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19 July 2019

Ref: FOI2018/21717

Dear Mr Sea

## Freedom of Information Act 2000: 2019 Loan Charge

Thank you for your enquiry of 30 November 2018, which we have considered under the terms of the Freedom of Information Act 2000 (the FOI Act).

You asked for the following information:

*"Can I please have a copy of the briefing notes provided to MP John Glen for the Westminster Hall debate on 20th November regarding the 2019 Loan Charge?"*

We wrote to you on 30 January to explain that by virtue of section 10(3) of the FOI Act, we needed to give further consideration to the information that we had identified in relation to your request under section 35 of the FOI Act, which relates to formulation of government policy.

Having now considered the information further, I can confirm that all information within the scope of your request can be released.

A copy of the briefing note is attached to this response.

Please accept my apologies for the delay in responding to your request.

If you have any queries about this letter, please contact us. Please quote the reference number above in any future communications.

Yours sincerely

Information Rights Unit

Enclosure: Disguised remuneration- Background briefing

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# Disguised remuneration – Background briefing

## Background to the debate

### Motion:

Effect of the 2019 loan charge

### Format

Time: 14:30 – 16:00

MP: Steve Baker

Title: Disguised remuneration loan charge

### Duration – 1.5 hours

- the MP who tabled debate speaks first for about 10-15 minutes.
- Then backbench MPs can speak, followed by the Opposition.
- The Minister then concludes with a speech of around 7-10 minutes.

### Parliamentary Context

- **Steve Baker** is the Conservative Party MP for Wycombe, winning his seat in the 2010 election.
- He was previously a Royal Air Force engineer, consultant and bank worker.
- In June 2015, he became co-chairman of Conservatives for Britain, a campaigning organisation formed of euro sceptic MPs.
- He co-founded The Cobden Centre, on which he sits on the advisory board.
- He established and chairs the all-party parliamentary group (APPG) on Economics, Money and Banking.
- He served as Chair of the European Research Group until his promotion to the position of Parliamentary Under-Secretary of State for Exiting the European Union at the Department for Exiting the European Union on 13 June 2017, but resigned from his office on 9 July 2018 following the resignation of David Davis over concerns with the Government strategy on Brexit. Chairman Jacob Rees-Mogg later appointed Steve Baker as Deputy Chairman of the ERG.

## Summary

Steve Baker MP has been granted a 1.5 hour debate on the effect of the disguised remuneration loan charge.

Most of his previous questions in Parliament have focused on the EU Exit negotiations and he does not appear to have spoken previously about the disguised remuneration legislation.

Given the broad nature of the debate, it is likely that we will have to make alterations to the speech depending on where MPs choose to focus their attentions. The speech has focused on:

- **Rationale for the loan charge** - the speech refers to the Early Day motion in Parliament and confirms that the charge on disguised remuneration loans, announced in Budget 2016, was legislated in Finance (No. 2) Act 2017 which has Royal Assent.

The speech outlines the Government's view that disguised remuneration (DR) loans were contrived tax avoidance schemes that use loans, often through offshore trusts, to avoid paying income tax and National Insurance contributions on earnings. The loans are no different to normal income and are therefore taxable. If the loan is genuine then it will be repaid.

- **Claims by Promoters and scheme users that HMRC accepted DR schemes** - the speech makes clear that the Government and HMRC has never accepted that DR schemes worked, and that tax was always payable. It then outlines the compliance activity undertaken by HMRC to secure the tax. HMRC has been successfully engaging with promoters, encouraging them to change their behaviour, seeing many promoters move out of promoting avoidance schemes altogether.
- **Defending against claims that the charge is retrospective** – the speech explains that the DR charge is not retrospective because the charge does not arise until 2019. The announcement in 2016 gave users a three-year period to repay disguised remuneration loans, or to agree a settlement with HMRC to avoid the charge. The charge in 2019 does not change HMRC's view that DR loans were always taxable.
- **Outlining settlement opportunities** – The speech sets out how individuals who have used a DR scheme can settle the tax that they owe and includes details of the simplified terms that HMRC announced in the summer.

## Key Facts

### Must not say the schemes are illegal or that they are evasion

- DR tax avoidance schemes are contrived arrangements that use loans, often paid through offshore trusts, to avoid paying income tax and National Insurance contributions on earnings.
- However, the law, at the time, did not allow the tax consequences these schemes claimed to achieve.
- Users of these schemes never intended to repay these loans. The loans are no different to ordinary income and were always taxable.
- It is unfair to ordinary taxpayers, who pay tax on time and in full, to allow people who have used tax avoidance schemes to get away with it, and that is why this Government has taken action to ensure that everybody pays the taxes they owe.

### Background:

- It has always been HMRC's view that DR schemes do not work and that tax is payable on earnings, even when they are taken in the form of a loan that is made by a third party, such as an offshore trust.
- The disguised remuneration legislation ensures that it is not possible to avoid paying tax on earnings by using a third party to make payment of the earnings and then claiming that because the payment wasn't made by the employer, no tax is due.

#### 2011 Disguised remuneration legislation

- The DR legislation, introduced in 2011, brought an end to the most widespread use of DR schemes. However the DR legislation was prospective only. This meant that individuals who had used DR schemes prior to 2011 were not caught by the legislation which made clear that the schemes did not work.
- HMRC compliance activity has continued to pursue the tax that was avoided through DR schemes that HMRC believes did not work.

#### Budget 2016 announcement on the 2019 loan charge

- At Budget 2016, the Government announced changes to the DR legislation to close loopholes in the 2011 legislation and to introduce a charge in 2019 on all loans that had been taken out after 1999 which remained outstanding in April 2019.
- The Budget 2016 announcement made clear that DR scheme users would still be able to settle the tax due on their historical DR loans with HMRC, or to repay the loan before 2019 so as to avoid having to pay the charge on DR loans in April 2019.

## Legality of DR schemes

- It is not illegal to use a DR scheme.
- However, DR schemes are tax avoidance schemes, and the law, at the time, did not allow the tax consequences these schemes claimed to achieve. It has been HMRC's view that these schemes have never been effective and a number of court successes support this view. The most well-known judgement was the unanimous Supreme Court decision in favour of HMRC against Rangers Football Club.

## HMRC activity on DR loan schemes

- Scheme users will say that promoters assured them that the schemes were disclosed to and accepted by HMRC and that they had QC approval. Schemes may have been disclosed to HMRC but HMRC did not accept that DR schemes achieved the aim that was intended.
- DR scheme users were often told by promoters that the schemes were lawful, but they are, and always were, tax avoidance. HMRC has consistently challenged their use and publicised the risks of engaging in avoidance.
- Being paid in loans should ring alarm bells – it isn't normal and users could have sought advice from an accountant or questioned their employer. And if you have a loan you would normally make provision to repay it.
- HMRC has always been clear that these schemes do not work, warning against the use of tax avoidance schemes in the media and in publications such as their *Spotlight* series. Published guidance, states - in no uncertain terms - that if you use a tax avoidance scheme, HMRC will seek full payment of any tax due, plus the appropriate interest and penalties.
- HMRC has undertaken extensive compliance activity against DR schemes, and scheme users, since they were first used. This has included opening thousands of enquiries into scheme users, successful litigation, and agreeing settlements.
- HMRC is working hard to agree settlements with anyone who wants to settle their tax affairs before the charge arises on the 5 of April 2019 and has written to over 40,000 DR scheme users, encouraging them to come forward and settle their tax affairs. So far, over 24,000 users have expressed an interest in settlement.

## Early Day Motion

- Stephen Lloyd (Lib Dems) has put forward an Early Day Motion (EDM) in Parliament which has attracted 101 signatures (as at November 16<sup>th</sup>).
- The EDM claims that the charge will bankrupt supply teachers, nurses and social workers. While there may be some affected individuals who work in the public sector, most scheme users work in professional services, such as IT, and earning on average twice as much as the average UK taxpayer.
- The EDM also claims that individuals used DR schemes as a result of the introduction of IR35. However, individuals are able to comply with IR35 without entering into contrived avoidance. Scheme users only entered into these artificial arrangements to pay little to no tax.

### Interaction with IR35

- IR35 is legislation which aims to tax an individual who provides services through their own company in the same way as an employee, if they would be treated as an employee.

### Loan Charge Action Group

- Some of those affected by the DR legislation have formed a lobby group named the Loan Charge Action Group (LCAG). The LCAG has been very active in trying to raise awareness about the impacts of the charge with MPs and with the Lords, particularly in recent weeks, holding a day of protest in Parliament in October and attracting sympathetic coverage on LBC.
- The LCAG and the EDM have both claimed that the charge on disguised remuneration loans will affect lower paid workers in the public sector. However, the reality is that the majority of scheme users (65%) work in the business services sector – including management consultants, IT consultants and financial advisors while HMRC's current records show fewer than 3% work in medical services and teaching. On average, DR scheme users earned twice as much as the average UK taxpayer (£33k) when using these schemes and the median amount of tax avoided was £14,000 per year.
- The LCAG has raised concerns that the charge on disguised remuneration loans will lead to bankruptcies and to suicides and have asked HMRC to introduce a 24 hour suicide helpline for individuals who are concerned about the charge.
- HMRC recognises that the cost of settling will be significant for some people (those that used schemes to avoid most tax over a number of years) and wants to do all it can to make it simple for people to get out of these tax avoidance schemes. There are a range of flexible options for anybody who may have difficulty paying what they owe. Anyone earning £50K or less can have 5 years to pay.
- Anyone who is concerned about the loan charge or their ability to pay the tax they owe should contact HMRC as soon as possible.

### Profile of DR scheme users

- The disguised remuneration loan charge is expected to affect up to 40,000 individuals who have entered into disguised remuneration avoidance schemes. This measure will also affect individuals who are self-employed and trading on their own account or through a partnership and have entered into disguised remuneration avoidance schemes. The measure is expected to affect up to 10,000 self-employed individuals who have entered into disguised remuneration avoidance schemes. (TIIN, November 2017)
- 70% of scheme users have used DR schemes for two years or more. This means that many/most scheme users will owe tax on their income for more than one year when the charge takes effect in April 2019.

### **Activity in Parliament**

- We have received a number of PQs and Oral Questions on the DR loan charge. Most questions have focused on the impact of the DR loan charge on the NHS, the economy and on scheme users.
- There is an EDM which has been signed by 101 MP's (as at November 16<sup>th</sup>).
- The Lords Finance Bill Sub-Committee asked for submissions into HMRC powers and received a large amount of correspondence on the disguised remuneration loan charge. As a result of this, the Sub-Committee invited a tax advisor who has close links with the LCAG to give evidence about the impact of the DR loan charge. The Committee therefore focused largely on the DR loan charge and were sympathetic to the claims made by those who have been advising on DR schemes.
- The Chancellor was also asked about DR loans on the Marr show (October 28) and in the Treasury Select Committee (November 5th).

### **Help available for people who have used DR schemes**

- HMRC is actively encouraging anybody who is worried about being able to pay what they owe to get in touch with them as soon as possible. HMRC will consider all personal circumstances to agree a manageable and sustainable payment plan wherever possible.
- HMRC has introduced simplified settlement terms which mean DR scheme users who earn less than £50,000 and who settle their tax affairs ahead of the loan charge can agree a payment plan of up to five years without detailed information as long as they are no longer engaged in avoidance.
- For those who require longer to pay or with income of £50k or more, HMRC is still able to help, but will need more details as these arrangements are tailored that individual's personal circumstances.

### **Suggestions for mitigation made by scheme users**

- Scheme users have suggested that the charge on disguised remuneration loans should be limited to a rate below 40/45% to reflect the fact that employers also benefited from the schemes, and that Promoters also took their cut.
- The Government believes that limiting the charge to loans that were taken out after 2017 is not the right answer and would not be fair to the vast majority of taxpayers who have paid always their taxes in full and on time.

### **Pay As You Earn and Employers liabilities**

- Many of those who are affected by the charge on disguised remuneration loans are individual contractors who use their own personal service company but provide services to other companies.
- They will argue that the loan charge is unfair, as the company they ultimately provided services to will have benefited from their using a disguised remuneration loan through a discounted rate. They do not believe that they should pay the disguised remuneration loan charge in full.



- Individual scheme users will also point to the Rangers case, where HMRC were successful at the Supreme Court which found that the disguised remuneration loan charge scheme never worked and tax was always payable on the payment made by the employer into the trust that was used by the scheme.
- They explain that since the tax was payable at the point the employer made a payment into the trust, HMRC should not try to pursue employees for the tax payments but should only try to collect tax from employers.
- HMRC continues to pursue employers who have used disguised remuneration schemes for the Pay As You Earn liabilities that would have fallen on the employer in the first instance. The charge on disguised remuneration loans does not change this principle. In fact, around three quarters of the yield resulting from this measure is expected to be paid by the employers who have used these schemes.
- However, in cases where the tax cannot reasonably be collected from the employer, for example where the employer is no longer in existence, HMRC will go to the employee to settle their income tax liability.
- The individual underpaid tax on the loans they received, and where it cannot be collected from the employer, it is only right that the individual pay the tax they should have paid at the time.

## Early Day Motion on the 2019 Loan charge

Primary sponsor: Lloyd, Stephen

### *Text of the Early Day Motion:*

That this House expresses its concern at the 2019 Loan Charge; notes that it is retrospective applying back to 1999; further notes that as a result of the introduction of IR35, umbrella companies were set up and recommended by professional advisers and employment agencies; recognises that the Charge will affect contractors, freelancers and agency workers, including social workers, supply teachers and bank and locum nurses and doctors; notes that employment was not an option and in some cases the company or organisation insisted on those arrangements, including to avoid paying National Insurance; notes that these individuals did not receive sick or holiday pay; believes it is unfair that HM Revenue and Customs (HMRC) are pursuing people who acted in good faith rather than the client organisations, agencies

or umbrella companies all of whom benefited significantly; notes that HMRC are aggressively pursuing individuals through Advanced Payment Notices with no independent right of appeal; further believes that the Charge is likely to cause financial distress and bankruptcies, impeding HMRC's ability to recover these tax liabilities and causing a devastating impact on people; believes that retrospectively taxing something that was technically allowed at the time, is unfair; calls on the Government to revise the legislation to avoid significant damage to independent contractors and freelancers in the UK; and calls for the Charge to apply only to disguised remuneration loans entered into after the Finance Act 2017 received Royal Assent.

### Signatories to the Early Day Motion (as at November 14<sup>th</sup> 2018):

Showing 101 out of 101

<u>Name</u>	<u>Party</u>	<u>Constituency</u>	<u>Date Signed</u>
<u>Aldous, Peter</u>	Conservative Party	Waveney	21.05.2018
<u>Amess, David</u>	Conservative Party	Southend West	09.10.2018
<u>Antoniazzi, Tonia</u>	Labour Party	Gower	26.06.2018
<u>Barron, Kevin</u>	Labour Party	Rother Valley	09.10.2018
<u>Bellingham, Henry</u>	Conservative Party	North West Norfolk	04.06.2018
<u>Betts, Clive</u>	Labour Party	Sheffield South East	15.10.2018
<u>Blackman, Bob</u>	Conservative Party	Harrow East	17.05.2018
<u>Bone, Peter</u>	Conservative Party	Wellingborough	11.09.2018
<u>Brake, Tom</u>	Liberal Democrats	Carshalton and Wallington	10.05.2018
<u>Bruce, Fiona</u>	Conservative Party	Congleton	18.06.2018
<u>Cable, Vincent</u>	Liberal Democrats	Twickenham	21.05.2018
<u>Cadbury, Ruth</u>	Labour Party	Brentford and Isleworth	11.06.2018
<u>Carmichael, Alistair</u>	Liberal Democrats	Orkney and Shetland	10.05.2018
<u>Clwyd, Ann</u>	Labour Party	Cynon Valley	09.07.2018

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<u>Coaker, Vernon</u>	Labour Party	Gedling	18.06.2018
<u>Cooper, Rosie</u>	Labour Party	West Lancashire	13.06.2018
<u>Coyle, Neil</u>	Labour Party	Bermondsey and Old Southwark	04.06.2018
<u>Cruddas, Jon</u>	Labour Party	Dagenham and Rainham	05.06.2018
<u>Cryer, John</u>	Labour Party	Leyton and Wanstead	10.05.2018
<u>Cunningham, Jim</u>	Labour Party	Coventry South	17.05.2018
<u>Daby, Janet</u>	Labour Party	Lewisham East	25.10.2018
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<u>Edwards, Jonathan</u>	Plaid Cymru	Carmarthen East and Dinefwr	16.05.2018
<u>Evans, Nigel</u>	Conservative Party	Ribble Valley	09.10.2018
<u>Farrelly, Paul</u>	Labour Party	Newcastle-under-Lyme	21.05.2018
<u>Farron, Tim</u>	Liberal Democrats	Westmorland and Lonsdale	17.05.2018
<u>Fitzpatrick, Jim</u>	Labour Party	Poplar and Limehouse	16.05.2018
<u>Gaffney, Hugh</u>	Labour Party	Coatbridge Chryston and Bellshill	27.06.2018
<u>Gapes, Mike</u>	Labour Party	Ilford South	04.06.2018
<u>George, Ruth</u>	Labour Party	High Peak	17.05.2018
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<u>Gray, James</u>	Conservative Party	North Wiltshire	05.11.2018
<u>Grieve, Dominic</u>	Conservative Party	Beaconsfield	06.06.2018
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<u>Hardy, Emma</u>	Labour Party	Kingston upon Hull West and Hessle	23.10.2018

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<u>Jardine, Christine</u>	Liberal Democrats	Edinburgh West	16.05.2018
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<u>Lefroy, Jeremy</u>	Conservative Party	Stafford	21.05.2018
<u>Lewis, Ivan</u>	Labour Party	Bury South	04.09.2018
<u>Lloyd, Stephen</u>	Liberal Democrats	Eastbourne	08.05.2018
<u>Lucas, Caroline</u>	Green Party	Brighton Pavilion	22.05.2018
<u>Main, Anne</u>	Conservative Party	St Albans	19.07.2018
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<u>Martin, Sandy</u>	Labour Party	Ipswich	05.06.2018
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<u>McGovern, Alison</u>	Labour Party	Wirral South	04.09.2018
<u>Moran, Layla</u>	Liberal Democrats	Oxford West and Abingdon	09.05.2018
<u>Murray, Ian</u>	Labour Party	Edinburgh South	15.10.2018
<u>O'Mara, Jared</u>	INDEPENDENT	Sheffield Hallam	22.05.2018

<u>Name</u>	<u>Party</u>	<u>Constituency</u>	<u>Date Signed</u>
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<u>Pearce, Teresa</u>	Labour Party	Erith and Thamesmead	04.07.2018
<u>Penning, Mike</u>	Conservative Party	Hemel Hempstead	04.06.2018
<u>Powell, Lucy</u>	Labour Party	Manchester Central	09.10.2018
<u>Rashid, Faisal</u>	Labour Party	Warrington South	24.07.2018
<u>Robinson, Gavin</u>	Democratic Unionist Party	Belfast East	21.05.2018
<u>Russell-Moyle, Lloyd</u>	Labour Party	Brighton Kemptown	16.05.2018
<u>Ryan, Joan</u>	Labour Party	Enfield North	23.07.2018
<u>Shannon, Jim</u>	Democratic Unionist Party	Strangford	09.05.2018
<u>Shapps, Grant</u>	Conservative Party	Welwyn Hatfield	18.06.2018
<u>Sharma, Virendra</u>	Labour Party	Ealing Southall	06.06.2018
<u>Sheerman, Barry</u>	Labour Party	Huddersfield	11.07.2018
<u>Skinner, Dennis</u>	Labour Party	Bolsover	17.10.2018
<u>Slaughter, Andy</u>	Labour Party	Hammersmith	23.05.2018
<u>Smeeth, Ruth</u>	Labour Party	Stoke-on-Trent North	09.07.2018
<u>Sobel, Alex</u>	Labour Party	Leeds North West	17.05.2018
<u>Stevens, Jo</u>	Labour Party	Cardiff Central	21.05.2018
<u>Stone, Jamie</u>	Liberal Democrats	Caithness Sutherland and Easter Ross	16.07.2018
<u>Streeting, Wes</u>	Labour Party	Ilford North	30.10.2018
<u>Swinson, Jo</u>	Liberal Democrats	East Dunbartonshire	12.09.2018
<u>Thewliss, Alison</u>	Scottish National Party	Glasgow Central	11.05.2018
<u>Thomas, Gareth (Harrow West)</u>	Labour Party	Harrow West	09.10.2018
<u>Turley, Anna</u>	Labour Party	Redcar	11.06.2018
<u>Twigg, Stephen</u>	Labour Party	Liverpool West Derby	05.07.2018
<u>Twist, Liz</u>	Labour Party	Blaydon	06.11.2018
<u>Vickers, Martin</u>	Conservative Party	Cleethorpes	04.06.2018
<u>Walker, Thelma</u>	Labour Party	Colne Valley	22.05.2018
<u>West, Catherine</u>	Labour Party	Hornsey and Wood Green	20.06.2018

<u>Name</u>	<u>Party</u>	<u>Constituency</u>	<u>Date Signed</u>
<u>Western, Matt</u>	Labour Party	Warwick and Leamington	14.06.2018
<u>Williams, Hywel</u>	Plaid Cymru	Arfon	04.06.2018
<u>Wilson, Sammy</u>	Democratic Unionist Party	East Antrim	26.06.2018
<u>Yasin, Mohammad</u>	Labour Party	Bedford	04.09.2018
<u>Zeichner, Daniel</u>	Labour Party	Cambridge	23.05.2018