Email 0004 attachment 1

Within email sent 03 October 2019 17:31

Meeting between officials from HM Treasury and HM Revenue and Customs (collectively HMRC) and the Independent Loan Charge Review (LCR) Secretariat.



Affordability

- Income/Liability Comparison:
 - LCR set out that they are looking for information and data to allow them to compare taxpayers current income to the amounts they will be expected to pay under the Loan Charge and associated settlements.
 - HMRC stated that they have already provided reported income in 2017/18 for those that have settled and can look to provide the settlement amounts as a comparison to that information. The number of those who have settled is over 5000 so this is an appropriate sample size. [AP1]
- Income/Instalment Arrangements Comparison:
 - LCR set out that they are looking for information and data to allow them to compare taxpayers current income to the instalment arrangements offered to those who have settled with HMRC.
 - HMRC noted that instalment arrangements are bespoke to taxpayers' circumstances and that a
 direct comparison is difficult. However, they will consider the best way to provide this information.

 [AP2]
 - LCR asked for the raw data, rather than a summary table. HMRC will consider whether this is possible under taxpayer confidentiality rules.
 - LCR asked about the instalment arrangement data provided previously and how the sample of 1,600
 cases was selected. HMRC confirmed this was based on the most easily accessible information and
 not recorded centrally.
 - LCR asked for HMRC's thoughts on the work of the Loan Charge All Party Parliamentary Group in comparing taxpayer's income to their expected Loan Charge liability. HMRC considers that the sample used is likely to be bias and not reflective of the true population. On the value in comparing expected liabilities to income generally they noted that HMRC's approach is to take account for assets and agreeing instalments is a much more in-depth process than a simple comparison. HMRC can provide details on the factors considered when agreeing payment arrangements and noted that this approach ensures that 90% of instalment arrangements complete. [AP3]

Costings

- HMRC gave an overview of the methodology used to establish the Loan Charge scorecard.
- The starting point was the tax under consideration provided by compliance teams. This was uplifted to
 account for years immediately preceding 2016 (where data was not yet available) and an estimate of cases
 that HMRC were not currently aware of.
- Deductions were then made, notably for Accelerated Payment Notices (APNs) where disputed tax has already been scored. Initially this was forecast at 100% of the amounts due pre-2011 and a lower proportion for later periods.
- Behavioural responses to the Loan Charge were also accounted for, specifically:
 - The use of exit schemes, as promoters sell new avoidance schemes to attempt to get round the Loan Charge – for example generating artificial windfalls to repay loans. This is around 25/35%.
 - Non-payment assumptions the starting point was 20% based on similar exercises and further work
 was taken to reflect the bespoke circumstances on lean schemes. Non-payment accounts for
 circumstances beyond insolvency such as taxpayers moving abroad and litigation.

- When considering the proportion of taxpayers who were expected to settle HMRC used figures from previous settlement opportunities.
- Deterrence
 - o Yield estimated from the impact on taxpayer behaviour going forward.
 - Usually calculated with a reducing impact over 5 years. Loan Charge included a bump in 2019 when the charge applies.
- All scorecard estimations are agreed by HMRC internal challenge panels and the Office of Budget Responsibility (OBR).
- The £3.2bn quoted is part of a package of measures:
 - Employment income loan charge.
 - Self employed loan charge.
 - Withdrawal of relief on Corporation Tax deductions.
- Post-2016
 - The loan charge has been re-costed at every fiscal event since it was announced to reflect recent outturn and other factors, e.g. data from earlier years now fully available.
 - Spring 2019 notable shift between amounts expected from settlement and the LC itself could reflect public awareness.
 - o The expected coverage of APNs has been reduced as less were issued than expected.
 - As with all updates HMRC's conclusions were challenged by the OBR.
- HMRC will share all public materials on Loan Charge costings and consider whether it is possible to share the OBR note, potentially for understanding only. [AP4]

Inheritance Tax (IHT)

- LCR explained an interest with the interaction with IHT, noting the criticism that HMRC's approach is anomalous with the income tax treatment.
- HMRC to share a technical note explaining the application of IHT to trusts, with a focus on loan schemes. **[AP4]**

Outstanding Questions and Next Steps

- LCR ran through the outstanding questions and agreed to email a summary of the current position by the end of the day.
- HMRC queried Q2 from LCR's email of 30.10. LCR will clarify in the email summary.
- LCR noted that further questions are likely to follow on HMRC's debt collection activities and the interaction between settlements and Accelerated Payment Notices.

Email 0007 attachment 1

17.09.2019

Independent Review of the Loan Charge: Request for Information to HMT and HMRC

Background Information

The Reviewer is keen to understand a lot more detail about issues including:

- Who is, in practice, subject to the Loan Charge
- Their profile (in terms of income and professional background) at the point at which they entered into relevant loans, and currently
- How HMRC have approached investigation and enforcement into DR schemes over the period since 1999

- How the Loan Charge interacts with:
 - Wider rules on off-payroll working (such as IR35)
 - Taxes that may introduce additional complexities to calculations regarding payment of the Loan
 Charge and potential settlement (such as Inheritance Tax, Corporation Tax and Capital Gains Tax)
 - HMRC's approach to enforcement in relation to both employers and employees, and the circumstances in which HMRC will seek to obtain outstanding tax from employees, when the liability could have fallen on the employer (e.g., when the employer is offshore or no longer in existence).

The Reviewer is particularly keen to ensure that he's getting the full picture around the Loan Charge – and so expects HMT and HMRC to proactively offer any additional or supplementary data, or access to anonymised datasets, which will address the topics set out above. The below questions should all be answered in their own right or, if that isn't possible, an explanation of why it isn't (as is set out within the Terms of Reference for the Review).

<u>Disquised Remuneration (DR) Schemes: Patterns of usage, Settlement Activity and Estimated Yield</u>

Page 5 of the HMT report produced in March 2019 to satisfy the requirement of s.95 FA 2019 (the 's.95 Report') states that "HMRC data shows that fewer than 1% of DR scheme users have an outstanding loan from before 2003. Around half of outstanding loans were made in the last seven years..."

Please provide further quantitative details regarding the number and value of outstanding loans within scope of the Loan Charge, based on the most recent information known to HMRC. Please ensure that this information includes the following:

- 1. Details of how many known individual DR scheme users have an outstanding loan from each tax year between 1999/2000 and 2018/19 (each of these years being a 'relevant tax year'). Please disaggregate this to show:
 - a. The total number of outstanding loans from each relevant tax year
 - b. The total value of outstanding loans from each relevant tax year
 - c. The percentage of the total number of outstanding loans which were made in each relevant tax year
 - d. The percentage of the total value of outstanding loans which were made in each relevant tax year

Page 7 of the s.95 Report states that "Since the DR loan charge was announced, HMRC has agreed around 6,000 settlements with employers and individuals, worth over £1 billion".

- 2. Please provide further quantitative details of the pattern of settlement activity, showing who has entered into a settlement and capturing the split between employers, individuals, and the values of loans of involved. Please ensure that this response includes (based on the most recent information available to HMRC) how many settlements have been agreed, disaggregated to show the following:
 - a. The <u>total number of settlements that have been agreed</u>, and to which relevant tax years these relate.
 - b. The <u>total value of the settlements that have been agreed</u>, and to which relevant tax years these relate.
 - c. For each of (a) and (b), details of the numbers/values of settlements that have been agreed with both <u>employers</u> and <u>individuals</u>.
 - d. For each of (a) and (b), the month and year in which those settlements were agreed.
 - e. What proportion of settlement offers that have been made remain under discussion between HMRC and each of <u>employers</u> and <u>individuals</u>.

Page 7 of the s.95 Report states that "around 75% of the overall yield from the charge on DR loans is expected to come from employers and, so far, about 85% of the yield from settlements in advance of the charge have come from employers". This data is stated as being correct as at 31 December 2018.

3. Please provide <u>updated figures for both of these sources of information</u>.

The s.95 Report refers at various points to approximately 50,000 individuals being involved in DR tax avoidance of a type that will mean they are affected by the Loan Charge.

- 4. The Reviewer is aware of arguments that the 50,000 individuals referred to in the s.95 Report may not represent the totality of individuals who could be subject to the Loan Charge, and that some may have been contacted without suspicion that they had engaged in tax avoidance. Please confirm whether this is correct, and in particular:
 - a. Whether this estimate has remained consistent since 2016, and whether it remains HMRC's view of the number of individuals who will be affected by the Loan Charge.
 - b. How many individuals have entered into/moved out of scope of the relevant population in view of HMRC's enquiries since the Loan Charge was announced.
 - c. How HMRC arrived at the original figure of 50,000 individuals affected by the legislation, and how HMRC decided to contact these individuals specifically (including whether any individuals were contacted without suspicion that they had engaged in tax avoidance).
 - d. How many of these 50,000 individuals had:
 - i. Not previously had any enquiries opened by HMRC into their tax affairs prior to 2016.
 - ii. First had an enquiry into their tax affairs opened by HMRC between 1995-1999.
 - iii. First had an enquiry into their tax affairs opened by HMRC between 2000-2004.
 - iv. First had an enquiry into their tax affairs opened by HMRC between 2005-2009.
 - v. First had an enquiry into their tax affairs opened by HMRC between 2010-2014.
 - vi. First had an enquiry into their tax affairs opened by HMRC after 2014.

We understand that HMT initially anticipated that the DR measures announced at Autumn Budget 2016 ('AB16') would yield approximately £3.2 billion. Paragraph 1.217 of the AB16 document sets out that "The government will raise £2.5 billion..." through legislation including that which introduced the Loan Charge.

5. Please provide:

- a. Confirmation of the <u>AB16 calculation of the revenue that DR measures announced at that fiscal event would yield</u>, disaggregated to show:
 - i. The proportion of this revenue that would be generated through settlement activity
 - ii. The proportion of this revenue that would be generated through application of the Loan Charge itself
 - iii. The proportion of this revenue (for each of (i) and (ii)) that would be derived from employers
 - iv. The proportion of this revenue (for each of (i) and (ii)) that would be derived from employees
- b. The most recent estimate of the revenue that DR measures announced at AB16 will yield, disaggregated as under point (a), and the date as of which that estimate is correct.

The Reviewer is aware of reports that elements of the population affected by the Loan Charge (specifically those individuals who were potentially subject to it at the time of its introduction) may face particular financial difficulties in either settling with HMRC or paying the Loan Charge itself. He is keen to understand more detail about the people who may fall into this category.

- 6. Please provide further detail on the relevant population (e.g., regarding their financial circumstances now and at the point at which they entered into relevant loans), including the following:
 - a. How many individuals were in each of the following yearly income bands (before tax) during years when they entered into a loan:
 - i. £0 19.9k, 20 29.9, 30 39.9, 40 49.9, 50 59.9, 60 79.9, 80 99.9, 100 + 100 100
 - ii. We would like this data broken down for each relevant tax year (as defined above). If this is not possible then please explain the reasons.
 - b. Of the individuals affected, how many were in each of those income bands for the last tax year?
 - c. For the individuals who have settled, please can you provide their income for the most recent tax year and:
 - i. the average (mean) amount that they are due to pay per year during the period covered by the settlement; and
 - ii. the average (mean) repayment period over which they are due to pay?

- d. If information similar to that referred to under point (c) above is available across broader distributions (for example the distributions across quartiles of individuals who have already agreed to settle so the quartile who need to repay the most per month, down to the quartile who need to repay the least per month) then please can this be provided.
- e. Please can you provide explanatory examples to demonstrate the amount that individuals will have to pay under the Loan Charge, if they fail to settle with HMRC?

Paragraph 3.80 of the s.95 Report references that former employees of dissolved companies (or employees of offshore companies) will be required to file a self-assessment return "and pay the charge by 31 January 2020".

- 7. Is the effect of this to treat employees of dissolved or offshore companies differently than employees of UK companies (who, as per paragraph 3.79 of the s.95 Report, are required to pay the PAYE liability)? Please confirm:
 - a. The circumstances in which HMRC will look to employees, rather than employers, to meet a tax liability that would otherwise fall on the company.
 - b. The policy rationale for requiring employees of dissolved UK companies to meet a tax liability that would fall on the company, were it still in existence.
 - c. The numbers of employees of the type referred to in paragraph 3.80 of the s.95 Report, and the total sum that HMRC expects they will be required to pay, either through settlement or by paying the Loan Charge.
 - d. Details of the approach that HMRC is taking in recovering revenue from employers who whether directly or indirectly employed individuals who are now subject to the Loan Charge.

HMRC Approach to action against DR schemes

Paragraph 3.27 of the s.95 Report states that "HMRC has opened tens of thousands of enquiries into thousands of businesses and individuals who have used DR schemes, with the first cases having been opened before 1999".

- 8. The Reviewer is aware of reports that HMRC may have opened enquiries into relevant tax years of individual DR Scheme users, who subsequently considered that those enquiries has been closed as they had not had additional questions raised with them. He is keen to receive more information about HMRC's approach to opening and pursuing enquiries into relevant tax years. Please provide more detail on this, including in relation to each of the following periods:
 - a. 1995-1999
 - b. 2000-2004
 - c. 2005-2009
 - d. 2010-2014
 - e. 2015-2019
 - i. the <u>total number of enquiries into DR schemes that have been opened</u> (based on the most recent available data)
 - ii. the <u>number of enquiries into DR schemes that were opened within each of these periods</u> (e.g., the total number of enquiries opened between 1995-1999; 2000-2004; and so on)
 - iii. HMRC's approach to conducting enquiries into DR schemes for example whether 'open' tax years were actively pursued, or whether enquiries were left open for a period of years without active investigation. Please provide figures to support an answer to this question.
 - iv. the <u>average number of HMRC employees whose responsibilities specifically included</u> investigating DR schemes within each of these periods

Paragraph 3.38 of the s.95 Report states that "Successive governments have been clear that DR schemes do not work, warning specifically against the use of these tax avoidance schemes".

9. A 2004 WMS from the then-Paymaster General is referenced to support this statement. Please could you confirm whether this 2004 WMS was the first statement of its type made specifically in relation to DR schemes, or whether there are additional, earlier, statements of which the Reviewer should be aware.

- 10. Please could you also provide a chronology of relevant court cases and other public statements where HM Treasury and HM Revenue and Customs believe the position was made clear.
- 11. In our meetings of 12th September, we briefly discussed the interaction of the Loan Charge with other taxes. Please could you explain in more detail the interaction between disguised remuneration legislation, specifically referencing the Loan Charge, and other taxes. This should include but need not be limited to:
 - a. Inheritance Tax
 - b. Corporation Tax
 - c. Capital Gains Tax
- 12. Paragraph 3.58 of the s.95 Report sets out that provisions of the Finance Act 2011 "put beyond doubt that any DR schemes entered into since December 2010 are ineffective". Please could you confirm the following:
 - a. Whether these provisions gave rise to the EBT Settlement Opportunity and Contractor Loan Settlement Opportunity (as referred to in paragraphs 3.65-3.68 of the s.95 Report).
 - b. The <u>settlement terms</u> that were offered to users of DR schemes in connection with the FA 2011 provisions, and how these differed from the settlement terms that have been offered in connection with the Loan Charge.
 - c. The <u>number of DR scheme users</u> that were contacted with a settlement offer in connection with the FA 2011 provisions, and <u>how many of these chose to settle</u>.
 - d. For the users who chose to settle, <u>examples of the settlements that were entered into</u> (along the lines requested in points 6(a)-(d) above).
- 13. The Reviewer is aware of arguments that certain taxpayers may have considered that they disclosed their usage of DR schemes to HMRC in their tax returns for relevant tax years. Please provide any information that HMRC holds on how many taxpayers made disclosures of this type, specifically including up-to-date figures for:
 - a. How many DOTAS numbers have been issued to tax avoidance schemes.
 - b. How many DOTAS numbers have been issued to tax avoidance schemes which HMRC consider would fall within the scope of the Loan Charge.
 - c. For both (a) and (b), an annualised breakdown since 2004 of when DOTAS numbers were issued.
 - d. How many individuals or firms that are subject to the Loan Charge (or have settled or are in the process of settlement) have declared one or more tax years to HMRC for which they have also declared the use of a tax avoidance scheme by reference to a DOTAS number.
 - e. How many taxpayers (<u>divided across both individuals and firms</u>) HMRC consider are subject to the Loan Charge, but fully disclosed their usage of DR tax avoidance schemes at the point of submitting tax returns.

Additional Questions

The terms of reference require the Reviewer to consider "whether changes announced by the government in advance of, and since, the Loan Charge came into effect address any legitimate concerns that have been raised about the impact on individuals, according affordability for those affected".

- 14. In July 2019, the Financial Secretary to the Treasury announced that HMRC would "not apply the loan charge to a tax year where an inquiry was closed on the basis of fully disclosed information". Please confirm HMRC's approach to applying this policy, including HMRC's assessment of:
 - a. How many <u>individuals</u> and <u>employers</u> will benefit from this approach, relative to if HMRC applied the Loan Charge to tax years where inquiries had been closed on the basis of fully disclosed information, having previously been opened.
 - b. The total number of tax years, across both individuals and employers affected by this approach.
 - c. The total amount of revenue foregone as a result of this approach.
 - d. Whether any settlement offers that were made prior to July 2019 will need to be reopened in view of this announcement, and if so how many.

- 15. The Financial Secretary also announced, in July 2019, that there would be "additional flexibility' for individuals settling under the published terms who may be in genuine hardship". Please confirm how HMRC is providing this flexibility, including HMRC's latest assessment of:
 - a. How many <u>individuals</u> are expected to fall into this category, and what <u>form(s)</u> of <u>flexibility</u> will <u>be</u> available to them for example whether this will consist of increased time to pay the sums owing, or whether there are any instances in which HMRC expect to grant flexibility over the total sums to be repaid.
 - b. If HMRC expects to provide any flexibility over the total sums to be repaid, please confirm:
 - i. the circumstances in which this flexibility will be provided;
 - ii. the approximate number of individuals to whom HMRC expects to extend this flexibility; and
 - iii. the total revenue that HMRC expects to forego as a result.
- 16. The Reviewer is aware of commentary regarding the interaction between the Loan Charge and IR35. Please confirm the government's view of the relationship between these pieces of legislation.
- 17. Please confirm whether HMRC are aware under any of IR35 or other legislation aimed at combatting tax avoidance (including the Loan Charge) of public sector organisations promoting the use of DR tax avoidance schemes to their employees or contractors. If HMRC are aware of such behaviour, please give an indication of:
 - a. the scale of this behaviour;
 - b. the timeframes in which it took place; and
 - c. action taken by HMRC as a result.
- 18. The Reviewer understands that DR schemes of the type that are subject to the Loan Charge continue to be promoted today. Please provide more details about the nature of such schemes particularly including:
 - a. The nature of the populations to whom they are promoted (e.g., including details of the type of economic sectors in which employees typically work, the typical income levels of participants, and the approximate numbers of people who continue to participate in such schemes).
 - b. HMRC's approach to taking action against promoters, employers and individuals involved in such schemes, including what powers are used when they fall outside the scope of the Loan Charge (e.g., how HMRC will take action when relevant loans are entered into following the 19/20 tax year).

Email 0006 attachment 1

Within email sent 23 September 2019 18:59



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

SW1A 2BQ

Sir Amyas Morse Independent Loan Charge Review Date 23 September 2019 www.gov.uk

Dear Sir Amyas,

Thank you for your request of 17 September 2019.

Our approach in responding to your request is to interpret your questions broadly and provide additional, relevant background material so our responses, as requested, are as broad and as helpful as possible.

Where we are unable to satisfy a specific request for information, because our systems do not collect the data in the precise format requested or the information does not exist, we will explain the position and, wherever possible, we will provide you with relevant alternative material.

As you will appreciate, such a large amount of information takes time to gather. In this letter, we have responded to questions 7, 10, 11, 14, 15 and 16.

We will respond to questions 1, 2, 3, 4, 5, 9 and 12 on 26 September 2019. Having reviewed the request, we do not believe we will be able to respond fully to all of the points raised in each of the questions. We will set out what we can provide with reasons where that differs from the precise request and any alternatives.

We are considering the remaining questions further and will respond in the week commencing 30 September 2019.

As we are not responding to the questions sequentially, we have aligned the paragraph numbers to the question numbers for ease of use. We have cross-referred responses to other questions where helpful.

In some circumstances, information you have requested could be sensitive or impact our enforcement approach if published externally. Where this is the case, we will take the approach of sharing information as fully as possible, but request that you do not share it with external stakeholders or include it within your report. We will provide further details on individual questions where this is relevant.

As you are aware, there are two types of disguised remuneration avoidance schemes; employment and self-employment/ trading income. The latter were a reaction to the anti-avoidance legislation introduced in 2011, and used by fewer individuals. Our responses will cover both types of schemes, and we will set out any specific differences.

	eration scheme was used. This is separate to the loan charge liability, which arose on 5 April 2019. The schensive double taxation relief rules ensure that nobody pays tax twice.
If you, o	or the review team, would like further clarification, or a discussion, to clarify any points we would be happy o.
Yours s	incerely
Carol B	ristow Mary Aiston
7.	Who is liable for the loan charge
The loa	HMRC's position is that the income from which income tax and National Insurance Contributions (NICs) is it to be avoided through the disguised remuneration (DR) schemes should be taxed as employment income. In charge seeks to ensure that people who have used these schemes pay tax by taxing the outstanding loan eas employment income in 2018/19.
7.2. our ope	Below we set out how employment income is taxed and collected, and who is liable for the loan charge and erational approach to collecting tax for the following situations:
•	DR schemes used by employers;
•	DR schemes used by individuals – offshore employer;
•	DR schemes used by individuals – onshore employer; and
•	DR schemes used by individuals – employer no longer exists.
7.3. contrac	The last three situations refer to individuals, who consider themselves self-employed, freelancers or stors, directly entering into schemes.
7.4. are dire	We have not set out the position for self-employed DR schemes as individuals who enter into those schemes ectly, and solely, liable.
How en	nployment income is taxed and collected

In our responses, we refer to the 'underlying liability'. This is the tax dispute relating to the year a disguised

- 7.5. The liability to pay income tax always rests with individuals. However, the obligation to operate Pay As You Earn (PAYE) to collect income tax and primary Class 1 NICs, arises on the employer in the first instance. Employers must also pay secondary Class 1 NICs to HMRC.
- 7.6. PAYE deducts tax from employment income on a provisional basis. The deductions are a payment on account to set against the actual tax liability for the year, which is established by Self Assessment, Simple assessment or informal calculation. Where an individual's income is wholly, or mainly, PAYE income, and PAYE is operated properly, the right amount of tax should be deducted during the tax year so that they do not need to complete a Self Assessment return .
- 7.7. Where an employer applies the regulations and co-operates with HMRC, the PAYE system works well and individuals do not need to complete a Self Assessment return. There are instances where employers do not apply the rules correctly or fail to co-operate with HMRC. In those cases, HMRC has existing powers to transfer the liability to the employee in specified circumstances, subject to appropriate safeguards.

DR schemes used by employers

- 7.8. The vast majority of employers who used DR schemes are close companies and the schemes were used to reward the owner-directors. Close company owner-directors have a high degree of control over their company's financial affairs and remuneration policy.
- 7.9. We expect the majority of employers to have settled their underlying liability with HMRC, to be in the process of settling or to account for the tax due under the loan charge via PAYE. In all these cases, HMRC has well established processes to provide instalment arrangements where needed.
- 7.10. In the minority of cases where the employer cannot pay, HMRC will seek to recover income tax from the owner-director employee using existing powers. This is to prevent a situation where an individual, who decided their company should use an avoidance scheme to benefit them, can claim not to be liable for the unpaid income tax because the employer cannot pay.
- 7.11. Under regulation 81 of the PAYE regulations, HMRC can transfer an income tax liability arising under the DR rules, which includes the underlying liability and the loan charge, to an employee where:
- HMRC has issued a determination to an employer in respect of the liability;
- the determination has become final; and
- the employer has not paid the liability within 30 days.
- 7.12. HMRC's operational approach for the loan charge is the same as it has been for the underlying liability since the DR rules were introduced in 2011. Where the employer accepts, or a court agrees, there is an income tax liability but they are unable to pay it, we consider using regulation 81.
- 7.13. There are some instances where an employer entered into a DR scheme to reward employees other than owner-directors. Where that occurs HMRC pursues the same approach; seeking tax from the employer in the first instance and considers transferring to the employee where the employer is unable to pay.

- 7.14. There is a well-established common law principle that where an employer pays the income tax liability of the employee, it can recover the money from the employee. Some DR arrangements also included specific indemnities for the employer so that they could recover income tax from the employee under contract law. This can mean that the employee ultimately bears the cost even if the employer pays in the first instance. This is a contractual matter between the employer and the employee.
- 7.15. A further tax charge can arise where the employer pays the income tax liability on behalf of the employee, including the owner-director, and the employee does not reimburse the employer. This tax charge arises on the benefit of the employer paying the employee's income tax liability.

DR schemes used by individuals – offshore employers

- 7.16. The majority of DR schemes used directly by individuals involve an artificial employer, set up solely for the purposes of the scheme, in an offshore jurisdiction.
- 7.17. Where there is an offshore employer that does not operate PAYE, the normal rules setting out who is responsible for operating PAYE transfer the responsibility to the first party onshore involved in the supply of the individual's services ('onshore entity'). This could be a recruitment agency or the end client using the services supplied by the individual.
- 7.18. The onshore entity is very likely to have been unaware that the individual was entering into avoidance and is unlikely to have benefitted from the avoidance. This is because they are likely to have engaged the services of the individual through a reputable recruitment agency and so will not be aware of what occurs further down the supply chain. If they are aware of the offshore employer, there is unlikely to be any indication that they are using an avoidance scheme. The onshore entity will also be unaware of the outstanding loan balance and have no power to obtain it in order to operate the loan charge. Therefore, the government ensured where the loan charge arose the existing rules did not transfer the liability to the onshore entity and it remains with the individual undertaking the avoidance.
- 7.19. Where the loan charge is due and the employer has ceased trading or there is no employer available to operate PAYE, the individual should self-assess the loan charge in their 2018-19 Self Assessment return and pay the income tax due. No NICs is due from the individual.
- 7.20. HMRC's current operational approach when collecting the underlying liability also seeks the same outcome; to collect the tax due from the individual because it cannot be collected from the employer. More information is set out in our response to question 10 about our approach to litigation.

DR schemes used by individuals – onshore employers

7.21. Some more recent DR schemes used directly by individuals involve an artificial employer onshore in the UK. Our operational approach is similar for the underlying liability and the loan charge and mirrors that for schemes used by employers set out above. We would seek to collect the money from the UK employer in the first instance. However, they are unlikely to have any assets or funds so we will seek to use regulation 81 to transfer the tax liability to the individual.

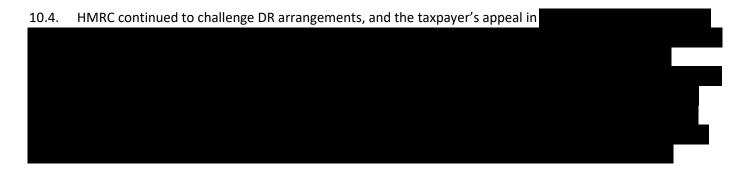
DR schemes used by individuals – employer no longer exists

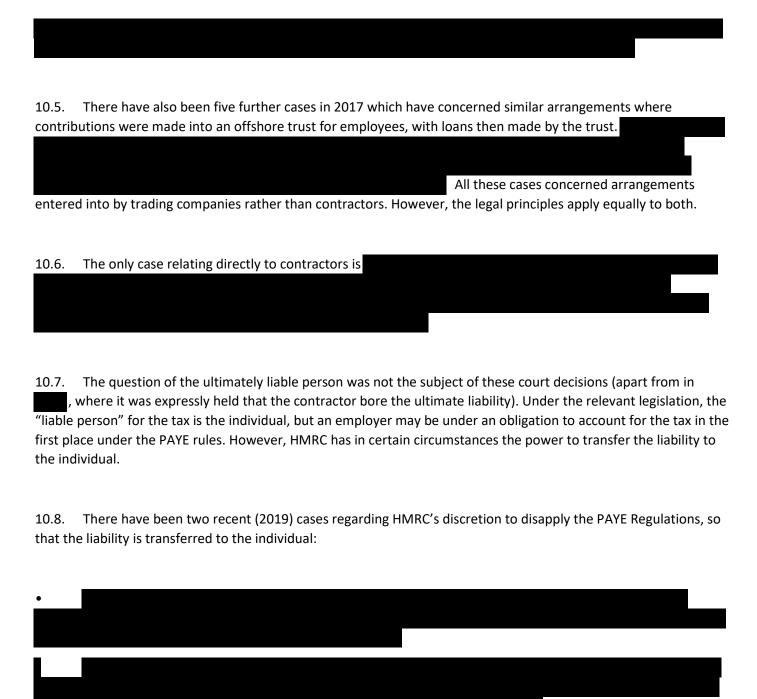
- 7.22. Where the employer does not exist at the time of an employment income charge, such as the loan charge, the income tax liability automatically arises on the individual employee. This can already happen in limited circumstances outside DR schemes, and applies equally whether the employer was onshore or offshore when it existed. The individual should include this liability in their Self Assessment return.
- 7.23. The government did not change this established position for DR schemes to ensure the individual who received their income without any tax deducted pays the tax due.

Data

- 7.24. We have interpreted your request as requiring an estimate of the split between onshore and offshore employers for schemes entered into directly by individuals. We are considering whether we have the data to provide this, and will include an update in our response later this week.
- 10. Litigation against users of DR schemes
- 10.1. We have interpreted this question to be about the chronology of litigation, and question 9 to be about public statements and communications. Therefore, we will set out the other public statements in our response to question 9 later this week.
- 10.2. HMRC has challenged the use of DR arrangements from their inception in late 1990s, building on HMRC's record of challenging earlier schemes designed to pay employment income in other ways that purported to avoid income tax and NICs. By way of background, where HMRC's decision regarding the tax position is not accepted by the taxpayer, the taxpayer can appeal to an independent Tribunal or Court. In addition to the cases below that have proceeded to a final hearing, there are thousands of DR cases where the taxpayer has accepted HMRC's view and not appealed, or appealed and settled before a final hearing.







- 10.9. Apart from the Tribunal and Court cases, the General Anti-Abuse Rule (GAAR) Advisory Panel ("the Panel") has between 2017 and 2019 considered nine DR avoidance schemes. The Panel is a statutory, independent, body made up of experts with legal, accountancy and commercial backgrounds. The Panel is not a judicial body deciding if the schemes are effective. The Panel provides external scrutiny to General Anti-Abuse Rule ("GAAR") cases by considering whether the tax arrangements entered into are a reasonable course of action, in line with the GAAR legislation.
- 10.10. In each of these cases the Panel has found the arrangements to be not reasonable and therefore abusive . Where the Panel considers that the arrangements were abusive, HMRC can make adjustments to the taxpayer's tax position, to counteract the avoidance and recover the tax that the scheme sought to avoid. The customer can appeal against those adjustments.
- 10.11. If you would like more information about specific arguments raised across these different cases we are happy to arrange a meeting with our lawyers.

11. Interaction with other taxes

- 11.1. There are several interactions between DR, and the loan charge, and taxes other than income tax and NICs. We do not think there is any interaction with capital gains tax, and have set out in more detail the interaction with:
- Beneficial loans;
- Inheritance Tax; and
- Corporation Tax.
- 11.2. The interaction with beneficial loans and Corporation Tax only apply to employment DR schemes. Inheritance Tax applies to both employment and self-employment DR schemes.
- 11.3. In our response to question 12, we will set out how these interactions have been taken into consideration in settlements over time.

Beneficial loans

- 11.4. Loans made from an employer to an employee that are interest free, or attract a very low rate of interest, can give rise to a benefit in kind (BiK) charge. The charge is income tax and Class 1 secondary NICs on the benefit of having a lower rate of interest than would be available from a lender other than the employer. Such loans are often referred to as 'beneficial loans'. The beneficial loans BiK charge applies whether the employer makes the loan directly, or indirectly via a third party.
- 11.5. It has been claimed that some individuals paid a BiK tax charge based on the beneficial loan provided through the DR scheme. Any BiK tax charge would be small, as it would only arise on the difference between the interest rate charged and a government set rate equivalent to a commercial rate (the official rate of interest).
- 11.6. Some commentators have claimed that because individuals paid a BiK tax charge they thought they were fully compliant. Tax enquiries opened by HMRC would have made clear that income tax was due on the amount of the loan, and individuals declaring a BiK are likely to have done so to make the arrangement seem less like avoidance and reduce the risk of challenge.
- 11.7. HMRC's position is that DR schemes give rise to an employment income charge at, or around, the time the loan is made on an amount roughly similar to the loan balance. An employment income charge would be on a much larger amount and takes precedence over a BiK charge so HMRC's view is there is no BiK tax charge. Anyone who paid a BiK charge can reclaim it through the overpayment relief claims process subject to the normal time limits.
- 11.8. The DR rules, including the loan charge, make clear that once an employment income charge has arisen a loan can no longer be treated as a beneficial loan, and so no further BiK charge will arise on the loan after that point.

11.9. There is no double taxation, as the BiK charge is on the benefit of the loan being a beneficial loan rather than on the amount of the loan itself, and HMRC would not seek a BiK charge for any year where the same loan was taxed as employment income.

Inheritance Tax

- 11.10. Generally, Inheritance Tax (IHT) can arise on a person's estate (their money and possessions) when they die. IHT can also arise when a person is alive if they transfer some of their estate into a trust. Many DR schemes use a trust as the third party, and therefore IHT charges can arise.
- 11.11. Broadly, an IHT charge can arise when there is a payment, or disposition, resulting in a loss of value to a trust. This includes outright payments, or distributions, to beneficiaries, and occasions when settled property is no longer held in a section 86 Inheritance Tax Act 1984 (IHTA84) compliant trust. It also includes where a loan is released (written off), in certain circumstances where a loan is made (if the circumstances give rise to a loss of value at that time), as well as other charging occasions where payments and distributions are made to beneficiaries.
- 11.12. Where a particular transaction gives rise to both an income tax charge and an IHT charge, relief against the IHT charge is due where the same transaction is treated as income .
- 11.13. As the loan charge only arises where the loan remains outstanding at 5 April 2019, there is no loss of value to the trust at that time and no charge to IHT arises as a result. Given that the loan continues, there could be a charge to IHT at a later time, if, for example, the loan is released by the trustees giving rise to a loss of value.
- 11.14. In summary, the loan charge will not give rise to an IHT charge. However, IHT may still be due on the use of the DR scheme.

Corporation Tax

- 11.15. The starting point for computing Corporation Tax is the employer's accounts prepared according to generally accepted accounting practice. In general, employers using DR schemes deducted the contribution to the DR scheme in their accounts for the year in which the contribution was made.
- 11.16. Payments made by an employer to reward employees, and that are incurred wholly and exclusively for trade purposes, are trading expenses which qualify as a deduction in calculating taxable profits. However, where the payment is made to a DR scheme from which employees may only benefit after some time has passed, specific anti-avoidance legislation enacted in 2004, defers this deduction, generally, until the employees receive an amount taxed as employment income derived from the payment. This treatment is often referred to as "fiscal symmetry".
- 11.17. In the vast majority of DR schemes employers claim to avoid an employment income charge and receive Corporation Tax relief for the amount contributed to the scheme, breaking the fiscal symmetry. This is purportedly achieved by rewarding employees in a way that does not create an employment income charge while still claiming Corporation Tax relief on the employee reward at the point the scheme is used. HMRC's view is that there is fiscal asymmetry because an employment income charge arises.

- 11.18. Where these employers are liable for the loan charge, it does not result in a further debit for the underlying contribution appearing in their accounts. Therefore, there is no further Corporation Tax deduction for the underlying contribution in the accounting period in which the loan charge arises.
- 11.19. There are some older cases where Corporation Tax relief was not given in the year the scheme was used. This could be as a result of a settlement agreement between HMRC and the employer, or the outcome of litigation deciding that the original contribution was not earnings and that the deduction in the earlier year's accounts for the contribution was disallowed for Corporation Tax purposes. In such cases, relief for the underlying contribution is allowed when the loan charge arises, which maintains fiscal symmetry.
- 11.20. There are some employers who included the expense in their accounts but never claimed the Corporation Tax deduction at that time. These employers no longer have any statutory route to claim the Corporation Tax deduction. However, a concession was incorporated into the published settlement terms to enable the deduction to be given to those who settle.
- 11.21. In either case, the employer will be able to claim an expense in their accounts, and a Corporation Tax deduction, for any income tax and NICs they pay for the loan charge. This only applies where the income tax and NICs are greater than the original accounts expense.
- 11.22. To discourage employers from entering into DR schemes, the government changed the rules from April 2017 so that tax relief for employers' contributions to DR schemes is denied rather than merely deferred until there is a corresponding employment income charge. It is not possible for the employer to obtain a tax deduction for such a contribution unless employment taxes and NICs are paid within 12 months of when the contribution is made, even where the contribution is subsequently agreed to be remuneration.
- 14. Closed enquiry new measure
- 14.1. HMRC will not apply the loan charge to a tax year where an enquiry was closed on the basis of fully disclosed information. This decision was made by HMRC's Commissioners using their collection and management powers because it is right that the loan charge should not arise where an individual was directly told by HMRC that their affairs were correct, following full disclosure of their DR arrangements. This measure does not apply to employers.
- 14.2. To benefit from this, individuals need to have provided HMRC with enough information about their disguised remuneration use, so that the officer enquiring into their affairs should have known from the information available that the individual had used a disguised remuneration scheme. The individual might have provided this either on their tax return or as part of the enquiry.
- 14.3. Individuals who consider that they qualify for the closed enquiry concession should notify HMRC when reaching any settlement, or when returning their loan charge information in their tax return for 2018 to 2019. If settlement has already been agreed with HMRC, individuals who are in this position should contact HMRC, which will refund any relevant part of the settlement.

	We are not able to provide an estimate of the numbers who will benefit and revenue foregone as we are rently aware of any cases where this new measure may apply. We are not able to identify cases of this kind ur records unless an individual comes forward and provides us with evidence, which has not happened to
14.5. individu	We will only be able to estimate how many customers are impacted and the revenue foregone once uals have returned the loan charge in January 2020 and appropriate assurance has taken place.
15.	Additional flexibility new measure
	The additional flexibility was introduced following a decision by HMRC's Commissioners using their on and management powers. It applies to individuals settling their underlying liability under the published who cannot afford to pay all the income tax arising from the underlying tax liability within a
15.2.	In response, HMRC will accept what the individual can afford to pay over a reasonable period,
15.3.	The eligibility criteria for individuals to qualify is as follows, they:
•	have used a DR scheme and provided all information requested by 5 April 2019;
•	
•	they are no longer entering into avoidance schemes.
15.4.	
	As a safeguard, HMRC recommends individuals thinking about entering into such an agreement take al advice, such as free advice available from Citizens Advice or a debt charity. This will ensure they are fully ed of any benefits of voluntarily taking the alternative route of becoming insolvent (bankruptcy, debt relief

order or individual voluntary arrangement) and that the negative effects generally only last six years, so they can judge whether that might be a better option for them.

15.6. HMRC have identified around 170 individuals who may benefit from this new measure, and expect this to increase to around 200 customers in total who will benefit as we finalise the remaining settlements. No individual has benefited yet as we are still in discussion with taxpayers and are in the process of finalising our processes. We expect the vast majority of individuals in this position will want to wait until the outcome of the review and the government's response before proceeding to settlement.

- 15.7. We are considering how we can provide an estimate of the expected tax foregone from this additional flexibility, and will include our view in our response later this week.
- 15.8. We are going to write directly to all the individuals who we think may benefit setting out the criteria and the benefits. However, we have not published the eligibility criteria, or how this additional flexibility will benefit individuals, to reduce the risk that individuals artificially change their circumstances to benefit. Therefore, we request that you also do not publish the eligibility criteria or how individuals may benefit in your report.
- 15.9. We will provide more information about other forms of support including payment arrangements in our response to question 6.
- 16. Off-payroll and DR
- 16.1. The off-payroll working rules, sometimes known as 'IR35', can apply if a worker provides their services through an intermediary and have been in place since 2000. An intermediary will usually be the worker's own personal service company (PSC), but it could also be a partnership, a managed service company, or an individual.
- 16.2. The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same income tax and NICs as employees. The rules do not apply to the self-employed.
- 16.3. Broadly, for each engagement the worker enters into the PSC should make an employment status determination to see if the off-payroll working rules apply. If they do, the PSC should calculate a 'deemed employment payment'. This is the amount deemed to be the income of the worker, after some deductions and employer NICs have been removed. The PSC should then pay the income tax and Class 1 NICs to HMRC.
- 16.4. Non-compliance with the off-payroll working rules is widespread. We estimate around 90% of PSCs in scope of the rules do not comply with them, costing the Exchequer around £700 million in 2016/17.
- 16.5. In April 2017, the government reformed the rules so that public sector organisations who take on contractors are responsible for making sure they and their workers pay the right tax. At Budget 2018, the government announced its intention to bring the operation of the rules for medium and large organisations outside the public sector in line with the public sector. The reform to the off-payroll working rules will raise almost £3bn to 2024.
- 16.6. Following the introduction of IR35 in 2000, contractors were required to pay employment taxes and argue they were pushed into using DR schemes to ensure they continued not to pay employment taxes. We recognise that some schemes were sold as being 'IR35 compliant', which may have been attractive to some individuals. DR schemes ensure that the off-payroll working rules do not apply because individuals become employees of the company set up for the purposes of the scheme, and there is no doubt about their employment status.



Email 0006 attachment 2

Within email sent 26 September 2019 20:29



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

CIV/1V 2DU

Sir Amyas Morse Independent Loan Charge Review By email only

Date

26 September 2019

www.gov.uk

Dear Sir Amyas,

Further to our response of 23 September, please see responses to questions 1, 2, 3, 4, 5, 6, 9 and 12 below. We are giving priority to resourcing these responses, but it has taken time to extract some of the data sought from our systems and undertake the necessary quality assurance.

In response to question 7, in the response dated 23 September 2019, we touched on the different populations that have used disguised remuneration schemes; employers and individuals. In this response, we refer to those different populations throughout. Therefore, we have started by setting out in more detail who these populations are. We have given this paragraph number 21 and put this at the beginning of the response.

This response touches on our different data systems and what data we record. We are happy to meet with you and/or the secretariat to explain the systems and data available in more detail if that would be helpful.

We will respond to the remaining questions, 8, 13, 17 and 18 on 1 October 2019.

Thank you for your additional questions 19 and 20, and follow-up questions to our responses to questions 7 and 10.

We have responded to questions 19 and 20, and the follow-up question about paragraph 7.8 as part of our responses to questions 1 and 4. We will respond to the remaining questions on 1 October 2019.

If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.
Yours sincerely

Carol Bristow

Mary Aiston

Who has used disguised remuneration avoidance schemes

- 7.1. There are three broad groups who have used disguised remuneration (DR) avoidance schemes:
 - Large corporate employers;
 - Employers; and
 - Individuals.

7.

Large corporate employers

- 7.2. Large corporate employers are typically multi-national firms, historically in the financial services sector. They usually set up a bespoke arrangement to benefit the majority of their employees. They generally stopped entering into DR schemes after anti-avoidance rules were introduced in 2011. The vast majority settled their use of DR schemes prior to the loan charge being enacted.
- 7.3. Therefore, large corporate employers and their employees do not form a material element of the population within scope of the loan charge and our responses to your information requests do not focus on them. Any references to employers does not include large corporate employers unless specified.

Employers

- 7.4. These employers are small and medium sized companies of varying sizes. Typically, they are close companies with turnover of low £ms and profits of £100ks. They are likely to have been introduced to a DR scheme by their accountant or agent, or by an enabler selling the scheme on behalf of the promoter. The owner-directors will have decided to use the DR scheme at a board of directors meeting and chosen to use it to remunerate themselves. Each time they used a DR scheme they will have set up a new arrangement.
- 7.5. The vast majority of employers are close companies because external investors are unlikely to allow owner-directors to remunerate themselves in this way. Anecdotally, one of the drivers for settlement is often when the employer is purchased by a larger company, which requires all tax disputes to be settled. We are exploring whether we can extract empirical analysis of the number of employers who are close companies from our data.

Individuals

- 7.6. Individuals who use DR schemes typically consider themselves to be self-employed, freelancers or contractors.
- 7.7. We have analysed available trade, or business sector, information recorded on individual Self Assessment tax returns. This shows individuals mostly work in business management sectors, such as IT, but this group also includes medical professionals. The sector breakdown is set out in table 1 below:

Sector	Percentage of individuals
Business services	65%
Construction	10%
Engineering	4%
Medical and education services	3%
Accountancy	2%
Dentistry	2%

Retail distribution	2%
Other professional and technical services	2%
Social and community services	<2%
Recreational services	<2%
Other financial activities	<2%
Other transport and storage	<2%

Source: Analysis provided by KAI using HMRC administrative data

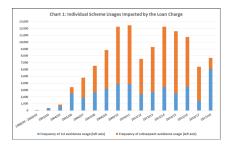
- 7.8. These individual workers will have provided their services to end clients or engagers via a recruitment agency. Until the DR rules took effect in April 2011, they were usually employed by an offshore employer set up for the purposes of the scheme, which invoices the agency, and ultimately end client, for the contract value. From that contract value, the offshore employer deducts their fee, pays a small salary to the individual and puts the balance through a DR scheme.
- 7.9. The precise structure of these schemes changed over time, with the development of self-employed, partnership and onshore employer schemes after 2011. Individuals can use the same scheme for several years.

Use of DR avoidance schemes over time

1.

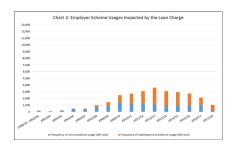
- 1.1. In 2013, HMRC formed the Counter Avoidance Directorate to bring all of our resources tackling avoidance into one place. Prior to that anti-avoidance work was undertaken across various directorates across HMRC, each with their own system and method of recording management data.
- 1.2. Since 2013, we have collated our information on all avoidance schemes, including DR, into Counter Avoidance. This resulted in the creation of the iCA database which holds records of open and closed enquiries into all avoidance schemes. We use this to keep track of how many enquiries we have open and how many we have resolved. It contains information common to all avoidance enquiries, such as the tax we expect to collect. We record tax we expect to collect when we have sufficient knowledge to know or estimate this.
- 1.3. There will inevitably be some scheme enquiries and settlements not updated on iCA at any given time because there will be a time difference between colleagues opening and closing enquiries and data being uploaded to iCA. The iCA data is the best centrally managed data we have about the number of open and closed enquiries into avoidance scheme use.
- 1.4. There is a period of time between HMRC finding out about a scheme and knowing which individuals and employers have used it. We may identify a scheme through a DOTAS disclosure or because we can see an offshore employer paying all their employees below the income tax personal allowance. We are then reliant on our investigations, or a disclosure on a Self Assessment return, to identify, or corroborate, an individual using a DR scheme.
- 1.5. Chart 1 below shows the number of DR scheme usages by individuals per year based on information from the iCA database as at 3 July 2019. A scheme usage is defined as an instance of a scheme being used by an individual during the tax year. Where an individual uses the same scheme more than once during the year it is recorded only once.
- 1.6. The blue bars indicate the total number of individuals entering DR for the first time in that year. The orange bars indicate the total number of usages by individuals who either had entered into a DR scheme in a previous year or entered into more than one DR scheme in their first year. We have grouped years 1998/99 to 2002/03 as the total number of users is very small.

1.7. This does not take into consideration whether HMRC opened an enquiry into that year, which is considered in our response to question 4. This includes settled cases, which are set out in more detail in our response to question 2.



Source: Analysis provided by KAI using data from Counter-Avoidance Operational database

Chart 1 below shows the same data for employers:



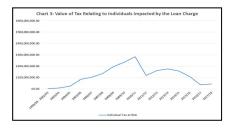
1.8.

Source: Analysis provided by KAI using data from Counter-Avoidance Operational database

1.9.

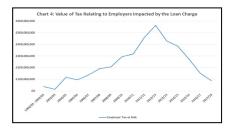
1.10. The government introduced an additional information reporting requirement for all individuals, including employees of employers, within scope of the loan charge. They need to provide details of all their DR loans and any repayments by 30 September 2019.

- 1.11. We have an estimate of the tax at risk which will take into consideration the income tax rates and thresholds in the relevant year. The tax at risk is an important number for HMRC performance monitoring, targets and allocating resource.
- 1.12. Chart 3 below shows the tax at risk for individuals per year, also from the iCA database as at 3 July 2019. Where we do not have a direct estimate of how much tax an individual might owe, we use an estimate based on known information. Depending on the circumstances, this could be based on a scheme average or how much an individual has put through a DR scheme previously.



Source: Analysis provided by KAI using data from Counter-Avoidance Operational database

1.13. Chart 4 shows same data for employers:



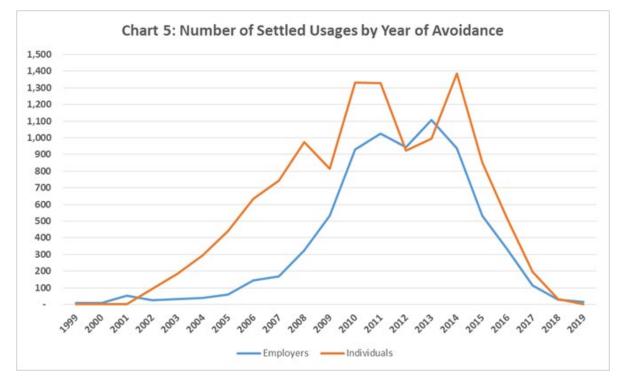
Source: Analysis provided by KAI using data from Counter-Avoidance Operational database

Settlements

2.

2.1.

- Since the loan charge was announced at Budget 2016 and up to 30 June 2019, HMRC have agreed around 8,000 settlements with employers and individuals, bringing in around £2 billion.
- 2.2. Around 40% of the settlements are with employers who account for around 88% of the yield and around 60% of the settlements are with individuals who account for around 12% of the yield. We have previously provided settlement information to the House of Lords Economic Affairs Committee and more recently the Loan Charge All-Party Parliamentary Group. The latter was based on settlements until 31 December 2018 and, at that time, 25% of settlements were with employers, 75% with individuals, with 85% of yield from the employer settlements and 15% from individuals.
- 2.3. The 8,000 settlements relate to around 19,000 usages of DR schemes. A breakdown of this across years for employers and individuals is shown in Chart 5 below:



Source: Analysis provided by KAI using data from Counter-Avoidance Operational database

2.4. Table 2 below sets out when those 8,000 settlements were agreed, the value of the settlements, and the number of the 19,000 DR scheme usages they cover:

		Emplo	oyers	Individ	uals
Month	Year	Number of Settled Usages	Value of Settled Usages	Number of Settled Usages	Value of Settled Usages
April	2016	15 £9m		270	£2m
May	2016	30	£12m	230	£2m
June	2016	40	£4m	215	£2m
July	2016	45	£11m	190	£2m
August	2016	60	£29m	910	£6m
September	2016	75	£47m	480	£4m
October	2016	90	£35m	100	£1m
November	2016	80	£19m	115	£3m
December	2016	75	£15m	115	£2m
January	2017	70	£14m	120	£3m
February	2017	35	£8m	105	£9m
March	2017	300	£174m	160	£21m
April	2017	75	£21m	175	£11m
May	2017	50	£11m	225	£8m
June	2017	70	£21m	165	£7m
July	2017	65	£11m	255	£7m
August	2017	70	£18m	280	£11m
September	2017	70	£22m	125	£3m
October	2017	80	£7m	205	£5m
November	2017	30	£8m	360	£8m
December	2017	45	£9m	170	£5m
January	2018	55	£11m	235	£9m
February	2018	70	£35m	240	£4m
March	2018	115	£51m	340	£10m
April	2018	160	£35m	230	£6m
May	2018	140	£35m	315	£7m
June	2018	135	£43m	210	£5m
July	2018	220	£40m	370	£9m

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August	2018	255	£47m	290	£12m
September	2018	180	£55m	325	£8m
October	2018	255	£39m	465	£14m
November	2018	275	£36m	570	£16m
December	2018	250	£44m	305	£12m
January	2019	415	£73m	525	£11m
February	2019	540	£99m	450	£9m
March	2019	825	£130m	730	£14m
April	2019	1,360	£334m	505	£15m
May	2019	490	£79m	310	£8m
June	2019	215	£36m	370	£10m
Total		7,425	£1,727m	11,755	£301m

Source: Analysis provided by KAI using data from Counter-Avoidance Operational database

- 2.5. In our response to question 6 we set out the mean and median amounts for individuals and employers.
- 2.6. Since the November 2017 settlement terms were published, over 19,000 individuals and employers correctly registered and provided the relevant information to settle by 5 April 2019. By 31 August 2019, over 99% of users had received settlement calculations.
- 2.7. Many of these individuals and employers have reached a final contract settlement with HMRC, and some agreed the settlement amount but have not formally signed the contract agreement. The balance of around 1,000 employers and 8,500 individuals remain in the settlement process and may choose to settle.
- 2.8. There are different settlement processes for individuals and employers.
- 2.9. Due to the volume, settlements for individuals are worked in a batch process. We allocated the majority of resource available to issuing initial calculations to individuals over a period of weeks, and then moved on to the next stage for those individuals who want to progress towards settlement. This ensured that all individuals had an initial calculation to understand their potential liability, which is important for them to be able to make financial decisions.
- 2.10. This approach can mean that some individuals who responded quickly can only move to the next stage once we are ready to do so for the majority of individuals. This is the most efficient way to process such a high volume of settlements, but we recognise some individuals will have experienced delay and waited longer than we would have liked. Broadly, we only include statutory late payment interest up to 30 September 2018 in the contract settlements so no individual is disadvantaged by our delay.
- 2.11. As there are far fewer employer cases, and due to the additional complexity of taking into account National Insurance contributions (NICs) and Corporation Tax, the settlements are each worked from start to finish by one, or a small number, of HMRC staff. This means more employer settlements have been concluded and they will have experienced less delay.

- 2.12. The figures above are not expected to change significantly over the coming weeks as we expect individuals and employers will not progress settling while they wait for the government's response to the review.
- 3. Scorecard and settlement yield split between employers and individuals
- 3.1. We have addressed the statistic about the proportion of settlement yield coming from employers in our response to question 2 above.
- 3.2. We have addressed the statistic about the proportion of scorecard yield coming from employers in our response to question 5 below.
 - Estimate of the number of individuals and employers affected and enquiry cover
- 4.1. Below we set out how our estimates of those affected were calculated.

Estimate of the number of individuals affected

4.

- 4.2. In 2016, the government estimated 40,000 individuals would be affected. This was arrived at from the number of individuals under enquiry for using a DR scheme plus an estimate of those who HMRC were unaware had used a DR scheme but would be within scope of the loan charge.
- 4.3. The additional 10,000 individuals, to reach the 50,000 commonly quoted, are those estimated to be affected by the self-employed measure. This was also arrived at by considering those HMRC is aware of and an estimate of those it is not aware of.
- 4.4. We are aware of the higher estimate of 100,000 individuals affected quoted by campaigners but we do not know how this was calculated. We have seen from other estimates and research by campaigners that they take a small, self-selecting, sample of those affected and use this to extrapolate to a total population. This approach will inevitably lead to an overestimate. HMRC's approach is based on the number of individuals it has under enquiry, and knows is in scope, so is likely to be more accurate.
- 4.5. In summer 2019, we undertook a comprehensive exercise to review the estimate of the number of individuals affected with operational teams. This involved identifying a list of schemes in scope of the loan charge and looking at the number of individuals using these schemes. This exercise showed that the figure of 50,000 remains valid and our best estimate of the number of individuals impacted by the loan charge.
- 4.6. The most common way for an individual who has used a DR scheme to move out of scope of the loan charge would be to settle with HMRC, which we have set out in our response to question 2. The estimate of 50,000 includes those who have and those who have not settled.
- 4.7. Alternatively, individuals could repay their loans before 5 April 2019 to prevent the loan charge arising. We will not know if individuals have done this until they return the additional information reporting requirement due by 30 September 2019. However, repaying the loan is more expensive than settling, or paying the loan charge, so we think it is unlikely many individuals will make this choice.

Enquiry cover

4.8. Using the iCA database, we have data on the total number of open enquiries by tax year from 1998 to 2018 across the wider DR population, not just those individuals expected to be caught by the loan charge. See table 3 below for information as at August 2018:

Time period	Number of enquiries
1995 - 1999	10
2000 - 2004	1,100
2005 - 2009	25,800
2010 - 2014	65,700
2015 - 2018	33,800
Total	126,410

4.9. This will not give a complete picture as iCA does not hold the total number of open enquiries. There are also various legacy systems, which we would need to interrogate, which cannot be done in the timeframe.

Communicating with those affected

4.10. We have interpreted question 8 to be about our compliance approach, including communications, over the years. We will respond to question 8 on 1 October 2019.

Estimate of the number of employers affected

4.11. In 2016, the government estimated 10,000 employers would be affected. This was arrived at using the same methodology for individuals. This has also been through the recent comprehensive exercise and our estimate remains around 10,000.

5. Scorecard yield

- 5.1. A package of measures to tackle employment DR schemes was announced at Budget 2016. The package included changes to the anti-avoidance rules introduced in 2011 to discourage individuals from entering into DR avoidance, and the loan charge to tackle historical use. The package was estimated at that time to raise over £2.5 billion up to 2020/21.
- 5.2. At Autumn Statement 2016, a similar package was announced to tackle self-employed DR schemes, which was estimated to raise £630 million up to 2021-22.
- 5.3. When the government refers to the loan charge yield, both measures are combined to get to around £3.2 billion. The costings for the measures were certified by the Office of Budget Responsibility (OBR) at Budget 2016 and Autumn Statement 2016. The published figures for both measures are set out in table 4 below.

Scorecard	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Total
yield (£m)							
Budget 2016	100	335	645	1,235	215	-	2,530
AS 2016	10	25	180	310	40	65	630
Total	110	360	825	1,545	255	65	3,160

Scorecard methodology

- 5.4. The costing for the DR measure is estimated by firstly determining the value of the tax base. The tax base consists of historic tax due from use of DR avoidance schemes and use anticipated in the future in the absence of a policy change for individuals and employers. The costing accounts for people being unable to pay, as well as those who move to other forms of tax avoidance. It also accounts for a small proportion of previously unidentified cases coming forward.
- 5.5. The costing excludes revenue that has been scored under the Accelerated Payments measure from Budget 2014. It is anticipated that some cases that have previously been included in the Accelerated Payments measure might end up settling, paying the loan charge or deterred from engaging in future avoidance. The yield from these cases have therefore been excluded in the DR costing to avoid double counting.
- 5.6. The costing methodology for the DR measures is set out in more details in the diagrams below.

Pre-2016 cases

Step 1: the tax base is derived from known cases

<u>Step 2:</u> uplift for the two years after the announcement that we do not have data yet but are in scope of the loan charge

<u>Step 3:</u> an uplift is applied to capture cases HMRC is unaware of, and are therefore not in the database

<u>Step 4:</u> Accelerated Payments coverage is considered, to remove yield already scored (40%-100%)

<u>Step 5:</u> a range of behavioural responses are allowed for, including avoidance, evasion and insolvency. The likelihood of currently unknown cases coming forward is considered.

<u>Step 6:</u> the timing of receipts takes account of settlements

<u>Overall:</u> the main uncertainties are the size of the behavioural response and of the unknown population

Data:

- Data from iCA ("known cases")
- Incomplete data (years 2014-15 to 2018-19 are imputed)
- Cases that are unknown to HMRC are also estimated ("unknown cases")

Behaviour:

- Settle with HMRC before the loan charge becomes due
- Pay the loan charge in 2018-19
- Attempt to avoid the loan charge by using an elaborate new 'exit' scheme (25%-35%)
- Non payment, including insolvency (30%-35%)
- Otherwise refuse to pay, through evasion or by attempting to push the matter to litigation

Prospective cases - Estimation of deterrence impact

<u>Step 1:</u> the tax base is derived from known cases. The assumed 2014-15 annual tax under consideration (TUC) figure is taken from the post-2011 cases (this includes known and unknown cases)

<u>Step 2:</u> the tax base is grown in line with the 5 year forecast in wages and salaries

<u>Step 3:</u> Accelerated Payments coverage is considered, to remove yield already scored (0%-20%)

<u>Step 4:</u> behavioural responses are allowed for, including avoidance, evasion and switching to dividends. Insolvencies due to the historical charge are considered.

<u>Step 5:</u> the timing of receipts treats 2016-17 partially as a historical year. From 2017-18 onwards, tax is received through SA and PAYE

<u>Overal:</u> the main uncertainties are the size of the behavioural response and of the unknown population

5.7.

Data:

- Data from iCA ("known cases")
- Cases that are unknown to HMRC are also estimated ("unknown cases")
- Annual figure is projected forward

Behaviour:

- Users switch to remuneration via employment income (desired outcome)
- Users switch to remuneration via dividends, paying less tax than on employment income (legal, tax-planning response)
- Users continued to use undocumented DR or other avoidance
- Attrition to account for increased avoidance over time
- A breakdown of the original costings by settlement, loan charge and deterrence (behavioural yield) for employers and individuals is set out in table 5 below.

	Employers		Individuals		Total	
Original Costing in	£m	% of	£m	% of	£m	% of
2016		total		total		Overall Total
Settlement	245	74%	90	26%	335	11%
Loan Charge	880	72%	345	28%	1,225	39%
Deterrence	1,110	69%	500	31%	1,610	51%
Overall Total	2,240	71%	930	29%	3,170	100%

5.8. As shown in the above table, about 74% and 72% of the estimated yield from settlement and loan charge respectively are from employers in our original forecasts. The estimate for settlements and loan charge combined is around 72%.

5.9. When setting out the proportion of yield from employers publically, we have rounded the estimate to 75% to account for additional settlement yield (c£100m) from large corporate employers that were not included in our original costing to ensure our estimate best reflects the overall position of the DR measures.

Updates since Budget 2016

- 5.10. The forecasts for the DR measures have been recosted in previous fiscal events to reflect latest operational data and outturn on DR cases. The forecasts have also been updated to include a payment profile to better reflect the profile of exchequer receipts. These changes and latest scorecards have been shared and agreed with the OBR in each of the six fiscal events since Budget 2016.
- 5.11. A breakdown of the recostings from Spring Statement 2019 is set out in table 6 below. This reflects the overall impact of the DR measures across years.

	Employers		Individuals		Total	
Recosting from Spring	£m	% of	£m	% of	£m	% of
Statement 2019		total		total		Overall
						Total
Settlement	555	74%	195	26%	750	22%
Loan Charge	425	50%	425	50%	850	25%
Deterrence	1,265	72%	500	28%	1,760	52%
Overall Total	2,245	67%	1,115	33%	3,365	100%

- 5.12. The settlement amounts in the scorecard are not comparable with those set out in response to question 2 because the scorecard is net of amounts scored under Accelerated Payments, as set out in paragraph 5.5 above.
- 5.13. Table 7 below shows the changes between Budget 2016 and Spring Statement 2019:

Variance between Budget 2016 and Spring Statement 2019 (£m)	Employers	Individuals	Total
Settlement	310	105	415
Loan Charge	-455	80	-375
Deterrence	155	0	150
Overall Total	5	185	195

6. Incomes of individuals affected

- 6.1. We are exploring how best to respond to all of the data requests in question 6, in particular 6.a.
- 6.2. Individuals' reported income at the time they used a DR scheme will be very low because they have used a DR scheme to reduce their taxable income. We need to work out what their income would have been if they had not used a DR schemes.

- 6.3. We have analysed the 2017/18 incomes of individuals who have used DR schemes. We have taken their reported incomes on either their Self Assessment or PAYE returns, which may be lower than their actual income. For example, if they are using a DR scheme in 2017/18. If we cannot find a record for an individual, perhaps because they have moved abroad, we have excluded them from the analysis.
- 6.4. HMRC does not have information about individuals' wealth or assets, which would help to understand an individual's ability to pay.
 - Table 8 below shows the reported 2017/18 incomes for individuals who have used DR schemes:

6.5.

2017/18 Reported Income	% where Income is Known
£0	2%
£1 - £19,999	27%
£20,000 - £29,999	12%
£30,000 - £39,999	11%
£40,000 - £49,999	15%
£50,000 - £59,999	8%
£60,000 - £79,999	10%
£80,000 - £99,999	6%
Over £100,000	10%
All	100%

Source: Analysis provided by KAI using data from Counter-Avoidance Operational database and income information on Self Assessment / PAYE returns

6.6. Table 9 shows the similar analysis for individuals who have settled:

Declared Income 2017/18	Proportion of Individuals Within Income Band
£0	2%
£1 - £30,000	24%
£30,000 - £50,000	26%
£50,000 - £100,000	30%
£100,000 - £250,000	15%
Over £250,000	3%

Source: Analysis provided by KAI using data from Counter-Avoidance Operational database and income information on Self Assessment / PAYE returns

6.7. For individuals who have settled up to 30 June 2019, the mean settlement is £58,000 and the median settlement is £18,000. We have previously released settlement information based on settlements until 31 December 2018, which showed the mean and median settlement was £45,000 and £13,000 respectively.

Government and HMRC communications about DR

9.

- 9.1. As set out in our last response, we interpreted question 10 to be about the chronology of litigation and question 9 to be about what HMRC and government have said publicly about DR schemes over time.
- 9.2. In our response to question 8, we will set out our compliance approach and when we have communicated with individuals and employers directly. This will include the individual letters HMRC sent to the thousands of individuals and employers under enquiry as well as the further communications to those affected by the loan charge alerting them to this and encouraging them to come forward and settle.
- 9.3. We can confirm that the written ministerial statement in 2004 is the earliest public statement about employment income avoidance. HMRC began setting out its position publicly, and consistently, on employment income avoidance from November 2009 in its Spotlights series.
- 9.4. In the 2000s, generally, the government and HMRC did not communicate its view on particular types of avoidance to the public in targeted communications, such as Spotlights. In the 2000s, other forms of avoidance were much more common than today, such as sideways loss and film tax relief schemes. There are some limited examples of public statements on avoidance generally around this time.
- 9.5. In the 2000s, HMRC communications focused largely on direct communication with tax professionals and large corporate employers. This is because most employment income avoidance at that time was driven by large corporate employers and employers being advised by agents and lawyers.
- 9.6. By 2004, the marketed avoidance was seen as a growing threat to the Exchequer and the government introduced the DOTAS (Disclosure of Tax Avoidance Schemes) regime. Hansard records comments from ministers during the 2004 Finance Bill debates and earlier expressing the government's determination to ensure that employers and employees pay the right amount of tax.
- 9.7. HMRC publicised the litigation cases, such as releases. HMRC also announced the creation of a team in the Anti-Avoidance Group to challenge similar schemes. Widely used professional websites, such as AccountingWeb and TaxationWeb drew attention to these successes in the courts.
- 9.8. As the response to question 1 shows, DR avoidance grew more quickly from 2005/06 which involves Self Assessment returns being filed by 31 January 2007 after which HMRC has one year to open an enquiry. Therefore, the extent of the growth of DR would only begin to become apparent in the late 2000s.
- 9.9. Since 2009, HMRC has undertaken a significant amount of public communications in addition to directly communicating with individuals and employers;
 - Spotlights 5, 6, 11, 12, 33, 35, 36, 37, 39, 42, 44, 45, 46, 48, 49, 50 and 51;
 - publicity from April 2011 to July 2015 supporting the Employee Benefit Trust Settlement Opportunity (see response to question 12 for more information);
 - publicity from May 2014 onwards supporting the Contractor Loan Settlement Opportunity (see response to question 12 for more information);
 - DR settlement terms published on GOV.UK in November 2017 for those wishing to settle their liability ahead of the loan charge (see response to question 12 for more information);

- a publicity campaign from 2018 onwards ahead of the loan charge and to raise awareness, that has included:
 - 7 webinars (plus 2 shortly after the policy was announced in 2016);
 - o a number of e-bulletins to agents;
 - o regular entries in the Agent Update and Employer Bulletin;
 - articles in trade publications;
 - o publication of a factsheet and an issue briefing; and
 - o a social media campaign.

12. <u>Settlement opportunities</u>

- 12.1. Generally, HMRC's policy is to encourage settlement by offering settlement opportunities in appropriate circumstances with clear transparent and Litigation and Settlement Strategy¹ compliant terms to make settlement cost effective for HMRC and the customer. We want to encourage early settlements to save the costs of litigation and so we offer terms on the basis that future terms will not be more beneficial.
- 12.2. At Autumn Statement 2010, the government announced it would introduce legislation to tackle DR schemes. The then Financial Secretary to the Treasury, David Gauke, said "the Government will introduce legislation to tackle arrangements involving trusts or other vehicles used to reward employees, which seek to avoid or defer the payment of income tax or NICs, including to provide a tax-advantaged alternative to saving beyond the annual and lifetime allowances available in a registered pension scheme²". This became Part 7A of ITEPA 2003 which was enacted in Finance Act 2011 and took effect from 6 April 2011. Part 7A only applied to prevent employers entering into schemes going forwards.
- 12.3. The legislation envisaged a future settlement opportunity and contained specific transitional relief to facilitate settlement. In particular, where funds had been placed in an offshore trust and invested rather than loaned out, if the employer settled, then the investment growth which had accrued in the trust would not be subject to employment income tax if brought onshore (although it could be taxed under different provisions in certain circumstances).
- 12.4. A number of settlement opportunities have been offered for DR schemes following the enactment of Part 7A:
- 12.5. In 2012, HMRC opened the Employee Benefit Trust Settlement Opportunity (EBTSO). This was for DR schemes involving EBTs used by large corporate employers and employers.
- 12.6. In 2013, HMRC opened the Employer Funded Retirement Benefit Scheme Resolution Opportunity (EFRBSRO). This was for DR schemes involving EFRBS rather than EBTs used by employers. It had two settlement options, one of which broadly mirrored EBTSO.
- 12.7. In 2014, HMRC opened the Contractor Loans Settlement Opportunity (CLSO) to individuals who had used schemes prior to 6 April 2011.
- 12.8. In 2016, the government announced the removal a transitional relief to encourage the remaining large corporate employers to settle.
- 12.9. After the loan charge was enacted, HMRC published settlement terms in November 2017 for all DR schemes. Employers and individuals had until 5 April 2019 to register, and provide the required information, to settle under these terms and prevent the loan charge arising.

² https://publications.parliament.uk/pa/cm201011/cmhansrd/cm101206/wmstext/101206m0001.htm

¹ www.gov.uk/government/publications/litigation-and-settlement-strategy-lss

12.10. Further details of these are set out below, including the main terms as well as figures on settlements.

EBTSO - April 2011 to July 2015

- 12.11. Employers often wanted to settle to ensure they would not face a future DR charge under Part 7A on the money/assets in the EBT and any investment growth on these. Employers could settle by paying income tax, Class 1 NICs, late payment interest and Inheritance Tax (IHT) on the sums contributed into a trust for an employee or allocated within the trust for the employee by the EBT trustees (depending on the facts of scheme use). Employees who opted to settle personally would pay their share of their employer's liabilities through the scheme.
- 12.12. Where years were unprotected, where HMRC was out of time to open an enquiry and raise a tax charge, voluntary restitution had to be paid to get relief from future DR charges unless the employer had provided sufficient information for HMRC to have protected the year before the statutory time limits expired. Where the employer had provided sufficient information, but HMRC had not opened an enquiry, no tax was required. This was on the basis that HMRC was out of time to collect the tax on past transactions, and, usually, had no realistic prospect of collecting the tax in the future.
- 12.13. A small number of scheme users settled on the basis that Corporation Tax Relief was denied on the contributions into the scheme. These customers did not have relief from future DR charges.
- 12.14. We wrote to over 5,000 large corporate employers and employers we were aware of at the time to let them know about the EBTSO. In total, approximately 700 large corporate employers and employers settled under EBTSO, paying around £1.6 billion before the opportunity closed in July 2015.
- 12.15. The settlement terms can be found at www.gov.uk/government/publications/employee-benefit-trusts-settlement-opportunity.

 opportunity/employee-benefit-trusts-settlement-opportunity.

EFRBSO - November 2013 to March 2015

12.16. This opportunity was offered to employers who used EFRBS schemes before Part 7A was introduced. Employers could choose to settle in two different ways;

Option 1: settle on the basis that Corporation Tax relief on contributions into the scheme were denied but that an employment income charge might arise in the future.

Option 2: pay income tax, class 1 NICs and late payment interest on the sums allocated within the trust for the employee by the trustees. After settlement the company could wind up the trust and trigger an IHT charge to be paid separately. This option largely mirrored the EBTSO.

12.17. We wrote to the 700 employers we were aware of in November 2013. 33 employers settled under option 1 and 254 users settled under option 2 before the opportunity closed on 31 March 2015 raising around £150 million.

CLSO - July 2014 to September 2015

12.18. This opportunity was available to individuals, contractors, who used a DR scheme up to 5 April 2011 where there was an offshore employer.

- 12.19. Individual customers could settle their scheme use by paying income tax on the loans they received in protected years. Where an individual settled all their protected years, the settlement would also cover any unprotected years without the individual being required to pay income tax or voluntary restitution in respect of those years. This was on the basis that HMRC was out of time to collect the tax on past transactions, and, usually, had no realistic prospect of collecting the tax in the future. They paid IHT if a charge had crystallised or if they wanted to trigger a charge (as some arranged with the trustees to do).
- 12.20. The opportunity was first offered in July 2014 and ran through to September 2015, although some settlements were still being processed in December 2015. HMRC wrote to around 11,000 known users at the time, as well as their agents, to alert them to the opportunity.
- 12.21. Around 1,500 individuals settled under CLSO, bringing in around £31 million with an average settlement value of around £19,800. Most individuals signed contracts where they agreed to pay their tax in under two years. We were open to considering longer payment arrangements but only a small number of individuals asked for arrangements of more than 3 years.
- 12.22. The settlement terms can be found at <a href="www.gov.uk/government/publications/tax-on-contractor-loans/tax-on-contractor-loans/tax-on-contractor-loans/tax-on-contractor-loans/tax-on-contractor-loans/tax-on-contractor-loans-extended-time-limit-and-more-information." www.gov.uk/government/publications/tax-on-contractor-loans/tax-on-contractor-loans-extended-time-limit-and-more-information.

Post-EBTSO - April 2016 to March 2017

- 12.23. After the EBTSO ended, employers could still settle by paying income tax, Class 1 NICs, late payment interest and IHT on the sums contributed into a trust for an employee or allocated within the trust for the employee by the EBT trustees (depending on the facts of scheme use). Employees who opted to settle personally would pay their share of their employer's liabilities through the scheme.
- 12.24. Access to offset of any income tax and NICs paid on beneficial loans was more limited than during EBTSO. Voluntary restitution had to be paid for unprotected years to get relief from future DR charges, regardless of the information held when HMRC was in time to protect duties.
- 12.25. In March 2017, the government withdrew transitional relief from DR charges on investment growth in an EBT/EFRBS referred to above. This change in the law is sometimes informally referred to as the "paragraph 59 settlement opportunity", after the legislation which was being amended. However, strictly speaking it was not a separate settlement opportunity. Rather, the fact that the withdrawal of the transitional relief was announced in March 2016 had the effect of encouraging large corporate employers to settle on existing terms.
- 12.26. Around 190 large corporate employers and employers settled raising around £330 million.
- 12.27. The settlement terms can be found at www.gov.uk/government/publications/employee-benefit-trust-settlements-after-31-july-2015.

November 2017 settlement terms

- 12.28. To help customers to decide whether to settle in the run up to the loan charge becoming due, we published one set of comprehensive and consistent terms for all DR scheme users on 7 November 2017.
- 12.29. The settlement terms can be found at www.gov.uk/government/publications/disguised-remuneration-detailed-settlement-terms/

- 12.30. The main differences between these terms and the previous terms are set out below:
- 12.31. **EBTSO** under the November settlement terms, voluntary restitution is required to be made for any tax years where HMRC has not protected the tax position to prevent the loan charge arising. Under EBTSO, voluntary restitution was not required if the taxpayer had provided sufficient information for HMRC to protect the position. Benefit in kind tax can only be offset against the settlement where the year is in date for overpayment relief to be claimed.
- 12.32. **CLSO** under the November settlement terms, voluntary restitution is required to be made for any tax years where HMRC has not protected the tax position. Under CLSO, voluntary restitution was not required for unprotected years. Benefit in kind tax can only be offset against the settlement where the year is in date for overpayment relief to be claimed.
- 12.33. **EFBRSRO** Option 1 is not be available under the November 2017 terms. Option 2 was similar to the EBTSO terms, so the differences between that and the November 2017 are similar.
- 12.34. Below is a table setting out the differences between the settlement terms available over time.

Issue	EBTSO	EFRBSRO	CLSO	Post EBTSO	DR (Nov 2017)
BIKs on beneficial loans offset	✓	×	✓	✓ limited	✓ limited
Voluntary restitution	✓ (unless sufficient information provided)	*	*	√	√
Statutory interest	✓ (allowed 30 days interest free to agree settlement)	✓	✓ (allowed 90 days interest free to agree settlement)	√	(interest free period as set out in question 2 response)
Double taxation	✓	✓	✓	✓	✓
Inheritance Tax	✓	✓	✓	✓	✓
Penalties	Same treatment	Same treatment	Same treatment	Same treatment	Same treatment
Corporation Tax set off	√	√	N/A	✓ limited	✓ limited
Can employees of employers settle	√	×	N/A	√	√

12.35. The terms used are defined below:

BIKs on beneficial loans – if the individual or employee paid income tax on the basis of receiving a beneficial loan from the scheme **HMRC** gives relief for this in settlement (providing the tax year is in time to be amended or an overpayment relief claim has been made.)

Voluntary restitution – Late payment interest is due for protected years. Where HMRC has not protected an amount of tax due then any payment of this is classed as voluntary restitution and no late payment interest is charged in settlement.

Statutory interest – Interest is due from the date the income tax should have been paid subject to our agreement not to charge this where customers are in ongoing settlement discussions under the November 2017 terms.

Double taxation – DR schemes can give rise to more than one income tax and NICs liability on the same underlying income. Double taxation provisions ensure there is no double taxation on the same sum or asset.

Inheritance Tax - IHT can arise when there is a payment, or disposition, resulting in a loss of value to a trust. Broadly, IHT liabilities which have already arisen at the date of settlement must be paid as part of the settlement amount.

Penalties – Penalties can apply where a person has made a return which contains an inaccuracy which leads to an understatement of liability to tax or NICs. HMRC has generally not charged penalties on settlements except in exceptional cases or fraud.

Corporation Tax set off - Employers can claim a Corporation Tax deduction for any income tax and NICs they pay under the settlement agreement which is not made good by the director. Further detail was set our in our previous response.

Employee settlements – HMRC allows employees to settle by paying their proportion of their employer's liability if the employer does not want, or is unable, to settle.

Recent history of avoidance

19.

- 19.1. At Spring Statement 2019, the government published a document setting out HMRC's and the government's approach to tackling avoidance, which includes a list of recent measures. The document can be found at www.gov.uk/government/publications/tackling-tax-avoidance-evasion-and-other-forms-of-non-compliance.
- 19.2. We think this documents covers the detail requested but if there is anything else you would like to know, please do not hesitate to ask.

20. Off-payroll contracts

20.1. We recommend you contact the tax professional bodies such as the Chartered Institute of Taxation (CIOT) and the CIOT initiative - Low Incomes Tax Reform Group (LITRG), and the Institute of Charted Accountants in England and Wales (ICAEW).

Email 0011 attachment 1

Within email sent 01 October 2019 22:01



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

C//// 2DC

Sir Amyas Morse Independent Loan Charge Review

By email only

Date	1 October 2019	www.gov.uk
Dear Sir Amyas,		
	esponses of 23 and 26 September 2019, please see e to question 6, below.	e responses to questions 8, 13, 17 and 18, and a
	sponded to your follow-up questions to our responded to your follow-up questions to our responses.	nses to questions 7, 10 and 15. We have continued
We have provide	ed a response to your question about Judicial Revi	ews, which we have numbered 22.
•	icy specialists and data analysts are meeting your sond scorecard assumptions.	secretariat on Thursday 3 October to discuss your
If you, or the rev to do so.	view team, would like further clarification, or a disc	cussion, to clarify any points we would be happy
Yours sincerely		
Carol Bristow	Mary Aiston	

Incomes of individuals affected

6.8. Below we set out HMRC's general approach to debt management and more details on the approach for disguised remuneration (DR) avoidance and the loan charge.

General approach

1.

- 6.9. More than 90% of people pay their tax on time. Where someone tells us they cannot pay a liability in full we will work with them to understand their ability to pay by looking at their income and expenditure. We then calculate what they can afford to pay based on their disposable income. Where someone can raise funds from their assets we expect them to do so. We never ask anyone to pay more than they can afford.
- 6.10. We routinely setup instalment arrangements, and there is no maximum period. We charge a statutory fixed interest percentage, currently 3.25%, for all instalment arrangements to compensate the government for the loss of the use of funds. In the year to June 2019, we agreed around 438,000 Time to Pay arrangements with over 15,000 for more than ten years. They are also consistently sustainable with over 90% completing successfully.
- 6.11. We do not want to make anyone bankrupt. Generally, we will only seek to make an individual insolvent where they are either at risk of accruing further debt or where they actively avoid paying what they owe.

DR and the loan charge

- 6.12. The same general approach applies equally to individuals settling their underlying liabilities, and will apply once the loan charge becomes due from 31 January 2020.
- 6.13. In our response to question 12 about the settlement opportunities we set out how we have granted extended payment arrangements for those settling under the Contractor Loans Settlement Opportunity and Employee Benefit Trust Settlement Opportunity.
- 6.14. Under the November 2017 settlement terms, we have automatically agreed payment plans up to 7 years for someone earning £30,000 or less and 5 years for someone earning less than £50,000, without requiring detailed financial information. Individuals can have longer if they need it.
- 6.15. We have committed that we will not make an individual sell their main home to pay their DR debt or the loan charge.
- 6.16. We set up a helpline with dedicated staff trained in instalment arrangements to provide advice to individuals worried about how they might afford to pay.
- 6.17. We do not centrally record the length and amounts of instalment arrangements. We have analysed a sample of around 1,600 settlements by individuals under the November 2017 settlement terms. Approximately 60% did not require extended payment terms and paid the tax in one instalment and 40% required extended payment arrangements. Of those individuals, around 60% required more than two years.
- 6.18. Table 1 provides more detail of the length of the arrangements and average monthly payment.

Length of instalment Number	Average	Average Monthly	Average number
arrangement of cases	Yield (£)	Instalment (£)	of months

Up to 24 months	248	15,235	820	18
25-60 months	233	28,947	499	46
61-84 months	115	31,984	381	71
85-120 months	53	58,457	506	101
121-240 months	7	39,439	268	164
Total	656	26,313	598	45

- 6.19. The average settlement yield across the sample was £26,313, which is lower than the mean of £58,000 and median of £18,000 set out at 6.7. This is because it is only a sample of the total number of individuals who have settled.
- 6.20. Multiplying the average month by amount will not equal £26,313. This is because individuals are encouraged to pay what they can upfront to minimise their monthly repayments. In addition, they have often already paid an Accelerated Payment or made a payment on account so the average monthly payment is only for the remaining balance.

Examples

- 6.21. Below we have set out two examples comparing settling the underlying liability with paying the loan charge.
- 6.22. We have not included examples for self-employed DR and loan charge but we can provide them if that would be helpful. Those individuals will be liable for National Insurance contributions (NICs) but the broad comparisons will be broadly similar.

Donald

- 6.23. Donald used a DR scheme with an offshore employer and received DR loans of £90,000 in 2007/08, £95,000 in 2008/09 and £100,000 in 2009/10. Donald also had £150,000 employment income in 2018/19 addition to the loans he received, which he declared in his Self Assessment return.
- 6.24. If Donald settled under the November 2017 terms he would have to pay just income tax at the rates applicable in the year he used the scheme, including receiving the personal allowance. Statutory late payment interest is also due from the date the tax should have been paid until the date of the settlement. Donald would have to pay the following:
 - 2007/08: £41,660 (income tax: £32,432, late payment interest: £9,228)
 - 2008/09: £42,512 (income tax: £33,833, late payment interest: £8,679)
 - 2009/10: £43,207 (income tax: £35,225, late payment interest: £7,982)
 - Total tax and late payment interest = £127,378
- 6.25. Donald also has an income tax liability of £53,100 in 2018/19 in respect of his £150,000 employment income, so would pay £180,478 in total.
- 6.26. If Donald decided not to settle his tax affairs with HMRC or repay his loans by 5 April 2019, he would pay the loan charge. He should include his DR loans of £285,000 and his employment income of £150,000 in his 2018/19 Self Assessment return. Donald would pay a total of £181,350 in income tax.
- 6.27. If Donald pays the loan charge, he will benefit from double taxation relief against his underlying liabilities. However, he may still be liable for late payment interest of £13,370 which would mean Donald pays £194,720.

6.28. Therefore, settlement under the 2017 terms would cost Donald less than paying the loan charge by around £13,370.

Anita

- 6.29. Anita used a scheme with an offshore employer and received loans of £20,000 in 2007/08, £25,000 in 2008/09 and £30,000 in 2009/10. Anita also had £20,000 employment income in 2018/19 in addition to the DR loans she received, which she declared in her Self Assessment return.
- 6.30. If Anita settled under the November 2017 terms she would have to pay just income tax at the rates applicable in the year she used the scheme, including receiving the personal allowance. Statutory late payment interest is also due from the date the tax should have been paid until the date of the settlement. Anita would have to pay the following:
 - 2007/08: £5,582 (income tax: £4,345, late payment interest: £1,236)
 - 2008/09: £6,283 (income tax: £5,000, late payment interest: £1,283)
 - 2009/10: £7,360 (income tax: £6,000, late payment interest: £1,360)
 - Total tax and late payment interest = £19,224
- 6.31. Anita also has an income tax liability of £1,630 in 2018/19 in respect of her £20,000 employment income, so would pay £20,854 in total.
- 6.32. If Anita decided not to settle her tax affairs with HMRC or repay her loans by 5 April 2019, she would pay the loan charge. She should include her DR loans of £75,000 and her employment income of £20,000 in her 2018/19 Self Assessment return. Anita would pay a total of £26,360 in income tax.
- 6.33. If Anita pays the loan charge, she will benefit from double taxation relief against her underlying liabilities. However, she may still be liable for late payment interest of £3,751, which would mean Anita pays £30,111.
- 6.34. Therefore, settlement under the 2017 terms would cost Anita less than paying the loan charge by around £3,751.

Who is liable for the loan charge

7.

- 7.25. In our previous responses, we committed at 7.24 to estimate the proportion of employment DR schemes used by individuals that have an offshore employer. We have analysed the relevant schemes and estimate around two-thirds involve an offshore employer. These schemes account for around 80% of the number of times a DR scheme has been used and around 80% of the individuals who have used DR schemes.
- 7.26. At 7.8 and 21.5, we said the vast majority of employers are close companies. We have analysed the known employer population using Companies House data to identify companies that are not close, which we subtracted from the total number of employers to identify those who are close. We estimate that at least 78% are close companies.
- 7.27. You have asked for more information about how aware end clients were that DR schemes were being used in their supply chain as we set out at 7.18. We respond to this further in our response to question 17, which is about public sector engagers.

8. <u>Compliance action</u>

8.1. Below we set out our compliance approach in the five year periods and then cover staffing numbers.

<u>1995-1999</u>

- 8.2. Historically, DR schemes were primarily targeted at and used by large corporate employers who were advised by their agents and lawyers of the advantages of offering tax efficient remuneration packages. These involved benefits (including loans) provided through a range of inventive devices that attempted to avoid tax and NICs on employment income. They included paying bonuses and salaries in gold bullion, diamonds, platinum sponges, fine wines or loans in obscure, rapidly depreciating currencies.
- 8.3. When those routes were closed, primarily through legislative changes in the 1990s and early 2000s, the use of Employee Benefit Trusts (EBTs), Employer Funded Retirement Benefit Schemes (EFRBS) and other, similar, trust arrangements became more prevalent. The arrangements were designed to mirror legitimate structures, which made them more difficult to identify and challenge.
- 8.4. HMRC's investigation into DR schemes in this period therefore focussed on large corporate employers and their bespoke arrangements. HMRC's main focus in these early DR scheme investigations was to seek fiscal symmetry by matching the Corporation Tax deductibility of the contributions to the EBT/ EFRBS, with the date relevant benefits were provided to the large corporate's employees and employment taxes paid.

2000-2004

- 8.5. DR schemes then morphed and developed over the years as promoters of avoidance identified and exploited the ability to mass market DR schemes. This included selling them to employers and latterly to individuals in what HMRC often refer to as contractor loans arrangements.
- 8.6. The extension to individuals was marketed by some promoters as a way of avoiding the off-payroll working rules, more commonly referred to as IR35. Early DR schemes aimed at contractors started to develop from April 2000 onwards, with the scheme being an early example.



8.11. During this period the investigation of mass marketed DR schemes, such as were worked on by a lead HMRC investigator. This person was responsible for all aspects of the investigation of the scheme. This included sourcing technical or policy experts needed to assist in formulating HMRC's technical response.

- 8.12. Once identified, the investigation of DR schemes in this period was generally focussed on the employer. As a creation of the scheme itself, the employer was under the control of, or materially advised by, the promoter of the arrangements. Where HMRC investigations or enquiries were opened into the individual participants, the individuals in question were often advised by the promoter and/or the scheme employer to refer all such HMRC contact to them to coordinate an appropriate response. This approach typically enabled HMRC to correspond with one party and their advisors, rather than to each individual participant separately.
- 8.13. Adopting this approach to working schemes, where a relatively small sample of scheme users were reviewed in depth, had positives and negatives for HMRC and individuals. The sample approach enabled us to gain an understanding of how the scheme operated in practice with a limited amount of investigative resource. The alternative, to request documents and information from every scheme user was highly resource intensive and unnecessary in schemes with standardised underlying documents. There were also advantages to the sampling approach for individuals as they would not be required to respond separately to HMRC's requests for documents and information.
- 8.14. This sampling approach allowed the promoter and/ or agent to control the narrative of what was happening with the individual. This is because we only direct contact to the promoter and/ or agent who was able to provide false reassurance about the nature and extent of our investigation to the individual. We recognised that this was happening so in recent years we have changed our approach to both sampling and communications to scheme users, with more regular direct updates.

2005-2009

- 8.15. The number of employers and individuals using DR schemes went through a period of rapid growth as seen in our response to question 1. Schemes became increasingly designed to be mass marketed, with standardised documentation allowing promoters to reduce their costs and subsequently the costs of entry for those taking them up.
- 8.16. As schemes grew in size, from participants numbering in the tens or low hundreds to high hundreds or even thousands, HMRC's ability to investigate at employer or individual level became unworkable. As such, HMRC's approach to challenge such arrangements was to fully investigate a limited number of scheme users in order to establish the facts by obtaining a full set of documentation from those users. Other users were asked to provide standard documents but, due to resources, it was not always possible to pursue or follow up on this information in each individual case.
- 8.17. The introduction of the DOTAS legislation in 2004 required avoidance scheme promoters and those who used the scheme to notify HMRC of their avoidance scheme usage, where certain hallmarks were present. As a result, HMRC were notified of certain DR schemes being marketed from 2005 onwards, with each such scheme being issued a scheme reference number (SRN) which was required to be reported by the user to HMRC on their tax return.
- 8.18. The DOTAS legislation provided us with a better picture of the extent and nature of the different DR schemes being marketed during this period. However, the requirement to notify arrangements under the DOTAS regime did not require users or scheme promoters to provide a full and accurate information about the arrangements. Also, not all DR schemes were notified or were required to be notified as set out in the response to question 13.
- 8.19. From 2004 to 2008, a large number of individuals were identified from around 34 different DR schemes. HMRC reorganised its investigations teams so that these schemes were primarily investigated by one team. Previously, cases had been worked across a number of areas.
- 8.20. Where HMRC was able to identify individual scheme users, they received an initial notification of HMRC's investigation/ enquiry. Further contact with the individual is likely to have happened only if initiated by the scheme user. Given the large number of enquiries and the number of open cases, HMRC did not ask for all documents and

pursue information in every case. It was impractical, due to the number of open cases, to litigate on a case-by-case basis.

8.21. HMRC frequently relied on the scheme employer and/or promoter of the relevant scheme to pass progress updates to their scheme users. As a result many users received less correspondence from HMRC than they would have done for routine tax enquiries.

2010-2015

- 8.22. As set out in response to question 12, anti-avoidance rules were introduced in 2011, which also led to the EBT Settlement Opportunity. At that time, the focus of our compliance work was to encourage large corporate employers and employers to settle.
- 8.23. The introduction of those anti-avoidance rules in 2011, was largely effective in discouraging large corporate employers from using DR type arrangements as they complied with the law. However, it did not have the same effect on employers and individuals who continued to not treat the arrangements as giving rise to employment income.
- 8.24. New schemes and promoters entered the market offering even more contrived arrangements that were promoted as being compliant with the 2011 rules. Other alternatives included schemes that aimed to continue to avoid income tax and NICs by moving from an employed to self-employed or partnership model. However, they all generally still involved the use of loans that are not repaid in practice. Some of the new variants try to obscure the fact a loan is used, such as by referring to it as an annuity.
- 8.25. Not all of these newer schemes were notified under the DOTAS regime as can be seen from the response to question 12. As a result, we have relied on intelligence and wider compliance activities to identify these new schemes and users.
- 8.26. During this period, HMRC continued to have limited contact with individual DR scheme users. In late 2012 when the number of DR scheme usages and Tax under Consideration (TUC) were reviewed additional staff were assigned to the work.
- 8.27. During 2012/13 HMRC conducted a review into the effectiveness of its approach to tackling tax avoidance, including its approach to the investigation and litigation of DR schemes. As a result of this review new governance processes were introduced which were designed to ensure that each avoidance scheme had:
 - a project control document known as an Issues Management Document (IMD) to better manage and control avoidance risks.
 - a handling and settlement strategy approved by a cross-HMRC board.
- 8.28. In parallel with HMRC's approach to investigating DR schemes we considered a new settlement handling strategy. Following the successful litigation of the Contractor Loan Settlement Opportunity (CLSO) was offered to individuals in a range of DR schemes that had been used before 6 April 2011. More detail was provided in our response to question 12, including the fact we wrote to around 11,000 individuals directly.

2015-2019

8.29. In 2013, as the number of tax avoidance schemes and scheme usage continued to increase and pose a substantial threat to the Exchequer, Counter Avoidance directorate was formed. This brought together around 1,300 technical, policy and operational experts from across the department into one place in order to concentrate its focus on tackling marketed tax avoidance schemes.

- 8.30. The investigation of existing known DR schemes continued, but with a clearer focus on advancing those cases to resolution through either settlement or litigation. To support the lead investigators of schemes, Counter Avoidance created new litigation lead roles designed to resolve schemes, through litigation where necessary.
- 8.31. Several DR schemes have advanced to the stage that closure notices have been issued for a number of lead litigation cases with those appeals now before the Tribunal. However, with the introduction of the DR settlement terms in November 2017, a number of these cases have had their appeals stayed or withdrawn as they progressed through the settlement process.
- 8.32. This period also saw the introduction of new powers to tackle avoidance and promoters. This includes the Promoters of Tax Avoidance Schemes (POTAS) regime, which was enacted in July 2014, with the objective of changing the behaviour of a small but persistent minority of promoters. Counter Avoidance set up a dedicated team solely to challenging the activities and behaviours of promoters, including those involved in DR schemes.
- 8.33. The government also listened to concerns raised about the wider supply chain involved in the selling, marketing and promotion of tax avoidance schemes. As a result new legislation, known as the Enablers regime, was introduced to tackle and remove the financial rewards of the small but persistent minority of accountants, lawyers or other advisors who enable an abusive tax avoidance scheme that is subsequently defeated. More detail regarding both the POTAS and Enablers regime is provided in response to question 18.
- 8.34. Since Budget 2016, we have been focused on communicating with individuals and employers in scope of the loan charge, encouraging settlement and litigating cases ready to go to Tribunal.
 - A timeline for this contact, including number of users contacted is set out below:
 - April August 2018: approximately 42,000 loan charge awareness letters issued
 - February 2019: approximately 25,000 letters issued
 - July 2019: approximately 23,000 letters issued advising on the loan charge additional information reporting requirements
- 8.36. In addition, approximately 7,000 awareness letters were sent to employers in September 2018 and approximately 9,000 letters were sent to beneficiaries of employer arrangements in December 2018.

Staff numbers

8.35.

- 8.37. As part of the design of Counter Avoidance, 16 operational teams were set up to deal with specific forms of tax avoidance. Half of Counter Avoidance's operational teams were created to investigate use of the wide range of DR schemes.
- 8.38. Table 2 sets out the number of HMRC staff in DR operational teams covering the period 2015 to 2019 and their full time equivalents (FTEs). The number for 2019 only represents the staff permanently within Counter Avoidance. As set out at paragraph 8.40 additional staff have temporarily being working within Counter Avoidance on DR work.

Date	Actual	FTEs
August 2019	533*	481*
August 2018	533	474
August 2017	502	446

August 2016	516	456
August 2015	516	457

- 8.39. These figures include all employees in Counter Avoidance who are specifically tasked with resolving DR enquiries. However, not everyone in those teams will be solely investigating or supporting the investigation of such schemes, such as subject matter experts and lawyers.
- 8.40. Additional resource, not reflected in the table above, has also been temporarily secured from other parts of HMRC to assist with the peak of individuals wanting to settle during 2018 and 2019 in advance of the loan charge. This has been as high as around 500 and at June 2019 was over 300 FTE.
- 8.41. Other HMRC employees, both within and outside of Counter Avoidance have also assisted with such investigations as and when required, which are not included above. For example, subject matter experts and lawyers. These numbers are likely to be much smaller than the resource within Counter Avoidance.
- 8.42. In relation to investigations open from 1995 to 2014, which pre-date the setting up of the Counter Avoidance directorate, the data to establish the average number of employees working such investigations is not available. We understand that the resources deployed to such work were lower and more disparately spread across HMRC's network of compliance teams.

10. <u>Litigation against users of DR schemes</u>

- 10.12. We have interpreted the follow-up question to be about the impact of the litigation successes.
- 10.13. The most common impact, apart from the employer or individual directly involved in the litigation, is for people to settle with us. We do not record why people settle with us and there is usually more than once reason. For example, in late 2017 the loan charge had been enacted and we had won the litigation against We are not able to attribute someone settling to either one of those events above the other.
- 10.14. In our response to question 12 we set out the main settlement opportunities and the number of employers and individuals who settled and for how much.
- 10.15. The FN legislation, introduced in 2014, allows HMRC to issue FNs on the back of court decisions in similar cases of tax avoidance that have found in HMRC's favour, so reducing the time taken to bring cases to conclusion. FNs cannot be issued unless a number of conditions are met and HMRC is of the view that the scheme used has already been defeated in another person's litigation. The FN rules are designed to resolve cases where the point at issue has already been decided in another person's case. The user is faced with a choice: settle now, or continue the dispute and face a penalty if they lose their case.
- 10.16. Across all tax avoidance arrangements, we have issued over 22,000 FNs, with associated APNs totalling just under £1 billion. Around 60% of recipients of a FN comply with the notice and take action to settle their case the balance continue with their dispute.
- 10.17. In DR, we have issued around 3,200 FNs with the vast majority following the Around 56% of those issued with an FN settled with us.

13. Disclosure of DR schemes

- 13.1. As touched on in our response to question 9, the DOTAS (Disclosure of Tax Avoidance Schemes) regime was introduced in 2004 in response to the growing threat of mass marketed tax avoidance schemes to the Exchequer.
- 13.2. The main aim of the regime was to allow us to establish quickly what schemes were being marketed, how those schemes claimed to work and who had used those schemes. Promoters of schemes falling under the DOTAS legislation are required to notify us of the schemes which are given a Scheme Reference Number (SRN). Only one SRN is issued per scheme, regardless of the number of individuals or employers using that scheme.
- 13.3. Since DOTAS was introduced and up until 5 April 2019, 2,468 SRNs have been issued for all types of tax avoidance schemes. The breakdown of when SRNs were issued by year is set out in table 3 below:

Year	Number of SRNs
2004/05	503
2005/06	607
2006/07	346
2007/08	277
2008/09	130
2009/10	177
2010/11	118
2011/12	129
2012/13	77
2013/14	38
2014/15	9
2015/16	13
2016/17	13
2017/18	15
2018/19	16
Total	2,468

13.4. We estimate that of the around 250 DR schemes in scope of the loan charge around 113 were issued with SRNs and the balance were not notified to HMRC. Table 4 below sets out the years in which these 113 schemes were notified to HMRC.

Year Number of disclosures 2004/05 14 2005/06 5 2006/07 8 2007/08 11 2008/09 9 2009/10 12 2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2017/18 - 2018/19 - Total 113		
2004/05		Number of
2005/06 5 2006/07 8 2007/08 11 2008/09 9 2009/10 12 2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2018/19 -	Year	disclosures
2006/07 8 2007/08 11 2008/09 9 2009/10 12 2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2004/05	14
2007/08 11 2008/09 9 2009/10 12 2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2005/06	5
2008/09 9 2009/10 12 2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2006/07	8
2009/10 12 2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2007/08	11
2010/11 16 2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2008/09	9
2011/12 26 2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2009/10	12
2012/13 7 2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2010/11	16
2013/14 5 2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2011/12	26
2014/15 - 2015/16 - 2016/17 - 2017/18 - 2018/19 -	2012/13	7
2015/16 - 2016/17 - 2017/18 - 2018/19 -	2013/14	5
2016/17 - 2017/18 - 2018/19 -	2014/15	1
2017/18 - 2018/19 -		-
2018/19 -	2016/17	-
,	2017/18	-
Total 113	2018/19	-
	Total	113

- 13.5. In the 2000s, there was a clear trend in the reduction of disclosures from all avoidance, but this was not reflected in the disclosure of DR schemes. As our response to question 1 shows, this is the time that the use of DR schemes was increasing.
- 13.6. After the introduction of the Accelerated Payments legislation in 2014, the number SRNs being issued each year fell significantly across all avoidance and to zero for DR schemes in scope of the loan charge. We believe this is a result of whether the scheme is DOTAS notifiable being one of only three conditions for being eligible to receive an Accelerated Payment Notice (APN). Our response to question 1 shows that the number of people using a scheme continued around the same level after 2014.
- 13.7. We have litigated six schemes for non-disclosure under the DOTAS rules, and have succeeded in four of those cases, with the outcome in the other two still awaited. One of the cases was against the promoter of a DR scheme used by individuals called
 The win over x means the promoter now has to disclose the details of their tax avoidance scheme to us, along with the names and addresses of over 1,000 individuals who used it.
- 13.8. In cases where individuals provided the correct DOTAS number in the correct section of their Self Assessment return, HMRC routinely opened enquiries. However, many scheme users and promoters did not make a full disclosure.
- 13.9. Table 5 below shows details of the number of individuals who declared their use of a DR scheme on their Self Assessment tax return using the SRN in the correct box since 2004/05 as at July 2019. It does not include declarations which may have been made in the notes/other information sections of the Self Assessment tax return. The year is when they declared the scheme which could be different to year they used a scheme.

	Individuals who
Tax year	correctly disclosed
2004/05	550
2005/06	520
2006/07	860
2007/08	1,180
2008/09	430
2009/10	1,620
2010/11	1,380
2011/12	1,070
2012/13	1,050
2013/14	1,030
2014/15	200
2015/16	50
2016/17	110
2017/18	50
Total	10,100

- 13.10. This shows the majority of individuals under enquiry did not correctly disclose their use of a DR scheme.
- 13.11. iCA records whether we have opened an enquiry but does not record whether an individual disclosed their scheme usage. Therefore, we cannot estimate what proportion of those who have settled or will pay the loan charge fully disclosed their scheme usage at the time.
- 13.12. We understand that some individuals consider that they fully disclosed because they include the beneficial loan, 11.4 onwards, in their Self Assessment return. We disagree because there are lots of reasons for employers to make beneficial loans to their employees. This does not let us know that an avoidance scheme was used or that there is no intention to ever repay the loan.

15. Additional flexibility new measure

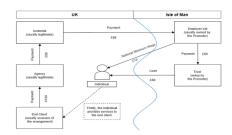
15.10. At 15.9, we committed to providing an estimate of the tax foregone from allowing

15.11. No individuals have benefited yet, and we have offered individuals the option of not progressing their settlement during the period of the review so we do not expect this to change in the coming weeks. An estimate of the reduction in the settlement liability will be solely based on the means of each individual. Until we begin agreeing reduced settlement we cannot provide an accurate estimate of yield we expect to forego.

15.12. However, we can provide an estimate of the total liabilities we believe are in scope of this additional flexibility, which is around £32 million. We do not expect all of the individuals in scope to settle for nil so the cost will be substantially lower than this.

17. <u>Public sector engagers</u>

- 17.1. We are not aware of any public sector organisations actively promoting the use of DR tax avoidance schemes to their employees or contractors.
- 17.2. A common DR scheme used by individuals before 2011 looked like below:



- 17.3. The end client will require a service and will approach a recruitment agency, which range from high-street names to boutique firms specialising in particular industries. The agency will know an individual who can provide that particular services or will identify them.
- 17.4. The agency will not employ individuals so will ask them to find an umbrella company. The individual then has a choice about the umbrella company, some of which offered DR schemes.
- 17.5. The individual provides their services to the end client via their offshore employer and one or more intermediaries on shore. Each party, beginning with the offshore employer, invoices the next party for the services provided by the individual. The end client will pay the recruitment agency, and each party takes their small fee until the offshore employer operates the DR scheme.
- 17.6. Some schemes required strict confidentiality clauses which stipulated that the individual must not tell their end client that monies would ultimately be routed offshore. Therefore, it is common for the end client to be unaware of what is happening further down the supply chain as they are contracting with a reputable firm. This applies equally to private and public sectors.
- 17.7. The iCA database does not contain information about end clients. However, in one particular scheme we undertook an exercise to look at the end clients. We identified several public sector bodies who, along with the recruitment agency, were unaware that there was an avoidance scheme or an offshore employer.
- 17.8. Any individuals providing their services to the public sector identified in the course of our compliance work would be investigated in the same way as someone working for a private sector client.
- 17.9. HMRC have worked with some public sector organisations and other professional bodies to increase awareness of DR schemes. This includes engagement with NHS, the General Medical Council and the General Dental Council, and others. We have also placed articles in various publication, including in the Nursing Times, about DR schemes and the loan charge.

18. Current use of DR avoidance schemes

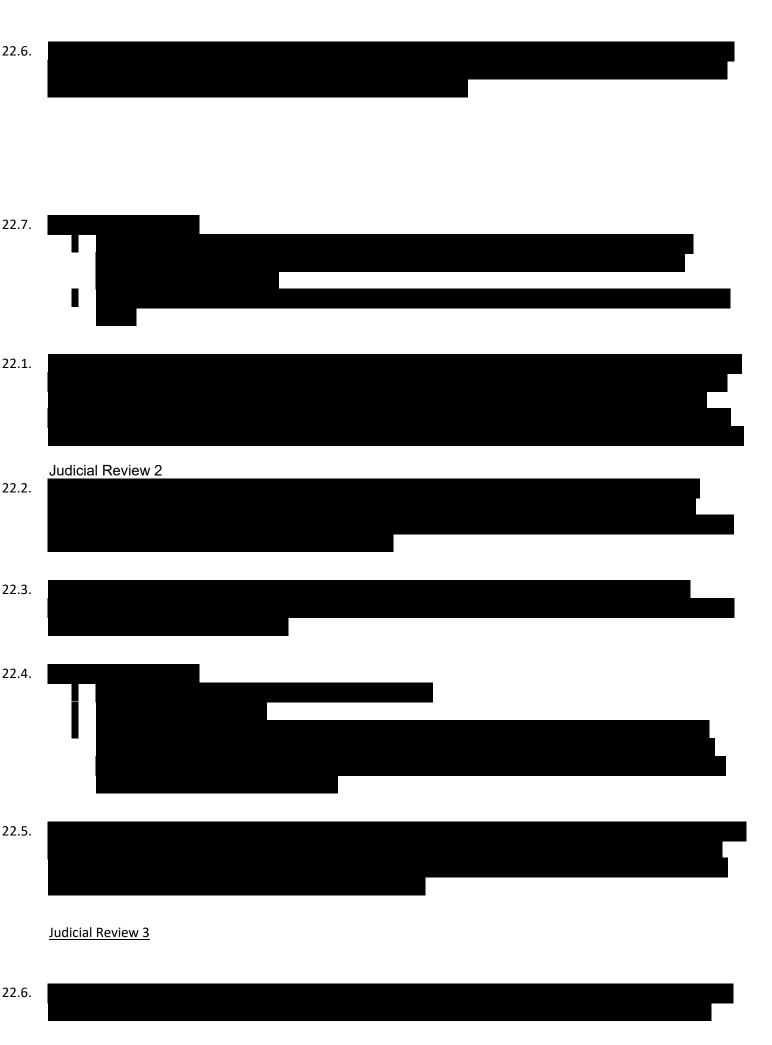
- 18.1. We have identified 12 new DR schemes since April 2019 aimed at individuals, which have been used by around 8,000 individuals, over 3,000 of whom are using an avoidance scheme for the first time.
- 18.2. Following the introduction of the anti-avoidance rules in 2011, and the Supreme Court decision against we do not consider it likely that these promoters consider the schemes to be effective. The schemes often only exist for a short period before the arrangement is closed and promoter sets up a new arrangement.
- 18.3. To tackle these new schemes, we will seek to identify them early and challenge on the basis that income tax and NICs are due because the schemes give rise to an employment income charge or the 2011 anti-avoidance rules apply.
- 18.4. We will also focus on using the legislative powers introduced since 2013 against promoters. Linked to our actions, around 20 of the highest risk promoters have ceased promoting avoidance schemes. Five of these were significant promoters of DR schemes, which have ceased activity altogether, as well as a number of other smaller promoters.
- 18.5. Our activity is concentrated on the remaining 14 promoters who we believe are responsible for the majority of DR schemes presently being sold. We have an operational team dedicated solely to bringing maximum pressure to bear on these promoters, and in 2019/20 we will double the resources involved in tackling promoters.
- 18.6. We are currently applying the POTAS legislation against a major promoter, against whom a Conduct Notice under that legislation is at present in force. We are also actively investigating a number of promoters with a view to applying the Enablers legislation, for the first time.
- 18.7. HMRC has made three successful complaints to the Advertising Standards Authority about misleading advertising. These rulings set precedents so other avoidance promoters cannot make the same claims about similar arrangements. The ASA has issued guidance about advertising tax schemes.

22. <u>Judicial reviews</u>

- 22.1. There are four Judicial Reviews connected to DR and the loan charge. Two of these concern the compatibility of the loan charge with the European Convention on Human Rights ("the Convention"). Two others concern the technical issue of HMRC's ability to disapply the PAYE Regulations in certain circumstances, so that the liability is transferred from the employer to the individual.
- 22.2. One of the latter cases is public as there is a decision and transcript from the Administrative Court, and we have attached these documents. This case, HMRC, is referred to at 10.8.
- 22.3. The remaining three have either not had hearings yet, or the Claimants have advanced their case in a manner which means that no single document which can be accessed by the public discloses the basis of the claim in a coherent way. We have written to the claimants to seek their permission to disclose the material to you. We hope to be able to come back to you on 7 October 2019 with their response.
- 22.4. In the meantime, we have set out more information on the challenges below.

Judicial Review 1

22.5.



Email 0011 attachment 2

Within email sent 01 October 2019 22:01

Withheld under section 44(1)(a) FOIA

Email0007

22 attachments within email sent 11 October 2019 18:31

The documents scheduled as attachments 18, 19 and 20 have been withheld under section 44(1)(a) FOIA



Carol Bristow
Director, Individuals Policy
Mary Aiston
Director, Counter Avoidance

100 Parliament Street London SW1A 2BQ

Sir Amyas Morse Independent Loan Charge Review By email only

Date 11 October 2019

www.gov.uk

Dear Sir Amyas,

Some of our policy and data specialists met with your secretariat on 3 October 2019 to answer their questions and to clarify points we made in our previous correspondence.

Following that meeting, we received your information requests on 3 October 2019 and 7 October 2019.

Your requests contain 20 questions numbered 1 to 20. In order to avoid confusion, we will continue with the numbering approach we have taken so far. Any additional questions relating to an existing question will be answered within that number, and any new question will be given a new number from 23 onwards.

In this response we have answered additional questions relating to questions 1, 2, 5, 9 and 22.

We will provide another response on Monday 14 October 2019 covering the majority of the remaining questions.

We will respond to the remaining questions on Wednesday 16 October 2019.

If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.

Yours sincerely

Carol Bristow

Mary Aiston

Information is available in large print, audio tape and Braille formats. Type Talk service prefix number – 18001



1. <u>Use of DR avoidance schemes over time</u>

- 1.14. In our response on 26 September, we set out what information the iCA database includes, and, at 1.7 and 1.8, provided charts on the number of DR scheme usages by individuals and by employers per year. This is based on information from the iCA database as at 3 July 2019.
- 1.15. Please find the underlying data for those charts in a table format below.

Table 1: The number of DR scheme usages by individuals and by employers per a vear

year	Number of Usages*			
Year of tax advantage	Individuals		Employers	
real of tax advantage	First usage	Subsequent usage	First usage	Subsequent usage
1998/99 - 2002/03	60	<10	110	90
2003/04	300	50	70	40
2004/05	650	210	150	70
2005/06	2,470	930	370	140
2006/07	1,870	2,930	290	220
2007/08	2,640	3,880	650	360
2008/09	3,190	5,660	800	660
2009/10	3,910	8,360	1,370	1,120
2010/11	3,830	8,640	1,180	1,530
2011/12	2,400	5,130	1,290	1,820
2012/13	2,690	6,580	1,080	2,540
2013/14	3,420	8,840	850	2,250
2014/15	2,510	9,080	930	2,020
2015/16	3,490	7,270	890	1,850

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database

- 1.16. In our response on 26 September at 1.12 and 1.13, we provided charts on the tax at risk for individuals and for companies per year based on information from the iCA database as at 3 July 2019.
- 1.17. Please find the underlying data for those charts in a table format below.

Table 2: The estimated tax at risk for individuals and for employers per year

Tax year	Tax Relating to Users Impacted by the Loan Charge		
	Individual	Employers	
1998/99 - 2002/03	£2m	£38m	
2003/04	£8m	£14m	
2004/05	£23m	£118m	
2005/06	£83m	£96m	
2006/07	£102m	£137m	
2007/08	£135m	£191m	
2008/09	£197m	£205m	
2009/10	£235m	£295m	
2010/11	£284m	£317m	
2011/12	£119m	£459m	
2012/13	£163m	£563m	

^{*}All numbers rounded to the nearest 10, where the underlying data shows that the actual value is less than 10, then we have supressed it to '<10' to prevent disclosure of potentially sensitive information.

2013/14	£177m	£431m
2014/15	£158m	£383m
2015/16	£108m	£274m

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database

2. <u>Settlements</u>

- 2.13. In our response on 26 September at 2.3, we provided a chart on the breakdown of usages for individuals and for employers by year of avoidance. This is based on information from the iCA database as at 3 July 2019.
- 2.14. Please find the underlying data for that chart in a table format below.

Table 3: Settled usages for individuals and employers by year of avoidance

	Number of Settled Usages*				
Tax Year	Individuals	Employers			
1998/99	<10	<10			
1999/00	<10	<10			
2000/01	<10	50			
2001/02	90	30			
2002/03	190	30			
2003/04	300	40			
2004/05	440	60			
2005/06	630	150			
2006/07	740	170			
2007/08	970	330			
2008/09	810	530			
2009/10	1,330	930			
2010/11	1,330	1,030			
2011/12	920	940			
2012/13	1,000	1,110			
2013/14	1,390	940			
2014/15	850	530			
2015/16	510	330			

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database

5. Scorecard yield

- 5.14. In our response on 26 September, we explained the methodology behind the costing forecasts.
- 5.15. In our meeting on 3 October, we agreed to share with you the publically available costings notes.
- 5.16. At Budget 2016, the government published its policy costings for the employment DR measures. Please see the link to the document below with the DR section page 37. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_da_ta/file/508147/PU1912 Policy Costings FINAL3.pdf
- 5.17. At the Autumn Statement 2016, the government published its policy costings for the selfemployment measures and the Corporation Tax changes. Please see the link to the document below with the DR section page 25.

^{*}Tax amounts have been rounded to the nearest £1m

^{*}All numbers rounded to the nearest 10, where the underlying data shows that the actual value is less than 10, then we have supressed it to '<10' to prevent disclosure of potentially sensitive information.

- 5.18. In January 2016, the Office of Budget Responsibility (OBR) published its evaluation of recent anti-avoidance measures, which includes the 2011 DR legislation. They found that the measure brought in £3.9 billion, £100 million more than expected. Please see the link to the document below with the DR section page 15.

 https://obr.uk/docs/dlm_uploads/Working-paper-No8-Anti_avoidance.pdf
- 5.19. We are considering if we are able to share the detailed costing note used in the Budget 2016 forecast and provided to the OBR. We will respond early next week.

9. Government and HMRC communications about DR

- 9.10. In our correspondence on 26 September 2019, we explained that HMRC carries out a significant amount of public communication explaining that DR schemes do not work.
- 9.11. Table 4 below shows the number of page views each DR related Spotlight received per year. The 2019 figures are inclusive of page views up to the end of September 2019. We do not hold any data on these pages prior to 2015.
- 9.12. The Spotlight series is targeted at agents, and tax professionals, rather than the wider population. In addition to the page views on GOV.UK, agents share information from Spotlights more widely in their own communication with their clients.

Table 4: Number of page views per a year

	2015	2016	2017	2018	2019	Total
Spotlight 5	884	1,544	733	634	704	4,499
Spotlight 6	393	515	464	456	366	2,194
Spotlight 11	607	725	714	544	915	3,505
Spotlight 12	197	217	169	180	264	1,027
Contractor Loans	-	5,699	22,757	18,324	5,539	52,319
Spotlight 35	-	-	3,934	2,839	3,022	9,795
Spotlight 36	-	-	9,386	5,595	1,961	16,942
Spotlight 37	-	-	9,945	1,221	363	11,529
Spotlight 39	-	-	5,548	5,451	1,907	12,906
Spotlight 42	-	-	-	8,773	2,464	11,237
Spotlight 44	-	-	-	9,084	5,519	14,603
Spotlight 45	-	-	-	21,872	11,049	32,921
Spotlight 46	-	-	-	-	2,295	2,295
Spotlight 48	-	-	-	-	5,578	5,578
Spotlight 49	-	-	-	-	7,961	7,961
Spotlight 50	-	-	-	-	2,516	2,516
Spotlight 51	-	-	-	-	3,663	3,663

9.13. Table 5 below shows the number of page views that the 'November 2017 Settlement' guidance received up to September 2019 since it was published in November 2017.

Table 5: 'November 2017 Settlement' page views per month

Month	Views
Nov-2017	4,217
Dec-2017	1,725
Jan-2018	1,611
Feb-2018	1,066
Mar-2018	1,702

Total	91,037
Sep-2019	1,383
Aug-2019	1,512
Jul-2019	2,066
Jun-2019	1,854
May-2019	2,233
Apr-2019	4,704
Mar-2019	5,660
Feb-2019	6,659
Jan-2019	3,670
Dec-2018	2,852
Nov-2018	3,368
Oct-2018	4,745
Sep-2018	8,516
Aug-2018	7,014
Jul-2018	5,774
Jun-2018	4,441
May-2018	10,895
Apr-2018	3,370

22. Judicial reviews

22.7. In our correspondence on 1 October, we provided you the transcript and decision in . We have since written to the remaining Claimants to seek their permission to disclose the relevant documents. Below is the current position of each.

Judicial Review 1

22.8. We have written to the Claimant, but they have not responded.

Judicial Review 2

- 22.9. The Claimant has consented to provide the documents. We have enclosed:
 - The Claimants' Grounds
 - HMRC's Grounds of Defence
 - A Note from the Claimant. For the record, the Claimant has requested we bring this to your attention; this is not an agreed note between the parties.

Judicial Review 3

22.10. The Claimant has requested you provide the request in writing to that they can consider it further. If you wish for us to proceed, please could you make a request in writing so that we can go back to the Claimant.

23. Enquiry letters

- 23.7. Enquiry letters are sent to individuals to notify them that HMRC has formally opened an investigation into their tax affairs.
- 23.8. Caseworkers across HMRC have access to the current versions of enquiry letters and notices from a central database. Attached is an example of a version of a template currently in use, including the accompanying factsheet CC/FS1a.
- 23.9. There are different versions available depending on whether;
 - the customer has an authorised agent or not;
 - the compliance check will include a visit or not; or
 - the compliance check is into something other than a tax return, such as a claim (not typically a feature of those involved in DR schemes).
- 23.10. However, that database does not store previous iterations to prevent caseworkers using letters and notices that have been superseded. We are aware there have been minor changes to the form and wording of enquiry letters since 1999. For example, HMRC's

enquiries have also been referred to as investigations, compliance checks or, simply, checks. They will also have changed over time to reflect HMRC's change in tone to be more user friendly.

- 23.11. To demonstrate how the compliance check notices have changed over time and how they are used in real life examples of DR schemes, we have attached anonymised copies of enquiry notices issued to DR scheme users.
- 23.12. These cover five different DR schemes covering tax years 2005/06 to 2016/17 with the exception of 2006/07. These enquiry notices are not necessarily reflective of all enquiry notices issued across the over 250 different DR schemes over time. However, we expect the vast majority of opening letters to follow these stencils, in particular for more recent years as HMRC has relied more on standardised letters. There will be a minority of cases where the caseworker drafted a bespoke enquiry letter. In all cases, we would have expected the reason and the purpose of the enquiry to have been clear.
- 23.13. In each notice the specific year of the tax return being enquired into is set out and the majority of the notices specify the legislative basis of the enquiry, such as section 9A Taxes Management Act 1970.
- 23.14. As you can see in the examples provided, the focus of the enquiry is highlighted to the individual. For example, 'my enquiry is concerned with employment income and benefits provided to you'. Some letters request documents and information, others indicate that no further information is being requested at that time. The latter type of enquiries are opened to ensure that any adjustments arising from our wider investigations of the scheme and a sample of users, can be reflected in an amendment of the customer's Self Assessment return at a later date.

24. Settlement contracts

- 24.1 The *Disguised remuneration: detailed settlement terms* published on 7 November 2017 set out the standard settlement terms available to DR scheme users. The terms vary according to whether the scheme user is an individual, employer or employee. This is because settlements with employers typically include Class 1 National Insurance contributions (NICs) and Corporation Tax elements.
- 24.2 In our correspondence on 26 September 2019 in paragraph 21, we provided our definitions for individuals and employers which are used below.

Individuals

- 24.2. The redacted agreement provided by the Review is indicative of settlements with individuals. We enclose the standard individual settlement template on which settlements are based. A simple contract is used when liabilities are entirely protected or partially protected and unprotected (see CSA). A deed is used when the agreement only includes voluntary restitution for unprotected years (see CSB).
- 24.3. The templates are designed in such a way that caseworkers can include the settlement of employment income scheme usage, trading income scheme usage or both. The text in green relates to employment income, the text in red to trading income. Square brackets and asterisks denote options for the caseworker to choose as appropriate. There are different versions of the template according to whether the agreement was to be entered into before the end of 5 April 2019, when the loan charge had not yet arisen, or after 5 April 2019.
- 24.4. Where an instalment arrangement is required, a different version is used that sets out the instalment arrangement as an appendix. Where the individual is benefitting from a 5 or 7 year instalment arrangement, the main body contains an assurance that the individual meets the eligibility criteria for this arrangement.

Employers and employees

24.5. In contrast to individuals, employers, and employees settling on behalf of their employer, settle by way of a more detailed agreement recorded in a contract or deed. This was

- considered more appropriate for the higher value, more complex arrangements being used by employers.
- 24.6. There are two main types of settlement agreements, a "long-form" which was the only one used until the end of 2018, and a "short-form" used from 2019 alongside the "long-form". The two are worded differently, but the substantive terms are the same. The "short-forms" were designed to be easier for caseworkers and employers to use and quicker to complete. We enclose a standard template for each (see CSC and CSD), and a template Workbook that accompanies the "short-form" (see CSE).
- 24.7. The detail of the agreements differs according to whether:
 - the agreement is made with the employer, the employee or both together;
 - the agreement covers protected and unprotected liabilities or unprotected liabilities only;
 - the scheme used involves a standard EBT, EFRBS or a so-called "EBT Lite" (where no Corporation Tax deduction was claimed for the employer's contribution into the trusts):
 - the agreement was made before or after the 5 April 2019 date on which the loan charge arose; and
 - the employer is insolvent at the time of entering into the agreement.
- 24.8. Each of these circumstances require a slightly different template agreement with slightly different terms there are approximately 19 different template settlement agreements currently in use for settlement with employers and employees.
- 24.9. More generally, the template agreements have been amended and updated in places on a number of occasions since the settlement terms were published. These updates have been made in response to feedback from caseworkers, tax agents and employers. However, the substantive terms have remained largely the same.



Date

Dear N

Tel Fax 21st January 2008 www.hmrc.gov.uk **Our Ref** Your Ref

Special Civil Investigations

Thank you for your tax return for the year ended 5 April 2006.

I am writing to tell you that I intend to enquire into this return. Each year we enquire into some tax returns to check that they are correct, or because we need further information to understand the figures. We want to make sure you pay the right amount of tax, not too little or too much. I will let you know if I find anything wrong.

My enquiry is concerned with the employment income and benefits provided to you by your employer The enquiry will be into arrangements involving the tax avoluance scheme, reference This will be dealt with by this office under Code of Practice 8. I do not intend to ask you further questions at this stage. I enclose a copy of this code. Please read it carefully. I hope to deal with this matter centrally but I am opening this enquiry to protect the interests of HMRC, so that any adjustments eventually agreed may be reflected in an amendment to vour self assessment I am also sending a copy of this letter to your accountant You may wish to talk to your employer or your accountant about my letter.

I will not be checking other areas of your return unless your reply, or any other information, gives me reason to.

There is more information on our website at www.hmrc.gov.uk.

Yours sincerely

Assistant Investigator

Information is available in large print, audio tape and Braille formats. Type Talk service prefix number - 18001



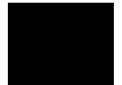




File up

Local Compliance
Personal Tax Compliance





Tel Mon - Fri 8:30 to 17:00

Fax

www.hmrc.gov.uk

Date Our ref 9 July 2009

Dear Mr

Check of Self Assessment Tax Return - year ending 5 April 2008

Thank you for your Self Assessment Tax Return for the year ended 5 April 2008, which we received on 18 August 2008.

Every year we check a number of returns to make sure that they are correct and that our customers are paying the right amount of tax. I would now like to check your return. My check will be made under Section 9A of the Taxes Management Act 1970.

I am sending a copy of this letter to your advisers, enclose a copy of my letter to them which explains what I need to carry out my cneck. You may wish to talk to them or your employer about this letter.

What I will be checking

I only intend to look at the employment income and benefits provided to you by However, when I look at this aspect I may find that I need to extend my check.

After the check is completed

When I have finished my check, I will let you know if your return is correct. If it is not correct, you might have to pay more tax or we might have to pay something back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on amounts we owe you.

Information is available in large print, audio and Braille formats. Type Talk service prefix number – 18001



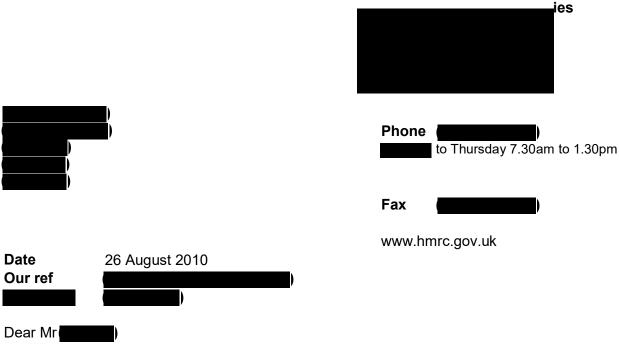
More information

I enclose a copy of our Code of Practice which gives you more information about this type of check. Please take the time to read it. There is more information on our website at www.hmrc.gov.uk.

Yours sincerely

Compliance Officer





Local Compliance

Check of Self Assessment Tax Return – year ending 5 April 2009

Thank you for your Self Assessment Tax Return for the year ended 5 April 2009, which we received on 7 October 2009.

Every year we check a number of returns to make sure that they are correct and that our customers are paying the right amount of tax. I would now like to check your return. My check will be made under Section 9A of the Taxes Management Act 1970.

I am sending a copy of this letter to your advisers, I enclose a copy of my letter to them, which explains what I need to carry out my check. You may wish to talk to them or your employer about this letter.

What I will be checking

Director:

I only intend to look at the employment income and benefits provided to you by the However, when I look at this aspect I may find that I need to extend my check.

After the check is completed

When I have finished my check, I will let you know if your return is correct. If it is not correct, you might have to pay more tax or we might have to pay something back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on amounts we owe you.

115.

Information is available in large print, audio and Braille formats
Text Relay service prefix number – 18001

More information

I enclose a copy of our Code of Practice which gives you more information about this type of check. Please take the time to read it. There is more information on our website at www.hmrc.gov.uk.

Yours sincerely





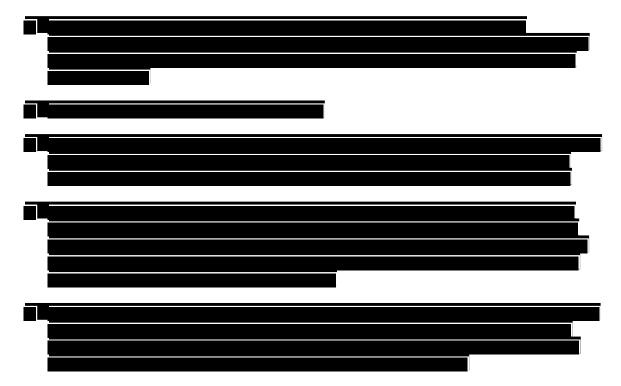


Date 10 November 2011
Our ref

Dear Mr



Thank you for your Tax Return for the year ended 6 April 2010. I am writing to tell you that I intend to enquire into this return and hereby give notice under S9(A) TMA 1970 I would like the following information and documentation listed below in relation to your claim to employment losses. Please could you supply the items requested by 29 December 2011.



Information is available in large print, audio and Braille formats. Text Relay service prefix number – 18001



Director:

I will not be checking other areas of your Return unless the reply, or other information, gives me reason to do so. In such circumstances, the scope of the enquiry could be widened to cover the whole of the Tax Return.

I enclose a copy of our Code of Practice 8. It explains how we keep our promise of fair treatment under the Revenue's Service Commitment to you. The Code also explains how you may request that the enquiry be concluded. When you have read this leaflet, please contact me if you require any further information.

If you contact us, please quote our reference number and provide a daytime phone number.

Yours sincerely

Investigator



Local Compliance
Personal & CGT Compliance





Phone

Fax

Web hmrc.gov.uk

Date 20 November 2012
Our ref
NI number
Case Ref

Dear Mr

Thank you for your Tax Return for the year ended 5 April 2011.

I would now like to check your return. My check will be made under Section 9A Taxes Management Act 1970, and under HMRC Code of Practice 8 – cases where serious fraud is not suspected. This code explains how we intend to conduct these enquiries and how we keep our promise of fair treatment under the HM Revenue & Customs' Service Commitment to you. The code also explains how you may request that the enquiry be concluded. The Code of Practice can be viewed on our website at www.hmrc.gov.uk/pdfs/cop8.pdf. Please take some time to read this booklet. If you are unable to view this booklet online please contact me on the telephone number above and I will forward you a copy.

I note that during the year you took part in arrangements whereby you had entered into a contract of employment with an offshore employer (a) and in due course received sums of money in the form of loans or expenses.

Would you please let me know

- what sums you received in the form of loans or expenses during the year ended 5 April 2011, either directly or indirectly connected with your engagement with
- what amounts of loans you have since repaid, and on what dates.

Please make sure that you keep all existing records, including computer records, during our investigation whether or not you are required to do so by law.

After the check is completed, I will let you know if your return is correct. If it is not correct, you might have to pay more tax or we might have to pay something back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on amounts we owe you.

I am copying this letter to your tax advisers.

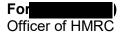
Information is available in large print, audio and Braille formats. Text Relay service prefix number – 18001



Business Unit Head:

However you choose to contact us about this check, you need to quote the case reference and any other references shown above. If you write, you need to use the address shown above and if you send documents you must tell us if you want them returned.

Yours sincerely



To learn more about your rights and obligations go to hmrc.gov.uk/charter





Local Compliance Individuals & Public Bodies

Phone Fax

Web hmrc.gov.uk

Date 18 December 2013
Our ref
NI number
Case Ref

Dear Mr

Check of Self Assessment tax return – year ended 5 April 2012

Thank you for your return for the year shown above, which we received on 31 January 2013.

HMRC is now opening an enquiry into your return. The enquiry will be made under Section 9A of the Taxes Management Act 1970.

I am sending a copy of this letter to your agent.

Why HMRC is opening an Enquiry

As part of the enquiries into your whole return we will be reviewing your declared employment income (and benefits) as an employee of

HMRC understands that the Disclosed Tax Avoidance scheme to reduce your tax bill by making interest-free or low rate loans available to you.

What happens next?

A number of tax returns submitted by people who have used the will be selected for a more detailed enquiry. These will be full enquiries covering all entries on the return. If you are one of the people selected, further correspondence will be sent to you in due course. You should retain all documentation to be able to provide information if requested.

However to enable us to consider your own personal position can you please supply full details relating to the loan payments you received / expected to receive through these arrangements for the year ending 05 April 2012 along with the evidence of each individual receipt. This information should be supplied within two months from the date of this letter.

Information is available in large print, audio and Braille formats. Text Relay service prefix number – 18001



Deputy Director:

You may wish to take the opportunity to review your financial affairs insofar as they affect your 2012 tax return, to make sure there have been no omissions, errors or other inaccuracies that you may need to correct. If you have made a mistake or forgotten to put something on your return, you can discuss the matter with your advisor.

Completing my check

Once the enquiries have been completed we will let you know whether there is any additional tax to pay or if there is any tax due back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on any amounts we owe you.

If there are any errors in your return, we may also charge you a penalty. By helping us with our check, you can reduce the amount of any penalty that we may charge. You can find more information about this in the enclosed factsheet CC/FS1a.

More information about my check

I enclose the following factsheets:

- CC/FS1a General Information.
- CC/FS9 Human Rights Act.
- CC/FS7a Penalties for inaccuracies in returns or documents

Whichever method you choose to contact us about this check, you need to quote the case reference and any other references shown above. If you write you need to use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 90 days.

Yours sincerely

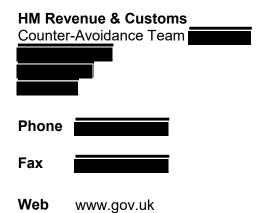
Officer

To learn more about your rights and obligations go to hmrc.gov.uk/charter





Dear Mr



Date 28 November 2014
Our ref
Case ref

Check of Self Assessment tax return – year ended 5 April 2013

Thank you for your return for the year shown above, which we received on 19 January 2014.

I am now opening an enquiry into your return. My enquiry will be made under Section 9A of the Taxes Management Act 1970.

Why I am opening an Enquiry

My enquiry is into your whole return. I will be reviewing your declared employment income (and benefits) as an employee of

HMRC understands that your employment is part of a scheme which aims to confer a tax advantage.

I have sent a copy of this letter to your agent

What happens next?

We are currently considering the full information and documents required from you and will contact your agent with a request for these shortly. Please retain all documentation to be able to provide information when requested.

You may wish to take the opportunity to review your financial affairs insofar as they affect your 2013 tax return, to make sure there have been no omissions, errors or other inaccuracies that you may need to correct. If you have made a mistake or forgotten to put something on your return, you can discuss the matter with your advisor or you can contact me on the telephone number shown above and I will be happy to talk to you and offer advice on how you can put things right.



Completing my check

Once the enquiries have been completed I will let you know whether there is any additional tax to pay or if there is any tax due back to you. I will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on any amounts we owe you.

If there are any errors in your return, we may also charge you a penalty. By helping us with our check, you can reduce the amount of any penalty that we may charge. You can find more information about this in the enclosed factsheet CC/FS1a.

More information about my check

I enclose the following factsheets:

- CC/FS1a General Information.
- CC/FS9 Human Rights Act.
- CC/FS7a Penalties for inaccuracies in returns or documents

If you choose to contact me please quote the references shown above.

Yours sincerely

For Mrs Enquiry Team Leader

To find out what you can expect from us and what we expect from you go to **www.gov.uk/hmrc/your-charter** and have a look at 'Your Charter'.







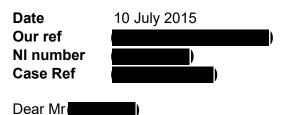
HM Revenue & Customs Counter-Avoidance



Phone 8.00 am to 4.00 pm Monday to Friday

Fax

Web www.gov.uk



Check of Self Assessment tax return – year ended 5 April 2014

Thank you for your return for the year shown above, which we received on 23 December 2014.

I am now opening an enquiry into your return. My enquiry will be made under Section 9A of the Taxes Management Act 1970.

Why I am opening an Enquiry

My enquiry is into your whole return. However, I will be concentrating on your income from employment, and in particular the salary and loans you received from

I have sent a copy of this letter to your agent

What happens next?

Officers of HMRC Counter Avoidance are currently in discussion with parties representing the offshore employer regarding the extent of information considered necessary to such enquiries. I will write to your advisor once the outcome of the discussions is known. At that stage you will be asked, via your advisor, to provide information.

You may wish to take the opportunity to review your financial affairs insofar as they affect your 2014 tax return, to make sure there have been no omissions, errors or other inaccuracies that you may need to correct. If you have made a mistake or forgotten to put something on your return, you can discuss the matter with your advisor or you can contact me on the telephone number shown above and I will be happy to talk to you and offer advice on how you can put things right.

Information is available in large print, audio and Braille formats. Text Relay service prefix number – 18001



About your refund

You have made a repayment claim in your Self Assessment tax return for the year ended 5 April 2014.

The unallocated balance of payments on your Self Assessment account are in respect of the 2011-2012 and 2012-2013 self assessments (totalling), as you will be aware, there are enquiries open for these years under S9A Taxes Management Act 1970. I will not be refunding this amount until I have completed my checks into these returns.

The legislation that allows me to do this is Section 59B(4A) of the Taxes Management Act 1970.

Completing my check

Once the enquiries have been completed I will let you know whether there is any additional tax to pay or if there is any tax due back to you. I will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on any amounts we owe you.

If there are any errors in your return, we may also charge you a penalty. By helping us with our check, you can reduce the amount of any penalty that we may charge. You can find more information about this in the enclosed factsheet CC/FS1a.

More information about my check

Once the enquiries have been completed I will let you know whether there is any additional tax to pay or if there is any tax due back to you. I will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on any amounts we owe you.

If there are any errors in your return, we may also charge you a penalty. By helping us with our check, you can reduce the amount of any penalty that we may charge.

More information about my check

I enclose the following factsheet:

CC/FS1a General Information.

If you choose to contact me please quote the references shown above.

Yours sincerely

Enquiry Team Leader

To find out what you can expect from us and what we expect from you go to www.gov.uk/hmrc/your-charter and have a look at 'Your Charter'.





Date 15 March 2016
Our ref
Your ref
Case Ref
Dear Mr

Check of Self Assessment tax return – year ended 5 April 2015

Thank you for your return for the year shown above, which we received on 24 January 2016.

Every year we check a number of returns to make sure that they are correct and that our customers are paying the right amount of tax. I would now like to check your return. My check will be made under Section 9A of the Taxes Management Act 1970.

I have sent a copy of this letter to your advisers, my letter to them, which explains what I need to carry out my check.

What I will be checking

I will be checking the whole of your return.

The figures you have entered on your Self Assessment return show that you are due a refund of I need to check that this amount is correct. I will not be refunding this amount until I have completed my check of your return. The legislation that allows me to do this is Section 59B(4A) of the Taxes Management Act 1970.

Completing the check

Once I have completed my check I will let you know whether there is any additional tax to pay or if there is any tax due back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on amounts we owe you.

If there are any inaccuracies in your return, we may also charge you a penalty.

Information is available in large print, audio and Braille formats. Text Relay service prefix number – 18001



More information

I enclose factsheet CC/FS1a 'General Information about compliance checks'. Please take time to read it, as it gives you important information about this type of check. If you have any questions once you have read it, please phone me on the number shown at the top of this letter.

If there is anything about your health or personal circumstances that may make it difficult for you to deal with this check, please tell me so that I can help you in the most appropriate way.

Whichever method you choose to contact us about this check, you need to quote the case reference and any other references shown above. If you write you need to use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 90 days.

Yours sincerely

Officer of HM Revenue and Customs

To find out what you can expect from us and what we expect from you go to www.gov.uk/hmrc/your-charter and have a look at 'Your Charter'.





HM Revenue & Customs Counter-Avoidance



Phone 8.00am to 4.00pm Monday to Friday

Web www.gov.uk

Date 13 November 2017
NI number
UTR
Case Ref

Dear Mr

Check of Self Assessment tax return - year ended 5 April 2016

Thank you for your return for the year shown above, which we received on 28 January 2017.

Every year we check a number of returns to make sure that they are correct and that our customers are paying the right amount of tax. I would now like to check your return. My check will be made under Section 9A of the Taxes Management Act 1970.

I have sent a copy of this letter to your adviser, I lenclose a copy of my letter to them, which explains what I need to carry out my check. Please make sure I have received what I have asked for by 12 January 2018.

What I will be checking

I only intend to look at your employment with the look at this aspect I may find that I need to extend my check. If this happens I will let you know.

The figures you have entered on your Self Assessment return show that you are due a refund of I need to check that this amount is correct. I will not be refunding this amount until I have completed my check of your return. The legislation that allows me to do this is Section 59B(4A) of the Taxes Management Act 1970.

Completing the check

Once I have completed my check I will let you know whether there is any additional tax to pay or if there is any tax due back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on amounts we owe you.

If there are any inaccuracies in your return, we may also charge you a penalty.

S W S

More information

I enclose factsheet CC/FS1a 'General Information about compliance checks'. Please take time to read it, as it gives you important information about this type of check.

If you have any questions once you have read it, please phone me on the number show at the top of this letter.

Whichever method you choose to contact us about this check, you need to quote the case reference and any other references shown above. If you write you need to use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 50 days.

Yours sincerely

Enquiry Team Leader

Join the millions of taxpayers already using their Personal Tax Account to access a range of HMRC services. It takes just a few minutes to get started, go to www.gov.uk/personal-tax-account

To find out what you can expect from us and what we expect from you go to www.gov.uk/hmrc/your-charter and have a look at 'Your Charter'.





CA HM Revenue and Customs

Fax
Web www.gov.uk

Date 18 September 2018
NI number
UTR
Case Ref
Dear Mr

Check of Self Assessment tax return – year ended 5 April 2017

Thank you for your return for the year shown above, which we received on 29 January 2018.

Every year we check a number of returns to make sure that they are correct and that our customers are paying the right amount of tax. I would now like to check your return. My check will be made under Section 9A of the Taxes Management Act 1970.

I have sent a copy of this letter to your adviser, I enclose a copy of my letter to them, which explains what I need to carry out my check. I do not need anything from you at present, but a colleague may contact you if further information is required in the future.

What I will be checking

I only intend to look at your employment with the look at this aspect I may find that I need to extend my check. If this happens I will let you know.

Completing the check

Once I have completed my check I will let you know whether there is any additional tax to pay or if there is any tax due back to you. We will tell you more about this at the time. We normally charge interest on any extra tax that needs to be paid but we can also give interest on amounts we owe you.

If there are any inaccuracies in your return, we may also charge you a penalty.



More information

I enclose factsheet CC/FS1a 'General Information about compliance checks'. Please take time to read it, as it gives you important information about this type of check. If you have any questions once you have read it, please phone me on the number show at the top of this letter.

Whichever method you choose to contact us about this check, you need to quote the case reference and any other references shown above. If you write you need to use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 50 days.

Yours sincerely

Officer of HM Revenue & Customs

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To find out what you can expect from us and what we expect from you go to www.gov.uk/hmrc/your-charter and have a look at 'Your Charter'.

TO THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS ("HMRC")

The tax ("Tax") [and National Insurance contributions* ("NICs")] on the statement[s]* in Appendix 1 [is/are]* unpaid, wholly or in part, because of my failure to meet all of my statutory obligations.

If the terms of this offer are accepted, it is confirmed that the agreement (the "Agreement"):

- (a) is within section 554Z5(4)(b)(ii) of the Income Tax (Earnings and Pensions) Act ("ITEPA") 2003 in relation to the Payments from employment income schemes listed in Appendix 2;
- (b) settles any liability to tax and National Insurance contributions that has arisen in relation to the Payments from employment income schemes listed in Appendix 2 as a result of a relevant step within paragraph 1 of Schedule 11 to the Finance (No. 2) Act 2017 (the "Employment Income 2019 Loan Charge");
- (c) is within paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017 so that I will not have to provide the "loan charge information" for the purpose of the Employment Income 2019 Loan Charge in connection with the Payments from employment income schemes listed in Appendix 2;
- (d) settles any liability to tax and National Insurance contributions that has arisen in relation to the Payments from trading income schemes listed in Appendix 2 as a result of a relevant benefit within paragraph 1 of Schedule 12 to the Finance (No. 2) Act 2017 (the "Trading Income 2019 Loan Charge");
- (e) is within paragraph 21(4) of Schedule 12 to Finance (No.2) Act 2017 so that I will not have to provide the "loan charge information" for the purpose of the Trading Income 2019 Loan Charge in connection with the Payments from trading income schemes listed in Appendix 2;
- (f) reflects HMRC's published settlement terms, according to which HMRC will not pursue me for any tax or National Insurance contributions on fees paid to third parties in connection with the Payments listed in Appendix 2;
- (g) *includes any inheritance tax ("IHT") [due to date in connection with the Payments listed in Appendix 2] [and] [that will be due on the release or write-off of the Payments listed in Appendix 2 and provided that release or write-off occurs within three months of the date of your letter accepting this offer, I will not have to pay any further IHT in respect of those Payments];*
- (h) concludes HMRC's enquiries into the Payments listed in Appendix 2 and settles any assessments in so far as they relate to those Payments.

For the avoidance of doubt the Agreement will not apply to any tax years, disguised remuneration schemes, sums or payments (whether in the form of loans or otherwise) that are not included in Appendix 2 [or to any inheritance tax that has arisen or that may arise in the future in connection with the Payments listed in Appendix 2 and that is not covered by the Agreement].

[*Moreover, if the release or write-off of the Payments listed in Appendix 2 occurs after the period of three months of the date of your letter accepting this offer, I will be liable to pay any difference if the IHT estimated under the Agreement is less than the IHT actually due pursuant to section 65 or 72 of the Inheritance Tax Act 1984.]

I acknowledge that the Agreement [does not/does] constitute a relevant defeat for the purposes of the serial tax avoidance legislation at Schedule 18 to the Finance Act 2016.

[I offer to pay the Tax [and NICs] for year[s] where HMRC do not have an open enquiry or assessment but in respect of which a charge to tax and National Insurance contributions may have arisen as a result of the Employment Income 2019 Loan Charge and/or* the Trading Income 2019 Loan Charge.]

On the basis that no proceedings are taken against me for the Tax [or NICs]"	on the
statement[s] in Appendix 1, or for the [penalties, surcharge and]* interest on [it/them]*	

l	[insert name of the taxpayer, No Title, First Name Middle Names Surname]
of	[insert address]
offer	the sum of £ ("the Settlement Amount")
less	£ which I have already paid].

The balance of £..... will be paid within 30 days of the date of your letter accepting this offer.

If the Settlement Amount has not been paid by that day, interest at the rate which applies for Section 86 Taxes Management Act 1970, which may be varied from time to time, will also be payable on any unpaid balance from that day. This interest will be payable without deduction of tax and shall not be claimed or allowed as a deduction in computing any income, profits or losses for any tax purposes.

If any part of the Settlement Amount is not paid within 14 days of the due date, HMRC may:

- (a) seek recovery of the outstanding balance of the Settlement Amount, together with interest, under the Agreement; and/or
- (b) terminate the Agreement.

Where HMRC terminate the Agreement, I will be treated as:

- i. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017, meaning that I have to provide the "loan charge information" for the purpose of the Employment Income 2019 Loan Charge in connection with the Payments from employment income schemes listed in Appendix 2; and
- ii. never having settled the Employment Income 2019 Loan Charge meaning that it becomes due and payable.

[OR]

Where HMRC terminate the Agreement, I will be treated as:

- i. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 21(4) of Schedule 12 to Finance (No.2) Act 2017, meaning that I have to provide the "loan charge information" for the purpose of the Trading Income 2019 Loan Charge in connection with the Payments from trading income schemes listed in Appendix 2; and
- ii. never having settled the Trading Income 2019 Loan Charge meaning that it becomes due and payable.

Where HMRC terminate the Agreement, I will be treated as:

- i. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017, meaning that I have to provide the "loan charge information" for the purpose of the Employment Income 2019 Loan Charge in connection with the Payments from employment income schemes listed in Appendix 2;
- ii. never having settled the Employment Income 2019 Loan Charge meaning that it becomes due and payable;
- iii. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 21(4) of Schedule 12 to Finance (No.2) Act 2017, meaning that I have to provide the "loan charge information" for the purpose of the Trading Income 2019 Loan Charge in connection with the Payments from trading income schemes listed in Appendix 2; and
- iv. never having settled the Trading Income 2019 Loan Charge meaning that it becomes due and payable.

The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

Any payments made under the Agreement prior to it being terminated may be treated as earlier charge paid amounts within the meaning of section 554Z11C ITEPA 2003 [or] as a tax charged within the meaning of section 23H ITTOIA 2005.

I undertake not to take any action with a view to obtaining repayment from HMRC of any part of the Settlement Amount including but not limited to making a claim under:

- a) Schedule 1AB (Recovery of overpaid tax etc) of the Taxes Management Act 1970;
- b) regulation 52 (*Return of contributions paid in error*) of the Social Security (Contributions) Regulations 2001; or
- c) common law.

Signed	Date
oignou	Dato

Appendix 1

Statement of Income Tax* and National Insurance contributions*

Year	Statement of	*National Insurance	Interest
i Gai	Income Tax	contributions	
XXXX-XXXX	£	£	£
XXXX-XXXX	£	£	£
XXXX-XXXX	£	£	£
XXXX-XXXX	£	£	£
XXXX-XXXX	£	£	£

Statement of Inheritance Tax*

*Ten year anniversary charges under section 64 of the Inheritance Tax Act 1984

Ten-year Anniversary Date	Value of Relevant Property at Ten-year Anniversary	Inheritance Tax Payable
[insert date]	£	£

*Charges under sections 65 and 72 of the Inheritance Tax Act 1984

Date of Charge	Charging Provision	Inheritance Tax Payable
[insert date]	[Section 65(1)(a)]	£
[insert date]	[Section 65(1)(b)]	£
[insert date]	[Section 72(2)(a)]	£
[insert date]	[Section 72(2)(b)]	£
[insert date]	[Section 72(2)(c)]	£

Appendix 2

Payments covered by the Agreement being payments made to or in respect of me, whether in the forms of loans or otherwise, in connection with employment income disguised remuneration schemes

Year	Scheme	Payment	
XXXX-XXXX		£	

Payments covered by the Agreement being payments made to or in respect of me, whether in the forms of loans or otherwise, in connection with trading income disguised remuneration schemes

Year	Scheme	Payment
XXXX-XXXX		£

The following details are for HMRC's purposes only and do not form part of this offer.

Reference number:	User to insert either LC post reference or Caseflow reference	

^{*[}Delete as appropriate, remove **square** brackets and words in italics. Ensure the end result is correct, logical and good English.]

(The date in the line below is to be completed by HMRC)

THIS DEED is made this day of 20 between:

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS ("HMRC");

AND

2. [NAME OF INDIVIDUAL] of [ADDRESS] (the "Individual")

Each a "Party" and together the "Parties".

NOW IT IS AGREED:

- 1. The tax ("**Tax**") [and National Insurance contributions* ("**NICs**")] on the statement(s) in Appendix 1 [is/are],* wholly or in part, unpaid.
- 2. It is confirmed that this Deed:
 - a) is within section 554Z5(4)(b)(ii) of the Income Tax (Earnings and Pensions) Act ("ITEPA") 2003 in relation to the Payments from employment income schemes listed in Appendix 2;
 - b) settles any liability to tax and National Insurance contributions that has arisen in relation to the Payments from employment income schemes listed in Appendix 2 as a result of a relevant step within paragraph 1 of Schedule 11 to the Finance (No. 2) Act 2017 (the "Employment Income 2019 Loan Charge");
 - c) is within paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017 so that the Individual will not have to provide the "loan charge information" for the purpose of the Employment Income 2019 Loan Charge in connection with the Payments from employment income schemes listed in Appendix 2;
 - d) settles any liability to tax and National Insurance contributions that has arisen in relation to the Payments from trading income schemes listed in Appendix 2 as a result of a relevant benefit within paragraph 1 of Schedule 12 to the Finance (No. 2) Act 2017 (the "Trading Income 2019 Loan Charge");
 - e) is within paragraph 21(4) of Schedule 12 to Finance (No.2) Act 2017 so that the Individual will not have to provide the "loan charge information" for the purpose of the Trading Income 2019 Loan Charge in connection with the Payments from trading income schemes listed in Appendix 2;
 - f) reflects HMRC's published settlement terms, according to which HMRC will not pursue the Individual for any tax or National Insurance contributions on fees paid to third parties in connection with the Payments listed in Appendix 2;
 - g) *includes any inheritance tax ("IHT") [due to date in connection with the Payments listed in Appendix 2] [and] [that will be due on the release or write-off of the Payments listed in Appendix 2 and provided that release or write-off occurs within three months of the date of this Deed, the Individual will not have to pay any further IHT in respect of those Payments];*

- 3. The Individual agrees to pay the Tax [and NICs]* for year[s] where HMRC do not have an open enquiry or assessment but in respect of which a charge to tax and National Insurance contributions may have arisen as a result of the Employment Income 2019 Loan Charge and/or* the Trading Income 2019 Loan Charge.
- 4. The Individual acknowledges that this Deed [does/does not] constitute a relevant defeat for the purposes of the serial tax avoidance legislation at Schedule 18 to the Finance Act 2016.
- 5. For the avoidance of doubt, this Deed does not apply to any tax years, disguised remuneration schemes, sums or payments (whether in the form of loans or otherwise) that are not included in Appendix 2 [or to any inheritance tax that has arisen or that may arise in the future in connection with the Payments listed in Appendix 2 and that is not covered by this Deed].
- 6. [*Moreover, if the release or write-off of the Payments listed in Appendix 2 occurs after the period of three months of the date of this Deed, the Individual will be liable to pay any difference if the IHT estimated under this Deed is less than the IHT actually due pursuant to section 65 or 72 of the Inheritance Tax Act 1984.]
- 7. Notwithstanding that no proceedings can be taken against the Individual for the Tax [or NICs]* on the statement[s] in Appendix 1, or for the [penalties, surcharge and interest]* on [it/them]*-

The Individual agrees the sum of £(the "Settlement Amount")
[less £ which the Individual has already paid.
The balance of £]* will be paid within 30 days of the date of this Deed.

- 8. If the Settlement Amount has not been paid by that day, interest at the rate which applies by reference to Section 86 Taxes Management Act 1970, which may be varied from time to time, will also be payable on any unpaid balance from that day. This interest will be payable without deduction of tax and shall not be claimed or allowed as a deduction in computing any income, profits or losses for any tax purposes.
- 9. If any part of the Settlement Amount is not paid within 14 days of the due date HMRC may:
 - a) seek recovery of the outstanding balance of the Settlement Amount, together with interest, under this Deed; and/or
 - b) terminate this Deed.
- 10. Where HMRC terminate this Deed, the Individual will be treated as:
 - i. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017, meaning that the Individual will have to provide the "loan charge information" for the purpose of the Employment Income 2019 Loan Charge in connection with the Payments from employment income schemes listed in Appendix 2; and
 - ii. never having settled the Employment Income 2019 Loan Charge meaning that it becomes due and payable.

Where HMRC terminate this Deed, the Individual will be treated as:

- i. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 21(4) of Schedule 12 to Finance (No.2) Act 2017, meaning that the Individual will have to provide the "loan charge information" for the purpose of the Trading Income 2019 Loan Charge in connection with the Payments from trading income schemes listed in Appendix 2; and
- ii. never having settled the Trading Income 2019 Loan Charge meaning that it becomes due and payable.

[OR]

Where HMRC terminate this Deed, the Individual will be treated as:

- i. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 35A(6) of Schedule 11 to Finance (No.2) Act 2017, meaning that the Individual will have to provide the "loan charge information" for the purpose of the Employment Income 2019 Loan Charge in connection with the Payments from employment income schemes listed in Appendix 2;
- ii. never having settled the Employment Income 2019 Loan Charge meaning that it becomes due and payable;
- iii. never having agreed terms with an officer of Revenue and Customs for the purpose of paragraph 21(4) of Schedule 12 to Finance (No.2) Act 2017, meaning that the Individual will have to provide the "loan charge information" for the purpose of the Trading Income 2019 Loan Charge in connection with the Payments from trading income schemes listed in Appendix 2; and
- iv. never having settled the Trading Income 2019 Loan Charge meaning that it becomes due and payable.
- 11. Any payments made under this Deed prior to it being terminated may be treated as earlier charge paid amounts within the meaning of section 554Z11C ITEPA 2003 [or] as a tax charged within the meaning of section 23H ITTOIA 2005.
- 12. A person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 13. This Deed may be executed in any number of counterparts and by the Parties in separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute the original of this Deed, but the counterparts together shall constitute one and the same instrument.
- 14. No delay or omission on the part of a Party in exercising any right or remedy contained in this Deed will impair or restrict or be construed as a waiver of any such right or remedy and any such right or remedy is in addition to any other rights, remedies or powers of that Party.
- 15. This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

- 16. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.
- 17. The Individual undertakes not to take any action with a view to obtaining repayment from HMRC of any part of the Settlement Amount including but not limited to making a claim under:
 - a) Schedule 1AB (Recovery of overpaid tax etc) of the Taxes Management Act 1970;
 - b) regulation 52 (*Return of contributions paid in error*) of the Social Security (Contributions) Regulations 2001; or
 - c) common law.

SIGNED AS A DEED by (Print name above) Date)))))
In the presence of	. (Signature of Witness)
Name of witness	
(Print Name)	
Address of witness	
Occupation of witness	
SIGNED AS A DEED)
for and on behalf of The Commissioners for Her Majesty's Revenue and Customs by))) Signature of Officer of Revenue and Customs
(HMRC Officer: Print name abo	ve)
Date	
In the presence of	(Signature of HMRC Witness)
Occupation of witness	

EXECUTED AS A DEED by the Parties and delivered and taking effect on the date written at

the beginning of it.

Appendix 1

Statement of Income Tax

Year	Statement of Income Tax	*National Insurance Contributions
YYYY-YYYY		
Total		

Statement of Inheritance Tax*

*Ten year anniversary charges under section 64 of the Inheritance Tax Act 1984

Ten-year Anniversary Date	Value of Relevant Property at Ten-year Anniversary	Inheritance Tax Payable
[insert date]	£	£

*Charges under sections 65 and 72 of the Inheritance Tax Act 1984

Date of Charge	Charging Provision	Inheritance Tax Payable
[insert date]	[Section 65(1)(a)]	£
[insert date]	[Section 65(1)(b)]	£
[insert date]	[Section 72(2)(a)]	£
[insert date]	[Section 72(2)(b)]	£
[insert date]	[Section 72(2)(c)]	£

Appendix 2

Payments covered by this Deed being payments made to or in respect of the Individual, whether in the forms of loans or otherwise, in connection with employment income disguised remuneration schemes.

Year	Scheme	Payment
XXXX-XXXX		£
XXXX-XXXX		£
XXXX-XXXX		£

Payments covered by this Deed being payments made to or in respect of the Individual, whether in the forms of loans or otherwise, in connection with trading income disguised remuneration schemes.

Year	Scheme	Payment
XXXX-XXXX		£
XXXX-XXXX		£
XXXX-XXXX		£

The following details are for HMRC's purposes only and do not form part of this Deed.

Reference number:	Caseflow Reference:

Delete guidance below before issue:

[* Delete as appropriate, remove **square** brackets and words in italics. Ensure the end result is correct, logical and good English. All wording should be changed to black before issue.]

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS ("the Commissioners");

AND

[NAME OF COMPANY] of [ADDRESS] ("the Employer")

Each a "Party" and together the "Parties".

NOW IT IS AGREED:

- [The income tax payable, deductible or that must otherwise be accounted for by the Employer pursuant to the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682), together with such further income tax as would be payable under those Regulations if the code[s] issued to the Employer in respect of [a] certain employee[s] had been determined by reference to the actual circumstances as they are now known] ("the PAYE Tax")][,/and] [the National Insurance Contributions ("NICs")] [and the Inheritance Tax ("the IHT")] set out in Appendi[x/ces] A [and B] (together, "the Unpaid Liabilities"), are unpaid wholly or in part because of the Employer's alleged failure to meet all its obligations.
- In addition the Employer has agreed to settle [the liability of [a] certain employee[s] that will arise under section 222 or 223 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003") in connection with this Agreement ("the Section 222/223 Liability")[,/ and] [the IHT that will arise after the date of this Agreement ("the IHT On Account")] [and the Part 7A tax and NICs that will arise after the date of this Agreement ("the Part 7A On Account")].
- On the basis that no proceedings are taken against the Employer for the Unpaid Liabilities or the [penalties and] interest on them, and the relevant assessments in place are withdrawn, and in consideration of the mutual obligations contained in this Agreement the Employer agrees to pay ("the Settlement Amount") in full and final settlement of the Unpaid Liabilities [, the Section 222/223 Liability][,/ and] [the IHT On Account][and the Part 7A On Account].

EARNINGS TAX AND NICS

- The Employer has [made [a] contribution[s] to]/[made [a] payment[s] in connection with the use of] the [Name of Trust[s]] made [Date of Trust[s]] [("the EBT")/("the EFRBS")/("the Trusts")] [which [has/have] been the subject of subsequent transactions/steps] for the benefit of certain employees in the tax year(s) and amount(s) as set out in Appendix A ("the Contribution[s]").
- Details of the Contribution[s] made for the benefit of each beneficiary ("the Employee[s]") are shown in Appendix A.
- [Some of t] [T]he Contribution[s] represent earnings plus the repayable secondary Class 1 NICs as set out in Appendix A ("Repayable Secondary Class 1 NICs"). The remainder of the Contribution[s] represent earnings only as set out in Appendix A.
- The [earnings element of the] Contribution[s] is/are the payment[s] of earnings ("the Earnings") as defined by section 62 of [the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003")/ITEPA 2003] and section 3 of the Social Security Contributions and Benefits Act 1992 on the date[s] that the Contribution[s] [was/were] made[, notwithstanding any obligation taken on by

Commented [A1]: Do not date until both the Employer and the Commissioners have signed the Agreement.

Commented [A21: Include the wording in square brackets if the PAYE code issued to the Employer (on which the PAYE Tax would otherwise be calculated) would lead to the Employer's income tax liability under the PAYE Regulations falling short of the overall income tax liability on the Earnings (as defined in clause [6], below).

Commented [A3]: Remove "the IHT" unless there is an IHT liability that has already arisen (e.g. 10 year anniversary

Commented [A4]: Delete "and B" unless IHT charges that have already arisen or Employer's 222/223 NICs is being paid as part of the Settlement Amount.

Commented [A5]: Include this part if the 222/223 charge is being paid by the Employer as part of the Settlement

Commented [A6]: Remove unless the Employer is settling the IHT that will arise after the date of the Agreement, eg the IHT exit charge.

Commented [A7]: Remove unless the Employer is paying the Part 7A tax and NICs that will arise after the date of the Agreement eg. Part 7A on the distribution of the investment growth on the Earnings or the secondary NICs or a distribution of funds not included in the "Earnings"

Commented [A8]: Remove if no penalties are being applied or included in the Settlement Amount.

Commented [A9]: Insert the Settlement Amount calculated in Appendix D.

Commented [A10]: Remove the parts that have been deleted from clause 1.

Commented [A11]: For some Post DR schemes there is no earnings charge applicable on contribution and therefore the charge arises only when a relevant step is taken. In such cases clauses 5-15 can be removed and clause 4 should jus

Commented [A12]: Generally "made a contribution to" should be used for pre DR schemes and "made a payment

Commented [A13]: Use whichever term is appropriate. The term "the Trusts" is intended for use where the

Commented [A14]: Use this option where the contribution or payment by the employer is not the chargi

Commented [A15]: Include these words and the last sentence where some of the secondary NICs is being

Commented [A16]: Include this clause only where the EBT provides that secondary NICs "may" be paid by the trust of

Commented [A17]: Delete this sentence if "Some of" at the beginning of this clause is deleted.

Commented [A18]: Remove these words if clause 6 is removed.

Commented [A19]: Use the first alternative if you have removed the part of clause 1 that defines ITEPA 2003.

the Employee[s] to pay a sum equivalent to the Earnings to any person in the future, and any such future payment will not give rise to any deduction or relief for income tax purposes either in the year the future payment is made or in any other year].

Income Tax

8. The PAYE Tax due on the Earnings is set out in Appendix A.

9. [Clause 8 is subject to clause 14.]

NICs

10. The primary and secondary Class 1 NICs due on the Earnings is set out in Appendix A.

[Clause 10 is subject to clause 14.] 11.

The PAYE Tax due under clause 8 together with the Class 1 NICs due under clause 10 (after 12. any adjustments under clause 14)] is the "Earnings Tax and NICs".

Repayable Secondary Class 1 NICs

- The Repayable Secondary Class 1 NICs in the sum set out in Appendix A is currently held in the EBT. The Settlement Amount has been calculated on the basis that the [trustees of the EBT/the Employee[s]] will [[transfer the Repayable Secondary Class 1 NICs to the Employer] / [pay to the Commissioners a sum equivalent to the Repayable Secondary Class 1 NICs in part payment of the Settlement Amount]] [[within [...] days of the date of this Agreement] / [on or before the date the final instalment is due under the Instalment Payment Plan in Appendix D]].
- If the [trustees of the EBT/the Employee[s]] do not [[transfer the Repayable Secondary Class 1 NICs to the Employer] / [pay to the Commissioners a sum equivalent to the Repayable Secondary Class 1 NICs in part payment of the Settlement Amount] [[within [...] days of the date of this Agreement] / [on or before the date the final instalment is due under the Instalment Payment Plan in Appendix D] in accordance with clause 13, the Parties agree that the entire Contribution[s] shall be treated as Earnings for the purpose of clause 6 and:
 - the calculations of the Earnings Tax and NICs due as set out in Appendix A;
 - the Effective Liability (clause 22 and Appendix A); and
 - the Settlement Amount that the Employer agrees to pay in clause 3

shall be amended accordingly to reflect the revised Earnings figure.

The Employer agrees to provide to the Commissioners written confirmation of the transfer of the Repayable Secondary Class 1 NICs if requested within 30 days from the date of the written request. In the event that no suitable confirmation is provided then the terms of clause 14 will apply and the entire Contribution[s] shall be treated as Earnings.]

PART 7A TAX AND NICS

Loan Charge

Where a relevant step that is treated as being taken for the purposes of Part 7A of ITEPA 2003 by operation of Schedule 11 to the Finance (No. 2) Act 2017 is connected to the Contributions (a "Schedule 11 Relevant Step") the Commissioners, in exercise of their powers under section 5 of the Commissioners for Revenue and Customs Act 2005 and any other powers so enabling them, accept the amount described in Appendix A as the "Loan Charge Settlement Sum" in full

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Commented [A20]: Use this part for a post DR scheme which involves the employee taking on an obligation to make future payments.

Commented [A21]: Remove if clause 14 is removed.

Commented [A22]: Remove if clause 14 is removed.

Commented [A23]: Remove these words if clause 14 is removed

Commented [A24]: If (and ONLY if) the terms of the trust deed include a provision (and did at the time the Contribution was made) which allows the trustees to reimburse the Employer any Secondary Class 1 NICs or pay a sum equivalent to the Secondary Class 1 NICs directly to HMRC, the reimbursement or payment can in the alternative be made by the Employee[s]. Where the trustees are making the reimbursement or payment choose the option of "trustees of the EBT" and remove references to "the Employee[s]" in both this clause and clause 14. Where the Employee[s] are making the reimbursement or payment remove references to "the trustees of the EBT" in this clause and clause 14.

Commented [A25]: Select the option that accurately describes the arrangements in place (and delete the alternative option) in this clause and clause 14.

Commented [A26]: If the Settlement Amount is being paid in a single payment, select the payment period in days / date that corresponds to that in paragraph 76 and Appendix D. If the Settlement Amount is being paid in instalments, select the option that refers to the Instalment Payment Plan in Appendix D.

Commented [A27]: Select the option that corresponds to the option selected in clause 13.

Commented [A28]: Remove this section if clause 6 is removed. The clauses in this section are only appropriate where: (1) the terms of the EBT include a provision that allows the trustees of the EBT to reimburse the Employer any Secondary Class 1 NICs; and (2) the PAYE and NICs due on the Earnings has been calculated on the basis that the Contributions represent Earnings and the Secondary Class 1 NICs on those Earnings.

Commented [A29]: Remove entire clause if trustees of the EBT/ Employees are to pay the Repayable Secondary Class 1 NICs to HMRC directly.

and final settlement of the PAYE Tax and NICs liability arising on the Schedule 11 Relevant Step (the "Loan Charge") and any penalties or interest thereon.

[Settlement Relevant Steps

- 17. The Employee[s listed] in the table titled "Part 7A Tax and NICs" in Appendix A have benefitted from relevant steps for the purposes of Part 7A of ITEPA 2003 in connection with the Contributions (the "Relevant Steps").
- The value of the Relevant Steps other than any Schedule 11 Relevant Steps (the "Settlement Relevant Steps") are set out in Appendix A.
- The PAYE Tax and NICs liabilities arising on the Settlement Relevant Steps ("the Part 7A Tax and NICs") are also set out in Appendix A.]

INTEREST

- 20. Interest is due on the Earnings Tax and NICs [and the Part 7A Tax and NICs] for the amount[s] and time period[s] as detailed in Appendix A pursuant to [regulation 82 of the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682)] [and] [,] [paragraph 17 of Schedule 4 to the Social Security (Contributions) Regulations 2001 (SI 2001/1004)] [and] [s.101 of the Finance Act 2009)].
- 21. The Employer also agrees to pay forward interest as set out in Appendix D ("the Forward Interest"). The Commissioners agree that the Forward Interest is an allowable deduction for the purpose of calculating the profits on which corporation tax is payable by the Employer for the relevant accounting period[s]. In the event that the instalment payment plan as set out in Appendix D is varied on agreement between the Parties, it is confirmed that the Forward Interest will be recalculated to reflect the variation of the payment plan.

THE EFFECTIVE LIABILITY

22. The PAYE Tax, NICs and interest thereon due in respect of the Earnings Tax and NICs [and the Part 7A Tax and NICs after the application of the double tax relief provisions in sections 554Z11B - F of ITEPA 2003] is set out in Appendix A and herein referred to as "the Effective Liability". The Effective Liability is made up of "the Effective Income Tax and NICs" and "the Effective Interest" as set out in Appendix A.

COURT FEES

- 23. The Commissioners issued [a] claim[s] against the Employer for the unpaid primary and secondary Class 1 NICs as per the details set out in Appendix B ("the NICs claim[s]").
- 24. The Employer agrees to pay the Commissioners the court fee[s] of issuing the NICs claim[s] in the amount[s] set out in Appendix B ("the Court Fee[s]") as part of the Settlement Amount and the Commissioners agree to withdraw the NICs claim[s] after they have received payment of the Settlement Amount in full.

PENALTIES

- 25. [The Parties agree that there are no penalties arising under Schedule 24 to the Finance Act 2007 or sections 95 and 98A(4) of the Taxes Management Act 1970 in relation to the Unpaid Liabilities and that no such penalties will arise in relation to the Unpaid Liabilities after the date of this Agreement.]
- [The Parties agree that there are penalties arising under Schedule 24 to the Finance Act 2007 or section 95 or 98A(4) of the Taxes Management Act 1970 due and owing to the Commissioners

Commented [A30]: Retain this clause even if, in the specific circumstances of the Employer, there are no Schedule 11 Relevant Steps. Where that is the case, the clause is of no effect.

Commented [A31]: Include all these clauses where a Part 7A charge has been triggered before settlement; otherwise, the clauses can be removed.

Commented [A32]: Remove these words if there is no Part 7A liability.

Commented [A33]: If the PAYE Tax and Class 1 NICs is due and payable in respect of the tax year 2014-15 and / or subsequent tax years refer only to s.101 FA 2009 (and delete the references to regulation 82 and paragraph 17); if the PAYE Tax and Class 1 NICs are due and payable in respect of earlier tax years refer only to regulation 82 and paragraph 17 (and delete the reference to s.101); if the PAYE Tax and Class 1 NICs are due and payable in respect of tax years spanning the 2014/15 tax year include all statutory references.

Commented [A34]: This will be the accounting period in which the Employer can properly recorded the deduction under GAAP.

Commented [A35]: Remove these words if there is no Part 7A charge.

Commented [A36]: Remove these clauses if protective NICs claims have not been issued.

in relation to the Unpaid Liabilities which are being settled in this Agreement in the amount[s] set out in Appendix D (the "Unpaid Liabilities Penalty Amount[s]").]

[The Parties agree that any penalties that have arisen under Schedule 24 to the Finance Act 2007 or section 95 or 98A(4) of the Taxes Management Act 1970 up to the date of this Agreement, or that may arise after the date of this Agreement, in relation to the Unpaid Liabilities are not settled pursuant to this Agreement and no part of the Settlement Amount relates to such penalties.]

INHERITANCE TAX

- The IHT due to date in relation to the EBT is set out in Appendix B ("the IHT Charge").
- 29. Interest is due on the IHT Charge pursuant to section 233 of the Inheritance Tax Act 1984 ("IHTA 1984") for the time period and in the sum as set out in Appendix B ("the IHT Interest").
- The Employer wishes to pay the IHT that will become due pursuant to section 65 or section 72 30. of [the Inheritance Tax Act 1984/ IHTA 1984] on distribution of the EBT property ("the Event").
- [[The Employer, the Employee[s] and the trustees of the EBT have agreed that the Employee[s] will pay to the Commissioners a sum equivalent to the PAYE Tax and Repayable Secondary Class 1 NICs in part payment of the Settlement Amount and simultaneously in return the trustees of the EBT will release the Employee[s] from an equivalent amount of debt ("the Release").] / [The Employer and the trustees of the EBT have agreed that the trustees of the EBT will pay to the Commissioners a sum equivalent to the [PAYE Tax and] [Repayable Secondary Class 1 NICs] in part payment of the Settlement Amount ("the Trustee Payment").]]
- The Commissioners have estimated that the IHT that will become due if the [Release / the Trustee Payment and the Event occur[s] on or before the date noted in Appendix B will be the figure as set out in Appendix B. This is the amount that the Employer will pay under this Agreement referred to as "the IHT On Account" in clause 1.
- Provided that the [Release / the Trustee Payment and the] Event occur[s] on or before the date detailed in Appendix B, the Commissioners will accept the IHT On Account in full and final settlement of the IHT charge that arises on the Event. The Commissioners will accept a letter from the trustees of the EBT stating that the [Release and the] Event occurred and the date on which [it] [they] occurred. If [either] the [Release / the Trustee Payment or the] Event does not occur on or before the date detailed in Appendix B the statutory position remains unaffected by this Agreement. In this scenario the Commissioners will allocate the IHT On Account to the IHT due pursuant to the Event and reserve their right to recover the difference if the IHT On Account is less than the IHT due pursuant to the Event.
- [Any inheritance tax [that has arisen to the date of this Agreement and] that may arise after the date of this Agreement in relation to the EBT is not settled pursuant to this Agreement and no part of the Settlement Amount relates to [future] inheritance tax.]
- The Parties agree that there are no outstanding inheritance tax charges due in relation to the EBT and, assuming no variation of the EBT, no change of law and no further contributions are made to the EBT, the Commissioners agree that any subsequent distribution of EBT property by the trustees of the EBT will be exempt from inheritance tax exit charges under section 65 IHTA 1984.]

Commented [A37]: These clauses refer to penalties under Schedule 24 to the Finance Act 2007 and / or ss. 95 and 98A(4) of the Taxes Management Act 1970. The clauses cover the following situations: (25) no penalties; (26) penalties agreed and being settled in the Agreement; and (27) penalties may be applicable but are not confirmed and/or no agreement has been reached to settle them as part of the Agreement. Use the one clause that accurately reflects the taxpayer's situation. Note that the clauses are not intended to cover late payment penalties. If any late payment penalties have arisen please contact Solicitor's Office.

Commented [A38]: Clauses 28 and 29 are to be included where there are existing unpaid IHT liabilities at the time of the Agreement, eg 10 year anniversary charge or exit charge. Remove these clauses if no IHT liabilities have arisen to date or are not being paid under this Agreement.

Commented [A39]: Use first alternative if clauses 28 and 29 are deleted.

Commented [A40]: Include the option that accurately describes the arrangement that has been agreed with HMRC (and delete the alternative option). If neither arrangement has been agreed with HMRC remove the clause.

Commented [A41]: If clause 31 is removed then delete the words in square brackets. If either of the options in clause 31 is retained then retain the corresponding defined term (i.e. either "Release" or "Trustee Payment") in this

Commented [A42]: If clause 31 is removed then delete the words in square brackets. If either of the options in clause 31 is retained then retain the corresponding defined term (i.e. either "Release" or "Trustee Payment") throughout this clause (and delete the alternate defined term).

Commented [A43]: Clauses 30 to 33 are to be included where there are future IHT liabilities that are being paid on account under the Agreement. Remove if there are no IHT liabilities being paid on account under the Agreement.

Commented [A44]: Clause 34 should be used in its entirety with the word "future" deleted if clauses 28-33 are deleted and no IHT is being settled under the Agreement. If only existing IHT is being settled but not IHT on Account then $\,$ include the clause but with the words "that has arisen to the date of this Agreement" deleted. If clauses 28-33 are included then delete clause 34 entirely.

Commented [A45]: Clause 35 is only to be included where clauses 28-34 are removed and HMRC is agreeing that there are no IHT charges at all, even future charges and IHT technical specialists have confirmed that there is no existing or future IHT charges based on existing legislation. If clauses 28-33 or 34 are included then delete clause 35 entirely.

PART 7A ON ACCOUNT

- The Employer wishes to pay the PAYE Tax and NICs that will become due when relevant steps within the meaning of Part 7A ITEPA 2003 are taken in respect of EBT property that is not included in the [Earnings or/ Relevant Step[s]] ("the Future Relevant Step[s]").
- The Commissioners have estimated that the income tax and NICs that will become due if the Future Relevant Step[s] occur[s] on or before the date noted in Appendix B will be the figure as set out in Appendix B. This is the amount that the Employer will pay under this Agreement referred to as "the Part 7A On Account" in clause 1.
- Provided that the Future Relevant Step[s] occur[s] on or before the date noted in Appendix B, the Commissioners will accept the Part 7A On Account in full and final settlement of the income tax and NICs that arises on the Future Relevant Step[s]. If the Future Relevant Step[s] [does/do] not occur on or before the date noted in Appendix B the statutory position remains unaffected by this Agreement. In this scenario the Commissioners will allocate the Part 7A On Account to the income tax and NICs due pursuant to the Future Relevant Step[s] and reserve their right to recover the difference if the Part 7A On Account is less than the income tax and NICs due pursuant to the Future Relevant Step[s].
- [Any PAYE Tax and NICs that may arise after the date of this Agreement when relevant steps within the meaning of Part 7A ITEPA 2003 are taken in respect of EBT property that is not included in the [Earnings or/ Relevant Step[s]] is not settled pursuant to this Agreement and no part of the Settlement Amount relates to such future charges.]

SECTION 222/223 LIABILITY

- The Employer has agreed to settle its NICs liability [and the income tax liability of the Employee[s]] as set out in Appendix B arising by operation of section [222] [and] [223] of ITEPA 2003 in connection with its use of the EBT for the benefit of the Employee[s] and the payment of the Settlement Amount pursuant to this Agreement. [The income tax that would otherwise have been due from the Employee[s] has been grossed up to include the income tax liability on the benefit to the Employee[s] of having this income tax paid by the Employer. The NICs liability of the Employer is calculated on this grossed up amount.] The NICs liability of the Employer [taken together with the income tax liability of the Employee[s] on a grossed up basis] is referred to in this Agreement as "the Section [222/223] Liability".
- The Section [222/223] Liability is set out in Appendix B. 41.
- The Commissioners agree that the Section [222/223] Liability is an allowable deduction for the 42 purpose of calculating the profits on which corporation tax is payable by the Employer for the appropriate accounting period[s].
- The Commissioners agree that in exercise of their powers under section 5 of the Commissioners for Revenue and Customs Act 2005, and any other powers so enabling them, they will not issue any assessments, or bring proceedings, in respect of any NICs liability of the Employer [or any income tax liability of the Employee[s]] arising by operation of section 222 of ITEPA 2003 on or as a result of a Schedule 11 Relevant Step.
- The Parties agree that any liability under [section 222] [or] [section 223] of ITEPA 2003 [that has arisen at the date of this Agreement and that may arise after the date of this Agreement is not settled pursuant to this Agreement and no part of the Settlement Amount relates to a [future] liability under [section 222] [or] [section 223] ITEPA 2003.]

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Commented [A46]: Clauses 36-38 should be used where the Employer is settling the PAYE Tax and NICs that will arise on Part 7A relevant steps after the date of this Agreement. For example a distribution of investment growth or the loan charge on loans out of the EBT funds on which the earlier earnings charge was not protected and there has been no voluntary restitution.

Commented [A47]: Clause 39 should be used in its entirety where clauses 36-38 are deleted because future Part 7A charges are not being settled under the Agreement. If clauses 36 - 38 are included then delete clause 39.

Commented [A48]: Delete the words in square brackets in this clause unless the Employer is also settling the Employee's income tax liability that arises pursuant to section 222 or 223.

Commented [A49]: Include these clauses where any liability arising under s.222 or s.223 of ITEPA 2003 is being settled in this Agreement.

Commented [A50]: Delete the words in square brackets if clauses 40 - 42 are retained and have the effect of settling all s.222 and / or s.223 liabilities that have arisen as of the date of this Agreement. Retain the words in square brackets if clauses 40- 42 are removed. If some but not all existing s.222 and / or s.223 liabilities are being settled in clauses 40 - 42 please contact Solicitor's Office for guidance.

Commented [A51]: Retain the word "future" in square brackets if the earlier words "that has arisen at the date of this Agreement and" are deleted. Delete the word "future" in square brackets if the earlier words are retained.

45 [The Commissioners agree that there are no charges arising out of the operation of [section 222] [or] [section 223] ITEPA 2003 payable in connection with the Employer's use of the EBT for the benefit of the Employee[s] or the payment of the Settlement Amount pursuant to this Agreement.]

Commented [A52]: This clause is only to be included (in the alternative to clauses 40 - 42 and 44) where HMRC is satisfied that no 222 or 223 charges have arisen or will arise in the future.

BENEFIT IN KIND TAX

- The Employee[s] listed in Appendix C [has/have] paid to the Commissioners income tax pursuant to the provisions of the benefits code (as defined in section 63 of ITEPA 2003) on benefits made available to them by the EBT as set out in Appendix C ("the BiK Tax") and the Employer has paid Class 1A NICs in relation to those benefits ("the Class 1A NICs").
- The Employee[s] listed in Appendix C [has/have] completed a mandate waiving their rights to a repayment of the BiK Tax.
- The Employer [has made/waives its rights to make] a repayment claim for the Class 1A NICs and agrees to include in its accounts for the current accounting period a receipt in the amount of the Class 1A NICs described as "Class 1A NICs repayment".
- The Commissioners accept that the [loan[s]/benefits] listed in Appendix C [is/are] not [employment-related loans as defined by section 174 of ITEPA 2003/treated as earnings under the benefits codel.
- The Commissioners have set off against the Unpaid Liabilities the BiK Tax, the Class 1A NICs and repayment interest thereon ("the BiK Repayment") as set out in Appendix C.

CORPORATION TAX DEDUCTION

Earnings

- The Earnings were qualifying benefits for the purposes of Schedule 24 to the Finance Act 2003 (now Part 20 of the Corporation Tax Act 2009).
- The Commissioners agree therefore that the Earnings paid in the period[s] set out in Appendix C are an allowable deduction for the purposes of calculating the corporation tax payable by the Employer in those accounting period[s].
- The Commissioners agree that the Settlement Relevant Step[s] taken in the period[s] set out in 53. Appendix A are an allowable deduction for the purposes of calculating the corporation tax payable by the Employer in those accounting period[s].

Income Tax and NICs paid under the Agreement

The Commissioners agree that the Effective Income Tax and NICs paid by the Employer to the Commissioners under this Agreement (to the extent that they are not to be made good to the Employer by the Employee or the trustees of the EBT or have not already been deducted in the accounts for any year) are an allowable deduction for the purpose of calculating the profits on which corporation tax is payable by the Employer for the relevant accounting period[s] (referred to in this Agreement as "the Deductible Amount"). Appendix C sets out the Deductible Amount[s] for each accounting period.

CT Credit

The Commissioners have set off against the Unpaid Liabilities the amount set out in Appendix C being an amount equivalent to the corporation tax repayment and repayment interest that would be due to the Employer for the relevant accounting period[s] if the Employer's return was Commented [A53]: Include these clauses where BIK Tax and/or Class 1A NICs has been paid and the Employer and Employee are able to make a statutory repayment claim.

Commented [A54]: The template mandate will need to be completed and signed by each Employee and kept with the signed Agreement.

Commented [A55]: The second part of this sentence is not necessary in the event that the Employer did not enter a deduction in its accounts for CT purposes when it paid the Class 1A NICs that is now being offset under the terms of the

Commented [A56]: Where there is no statutory way for the Employer to obtain CT relief for the Earnings / Contribution[s] (e.g. because the CT return for the relevant year cannot be amended and the time limit for overpayment relief has expired) use the EBT Lite template.

Commented [A57]: Clause 54 is relevant only for Post DR settlements where there is no earnings charge on contribution. Delete this clause if clause 53 is included.

Commented [A58]: Where an APN has been paid the company may have already had the benefit of the deduction in its accounts and care needs to be taken not to allow a double deduction.

Commented [A59]: See BIM47090 for timing of CT

Commented [A60]: Remove this clause if the Employer is being completely reimbursed by the Employee or EBT or has already had the deductions.

amended / a repayment claim made for the relevant period[s] on the basis that the [Earnings and/or the Deductible Amount] [was / were] [an] allowable deduction[s] for the purpose of calculating the profits on which corporation tax was payable by the Employer ("the CT Credit").

CT Returns and Repayment Claims

- The Employer confirms it has not, and agrees it will not, include in its corporation tax return for any year a deduction for the [Earnings and/or the Deductible Amount] which has already been taken into account when calculating the Settlement Amount due under this Agreement.
- The Employer confirms it has not, and agrees it will not, include in its corporation tax return for 57 any year a deduction in respect of the Loan Charge or any Schedule 11 Relevant Step.
- The Employer agrees not to make a repayment claim for the CT Credit which has already been 58. taken into account when calculating the Settlement Amount due under this Agreement.

SECTION 554Z5 ITEPA 2003

To the extent that relief is not given under paragraph 59 of Schedule 2 to the Finance Act 2011 this Agreement is an agreement within section 554Z5(4)(b)(ii) of ITEPA 2003 and the Earnings are "sum or asset Q" for the purposes of section 554Z5(1) of ITEPA 2003.

DUTY TO PROVIDE LOAN CHARGE INFORMATION TO THE COMMISSIONERS

- This Agreement satisfies the requirements of paragraph 35A(6) of Schedule 11 to the Finance (No. 2) Act 2017 (agreement for the discharge of income tax liability) in respect of any Schedule 11 Relevant Steps such that paragraph 35C of Schedule 11 to the Finance (No. 2) Act 2017 (duty to provide loan charge information to the Commissioners) does not apply.
- The Employer is not required to report to the Commissioners any Schedule 11 Relevant Steps in respect of which a Loan Charge arises and no penalties shall be payable by the Employer as a result of its failure to so report a Schedule 11 Relevant Step after 5 April 2019.

[CURRENT PROCEEDINGS

The Appeals

- The Employer has appealed to the First-tier Tribunal (Tax Chamber) ("the Tribunal") in respect of the liabilities arising in connection with the Contribution[s]. [That appeal has] [Those appeals have] been allocated reference number[s] [•] ("the Appeal[s]").
- The Parties agree that this Agreement is an agreement for the purposes of section 54 of the Taxes Management Act 1970 and, accordingly, that the [Appeals are] [Appeal is] treated as having been determined by the Tribunal in the manner set out in this Agreement.
- The Employer agrees to withdraw the Appeal[s] within 30 days of the date of this Agreement by giving notice to the Tribunal in accordance with Rule 17 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
- The Parties agree that [each Party shall bear its own costs] [the Employer shall bear its own and the Commissioners' costs] relating to the litigation of the Appeal[s].]]

The Legal Proceedings

The Employer has commenced legal proceedings in respect of or in connection with the Loan Charge (and which may involve a challenge to the lawfulness, application or operation of

Commented [A61]: Delete "Earnings" if the Earnings deduction is being claimed outside of this Agreement (i.e. in the Employer's return). Delete "the Deductible Amount" if clause 55 is deleted or the Deductible Amount is being claimed outside of the Agreement.

Commented [A621: Remove this clause where the Employer has claimed or is claiming the available CT deductions (i.e. in respect of Earnings and (if applicable) the Deductible Amount) in its returns. Include this clause where the Employer has not and is not going to claim the Earnings or the Deductible Amount deductions (or either of them) in its returns and instead HMRC will set off under this Agreement the CT repayment due by reason of the Employer being eligible for the deduction(s).

Commented [A63]: This is particularly necessary where it is still possible for the Employer to claim a deduction for an APN payment in a later year.

Commented [A64]: Delete as appropriate (see clause 56).

Commented [A65]: Remove this clause where clause 56 (CT Credit) is removed.

Commented [A66]: Remove this clause where clauses 56 and 57 are removed (i.e. where there is no CT Credit).

Commented [A67]: Note that para 35A(6)(c) requires the Agreement to be signed no later than 30 September 2019.

Commented [A68]: Your Solicitor's Office litigation lawyer can advise you of the appropriate option to select.

Commented [A69]: Include these clauses if the liabilities being settled are the subject of an appeal to the First-tier Tribunal. NOTE: You must secure the approval of your Solicitor's Office litigation lawyer and the Solicitor's Office Disguised Remuneration team before settling a claim currently subject to litigation. If the appeal is to the Upper Tribunal, Court of Appeal or SC please contact Solicitor's Office.

Schedule 11 to the Finance (No. 2) Act 2017 or Part 7A of ITEPA 2003). Those proceedings have been allocated reference number [•] (the "Legal Proceedings").

- The Employer agrees to withdraw the Legal Proceedings within 30 days of the date of this Agreement in accordance with the applicable court procedure rules.
- The Parties agree that [each Party shall bear its own costs] [the Employer shall bear its own and 68. the Commissioners' costs] relating to the litigation of the Legal Proceedings.]]

THE SETTLEMENT AMOUNT

The calculation of the Settlement Amount is set out in Appendix D.

ACCELERATED PAYMENT NOTICES

- The Commissioners have issued [an] accelerated payment notice[s] to the Employer pursuant to Chapter 3 of Part 4 of the Finance Act 2014 in respect of [the Unpaid Liabilities] [and] [the corporation tax payable by the Employer in connection with its use of the EBT]. [The Employer has paid the amount[s] due pursuant to the accelerated payment notice[s] (the "APN Payment") as detailed in Appendix D.] [The penalties or surcharges arising under section 226 of the Finance Act 2014, Schedule 56 to the Finance Act 2009 or section 59C of the Taxes Management Act 1970 that have been assessed or determined in respect of the accelerated payment notice[s], and any interest thereon, are set out in Appendix D (the "APN Penalty Amount").]
- The APN Penalty Amount has been included in the Settlement Amount calculation as set out in Appendix D] / [The APN Penalty Amount is not settled pursuant to this Agreement and no part of the Settlement Amount relates to the APN Penalty Amount].
- [An APN interest credit has been set off against the interest due to reach the Effective Interest amount in Appendix A].

FOLLOWER NOTICES

The Commissioners have issued [a] follower notice[s] to the Employer pursuant to Chapter 2 of Part 4 of the Finance Act 2014 in respect of the Unpaid Liabilit[y/ies] ("FN[s]"). The Employer failed to take the appropriate corrective action as set out in [this/these] FN[s] within the specified time period and [a] penalt[y/ies] now appl[y/ies] ("FN Penalty Amount"). The FN Penalty Amount is set out in Appendix D and has been included in the Settlement Amount calculation in Appendix

PAYMENTS ON ACCOUNT

The Employer has made [a] payment[s] on account as set out in Appendix D ("Payment[s] on Account").

PAYMENT OF THE SETTLEMENT AMOUNT

- The Employer will pay the Settlement Amount [within []] days of the date of this Agreement/in the manner and on the date[s] as set out in Appendix D].
- Any late payment of any part of the Settlement Amount will be subject to interest at the late payment interest rate applicable under section 86 of the Taxes Management Act 1970. This interest will be payable without deduction of tax and shall not be claimed or allowed as a deduction in computing any income, profits or losses for any tax purposes.
- If any part of the Settlement Amount is not paid within 14 days of the date it becomes due under this Agreement, the Commissioners may:

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Commented [A70]: Your Solicitor's Office litigation lawyer can advise you of the appropriate option to select.

Commented [A71]: If any judicial review proceedings are ongoing in respect of the Employer's use of the EBT (including as regards APNs, FNs, Loan Charge etc) or, indeed, any legal proceedings at all are ongoing in respect of the Employer's use of the EBT, please discuss the inclusion of this clause with your Solicitor's Office litigation lawyer and the Solicitor's Office Disguised Remuneration team before providing the Employer with a draft settlement agreement to consider. If there are no such legal proceedings this clause can be deleted.

Commented [A72]: Amend this clause according to the situation. Where an APN has been issued, and payment made in good time, there does not need to be reference to penalties. However, where an APN has been issued and it has not been paid, or it was paid late, you must check whether there are penalties (including late payment penalties) or surcharges and interest to be paid and, if there are, include them in the Settlement Amount wherever possible

Commented [A73]: If there are no APN penalties or interest remove clause 72 altogether. If there are APN penalties or interest select the appropriate option (and delete the alternative). Wherever possible APN penalties and interest should be included in the Settlement Amount.

Commented [A74]: Only necessary to include this clause where the APN payment is higher than the unpaid liability. Remove if not necessary.

Commented [A75]: This clause is ONLY necessary where there has been a FN issued and no corrective action has been taken within 90 days but the Employer wants to settle. The amount is worked out by a calculation taking into account delay and amount due which can be obtained from discussions with FN colleagues. Delete this clause if no FN has been issued or the corrective action is taken within the 90 days.

Commented [A76]: Use the first option if there are no instalment arrangements.

- seek recovery of the outstanding balance of the Settlement Amount, together with interest thereon at the late payment interest rate applicable under section 86 of the Taxes Management Act 1970, under this Agreement; and/or
- terminate this Agreement with immediate effect by giving notice in writing to the other Parties.
- The Parties agree that in the event that this Agreement is terminated under clause 77b:
 - for the purposes of sections 554Z5(4)(b)(ii) and 554Z11B(3)(b) of ITEPA 2003 the person liable is treated as never having agreed terms with an Officer of Revenue and Customs for the discharge of the liability;
 - the Parties are treated as never having agreed to settle the Loan Charge with the effect that the Loan Charge will immediately become due and payable; and
 - any payments made under this Agreement prior to the termination are treated as earlier charge paid amounts within the meaning of section 554Z11C of ITEPA 2003.

MISCELLANEOUS

- The [Employer acknowledges that this Agreement may] [Parties agree that this Agreement does not / does] constitute a relevant defeat for the purposes of the serial tax avoidance legislation at Schedule 18 to the Finance Act 2016.
- 80. A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- This Agreement contains the entire agreement between the Parties and there is no part of the 81 agreement between the Parties that has not been recorded in it. The Employer has not entered into this Agreement in reliance on any statement made by or on behalf of the Commissioners not contained in this Agreement.
- If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute the original of this Agreement, but the counterparts together shall constitute one and the same instrument.
- No delay or omission on the part of a Party in exercising any right or remedy contained in this Agreement will impair or restrict or be construed as a waiver of any such right or remedy and any such right or remedy is in addition to any other rights, remedies or powers of that Party.
- The Employer undertakes not to take any action with a view to obtaining repayment from the Commissioners of any part of the Settlement Amount including but not limited to making a claim under.
 - a. Schedule 1AB of the Taxes Management Act 1970;
 - regulation 52 of the Social Security (Contributions) Regulations 2001; or b.
 - common law. C.
- This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- Each Party irrevocably agrees, for the sole benefit of the Commissioners that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement

Commented [A77]: Choose the correct option depending on the situation. Schemes that are not under DOTAS, or where the taxpaver has not received a follower notice or a GAAR notice in respect of the scheme, are not within the STAR regime. Also, the Employer may have provided sufficient information in relation to the scheme before 5 April 2016 such that STAR won't apply.

or its subject matter or formation. Nothing in this clause shall limit the right of the Commissioners to take proceedings against any other Party in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

The Parties have caused this Agreement to be duly executed by authorised representatives of the Parties on the dates specified below.

Signed by for and on behalf of [Name of Employer])))	Director / authorised signatory
Date		
Signed by for and on behalf of The Commissioners for Her Majesty's Revenue and Customs))))	Officer of Revenue and Customs

Appendix A

Employer:	
Scheme reference number(s)	
Accounting Period of	
Contribution(s)	
Total amount of Contribution(s)	£

Earnings Tax and NICs

Employee name and NINO	Tax Year(s)	Share of Contribution(s)	PAYE Tax	Primary and secondary Class 1 NICs	Repayable Secondary Class 1 NICs
		£	£	£	£
		£	£	£	£
		£	£	£	£

Earnings Tax and NICs Interest

Date earliest year tax due	Date to which interest is calculated	Interest Amount due
		£

Part 7A Tax and NICs

Employee name and NINO	Tax Year(s)	Total Settlement Relevant Step(s)	PAYE Tax	NICs	
		£	£	£	
		£	£	£	
		£	£	£	

Part 7A Tax and NICs Interest

Date earliest year tax due	Date to which interest is calculated	Interest Amount due
		t

Loan Charge

Loan Charge Settlement Sum	£0 (nil pounds)

EFFECTIVE LIABILITY Being the PAYE Tax and NICs (and interest thereon) due after applying the double tax relief provisions in s.554Z11B – F of ITEPA 2003	£
Effective Income Tax and NICs (being the PAYE Tax and NICs element of the Effective Liability)	£
Effective Interest (being the interest element	£
of the Effective Liability [and the APN	
Interest Credit])	

Commented [A78]: This figure does not include Forward Interest or IHT interest. This figure is limited to the interest on the Earnings Tax and NICs and Part 7A tax and NICs, after the double tax relief provisions are applied and APN interest credit given but before any CT repayment interest or BIK repayment interest is credited.

Commented [A79]: Remove if not relevant.

Appendix B

Inheritance Tax

NAME OF TRUST

Year	IHT Charge	IHT Interest
	£	£
	£	£
Totals	£	£

Commented [A80]: Include the name of the EBT/EFRBS and have a separate table for each trust where there are multiple.

Inheritance Tax On Account

Date of Event	Amount due
	£

If [either] the [Release / the Trustee Payment or the] Event does not occur on or before the above date the statutory position remains unaffected by this Agreement.

Unpaid Liabilities Penalty Amount[s]

Ref	Year	Amount
		£
		£

Part 7A On Account

Date of Future Relevant Step	Employee	Income Tax	NICs	
		£	£	
		£	£	
		£	£	

If the Future Relevant Step[s] [does/do not occur] on or before the above date the statutory position remains unaffected by this Agreement.

Section 222/223 Liability

Employee	Year	s.223 Charge	s.222 Charge	NICs due	Interest	Tax and NICs due on grossed up amounts	Employer NICs	Interest on Employer NICs
		£	£	£	£	£	£	£
		£	£	£	£	£	£	£
Totals		£	£	£	£	£	£	£
						£	£	£

NICs Claim[s]

County Court Ref(s)	Year(s)	Court Fee
		£
		£

Commented [A81]: This date should be no more than three months after the date of the Agreement and should be within a timescale that HMRC are able to reasonably estimate the IHT that will be due when the Event occurs.

Commented [A82]: Include here the penalties due and owing to the Commissioners in relation to the Unpaid Liabilities which, when added together, make up the Unpaid Liabilities Penalty Amount found in Appendix D (and referred to in clause 26). Remove this table if no such penalties are due or if any penalties that have arisen / will arise are not being settled in this Agreement.

Commented [A83]: This date should be no more than three months after the date of the Agreement and should be within a timescale that HMRC are able to reasonably estimate the Part 7A that will be due when the Future Relevant Step is taken.

Commented [A85]: Remove columns that are not relevant.

Commented [A84]: The Section 222/223 Liability to be included in Appendix D will be the total of the last three column totals.

Appendix C

Corporation Tax - Earnings

Relevant A/P(s)	Earnings
	£

Corporation Tax - Deductible Amount

Relevant A/P(s)	Effective Income Tax and NICs	Income tax to be made good to the Employer and / or HMRC	Amounts already claimed in a CT return	Deductible Amount
	£	£	£	£

CT Repayment	CT Repayment Interest	CT Credit
£	£	£

Benefit in Kind Tax

Employee	Year(s) BiK Tax	Class 1A NICs	BiK Tax	Repayment Interest	BiK Repayment
		£	£	£	
		£	£	£	
		£	£	£	
Total		£	£	£	£

Commented [A86]: Delete if clauses 52 and 53 are

Commented [A87]: Delete if clause 55 is deleted.

Commented [A90]: The Deductible Amount is the Effective Income Tax and NICs after accounting for any Amounts to be made good to the Employer and any Amounts already claimed in a CT return. A given amount may have been both made good to the Employer and claimed as a deduction in a CT return (for example, the Repayable Secondary Class 1 NICs from Appendix A) - so care has been taken to ensure that such amounts are not double-counted when calculating the Deductible Amount. If the Deductible Amount is negative, Officers should contact the RPG Calculation Support team.

 $\textbf{Commented [A89]:} \ \textbf{This includes claims in a CT return for}$ the RSC1NICs or the payment of an APN.

Commented [A88]: This includes any amount of income tax that is transferred to the Employer, or paid directly to HMRC, by the trustees of the EBT or the Employee.

Commented [A91]: CT Credit = CT Repayment + CT Repayment Interest.

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Appendix D

Settlement Amount Calculation:

Loan Charge Settlement Sum	£0
Effective Liability	£
Forward Interest	£
Court Fee[s]	£
IHT Charge[s]	£
IHT Interest	£
IHT On Account	£
Part 7A On Account	£
S.222/223 Liability	£
Unpaid Liabilities Penalty Amount[s]	£
APN Penalty Amount	£
FN Penalty Amount	£

Less:

BiK Repayment	£
CT Credit	£

SETTLEMENT AMOUNT [to be paid within [] £ days from the date of this Agreement/in the following instalment[s]]:

Accelerated Payment Notice(s)

APN Ref(s)	Date of Issue	APN Penalty Amount(s)	Date(s) of Payment(s)	APN Payment(s)
		£		£

Payment(s) on Account

Reference	Amount(s) Paid	
	£	
	£	

Settlement Amount:	£
APN Payment(s):	£
Payment(s) on Account:	£
Balance of the Settlement Amount [to be	£
paid within [] days from the date of this Agreement/in the following instalment(s)]:	

Instalment Payment Plan

Date of Instalment due	Amount
	£
	£
	£
Total	£

Employer Settlement Template – Pre and Post DR Arrangements (Including both Protected & Unprotected Liabilities) Post-5 April 2019

May 2019 Version v1.1

Commented [A92]: Remove if: (1) there are no APN penalties or interest; or (2) the APN Penalty Amount is not being settled in this Agreement.

Commented [A93]: BiK tax + Class 1A NICs + BiK repayment interest.

Commented [A94]: CT Repayment + CT Repayment interest.

Commented [A95]: Include where there are no APNs or Payments on Account.

Commented [A96]: This table can be adapted where APNs have been paid in instalments.

Commented [A97]: Remove if no APNs have been issued.

Commented [A98]: Remove if no payments on account have been made.

Commented [A99]: Settlement Amount – APN Payments – Payments on Account.

Commented [A100]: This table can be removed and replaced with the instalment paragraph from SEES Instalment Calculator or similar if preferred. The heading should however remain.

Forward Interest

Date from which Forward	Date Instalment Payment Plan	Forward Interest
Interest is calculated	to be completed	
		£

Commented [A102]: Remove if no Forward Interest.

Commented [A101]: Following recent changes to the payment arrangements, Forward Interest is calculated from 6 April 2019.

THIS SETTLEMENT AGREEMENT is made this

day of

2019 between:

 THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS (the "Commissioners"); and

[INSERT REGISTERED NAME OF COMPANY] of [INSERT REGISTERED ADDRESS OF COMPANY] (the "Employer")

each a "Party" and together the "Parties".

1. INTERPRETATION

I.1. In this settlement agreement capitalised terms and phrases used but not otherwise defined shall have the meanings given to them in clause 16.

2. BACKGROUND

- 2.1. The Employer has used the Trust(s) for the benefit of the Employee(s).
- 2.2. The Employer's use of the Trust(s) has given rise to liabilities including income tax and NICs liabilities
- 2.3. Where, as a result of the Employer's use of the Trust(s) for the benefit of the Employee(s), there were loan amounts outstanding immediately before the end of 5 April 2019 for the purposes of Schedule 11 to the Finance (No. 2) Act 2017, further income tax and NICs liabilities have arisen.
- 2.4. The Employer now wishes to settle liabilities arising from its use of the Trust(s) on the terms set out in this Agreement.
- 2.5. The Commissioners have agreed to exercise their powers under section 5 of the Commissioners for Revenue and Customs Act 2005, and any other powers so enabling them, to settle liabilities arising from the Employer's use of the Trust(s) on the terms set out in this Agreement, such terms both giving effect to the *Disguised remuneration: detailed settlement terms* published by the Commissioners on 7 November 2017 and ensuring that the Employer does not face any additional tax, interest, penalty or other liabilities (including NICs liabilities) as a result of the operation of Schedule 11 to the Finance (No. 2) Act 2017.

3. SETTLEMENT OF THE LIABILITIES

- 3.1. Subject to clause 3.2, the Employer will pay to the Commissioners the Settlement Balance Due in full and final settlement of the Liabilities.
- 3.2. Where clause 10.3 applies, the application by the Commissioners described therein shall, for the purposes of this Agreement, be treated as a payment made by the Employer to the Commissioners in full and final settlement of the Liabilities.
- 3.3. The Commissioners:
 - will withdraw any assessments or determinations currently in place in respect of the Liabilities;
 - b. will not issue any new assessments or determinations in respect of the Liabilities; and
 - c. will not bring proceedings against the Employer in respect of the Liabilities other than under the terms of this Agreement.

3.4. For the avoidance of doubt:

- a. any tax, interest, penalty or other liability not specifically accounted for in the calculation
 of the Settlement Balance Due is not settled under this Agreement and no part of the
 Settlement Balance Due relates to such tax, interest, penalties or other liabilities; and
- b. where a tax, interest, penalty or other liability is specifically accounted for in the calculation of the Settlement Balance Due, and the amount so accounted for is stated to be zero, the tax, interest, penalty or other liability shall insofar as it arises in respect of or in connection with the use of the Trust(s) for the benefit of the Employee(s), be treated as settled under this Agreement.

Commented [A1]: DO NOT DATE until both the Employer and the HMRC Officer have signed the Agreement.

Commented [A2]: This Agreement is to be used ONLY where it will be signed AFTER 5 April 2019.

Commented [A3]: Insert the name and address of the Employer as it is registered at Companies House.

Commented [A4]: This clause means that: (a) if a liability is <u>not</u> included in the Settlement Calculation Workbook it is <u>not</u> settled under this Agreement (and therefore it remains outstanding and must be paid at a later date); and (b) if a liability <u>is</u> included in the Settlement Calculation Workbook it <u>is</u> settled under this Agreement (even if it is calculated as £0 in the Workbook). That is why it is <u>vital</u> that only worksheets (and entries) relating to liabilities that are being settled in this Agreement are included in the Workbook. <u>If you are unsure about what should be included in the Workbook you should seek assistance</u>.

4. REPAYABLE SECONDARY CLASS 1 NICS

- 4.1. Clauses 4.2 and 4.3 apply where PAYE Tax has been calculated on the basis that the Contributions, or some of the Contributions, represent earnings and the repayable secondary Class 1 NICs payable on those earnings.
- 4.2. In respect of a Contribution that has been treated as representing earnings and the repayable secondary Class 1 NICs payable on those earnings for the purpose of calculating the Settlement Amount, if neither of the events described in clause 4.3 take place on or before the Repayment Date the PAYE Tax, Settlement NICs, Settlement Amount and Settlement Balance Due shall be recalculated on the basis that such a Contribution is in its entirety earnings.
- 4.3. The events referred to in clause 4.2 are:
 - a. transfer of the repayable secondary Class 1 NICs to the Employer by the trustees of the Trust(s) or the Employee(s):
 - b. payment of a sum equivalent to the repayable secondary Class 1 NICs to the Commissioners by the trustees of the Trust(s) or the Employee(s) in part payment of the Settlement Balance Due.

5. SECTION 222 / 223 LIABILITY

5.1. Where the Section 222 / 223 Liability has been calculated on the basis that the Employee(s) will for the purposes of sections 222 or 223 of ITEPA 2003 make good an amount to the Employer, and at the end of any statutory period prescribed for doing so the Employee(s) have made good only a lesser amount or nothing at all, the Section 222 / 223 Liability shall be recalculated in accordance with the statutory position and the Settlement Amount and Settlement Balance Due shall be amended to reflect the revised Section 222 / 223 Liability.

6. IHT ON ACCOUNT

- 6.1. Clauses 6.2 to 6.4 apply where the Settlement Amount includes IHT on Account.
- 6.2. If the IHT on Account Event does not take place on or before the IHT on Account Event Date both the statutory position as regards the IHT due on the occurrence of the IHT on Account Event and the Commissioners' rights to recover any additional IHT arising on the occurrence of the IHT on Account Event are unaffected by this Agreement.
- 6.3. Where the IHT on Account has been calculated on the basis that an event of the type described in clause 6.4 takes place on or before the IHT on Account Event Date, and the intended event does not take place on or before the IHT on Account Event Date, both the statutory position as regards the IHT due on the occurrence of the IHT on Account Event and the Commissioners' rights to recover any additional IHT arising on the occurrence of the IHT on Account Event are unaffected by this Agreement.
- 6.4. The events referred to in clause 6.3 are:
 - a. an Employee pays to the Commissioners a sum equivalent to the PAYE Tax and repayable secondary Class 1 NICs payable on a Contribution, or such part of a Contribution as represents earnings, in part payment of the Settlement Balance Due and simultaneously in return the trustees of the Trust(s) release the Employee from an equivalent amount of debt;
 - b. the trustees of the Trust(s) pay to the Commissioners a sum equivalent to the PAYE Tax and repayable secondary Class 1 NICs payable on a Contribution, or such part of a Contribution as represents earnings, in part payment of the Settlement Balance Due.

7. PART 7A ON ACCOUNT

- 7.1. Clause 7.2 applies where the Settlement Amount includes Part 7A on Account.
- 7.2. If the Part 7A on Account Event does not take place on or before the Part 7A on Account Event Date both the statutory position as regards the income tax and NICs due on the occurrence of the Part 7A on Account Event and the Commissioners' rights to recover any

additional income tax and NICs on the occurrence of the Part 7A on Account Event are unaffected by this Agreement.

8. BENEFIT IN KIND TAX

- 8.1. Clauses 8.2 to 8.4 apply where the Settlement Amount includes a BiK Repayment.
- 8.2. The Employer waives its right to a repayment of any part of the BiK Repayment.
- 8.3. The Employer will include in its accounts for the current accounting period a receipt in the amount of the Class 1A NICs element of the BiK Repayment.
- 8.4. The Employer will reimburse the Commissioners any amounts representing the income tax and any interest thereon comprised in the BiK Repayment that are claimed by Employee(s) and paid to them by the Commissioners.

9. CORPORATION TAX DEDUCTION

- 9.1. Clauses 9.2 to 9.4 apply where there are Allowable Deductions.
- 9.2. Subject to clause 9.3, the Employer has not and will not include in its corporation tax return for any year an Allowable Deduction.
- 9.3. The Employer can include in its corporation tax return for a given year an Allowable Deduction where the amount deducted is a Contribution, or such part of a Contribution as represents earnings, deductible in the year to which the return relates.
- 9.4. The Employer will not make a repayment claim for corporation tax or interest where such a claim relies on an Allowable Deduction.

10. PAYMENTS ON ACCOUNT AND APN PAYMENTS

- 10.1. Clauses 10.2 to 10.4 apply where there is a Payment on Account, an APN Payment or both.
- 10.2. Subject to clause 10.3:
 - a. the Employer hereby authorises the Commissioners to apply the Payments on Account and APN Payments towards the full and final settlement of the Liabilities pursuant to the terms of this Agreement; and
 - the Commissioners hereby apply the Payments on Account and APN Payments towards the full and final settlement of the Liabilities pursuant to the terms of this Agreement in accordance with clause 10.2.a.
- 10.3. Where, taken together, the Payments on Account and APN Payments exceed the Settlement Amount the Employer hereby authorises the Commissioners to apply, and the Commissioners hereby apply, in full and final settlement of the Liabilities, such of, or such parts of, the Payments on Account and APN Payments as will discharge the Settlement Amount in full.
- 10.4. The Employer will not take any action with a view to obtaining from the Commissioners the repayment of the whole of, or any part of, a Payment on Account or APN Payment that has been accounted for in calculating the Settlement Balance Due or applied towards the full and final settlement of the Liabilities pursuant to the terms of this Agreement.

11. PAYMENT OF THE SETTLEMENT BALANCE DUE

- 11.1. Subject to clause 11.2 the Employer will pay the Settlement Balance Due on or before the Settlement Balance Payment Date.
- 11.2. Where the Employer is paying the Settlement Balance Due in accordance with an Instalment Payment Plan the Employer will pay the amounts due under the Instalment Payment Plan on or before the dates stated or otherwise provided for in the Instalment Payment Plan.
- 11.3. Any late payment of any part of the Settlement Balance Due is subject to interest at the late payment interest rate applicable under section 86 of the Taxes Management Act 1970.
- 11.4. If any part of the Settlement Balance Due is not paid within 14 days of the date it becomes due under this Agreement the Commissioners can:
 - recover the outstanding balance of the Settlement Balance Due and interest thereon at the late payment interest rate applicable under section 86 of the Taxes Management Act 1970; and / or

Commented [A5]: Despite the indemnity in this clause, caseworkers will still need a mandate completed and signed by each Employee(s) in which the Employee(s) waive(s) their rights to the repayment of any part of the BiK Repayment. A template mandate for completion has been provided for this purpose. The completed and signed mandate should be kept with the signed Agreement.

- b. terminate this Agreement with immediate effect by giving notice in writing to the Employer.
- 11.5. In the event that this Agreement is terminated under clause 11.4.b:
 - a. for the purposes of sections 554Z5(4)(b)(ii) and 554Z11B(3)(b) of ITEPA 2003 the
 person liable is treated as never having agreed terms with an Officer of Revenue and
 Customs for the discharge of the liability;
 - b. the Parties are treated as never having agreed to settle the Loan Charge with the effect that the Loan Charge will immediately become due and payable; and
 - any payments made under this Agreement prior to the termination are treated as earlier charge paid amounts within the meaning of section 554Z11C of ITEPA 2003.

12. SECTION 554Z5 ITEPA 2003

12.1. To the extent that relief is not given under paragraph 59 of Schedule 2 to the Finance Act 2011 this Agreement is an agreement within section 554Z5(4)(b)(ii) of ITEPA 2003 and such parts of the Contributions as are treated as earnings for the purpose of the calculation of the Settlement Amount are "sum or asset Q" for the purpose of section 554Z5(1) of ITEPA 2003.

13. DUTY TO PROVIDE LOAN CHARGE INFORMATION TO THE COMMISSIONERS

- 13.1. This Agreement satisfies the requirements of paragraph 35A(6) of Schedule 11 to the Finance (No. 2) Act 2017 (agreement for the discharge of income tax liability) in respect of the Loan Charge such that paragraph 35C of Schedule 11 to the Finance (No. 2) Act 2017 (duty to provide loan charge information to the Commissioners) does not apply.
- 13.2. The Employer is not required to report to the Commissioners the outstanding loans in respect of which the Loan Charge arises and no penalties shall be payable by the Employer as a result of its failure to so report the outstanding loans after 5 April 2019.

14. CURRENT PROCEEDINGS

- 14.1. Clauses 14.2 and 14.3 apply where there is an Appeal.
- 14.2. This Agreement is an agreement for the purposes of section 54 of the Taxes Management Act 1970
- 14.3. The Employer will withdraw any Appeal within 30 days of the date of this Agreement.
- 14.4. The Commissioners will withdraw any claim against the Employer in respect of which there are Court Fees.

15. MISCELLANEOUS

- 15.1. This Agreement may constitute a relevant defeat for the purposes of the serial tax avoidance legislation in Schedule 18 to the Finance Act 2016.
- 15.2. A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 15.3. This Agreement contains the entire agreement between the Parties and there is no part of the agreement between the Parties that has not been recorded in it. The Employer has not entered into this Agreement in reliance on any statement made by or on behalf of the Commissioners not contained in this Agreement.
- 15.4. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 15.5. This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute the original of this Agreement, but the counterparts together shall constitute one and the same instrument.
- 15.6. No delay or omission on the part of a Party in exercising any right or remedy contained in this Agreement will impair or restrict or be construed as a waiver of any such right or remedy and any such right or remedy is in addition to any other rights, remedies or powers of that Party.

Commented [A6]: Note that para 35A(6)(c) requires the Agreement to be signed no later than 30 September 2019

- 15.7. The Employer will not take any action with a view to obtaining repayment from the Commissioners of any part of the Settlement Amount including but not limited to making a claim under:
 - a. Schedule 1AB to the Taxes Management Act 1970;
 - b. regulation 52 of the Social Security (Contributions) Regulations 2001; or
 - c. common law.
- 15.8. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.9. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

16. DEFINITIONS

- "Agreement" means this settlement agreement including the schedule to it;
- "Allowable Deduction" means an amount the Employer can deduct in a given accounting period for the purpose of calculating the corporation tax due for that accounting period and which is accounted for in the calculation of the Settlement Amount, if any;
- "APN" means an accelerated payment notice issued to the Employer pursuant to Chapter 3 of Part 4 of the Finance Act 2014 and referred to in the Settlement Calculation Workbook, if any;
- "APN Payment" means a payment to the Commissioners pursuant to an APN and stated in the Settlement Calculation Workbook, if any;
- "APN Penalty" means a penalty or surcharge, and any interest thereon, that has been assessed in respect of an APN and is outstanding at the date of this Agreement, as stated in the Settlement Calculation Workbook, if any;
- "Appeal" means an ongoing appeal to the First-tier Tribunal (Tax Chamber) in respect of any liabilities arising on, in respect of or in connection with a Contribution or to any court in respect of or in connection with the Loan Charge including but not limited to any challenge to the lawfulness, application or operation of Schedule 11 to the Finance (No. 2) Act 2017 or Part 7A of ITEPA 2003;
- "Bik Repayment" means a notional repayment with interest credited to the Employer and accounted for in the calculation of the Settlement Amount in respect of income tax and Class 1A NICs paid by the Employee(s) and the Employer, respectively, on benefits made available to the Employee(s) by the trustees of the Trust(s), if any;
- "Contribution" means a contribution to the Trust(s) for the benefit of the Employee(s) as stated in the Settlement Calculation Workbook;
- "Court Fees" means the court fees incurred by the Commissioners in issuing one or more claims against the Employer in respect of the Settlement NICs as stated in the Settlement Calculation Workbook;
- "Employee(s)" means the one or more employees of the Employer named in the Settlement Calculation Workbook;
- "FN Penalty" means a penalty, and any interest thereon, that has arisen in respect of a follower notice issued to the Employer pursuant to Chapter 2 of Part 4 of the Finance Act 2014 and referred to in the Settlement Calculation Workbook, as stated in the Settlement Calculation Workbook, if any:
- "IHT" means inheritance tax;

"IHT on Account" means the IHT due on the occurrence of an IHT on Account Event as stated in the Settlement Calculation Workbook, if any;

"IHT on Account Event" means an intended distribution of property of the Trust(s) referred to in the Settlement Calculation Workbook, if any;

"IHT on Account Event Date" means the date stated in the Settlement Calculation Workbook as being the date on which the IHT on Account Event will occur, if any;

"Instalment Payment Plan" means an agreement made between the Employer and the Commissioners on or before the date of this Agreement for the payment of the Settlement Balance Due by periodic instalments as referred to in the Settlement Calculation Workbook;

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003;

"Liabilities" means the Loan Charge, PAYE Tax, Settlement NICs, Settlement IHT, Section 222 / 223 Liability, IHT on Account, Part 7A on Account, APN Penalties, FN Penalties and Court Fees along with such interest and penalties payable on or in respect of them as are accounted for in the calculation of the Settlement Amount;

"Loan Charge" means the income tax and corresponding NICs liabilities arising as a direct or indirect result of the operation of Schedule 11 to the Finance (No. 2) Act 2017 in connection with the Contributions, and any interest or penalties thereon, as stated in the Settlement Calculation Workbook, if any;

"NICs" means National Insurance contributions;

"Part 7A on Account" means the income tax and NICs due on the occurrence of a Part 7A on Account Event as calculated in the Settlement Calculation Workbook, if any;

"Part 7A on Account Event" means a relevant step within the meaning of Part 7A of ITEPA 2003 intended to be taken in respect of property of the Trust(s) and referred to in the Settlement Calculation Workbook, if any;

"Part 7A on Account Event Date" means the date stated in the Settlement Calculation Workbook as being the date on which a Part 7A on Account Event will occur, if any;

"PAYE Tax" means the income tax arising on, in respect of or in connection with the Contributions including, for the avoidance of doubt, income tax arising as a result of any relevant steps being taken within the meaning of Part 7A of ITEPA 2003 other than those treated as taken as a result of the operation of Schedule 11 to the Finance (No. 2) Act 2017, as calculated in the Settlement Calculation Workbook:

"Payment on Account" means a payment made to the Commissioners on account of tax, interest, penalties or other liabilities and referred to in the Settlement Calculation Workbook, if any;

"Repayment Date" means where the Settlement Balance Due is being paid in accordance with an Instalment Payment Plan the date the final instalment is due as stated in the Settlement Calculation Workbook and, in all other cases, the Settlement Balance Payment Date;

"Section 222 / 223 Liability" means the income tax liability arising under section 222 or section 223 of ITEPA 2003 and the corresponding NICs liability as calculated in the Settlement Calculation Workbook, if any;

"Settlement Amount" means the amount of £[INSERT settlement amount from the Settlement Calculation Workbook] described as the settlement amount in the Settlement Calculation Workbook and calculated therein;

"Settlement Balance Due" means the amount of £[INSERT settlement balance due from the Settlement Calculation Workbook] being the Settlement Amount after accounting for APN Payments and Payments on Account in accordance with clause 10 of this Agreement, and any

Commented [A7]: The settlement amount can be found on the "Summary" worksheet of the Settlement Calculation Workbook or, alternatively, on the page headed "Summary Computation" in the calculation PDF.

Commented [A8]: The settlement balance due amount can be found on the "Summary" worksheet of the Settlement Calculation Workbook or, alternatively, on the page headed "Summary Computation" in the calculation PDF.

forward interest charged in accordance with an Instalment Payment Plan, as stated in the Settlement Calculation Workbook;

"Settlement Balance Payment Date" means 60 calendar days from the date of this Agreement;

"Settlement Calculation Workbook" means the document reproduced in the schedule to this Agreement;

"Settlement IHT" means the IHT due in respect of the Trust(s) at the date of this Agreement as stated in the Settlement Calculation Workbook, if any;

"Settlement NICs" means the NICs liability arising on, in respect of or in connection with the Contributions including, for the avoidance of doubt, NICs liabilities arising as a result of any relevant steps being taken within the meaning of Part 7A of ITEPA 2003 other than those treated as taken as a result of the operation of Schedule 11 to the Finance (No. 2) Act 2017, as calculated in the Settlement Calculation Workbook; and

"**Trust(s)**" means the one or more Employee Benefit Trusts and Employer Financed Retirement Benefit Schemes named or otherwise referred to in the Settlement Calculation Workbook.

The Parties have caused this Agreement to be duly executed by authorised representatives of the Parties on the dates specified below.

orgina by [intoliti marrie or birector /	,		
authorised signatory])		
for and on behalf of)		
[INSERT name of Employer])		
)		1
	,	Director / authorised signatory	
Date:			
Cinned by MNCERT name of UMPC	`		
Signed by [INSERT name of HMRC)		
Officer])		_
for and on behalf of)		
The Commissioners for)		_
Her Majesty's Revenue and Customs)		
	,	Officer of Revenue and Customs	
Date:	1		
Date.			

Commented [A9]: Type in the name of the director / authorised signatory who will sign on behalf of the Employer.

Commented [A11]: Director / authorised signatory should sign his / her usual signature here.

Commented [A10]: Type in the full name of the Employer (as it appears at the beginning of this Agreement).

Commented [A12]: Signing director / authorised signatory should write the date on which he / she signed the Agreement here.

Commented [A13]: Type in the full name of the HMRC Officer who will sign on behalf of HMRC.

Commented [A15]: HMRC Officer should sign his / her usual signature here.

Commented [A14]: HMRC Officer should write the date on which he / she signed the Agreement here.

Signed by INSEPT name of Director /

SCHEDULE

Commented [A16]: You must insert the Settlement Calculation Workbook behind this page before sending the Agreement for signing.

CT Position - Relief Yes

APE	Total relief		Lite Scheme adjustment		CT Adjustments	s222 relief	
	£		£	-		£	-
	£	-	£	-		£	-
	£	-	£	-		£	-
	£		£	-		£	-
	£	-	£	-		£	-
	£	-	£	-		£	-
	£		£	-		£	-
	£	-	£	-		£	-
	£		£	-		£	-
	£	-	£	-		£	-

s223					
Tax year	Relief		APE		
2009/2010	£	-			
2010/2011	£	-			
2011/2012	£	-			
2012/2013	£	-			
2013/2014	£	-			
2014/2015	£	-			
2015/2016	£	-			
2016/2017	£	-			
2017/2018	£	-			
2018/2019	£	-			
2019/2020	£	-			

APE	Open for amendment	PAYE to relieve	Lite schem	e CT adjustment	Original Profit	Trade Profit	In-Year Dedn	Brought forward	Brought back	Revised Profit	Carry forward	Carry Back	Unused losses	Unused BIM47090	Original Tax	Revised	Difference
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£ -							£ -
		£ -	£	£ -						£							£ -
	Total	£ -															

Order of Dedn/Relief

Exy

Cf enquiry or capable of amendment.

Part 7a

APE

| O(0/11/15/00 | E |
| O(0/11/15/00

Total £ -



XXXXXXX

HM Revenue & Customs
Counter-Avoidance
XXXXXXXX
XXXXXXXXX
XXXXXXXX

Phone XXXXXXXXXXX

Web www.gov.uk

Date 3 October 2019

_ Dear XXXXXXX

Check of your Self Assessment tax return for the year ended 5 April 2018

Customer notification

This is an important letter that needs your attention, please read it carefully.

Thank you for your tax return for the year ended 5 April 2018. We received this on XXXXXXXX.

I am writing to tell you that I am checking this return. I will do this under section 9A of the Taxes Management Act 1970.

I have written to your authorised tax agent XXXXXXXX, telling them about my check and I enclose a copy of that letter for your information.

You should contact them to make sure they are dealing with my letter.

More information

I enclose factsheet CC/FS1a 'General Information about compliance checks'. It gives important information about this type of check.

If there are any questions, please contact me using the details at the top of this letter.

HMRC may observe, monitor, record and retain internet data which is available to anyone. This is known as 'open source' material and includes news reports, internet sites, Companies House and Land Registry records, blogs and social networking sites where no privacy settings have been applied.

If there is anything about your health or personal circumstances that may make it difficult for you to deal with this check, please tell me so that I can help you in the most appropriate way.

How to contact us

If you contact us about this letter, please quote the reference numbers at the top of this letter.



If you need to contact us about anything else, go to **www.gov.uk** and search for 'contact HMRC' to find the right phone number or address.

Whichever method you choose to contact us about this check, you need to quote the case reference XXXXXXXXXXX and any other references shown above. If you write you need to use the address shown above. If you send documents you must tell us if you want them returned as we may securely destroy them after 50 days. We will not return memory sticks or any other removable media. It is our policy to destroy these rather than return them.

Yours sincerely

XXXXXXXXX

XXXXXXXXXXXXXX

Join the millions of taxpayers already using their Personal Tax Account to access a range of HMRC services. It takes just a few minutes to get started, go to www.gov.uk/personal-tax-account

To find out what you can expect from us and what we expect from you go to www.gov.uk/hmrc/your-charter and have a look at 'Your Charter'.



Compliance checks series - CC/FS1a

About compliance checks

We have asked you to read this factsheet because we've started a compliance check. Please keep it safe – you may need to refer to it during the check. A compliance check allows us to check your tax position, to make sure you're:

- paying the right amount of tax at the right time
- · getting the right allowances and tax reliefs

We carry out some types of checks over the phone. If you'd prefer us to write to you instead, you can ask us to do this if we phone you. We may ask you to give us information or documents to help with the check.

If you need help

If you have any health or personal circumstances that may make it difficult for you to deal with this check, please tell the officer that's contacted you. We'll help you in whatever way we can. For more details, go to **www.gov.uk/dealing-hmrc-additional-needs**

You can also ask someone else to deal with us on your behalf, for example, a professional adviser, friend or relative. We may however still need to talk or write to you directly about some things. If we need to write to you, we'll send a copy to the person you've asked us to deal with. If we need to talk to you, they can be with you when we do, if you prefer.

During the compliance check

When we start the check, we'll tell you what we need from you.

During the check we may ask you to help us in several different ways depending on what we are checking:

- we may ask you to send us any information or documents that we need if you need extra time
 or have any difficulties providing these, please tell us so that we can try to help you
- we may ask you to have a meeting with us to discuss your tax affairs and records if we do, we'll explain why you'll be able to choose if you want to have this meeting or not
- if you have business premises, we may ask to visit them to inspect your premises, assets and records - if we need to visit your business we'll try and agree a convenient date and time for our visit

If we cannot agree with you about sending us information or documents, or visiting your business premises, we may have to use our legal powers to get what we need. You cannot choose to ignore an information or inspection notice if we give you one, but you do have certain safeguards when we use our legal powers.

For more information about our legal powers and safeguards read factsheets:

- CC/FS2, 'checking a customers' tax position'
- CC/FS4, 'unannounced visits for inspections'

Go to www.gov.uk and search for 'CC/FS2' or 'CC/FS4'.

We'll only ask to visit your home if you run your business from there. If we need anything else later in the check, we'll let you know.

You can speak to the officer who's dealing with the check if you:

· are not sure why we're asking for something

- · cannot do what we ask
- think that something we've asked for is unreasonable or not relevant to the check
- have any other questions at any stage of the check

Please continue to send returns or make payments during this compliance check, if they're due.

Use of open source material during a compliance check

HMRC may observe, monitor, record and retain internet data which is available to anyone. This is known as 'open source' material and includes news reports, internet sites, Companies House and Land registry records, blogs and social networking sites where no privacy settings have been applied.

Our Charter

Our personal information charter sets out the standards that you can expect from us when we ask for information or hold information about you. Go to **www.gov.uk** and search for 'HMRC personal information charter'.

If you need more time

If we've asked you to do something and you need more time, please tell us. We may agree to allow extra time if there's a good reason, for example, if you're seriously ill or someone close to you has died.

The benefits of helping us with the compliance check

If you help us with the compliance check, we can:

- · complete it quickly as possible and reduce any inconvenience to you
- reduce the amount of any penalty we charge you, if we find there's something wrong

If we find something wrong, we'll work with you to put it right, and tell you if you need to pay any:

- additional tax and late payment interest
- penalties

If we're considering charging you a penalty, we'll look at how much assistance you've given us during the check. We call this assistance the 'quality of disclosure' or 'telling, helping and giving'.

We measure the quality of disclosure by considering how much:

- you tell us about what's wrong
- · help you give us to work out what's wrong
- access you give us to the information or documents we need to complete the check

If there are ways that you can help us with the check but you choose not to, this will affect our view on the quality of disclosure. For example, if we ask:

- to visit your business premises to inspect your business records and assets, or to carry out a valuation, but you do not let us
- for information or documents, but you do not give us everything we've asked for

How to get the maximum penalty reduction if something is wrong

If there's something wrong and you do everything you can to assist us, we'll reduce the penalty by the maximum amount possible.

If you know or suspect that there's something wrong, to get the maximum reduction possible, you must:

- tell us everything you know about it immediately
- work with us to calculate the right amount of tax

If we find something wrong that you did not know about, to get the maximum reduction possible, you must:

- have given us as much assistance as we needed, up to the point we find it
- immediately tell the officer dealing with the check everything about it, let them see any records they ask for, and help them to work out the right amount of tax

To work out the quality of disclosure, we also consider how long it's taken you to tell us about anything that's wrong. If it's taken you a long time, (such as 3 years or more), we usually restrict the maximum reduction we give for the quality of disclosure to 10 percentage points above the minimum of the penalty range. This means you will not benefit from the lowest penalty percentage that's normally available.

For more information about penalties, reductions and restricting the penalty range, go to **www.gov.uk** and search for 'compliance checks factsheets' and select 'penalties'.

We may publish your details if you deliberately got your tax affairs wrong, but we'll not do this if we've given you the maximum penalty reduction. For more information about this, read the section 'If you've deliberately done something wrong'.

If you think we should stop the compliance check

If you think we should stop the check, you first need to tell us why. If we do not agree, you may be able to ask the independent tribunal that deals with tax matters to decide if we should stop it.

If something is wrong

If we find something wrong, we'll:

- explain why it's wrong, and work with you to put it right
- tell you how to prevent it happening again, where possible

We may also ask you to sign a certificate, to confirm that you've told us all relevant facts relating to the check.

If you owe us money, we'll tell you how to pay. This may also include interest and any penalties we've charged you. If we owe you money, we'll normally refund you or credit your account. In some cases, we'll also pay you interest.

If you've deliberately done something wrong

We may carry out a criminal investigation with a view to prosecution if you've deliberately done something wrong, such as:

- given us information that you know is not true, whether verbally or in a document
- dishonestly misrepresented how much tax you owe, or claimed payments you're not entitled to

Managing serious defaulters

If you deliberately got your tax affairs wrong, and we find this during the check, we may monitor your tax affairs more closely. We have an enhanced monitoring programme called 'managing serious defaulters. For more information, read factsheet CC/FS14, 'Managing serious defaulters'. Go to **www.gov.uk** and search for 'CC/FS14'.

Publishing details of deliberate defaulters

We may publish your details if you deliberately got your tax affairs wrong, but we'll not do this if we've given you the maximum penalty reduction. For more information, read factsheet CC/FS13, 'Publishing details of deliberate defaulters'. Go to www.gov.uk and search for 'CC/FS13'.

What happens at the end of the compliance check

When we've completed the check, we'll either send you one or more 'decision notices' or agree a contract settlement with you.

A decision notice can be:

- · an assessment, or amendment to an assessment
- a penalty notice, if a penalty is due
- a letter explaining the final position

A contract settlement is a legally binding agreement, where you offer to pay everything that you owe as a result of the check, and we agree not to use our formal powers to recover that amount. You can only pay through a contract settlement if both you and we agree to this, and to the terms of the contract. You cannot use contract settlements for any VAT or VAT penalties.

If you cannot pay what you owe

If you think you may have problems paying, please tell the officer dealing with the check straightaway.

If you disagree

If there's something that you do not agree with, please tell us.

If we make a decision that you can appeal against, we'll write to you about the decision and tell you what to do if you disagree. You'll usually have 3 options. Within 30 days, you can:

- send new information to the officer dealing with the check and ask them to take it into account
- · have your case reviewed by an HMRC officer who has not been involved in the matter
- · arrange for an independent tribunal to hear your appeal and decide the matter

Whichever you choose, you may also be able to ask for an HMRC specialist officer to act as a neutral facilitator to help resolve the dispute. We call this Alternative Dispute Resolution (ADR).

ADR is only available for disputes that relate to particular tax areas. The officer dealing with the check

will tell you if ADR is available for your dispute. For more information about appeals and ADR, read factsheets:

- HMRC1, 'HM Revenue and Customs decisions what to do if you disagree'
- CC/FS21, 'Alternative dispute resolution'

Go to www.gov.uk and search for 'HMRC1' or 'CC/FS21'.

Your principal rights and obligations

You have:

- the right to be represented you can authorise anyone to act on your behalf
- an obligation to take reasonable care to get things right if you have an adviser, you must still
 take reasonable care to make sure that any returns, documents or details they send us on your
 behalf are correct

'Your Charter' explains what you can expect from us and what we expect from you. For more information, go to www.gov.uk/hmrc/your-charter

Your rights if we're considering penalties

We'll tell you if there's something wrong and we're considering penalties. To find out what rights you have when we consider penalties, read factsheet CC/FS9, 'The Human Rights Act and penalties'. Go to www.gov.uk and search for 'CC/FS9'.

Authorising a representative

If you have a representative, you can ask us to deal directly with them during the check. We'll only give them details of the check if it relates to taxes that you've authorised us to contact them about.

If you want to authorise a:

- professional tax adviser, ask them to give you an authorisation form to complete and send to us
- friend or relative, write to us and say who you want to authorise and what you want them to deal with on your behalf

Compliance checks that this factshee	t relates to
This factsheet relates to compliance checks for the	following.
Aggregates Levy	Insurance Premium Tax
Annual Tax on Enveloped Dwellings	Landfill Tax
Apprenticeship Levy (relating to returns for tax years starting on or after 6 April 2010)	Machine Games Duty
Bank Payroll Tax	National Insurance contributions classes 1, 1A and 4 (For class 1A, it relates to P11D(b) returns for tax years starting on or after 6 April 2010)
Capital Gains Tax	Pay As You Earn (PAYE)
Climate Change Levy	Petroleum Revenue Tax
Construction Industry Scheme	Soft Drinks Industry Levy (from 6 April 2018)
Corporation Tax	Stamp Duty Land Tax (relating to returns for tax years starting from April 2018)
Income Tax	Stamp Duty Reserve Tax
Inheritance Tax	VAT

More information

Benefits, fees, grants and tax credits

If you get any benefits, fees or grants based on your income, and your income changes as a result of this check, you'll need to tell the organisation that's paying you. If you receive tax credits, you must tell the

Tax Credit Office about income changes. You can phone them on 0345 300 3900 or write to them at:

Tax Credit Office HM Revenue and Customs BX9 1LR United Kingdom

You do not need to include a street name or PO Box.

Please write 'Change of circumstances' at the top of your letter.

If you're not happy with our service

Please tell the person or office you've been dealing with. They'll try to put things right. If you're still not happy, they'll tell you how to make a formal complaint.

This factsheet is one of a series. For the full list, go to **www.gov.uk** and search for 'Compliance checks factsheets'.

0005 attachment 1

Within email sent 15 October 2019 20:39



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

C/V/1 V 2DU

Sir Amyas Morse Independent Loan Charge Review By email only

Date

15 October 2019

www.gov.uk

Dear Sir Amyas,

Further to our letter of 11 October, please see responses to a further 8 questions.

We will respond to your remaining questions by 16 October 2019.

If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.

Yours sincerely

Carol Bristow

Mary Aiston

Settlements

1.

14.

- 2.13. At set out at 7.25 of our letter of 23 September, around 80% of individuals and usages relate to schemes involving an offshore employer. In those instances, the loan charge liability will arise directly on the individual.
- 2.14. In the remaining cases, individuals will have used a scheme with an onshore employer. These artificial employers are highly likely to have no funds or assets to pay the loan charge liability. Therefore, it is likely we will seek to transfer the liability to the individual as set out at 7.21.
- 2.15. In either of these groups, it is possible the employer no longer exists so the loan charge liability will automatically arise on the individual.
- 2.16. Therefore, we anticipate nearly all individuals who have settled would either automatically have had to pay the loan charge or would have had the liability transferred to them. As set out previously we do not record the reason why an individual has settled.

Disclosure of DR schemes

- 13.13. The DOTAS regime was introduced in 2004 to provide early information about new and innovative tax avoidance arrangements, how they are intended to work and those who use them. It was not introduced to capture all avoidance or even all taxes.
- 13.14. Since then, DOTAS has been strengthened and refined in response to changes in the avoidance landscape. These changes include tightening rules and obligations requiring disclosure for employment income related avoidance in 2013 and 2015 and requiring more detail on these schemes from the promoters, employers and users of such schemes.
- 13.15. DOTAS relies on 'hallmarks' to describe what has to be disclosed. Arrangements must be disclosed when they fall within a hallmark. Hallmarks generally test arrangements in the hypothetical, considering how a hypothetical promoter might reasonably be expected to act, whether they could charge a premium fee, and what an informed observer could reasonably be expected to conclude from looking at the arrangement.
- 13.16. Promoters are required to provide information to HMRC about tax avoidance arrangements describing how they work within five days of first marketing them. HMRC then issues a Scheme Reference Number (SRN) to identify the disclosed arrangements so the appropriate compliance action can be taken. The regime requires each promoter to give each scheme user the SRN which the user must report to HMRC each year on their tax return (or special form) to identify them as having used the scheme in that tax year.
- 13.17. Since January 2011, promoters must provide information to HMRC about clients (users) to whom they have given a SRN. Since 2015, there has been a similar obligation on employers who implement schemes relating to employees' remuneration.
- 13.18. The information provided under the DOTAS rules is used to investigate avoiders and inform legislative changes. The legislation has been strengthened in line with these objectives and will continue to be kept under review so that we can effectively challenge tax avoidance.

22. <u>Debt collection process</u>

- 25.1. As set out at 6.9 to 6.11 in our response of 1 October, we set out some information about HMRC's general approach to debt management.
- 25.2. We referred to instalment arrangements and Time to Pay (TTP) arrangements without defining them.
- 25.3. TTP is a formal process run by our Debt Management directorate to assist those who cannot pay their debt in full. For example, a self-employed individual files their Self Assessment return each year to declare their business profits. If they have difficulty paying they will speak to Debt Management and we will consider a TTP arrangement.
- 25.4. Instalment arrangements are agreed as part of a contract settlement to resolve a dispute. They are discussed and agreed by the directorate handling the dispute and that can be a more informal process involving less paperwork than TTP arrangements. Once an instalment arrangement is agreed it will be managed by Debt Management.
- 25.5. The process and outcome for both are broadly the same, apart from one instance set out below. Broadly, TTP will be more relevant for individuals including the loan charge in their 2018/19 Self Assessment return while instalment arrangements are relevant for those who are agreeing settlements of their underlying liabilities.
- 25.6. The process and outcomes are different where individuals qualify for the automatic instalment periods for settling underlying liabilities as set out at paragraph 6.14. Individuals do not need to provide detailed financial information and the payment period is not tailored to their specific circumstances. This was introduced to give individuals certainty and to make the settlement process simper.

General approach

- 25.7. When agreeing an instalment or TTP arrangement, HMRC will ask the individual to complete an Income and Expenditure (I&E) form, which is standard practice across the debt collection industry.
- 25.8. We have attached the standard I&E form that is used for all types of debt and customers. We have also attached the tailored I&E form used for individuals who are settling their DR underlying liability and think they will need longer instalment arrangements than those set out in paragraph 6.14.
- 25.9. We use that information to determine how much disposable income an individual has available. Disposable income is the amount of an individual's income remaining after taking account of their household expenses. Household expenses include food, clothing, childcare costs, mortgage, utilities costs, council tax and travel expenses and are therefore unique to each individual.
- 25.10. We may use information from a Credit Reference Agency to better understand an individual's financial situation if the information in the I&E form does not give a clear picture. We will consider a wide range of factors when discussing the level of disposable income the individual requires.
- 25.11. Other factors that can influence the instalment or TTP arrangement

 We have also committed that we will not make anyone sell their main residence to pay their underlying DR liability or the loan charge.
- 25.12. We can only agree to an arrangement that is manageable for the individual and that we think they can complete. We will not agree to an arrangement we do not think they can complete, and it is not in our interest for individuals to default on their payments.

25.13. TTP agreements are flexible and are reviewed periodically. If the individual's circumstances change during the period of the instalment arrangement or TTP, we will adjust the arrangement accordingly. For example, the TTP plan can be lengthened if there is an unexpected rise in living expenses.

DR and the loan charge

- 25.14. We apply this general approach to DR cases, and will do so for the loan charge.
- 25.15. External debt collection agencies have no role in the collection of debts related to DR underlying liabilities and the loan charge.

Expected rate of completion

- 25.16. As set out above, we will not enter into an instalment or TTP arrangement unless we think an individual can complete it.
- 25.17. If an individual misses a payment, we contact them to support them, including adjusting the terms of the instalment plan if necessary.
- 25.18. Around 90% of TTP arrangements complete on time and we have no reason to expect we will see a different rate of completion for DR underlying liabilities or the loan charge.

Accelerated Payments

- 25.19. Counter Avoidance and Debt Management work together to identify DR instalment arrangements that overlap with Accelerated Payments. We have processes to offset APN payments against the liabilities due under the settlements. We have also ensured that where settlement discussions are ongoing, and agreement is imminent, DM is informed and no unnecessary debt collection activity is undertaken in relation to the APN.
- 25.20. We are aware of recent claims that we have increased collection activity in relation to DR APNs. We can confirm that these claims are unfounded and that activity has not increased. There are some APNs, which were issued in 2015, on hold until the judicial reviews challenging APNs were completed. These judicial reviews have now concluded in HMRC's favour and we are seeking to collect from individuals in line with the processes set out above.

Recognition and reward

25.21. We do not reward staff based on debts collected or the number of DR settlements and we will not base rewards on the success of the loan charge.

23. Powers to tackle tax avoidance

26.1. Below we set out more detail on the Promoter of Tax Avoidance Schemes (POTAS), APN and Follower Notice regimes.

POTAS

26.2. POTAS was introduced in Finance Act 2014 to change the behaviour of a small and persistent minority of promoters of avoidance schemes who are not transparent with HMRC. The regime is focused on the highest risk promoters – those who commonly design, market and implement schemes that overwhelmingly do not work, rely on non-cooperation with HMRC and which may also rely on concealment and mis-description to achieve the tax advantage for their clients.

- 26.3. HMRC has a dedicated POTAS team that leads enquiries into promoters and co-ordinates interventions covering the promoter's own tax affairs, their schemes, the entities they use and the intermediaries who sell the schemes. The team actively use POTAS to encourage promoters to change their behaviour voluntarily, where this does not work POTAS provides an escalating series of sanctions to require them to change that behaviour, supported by information powers and penalties.
- 26.4. It is important to note that POTAS works alongside other anti-avoidance measures, including the Enablers Penalty Regime and DOTAS, to increase the risks associated with promoting and enabling tax avoidance schemes.
- 26.5. We set out the impact of the new anti-avoidance powers at paragraphs 18.4 to 18.6 in our response of 1 October.

Follower Notice (FN) and APN

- 26.6. Follower Notices and APNs were introduced in Finance Act 2014. The policy intent of APNs is to change the economics of avoidance by moving disputed funds from the avoider to the Exchequer while the dispute is resolved. Any tax enquiry or appeal remains in train and is not affected by the APN. If a customer was ultimately successful in showing that no tax is due any APN would be repaid to them with interest.
- 26.7. The purpose of FNs is to discourage avoiders from spinning out their dispute with HMRC when the avoidance scheme they have used has been shown to fail in another party's litigation.
- 26.8. Our experience was that where a lead case has been finally defeated in the courts, other users of that scheme were very reluctant to settle. They would highlight often spurious distinctions between their arrangements and those in the lead case. Frequently, such users would pursue appeals as far as the First-Tier Tribunal, often conceding immediately before the hearing. This would have enabled them to hold onto the disputed tax for as long as possible and wasted tribunal time. Given limited tribunal capacity, it can take several months before a suitable tribunal date is found, this could delay settlement and payment for a significant period.
- 26.9. Both regimes aim to discourage people from entering into avoidance in future, as well as encourage settlement of cases on hand.
- 26.10. More detail can be found at the following link: <a href="https://www.gov.uk/government/publications/follower-notices-and-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-accelerated-payments/follower-notices-
- 26.11. In particular:
 - the policy purposes of the measure can be found in the introduction, plus paragraph 1.1 for FNs and 2.1.1 &
 2.1.2 for APNs;
 - conditions for issue can be found at paras 1.3 for FNs and 2.2 for APNs;
 - details on the right to make representations are at 1.11, plus 1.18.9 for partnerships (FNs); and 2.6, plus 2.16.9 for partnerships (APNs); and
 - appeals against penalties can be found at 1.16, plus 1.18.10 partnerships (FNs); and at 2.12.5 for APNs.

27. Inheritance Tax

27.1. As set out from paragraph 11.10 onwards in our response of 23 September, the Inheritance tax (IHT) regime applies to property (assets) held in trust.

- 27.2. DR schemes that use trusts can give rise to IHT liabilities. In
- 27.3. Generally, assets within a discretionary trust will be "relevant property".
- 27.4. A charge to IHT may arise on every tenth anniversary of the creation of the trust³. The ten-year anniversary charge is a maximum of 6% of the value of the relevant property held in the trust at that date.
- 27.5. A charge to IHT can also arise where there is a loss of value, typically property leaving the trust⁴. This includes situations where the trustee agrees to release loans or distribute the property held on trust. This IHT charge is proportionate to the amount of time elapsed since the last ten-year anniversary.
- 27.6. An Employee Benefit Trust (EBT) is specifically one meeting the requirements of section 86 IHT Act 1984. The beneficiaries must be defined by reference to employment and 'all or most' employees must be within the class of potential beneficiaries.
- 27.7. As property held in these trusts is not relevant property, the ten-year anniversary charge does not apply. However, a charge arising from loss of value can arise, and the amount of the IHT charge increases the longer the property has been held by the trustee⁵.
- 27.8. DR schemes typically use EBTs, but often then set aside funds for a specific employee, and their family, within a subfund within the main trust. These sub-funds typically do not meet the 'all or most' requirement of section 86 IHT Act 1984, and therefore fall within the relevant property regime.
- 27.9. It is possible for there to be some property in the EBT within the relevant property regime and some property within the definition of section 86 IHT Act 1984. Only one of the two charging regimes can apply to the same property at any point in time.

The loan charge

27.10. Loans are assets of the trust and there is no loss of value charge where the debt remains. The loan charge does not discharge the loan so an IHT charge does not arise at the same time. The trust will remain and relevant property, or section 86, charges may arise in the future.

Nil Rate band

- 27.11. The nil rate band (NRB) for IHT, currently £325,000, can apply to reduce the value of relevant property.
- 27.12. The calculation of the charge applying to relevant property includes a deduction for the NRB applying at that time. This reduces the value of the property subject to IHT, and the IHT charge. Where the value of the relevant property is less than the NRB no IHT will be due.
- 27.13. Where there is a single person making the contributions to the trust, a single NRB will apply. Generally, one employer settled the funds within a trust forming part of a DR scheme, and so a single NRB applies.

³ Section 64 Inheritance Tax Act 1984

⁴ Section 65 Inheritance Tax Act 1984

⁵ Section 72 Inheritance Tax Act 1984

27.14. In some schemes used by individuals, each individual made their own contribution so they will each benefit from their own NRB. The amount avoided through a DR scheme means most individuals will not surpass the NRB and no IHT will be due.

2006 changes

- 27.15. The major changes in the law relating to trusts and IHT in 2006 were to bring property held on most Interest in Possession trusts within the relevant property regime. This has no impact on DR schemes as the trusts used are discretionary trusts as per paragraph 27.3.
- 27.16. There was a change to the IHT exclusions in 2006. Where the trust qualified as a sponsored superannuation scheme, trust property was excluded from being relevant property⁶. Where there are no further contributions to the trust after April 2006 the exemption continued to apply. Where a later contribution is made the existing property remains protected, but the additional property is subject to the IHT relevant property regime.
- 27.17. A number of early DR schemes included the necessary pension benefit provisions within the trust deed to benefit from this exemption. Some exempt trusts did receive later contributions on which IHT charges arise.

On death

- 27.18. One of the benefits used to promote DR schemes was that, on death, the liability (debt due to the trust) was deducted from the value of the deceased's estate and therefore reduced any IHT due on death.
- 27.19. From 17 July 2013, legislation to neutralise other, non-DR, IHT avoidance involving the artificial creation of liabilities was introduced. This meant the liability is only deducted from the value of the estate to the extent that it is repaid. This has reduced the frequency of DR loans reducing IHT due on the beneficiary's own estate, on death.

Further questions

<u>28.</u>

27.20. As discussed previously, we are happy to arrange a meeting or discussion with one of our IHT experts.

Additional Customer Support

- 28.1. Counter Avoidance introduced the Additional Customer Support (ACS) programme to meet the needs of its customers who needed additional support while we work with them to resolve their tax disputes. The ACS programme is available to all Counter Avoidance customers and is not targeted specifically at those involved in DR schemes or who need to pay the loan charge.
- 28.2. Where we become aware that a customer is experiencing difficulties, we identify the individual as needing additional support through a process of triage on a case-by-case basis. This might identify someone as needing additional support for a range of reasons including physical or mental health, family issues or stress, including those very anxious about how they will pay the tax due. It is not always easy for us to identify someone requiring additional support.
- 28.3. We identify those cases with the most acute needs as our highest priority and provide the most support. This could be, for example, where we think there might be a risk of suicide, harm to others or customers suffering from a terminal illness. Where appropriate, we direct people to organisations like Samaritans and Mind.

⁶ Section 151 Inheritance Tax Act 1984

- 28.4. Ability to pay is not of itself an indicator that a customer needs additional support. However, financial concerns may of course contribute to anxiety and stress and the requirement for additional support. HMRC considers the support needed to work to the resolution of a customer's affairs on a case-by-case basis.
- 28.5. A network of customer support specialists across Counter Avoidance have been appointed to support caseworkers when they have identified that a customer may need additional support to settle their tax affairs. They provide guidance in terms of customer handling and level of support required.
- 28.6. All customer front line staff in CA are required to carry out training to enable them to identify customers who need extra help.
- 28.7. Enhanced face-to-face training is underway for customer support specialists and managers. This will provide more colleagues with the necessary skills to carry out their responsibilities and support customer facing staff, and to bring consistency across Counter Avoidance.
- 28.8. We recognise that a proportion of our customers will need additional support for a variety of reasons in order to meet their obligations. Where a customer approaches us, or is identified, as needing extra support, we will work with them to enable them to fulfil their obligations while adjusting our approach, process and decision making to mitigate the impact of HMRC activity on them.

Email 0007 attachment 1

Within email sent 16 October 2019 08:50

Name		
UTR	Case reference	

Information about completing this form

Please give us as much information as you can, as this will help us consider your proposal to settle your tax affairs by contract settlement, and by paying in instalments.

If there's not enough room in any part of this form, please either put the information in the 'Additional information' section near the end of the form or on a separate sheet of paper.

Please clearly show which part of this form the information is for. If you use a separate sheet, please write your name, UTR and case reference at the top of it.

Please return the completed form to: HM Revenue and Customs Counter-Avoidance, BX9 1LW

Contact details

Contact email address		
Contact telephone number		
Please read the enclosed information sheet 'C	orresponding with HMRC b	oy email'.
If you want us to reply by email you must tell u	s that you understand and	accept the risks involved.
I have read, understood and accept the risks of	of corresponding by email	
I do not want to be contacted by email		
Your use of tax avoidance		
We will only enter into a contract settlement wi arrangements.	th you if you are no longer	using tax avoidance
I am no longer engaged in avoidance	l	

Part A: Your Household

Please give details about everyone who lives with you – whether or not you support them financially.

Their full name	Your relationship to them (for example, your partner, child, or parent etc)	Their employment status (for example, self- employed, employed, at school, or retired)	Their date of birth
		·	

Part B: Income

Include all types of income coming into your household. Remember to include the amount after deductions such as Income Tax, National Insurance contributions and pension contributions.

Income	Amount £	How often? (weekly, monthly, yearly etc)
Your income from employment		
Your partner's Income from employment		
Your income from self-employment		
Your partner's income from self-employment		
Pensions		
For example private pension, employer		
pensions, state pensions. (Show the full		
amount, including any pension credit.)		
Rent received from properties, including		
holiday homes		
Income from investments		
Please show income from investments, such		
as dividend payments and bank interest, etc		
Benefits		
For example, housing benefit, tax credits,		
jobseekers allowance, income support, and		
disability allowances etc. (Show all benefits,		
even if they are not taxable.)		
Other income/payments/gifts etc		
Please show any other income that is not		
shown anywhere else in this form. For		
example maintenance, child support,		
student loans/grants, etc		

Part C: Your outgoings - fixed

If you are living with a partner and you are not dealing with your household expenditure together, please provide further details in the additional information box at the end of the form.

Property costs - for the property you live in

Please give details of property expenses – showing the total amount for the household.

Type of expense	Total household amount £	How often? (weekly, monthly, yearly etc)
Rent	2	journy every
Mortgage		
Ground rent or service		
charges		
Secured loans		
Building and contents		
insurance		
Council tax ('rates' in Northern		
Ireland)		
Gas		
Electricity		
Water		
Other fuel (for example coal,		
oil and Calor Gas)		

TV Licence	
Other (please describe)	

Transport and travel

Please give details for motoring and travel costs – showing the total amount for the household.

Type of expense	Total household amount	How often? (weekly, monthly, yearly etc)
Public transport and taxis for work/school/shopping	L	yearry etc)
Hire purchase payment		
Car insurance		
Car fuel and parking costs		
Other car costs (MOT, road tax, servicing, breakdown cover, etc)		

Care and health costs

Please give details for care and health costs – showing the total amount for the household.

Type of expense	Total household amount £	How often? (weekly, monthly, yearly etc)
Childcare costs		
School fees		
Adult-care costs		
Child maintenance or child		
support		
Other (such as prescriptions,		
medicines, dentistry,		
opticians, etc)		

Part D: Your outgoings - flexible

Please give details of household costs – showing the total amount for the household.

Type of expense	Total household amount £	How often? (weekly, monthly, yearly etc)
Housekeeping (food including school/work meals and household supplies)		young otey
Clothes and shoes		
TV, IT and media costs (for example, landline,, internet, TV package)		
Mobile phone		
Endowment or payment protection insurance for mortgage or loans		
Life insurance		
Health insurance		
Pension contributions (do not include any that are made direct from your salary)		

Gifts (for example, birthdays	
and other special occasions)	
Hobbies, leisure or sport(for	
example, gym or club	
membership, eating out,	
holidays)	
Other (such as house repairs	
and maintenance, pocket	
money, pet costs, magazines,	
etc)	

Part E: Your debts

Please give details of all loans, student loans, finance agreements and other debts such as credit cards, and payments relating to County Court/Sheriff's Court. Do not show any that relate to properties. Do not include student loans where the amount is taken direct from your salary.

Creditor (for example, name of credit card company or lender – including family or friends)	Total amount currently owed £	Monthly payment made by you £	Date when loan/finance agreement ends (this is not needed for credit cards)
			·

Part F: Your assets - savings

Please give details of all your savings and assets with a value in excess of £1,500. Do not include buildings, land or vehicles that you currently own.

Type of saving, asset, gift made and asset transferred	Amount or value £	names, show Please s percentage s and the amou	ving is in joint v your share. how what hare is yours, unt or value in 's
		£	%
Bank account balance(s)			
Building society account balance(s)			
ISAs			
Stocks/bonds/shares			
If you have assets with a value in excess of			
£1,500			
Other (please describe)			

Part G: Your assets – buildings and land

Please give details of all buildings and land that you own or part-own (including buildings and land outside the UK).

	Building/land 1	Building/land 2
Address of building or land		
Approximate current value		
Is there a mortgage or loan currently secured on the building/land?		
Name of lender (if any)		
Amount of mortgage or loan currently outstanding		
Type of mortgage or loan (for example, repayment, interest only)		
Mortgage or loan interest rate(s)		
Amount of monthly mortgage/loan payment		
Date when mortgage or loan ends		
Name(s) of any joint owner(s)		

Part H: Your assets - vehicles

Please give details of all vehicles that you own or part-own (including cars, caravans, mobile homes, motorbikes, boats, etc).

	Vehicle 1	Vehicle 2	Vehicle 3
Make and model			
Vehicle registration number or			
_			
other identifying name or number			
Approximate current value			
Is there a loan or Hire Purchase			
(HP) agreement currently secured			
on the vehicle?			
Amount of loan or HP currently			
outstanding			
Amount of monthly loan or HP			
repayment			
Date when loan or HP agreement			
ends			
Name(s) of any joint owner(s)			
, , , , ,			

Part I: Your assets - Other

Please give details of all money and assets, with a value of £5,000 or more, which you are expecting to receive in the next 6 months and/or are not shown anywhere else on the form. For example, inheritances, gifts, payments from employers or former employers, money from the sale or transfer of an asset, windfalls (such as PPI or other mis-selling claims), buildings, land, and cars etc.

Type of money or asset	Value £	Date you expect to receive it (or are entitled to receive it, if that date is earlier)

Additional Information

Your offer of instalment payments

Please complete the boxes below to show how much you will be able to afford to pay.

How much you can pay within 30 days from now	£
How much you can then afford to pay each month	£
How much you can pay in the future? (e.g. on completion of	£
mortgage/loan term.)	

Your declaration

If we enter into a contract settlement with you, based on the information you have given in this form, and we later find the information was materially inaccurate, we may take action to recover the full amount you owe.

If you want to enter into a contract settlement to settle your tax affairs and pay what you owe in instalments, please sign the declaration below.

Declaration

I confirm both of the following:

- 1. To the best of my knowledge and belief, this is a complete and accurate statement of my income, expenses and liabilities.
- 2. I am no longer using tax avoidance arrangements.

Signature	
Date DD MM YYYY	



Email 0032 attachment 2

Personal details	
Enter Mr, Miss, Mrs, Ms	Reference number
Full name	Contact phone numbers / email address
Single Married Partner	Date of birth DD MM YYYY
Dependants (people you look after financially)	
Number of children Number of children	Other dependants
aged under 14 aged 14 – 18	
Employment details	
Employment details Employed	Self-employed
	Self-employed Self-employed as a
Employed	
Employed	
Employed Works number (if appropriate)	
Employed Works number (if appropriate)	
Employed Works number (if appropriate)	
Employed Works number (if appropriate) Employer	Self-employed as a Address of office where registered as unemployed
Employed Works number (if appropriate) Employer Currently unemployed or retired	Self-employed as a
Employed Works number (if appropriate) Employer Currently unemployed or retired	Address of office where registered as unemployed (UK residents only)
Employed Works number (if appropriate) Employer Currently unemployed or retired If unemployed, how long have you been unemployed?	Address of office where registered as unemployed (UK residents only)

rioperty (ii you	nave more than one	property pleas	se continue on a separa	te sheet)
My property is <i>tick or</i>	ne of the following		Address of property own	ed
Owned .	Jointly owned		Address	
Value of property if c	•			
£	• 0 0			
Mortgage balance o	utstanding		Postcode	
£	• 0 0			
Vehicle (If you h	ave more than one ve	ehicle please	continue on a separate :	sheet)
My vehicle is tick one	e of the following		If on HP or loan give the	date of the final payment
Owned	Hire purchase/l	oan		
			Registration number	
Lease/company	I do not own a	vehicle	Tregion and manna of	
Endowment pol	licies/Premium Bond	ds/ISAs/Savir	ngs/Stocks and shares	and so on
Value	Account number		Bank/Company	Maturity date
	Account number	Sort code		
	Account number	Sort code	held with	if appropriate
	Account number	Sort code		
	Account number	Sort code		
	Account number	Sort code		
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Other information Income and extended the second of the se	on (Please give other de	etails about the	se assets, for example, who onuses)	if appropriate

Monthly expenses (Do not include any payment made by other members of your household)

Type of expense	Amount £
Mortgage/ Rent/ Board (include second mortgage)	
All household bills (include TV licence, Council Tax, gas, electric, water and phone expenses)	
Hire Purchase/ Credit cards/ loans (include mail order)	
Housekeeping (food, clothing and so on)	
Travel expenses (include road tax, fares, petrol and so on)	
Childcare fees	
Pension/ Insurance payments (house, life, pet, car and so on)	
Other (child maintenance, court payments and so on)	
(Box B) Total expenses	

Total disposable income

	Amount £
Total income	
Less	
Total expenses	
(Box A – Box B) Disposable income	

Total debts owed

Type of debt	Amounts owed £	Date of final payment if appropriate
Loans		
Repayment of Social Fund payment		
Hire Purchase		
Court order - Magistrate's court		
Court order - County court		
Credit cards		
Mortgage arrears		
Council tax arrears		
Utilities arrears		
Maintenance arrears		
Store cards		
Mail orders		
Other debts		

Email 0013 attachment 1

Within email sent 16 October 2019 20:20



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

CIV/1 V 2DO

Sir Amyas Morse Independent Loan charge Review By email only

Date 16 October 2019

www.gov.uk

Dear Sir Amyas,

Further to our response of 15 October 2019, please see our responses to the remaining questions.

You asked for information about the policy costings. We have provided new analysis on a Budget 2019 basis as we are now in the process of updating revenue forecasts. These figures are subject to final agreement with the Office for Budget Responsibility.

This analysis replaces the initial response to 5.11 sent on 26 September, which provided an estimate of the Exchequer yield coming from employers and individuals. To derive this breakdown, we undertook new analysis in late September on the Spring Statement 2019 costings. This is now superseded by Budget 2019 forecasts.

If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.

Yours sincerely

Carol Bristow

Mary Aiston

2. Use of DR avoidance schemes over time

- 1.14. A protected year is where HMRC has notified the customer that it disputes the amount of tax paid and has a formal route to collect additional tax from that year. Protected years are sometimes referred to as open years. The processes are different for employers and individuals, which are set out in more detail below.
- 1.15. An unprotected year is where HMRC has no power to enforce collection of additional tax for that year, and is the absence of protection. Unprotected years are sometimes referred to as closed years.

Employers

- 1.16. Where we believe an employer has failed to deduct and pay the right amount of income tax from employment income we can issue a regulation 80 determination or assessment. This determination sets out how much additional tax we believe is due from that year.
- 1.17. The determination must be issued within the assessing time limits, which are as follows:
 - 4 years from the end of tax year;
 - 6 years from the end of the tax year where the employer was careless in not paying the right amount of tax; and
 - 20 years from the end of the tax year where the employer deliberately did not pay the right amount of tax.
- 1.18. There is a different power covering the issue of a determination for National Insurance contributions and it has slightly different assessing time limits.

Individuals

- 1.19. Where an individual files a Self Assessment tax return and makes a full disclosure of their affairs we have 12 months from the date of receipt of the return if it is filed on time to open an enquiry or compliance check.
- 1.20. If the individual does not file a return, or they file a return and do not make a full disclosure, and we identify at a later point they have underpaid tax we can issue a discovery assessment. The time limits for issuing these are the same as the time limits set out at paragraph 1.21 above.

Type, number and value of unprotected years

1.21. As set out previously, iCA is used for all forms of avoidance and not just DR. Therefore, its functionality is designed to cover the common data points across all avoidance, which are the ones required for performance monitoring, such as tax at risk and when enquiries are opened. Unprotected years are not relevant for other forms of avoidance, or for monitoring performance, and therefore the iCA database does not tell us whether a year is protected or not.

- 1.22. However, we are undertaking a thorough sampling exercise to identify the number and value of unprotected years. We have to review the contract settlements individually for settled cases to identify if they have paid voluntary restitution for any years. It is a manual process to review the paperwork which takes time and we expect the exercise to be complete at the beginning of the week commencing 28 October 2019.
- 1.23. For similar reasons, the iCA database does not record how, or under which statutory provision, we have protected a year. This will not become apparent from the unprotected years sampling exercise as the contract settlements do not record which statutory provision we have used to protect each year.

<u>Data</u>

- 1.24. The data we provided in charts 1 to 4 on 26 September, and in tables on 11 October, show the number of times a DR scheme has been used and the tax at risk. These numbers show the total number of cases including where an individual or employer has subsequently settled.
- 6. Estimate of the number of individuals and employers affected and enquiry cover
- 4.12. As set out, the 50,000 estimate includes 40,000 for the employment loan charge and 10,000 for the self-employed loan charge.
- 4.13. The employment loan charge was announced at Budget 2016. At that time, we had 23,000 individuals under enquiry. In order to arrive at the 50,000 estimate, this number was increased to take into account the years within scope of the loan charge we did not have enquiry data for yet; 2015/16, 2016/17, 2017/18 and 2018/19. It was also increased to take into account that there will be individuals we are unaware of that are in scope of the loan charge but recognising that many will not comply.
- 4.14. Between June and July this year, we undertook an exercise to review the estimate of the number of individuals impacted by the loan charge.
- 4.15. Counter Avoidance reviewed their records and provided a list of DR schemes in scope of the loan charge. This showed more than 250 schemes within scope of the loan charge, and some schemes that we had not fully investigated to be certain.
- 4.16. The iCA database was interrogated to identify the number of individual users that have used these schemes. As part of the quality assurance, Counter Avoidance to confirmed the count and provided details of those cases that are not held on iCA database and any duplicates were removed.
- 4.17. This exercise showed that there are around 40,000 individuals impacted by the employment and self-employment loan charge. It also showed an additional central estimate of 10,000 users that are using DR schemes that could fall within scope of the loan charge once full assessment of the schemes have been made.

7. Scorecard yield

- 5.13. We are now in a position to share the emerging costings for Budget 2019, which have been shared with the Office of Budget Responsibility (OBR) and are subject to change pending their review.
- 5.14. This supersedes the Spring Statement 2019 costings and analysis we provided on 26 September, including the new analysis we undertook in late September to estimate how much of the costing relates to employers and individuals at paragraph 5.11.
- 5.15. No costings information can be published or referred to apart from numbers already in the public domain. This is to maintain the important principle that the government updates Parliament first on forecasts before all others. The government expects to publish updated forecast information based on the Budget 2019 costings in the coming weeks.

2016 costings

- 5.16. At paragraphs 5.4 to 5.6 of our response of 26 September, we set out how the costing model works from tax base to Exchequer yield, including the key assumptions. As with all measures there is a rigorous process of internal challenge and further challenge from the OBR.
- 5.17. It is important to recognise that the analysis was undertaken based on the information available at that time. Some of the assumptions and underlying data will have changed as we have a better understanding of the population and how they will behave.
- 5.18. As per paragraph 5.5 of our response of 26 September, one of the key assumptions that affects the Exchequer yield is the interaction with the Accelerated Payments (AP) measure. Below is the table we provided previously, showing the 2016 costings breakdown after the AP interaction has been taken into consideration.

	Employers		Individuals		Total	
Original forecasts in 2016 (with AP interaction)	£m	% of total	£m	% of total	£m	% of overall total
Settlement forecast	245	74%	90	27%	335	11%
Loan charge forecast	880	72%	345	28%	1,225	39%
Deterrence forecast	1,110	69%	500	31%	1,610	51%
Overall total forecast	2,240	71%	930	29%	3,170	100%

5.19. The table below removes the AP interaction. These AP adjustments are simply for the purposes of the avoiding double counting, and do not reflect the expected overall impact on individuals and employers affected by the DR measures.

	Employ	/ers	Indivi	duals	To	otal
Original forecasts in 2016 (without AP interaction)	£m	% of total	£m	% of total	£m	% of overall total
Settlement forecast	380	76%	120	24%	500	12%
Loan charge forecast	1,635	77%	500	23%	2,130	50%
Deterrence forecast	1,160	70%	505	30%	1,665	39%
Overall total forecast	3,180	74%	1,120	26%	4,300	100%

5.20. The deterrence forecast is not relevant to the loan charge as it is about the behavioural impact of changes to 2011 DR rules. We believe that this is a more meaningful basis for looking at the share of revenues from the DR measures is to use the settlement plus loan charge forecasts. If the deterrence is removed, the proportions coming from employers and individuals are as follows.

	Employers		Individuals		Total	
Original forecasts in 2016 (without AP interaction)	£m	% of total	£m	% of total	£m	% of overall total
Settlement and loan charge forecast	2,015	77%	615	23%	2,630	61%

5.21. As per paragraphs 5.8 and 5.9 of our response of 26 September, we rounded the Exchequer yield breakdown to 75% from employers and the remainder from individuals. This was because we were aware that some yield from large corporate employers would shift the balance towards employers.

2019 costings

- 5.22. As part of the routine Budget 2019 forecast process, we have been updating the DR costing, which has been shared with the OBR but not yet been formally agreed by them yet.
- 5.23. The table below shows the current Budget 2019 forecast including the AP interaction.

	Employers		Individuals		Total	
Budget 19 forecasts (with AP interaction)	£m	% of total	£m	% of total	£m	% of overall total
Settlement forecast	930	76%	295	24%	1,230	35%
Loan charge forecast	130	30%	305	70%	440	12%

Deterrence forecast	1,200	64%	675	36%	1,875	53%
Overall total forecast	2,265	64%	1,280	36%	3,545	100%

5.24. The table below shows the current Budget 2019 forecast excluding the AP interaction.

Pudget 10 forecasts	Emplo	yers	Individ	luals	Total	
Budget 19 forecasts (without AP interaction)	£m	% of total	£m	% of total	£m	% of overall total
Settlement forecast	1,690	79%	455	21%	2,150	45%
Loan charge forecast	275	37%	475	63%	745	16%
Deterrence forecast	1,200	64%	675	36%	1,880	39%
Overall total forecast	3,165	66%	1,610	34%	4,770	100%

5.25. The table below shows the deterrence forecast removed.

Budget 19 forecasts	Emplo	yers	Indivi	duals	To	otal
(without AP interaction)	£m	% of total	£m	% of total	£m	% of overall total
Settlement and loan charge forecast	1,965	68%	930	32%	2,895	61%

- 5.26. The changes to the employer/individual breakdown since 2016 is due to more up to date information becoming available on the amount of tax avoided by individuals.
- 5.27. The changes since the 2016 costing are summarised below.

	Employers	Individuals	Total
Variance between Budget 2016 and Budget 2019 without AP interaction (£m)	£m	£m	£m
Settlement forecast	1,310	335	1,650
Loan charge forecast	-1,360	-25	-1,385
Deterrence forecast	40	170	215

Overall total forecast	-15	490	470
Settlement and loan charge forecast	-50	315	265

- 5.28. The changes are caused by a better understanding of the tax base, the value of settlements, the interaction with the AP measure and to update the payment profile to better reflect the profile of Exchequer receipts.
- 5.29. As with any other costing, there is always a degree of uncertainty with any forecast estimates. We will continue to review and update the forecasts and modelling assumptions going forward. In particular, we will undertake a comprehensive look at the assumptions once we know the outcomes from the review and how many have included the loan charge in their 2018/19 Self Assessment.

6. <u>Incomes of individuals affected</u>

- 6.35. At paragraph 6.6 in our response dated 26 September, we set out the reported 2017/18 incomes of individuals who had settled. This only covered settlements up to 31 March 2019.
- 6.36. Table 1 below updates this and shows the reported 2017/18 incomes of individuals who have settled up to 30 June 2019. As per paragraph 6.2, reported incomes are unlikely to reflect all individuals' actual income.

	% of individuals within each income band
2017/18 Income	where Income is
Bandings	known
£0	2%
£1 - £30,000	25%
£30,000 - £50,000	27%
£50,000 - £100,000	30%
£100,000 - £250,000	14%
Over £250,000	3%
All	100%

Source: Analysis provided by KAI using data from iCA

6.37. Table 2 below shows the same information with bandings for settlement amounts.



- 6.38. We have attached the raw data, with all identifying information removed, underpinning Table 2.
- 6.39. If you want to publish your own analysis, it will be important to ensure that there is no individually identifiable information. We can advise on our standards to protect against dominance and disclosure in official statistics. We can also provide assistance with quality assurance of your analysis if that would be helpful.
- 6.40. At paragraph 6.7 in our response dated 26 September, we set out that the mean and median settlement amounts. This showed the mean and median settlement amounts up to 31 March 2019. Table 3 below sets out the mean and median settlement amounts over time, including up to 30 June 2019.

	Median (£)	Mean (£)
End of December 2018	13,000	45,000
End of March 2019	18,000	58,000
End of June 2019	18,000	59,000

Source: Analysis provided by KAI using data from iCA

- 6.41. The averages have changed as more individuals have settled, and we expect they will continue to change as more individuals settle.
- 6.42. At paragraph 6.17, we set out that we had analysed a sample of around 1,600 settlements by individuals. Approximately 60% did not require extended payment terms and the mean settlement amount was around £25,900.

- 6.43. We also set out that around 40% required extended payment arrangements and provided a table showing the average yield, monthly instalments and number of months. We have reviewed this data again and identified a small number of duplicates, which does not materially change the conclusions.
- 6.44. Table 4 below shows the summary with the duplicates removed.

Length of instalment arrangement	Number of cases	Average Yield (£)	Average Monthly Instalment (£)	Average number of months
Up to 24 months	243	15,950	833	18
25-60 months	230	30,775	502	45
61-84 months	112	32,598	383	71
85-120 months	53	64,047	506	101
121-240 months	7	49,484	268	164
Total	645	28,443	604	45

Source: Settlement data provided by Counter-Avoidance

6.45. Table 5 below shows the same information with the income bands for each length of instalment arrangement.

demander of the Agent of the Control	Sum Agreement	A CHARGE	anemic de la constante de la c	THE	Pro	portion	of cases s w	thin each inc	ome bands b	Yop ortion of cases within each income bands based on income in 20	e n 2016-17	
Length of instalment arrangement	Number of cases	CO pac.	Average Monthly Instalment (E)	Average number of months	Urknown	630	£1. 000,000	000063	£100,000 -	£100,000 - £250,000	Over £250,000	Total
Up to 24 months	243	056 91	6.09	18			43%	24%	27%	7%	0%	100%
25-60 months	230	30,776	502	45			30%	33%	27%	7%		100%
61-84 months	112	32,598	383	71			39%	33%	21%	5%	0%	100%
85-120 months	63	64,047	506	101			32%	32%	21%			100%
121-240 months	7	49,494	200	104					0%	0%	0%	100%
Total	645	28,443	604	45	2%	1%	37%	30%	24%	6%	0%	100%
Source: Settlement data provided by Counter-Avoldance, income styles provided by KAI sky income information on Set Assessment / PAYE returns	t data provi	ded by Cou	der-Avoldan	e hoome	analysis pro	t pap y	yiou sing	hoome hibn	nation on Set	Assessment	PAYEreur	ğ
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- 6.46. We have attached the raw data, with all identifying information removed, underpinning Table 5. The same points made at 6.39 and 6.40 apply equally to this data.
- 6.47. As set out previously, we do not hold records of all the DR instalment arrangements in a way that can be extracted and analysed. We have been able to provide information based on a sample of around 1,600 instalment arrangements. This sample is not necessarily representative of all the individual settlements or the individuals population as a whole.
- 6.48. You have asked us to weight this sample to better reflect the overall DR population. The incomes breakdown in Table 5 are broadly similar to table 2, but with a lower proportion of individuals with incomes over £50,000. This is to be expected given Table 5 reflects individuals requiring longer to pay.

Examples

- 6.49. Double taxation relief (DTR) is available where more than one tax liability exists on the same money or asset because of the DR rules, including the loan charge. We recognise these comprehensive rules are complex as they need to cater for many different scenarios and not incentivise individuals and employers to pay one liability over the other.
- 6.50. To determine the DTR available, and if there is anything left to pay, there are the following steps:
 - Identify where the same income has been taxed more than once;
 - Establish and compare each of the tax liabilities on the same income; and
 - Net off the tax paid against the tax due from the other charge, and then if there is any tax remaining net off against the interest.

Donald

6.51. As per paragraph, 6.23 of our response of 1 October, Donald used a DR scheme with an offshore employer and received DR loans of £90,000 in 2007/08, £95,000 in 2008/09 and £100,000 in 2009/10. Donald also had £150,000 employment income in 2018/19 addition to the loans he received, which he declared in his Self Assessment return.

- 6.52. We should have also made clear that Donald had declared income from the DR scheme of £20,000 each year.
- 6.53. Firstly, we identify the overlapping amounts of income by comparing the amounts of income taxable for the underlying liability and the loan charge.

Underlying liability		Loan charge		
Year	Income (£)	Year	Income (£)	
2007/08	90,000	2018/19	90,000	
2008/09	95,000	2018/19	95,000	
2009/10	100,000	2018/19	100,000	
Total	285,000	Total	285,000	

6.54. Then we identify the relevant tax and interest liabilities for the underlying liability:

Year	Income (£)	Income Tax (£)	Interest (£)	Tax and Interest (£)
2007/08	90,000	28,975	8,245	37,220
2008/09	95,000	30,256	7,761	38,017
2009/10	100,000	31,608	7,162	38,770
Total	285,000	90,839	23,168	114,007

6.55. We also need to identify the relevant amount of tax due under the loan charge:

Year	Income (£)	Income Tax (£)
2018/19	90,000	37,521
2018/19	95,000	39,605
2018/19	100,000	41,689
Total	285,000	118,815

6.56. Then we net off the tax against the tax due from the loan charge, and then if there is any tax remaining net off against the interest:

Year	Income Tax (£)	Less 2018/19 Income Tax (£)	Remaining Income Tax (£)	Interest (£)	Less 2018/19 Income Tax (£)	Balance due (£)
2007/08	28,975	-28,975	8,546	8,245	-8,245	-
2008/09	30,256	-30,256	9,349	7,761	-7,761	-
2009/10	31,608	-31,608	10,081	7,162	-7,162	-
Total	90,839	-90,839	27,976	23,168	-23,168	-

- 6.57. The end result is that no income tax or interest is due on the overlapping amounts of income.
- 6.58. However, there is additional income tax and interest due from the £20,000 declared each year. This is because it will now be taxed at higher rates as per below:

Year	Income (£)	Income Tax (£)	Interest (£)	Total (£)
2007/08	20,000	3,456	983	4,440
2008/09	20,000	3,577	917	4,494
2009/10	20,000	3,617	820	4,436
Total	60,000	10,649	2,720	13,370

6.59. HMRC will decide whether it is cost effective to pursue that amount of income tax and interest using its normal collection and management procedures.

APPG submissions analysis

- 28.9. We thought it would be helpful to provide our analysis of the 70 personal submissions shared with us at the beginning of 2019 by the Loan charge All-Party Parliamentary Group.
- 28.10. None of the submissions were provided on that basis the individuals had given their consent for HMRC to respond transparently to the many particular tax issues they raised. Therefore, we are not able to provide detailed corroboration of the accounts. Where it has been possible to check the submissions against our records, we do not accept the claims that are made in a number of the cases.

- 28.11. We can provide some high level analysis of the submissions. They are broadly representative of the professions that we have seen use DR schemes. They include a wide range of liabilities; £30,000 to £650,000 with a mean of £157,952 and a median of £100,000.
- 28.12. The majority (84%) stated they entered DR arrangements because they were told by the promoter was it was legal, and/ or approved by HMRC or a QC. At the same time, only 19% say they fully disclosed the use of their scheme to HMRC. Of those that did disclose their use of their scheme, HMRC opened enquiries into the vast majority (91%) of those schemes.

						Settlement	Settlement yield bandings	ngs			
2017/18 Income Bandings	% of individuals within each income band where Income is known	£1 - 10,000	£10,000 - 20,000	£20,000 -30,000	£30,000 - 40,000	£40,000 - 50,000	£50,000 -75,000	£75,000 - 100,000	£100,000 -250,000	Over £250,000	Total
£0	2%	45%	13%	8%	_*	_*	8%	*	_*	*	100%
£1 - £30,000	25%	48%	16%	9%	6%	4%	6%	4%	6%	2%	100%
£30,000 - £50,000	27%	41%	13%	9%	6%	5%	8%	5%	10%	3%	100%
£50,000 - £100,000	30%	29%	13%	11%	8%	5%	9%	7%	15%	3%	100%
£100,000 - £250,000	14%	19%	12%	10%	7%	6%	13%	7%	18%	8%	100%
Over £250,000	3%	13%	10%	7%	_*	_*	11%	7%	23%	22%	100%
All	100%	35%	14%	10%	7%	5%	8%	6%	12%	4%	100%
Source: Analysis provided by KAI using data from Counter-Avoidance Operational database	ed by KAI using dat	a from Co	unter-Avoid	ance Opera	tional data	base		:	:	:	
* Figures have been suppressed due to case number in the underlying data falls below 5 to prevent potential disclosure of sensitive information	pressed due to cas	e number	r in the unde	rlying data	falls below	5 to preven	t potential c	lisclosure of	sensitive info	rmation	

Email 0013 attachment 2 – withheld under section 44(1)(a)

Email 0015 attachment 1

Within email sent 29 October 2019 18:29



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

CIV/1 V 2DO

Sir Amyas Morse Independent Loan charge Review By email only

Date

29 October 2019

www.gov.uk

Dear Sir Amyas,

Further to our letter of 18 October 2019, please see our responses to the outstanding questions.

This includes the additional data in paragraphs 1 and 2, the costing note agreed with the Office of Budget Responsibility and an explanation of settlement terms available to employees.

You requested a breakdown of scheme usages by protected and unprotected years. We are working on bringing this data together and we hope to send this to you by the end of the week.

We have also received your additional request for information about individuals entering into disguised remuneration avoidance schemes in 2019. We will respond by the end of the week.

If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.

Yours sincerely

Carol Bristow

Mary Aiston

3. <u>Use of DR avoidance schemes over time</u>

- 1.25. In our response of 26 September, we set out what information the iCA database includes, and, at paragraphs 1.7 and 1.8, provided charts on the number of DR scheme usages by individuals and by employers per year. This is based on information from the iCA database as at 3 July 2019.
- 1.26. Please find the underlying data for those charts in a table format below, up to and including 2017/18.

		Number	of Usages*	
Year of tax	Ind	lividuals	Em	ployers
advantage	First usage	Subsequent usage	First usage	Subsequent usage
1998/99 - 2002/03	60	<10	110	90
2003/04	300	50	70	40
2004/05	650	210	150	70
2005/06	2,470	930	370	140
2006/07	1,870	2,930	290	220
2007/08	2,640	3,880	650	360
2008/09	3,190	5,660	800	660
2009/10	3,910	8,360	1,370	1,120
2010/11	3,830	8,640	1,180	1,530
2011/12	2,400	5,130	1,290	1,820
2012/13	2,690	6,580	1,080	2,540
2013/14	3,420	8,840	850	2,250
2014/15	2,510	9,080	930	2,020
2015/16	3,490	7,270	890	1,850
2016/17	1,450	4,970	910	1,240
2017/18	6,080	1,620	220	820

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database

^{*}All numbers rounded to the nearest 10, where the underlying data shows that the actual value is less than 10, then we have supressed it to '<10' to prevent disclosure of potentially sensitive information.

- 1.27. In our response of 26 September at paragraphs 1.12 and 1.13, we provided charts on the tax at risk for individuals and for employers per year based on information from the iCA database as at 3 July 2019.
- 1.28. Please find the underlying data for those charts in a table format below, up to and including 2017/18.

Tax year	_	Isers Impacted by n Charge
	Individual	Employers
1998/99 - 2002/03	£2m	£38m
2003/04	£8m	£14m
2004/05	£23m	£118m
2005/06	£83m	£96m
2006/07	£102m	£137m
2007/08	£135m	£191m
2008/09	£197m	£205m
2009/10	£235m	£295m
2010/11	£284m	£317m
2011/12	£119m	£459m
2012/13	£163m	£563m
2013/14	£177m	£431m
2014/15	£158m	£383m
2015/16	£108m	£274m
2016/17	£37m	£152m
2017/18	£44m	£88m

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database

<u>Unprotected/protected years</u>

1.29. We are currently working on our analysis of unprotected years and expect to provide this early next week.

2. <u>Settlements</u>

^{*}Tax amounts have been rounded to the nearest £1m

- 2.17. In our response of 26 September at paragraph 2.3, we provided a chart on the breakdown of usages for individuals and for employers by year of avoidance. This is based on information from the iCA database as at 3 July 2019.
- 2.14. Please find the underlying data for that chart in a table format below, up to and including data for 2017/18.

Tax Year	Number of Se	ttled Usages*
Tax Teal	Individuals	Employers
1998/99	<10	<10
1999/00	<10	<10
2000/01	<10	50
2001/02	90	30
2002/03	190	30
2003/04	300	40
2004/05	440	60
2005/06	630	150
2006/07	740	170
2007/08	970	330
2008/09	810	530
2009/10	1,330	930
2010/11	1,330	1,030
2011/12	920	940
2012/13	1,000	1,110
2013/14	1,390	940
2014/15	850	530
2015/16	510	330
2016/17	200	120
2017/18	30	30

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database

^{*}All numbers rounded to the nearest 10, where the underlying data shows that the actual value is less than 10, then we have supressed it to '<10' to prevent disclosure of potentially sensitive information.

5. Scorecard yield

- 5.30. Please find enclosed the costing note agreed and certified with the Office of Budget Responsibility for the 2016 disguised remuneration employment measures.
- 5.31. As per paragraph 5.15 of our response of 16 October, any material related to the costings, including the costing note, should not be published.
- 5.32. In 2016, the government was considering implementing the loan charge so it considered the outstanding loan balance on 5 April 2018. The costing note is drafted on this basis and Annex A contains the forecast for 2019 implementation that the government chose.

12. Settlement opportunities

- 12.36. At our meeting on the 17 October 2019, you requested further information on the National Insurance Contribution (NICs) position for individuals that decided to settle under the terms published in November 2017.
- 12.37. As set out in paragraph 7.19 in our letter of 23 September 2019, no NICs, whether employer or employee NICs, is due from individuals who settle; they only need to pay income tax. We do not have any transfer of liability powers that would allow us to transfer the employer NICs in DR cases.
- 12.38. HMRC's original position under the Employer Benefit Trust Settlement Opportunity (EBTSO), set out in more detail in our response of 26 September 2019, was that settlements could only be entered into by the employer. However, towards the end of the EBTSO we agreed that employee settlements were possible. This happens where the employee wishes to avoid a benefit in kind charge for the employer paying the loan charge liability or where the employer is insolvent but not dissolved. There were only a limited number of those settlements that time.
- 12.39. For the November 2017 terms, we continued this practice and allowed employee settlements where the employer was not willing, or able, to settle. This is because it is important everyone has the opportunity to prevent the loan charge arising by settling.

- 12.40. We decided that the employee should pay the related employer NICs if they are settling on behalf of the employer because we could pursue the employer for the full amount so we should not settle with another party for a lesser amount.
- 12.41. Part of the reasoning was that a settlement should provide finality. If only the income tax and employee NICs were settled, we would still have the open dispute with the employer for the employer NICs (and consequently Corporation Tax). Since relief from the loan charge is only dependent on paying the income tax, and not NICs, it was feared that directors of employers could simply settle the employee liabilities, and leave HMRC having to litigate for the relatively small employer NICs element. As the vast majority of employers are close companies, where the owner-directors have control of the employer, they could then dispose of assets and funds so that the employer is unable to pay the employer NICs.

						Settlement	yield bandings	ngs			
	% of individuals within each income band	£1 -	£10,000 -	£20,000	£30,000	£40,000	£50,000	£75,000 -	£100,000	Over	Total
2017/18 Income	where Income is	10,000	20,000	- 30,000	- 40,000	- 50,000	- /5,000	100,000	- 250,000	£250,000	
Bandings	known										
£0	2%	45%	13%	8%	'*	'*	8%	*	*	'*	100%
1 - £30,000	25%	48%	16%	9%	6%	4%	6%	4%	6%	2%	100%
200,000 - £50,000	27%	41%	13%	9%	6%	5%	8%	5%	10%	3%	100%
£50,000 - £100,000	30%	29%	13%	11%	8%	5%	9%	7%	15%	3%	100%
£100,000 - £250,000	14%	19%	12%	10%	7%	6%	13%	7%	18%	8%	100%
Over £250,000	3%	13%	10%	7%	*	*	11%	7%	23%	22%	100%
All	100%	35%	14%	10%	7%	5%	8%	6%	12%	4%	100%

Source: Analysis provided by KAI using data from Counter-Avoidance Operational database
* Figures have been suppressed due to case number in the underlying data falls below 5 to prevent potential disclosure of sensitive information

- 6.60. We have attached the raw data, with all identifying information removed, underpinning Table 2.
- 6.61. If you want to publish your own analysis, it will be important to ensure that there is no individually identifiable information. We can advise on our standards to protect against dominance and disclosure in official statistics. We can also provide assistance with quality assurance of your analysis if that would be helpful.
- 6.62. At paragraph 6.7 in our response dated 26 September, we set out that the mean and median settlement amounts. This showed the mean and median settlement amounts up to 31 March 2019. Table 3 below sets out the mean and median settlement amounts over time, including up to 30 June 2019.

	Median (£)	Mean (£)
End of December 2018	13,000	45,000
End of March 2019	18,000	58,000
End of June 2019	18,000	59,000

Source: Analysis provided by KAI using data from iCA

- 6.63. The averages have changed as more individuals have settled, and we expect they will continue to change as more individuals settle.
- 6.64. At paragraph 6.17, we set out that we had analysed a sample of around 1,600 settlements by individuals. Approximately 60% did not require extended payment terms and the mean settlement amount was around £25,900.
- 6.65. We also set out that around 40% required extended payment arrangements and provided a table showing the average yield, monthly instalments and number of months. We have reviewed this data again and identified a small number of duplicates, which does not materially change the conclusions.
- 6.66. Table 4 below shows the summary with the duplicates removed.

Length of instalment arrangement	Number of cases	Average Yield (£)	Average Monthly Instalment (£)	Average number of months
Up to 24 months	243	15,950	833	18
25-60 months	230	30,775	502	45
61-84 months	112	32,598	383	71

85-120 months	53	64,047	506	101
121-240 months	7	49,484	268	164
Total	645	28,443	604	45

Source: Settlement data provided by Counter-Avoidance

6.67. Table 5 below shows the same information with the income bands for each length of instalment arrangement.

Settlement d	ata by leng	th of instalm	Settlement data by length of instalment arrangement	nent	Pro	portion	of cases w	ithin each inc	ome bands ba	Proportion of cases within each income bands based on income in 2016-17	e in 2016-17	
Length of instalment arrangement	Number of cases	Average Yield (£)	Average Monthly Instalment (£)	Average number of months	Unknown	£0	£1- £30,000	£30,000 - £50,000	£50,000 - £100,000	£100,000 - £250,000	Over £250,000	Total
Up to 24 months	243	15,950	833	18	·*	۰*	43%	24%	23%	7%	0%	100%
25-60 months	230	30,775	502	45	·*	*	30%	33%	27%	7%	*	100%
61-84 months	112	32,598	383	71	*	*	38%	33%	21%	5%	0%	100%
85-120 months	53	64,047	506	101	*	*	32%	32%	21%	'*	' *	100%
121-240 months	7	49,484	268	164	*	*	*	*	0%	0%	0%	100%
Total	645	28,443	604	45	2%	1%	37%	30%	24%	6%	0%	100%
Source: Soft among data provided by Counter Avoidance: income analysis provided by KAI sing income information on Soft Assessment / DAVE returns	. 40+0 55000	ליש ציי כייי	tor Avoidon	20.		200			100 de 110 de 110 de	· ^)))))))) + /	J ^ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \)

Source: Settlement data provided by Counter-Avoidance; income analysis provided by KAI sing income information on Self Assessment / PAYE returns.
* Figures have been suppressed due to case number in the underlying data falls below 5 to prevent potential disclosure of sensitive information

- 6.68. We have attached the raw data, with all identifying information removed, underpinning Table 5. The same points made at 6.39 and 6.40 apply equally to this data.
- 6.69. As set out previously, we do not hold records of all the DR instalment arrangements in a way that can be extracted and analysed. We have been able to provide information based on a sample of around 1,600 instalment arrangements. This sample is not necessarily representative of all the individual settlements or the individuals population as a whole.
- 6.70. You have asked us to weight this sample to better reflect the overall DR population. The incomes breakdown in Table 5 are broadly similar to table 2, but with a lower proportion of individuals with incomes over £50,000. This is to be expected given Table 5 reflects individuals requiring longer to pay.

Examples

- 6.71. Double taxation relief (DTR) is available where more than one tax liability exists on the same money or asset because of the DR rules, including the loan charge. We recognise these comprehensive rules are complex as they need to cater for many different scenarios and not incentivise individuals and employers to pay one liability over the other.
- 6.72. To determine the DTR available, and if there is anything left to pay, there are the following steps:
 - Identify where the same income has been taxed more than once;
 - Establish and compare each of the tax liabilities on the same income; and
 - Net off the tax paid against the tax due from the other charge, and then if there is any tax remaining net off against the interest.

Donald

- 6.73. As per paragraph, 6.23 of our response of 1 October, Donald used a DR scheme with an offshore employer and received DR loans of £90,000 in 2007/08, £95,000 in 2008/09 and £100,000 in 2009/10. Donald also had £150,000 employment income in 2018/19 addition to the loans he received, which he declared in his Self Assessment return.
- 6.74. We should have also made clear that Donald had declared income from the DR scheme of £20,000 each year.
- 6.75. Firstly, we identify the overlapping amounts of income by comparing the amounts of income taxable for the underlying liability and the loan charge.

Underlyin	g liability	Loan charge	е
Year	Income (£)	Year	Income (£)
2007/08	90,000	2018/19	90,000

2008/09	95,000	2018/19	95,000
2009/10	100,000	2018/19	100,000
Total	285,000	Total	285,000

6.76. Then we identify the relevant tax and interest liabilities for the underlying liability:

Year	Income (£)	Income Tax (£)	Interest (£)	Tax and Interest (£)
2007/08	90,000	28,975	8,245	37,220
2008/09	95,000	30,256	7,761	38,017
2009/10	100,000	31,608	7,162	38,770
Total	285,000	90,839	23,168	114,007

6.77. We also need to identify the relevant amount of tax due under the loan charge:

Year	Income (£)	Income Tax (£)
2018/19	90,000	37,521
2018/19	95,000	39,605
2018/19	100,000	41,689
Total	285,000	118,815

6.78. Then we net off the tax against the tax due from the loan charge, and then if there is any tax remaining net off against the interest:

Year	Income Tax (£)	Less 2018/19 Income Tax (£)	Remaining Income Tax (£)	Interest (£)	Less 2018/19 Income Tax (£)	Balance due (£)
2007/08	28,975	-28,975	8,546	8,245	-8,245	-
2008/09	30,256	-30,256	9,349	7,761	-7,761	-

2009/10	31,608	-31,608	10,081	7,162	-7,162	-
Total	90,839	-90,839	27,976	23,168	-23,168	-

- 6.79. The end result is that no income tax or interest is due on the overlapping amounts of income.
- 6.80. However, there is additional income tax and interest due from the £20,000 declared each year. This is because it will now be taxed at higher rates as per below:

Year	Income (£)	Income Tax (£)	Interest (£)	Total (£)
2007/08	20,000	3,456	983	4,440
2008/09	20,000	3,577	917	4,494
2009/10	20,000	3,617	820	4,436
Total	60,000	10,649	2,720	13,370

6.81. HMRC will decide whether it is cost effective to pursue that amount of income tax and interest using its normal collection and management procedures.

APPG submissions analysis

- 28.13. We thought it would be helpful to provide our analysis of the 70 personal submissions shared with us at the beginning of 2019 by the Loan charge All-Party Parliamentary Group.
- 28.14. None of the submissions were provided on that basis the individuals had given their consent for HMRC to respond transparently to the many particular tax issues they raised. Therefore, we are not able to provide detailed corroboration of the accounts. Where it has been possible to check the submissions against our records, we do not accept the claims that are made in a number of the cases.
- 28.15. We can provide some high level analysis of the submissions. They are broadly representative of the professions that we have seen use DR schemes. They include a wide range of liabilities; £30,000 to £650,000 with a mean of £157,952 and a median of £100,000.
- 28.16. The majority (84%) stated they entered DR arrangements because they were told by the promoter was it was legal, and/ or approved by HMRC or a QC. At the same time, only 19% say they fully disclosed the use of their scheme to HMRC. Of those that did disclose their use of their scheme, HMRC opened enquiries into the vast majority (91%) of those schemes.

Email 0005 attachment 1 – withheld under section 35(1)(a)

Within email sent 30 October 2019 11:35

Email0013 attachment 1 – withheld under section 44(1)(a)

Within email sent 01 November 2019 16:09

Email0013 attachment 2

Within email sent 01 November 2019 16:09



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

CIV/1 V 2DO

Sir Amyas Morse Independent Loan charge Review By email only

Date 1 November 2019

www.gov.uk

Dear Sir Amyas,

At our meeting on 17 October 2019, we raised the issue of sustained abuse HMRC officials have received from individuals.

We appreciate that individuals have the right to campaign against a particular policy they disagree with. However, no one should be subject to bullying and harassment for doing their job. We have a duty of care to our staff and the personal nature of this abuse is a major concern for us. We have reported the more egregious instances to the relevant authorities.

Whilst we recognise senior colleagues are public figures open to a higher level of scrutiny, the threatening tone is still a concern. It is even less acceptable for more junior colleagues to be subject to such levels of abuse.

Most worrying is the release of personal details, including photographs of family homes, accompanied by threatening language. This could put the personal safety of officials and their families at risk.

We have enclosed some examples of abuse and have categorised them as abuse of senior staff, abuse of junior staff and disclosure of officials' personal information.

We have also enclosed a FOI request that was rejected under section 14(1) of the Freedom of Information Act as it was deemed to cause disproportionate levels of disruption, irritation or distress.

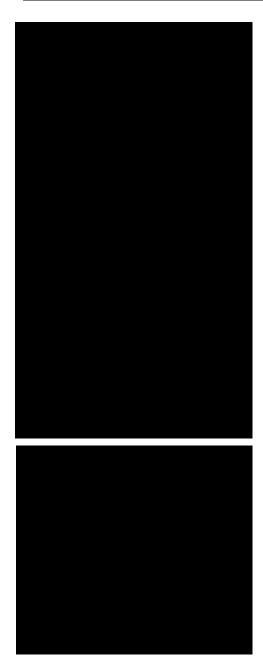
If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.

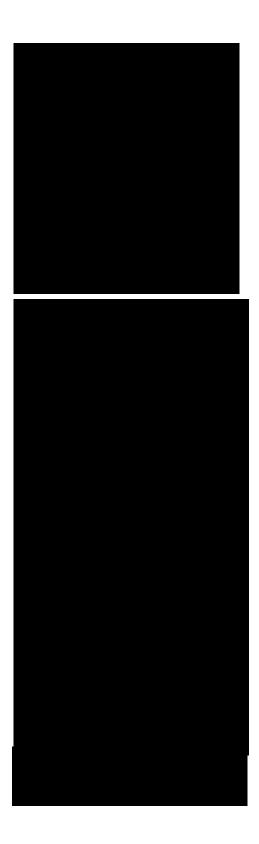
Yours sincerely

Carol Bristow

Mary Aiston

Abuse of senior staff - Sir Jonathon Thompson



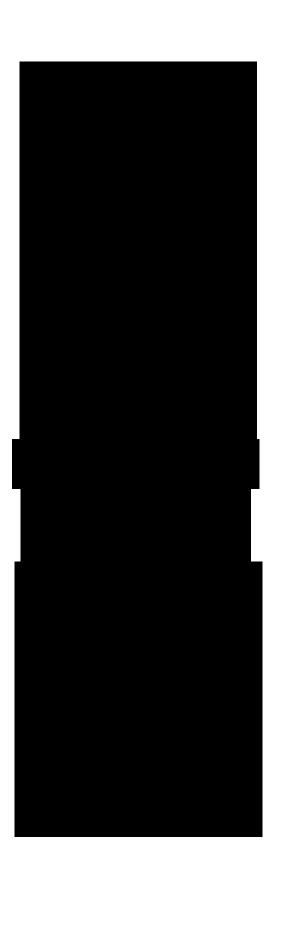


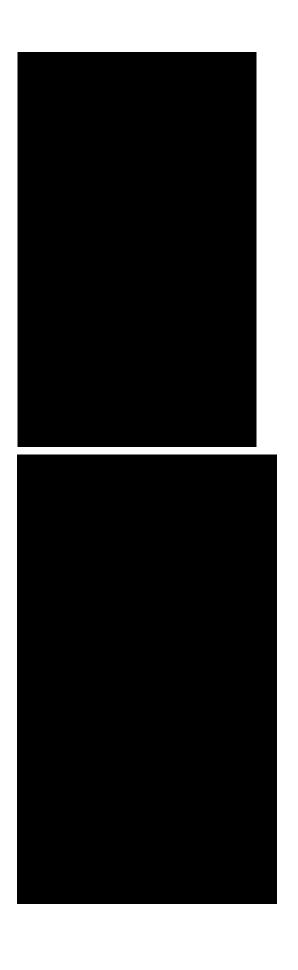
Abuse of junior staff



Disclosure of official's personal information







Email0005 attachment 1

Within email sent 08 November 2019 16:54



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

C1V/1V 2DU

Sir Amyas Morse Independent Loan charge Review By email only

Date

8 November 2019

www.gov.uk

Dear Sir Amyas,

Thank you for your request for further information of 4 November 2019.

We have responded to the majority of questions, and provided some additional information we hope you find useful.

Separately, we have written jointly with HM Treasury about unprotected years and time to pay arrangements.

If you, or the review team, would like further clarification, or a discussion, to clarify any points we would be happy to do so.

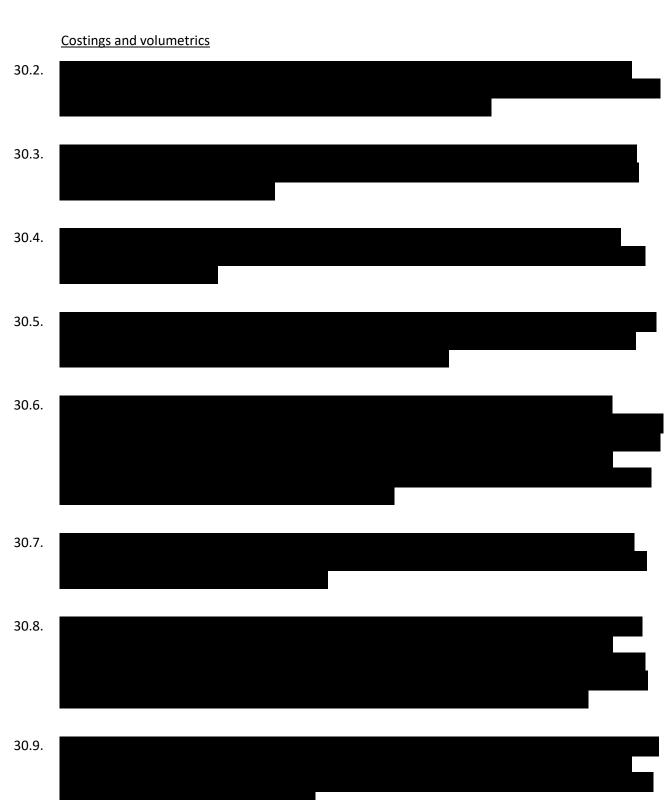
Yours sincerely

Carol Bristow

Mary Aiston

13. Loans in scope of the loan charge

30.1. Question 8 from your request of 4 November 21011 refers to changing the start date for loans inscope of the loan charge to December 2010 or April 2011.



Reported incomes

30.10. Table 1 below shows the reported 2017/18 income distribution for those who have exclusively used DR schemes since 6 April 2011. We have also excluded those who we know have used a DR scheme in 2017/18 to give a better reflection of actual incomes.

Declared Income 2017/18	% where income is known
£0	2%
£1 - £19,999	26%
£20,000 - £29,999	12%
£30,000 - £39,999	13%
£40,000 - £49,999	16%
£50,000 - £59,999	8%
£60,000 - £79,999	9%
£80,000 - £99,999	6%
Over £100,000	9%
Total	100%

Source: Analysis provided by KAI using data from

iCA and reported income from PAYE/SA returns

30.11. Table 2 below shows the same analysis for those who have exclusively used DR schemes since 6 April 2011 and have settled.

Declared Income	% where income is
2017/18	known
£0	1%
£1 - £30,000	21%
£30,000 - £50,000	29%
£50,000 - £100,000	32%
£100,000 - £250,000	15%
Over £250,000	3%
Total	100%

Source: Analysis provided by KAI using data from

30.12. Table 3 below shows the same analysis as Table 2 above, but also includes the settlement amount distributions.

		% of individuals within each income band where Income is Known	£1 - 10,000	£10,000 - 20,000	£20,000 - 30,000	£30,000 - 40,000	£40,000 - 50,000	£50,000 - 75,000	£75,000 -	£100,000 - 250,000	Over £250,000	Total
e	£0	1%	50%	-*	-*	*	-*	*	'*	'*	*	100%
om	£1-£30,000	21%	55%	16%	10%	6%	4%	4%	*	4%	*	100%
Inc	£30,000 - £50,000	29%	49%	14%	8%	5%	4%	8%	3%	6%	1%	100%
7-18 Band	£50,000 - £100,000	32%	30%	16%	13%	7%	5%	10%	6%	10%	2%	100%
017 E	£100,000 - £250,000	15%	21%	11%	12%	9%	7%	11%	5%	18%	6%	100%
2	Over £250,000	3%	26%	15%	.*	*	*	*	*	15%	13%	100%
	All	100%	40%	14%	11%	7%	5%	8%	4%	9%	2%	100%
	Source: Analysis provi	Source: Analysis provided by KAI using data from Counter-Avoidance Operational Database	from Cou	ınter-Avoida	nce Operatio	onal Databas	ř					
	* Figures have been si	* Figures have been suppressed due to case numbers in the underlying data falls below 5 to prevent potential disclosure of sensitive	numbers	in the unde	rlying data fa	alls below 5 t	to prevent po	otential discl	osure of sen		information	

Settlement yield bandings for users with usages after April 2011 exclusively

30.13. Table 4 below shows the reported 2017/18 income distribution for those who have exclusively used DR schemes before 6 April 2011.

Declared Income	% where income is
2017/18	known
£0	2%
£1 - £19,999	21%
£20,000 - £29,999	8%
£30,000 - £39,999	9%
£40,000 - £49,999	16%
£50,000 - £59,999	8%
£60,000 - £79,999	12%
£80,000 - £99,999	9%
Over £100,000	14%
Total	100%

Source: Analysis provided by KAI using data from

iCA and reported income from PAYE/SA returns

30.14. The tables exclude those who have used schemes in years both before and after 6 April 2011.

Anti-forestalling rules

- 30.15. At Autumn Statement 2010, on 9 December 2010, the government announced it would introduce the rules which became Part 7A ITEPA 2003 from 6 April 2011.
- 30.16. The government wanted to avoid the forestalling risk of employers and individuals entering into DR schemes in the period before the legislation commenced. It was not possible to fully introduce Part 7A from 9 December 2010 so the government introduced anti-forestalling rules.
- 30.17. These applied to anyone who:
 - received a payment between the 9 December 2010 and 5 April 2011;
 - the payment was in a form and manner which Part 7A would apply if it was enacted; and
 - had not repaid the amount by 5 April 2012.
- 30.18. The effect of this was that the individual or employer would be liable to the tax on the amount received in the anti-forestalling period as part of their taxable income for 2012/13.
- 30.19. Individuals and employers who used a DR scheme during the forestalling period are just as clearly ignoring the legislation as those who used a scheme after 6 April 2011.

- 30.20. There are some operational benefits to only considering loans after 6 April 2011 as opposed to 9

 December 2010. We believe the announcement caused a temporary moratorium from some promoters while they considering how to respond. Therefore, there should be not a large number of individuals and employers who have used DR schemes in the forestalling period.
- 30.21. Of those who did use a scheme in that period, employers will be able to identify the loan amounts as they usually only used the scheme once a year to make a single large loan. Some individuals may not be able to identify loans made solely in the anti-forestalling period, which may lead to disputes about apportioning.

31. Unprotected years

- 31.1. Question 8 from your request of 4 November 2019 also refers to excluding from the scope of the loan charge unprotected years from December 2010 or April 2011.
- 31.2. As set out previously, the iCA database does not record whether a year is protected or not. We have undertaken some stratified sampling of around 1,600 individual and 300 employer settlements to identify the number and value of unprotected years.
- 31.3. Unprotected' years have been defined within this sample of data as years that are not under formal enquiry by HMRC, are not subject to formal assessments raised by HMRC and the statutory time limits for opening a formal enquiry or raising assessment have expired.
- 31.4. Table 5 below sets out the output of that analysis for schemes used since 6 April 2011.

	Individuals	Employers
Proportion of years that are unprotected	10-15%	10-25%
Proportion of users with at least one unprotected year	15-20%	15-30%
Proportion of tax at risk that is unprotected	15-20%	15-20%

Source: Analysis provided by KAI based on a sample of settlements

31.5. The iCA database includes information on which schemes have been disclosed to HMRC. We matched the individual settlement data to the iCA database to see whether the schemes they had used were disclosed. We could only match around 70% of the settlements in the time available. Where we found a match, around 90% of unprotected years since 6 April 2011 are from non-disclosed schemes.

31.6. Table 6 below sets out the output from the matching exercise:

	Individuals
Proportion of unprotected years with non- disclosed schemes	92%
Proportion of unprotected years with disclosed schemes	2%
Proportion of unprotected years with a mix of disclosed and non-disclosed schemes	6%

Source: Analysis provided by KAI based on a sample of settlements

- 31.7. We were unable to undertake the same analysis for employers in the time available.
- 31.8. Using the sample data, we estimate if the loan charge only applied to protected years after 6 April 2011 it would create an additional Exchequer cost of around £300m, on the same basis as set out at paragraph 30.2 above.
- 31.9. We estimate around 2,000 individuals have solely unprotected years after 6 April 2011 and would be taken out of scope of the loan charge. Around 5,000 individuals have both protected and unprotected years and would benefit.
- 31.10. We estimate around 500 employers have solely unprotected years after 6 April 2011 and would be taken out of scope of the loan charge. Around 1,500 individuals have both protected and unprotected years and would benefit.

32. Loan charge design

- 32.1. The loan charge design charges all the outstanding loan balance to income tax in the 2018/19 tax year, sometimes referred to as 'income stacking'.
- 32.2. The biggest driver for this design choice was simplicity. It is easy to communicate and understand as well as being easy to administer, for employers, individuals and HMRC, as it did not require any IT system changes or new forms.
- 32.3. We have also always been clear that the loan charge was not designed to target a specific amount of tax from individual cases. It seeks to ensure that income which has not previously been taxed as employment income is taxed as such.



32.13. Table 7 below sets out the number of repeated usages of DR schemes by individuals.

Number of	Proportion of	Proportion of
Years in DR	individuals who	individuals who
Avoidance	have used a	have exclusively

	scheme after 6 April 2011	used a scheme after 6 April 2011
1	43%	48%
2	27%	28%
3	13%	11%
4 or more	16%	12%

Source: Analysis provided by KAI using data from iCA

32.14. The mean and median for both are 2 years, when rounded to the neared whole year. You may consider this to be an appropriate number of years to spread the outstanding loan balance.

33. <u>Settlements</u>

33.1. The settlement agreements are structured so that they settle the underlying tax liability from when the DR scheme was used, which means the loan charge does not arise. When the parties enter into the settlement agreement, this means that, in the case of protected years, the enquiries into the underlying tax liability are closed, and any assessments discharged.



34. Time to Pay and support for those unable to pay

34.1. We thought it might be useful to provide some more information about how Time to Pay works, how HMRC handles those customers who are unable to pay, and the debt options that are already available for those in financial difficulty.

Time to Pay

- 34.2. HMRC will start debt conversations by asking whether the customer is able to pay. Where a customer is unable to pay in full, then HMRC will move to a discussion about Time to Pay. This is always a preferable outcome to any enforcement action, as it is a better solution for the customer and lower cost for HMRC. The rest of the Time to Pay process, as described below, normally happens in a single call.
- 34.3. On some occasions a taxpayer may respond to the initial question about payment by saying they could pay over a short period, for example less than three months. In this scenario, we would not complete a full income and expenditure assessment.
- 34.4. If the taxpayer does not indicate they are able to pay over a short period, then we will proceed to use the income and expenditure assessment to identify the income and assets that an individual has, alongside their expenses.
- 34.5. If they have assets, then HMRC will ask whether they can be realised and to what timescale. This timescale is set by the customer rather than HMRC because they are better informed about how to realise the value (for example, a Director of a company may consider selling their share of that company, but timing plays a major role in the price achieved).
- 34.6. HMRC will ask the customer about opportunities to reduce their expenditure, and will focus on any areas that are significantly different to our expectation.

34.7.

- 34.8. The income & expenditure enables us to identify disposable income. HMRC does not seek 100% of disposable income, but instead makes a judgement on level that the customer requires for the plan to remain sustainable, even where unexpected expenses or reduced income occur. This includes consideration of their circumstances (e.g those with children are more likely to have increased expenses), and income (e.g. those on a zero hours contract will have more volatile earnings).
- 34.9. Once the monthly affordable figure is established, HMRC divides the debt value by that figure to work out the length of the payment arrangement.
- 34.10. Where a customer realises they are unable to make their payments part way through a plan, they can contact HMRC, share their new income and expenditure information and we will amend the plan.
- 34.11. In a scenario where the income and expenditure shows that the customer cannot repay anything, then HMRC will cease pursuit activity and put the debt on hold until we are notified about a change in circumstances. In relation to financial difficulty, we only remit debt where it is clear that the taxpayer will never be able to repay any of their charge.

- 34.12. Interest applies throughout a Time to Pay, but once agreed no payment penalties are applied.
- 34.13. Time to Pay is delivered at scale, with 640,000 customers currently paying HMRC through one. They are the full range of lengths, with 15,000 per annum being agreed for over 10 years (primarily tax credits). There are currently over 85,000 debts that are over 10 years old and are being repaid through Time to Pay
- 34.14. Around 90% of Time to Pay agreements are completed successfully. We would not expect that to be 100% because some debtors will choose other options, such as those below. In addition, for businesses HMRC needs to decide whether the business is sustainable in the medium term or whether HMRC should file for insolvency.
- 34.15. Time to Pay policy has worked successfully across a range of scenarios, from the financial crisis of 2008 to Foot and Mouth, and measures, like Accelerated Payments.

Debt Solutions

- 34.16. There is already a range of solutions designed for people who are in debt, but are unable to afford to pay it. These include Individual Voluntary Arrangements (IVAs), and Debt Relief Orders (DROs).
- 34.17. IVAs will be the most applicable to the individuals who have used DR schemes. An IVA is an agreement with all an individual's creditors to pay all or part of their debts.
- 34.18. To obtain an IVA, the individual should approach an Insolvency Practitioner (IP), who will then establish what they can afford to pay (what proportion of the debt) and how long the IVA lasts (up to a maximum of 6 years).
- 34.19. The IP then writes to creditors proposing this solution, and creditors holding 75% of the debt value have to agree to the proposal. If agreed, the IVA then starts.
- 34.20. The IVA will then continue to completion, as long as the individual complies with the payment plan laid out.
- 34.21. An IVA gives the individual more control of their assets than any other solution, so is applicable to those in problem debt, but who own assets, such as a home.
- 34.22. An IVA will affect their credit score while it runs and 3 months after completion their details are removed from the Individuals Insolvency Register. Therefore, after a maximum of 75 months, debts are cleared and there is no further impact on the individual.
- 34.23. DROs are aimed at the most financially vulnerable, so are only suitable for those who owe less than £20,000, do not own their home, and do not have disposable income.

- 34.24. DROs stop creditors pursuing payment (apart from some specific charges, like student loan, court fines, upcoming but not past rent and utility bills) and after 12 months your debts are removed.
- 34.25. This also affects individual's credit rating for 6 years and their details are removed 3 months after completion.

35. Promoters

35.1. We thought it would be useful to provide some more information on the avoidance market and HMRC's approach to avoidance, including recent policy measures designed to tackle promoters and enablers.

Overview of market and HMRC approach

- 35.2. We have seen a shift in the behaviours of those promoting avoidance schemes, primarily as a result of the legislation that has been introduced, which is targeted at those who promote and enable tax avoidance. This has meant a reduction in the number of new avoidance schemes. The number of all avoidance schemes disclosed under the Disclosure of Tax Avoidance Scheme (DOTAS) has fallen from around 600 in 2005-06 to 16 in 2018-19.
- 35.3. It has also meant that more reputable agents and tax advisers have largely moved away from marketing avoidance schemes. But there is a smaller pool of promoters who remain active in promoting tax avoidance schemes. We are vigorously challenging schemes which should have been disclosed under DOTAS. In 18/19 of the 16 DOTAS notifications, 11 were as a result of proactive interventions from HMRC to persuade the promoters to notify.
- 35.4. Promoters are increasingly registered offshore, do not deal with HMRC directly and are solely web based in their marketing. Many of the key players now remain pretty constant but operate though a succession of vehicles which can be short-lived and disappear before HMRC has had a chance to challenge the scheme. Applying the promoters' legislation is more challenging where the promoter is offshore. We robustly challenge claims to the residency position of offshore promoters in order to establish whether there is actually a UK presence. These cases involve complex investigations. Our enquiries also extend to other parties in the UK who are involved in enabling the scheme. We have over 100 investigations in to promoters and others involved in selling tax avoidance schemes.
- 35.5. Our priority is upstream activity, tackling the supply of tax avoidance schemes, turning up the heat on promoters and disrupting their business model:
 - In 2019/20 HMRC will double the resources we devote to tackling promoters and other upstream initiatives.
 - The Promoters of Tax Avoidance (POTAS) and the Enablers legislation are intended to change behaviours and deter promoters and others from selling avoidance schemes, but we will apply the sanctions where needed. We have issued conduct notices in a handful of cases, which allow us to actively monitor promoters. On challenge other promoters have chosen to cease their promoter activity entirely.

- While it is too early for Enablers penalties to have been charged yet (the penalty only applies to
 transactions that occurred after 16 November 2017) we are currently challenging a number of
 arrangements, seeking to apply penalties at the earliest opportunity. The Enablers' legislation is
 having an impact, with some promoters having publicly announced that they will not offer any
 further schemes.
- We are working with partner agencies, for example:
 - We have made three successful complaints to the Advertising Standards Authority (ASA) about misleading advertising. These rulings has seen certain misleading content on websites taken down. We have identified further instances of, in HMRCs view, promoters breaching ASA guidelines and HMRC will be submitting complaints in respect of these. In addition we have started writing to a number of promoters referencing earlier ASA decisions following HMRC complaint and have already achieved a positive outcome.
 - o following our engagement, the accountancy profession, which represents 2/3rds of the advisory community, tightened up their code of conduct (the 'Professional Conduct in Relation to Taxation' PCRT). This has been key to the shift of more reputable agents away from promoting tax avoidance.
- 35.6. Reducing the demand for avoidance schemes is also key to disrupting the promoter's business. As part of this, we are piloting:
 - contacting customers directly and earlier where our data suggests they might have started to
 use an avoidance scheme to support them withdrawing from the scheme, before they have built
 up significant tax liabilities. For example, in the last 18 months we have sent over 1500 letters
 directly to individual users to nudge them towards compliant behaviours; and
 - planning more communications to alert people to the risks of avoidance.
- 35.7. HMRC iscommitted to publishing a Promoter Strategy by 31 March 2020, which will outline HMRC's future strategy.
- 35.8. HMRC is also undertaking an evaluation of the implementation of powers granted to HMRC since 2012 which includes anti-avoidance legislation such as the GAAR and the POTAS regime etc. The evaluation is due to report in early 2020.

Legislation

- 35.9. A range of policy measures have been introduced since 2013, including: the Accelerated Payments regime (2014); Follower Notices (2014); the General Anti-Abuse Rule (GAAR) (2013); a tough regimes of penalties and monitoring requirements for high risk promoters (the Promoters of Tax Avoidance Scheme 'POTAS' rules 2014), and serial tax avoiders (2015).
- 35.10. In 2017 a tough new financial penalty was introduced of 100% of the fees earned by any person who knowingly enables a tax avoidance arrangement that is later defeated by HMRC (referred to as the Enablers Penalty Regime'). The Enablers Penalty Regime applies to defeated abusive tax arrangements where enabling took place on or after 16 November 2017.

Legal professionals

- 35.11. Put simply a promoter for the application of DOTAS and POTAS is a person who designs, organises or manages, or markets avoidance schemes. An enabler is anyone who knowingly facilitates and enables the use of an abusive arrangement that is later defeated. There are five types of enabler in the Enablers Penalty Regime, an enabler can be a designer, manager, marketer, enabling participant or financial enabler. You will see from this that a promoter will always be an enabler.
- 35.12. A regulated legal professional can be a promoter or enabler on their own terms but also an enabler if they have knowingly given advice on an abusive tax arrangement. There is extensive guidance on GOV.UK on the definition of enabler and how someone providing legal advice can be an enabler, which can be found at:

www.gov.uk/guidance/tax-avoidance-enablers-who-is-classed-an-enabler

Email0005 attachment 2 – withheld under section 35(1)(a)

Within email sent 08 November 2019 16:54

Email0014 attachment 1 – withheld under section 35(1)(a)

Within email sent 11 November 2019 13:32

Email0014 attachment 2

Within email sent 11 November 2019 13:32



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Sir Amyas Morse Independent Loan charge Review

By email only

Date 11 November 2019

www.gov.uk

Dear Sir Amyas,

Thank you for your request for further information of 4 November 2019.

We have responded to the majority of questions, and provided some additional information we hope you find useful.

Separately, we have written jointly with HM Treasury about unprotected years and time to pay arrangements.

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Yours sincerely

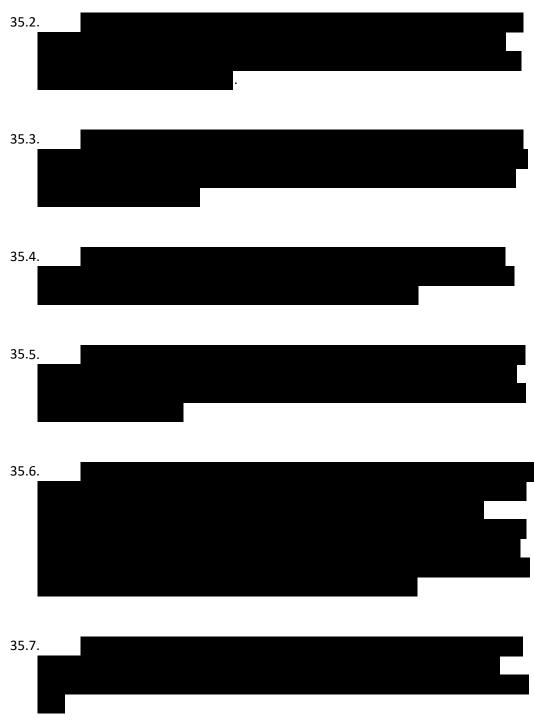
Carol Bristow

Mary Aiston

30. Loans in scope of the loan charge

35.1. Question 8 from your request of 4 November 2019 refers to changing the start date for loans in-scope of the loan charge to December 2010 or April 2011.

Costings and volumetrics





Reported incomes

35.10. Table 1 below shows the reported 2017/18 income distribution for those who have exclusively used DR schemes since 6 April 2011. We have also excluded those who we know have used a DR scheme in 2017/18, as their reported incomes are supressed, to give a better reflection of actual incomes.

Declared Income 2017/18	% where income is known
£0	2%
£1 - £19,999	26%
£20,000 - £29,999	12%
£30,000 - £39,999	13%
£40,000 - £49,999	16%
£50,000 - £59,999	8%
£60,000 - £79,999	9%
£80,000 - £99,999	6%
Over £100,000	9%
Total	100%

Source: Analysis provided by KAI using data from

iCA and reported income from PAYE/SA returns

35.11. Table 2 below shows the same analysis for those who have exclusively used DR schemes since 6 April 2011 and have settled.

Declared Income 2017/18	% where income is known
£0	1%
£1 - £30,000	21%
£30,000 - £50,000	29%
£50,000 - £100,000	32%
£100,000 - £250,000	15%
Over £250,000	3%
Total	100%

Source: Analysis provided by KAI using data from

iCA and reported income from PAYE/SA returns

35.12. Table 3 below shows the same analysis as Table 2 above, but also includes the settlement amount distributions.

				Se	ettlement yie	eld bandings	for users wit	Settlement yield bandings for users with usages after April 2011 exclusively	er April 201	L exclusively		
		% of individuals within each income band where Income is Known	£1 - 10,000	£10,000 - 20,000	£20,000 - 30,000	£30,000 - 40,000	£40,000 - 50,000	£50,000 - 75,000	£75,000 - £100,000 100,000 -250,000		Over £250,000	Total
-	03	1%	50%	-*	'*	*	*	*	-*	*	'*	100%
5	£1-£30,000	21%	55%	16%	10%	6%	4%	4%	-*	4%	-*	100%
ding	£30,000 - £50,000	29%	49%	14%	8%	5%	4%	8%	3%	6%	1%	100%
Band	£50,000 - £100,000	32%	30%	16%	13%	7%	5%	10%	6%	10%	2%	100%
E	£100,000 - £250,000	15%	21%	11%	12%	9%	7%	11%	5%	18%	6%	100%
_	Over £250,000	3%	26%	15%	*	*	*	*	*	15%	13%	100%
	All	100%	40%	14%	11%	7%	5%	8%	4%	9%	2%	100%
	Source: Analysis prov	Source: Analysis provided by KAI using data from Counter-Avoidance Operational Database	from Cou	unter-Avoida	nce Operati	onal Databas	ě					
	* Figures have been s	* Figures have been suppressed due to case numbers in the underlying data falls below 5 to prevent potential disclosure of sensitive information	numbers	s in the unde	rlying data fi	alls below 5	to prevent p	otential discl	osure of sen	sitive inforr	nation	

2017-18 Income

35.13. Table 4 below shows the reported 2017/18 income distribution for those who have exclusively used DR schemes before 6 April 2011.

Declared Income 2017/18	% where income is known
£0	2%
£1 - £19,999	21%

£20,000 - £29,999	8%
£30,000 - £39,999	9%
£40,000 - £49,999	16%
£50,000 - £59,999	8%
£60,000 - £79,999	12%
£80,000 - £99,999	9%
Over £100,000	14%
Total	100%

Source: Analysis provided by KAI using data from

iCA and reported income from PAYE/SA returns

- 35.14. Tables 1 to 4 exclude those who have used schemes in years both before and after 6 April 2011.
- 35.15. Table 5 below shows the mean and median settlement amounts for individuals who have settled based on the sample of 1,600 settlements.

	All years	Exclusively before 6 April 2011	Exclusively after 6 April 2011	Both before and after 6 April 2011
Mean settlement	£59,000	£64,000	£43,000	£69,000
Median settlement	£18,000	£17,000	£16,000	£25,000

Anti-forestalling rules

- 35.16. At Autumn Statement 2010, on 9 December 2010, the government announced it would introduce the rules which became Part 7A ITEPA 2003 from 6 April 2011.
- 35.17. The government wanted to avoid the forestalling risk of employers and individuals entering into DR schemes in the period before the legislation commenced. It was not possible to fully introduce Part 7A from 9 December 2010 so the government introduced anti-forestalling rules.
- 35.18. These applied to anyone who:
- received a payment between the 9 December 2010 and 5 April 2011;

- the payment was in a form and manner which Part 7A would apply if it was enacted; and
- had not repaid the amount by 5 April 2012.
 - 35.19. The effect of this was that the individual or employer would be liable to the tax on the amount received in the anti-forestalling period as part of their taxable income for 2012/13.
 - 35.20. Individuals and employers who used a DR scheme during the forestalling period are ignoring the legislation in the same way as those who used a scheme after 6 April 2011.
 - 35.21. We believe the Autumn Statement 2010 announcement caused a temporary pause in promotion by some promoters while they considered how to respond. Therefore, there should be not a large number of individuals and employers who have used DR schemes in the forestalling period.
 - 35.22. If the loan charge applied to loans made since 9 December 2010, employers who used a scheme in the anti-forestalling period will be able to identify the loan amounts as they usually only used the scheme once a year to make a single large loan. However, some individuals may not be able to identify loans made solely in the anti-forestalling period, which may lead to disputes about when loans were made and apportioning.

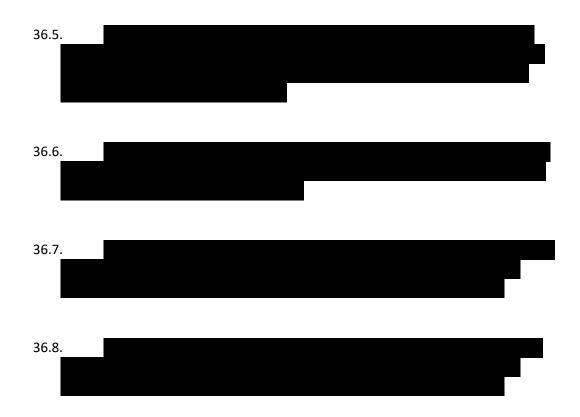
36. Unprotected years

- 36.1. Question 8 from your request of 4 November 2019 also refers to excluding from the scope of the loan charge unprotected years from December 2010 or April 2011.
- 36.2. As set out previously, the iCA database does not record whether a year is protected or not. We have undertaken some stratified sampling of around 1,600 individual and 300 employer settlements to identify the number and value of unprotected years.
- 36.3. Unprotected years have been defined within this sample of data as years that are not under formal enquiry by HMRC, are not subject to formal assessments raised by HMRC and the statutory time limits for opening a formal enquiry or raising assessment have expired.

36.4. Table 5 below sets out the output of that analysis for schemes used since 6 April 2011.

	Individuals	Employers
Proportion of years that are unprotected	10-15%	10-25%
Proportion of users with at least one unprotected year	15-20%	15-30%
Proportion of tax at risk that is unprotected	15-20%	15-20%

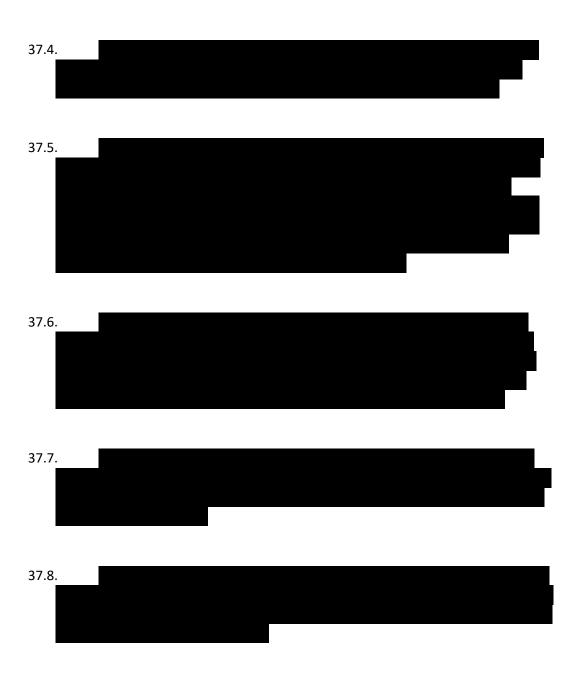
Source: Analysis provided by KAI based on a sample of settlements



37. Loan charge design

37.1. The loan charge design charges all the outstanding loan balance to income tax in the 2018/19 tax year, sometimes referred to as 'income stacking'.

- 37.2. The biggest driver for this design choice was simplicity. It is straightforward to understand and administer, for employers, individuals and HMRC. It did not require any IT system changes or new forms. The announcement in 2016 was designed to allow users a number of years to pay the underlying liability to prevent all outstanding loans being taxed in one year.
- 37.3. The loan charge was not designed to target a specific amount of tax from individual cases. It seeks to ensure that income which has not previously been taxed as employment income is taxed as such.





37.13. Table 6 below sets out the number of repeated usages of DR schemes by individuals.

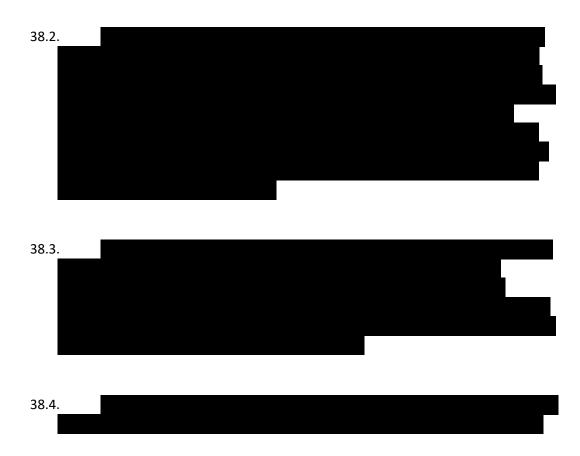
Number of	Proportion of	Proportion of
Years in DR	individuals who	individuals who
Avoidance	have used a	have exclusively
	scheme after 6	used a scheme
	April 2011	after 6 April 2011
4	420/	400/
1	43%	48%
2	27%	28%
3	13%	11%
	4.00/	420/
4 or more	16%	12%

Source: Analysis provided by KAI using data from iCA

37.14. The mean and median for both are 2 years, when rounded to the neared whole year. You may consider this to be an appropriate number of years to spread the outstanding loan balance.

38. Settlements

38.1. The settlement agreements are structured so that they settle the underlying tax liability from when the DR scheme was used, which means the loan charge does not arise. When the parties enter into the settlement agreement, this means that, in the case of protected years, the enquiries into the underlying tax liability are closed, and any assessments discharged.



39. Time to Pay and support for those unable to pay

39.1. We thought it might be useful to provide some more information about how Time to Pay works, how HMRC handles those customers who are unable to pay, and the debt options that are already available for those in financial difficulty.

Time to Pay

39.2. HMRC will start debt conversations by asking whether the customer is able to pay. Where a customer is unable to pay in full, then HMRC will move to a

discussion about Time to Pay. This is always a preferable outcome to any enforcement action, as it is a better solution for the customer and lower cost for HMRC. The rest of the Time to Pay process, as described below, normally happens in a single call.

- 39.3. On some occasions a customer may respond to the initial question about payment by saying they could pay over a short period, for example less than three months. In this scenario, we would not complete a full income and expenditure assessment. HMRC's income and expenditure assessment is aligned with the industry standard Single Financial Statement (SFS), used by debt charities and creditors.
- 39.4. If the customer does not indicate they are able to pay over a short period, then we will proceed to use the income and expenditure assessment to identify the income and assets that an individual has, alongside their expenses.
- 39.5. If they have assets, then HMRC will ask whether they can be realised and to what timescale. This timescale is set by the customer rather than HMRC because they are better informed about how to realise the value (for example, a Director of a company may consider selling their share of that company, but timing plays a major role in the price achieved). We have committed that we will not make an individual sell their main home to pay their DR debt or the loan charge.
- 39.6. HMRC will ask the customer about opportunities to reduce their expenditure, and will focus on any areas that are significantly different to our expectation.



39.8. The income & expenditure enables us to identify disposable income. HMRC does not seek 100% of disposable income, but instead makes a judgement on the level that the customer requires for the plan to remain sustainable, even where unexpected expenses or reduced income occur. This includes consideration of their circumstances (e.g those with children are more likely to have increased expenses), and income (e.g. those on a zero hours contract will have more volatile earnings).

- 39.9. Once the monthly affordable figure is established, HMRC divides the debt value by that figure to work out the length of the payment arrangement.
- 39.10. Where a customer realises they are unable to make their payments part way through a plan, they can contact HMRC, share their new income and expenditure information and we will amend the plan.
- 39.11. In a scenario where the income and expenditure shows that the customer cannot repay anything, then HMRC will cease pursuit activity and put the debt on hold until we are notified about a change in circumstances. In relation to financial difficulty, we only remit debt where it is clear that the customer will never be able to repay any of their charge.
- 39.12. Interest applies throughout a Time to Pay, but once agreed no payment penalties are applied.
- 39.13. Time to Pay is delivered at scale, with 640,000 customers currently paying HMRC through one. They are the full range of lengths, with 15,000 per annum being agreed for over 10 years (primarily tax credits). There are currently over 85,000 debts that are over 10 years old and are being repaid through Time to Pay
- 39.14. Around 90% of Time to Pay agreements are completed successfully. We would not expect that to be 100% because some debtors will choose other options, such as those below. In addition, for businesses HMRC needs to decide whether the business is sustainable in the medium term or whether HMRC should file for insolvency.
- 39.15. Time to Pay policy has worked successfully across a range of scenarios, from the financial crisis of 2008 to Foot and Mouth, and flooding, as well as previous avoidance measures, like Accelerated Payments.

Debt Solutions

- 39.16. There is already a range of solutions designed for people who are in debt, but are unable to afford to pay it. These include Individual Voluntary Arrangements (IVAs), and Debt Relief Orders (DROs).
- 39.17. IVAs will be the most applicable to the individuals who have used DR schemes. An IVA is an agreement with all an individual's creditors to pay all or part of their debts.

- 39.18. To obtain an IVA, the individual should approach an Insolvency Practitioner (IP), who will then establish what they can afford to pay (what proportion of the debt) and how long the IVA lasts (up to a maximum of 6 years).
- 39.19. The IP then writes to creditors proposing this solution, and creditors holding 75% of the debt value have to agree to the proposal. If agreed, the IVA then starts.
- 39.20. The IVA will then continue to completion, as long as the individual complies with the payment plan laid out.
- 39.21. An IVA gives the individual more control of their assets than any other solution, so is applicable to those in problem debt, but who own assets, such as a home.
- 39.22. An IVA will affect their credit score while it runs and 3 months after completion their details are removed from the Individuals Insolvency Register. Therefore, after a maximum of 75 months, debts are cleared and there is no further impact on the individual.
- 39.23. DROs are aimed at the most financially vulnerable, so are only suitable for those who owe less than £20,000, do not own their home, and do not have disposable income.
- 39.24. DROs stop creditors pursuing payment (apart from some specific charges, like student loan, court fines, upcoming but not past rent and utility bills) and after 12 months your debts are removed.
- 39.25. This also affects individual's credit rating for 6 years and their details are removed 3 months after completion.

40. Promoters

40.1. We thought it would be useful to provide some more information on the avoidance market and HMRC's approach to avoidance, including policy measures designed to tackle promoters and enablers.

Overview of market and HMRC approach

- 40.2. We have seen a shift in the behaviours of those promoting avoidance schemes over the last few years. This has moved to a smaller group of promoters determined to profit from marketing tax avoidance, while more reputable agents and tax advisers have largely moved away from this area.
- 40.3. Changes in legislation to address those promoting and enabling tax avoidance schemes, the introduction of Accelerated Payments and Follower Notices, as well as HMRC's success in litigating avoidance have been significant factors in this shift.

40.4. We have seen:

- a reduction in the number of new avoidance schemes disclosed under the Disclosure of Tax Avoidance Scheme (DOTAS), which has fallen from around 600 in 2005-06 to 16 in 2018-19.
- a smaller pool of promoters who are purposefully not making voluntary disclosures in an
 attempt to make our compliance effort more difficult, also significantly because it will bring
 schemes users into the APN regime. In 18/19 of the 16 DOTAS notifications, 11 were as a
 result of proactive interventions from HMRC to persuade the promoters to notify.
 - 40.5. Promoters are increasingly registered offshore, do not deal with HMRC directly and are solely web based in their marketing. Many of the key players now remain pretty constant but operate though a succession of vehicles which can be short-lived and disappear before HMRC has had a chance to challenge the scheme.
 - 40.6. While the profile of the avoidance scheme marketplace has narrowed in breadth, the profile of the scheme user has changed enormously towards a higher volume of less affluent users, raising the stakes in tackling those promoting and marketing tax avoidance schemes.
 - 40.7. Our approach focuses on upstream activity, identifying new avoidance schemes and tackling the supply chain to disrupt promoters business model. This includes:
- In 2019/20, HMRC will double the resources we devote to tackling promoters.
- We are using and piloting a range of approaches to identify new avoidance schemes, including profiling employer real time information (RTI) returns and web-based research.
- We are clamping down on promoters who try and avoid disclosing their schemes under DOTAS - over the past 2 years HMRC has litigated more than 10 promoter businesses for

- failure to disclose a scheme under DOTAS, with around 20 others disclosing schemes following challenge, to avoid litigation. Further cases will be litigated during 2019-20.
- Six cases have been heard, all in relation to disguised remuneration avoidance arrangements. The four decisions received so far have all confirmed HMRC's view that the schemes are notifiable under the DOTAS regime, with decisions awaited in the further two cases. Penalty action is considered in all cases that HMRC win.
- The Promoters of Tax Avoidance (POTAS) and the Enablers legislation are intended to change behaviours and deter promoters and others from selling avoidance schemes, but we will apply the sanctions where needed. We have issued conduct notices in a handful of cases, which allow us to actively monitor promoters. On challenge other promoters have chosen to cease their promoter activity entirely.
- While it is too early for Enablers penalties to have been charged yet (the penalty only applies
 to transactions that occurred after 16 November 2017 2017 and when HMRC has
 investigated and defeated the scheme) we are currently challenging a number of
 arrangements, seeking to apply penalties at the earliest opportunity. The Enablers'
 legislation is having an impact, with some promoters having publicly announced that they
 will not offer any further schemes.
- We take a holistic approach to tackling promoters. We are investigating over 100 promoters
 and others involved in tax avoidance with the majority of these linked or closely associated
 with in the region of 20 key entities. As appropriate, HMRC challenges on each include one,
 more or all of the following: DOTAS, POTAS, Enablers as well as enquiries into individuals or
 companies' tax returns.
- We are working with partner agencies, for example:
 - We have made three successful complaints to the Advertising Standards Authority (ASA) about misleading advertising. These rulings have seen certain misleading content on websites taken down. We have identified further instances of, in HMRCs view, promoters breaching ASA guidelines and HMRC will be submitting complaints in respect of these. We have also started writing to a number of promoters referencing earlier ASA decisions following HMRC complaint and have already achieved a positive outcome.
 - following our engagement, the accountancy profession, which represents 2/3rds of the advisory community, tightened up their code of conduct (the 'Professional Conduct in Relation to Taxation' – PCRT). This has been key to the shift of more reputable agents away from promoting tax avoidance.
 - 40.8. Reducing the demand for avoidance schemes is also key to disrupting the promoter's business. As part of this, we are:
- piloting different approaches to contacting customers directly and earlier where our data suggests they might have started to use an avoidance scheme to support them withdrawing from the scheme, before they have built up significant tax liabilities. For example, in the last

- 18 months we have sent over 1,500 letters directly to individual users to nudge them towards compliant behaviours;
- seeking to identify new schemes quickly and respond swiftly. For example, we published
 Spotlight 49 in response to loan busting schemes designed to get around the loan charge.
 We ran a paid-for ad campaign which significantly increased traffic to the Spotlight (by 760%
 compared with the previous month) and warn people against using it; and
- working with accountancy and taxation professional bodies in developing products aimed at specific groups e.g. to raise awareness of the risks of tax avoidance schemes and deter people from using them.
 - 40.9. HMRC is committed to publishing a Promoter Strategy by 31 March 2020.
 - 40.10. HMRC is also undertaking an evaluation of the implementation of powers granted to HMRC since 2012, which includes anti-avoidance legislation such as the General Anti-Abuse Rule (GAAR) and the POTAS regime. The evaluation is due to report in early 2020.

Legislation

- 40.11. A range of policy measures have been introduced since 2013, including: the Accelerated Payments regime (2014); Follower Notices (2014); the GAAR (2013); a tough regimes of penalties and monitoring requirements for high risk promoters (the Promoters of Tax Avoidance Scheme 'POTAS' rules (2014), and serial tax avoiders (2015).
- 40.12. In 2017, a tough new financial penalty was introduced of 100% of the fees earned by any person who knowingly enables a tax avoidance arrangement that is later defeated by HMRC (referred to as the Enablers Penalty Regime'). The Enablers Penalty Regime applies to defeated abusive tax arrangements where enabling took place on or after 16 November 2017.

Legal professionals

40.13. Put simply a promoter for the application of DOTAS and POTAS is a person who designs, organises or manages, or markets avoidance schemes. An enabler is anyone who knowingly facilitates and enables the use of an abusive arrangement that is later defeated. There are five types of enabler in the Enablers Penalty Regime, an enabler can be a designer, manager, marketer, enabling participant or financial enabler. You will see from this that a promoter will always be an enabler.

40.14. A regulated legal professional can be a promoter or enabler on their own terms but also an enabler if they have knowingly given advice on an abusive tax arrangement. There is extensive guidance on GOV.UK on the definition of enabler and how someone providing legal advice can be an enabler, which can be found at:

www.gov.uk/guidance/tax-avoidance-enablers-who-is-classed-an-enabler

Email0016 attachment 1 - withheld under section 35(1)(a)

Within email sent 22 October 2019 12:48

Email0018 attachment 1

Within email sent 19 November 2019 17:20



Carol Bristow

Director, Individuals Policy

Mary Aiston

Director, Counter Avoidance

100 Parliament Street

London

C14/1 A 2DA

Sir Amyas Morse Independent Loan Charge Review

By email only

Date 19 November 2019

www.gov.uk

Dear Sir Amyas,

Thank you for your request for further information of 11 November 2019.

We have responded to those questions, and provided some additional information we hope you find useful.

Separately, we have written jointly with HM Treasury about unprotected years and non-disclosure, and payment arrangements.

If you, or the review team, would like further clarification, or discussion on any points we would be happy to do so.

Yours sincerely

Carol Bristow

Mary Aiston

31. Loans in scope of the loan charge

- 40.15. In our previous responses, we have provided you with analysis of the reported 2017/18 incomes for individuals covering the following populations for those who have:
- used DR schemes and have settled (26 September);
- exclusively used DR schemes since 6 April 2011 (11 November);
- exclusively used DR schemes since 6 April 2011 and have settled (11 November); and
- exclusively used DR schemes prior to 6 April 2011 (11 November).
 - 40.16. As requested, below we have also provided analysis of reported 2017/18 incomes for individuals covering the following populations for those who have exclusively used DR schemes:
- prior to 6 April 2011 and have settled;
- since 6 April 2011 and have not settled; and
- prior to 6 April 2011 and have not settled.
 - 40.17. Overall, this analysis shows that those who have not settled and used disguised remuneration (DR) schemes exclusively before 6 April 2011 tend to have higher incomes than those who used schemes exclusively after 6 April 2011. For information, 44% of individuals who have not settled and exclusively used a DR scheme before 6 April 2011 have reported 2017/18 income of £50,000 or more, compared to only 29% of individuals who exclusively used a DR scheme after 6 April 2011.
 - 40.18. The analysis also shows that the average settlements amounts for individuals who used DR schemes exclusively after 6 April 2011 are lower than those used for schemes exclusively before 6 April 2011. We set this out at table 5 at paragraph 30.15 in our response of 11 November.
 - 40.19. Table 1 below shows the reported 2017/18 income distribution for those who have exclusively used DR schemes prior to 6 April 2011 and have already settled.

Declared Income	% where income is
2017/18	known
£0	2%
£1 - £30,000	27%
£30,000 - £50,000	27%
£50,000 - £100,000	28%
£100,000 - £250,000	14%
Over £250,000	3%
Total	100%

Source: Analysis provided by KAI using data from

iCA and reported income from PAYE/SA returns

40.20. Table 2 below shows the same analysis as Table 1 above, but also includes the settlement amount distributions.

	20	• • •	-18 and					
All	Over £250,000	£100,000 - £250,000	£50,000 - £100,000	£30,000 - £50,000	£1 - £30,000	£0		
100%	3%	14%	28%	27%	27%	2%	% of individuals within each income band where Income is Known	
35%	۰*	19%	30%	38%	47%	46%	£1 - 10,000	
12%	۰*	13%	12%	12%	13%	¹*	£10,000 - 20,000	Settleme
9%	۰*	9%	10%	9%	8%	۱*	£10,000 - £20,000 - £30, 20,000 30,000 40,	nt yield ba
6%	۰*	5%	7%	5%	6%	14%	£30,000 - 40,000	ındings fo
5%	۰*	5%	6%	6%	5%	*	£40,000 - 50,000	r users wi
9%	16%	14%	9%	8%	6%	'*	£50,000 - 75,000	th usages
7%	9%	11%	6%	6%	5%	'*	£75,000 - 100,000	before Ap
13%	25%	17%	16%	11%	8%	'*	000 - £40,000 - £50,000 - £75,000 - £100,000 Over 000 50,000 75,000 100,000 - 250,000 £250,000	Settlement yield bandings for users with usages before April 2011 exclusively
5%	29%	7%	3%	4%	3%	'*	Over £250,000	xclusively
100%	100%	100%	100%	100%	100%	100%	Total	

40.21. Table 3 below shows the distribution of reported income for those who have exclusively used DR schemes prior to 6 April 2011 and have <u>not</u> settled.

Declared Income	% where income is
2017/18	known
£0	3%
£1 - £30,000	30%
£30,000 - £50,000	25%
£50,000 - £100,000	30%
£100,000 - £250,000	12%
Over £250,000	2%
Total	100%

40.22. Table 4 below shows the income distribution of income reported for those who have exclusively used DR schemes after 6 April 2011 (excluding users with usages in 2017-18) and have <u>not</u> settled.

Declared Income	% where income is
2017/18	known
£0	2%
£1 - £30,000	40%
£30,000 - £50,000	29%
£50,000 - £100,000	22%
£100,000 - £250,000	6%
Over £250,000	1%
Total	100%

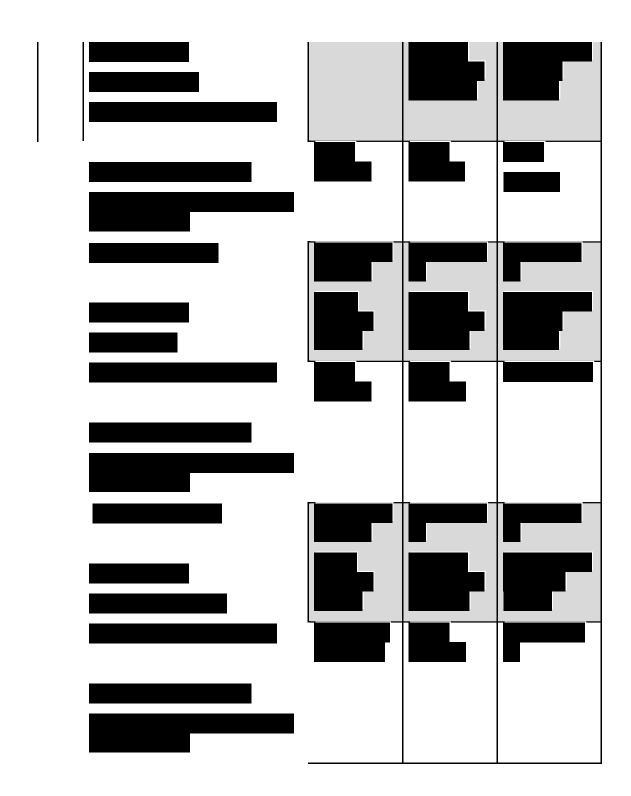
40.23. Our letter of 11 November, contained an error at paragraph 30.15 as to the source of the data for the analysis of mean and median settlements amounts. We

stated that the averages were based on the sample of 1,600 settlements but they are actually based on all settlements from the iCA database.

32. Loan charge design







34. Time to Pay and support for those unable to pay

34.26. Following our 11 November letter, we have provided further information and data on Individual Voluntary Agreements (IVAs) to explain the key difference in comparison to Time to Pay (TTP) arrangements. We also note the differences to bankruptcy where appropriate.

- 34.27. At the end of this section, we have also included analysis of all existing TTP arrangements.
- 34.28. We compare the different approaches for the following areas:
 - Timescale
 - Assets
 - Affordability
 - Debts included
 - Agreements
 - Interest
 - Access to credit
 - Professional status
 - Fees
 - Access
 - Incentives
- 34.29. This analysis shows that IVAs provide an existing, deliverable solution for those in 'problem' debt, which enables debts to be cleared in 6 years, with very limited wider impacts, particularly for lower earners. It enables an individual to make their overall debt position, across all creditors, manageable through debt reduction, stops interest, and involves an impartial assessment of affordability.

Timescale

- 34.30. IVAs are set up for a maximum of 6 years, although are normally limited to 5 years, and there is no minimum. It is possible to have a "full and final" IVA, although this is primarily where you have a large, specific windfall, but no ongoing ability to pay (e.g. house sale). If you miss payments or reduce them then the IVA will be extended to adjust for those changes in payment.
- 34.31. There is no minimum or maximum limit to the length of TTP arrangements. They are also flexible if payments are missed or reduced.

Assets

34.32. In an IVA, an Insolvency Practitioner (IP) assesses your disposable income to determine what can be paid over the timeframe. If you have assets, then the IP will assess what equity can be released from them. For example, where individuals have equity in their home, the IVA will

often expect release of some of that equity (this is only expected where the value is significant in paying the debts). However, you have control over your assets and can determine how they are included in your proposal to creditors. You will not be forced to sell your home in an IVA.

- 34.33. In a TTP, HMRC would also expect realisation of assets and if this is not happening has the option to enforce on those. HMRC has committed to not force individuals to sell their primary home for a loan charge TTP.
- 34.34. In bankruptcy, an individual loses control of their assets and the IP determines how they are realised, following the creditor hierarchy.

Affordability

- 34.35. In an IVA an IP supports the debtor in assessing their disposable income, and realistic realisation of assets, and therefore assesses how much of the debt could be repaid through an IVA (there is no fixed rules on how much debt can be written off; it's determined by affordability).
- 34.36. The IP then proposes this offer to creditors, and, if accepted (further info below) then the amount owed to creditors is amended to that level and is then paid to completion (and the IVA is a legal agreement). If you are unable to comply with the IVA due a change in circumstances, the IVA can be amended; normally through extension, but also through fundamental change with creditor agreement.
- 34.37. For a TTP, HMRC performs a similar assessment through its Income and Expenditure process, but establishes how much can be paid, then divides the outstanding debt by that amount to determine length. If your ability to pay changes, then the TTP can be changed, providing the debtor contacts HMRC. If the debtor simply does not pay, then HMRC considers the TTP "failed" and will seek to engage with the debtor to arrange payment (normally through a new TTP).
- 34.38. In bankruptcy, all debts are written off and your assets are distributed to creditors.

Debts Included

34.39. An IVA will include debts from all creditors, apart from priority debts⁷. This enables an individual to be in an overall affordable position and simplifies payment (you pay one amount to one place each month).

⁷ Priority debts are mortgages and secured loans, rent and property service charges, upcoming (not historic) utility bills, hire purchase payments, student loans, child maintenance payments, current year council tax, and court fines.

- 34.40. A TTP will include HMRC debts only, so individuals may still have difficulty paying other debts. A loan charge debt will not be in a separate payment plan to, for example, the rest of any SA payments outstanding.
- 34.41. Bankruptcy will cover the vast majority of debts, apart from student loans, court required payments (fines and court orders), social fund loans etc. (and for secured debts, you either need to pay or your secured asset, including, potentially, your home if you have a mortgage, will go to creditors).

Agreement

34.42. IVAs need to be voted for by creditors who account for 75% of the debt value. We anticipate that HMRC will meet that criteria for the majority of those who owe the loan charge. Creditors generally support IVAs because it is a better alternative to bankruptcy, and because it is the best possible offer based on financial evidence. Year to date, HMRC accepted 57% of 4,000 offers.

34.43. The two primary reasons for not accepting IVAs⁸ were:

- HMRC did not believe it was the best possible offer, based on the evidence of the debtor's finances (therefore some of the 43% rejected will have become acceptances after amendments to the offer);
- HMRC was awaiting tax returns, so did not have the full debt position and cannot accept until those returns are submitted.



⁸ HMRC will also reject IVAs for other less frequent reasons, normally that the individual is subject to investigation or the debt has arisen due to evasion.

- 34.46. HMRC will accept TTP where an individual has worked through an Income and Expenditure assessment with us, and they have shown they are making efforts to pay (e.g. explaining how they are seeking to reduce expenditure where appropriate). As a TTP is an informal payment plan, it is always better for HMRC to agree a TTP (it is better to recover some tax than none). Should HMRC, at any point, discover that an individual has misinformed us during that process, we will seek to enter an improved payment plan or look to take enforcement action.
- 34.47. The courts determine whether someone is bankrupt through the legal bankruptcy process.

Interest and Late Payment Charges

- 34.48. In an IVA, interest and late payment charges are frozen at the point that the IVA is put in place.
- 34.49. In a TTP, interest continues to accrue, but no late payment charges are applied.
- 34.50. In bankruptcy, no further interest or late payment charges occur (as you no longer owe those debts).

Access to Credit

- 34.51. As part of the terms of an IVA, the debtor must ask the IP who arranged the IVA for permission if they wish to borrow more than £500, but the IP is able to authorise this. The IVA will remain on the individual's credit file for 6 years (or longer, if they are unable to pay the IVA in time and it is extended), so lenders will take it into account in their lending decisions.
- 34.52. A TTP will not affect an individual's your credit score, but lenders will normally seek information on outstanding debts as part of their decision making process, so having a large outstanding tax debt will affect access to credit in that way.
- 34.53. Bankruptcy will also remain on the individual's credit file for 6 years, and will have a larger impact on their credit score.

Professional Status

34.54. An IVA does not have a direct impact for the vast majority of professions. For some professions, primarily those which either relate to finance or where becoming insolvent might be seen as a risk to impartiality (for example, accountants, financial services, lawyers, and roles requiring Developed Vetting security status).

- 34.55. The range of roles affected is significantly less than those affected by bankruptcy. For example, if someone who is a chartered accountant with the Institute of Chartered Accountants in England and Wales (ICAEW) goes into bankruptcy, then they are disqualified. However, if with an IVA, ICAEW will investigate to understand if there are aggravating features (e.g. fraud or failure to cooperate), but if not then it is possible to continue operating. This is the same for Solicitors with the Solicitors Regulation Authority (SRA); although SRA may decide to put some limits on the individual's ability to operate, it will not stop them from operating (unless a similar aggravating feature is discovered). As a last example, going bankrupt someone from being a company director, but an IVA does not. The affected professions when someone enters an IVA relate to, typically, higher earners.
- 34.56. TTP does not have an impact on professional status as it is an informal agreement to repay debts.

Fees

- 34.57. There are fees associated with setting up IVAs. They are, however, inserted into the IVA, so are covered as part of that and therefore spread over the required time.
- 34.58. There are no fees for TTP, but ongoing interest is built into the plan.
- 34.59. In bankruptcy, the IP takes fees from the debtor's assets (in line with the creditor hierarchy).

<u>Access</u>

For an IVA, the individual needs to approach an IP to arrange it. There are, however, a number of options (e.g. Debt Management Plans, IVAs, Debt Relief Orders, and Bankruptcy) for those who are in debt and unable to pay in full. Therefore, we recommend that people seek advice in order to enter the right option for them. In order to do that, HMRC can commit to referring anyone who needs a 5 year or longer TTP to a Debt Advice charity. That charity will then provide free, impartial advice on which option is best for that individual.

34.60. For TTP, a taxpayer needs to phone HMRC and for bankruptcy, a debtor needs to apply to the courts.

Incentives

34.61. In an IVA, the incentive is to complete the IVA as soon as possible – the debt amount is fixed and the sooner it is paid, the quicker your IVA is completed. In bankruptcy, the debt is cleared. In a normal TTP, the incentive is to pay as quickly as possible in order to manage interest.

Existing Time to Pay arrangements

- 34.62. We have analysed the TTP arrangements we entered into in 2017/18 that had a length of ten years or more. In our analysis, there were around 17,500 new TTPs over 10 years in 2017/18, consisting of around 16,000 related solely to tax credits (TC) debts and around 1,500 related to income tax debts arising from Self Assessment (SA). We have not examined TTP arrangements for the other heads of duty and, as this analysis was for new TTPs agreed 2017/18, it reflects only a small, although representative, portion of the existing stock of TTPs over 10 years.
- 34.63. In the time available we were only able to match around 50% of the SA cases, and around 75% of the TC cases, to identify their reported 2017/18 incomes.
- 34.64. The TC cases unsurprisingly relate to those with lower incomes, around 90% of the 12,000 cases we could identify have incomes of less than £30,000 and around half of these relate to debts of under £5,000.
- 34.65. The SA cases, which are likely to be more representative of DR scheme users, show higher incomes and higher average debts.
- 34.66. Table 6 below shows the number of TTP arrangements over 10 years entered into in 2017-18 related to SA cases by income distribution and outstanding debt.

2017/18 income	Debt amo				
bandings	£1 to £2,499	£2,500 to £4,999	£5,000 to £7,999	£8,000 & Over	All
£1 to £29,999	15%	3%	11%	31%	60%
£30,000 to £49,999	3%	-	2%	13%	18%
£50,000 to £99,999	2%	-	2%	9%	13%
£100,000 to £249,999	-	-	-	6%	6%
£250,000 & Over	0%	0%	0%	2%	2%
All	20%	3%	15%	61%	100%

Component parts as shown may not sum to the totals exactly due to independent rounding.

34.67. Table 7 below shows the value of TTP arrangements over 10 years entered into related to SA cases by income distribution and outstanding debt.

2017/18 income	Debt amount bandings				
bandings	£1 to £2,499	£2,500 to £4,999	£5,000 to £7,999	£8,000 & Over	All
£1 to £29,999	1%	1%	3%	29%	33%
£30,000 to £49,999	0%	0%	0%	21%	21%
£50,000 to £99,999	0%	0%	1%	15%	15%
£100,000 to £249,999	0%	0%	0%	15%	15%
£250,000 & Over	0%	0%	0%	15%	15%
All	1%	1%	4%	94%	100%

Component parts as shown may not sum to the totals exactly due to independent rounding.

36. Employer settlements

36.1. In our previous correspondence on 26 September, we set out the various settlement opportunities since April 2011. Below we set out further detail on the withdrawal of a relief in March 2017 that encouraged employers to settle, and the interaction of Corporation Tax and the repayment of settlements.

Settlements between April 2016 and March 2017

- 36.2. Not all settlements that took place after 16 March 2016 until 31 March 2017 were motivated solely or predominately by a desire to avoid the loan charge.
- 36.15. On 16 March 2016, alongside the announcement of what would become the loan charge, the government announced the withdrawal of a significant relief contained in paragraph 59 of Schedule 2 to the Finance Act 2011 ("Paragraph 59"). That announcement prompted many employers to settle their underlying DR liabilities before 31 March 2017, when the relief was withdrawn.
- 36.3. The relief being withdrawn benefited only those employers that had used Employee Benefit Trusts (EBT) that had invested, rather than loaned to employees, some or all of the contributions made to them. Accordingly, such employers cannot be said to have been wholly motivated to settle their disguised remuneration liabilities by a desire to avoid the

loan charge. For many, the introduction of the loan charge will not have been relevant in their decision to settle.

- 36.4. Paragraph 59 was introduced alongside Part 7A of ITEPA 2003 to encourage those employers that had used DR schemes before 6 April 2011 to settle with us on the terms of the EBT Settlement Opportunity launched in April 2011 (the "EBTSO").
- 36.16. Paragraph 59 relief applied when income tax was paid on an amount of pre-April 2011 contribution to a DR scheme on the basis that it was earnings. The effect of the relief was that neither that amount, nor any investment returns accruing on that amount, would be taxed under Part 7A ITEPA 2003, when they were subsequently distributed to the employee by, most commonly, the trustee of the EBT.
- 36.17. However, it was announced on 16 March 2016 that the relief insofar as it applied to investment returns would only be available where income tax on the pre-April 2011 DR scheme contributions was paid by 31 March 2017. Where tax was not paid by 31 March 2017, Part 7A ITEPA 2003 would apply to the investment returns, whenever they were accrued, when they were eventually distributed to the employee. Please see examples 3 and 4 of the 16 March 2016 Technical Note published alongside the 2016 Budget for more details.
- 36.5. This presented a potentially significant increased tax charge for employers when EBT funds that had been invested, rather than loaned to employees, were eventually distributed to an employee. Therefore, it incentivised such employers to settle with HMRC before 31 March 2017.

Impact of repaying unprotected years on Corporation Tax (CT) liability

36.18. Repaying voluntary restitution years on employer settlements has a significant effect on the CT liabilities of the employer

36.19. Some employers did not claim a CT deduct when they use a DR scheme. When employers settled, they usually received a corresponding deduction in their taxable profit for the year of the contribution to the EBT, that in turn reduced their CT liability for that year. If part of these settlements were repaid, HMRC should be able to recover the corresponding CT relief given to employers. If HMRC was not able to do that, the employer would have paid less CT than they should have done for the years in which refunds were being made – and as a result would effectively be receiving a CT windfall for their use of avoidance.

- 36.20. In brief, during the settlement process, HMRC and the employer would usually net off the reduction in CT liability generated by the additional payment of PAYE/NIC (through the settlement).
- 36.21. Table 8 is a very simple example of how this would work, based on a £100 contribution to an EBT (ignoring any allowances).

Liability to PAYE/NIC	£53
Reduction in CT at circa 20%	£10
Associated CT interest credit	£2
Net Settlement actually paid by employers	£41 (=53-10-2)

- 36.22. Furthermore, not all settlements were calculated on the net basis set out above. For example, some employers did not net off the CT relief for the additional PAYE/NIC paid within the settlement but instead claimed the CT relief separately.
- 36.23. In some settlements, the amount of duties payable was reduced because part of the settlement was being accounted for by the EBT trustees. These different bases will have an effect on the calculation of CT relief given and in all cases HMRC should be able to recover the additional CT that is due on the employer's (now increased) profits.
- 36.24. HMRC should therefore be able to ensure that, irrespective of how the settlement amount was calculated, any repayment of Voluntary Restitution did not lead to the employer obtaining a CT advantage.
- 36.25. The CT relief is normally given in the year of contribution to the EBT. This may have been some time ago. So there will also be associated effects relating to CT rates and interest that HMRC should also be able to take into account.

35. Promoters

35.15. In previous responses, we set out how the avoidance industry has changed in recent years, and what HMRC are doing to combat avoidance. Below are responses to your follow-up questions from 11 November.

HMRC approach

- 35.16. To combat the promoter behaviours described in paragraphs 35 of our 11 November letter (a move to smaller promoters based offshore who focus on a higher volume of less affluent users) we have adopted the approach set out in paragraphs 35.7 to 35.8 of the letter. This includes doubling the resource we devote to tacking promoters, profiling real time information (RTI) data and working with partner agencies. Additionally, we are reviewing our existing powers (Promoters of Tax Avoidance Schemes (POTAS), Disclosure of Tax Avoidance Schemes (DOTAS), enablers etc), to ensure they support earlier interventions in the supply chain of avoidance schemes and further disrupting the business model of promoters.
- 35.17. The Promoter Strategy will articulate HMRC policy, operational and communication strategies for promoters. This will be published by 31 March 2020.
- 35.18. To date six disguised remuneration arrangements have been litigated under the DOTAS legislation with the courts deciding in HMRC's favour in four and decisions awaited in a further two cases. In addition, and as a consequence of HMRC challenge, a further 18 arrangements were voluntarily notified by promoters rather than face the Tribunal. The vast majority of these notifications were of disguised remuneration schemes.
- 35.19. As we said on our 1 October letter five significant promoters of disguised remuneration schemes have ceased promoting avoidance schemes. One major promoter of loan schemes publicly stated they would cease. Two significant players have both ceased and are encouraging their users to settle. Both would have faced action under POTAS had they not ceased.
- 35.20. However, as the profile of the avoidance scheme marketplace has narrowed in breadth, the profile of the scheme user has changed enormously towards a higher volume of less affluent users, raising the stakes in tackling those promoting and marketing tax avoidance schemes.
- 35.21. Currently, Counter Avoidance is investigating 100 promoters and other enablers involved in avoidance, with the vast majority of those enquiries involving disguised remuneration. These challenges include one or, in all probability, more than one of the following:
- Para 24 and/or S9A enquiry into the Promoter Company and key personnel

- VAT enquiry into the Company
- DOTAS enquiry
- Challenge under POTAS
- Challenges involving HMRC standards for agents⁹, GAAR, Enablers legislation
- Where appropriate referral to HMRC's fraud investigation directorate.

Promoters ceasing activity

- 35.22. Despite HMRC successes in litigation and in inducing disclosures the progress in tackling the DR market of avoidance schemes is challenging, as a determined group of promoters are still finding sufficient scope to profit from marketing their schemes, before we are always able to take action. We are now focused on 14 scheme promoters, many of whom are off shore.
- 35.23. When a promoter claims to be offshore, this poses additional challenges for HMRC. In a number of cases, we are challenging whether or not the promoter is genuinely resident offshore or is still resident in the UK.
- 35.24. In addition, we regularly exchange information with Fiscal Authorities from across the world. This helps to provide the evidence to challenge offshore Promoters. Non-Resident promoters do fall within the POTAS and Enablers Regime but enforcement is difficult.
- 35.25. Under DOTAS, offshore promoters should notify their scheme but if they do not, then the obligation to notify can fall on any person in the UK who satisfies the definition of promoter for DOTAS, or the users of the avoidance scheme. Our preferred approach in these cases is to use our powers to obtain information from those in the supply chain, for example, the enablers of the avoidance scheme who have a presence onshore.

37. Customer service

37.1. Following your meeting of 30 October with Jim Harra of HMRC and HMT, we said we would provide you with further information on HMRC's previous and

⁹ https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents

planned communication approach with customers who we can identify as having participated in an avoidance scheme.

Communications

- 37.2. There is no doubt that we could have done, and can still do more, to improve communication with our customers and that in too many cases we opened an enquiry and then failed to communicate sufficiently with the customer; sometimes for many years.
- 37.3. Until 2014 our approach to communicating with customers in avoidance cases was to work a lead case and focus on active correspondence with the promoter/agent who would agree to keep their clients informed of progress we would often formalise this arrangement by way of a 'representative sample agreement' (RSA). This had the unintended consequence of allowing some promoters to block some of HMRC's communication efforts and give an "all is well" message to clients when our communications to the promoter/agent made clear that we strongly believed otherwise. We have, to a large extent, moved away from this approach since 2014 and are more actively communicating with avoidance scheme users directly. Where we know about, and choose to investigate a scheme, we now seek to obtain information from each user we identify, not just a representative sample.
- 37.4. Avoidance schemes structured as syndicates where confidentiality prevents HMRC from sharing information relating to the syndicate with investors; and partnerships, where in common with the wider HMRC approach to enquiries, communication in connection with the partnership enquiry is routed through the nominated partner, pose a particular challenge. We plan to revisit our communications approach with these schemes too, with a view to applying our broader approach of more direct communication.
- 37.5. However, there will still be customers currently who have had "one-to-many" letters, but not had regular bespoke communications from us. This is likely to run into 1,000s given the challenges of managing over 110,000 open enquiries.
- 37.6. Part of our strategic approach to bringing customers' enquiries to earlier conclusion, particularly those who have been in a long standing avoidance dispute with us, is to write to them setting out where we have won in court the substantive argument that applies to the scheme they are a member of, the formal powers available to us, and the ease with which customers can settle with us. Our new approach, which we plan to gear up during 2020-21, is intended to encourage customers to engage and settle their dispute, which invariably saves the customer (and HMRC) from incurring further costs pursuing their dispute, which has little chance of success, through the courts (HMRC wins over 90% of disputes that customers take to court/ tribunal).

- 37.7. More broadly, our strategic approach to tackling customers who are using new avoidance schemes involves challenging scheme use in near real time by engaging with customers early to highlight the avoidance risk they present, and implications, before loans build up. An example of this strategy in action includes an approach we are currently piloting where, having identified a new avoidance scheme being set up, we're writing to each of the recorded scheme users as soon as possible (i.e. as the users first appear on an employer's monthly RTI return and before they have to file any self-assessment return) and informing them of our view that they're engaged in a tax avoidance scheme. We explain to them that HMRC are on hand to help the individual extricate themselves from the arrangement. This approach seeks to avoid the delay that is inherent in opening formal enquiries (where we first need to await the submission of a tax return, before we can open an enquiry and intervene). We are testing this approach and the feedback from this pilot will inform how we design this process for engaging with customers early, going forwards.
- 37.8. It is important to mention briefly our approach to customers who need additional support here too. We have already shared with the Review team the support we offer to these customers and our current Additional Customer Support infrastructure. We recognise that settling DR liabilities and more recently, facing the loan charge, was likely to be very stressful for some customers. We have been providing a bespoke customerfocussed service for customers in this position for several years.
- 37.9. In 2014 we set up the Contractor Loans (CL) Settlement Helpline. The remit of this dedicated helpline was expanded to deal with all DR scheme users' affairs and relaunched in November 2017, with call handlers increased 4-fold (to 40 handlers) in Autumn 2018.
- 37.10. By the end of 2018, all front-line staff (at that time) dealing with these cases had had our vulnerable customer training. We had also set up a specific team looking after vulnerable customers to support them in resolving their avoidance dispute.
- 37.11. In Spring 2019 we announced the extension of HMRC's successful Needs Enhanced Support service to customers undergoing compliance checks, starting with HMRC's Counter-Avoidance (C-A) directorate. This became the Additional Customer Support programme.
- 37.12. In June 2019 we launched the Loan Charge Helpline (separate to the CL Settlement Helpline), which capitalises on our existing call centre infrastructure and now brings in further call handlers, able to triage routine enquires supported by a formal escalation route for more detailed questions.
- 37.13. In terms of improving our correspondence to customers involved in disguised remuneration, we committed in March 2019 to drawing on the expertise of representative bodies in supporting customers when planning a one-to-many communications campaign.

We put this into action immediately, running 2 draft customer letters past ICAEW and Chartered Institute of Taxation (CIOT) over summer 2019. CCG is undertaking a wider review of our current approach to communicating to customers when we open enquiries etc, with a view to making our communication more helpful, particularly for those customers that are un-represented.

Regular contact with customers

- 37.14. We recognise long, unexplained periods without direct communication from HMRC was a significant feature of our historic approach to communicating with avoidance scheme users, for the reasons set out above too many customers with an open enquiry did not hear from HMRC for a significant period of time, often years after the enquiry was opened. In line with our revised strategic approach to legacy cases, we have already started the process of re-engaging with scheme users, to encourage them to settle (referred to at para 37.2 to 37.6 above). DR scheme users would have heard from us regularly, particularly over the last 2 years as we've sought to correspond with them direct, and encourage them to settle under the published settlement terms. There have been at least two one-to-many campaigns (where HMRC has issued a generic letter to a large volume of scheme users to deliver a standard message) during this time, interspersed with various scheme specific correspondence (on a more bespoke basis, led by the scheme lead investigator). In addition, we have of course been writing to scheme users who expressed an interest in settling their DR scheme use under the November 2017 published terms.
- 37.15. We plan to keep up this level of engagement with DR scheme users going forwards. We have, however, yet to fully implement more regular contact across all avoidance scheme users and whilst there are plans in place, we are yet to fully operationalise our strategy for addressing legacy avoidance cases. Our internal guidance is clear that in one-to-many communication campaigns, providing regular updates is mandatory although this may not always be via letter. For bespoke, scheme based correspondence, the regularity of our communications will be tailored to the circumstances of the scheme, but correspondence in some form to scheme users at least every 6 to 12 months is our aspiration.
- 37.16. C-A has set a new vision for our work that prioritises tackling promoters and dissuading customers from getting into avoidance in the first place. In addition to existing powers, part of dissuading customers involves the approach to direct contact, referred to at para 37.6 above. C-A is also developing a new strategic approach to resolving the legacy of over 110,000 customers with open enquiries including the remaining customers involved in disguised remuneration. We will shortly be setting out what we can do within existing resources, and what we could do with more, and will feed that into wider compliance group work on supporting customers, business planning for 2020/21 and any future spending review. However, it is clear that resolving the existing open enquiries while policing the loan charge and addressing further cases that result from the review's recommendations will require additional resource and take time (our high level estimate is that resolving all open enquiries will take at least 10 years and probably longer).

<u>Information from advisers</u>

- 37.17. You have suggested that advisers were able to provide misleading advice/ information, and were left, unregulated, to communicate messages to users without HMRC communications. Two thirds of the advisory community are members of a professional body and are therefore, subject to a degree of regulation. HMRC has endorsed the code of practice for which these professional bodies are responsible for regulating. Some unregulated tax advisors provide advice on avoidance that we consider to be un-professional. It is difficult for HMRC to determine the extent to which any advice has been positively misleading. These advisors are unlikely now to be members of any professional body, such as the ICAEW or CIOT. Since C-A was set up in 2013/14, HMRC has been actively engaging with professional representative bodies (including the accountancy and legal professions), encouraging them to carry our messages on the dangers of tax avoidance. Notable successes include a suite of products we've produced for all of the accounting bodies, including webinars, simple guides, case studies and draft articles for publication. We have a detailed plan for the delivery of further products, working in partnership with the professional bodies.
- 37.18. We are also tackling those advisors who are not members of professional bodies. We use the HMRC Standard for Agents (available on GOV.UK) as a basis for such checks. By way of an example, of 6 face to face meetings held with agents acting in respect of one avoidance scheme promoter (representing around 100 scheme users) all have agreed that (i) their work falls short of what is acceptable (ii) they will no longer submit accounts or correspondence to HMRC in respect of such avoidance users, other than those who wish to now settle. We are looking to accelerate and extend this approach of engaging directly with agents of specific scheme promoters to flag where they have fallen short of the standard of professionalism expected, with a view persuading them of the benefits of taking users out of avoidance.
- 37.19. Over the last 5 years we have also collaborated with other intermediaries to cascade our message. For example, in 2014 former Director, Counter-Avoidance, appeared alongside of the Professional Footballers Association in an online video warning footballers to steer clear of avoidance, and we have authored several articles in their trade magazine since then. Other more sectoral approaches include an article in Nursing Times (spring 2019).

HMRC co-ordination

37.20. HMRC is working towards putting in place a master customer record for all customers as part of wider digital transformation. This is a major and complex undertaking that will require significant time and investment. Until such time that there is a single customer record covering both all aspects of a customer's tax position and all their contacts with HMRC, there will always be a risk that interaction with HMRC will be disjointed because the IT systems used for compliance, debt management and customer contact

centres are not yet linked up. We acknowledge that this can result in poor customer experience.

37.21. Where customers are recorded as needing additional support (ACS), a more bespoke, coordinated approach to their tax affairs and interaction with HMRC is taken. But this level of service is not sustainable across the avoidance scheme population as a whole. C-A are working to improve the coordination of communications from across the directorate (be that GAAR, APN, FN, or scheme based letters as far as possible within the constraints of existing systems). While legislative time limits can require specific formal notices to be issued at different times, we recognise that there is an opportunity to better set out how any legal notice fits into the context of our wider planned engagement with the customer. But none of that will have a material impact on the coordination of correspondence issued from other parts of the organisation. Planning for new IT systems that can introduce a master customer record is being considered as part of HMRC's input to the next spending review.

Email0018 attachment 2

Within email sent 19 November 2019 17:20

Unprotected years

- As we have discussed unprotected years, we thought it would be helpful to provide some
 more information about some of the reasons why HMRC did not protect its position and the
 impacts proposals in this space could have on the perception of tax avoidance and noncompliance.
- 2. Disguised remuneration (DR) schemes are clear examples of tax avoidance. The vast majority of the public (99.8%) did not use them and they were therefore not widespread or accepted before or after 2011.
- 3. In 2011, the Government legislated to make clear and put beyond doubt the legal position that DR avoidance schemes do not work. Since the legal position was clear and beyond doubt from that date, there is no justifiable rationale for carving out any taxpayer from their Loan Charge liability post-2011. From that point in time, it should have been clear to scheme users and their advisors HMRC's view that income received in the form of a DR loan would be taxable and should be reported and treated as such.
- After the 2011 legislation was introduced and even further on the introduction of Accelerated Payment Notices (APNs) in 2014, disclosure of DR schemes under the DOTAS regime largely ceased.
- 5. We have looked at settlement data to see whether contractors with unprotected years since 2011 had disclosed scheme usage (whether or not a scheme was itself disclosed under DOTAS). This analysis is based on a sample of around 1,600 settled contractor cases. It shows that 287 scheme usages after 2011 were unprotected. Of these, between 96% (using the loosest definition of disclosure) and 99% (using the tightest) made no reference to having received income via a loan, be that by making a reference in the 'white space' or properly completing (where appropriate) the DOTAS boxes on a tax return. Further detail on the definitions of disclosure can be found in paragraph 12.

Sample analysis of unprotected years with usages after 2011

Tax Year	Total	No SA Return	SA Returns Received	Number disclosing SRN on SA Return	Number disclosing in white spaces ¹	Total number disclosing	Total number not disclosing
2011/12	51	3	48				50
2012/13	65	7	58				62
2013/14	83	11	72				81
2014/15	85	12	73				83
2015/16					1		
2016/17							
Total	287	33	254				276
% of Total	100%	11%	89%				96.2%

¹ This is based on analysis of additional information box entry from Main Return, Additional Information sheet, Capital Gains and Self-Employment supplementary pages.

- 6. We have included the detailed analysis results for transparency. However, the due to the size of the sample, there is a risk that data might be identifiable. Please do not include the absolute figures in your final report.
- 7. Tax returns that indicate the use of a disclosed or undisclosed DR scheme would ordinarily lead to HMRC opening an enquiry into the scheme use, and after 2014, issuing an APN to require users to pay the income tax due on the loans taken out. Non-disclosure of DR scheme use makes it extremely difficult for HMRC to cost effectively detect, investigate and enforce compliance. As a result, the vast majority of years where HMRC does not have an open enquiry involve cases of non-disclosure, be that non-disclosure of the scheme under DOTAS, or non-disclosure of the use of a scheme by the contractor to HMRC.
- 8. Carving out of the loan charge years for which HMRC does not have an open enquiry or is no longer in time to raise an assessment would benefit those who used schemes that were not disclosed to HMRC as legally required. Those who complied with their obligation to report their use of tax avoidance (be that a disclosed or non-disclosed DOTAS scheme) would remain within scope of the Loan Charge. This would reward the wrong behaviour (non-disclosure) and send the message to taxpayers using tax avoidance schemes that non-disclosure allows you to avoid your tax obligations. A key principle of the Loan Charge design

is that taxpayers should always be better off if they disclosed their scheme use and cooperated with HMRC.

- 9. Our analysis indicates non-disclosure was a deliberate response to the risk that disclosure would lead to HMRC litigating and/or issuing APNs to recover the money due. Legislation from 2011 onwards was completely clear that these schemes didn't work, so informed taxpayers will have known a disclosure would be met with HMRC litigation. In addition, since 2014, if a taxpayer disclosed their use of tax avoidance they will have received an Accelerated Payment Notice on the underlying tax liability (not on the Loan Charge) which will also have deterred disclosures.
- 10. Significantly, the overwhelming majority of unprotected usages since 2011 (from the sample of contractor population) relate to years where the contractor did not disclose their scheme use, so removing unprotected years from the scope of the Loan Charge would reward this non-disclosure. Our estimates suggest that around 5,000 individuals and 1,500 employers would benefit from removing all unprotected years post-2011 from the scope of the Loan Charge. Of these, around 2,000 individuals and around 500 employers are taken out completely from the charge.
- 11. Analysis indicates that 96% to 99% of unprotected usages since 2011/12 (based on a sample of settled cases as explained earlier) relate to scheme usages that were not disclosed (further detail on this data can be found in the annex).
- 12. In defining disclosure, we essentially included all references on the Self Assessment forms, whether that included disclosure of scheme use under DOTAS by including a Scheme Reference Number, or a mention of loans or other income in the notes/other information sections of the Self-Assessment tax return. Under HMRC's ordinary compliance approach, a judgement would be made about the extent to which comments contained in the additional notes (to the tax return) amount to a sufficient disclosure of avoidance scheme use. However, for the purposes of this analysis, we have assumed any attempt to disclose a loan based arrangement should be considered a disclosure, making this the widest definition of disclosure possible. This analysis indicates that the vast majority of users did not use the white space to declare their use of avoidance; with less than 4% including any reference to a loan of any kind on the tax return.
- 13. The Loan Charge announced in 2016 was intended to tackle this deliberate behaviour, by ensuring that years were caught, even when they weren't disclosed. This feature of the Loan Charge ensures that those who disclosed are not in a worse position than those who did not disclose their use of tax avoidance schemes.

14.	. Note that in the time available, and due to the complexity of returns made by corporates/ employers (where they are required to submit a return, annual accounts and often other supplementary information), we were not able to provide comparable disclosure data for this population.					

Annex: Data on disclosure levels you have received previously

1. Disclosure of DR schemes under DOTAS [excerpt from tranche 3]

The DOTAS (Disclosure of Tax Avoidance Schemes) regime was introduced in 2004 in response to the growing threat of mass marketed tax avoidance schemes to the Exchequer.

The main aim of the regime was to allow us to establish quickly what schemes were being marketed, how those schemes claimed to work and who had used those schemes. Schemes falling under the DOTAS legislation (i.e. triggering a DOTAS disclosure 'hallmark') are required to be notified to us, and are then given a Scheme Reference Number (SRN). Only one SRN is issued per scheme, regardless of the number of individuals or employers using that scheme. We estimate that of the around 250 DR schemes in scope of the Loan Charge around 113 were issued with SRNs and the balance were not notified to HMRC.

In cases where individuals provided the correct DOTAS number in the correct section of their Self Assessment return, HMRC routinely opened enquiries. However, many scheme users and promoters did not disclose their DR schemes, where there was an obligation to do so.

The table below shows details of the number of individual users who declared their use of a DR scheme on their Self Assessment tax return using, as required, the SRN in the correct box since 2004/05 as at July 2019. The year is when they declared the scheme which could be different to year they used a scheme. The table also sets out the number of DR scheme usages by individuals. Both sets of data have been provided to the review team in previous response.

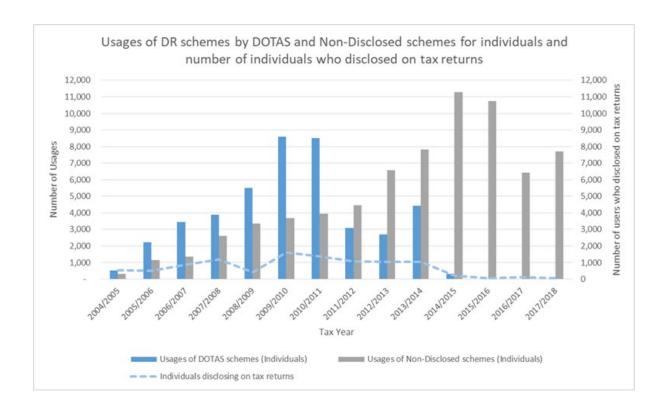
Tax Year	Individuals who disclosed ¹	Number of usages by individuals ²
2004/2005	550	860
2005/2006	520	3,400
2006/2007	860	4,800
2007/2008	1,180	6,520
2008/2009	430	8,850
2009/2010	1,620	12,270
2010/2011	1,380	12,470
2011/2012	1,070	7,530
2012/2013	1,050	9,280

2013/2014	1,030	12,250
2014/2015	200	11,600
2015/2016	50	10,760
2016/2017	110	6,420
2017/2018	50	7,700

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database¹ and Self-Assessment tax return data²

This shows the majority of individual scheme users under enquiry did not disclose their use of a DR scheme (although it should be noted that the obligation to disclose can fall on different parties within the avoidance arrangement).

The below graph sets out visually the data above to show the relationship between scheme use and disclosure on the tax return.



2. Data on unprotected years

¹ As per data provided in Table 5 (para 13.9) on 01/10/2019.

² As per data provided in para 1.30 on 29/10/2019. Estimates might slightly differ due to rounding.

You previously received data on unprotected years based on stratified sampling we have undertaken of cases. The table below sets out the output of that analysis for schemes used since 6 April 2011.

Source: provided by a sample of

You have requested a in relation to

	Individuals	Employers
Proportion of years that are unprotected	10-15%	10-25%
Proportion of users with at least one unprotected year	15-20%	15-30%
Proportion of tax at risk that is unprotected	15-20%	15-20%

KAI based on Sect Wifents since similar table

years pre-2011. The table below sets out the output of the analysis for scheme used exclusively prior to 6 April 2011.

	Individuals	Employers
Proportion of years that are unprotected	40%	30-45%
Proportion of users with at least one unprotected year	45-50%	30-50%
Proportion of tax at risk that is unprotected	40-45%	35%

No distinction has been made between years before and after the introduction of DOTAS in 2004. Whilst DOTAS may have some influence on whether a year is protected or not, this is not the only factor in play.

Our data defines unprotected years as those that are not under formal enquiry by HMRC, are not subject to formal assessments raised by HMRC and the statutory time limits for opening a formal enquiry or raising assessment have expired.

3. <u>Data on unprotected years with non-disclosure – summary of methodology</u>

You have asked for further analysis of the extent to which unprotected years relate to cases where scheme use was not disclosed. As explained earlier in the note, our analysis from a sample of settled cases suggests that 96% to 99% of unprotected years since 2011/12 relate to schemes usages that were not disclosed.

Specific data on whether loan scheme usages are protected or unprotected is not stored in a central database and so it is not possible to see the scale of unprotected years in the entire loan charge scheme user population directly. In order to develop estimates for the scale of unprotected years we needed to commission a detailed exercise whereby operational staff went through cases one-by-one to ascertain the number of unprotected usages and value of unprotected tax and NICs. This is very labour intensive, so we established statistically robust samples using standard statistical techniques for assessing required sample size in order to represent the wider population with confidence.

In addition, data on unprotected years is only available for cases that have settled with HMRC rather than the full loan scheme user population. We have to assume that the scale of unprotected years in the settled population is representative of the loan scheme user population as a whole.

We used two sampling exercises to produce estimates for the proportion of unprotected years in the individual and employer populations separately, with sub-samples taken to produce ranges for the estimates. Counter-Avoidance (C-A) operational teams opened and reviewed the case files for users in the sample and populated a spreadsheet with relevant usages data showing the value of protected and unprotected tax and NICs by year of usage for each user.

This sample data allows us to estimate the proportion of years that are unprotected, the proportion of users with unprotected years and the value of the avoided tax that are unprotected. Further analysis is also conducted on the sample to explore disclosure rates and use of DOTAS and non-Disclosed schemes in the years where it is unprotected. For the purpose of this analysis, disclosure was defined objectively as any reference to loans on the tax return, or disclosure of a DOTAS number, to ensure completeness of the sample. In practice during HMRC compliance activity, whether a disclosure consisted of a full disclosure would depend on nature of the disclosure in individual cases and is subjective.

The unprotected estimates are rounded to the nearest 5% and are used when estimating the Exchequer cost of the proposed changes to remove unprotected years from the scope of the Loan Charge and the estimated number of users impacted by this change.

Individuals

An estimated 50,000 individual users are impacted by the DR measures. A population of this size would normally require a sample of around 380 to provide statistically robust estimates (e.g. 95% confidence level and confidence interval of 5). In total, information for 3,321 settled years was collected by C-A, corresponding to 1,578 individuals from the contractor loans population. We performed analysis on the full set of data, but also produced two additional stratified sub-samples based on the distribution of settlement yield in CA's internal avoidance database. We undertook this extra sampling to further improve the representativeness of the data.

The sample contains settlements from early 2019 onwards, although a small proportion may fall in 2018. This is because the approach for collecting this level of data was only fully introduced by C-A in 2019. All settlements will have been made under the November 2017 settlement terms.

4. Case studies of disclosure and non-disclosure

The below case studies are stylised examples designed to provide further understanding of disclosure requirements for individuals using DR schemes, and to provide an indication of what HMRC would expect an individual to disclose on their tax return. Where a scheme is disclosed under DOTAS, HMRC would expect disclosure of the SRN associated with the scheme. Where a scheme is not disclosed under DOTAS, the correct treatment is to disclose the loans as trading income. HMRC has published guidance on the disclosure of beneficial loans which specifically sets out the treatment of a DR loan to assist individuals in determining the appropriate treatment on their tax returns. DOTAS and disclosure of schemes by promoters should not be seen as a replacement for individual responsibility to ensure they have correctly disclosed their tax liabilities on their tax return.

Case study 1 (Mike): DOTAS disclosed scheme

Mike used a contractor loans scheme where he sold his services as a self employed contractor and received his money in the form of loans through an offshore trust. The promoter of the scheme (A) told HMRC about the scheme and gave Mike a scheme reference number. Mike didn't include his loans as income on his tax return and so did not pay tax on them, but he did put the scheme reference number on his return. HMRC opened an enquiry so the year is protected. If unprotected years are removed from the scope of the Loan Charge, Mike will still have to pay the loan charge.

Case study 2 (John): Scheme not disclosed under DOTAS

John used a contractor loans scheme where he sold his services as a self employed contractor and received his money in the form of loans through an offshore trust. The promoter of the scheme (B) didn't tell HMRC about the scheme because B knew that, when A's clients included the scheme reference number on their tax returns, HMRC opened an enquiry and issued them with Accelerated Payment Notices John didn't include his loans as income on his tax return and so did not pay tax on them, and he didn't say anything on his return about the tax avoidance scheme. HMRC did not open an enquiry and did not find out that John had used the scheme until it was too late to protect the tax. If unprotected years are removed from the scope of the Loan Charge, the tax remains unprotected and John won't have to pay the loan charge.

Case study 3 (John): Scheme disclosed to HMRC without DOTAS

John used a contractor loans scheme where he sold his services as a self employed contractor and received his money in the form of loans through an offshore trust. The promoter of the scheme (B) didn't tell HMRC about the scheme because B knew that, when A's clients included the scheme reference number on their tax returns, HMRC opened an enquiry and issued them with Accelerated Payment Notices.

The promoter told John that he didn't need to declare the scheme but John became concerned when he read a HMRC publication about loan schemes.

¹⁰ https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim26101

John didn't include his loans as income on his tax return and so did not pay tax on them but John decided to tell HMRC about the avoidance scheme and says he received most of his trading income in the form of loans which he does not expect to repay. He does this by giving full details using the white space section of his tax return.

If John had instead spoken to an independent professional adviser or read HMRC's published manuals to help him identify the correct tax position then he could have declared the loans as trading income, the white space entry is not a substitute for doing that.

Email0018 attachment 3

Within email sent 19 November 2019 17:20

Payment arrangements

- 1. As we have discussed options affecting payment arrangements to address affordability, we thought it would be helpful to provide some more information about how payment arrangements work, commitments HMRC could make and the impacts of some of the proposals we have discussed. We are happy to discuss further.
- 2. Concerns have been raised about the payment arrangements of the Loan Charge for scheme users. Evidence suggests that, while the Loan Charge will result in large bills for some scheme users, bills are affordable for the majority, and for the minority who may find themselves with very large bills, existing safeguards will mitigate the difficulties they will experience, as they do for other taxpayers in similar circumstances.
- 3. For individuals who have settled their tax debts ahead of the Loan Charge falling due, the evidence shows 60% did not need to pay by instalment, and of the remaining 40% who needed to pay by instalment, the average repayment was £598 for 45 months (less than 4 years).
- 4. For individuals who have used a scheme exclusively after 6 April 2011 and settled, the evidence shows 54% owe less than £20,000 and 55% of those with reported 2017/18 incomes of less than £30,000 owe less than £10,000. These tax bills would not have to be paid at once, and could be spread over several years.
- 5. There are existing options and safeguards for individuals who have a considerable tax debt to pay, including Time To Pay (TTP) arrangements.
- 6. HMRC has a good track record in agreeing and people paying under TTP arrangements, and there is no evidence to suggest HMRC forces people into arrangements they can't afford. 90% of TTP arrangements complete on time.
- 7. However, we recognise that for a small minority, bills could be considerable. These are likely to be cases where individuals have engaged in DR schemes over many years at high salary levels. Some individuals may also be better off if they agree an individual voluntary arrangement (IVA), a formal debt solution for those with unsustainable debts which exists as a protection for individuals who find themselves in serious debt. We have provided a comparison of TTP, IVA, and bankruptcy in the additional evidence return.

- 8. We understand that concerns have been raised about trust in HMRC in relation to the treatment of taxpayers who have large bills to pay. To address this, HMRC can commit to making existing arrangements and safeguards public and to standing by those terms. This could include:
 - HMRC has already committed that it will not make anyone sell their primary home to raise funds to pay the Loan Charge and we will not place Loan Charge debt with a debt collection agency.
 - HMRC can also commit that where an individual earns less than £50,000 and does not
 have realisable assets, we guarantee we will not ask for more than 50% of their
 disposable income.
 - If HMRC agree a TTP of over 5 years, we refer the individual to a debt advice charity, so they can get free, impartial advice on their options.
 - We will cease any debt pursuit where an individual's income and expenditure shows
 they have no ability to pay, and only subsequently seek further payment where there's a
 significant change of circumstance.
 - Where an individual has completed an Income and Expenditure assessment (using the industry standard) Single Financial Statement with a financial advice charity, then we will accept that for calculating TTP.
 - Where an individual works through an Income and Expenditure assessment with HMRC, then we will agree a TTP for their LC debt.
- 9. If HMRC were to provide individuals affected by the Loan Charge with a specific debt write off or tax liability reduction to address affordability, this would be unfair to other taxpayers who find themselves with bills on a similar scale for other tax debts or tax credit overpayments. In 2017/18, HMRC agreed 17,500 TTP agreements with a length of 10 years or more; of these 16,000 related solely to tax credits debts.
- 10. Income levels of those in scope of the Loan Charge are higher than many who would be asked to pay the amounts due on other taxes or tax credit overpayments. Around 90% of individuals with tax credits TTP arrangements of over ten years have 2017/18 reported incomes under £30,000, whereas only around 40% of individuals who have used a DR scheme exclusively since 6 April 2011 have reported 2017/18 incomes of less than £30,000.
- 11. Providing a write off to individuals in DR tax avoidance schemes would mean providing additional tax breaks to tax avoiders, disincentivise individuals from efforts to make payment, and encourage manipulation of their financial position, while requiring individuals who did not use avoidance schemes on much incomes to continue making payments on a longer timescale.

Email0019 attachment 1

Within email sent 25 November 2019 12:39

Methodology for estimates of disclosure in unprotected years for loan charge scheme users Introduction

1. On page one of the supplementary note we shared with the review team alongside the tranche 9 response on 19/11/2019, we made the following statement:

We have looked at settlement data to see whether contractors with unprotected years since 2011 had disclosed scheme usage (whether or not a scheme was itself disclosed under DOTAS). This analysis is based on a sample of around 1,600 settled contractor cases. It shows that 287 scheme usages after 2011 were unprotected. Of these, between 96% (using the loosest definition of disclosure) and 99% (using the tightest) made no reference to having received income via a loan, be that by making a reference in the 'white space' or properly completing (where appropriate) the DOTAS boxes on a tax return.

2. This note sets out the background sampling and methodology used to analyse the rate of non-disclosure for scheme usages after 2011 that are unprotected.

Background to initial sampling approach

- 3. An estimated 50,000 individual users are impacted by the disguised remuneration (DR) measures. A population of this size would normally require a sample of around 380 to provide statistically robust estimates (e.g. 95% confidence level and confidence interval of 5). As data on unprotected years is only available for cases that have settled with HMRC rather than the full loan scheme user population, we have obtained a sample of data for settled contractor scheme users to conduct analysis on unprotected years.
- 4. For reference, 'Unprotected' years' have been defined as years that are not under formal enquiry by HMRC, are not subject to formal assessments raised by HMRC and the normal statutory time limits for opening a formal enquiry or raising assessment have expired. In this respect, we have only considered the normal 12 month time limit to open an enquiry or 4 year time limit to raise a discovery assessment. We have not considered whether any individual customer may have a discovery assessment raised under the extended time limits. This is to ensure the widest possible definition of an unprotected year, as in practice HMRC may be in time to raise a discovery assessment later in some cases.
- 5. Operational teams provided a sample of 1,578 settled contractor scheme users, from an overall settled contractor population of around 4,000. The 1,578 users are settled users recorded in operational data by the Contractor Avoidance Settlements Operations Team (CASOT) which is responsible for the majority of contractor loan cases within Counter-Avoidance (C-A). This provided 3,321 scheme usages for analysis.
- 6. This sample contains settlements from recent months (early 2019 onwards, although a small proportion may fall in 2018). This is because the approach for collecting this level of data with

the information needed for this detailed analysis on unprotected years was only fully introduced by C-A in 2019. However, all settlements will have been made under the settlement terms published in November 2017, so it would be comparable with cases who have settled earlier also.

- 7. We used this sample to analyse the scale of unprotected years in the DR population. Initial analysis was carried out to check the representativeness of this sample against the overall settled population. Table 2 below compares the settlement yield distribution of the overall settled population against that of the 1,578 settled contractors in our sample.
- 8. While there is a slightly higher proportion of cases with lower settlement yield in the sample settled population, overall, the sample population does follow a very similar settlement yield distribution, which shows it is representative of the overall settled population.

Table 2: Comparison of distribution by settlement yield between overall settled population and sample settled population

Settlement yield band	% of overall settled population	% of sample settled population of 1,578 individuals
1. Less than £0	0	0
3. Up to £10,000	42	49
4. £10,000 to £20,000	16	15
5. £20,000 to £30,000	10	9
6. £30,000 to £40,000	7	6
7. £40,000 to £50,000	4	4
8. £50,000 to £60,000	3	4
9. £60,000 to £70,000	3	3
10. £70,000 to £80,000	2	2
11. £80,000 to £90,000	2	1
12. £90,000 to £100,000	1	1
13. £100,000 to £150,000	4	4
14. £150,000 to £200,000	2	1
15. £200,0000 or more	4	1
Total	100	100

- 9. The sample data was then analysed to estimate the proportion of years that are unprotected, the proportion of users with unprotected years and the value of the avoided tax that are unprotected.
- 10. We also conducted the same analysis on 2 additional stratified samples containing 400 users from the 1,578 sample of settled users. The additional samples were stratified on settlement yield and were randomly selected within each settlement yield banding based on the distribution of settlement yield for the overall settled population as shown in Table 2 and Table 3 (which has more collapsed bandings).

Table 3: Distribution by settlement yield for overall settled population (Sampling frame used for second additional stratified sample)

Settlement yield band	% of overall settled population
Up to £10,000	42
£10,000 to £20,000	16
£20,000 to £30,000	10
£30,000 to £40,000	7
£40,000 to £50,000	4
£50,000 or more	21
Total	100

11. Both additional stratified samples generated very similar results on unprotected years to that from using the 1,578 sample directly. This further strengthens our assessment that the 1,578 sample is a good representative sample of the overall settled population. Separately, we have used the analytical results from the additional stratified samples to inform the estimated ranges for the unprotected analysis.

Disclosure analysis on unprotected years

- 12. This representative sample of 1,578 settled contractors provided 3,321 usage years for analysis. From this data, our analysis has identified 287 scheme usages after 2011 were unprotected. Further analysis was conducted on these unprotected scheme usages to determine if these were disclosed to HMRC through Income Tax Self-Assessment tax returns.
- 13. From the 287 scheme usages, 254 have submitted an Income Tax Self Assessment tax return. Our analytical teams then extracted scheme use disclosure data and the additional information box entries from the Main Return, Additional Information sheet, Capital Gains and Self-employment supplementary pages from the tax returns. For example, on the 2011-12 tax return: boxes 18 and 19 of the "other information" section of the Additional Information sheet,

and the 'white space' box 102 on the <u>self-employment (full)</u> form. These data were provided to operational colleagues who conducted a thorough review to look for the presence of potential disclosures, and to assess the disclosure rate of these Disguised Remuneration (DR) scheme usages.

- 14. In defining disclosure, we essentially included all references on the Self Assessment forms, whether that included disclosure of scheme use under DOTAS by including a Scheme Reference Number, or a mention of loans or other income in the notes/other information sections of the Self-Assessment tax return. We make an operational judgement about the extent to which comments contained in the additional notes (to the tax return) amount to a sufficient disclosure of avoidance scheme use. However, for the purposes of this analysis we have assumed any attempt to disclose a loan based arrangement should be considered a disclosure, making this the widest definition of disclosure possible.
- 15. A detail breakdown of the analysis results from the review of the 287 schemes usages are set out in Table 1 below. Overall, this analysis shows that 96% to 99% of the 287 unprotected usages since 2011/12 relate to scheme usages that were not disclosed.
- 16. Detailed explanation of the results is as follows:
 - 1 (or 0.3%) of the 287 unprotected scheme usages disclosed a Scheme Reference Number (SRN) on the tax return
 - 10 (or 3.5%) of the 287 unprotected scheme usages mentioned "loan" in the additional information entry areas on the tax return
 - More specifically within the 10 who mentioned "loan", only 2 would be considered as a sufficient disclosure based on the information provided.

Overall:

- 3 (or 1%) of the 287 unprotected scheme usages have disclosed <u>using the tightest</u> <u>definition</u>, e.g. 1 disclosed SRN and 2 disclosed sufficient information in additional information spaces.
- 11 (or 3.8%) of the 287 unprotected scheme usages have disclosed <u>using the looser</u> <u>definition</u>, e.g. 1 disclosed SRN and 10 disclosed/mentioned of loan in additional information spaces.
- The above bullets provides a non-disclosure range of 96%-99%.

Table 1: Results - sample analysis of unprotected years with usages after 2011

Tax Year	Total	No SA Return	SA Returns Received	Number disclosing SRN on SA Return	Number disclosing in white spaces ¹	Total number disclosing	Total number not disclosing
2011/12	51	3	48				50
2012/13	65	7	58				62
2013/14	83	11	72				81
2014/15	85	12	73				83
2015/16							
2016/17							
Total	287	33	254				276
% of Total	100%	11.5%	88.5%				96.2%

¹ This is based on analysis of additional information box entries from the Main Return, Additional Information sheet, Capital Gains and Self-Employment supplementary pages.

- 17. The above results were reviewed together by colleagues from operational and analytical teams to ensure robust and consistent interpretation and understanding of the data. Furthermore, the data and analysis results from the investigations conducted by operational colleagues were also separately reviewed and independently checked by a quality assurer from the analytical team. Programming code used for the extraction of tax return data was also independently checked and quality assured by a separate analyst in the team.
- 18. For reference, example additional information spaces or 'white space' disclosures include:
 - I have been in receipt of a loan from my employer of GBP[amount]. This is subject to repayment conditions including an accruing interest charge of 6.0 per cent per annum and repayable on demand or within a maximum term of 10 years.
 - During the tax year 2013/14 foreign currency loans were entered into. It is considered that these loans do not give rise to taxable income.
 - Employment [Employer Name] This return has been completed on the basis that it is correct and complete to the best of my knowledge and belief. During the year I received loans of GBP[amount] directly from [Employer Name], my UK resident employer. All loans are interest free and repayable upon demand. Under the terms of the loan agreement funds were withheld from loans made to me as I am required to contribute sums to a life policy over which the trustees take a charge. The purpose of that life policy is to facilitate repayment of the loans that are repayable upon the earlier of, demand, the value of the

underlying life policy being sufficient to repay the loans in full, or the maturity of that policy.

Email0019 attachment 1

Within email sent 26 November 2019 14:02

Methodology for estimates of disclosure in unprotected years for loan charge scheme users Introduction

19. On page one of the supplementary note we shared with the review team alongside the tranche 9 response on 19/11/2019, we made the following statement:

We have looked at settlement data to see whether contractors with unprotected years since 2011 had disclosed scheme usage (whether or not a scheme was itself disclosed under DOTAS). This analysis is based on a sample of around 1,600 settled contractor cases. It shows that 287 scheme usages after 2011 were unprotected. Of these, between 96% (using the loosest definition of disclosure) and 99% (using the tightest) made no reference to having received income via a loan, be that by making a reference in the 'white space' or properly completing (where appropriate) the DOTAS boxes on a tax return.

20. This note sets out the background sampling and methodology used to analyse the rate of non-disclosure for scheme usages after 2011 that are unprotected.

Background to initial sampling approach

- 21. An estimated 50,000 individual users are impacted by the disguised remuneration (DR) measures. A population of this size would normally require a sample of around 380 to provide statistically robust estimates (e.g. 95% confidence level and confidence interval of 5). As data on unprotected years is only available for cases that have settled with HMRC rather than the full loan scheme user population, we have obtained a sample of data for settled contractor scheme users to conduct analysis on unprotected years.
- 22. For reference, 'Unprotected' years' have been defined as years that are not under formal enquiry by HMRC, are not subject to formal assessments raised by HMRC and the normal statutory time limits for opening a formal enquiry or raising assessment have expired. In this respect, we have only considered the normal 12 month time limit to open an enquiry or 4 year time limit to raise a discovery assessment. We have not considered whether any individual customer may have a discovery assessment raised under the extended time limits.
- 23. Operational teams provided a sample of 1,578 settled contractor scheme users, from an overall settled contractor population of around 4,000. The 1,578 users are settled users recorded in operational data by the Contractor Avoidance Settlements Operations Team (CASOT) which is responsible for the majority of contractor loan cases within Counter-Avoidance (C-A). This provided 3,321 scheme usages for analysis.
- 24. This sample contains settlements from recent months (early 2019 onwards, although a small proportion may fall in 2018). This is because the approach for collecting this level of data with the information needed for this detailed analysis on unprotected years was only fully introduced by C-A in 2019. However, all settlements will have been made under the settlement

terms published in November 2017, so it would be comparable with cases who have settled earlier also.

- 25. We used this sample to analyse the scale of unprotected years in the DR population. Initial analysis was carried out to check the representativeness of this sample against the overall settled population. Table 2 below compares the settlement yield distribution of the overall settled population against that of the 1,578 settled contractors in our sample.
- 26. While there is a slightly higher proportion of cases with lower settlement yield in the sample settled population, overall, the sample population does follow a very similar settlement yield distribution, which shows it is representative of the overall settled population.

Table 2: Comparison of distribution by settlement yield between overall settled population and sample settled population

Settlement yield band	% of overall settled population	% of sample settled population of 1,578 individuals
1. Less than £0	0	0
3. Up to £10,000	42	49
4. £10,000 to £20,000	16	15
5. £20,000 to £30,000	10	9
6. £30,000 to £40,000	7	6
7. £40,000 to £50,000	4	4
8. £50,000 to £60,000	3	4
9. £60,000 to £70,000	3	3
10. £70,000 to £80,000	2	2
11. £80,000 to £90,000	2	1
12. £90,000 to £100,000	1	1
13. £100,000 to £150,000	4	4
14. £150,000 to £200,000	2	1
15. £200,0000 or more	4	1
Total	100	100

- 27. The sample data was then analysed to estimate the proportion of years that are unprotected, the proportion of users with unprotected years and the value of the avoided tax that are unprotected.
- 28. We also conducted the same analysis on 2 additional stratified samples containing 400 users from the 1,578 sample of settled users. The additional samples were stratified on settlement yield and were randomly selected within each settlement yield banding based on the distribution of settlement yield for the overall settled population as shown in Table 2 and Table 3 (which has more collapsed bandings).

Table 3: Distribution by settlement yield for overall settled population (Sampling frame used for second additional stratified sample)

Settlement yield band	% of overall settled population
Up to £10,000	42
£10,000 to £20,000	16
£20,000 to £30,000	10
£30,000 to £40,000	7
£40,000 to £50,000	4
£50,000 or more	21
Total	100

29. Both additional stratified samples generated very similar results on unprotected years to that from using the 1,578 sample directly. This further strengthens our assessment that the 1,578 sample is a good representative sample of the overall settled population. Separately, we have used the analytical results from the additional stratified samples to inform the estimated ranges for the unprotected analysis.

Disclosure analysis on unprotected years

- 30. This representative sample of 1,578 settled contractors provided 3,321 usage years for analysis. From this data, our analysis has identified 287 scheme usages after 2011 were unprotected. Further analysis was conducted on these unprotected scheme usages to determine if these were disclosed to HMRC through Income Tax Self-Assessment tax returns.
- 31. From the 287 scheme usages, 254 have submitted an Income Tax Self Assessment tax return. Our analytical teams then extracted scheme use disclosure data and the additional information box entries from the Main Return, Additional Information sheet, Capital Gains and Self-employment supplementary pages from the tax returns. For example, on the 2011-12 tax return: boxes 18 and 19 of the "other information" section of the Additional Information sheet,

and the 'white space' box 102 on the <u>self-employment (full)</u> form. These data were provided to operational colleagues who conducted a thorough review to look for the presence of potential disclosures, and to assess the disclosure rate of these Disguised Remuneration (DR) scheme usages.

- 32. In defining disclosure, we essentially included all references on the Self Assessment forms, whether that included disclosure of scheme use under DOTAS by including a Scheme Reference Number, or a mention of loans or other income in the notes/other information sections of the Self-Assessment tax return. We make an operational judgement about the extent to which comments contained in the additional notes (to the tax return) amount to a sufficient disclosure of avoidance scheme use. However, for the purposes of this analysis we have assumed any attempt to disclose a loan based arrangement should be considered a disclosure, making this the widest definition of disclosure possible.
- 33. A detail breakdown of the analysis results from the review of the 287 schemes usages are set out in Table 1 below. Overall, this analysis shows that 96% to 99% of the 287 unprotected usages since 2011/12 relate to scheme usages that were not disclosed.
- 34. Detailed explanation of the results is as follows:
 - 1 (or 0.3%) of the 287 unprotected scheme usages disclosed a Scheme Reference Number (SRN) on the tax return
 - 10 (or 3.5%) of the 287 unprotected scheme usages mentioned "loan" in the additional information entry areas on the tax return
 - More specifically within the 10 who mentioned "loan", only 2 would be considered as a sufficient disclosure based on the information provided.

Overall:

- 3 (or 1%) of the 287 unprotected scheme usages have disclosed <u>using the tightest</u> <u>definition</u>, e.g. 1 disclosed SRN and 2 disclosed sufficient information in additional information spaces.
- 11 (or 3.8%) of the 287 unprotected scheme usages have disclosed <u>using the looser</u> <u>definition</u>, e.g. 1 disclosed SRN and 10 disclosed/mentioned of loan in additional information spaces.
- The above bullets provides a non-disclosure range of 96%-99%.

Table 1: Results - sample analysis of unprotected years with usages after 2011

Tax Year	Total	No SA	SA	Number	Number	Total	Total
		Return	Returns	disclosing	disclosing in	number	number
			Received	SRN on SA	white	disclosing	not
				Return	spaces ¹		disclosing
					_		

% of Total	100%	11.5%	88.5%			96.2%
Total	287	33	254	1		276
2016/17						
2015/16					1	
2014/15	85	12	73	þ		83
2013/14	83	11	72			81
2012/13	65	7	58	1		62
2011/12	51	3	48			50

¹ This is based on analysis of additional information box entries from the Main Return, Additional Information sheet, Capital Gains and Self-Employment supplementary pages.

- 35. The above results were reviewed together by colleagues from operational and analytical teams to ensure robust and consistent interpretation and understanding of the data. Furthermore, the data and analysis results from the investigations conducted by operational colleagues were also separately reviewed and independently checked by a quality assurer from the analytical team. Programming code used for the extraction of tax return data was also independently checked and quality assured by a separate analyst in the team.
- 36. For reference, example additional information spaces or 'white space' disclosures include:
 - I have been in receipt of a loan from my employer of GBP[amount]. This is subject to repayment conditions including an accruing interest charge of 6.0 per cent per annum and repayable on demand or within a maximum term of 10 years.
 - During the tax year 2013/14 foreign currency loans were entered into. It is considered that these loans do not give rise to taxable income.
 - Employment [Employer Name] This return has been completed on the basis that it is correct and complete to the best of my knowledge and belief. During the year I received loans of GBP[amount] directly from [Employer Name], my UK resident employer. All loans are interest free and repayable upon demand. Under the terms of the loan agreement funds were withheld from loans made to me as I am required to contribute sums to a life policy over which the trustees take a charge. The purpose of that life policy is to facilitate repayment of the loans that are repayable upon the earlier of, demand, the value of the underlying life policy being sufficient to repay the loans in full, or the maturity of that policy.

Independent Loan Charge Review – HMRC Assertions Review

GIAA queries for discussion with HMRC, 27 November 2019

Qu	estion/Query	Response
1.	Before we get on to detailed questions it would be useful to understand your role and that of HMRC, staff who worked on this and their backgrounds? (Plus, as HMT SPOC)	
2.	Talk us through the objectives of this analysis. What were you trying to demonstrate, and why plus timescales you have been given	
3.	Please confirm: a) what your population was, and b) what your sample was from which the figures in the assertion were based. NC – is this now in the Un Paper sent over or do we still need this? If so let's leave	
4.	The papers we have reviewed states that there were 1,578 settled contractors in the sample. What was the population from which this sample was drawn? What sampling methodology was applied to determine the sample size of 1,578 and how was this sample	
	selected? Did any one review or was the methodology discussed with anyone outside direct HMRC/HMT teams? If so, what was their analysis?	

Qu	estion/Query	Response
	What was the purpose of 2 additional stratified samples? If the 1,578 was a sample in itself, why were these subsamples selected and who determined they should be done and benefits of doing them	
6.	Why did you choose to stratify your sub-samples? Is this normal practice or something that you felt benefitted this piece of work?	
7.	What was the significance of the "settlement yield" – what made this a good candidate for stratification? Paragraphs 7 to 11 of the methodology document analyses the sample of 1,578 and the sub-samples (of 400) against the population to assess whether these samples were representative of the underlying population.	
	Beyond the distributions provided, did you perform any further analysis to test for representativeness or were you satisfied with the results from samples taken	
8.	The methodology paper confirms that 287 scheme usages were analysed, and that these were taken from the sample of 1,578. However, in the "unprotected years" note provided to the Review Team (section 3, page 7) there is reference to the sub-samples. It is unclear to us as to what role these sub-samples had, and how they were used to inform the figures quoted in the assertion.	
9.	In the "unprotected years" note provided to the Review Team (section 3, page 6) there is a reference to use of "standard statistical techniques for assessing required sample size in order to represent the wider population with confidence". Talk us through this, what it is, why you chose this method	

Question/Query	Response
and what it means for the reliability of the assertion.	
10.How did you extrapolate results from your sample to the population?	
11. Did you identify disclosure rates for each strata (settlement yield band)? What did this show?	
12. The 96%-99% range appears to have been generated based on the loosest and tightest definition of disclosure. Did you identify sampling precision/error beyond this?	
13.What data constraints did you have? Were there any issues of data quality that you needed to consider? How were these resolved?	
14. We can see that you have provided some caveats as to the representative nature of the analysis to the overall loan scheme population. But you also say that you "have to assume that the scale of unprotected years in the settled population is representative of the loan scheme user population as a whole". Why is that? What gives you this assurance that this is a valid hypothesis? Was this reviewed or discussed at all and with whom?	

Question/Query	Response
15. Over what period did CA operational teams undertake this analysis? How many people reviewed the case files and what were their skills etc?	
16. Information states that CA "operational teams opened and reviewed the case files for users in the sample and populated a spreadsheet".	
How was the spreadsheet populated - Data transfer/load or manual entry (line by line)?	
Did you establish any guidance / checklists / training for reviewers and how did they feedback any questions or issues and if so, how were these dealt with?	
17. How were sample findings quality assured? Did you QA all cases, a sample (if so how were these selected), who did it, etc? What did QA show? In cases where there was a discrepancy relating to disclosure, how were these resolved?	
18.Was it reviewed by anyone else in HMRC? KAI or Internal audit or independent assessor for example?	

0069-1

Additional information for GIAA on quality assurance undertaken for the unprotected years estimates

"My ask is that following internal discussions from GIAA Senior Management on Friday and following our discussions and the walk through you and your colleagues in C-A and KAI you provided us at the walkthrough on Thursday we do some extra clarification and information/evidence around the QA processes that were undertaken. i.e.

- o What QA was undertaken
- o When
- o Who
- o Results

You gave us a lot of detail around this and we just need some clarification around this. As auditors we have to base our assessment on evidence seen and reviewed as this is potentially open to challenge if we base our work on assumptions etc. This will allow us to be clearer in our final assessment."

Please note that we are happy to share this level of information with GIAA and the Review Team for information, but we would not expect the finer details about individual roles and activities on particular pieces of analysis to be published. You may be aware that there has recently been social media abuse of officials working on the Loan Charge, and we cannot put our staff at further risk. Thank you.

A) Timeline on unprotected years and disclosure rate analysis

Date Main Activities Further details & Quality Assurance activities undertaken Individuals involved

17/10/2019 to 07/11/2019 Estimating the proportion of unprotected years in the DR user population.

A sample of 1,578 settled contractor scheme users was provided by Counter-Avoidance (C-A). This was used to measure the proportion of "unprotected years". This data was subsequently further used to estimate the extent to which these unprotected schemes usages after 2011 were disclosed in tax returns.

The settlement caseworkers follow stringent Standard Work Instructions (SWIs) when handling an individual settlement. The SWIs instruct the caseworkers to record the case information consistently on a separate Case Review Template (CRT) per customer. The CRT contains all the loan information by year, whether a year is protected, the schemes used and the tax liabilities each year. As part of their work, the caseworkers have access to some automation that is coded to read the CRTs and

automatically produce customer outputs including tax calculations, letters of offer and letters of acceptance.

As part of the Loan Charge Review work, C-A operational lead reutilised this well-established code to extract the protected and unprotected years information from the available CRTs in bulk. Spot checks were carried out internally within C-A to ensure the information extracted was accurate. In addition, C-A undertook a different extraction based on another requirement and compared the results to ensure consistency.

In previous sampling work, C-A had identified some erroneous entries regarding duplications through further QA work. Taking on board this lesson learnt, C-A ensured that they were not included in the current extracted sample.

Knowledge, Analysis & Intelligence (KAI) analysed and tested the representativeness of the sample data through running analysis on additional sub-samples. The results and process of producing the distribution analysis on settlement yield data were peer reviewed by a quality assurer. This included reviewing of the programming codes used to generate the analysis as well as comparison with past analysis conducted on settlement yield.

For the random sampling of the additional sub-sample, KAI used random sampling function sample_n() in R (a statistical analysis software package). The QA on this picked up that individuals with £0 settlement yield were being dropped but this was confirmed to be appropriate as they are not normally included in analysis on settled cases and the distribution analysis. No changes to the code were made as a result.

Analysis was conducted on the full 1,578 sample and two additional sub-samples of 400. Our QA found that there were 2 lines of code that were duplicated when counting the number of unprotected years in the data sample. However, this has made no difference to the overall final outputs. The code was fixed and no subsequent changes required.

The results of the analysis on unprotected years was reviewed and discussed with C-A and policy colleagues. There was also a further review session with the Loan Charge Analysis Steering Group on 07/11/2019 where the KAI statistician leading the unprotected analysis explained in details the methodology and final analysis results.

4x Operational lead (C-A)

1x Policy Lead (IPD)

1x G6 Operational Researcher (KAI)

1x G6 Statistician (KAI)

- 1x G7 Statistician (KAI)
- 1x Senior Statistical Officer (KAI)
- 1x Operational Researcher (KAI)
- 1x Higher Statistical Officer (KAI)

Loan Charge Analysis Steering Group (See section B and Annex A)

12/11/2019 to 13/11/2019 Provision & Review of sample data on scheme usages after 2011 that are unprotected to estimate the extent of disclosure Sample data was reviewed and provided by operational lead in C-A. KAI analysts carried out assurance checks on the provided data to double check the classification of cases was correct in the sample. This process identified 6 cases for further review with C-A colleagues and were confirmed as accurate interpretation subsequently. The final quality assurance checks were completed and confirmed by KAI on 13/11/2019.

1 x Deputy Director (C-A)

- 1 x Operational lead (C-A)
- 1 x G7 Statistician (KAI)
- 1 x Higher Statistical Officer (KAI)

13/11/2019 to 14/11/2019 Extraction of disclosure data on Self Assessment Tax Return
Both Risk & Intelligence Service (RIS) and KAI were involved in the extraction of disclosure
data on Self Assessment tax return. The data extracted by RIS was quality assured by KAI to ensure
the data extracted was consistent between the 2 teams. A comparison was also made on an earlier
data extract KAI has retained from recent analysis on disclosure for the review team in September
2019. The datasets were matched using unique taxpayer reference numbers and tax year to check
for consistent entries using SAS (another statistical code-based software package) and vlookup
function in Excel by KAI analysts. The SAS programming code used to extract the disclosure data and
to match the extracted data between the two teams was reviewed and quality assured by a senior
analyst in the team. The checks concluded the extracted entries were consistent across both teams.

1 x Operational lead (C-A)

- 1 x G6 Statistician (KAI)
- 1 x Senior Statistical Officer (KAI)
- 1 x Higher Statistical Officer (KAI)

14/11/2019 to 15/11/2019 Reviewing the presence of potential disclosures from extracted Self Assessment Tax Return data from main return. The C-A operational lead conducted a thorough review to look for the presence of potential disclosures and to assess the disclosure rate of the scheme usages after 2011 that were unprotected. The results of the assessment showing a non-disclosure rate of between 97% and 99% were reviewed together in a meeting involving operational, policy and analytical leads from C-A, IPD, KAI in HMRC and HM Treasury (HMT) on the afternoon of 14/11/2019. The purpose of the meeting was to ensure robust and consistent interpretation and understanding of the data from the tax return entries.

To help sense check this analysis, the results from this analysis was compared against wider analysis that was conducted in this area. This shows that latest analysis is in line with the overall low number of users who have disclosed the use of Disguised Remuneration schemes on tax return over the years as shown in recent analysis conducted for the LC review in September and an earlier FOI request in 2018. Furthermore, the latest analysis is also in line with the rise of scheme usages through use of Non-Disclosed schemes over time.

As part of Quality Assurance, KAI asked in the meeting whether there are other additional information entries boxes that users can use to make disclosure as the current data extracted focused on entries in the main tax return. This led to an action for C-A to confirm whether other supplementary pages should also be included for this review. Following consultation with risking colleagues, C-A confirmed on 15/11/2019 that it was possible that users could have submitted additional information "white space" entry boxes in the self-employment and Capital Gains supplementary pages to disclose the use of avoidance schemes. This is not a common route for disclosure but to ensure completeness of the disclosure analysis, KAI took an action to extract white space entries from these supplementary pages.

As an additional quality assurance check, the data and analysis results from the investigations conducted by C-A were also separately reviewed and independently checked by a quality assurer from KAI. The quality assurer asked for clarification on entries for 2012-13 and 2016-17 and these were resolved and confirmed accurate. The quality assurer confirmed all results tallied up with the summary results produced by C-A.

- 1 x Deputy Director (C-A)
- 1 x Operational lead (C-A)
- 1 x G6 Statistician (KAI)
- 1 x Operational Researcher (KAI)
- 1 x Policy Lead (IPD)
- 1 x Policy Lead (HMT)

15/11/2019 & 18/11/2019 Quality Assurance & sign off with senior stakeholders The following meetings were held with senior stakeholders to review and provide challenge to the disclosure analysis:

15/11/2019 - two meetings were held between KAI analysts with the Director and Deputy Director of KAI to review and discuss the process taken to extract and analyse the disclosure data. The analysis and presentation of results were discussed in details in the meeting. This ensure presentation and interpretation of results were clear for the audience, reducing risks of misinterpretation.

18/11/2019 - Sign off meeting to discuss latest submission for the review team for which the disclosure analysis was part of. Attendees in this meeting included Director Generals, Directors and Deputy Directors from across different directorates in HMRC and senior stakeholders from HMT. Again, the attendees provided a challenge function to ensure the input data, analysis and output results were robust. We discussed the interpretation of results based on definition of disclosures (e.g. whether an entry would be considered as sufficient disclosure or not) from disclosure data extracted from the main return pages of the tax return. This showed a non-disclosure rate of between 97% and 99%. There was discussion whether a "single point" or "range" estimate should be provided to the review and the group agreed collectively on the latter presentation as it shows the variability of details provided by users in their "disclosure". In this same meeting, senior stakeholders also agreed with our recommendation to conduct additional analysis on additional supplementary pages of the tax returns to ensure completeness of the analysis and results.

2 x HMRC Director Generals

3 x HMRC Directors from C-A, IPD & KAI)

Multiple HMRC Deputy Directors from C-A, IPD, KAI

Multiple senior representatives from HMT

Multiple KAI analysts

Multiple HMRC policy leads

18/11/2019 Further analysis of white space entries in Self-Employment and Capital Gains supplementary pages KAI carried out further data extraction of additional information (white space) entries in the Self-Employment and Capital Gains supplementary pages of the tax return. In preparation, the senior statistical officer discussed with the senior statistician what data needs to be extracted. A thorough review was carried out on a tax return cross reference document to identify what datasets and data variables should be used for this extraction work.

This extracted data was provided to C-A on 18/11/2019. Initial review and assessment of the data by KAI analyst indicates there are up to 3 potential disclosures from this new data extract. The full extract was provided to C-A for reviewing and C-A confirmed there were 2 additional potential disclosures as the other case has already been accounted for in an entry also made in the additional information box in the main tax return. The inclusion of these two additional disclosures brought the non-disclosure rate based on the looser definition of disclosure from 97% to 96%, as presented in the note to the Loan Charge Review and as the current subject of audit currently. This calculation was conducted by C-A initially and further quality assured by a KAI analyst.

The code and process used to extract the additional data entries was reviewed and quality assured independently by another KAI analyst. This was completed and confirmed accurate on the afternoon of 18/11/2019.

1 x Deputy Director (C-A)

- 1 x Operational lead (C-A)
- 1 x G6 Statistician (KAI)
- 1 x Senior Statistical Officer (KAI)
- 1 x Higher Statistical Officer (KAI)
- 1 x Policy Lead (IPD)

B) Governance

Our governance of Loan Charge analysis builds in quality assurance.

Given the high profile, fast pace, large workload and sensitive nature of the Loan Charge Review, our business-as-usual Counter-Avoidance analysis team in Knowledge Analysis & Intelligence (KAI) has been boosted and reshaped to form the temporary Loan Charge Analysis Team. This now comprises four Grade 7 staff working with six analysts below Grade 7. The wider unit's Grade 6 leader is very closely involved in overseeing the day-to-day analysis, directing and challenging outputs regularly. The team's Deputy Director also devotes a large percentage of time to Loan Charge issues for higher-level oversight and assurance.

KAI's Director has a key role in our Loan Charge work. We have a regular weekly meeting to appraise our Director of the latest analysis, challenge new results and seeking sign-off. This reflects a similar level of governance and sign-off to (for example) analysis on key measures for Budgets and other fiscal events. Alongside the regular weekly meeting schedule we hold further ad hoc challenge and sign-off meetings as needs arise.

In October we established the Loan Charge Analysis Steering Group in recognition of the importance of our Loan Charge analysis. This meets weekly, bringing together our analysts with senior HMRC staff from the operational and policy areas and HM Treasury colleagues. (See Annex A.) Part of the group's remit is to review and sign off new headline analysis. This includes the logic and estimates involved in the unprotected years analysis.

On analytical quality assurance more generally, KAI operates in line with the wider guidance on producing quality assurance in government also known as the "Aqua Book." Our analysts were involved directly and actively in the creation of that guidance and its application to our ways of working. Significant analytical models assessed as business critical are subject to particular attention and are overseen by HMRC's Audit & Risk Committee. Our in-house QA framework is scrutinised regularly by external bodies such as the National Audit Office, and we apply continuous improvement principles to keep it fit for purpose. Current improvements involve building a greater focus on practical QA steps into our guidance and developing a new in-house training course for our analysts.

Annex A - senior cast list of the Loan Charge Analysis Steering Group

- Knowledge Analysis & Intelligence (KAI) Director
- KAI Deputy Director responsible for Loan Charge analysis
- Counter-Avoidance (C-A) Director
- C-A Deputy Director responsible for Loan Charge operations
- Individuals Policy Director
- IPD Deputy Director responsible for Loan Charge policy
- Debt Management Director
- Debt Management Deputy Director
- HM Treasury Personal Tax Deputy Director

Each area is also supported on the LC Analysis Steering Group by relevant Grade 6 and Grade 7 colleagues (and equivalent in HM Treasury) working on the Loan Charge.

0073-1

Note to GIAA

- 1. In our submission to the review, we said "We have to assume that the scale of unprotected years in the settled population is representative of the loan scheme user population as a whole".
- 2. Information on unprotected years is only available for the settled population. As explained to the review previously, specific data on whether loan usages are protected or unprotected is not stored in a central database and so it is not possible to see the scale of unprotected years in the post-2011 loan charge scheme user population directly.
- 3. We need to consider the variables that are available for both the population and the sample to take a view about whether the characteristics of the settled population are the same as those of the post-2011 population of loan charge scheme users. These are limited to income, number of usages and types of schemes used.
- 4. We know there are some differences in the income distribution between the settled and full population. This is consistent with the hypothesis that those on higher incomes are more likely to settle their cases early because they can more easily afford to do so, and they do not require payment arrangements, which take time to agree. Other reasons for settling tend to be specific to the individuals' specific circumstances and are not related to whether they have protected or unprotected years.
- 5. We have not at this stage carried out structured analysis on scheme type and usage volumes. We believe that the existence of unprotected years is most likely to be independent of these variables. Therefore, any adjustment that could potentially be made to allow for any issues of representativeness between the settled population and full population of users would not impact on our estimates of the prevalence of unprotected years and the rate of disclosure.
- 6. This is reinforced by our understanding of how the schemes are marketed and implemented. They are a mass-market product where individuals are all given the same advice, information and paperwork from the promoters. For example, the instructions about how to complete tax returns. Therefore, we would expect all users of the same scheme to act in the same way regardless of whether they had settled or whether they had unprotected years.
- 7. As you recognised in our meeting of 28 November, we have been clear in our submission that the 96%-99% non-disclosure rate estimates relate to settled scheme usages after 2011 that are unprotected specifically and we have not claimed that it is an estimate for the full population of DR users.
- 8. Nevertheless, it is worth noting the analysis results from the sample of settled cases line up with wider analysis we have carried out on disclosure rates for disguised remuneration scheme usages; see Table 1 below. This suggests the 96%-99% non-disclosure rate estimates for unprotected years could be a good proxy for the overall population.
- 9. In one of our previous submissions to the review, we shared Table 1 below which shows details of the number of individual users who declared their use of a disguised remuneration scheme on their Self Assessment tax return using, as required, the SRN in the correct box since 2004/05 as at July 2019 and the number disguised remuneration scheme usages by individuals. This analysis is based on the full population of DR scheme users. For reference, the year is when they declared the scheme which could be different to the year they had gained a tax advantage.

10. While the obligation to disclose can fall on different parties within the avoidance arrangement, the table does show a low rate of disclosure when we look at the low number of users who have disclosed use of DR avoidance scheme on tax returns compared against the level of usages in each year, and particularly more recent years.

Table 1: Number of disclosures made and numbers of schemes usages by year

	Individuals	Number of
	who	usages by
Tax Year	disclosed1	individuals ²
2004/2005	550	860
2005/2006	520	3,400
2006/2007	860	4,800
2007/2008	1,180	6,520
2008/2009	430	8,850
2009/2010	1,620	12,270
2010/2011	1,380	12,470
2011/2012	1,070	7,530
2012/2013	1,050	9,280
2013/2014	1,030	12,250
2014/2015	200	11,600
2015/2016	50	10,760
2016/2017	110	6,420
2017/2018	50	7,700

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database² and Self-Assessment tax return data¹

0073-2

Methodology for estimates of disclosure in unprotected years for loan charge scheme users

Introduction

- 1. On page one of the supplementary note we shared with the review team alongside the tranche 9 response on 19/11/2019, we made the following statement:
 - We have looked at settlement data to see whether contractors with unprotected years since 2011 had disclosed scheme usage (whether or not a scheme was itself disclosed under DOTAS). This analysis is based on a sample of around 1,600 settled contractor cases. It shows that 287 scheme usages after 2011 were unprotected. Of these, between 96% (using the loosest definition of disclosure) and 99% (using the tightest) made no reference to having received income via a loan, be that by making a reference in the 'white space' or properly completing (where appropriate) the DOTAS boxes on a tax return.
- 2. This note sets out the background sampling and methodology used to analyse the rate of non-disclosure for scheme usages after 2011 that are unprotected.

Background to initial sampling approach

- 3. An estimated 50,000 individual users are impacted by the disguised remuneration (DR) measures.
- 4. A population of this size would require a sample of around 380 to provide statistically robust estimates of the proportion of any characteristic of the population. This is at the 95% confidence level and with a confidence interval of 5. This means, with a sample of 380, we can be 95% sure that the true percentage of the population with the particular characteristic that we want to measure is between ±5 of the proportion observed in the sample. In text book examples, the characteristics being measured from a sample are often the buying or voting preferences of the population. So if 40% of the **sample** say they would vote for a particular party, we could be confident that between 35% and 45% of the **population** would vote that way. An example of this online <u>sample size calculator</u> provides more information and statistical advice around sample sizes.
- 5. For our work, the characteristics we are measuring through sampling is the proportion of 'unprotected years' for these users, and the extent to which these unprotected scheme usages after 2011 were disclosed in tax returns. Our sample is 4 times as large as the recommended minimum sample size (see paragraph 8). Generally, the larger the sample size, the more sure we can be that estimates derived from the sample truly reflect the population. While the relationship is not linear, we can expect that for a given confidence level, the larger the sample size, the smaller the confidence interval (or margin of error) is in the estimates.
- 6. As data on 'unprotected years' is only available for cases that have settled with HMRC rather than the full loan scheme user population, we have obtained a sample of data for settled contractor scheme users to conduct analysis on unprotected years.
- 7. For reference, 'unprotected years' have been defined as years that are not under formal enquiry by HMRC, are not subject to formal assessments raised by HMRC and the normal statutory time limits for opening a formal enquiry or raising assessment have expired. In this respect, we have only considered the normal 12 month time limit to open an enquiry or 4 year time limit to raise a discovery assessment. We have not considered whether any individual customer may have a discovery assessment raised under the extended time limits.
- 8. Operational teams provided a sample of 1,578 settled contractor scheme users, from an overall settled contractor population of around 4,000. The 1,578 users are settled users recorded in operational data by the Contractor Avoidance Settlements Operations Team (CASOT) which is responsible for the majority of contractor loan cases within Counter-Avoidance (C-A). The size of this sample (1,578) is considerably larger than the minimum sample size requirement (380) as set out in paragraph 4. This provided 3,321 scheme usages for analysis.
- 9. This sample contains settlements from recent months (early 2019 onwards, although a small proportion may fall in 2018). This is because the approach for collecting this level of data with the information needed for this detailed analysis on unprotected years was only fully introduced by C-A in 2019. However, all settlements will have been made under the settlement terms published in November 2017, so it would be comparable with cases who have settled earlier also.

- 10. We used this sample to analyse the scale of unprotected years in the DR population. Initial analysis was carried out to check the representativeness of this sample against the overall settled population. Table 2 below compares the settlement yield distribution of the overall settled population against that of the 1,578 settled contractors in our sample.
- 11. While there is a slightly higher proportion of cases with lower settlement yield in the sample settled population, overall the sample population does follow a very similar settlement yield distribution, which shows it is representative of the overall settled population.

Table 2: Comparison of distribution by settlement yield between overall settled population and sample settled population

Settlement yield band	% of overall settled population	% of sample settled population of
		1,578 individuals
1. Less than £0	0	0
3. Up to £10,000	42	49
4. £10,000 to £20,000	16	15
5. £20,000 to £30,000	10	9
6. £30,000 to £40,000	7	6
7. £40,000 to £50,000	4	4
8. £50,000 to £60,000	3	4
9. £60,000 to £70,000	3	3
10. £70,000 to £80,000	2	2
11. £80,000 to £90,000	2	1
12. £90,000 to £100,000	1	1
13. £100,000 to £150,000	4	4
14. £150,000 to £200,000	2	1
15. £200,0000 or more	4	1
Total	100	100

- 12. The sample data was then analysed to estimate the proportion of years that are unprotected, the proportion of users with unprotected years and the value of the avoided tax that are unprotected.
- 13. We also conducted the same analysis on 2 additional stratified samples containing 400 users from the 1,578 sample of settled users. The additional samples were stratified on settlement yield and were randomly selected within each settlement yield banding based on the distribution of settlement yield for the overall settled population as shown in Table 2 and Table 3 (which has more collapsed bandings).

Table 3: Distribution by settlement yield for overall settled population (Sampling frame used for second additional stratified sample)

Settlement yield band	% of overall settled population
Up to £10,000	42
£10,000 to £20,000	16
£20,000 to £30,000	10
£30,000 to £40,000	7

£50,000 or more	21 100
£40,000 to £50,000	4

14. Both additional stratified samples generated very similar results on unprotected years to that from using the 1,578 sample directly. This further strengthens our assessment that the 1,578 sample is a good representative sample of the overall settled population. Separately, we have used the analytical results from the additional stratified samples to inform the estimated ranges for the unprotected analysis.

Disclosure analysis on unprotected years

- 15. This representative sample of 1,578 settled contractors provided 3,321 usage years for analysis. From this data, our analysis has identified 287 scheme usages after 2011 were unprotected. Further analysis was conducted on these unprotected scheme usages to determine if these were disclosed to HMRC through Income Tax Self-Assessment tax returns.
- 16. From the 287 scheme usages, 254 have submitted an Income Tax Self Assessment tax return. Our analytical teams then extracted scheme use disclosure data and the additional information box entries from the Main Return, Additional Information sheet, Capital Gains and Self-employment supplementary pages from the tax returns. For example, on the 2011-12 tax return: boxes 18 and 19 of the "other information" section of the Additional Information sheet, and the 'white space' box 102 on the self-employment (full) form. These data were provided to operational colleagues who conducted a thorough review to look for the presence of potential disclosures, and to assess the disclosure rate of these Disguised Remuneration (DR) scheme usages.
- 17. In defining disclosure, we essentially included all references on the Self Assessment forms, whether that included disclosure of scheme use under DOTAS by including a Scheme Reference Number, or a mention of loans or other income in the notes/other information sections of the Self-Assessment tax return. We make an operational judgement about the extent to which comments contained in the additional notes (to the tax return) amount to a sufficient disclosure of avoidance scheme use. However, for the purposes of this analysis we have assumed any attempt to disclose a loan based arrangement should be considered a disclosure, making this the widest definition of disclosure possible.
- 18. A detail breakdown of the analysis results from the review of the 287 schemes usages are set out in Table 1 below. Overall, this analysis shows that 96% to 99% of the 287 unprotected usages since 2011/12 relate to scheme usages that were not disclosed.
- 19. Detailed explanation of the results is as follows:
 - 1 (or 0.3%) of the 287 unprotected scheme usages disclosed a Scheme Reference Number (SRN) on the tax return
 - 10 (or 3.5%) of the 287 unprotected scheme usages mentioned "loan" in the additional information entry areas on the tax return
 - More specifically within the 10 who mentioned "loan", only 2 would be considered as a sufficient disclosure based on the information provided.

Overall:

- 3 (or 1%) of the 287 unprotected scheme usages have disclosed <u>using the tightest definition</u>, e.g. 1 disclosed SRN and 2 disclosed sufficient information in additional information spaces.
- 11 (or 3.8%) of the 287 unprotected scheme usages have disclosed <u>using the looser definition</u>, e.g. 1 disclosed SRN and 10 disclosed/mentioned of loan in additional information spaces.
- The above bullets provides a non-disclosure range of 96%-99%.

Table 1: Results - sample analysis of unprotected years with usages after 2011

Tax Year	Total	No SA Return	SA Returns	Number disclosing	Number disclosing in	Total number	Total number
			Received	SRN on SA	white spaces ¹	disclosing	not
				Return			disclosing
2011/12	51	3	48				50
2012/13	65	7	58				62
2013/14	83	11	72				81
2014/15	85	12	73				83
2015/16							
2016/17							
Total	287	33	254				276
% of Total	100%	11.5%	88.5%				96.2%

¹ This is based on analysis of additional information box entries from the Main Return, Additional Information sheet, Capital Gains and Self-Employment supplementary pages.

- 20. The above results were reviewed together by colleagues from operational and analytical teams to ensure robust and consistent interpretation and understanding of the data. Furthermore, the data and analysis results from the investigations conducted by operational colleagues were also separately reviewed and independently checked by a quality assurer from the analytical team. Programming code used for the extraction of tax return data was also independently checked and quality assured by a separate analyst in the team.
- 21. For reference, example additional information spaces or 'white space' disclosures include:
 - I have been in receipt of a loan from my employer of GBP[amount]. This is subject to repayment conditions including an accruing interest charge of 6.0 per cent per annum and repayable on demand or within a maximum term of 10 years.
 - During the tax year 2013/14 foreign currency loans were entered into. It is considered that these loans do not give rise to taxable income.
 - Employment [Employer Name] This return has been completed on the basis that it is correct and complete to the best of my knowledge and belief. During the year I received loans of GBP[amount] directly from [Employer Name], my UK resident employer. All loans are interest free and repayable upon demand. Under the terms of the loan agreement funds were withheld from loans made to me as I am required to contribute sums to a life policy over which the trustees take a charge. The purpose of that life policy is to facilitate repayment of the loans that are repayable upon the earlier of, demand, the value of the underlying life policy being sufficient to repay the loans in full, or the maturity of that policy.

0076 -1

Sample size calculations are deeply rooted in well-established statistical concepts such as normal distributions, means, standard deviations and confidence intervals.

We have established the required sample size needed for the sub-sample using online sample size calculator. This website, <u>Surveymonkey</u>, is a good example which also provides the following formula that could be used to do the calculation manually.

Sample size formula:

$$\frac{z^2 \times p (1-p)}{e^2}$$

$$1 + \left(\frac{z^2 \times p (1-p)}{e^2 N}\right)$$

N = population size

p = the expected proportion of the population with the particular characteristic being measured. p=0.5 gives the largest target sample size.

e = confidence interval (margin of error) (percentage in decimal form e.g. 0.05)

z = the z-score, which is the number of standard deviations a given sample proportion is away from the mean. For a 95% confidence level, z=1.96

A population of 50,000 (estimated size of Disguised Remuneration avoidance schemes user population) would require a sample of around 380 to provide statistically robust estimates of the proportion of any characteristic of the population. This is at the 95% confidence level and with a confidence interval of 5.

Once we had determined the total sample size needed for the 2 additional sub-samples, we then looked at the settlement yield distribution of the overall settled population (around 4,000). We used this distribution as our sampling frame and calculated how many of the 400 sample we should have within each settlement yield banding to ensure we have a good representative sample of the settled population for analysis. Table 1 & 2 at the end of this note shows the settlement yield of the overall settled population and the number of sample cases required within distribution banding for the 2 sub-samples of 400.

We put the 1,578 settled cases we have been provided by operational team into the same settlement yield bandings as our sampling frame and randomly selected the required number of cases for the additional sub-sample within each banding.

Both additional stratified sub-samples generated very similar results on the proportion of unprotected years to that from using the total 1,578 sample directly. This strengthens our assessment that the 1,578 sample is a good representative sample of the overall settled population for analysis and is not producing biased or skewed results.

Table 1: Distribution of settlement yield for overall settled population and cases required for sub-sample 1

	Distribution	Casas required
Settlement yield band	of overall settled	Cases required
		for sub-sample
	population	1
1. Less than £0	0%	0
3. Up to £10,000	42%	168
4. £10,000 to £20,000	16%	64
5. £20,000 to £30,000	10%	40
6. £30,000 to £40,000	7%	28
7. £40,000 to £50,000	4%	16
8. £50,000 to £60,000	3%	12
9. £60,000 to £70,000	3%	12
10. £70,000 to £80,000	2%	8
11. £80,000 to £90,000	2%	8
12. £90,000 to £100,000	1%	4
13. £100,000 to £150,000	4%	16
14. £150,000 to £200,000	2%	8
15. £200,0000 or more	4%	16

Total	100%	400

Table 2: Distribution of settlement yield for overall settled population and cases required for sub-sample 2

Settlement yield band	Distribution of overall settled population	Cases required for sub-sample 2
Up to £10,000	42%	168
£10,000 to £20,000	16%	64
£20,000 to £30,000	10%	40
£30,000 to £40,000	7%	28
£40,000 to £50,000	4%	16
£50,000 or more	21%	84
Total	100%	400

Attachment 0076-2

Note to GIAA

- 11. In our submission to the review, we said "We have to assume that the scale of unprotected years in the settled population is representative of the loan scheme user population as a whole".
- 12. This note sets out the rationale underpinning our assumption that (i) the prevalence of unprotected years and (ii) the extent of disclosure of scheme usages observed in the sample of post-2011 settled cases is similar to the whole population of disguised remuneration (DR) scheme users. In summary, the main points are:
 - As stated in our main sampling note, the sample size taken is 4 times as large as the minimum sample size required to measure population of 50,000 (see para 3);
 - While the income distribution of people with settled cases is slightly different to that of the whole DR population, the existence of an unprotected year is independent of income levels (see paras 5);
 - The reasons for people settling tend to be specific to their personal circumstances and not related to the existence of an unprotected year (see para 6);
 - By coming forward to settle, users have demonstrated a tendency towards compliance not evident in the wider population, and so it is unlikely that the sample result for settled users overestimates non-disclosure in the population as a whole (see para 7);

- The standardised way the schemes were sold and implemented means that it is unlikely any variables would have an impact on disclosure rates or unprotected years (see paras 8 and 9);
- The low disclosure rates observed for users with unprotected years from our sample of settled cases are consistent with the overall low disclosure rates of DR scheme usages on tax returns (see paras 11 to 13).
- 13. Information on unprotected years is only available for the settled population. As explained to the review previously, specific data on whether loan usages are protected or unprotected is not stored in a central database and so it is not possible to see the scale of unprotected years in the post-2011 loan charge scheme user population directly.
- 14. We need to consider the variables that are available for both the population and the sample to take a view about whether the characteristics of the settled population are the same as those of the post-2011 population of loan charge scheme users. These are limited to income, number of usages and types of schemes used.
- 15. We know there are some differences in the income distribution between the settled and full population. This is consistent with the hypothesis that those on higher incomes are more likely to settle their cases early because they can more easily afford to do so, and they do not require payment arrangements, which take time to agree.
- 16. We do not have evidence of why some individuals settle at certain times compared to others. The is often more than one reason for settling and they often tend to be specific to the individuals' specific circumstances and are not related to whether they have protected or unprotected years. For example, a business owner may need to end their involvement in a scheme as a condition of selling their business.
- 17. It is possible users that have settled with HMRC are more compliant on average than the full population of DR scheme users, so we would expect the sample of settled users to have marginally higher disclosure rates than the full population of DR users. This suggests that the 96% to 99% (of users who did not disclose scheme use) in the sample is unlikely to be an overestimate of the position for the full population of DR users.
- 18. We have not at this stage carried out structured analysis on scheme type and usage volumes. We believe that the existence of unprotected years is most likely to be independent of these variables. Therefore, any adjustment that could potentially be made to allow for any issues of representativeness between the settled population and full population of users would not impact on our estimates of the prevalence of unprotected years and the rate of disclosure.
- 19. This is reinforced by our understanding of how the schemes are marketed and implemented. They are a mass-market product where individuals are all given the same advice, information and paperwork from the promoters. For example, the instructions about how to complete tax returns. Therefore, we would expect all users of the same scheme to act in the same way regardless of whether they had settled or whether they had unprotected years.
- 20. As you recognised in our meeting of 28 November, we have been clear in our submission that the 96%-99% non-disclosure rate estimates relate to settled scheme usages after 2011 that are unprotected specifically and we have not claimed that it is an estimate for the full population of DR users.

- 21. Nevertheless, it is worth noting the analysis results from the sample of settled cases line up with wider analysis we have carried out on disclosure rates for DR scheme usages; see Table 1 below. This suggests the 96%-99% non-disclosure rate estimates for unprotected years are a good proxy for the overall population.
- 22. In one of our previous submissions to the review, we shared Table 1 below which shows details of the total number of individual users who declared their use of a DR scheme on their Self Assessment tax return using, as required, the SRN in the correct box since 2004/05 as at July 2019 and the number of DR scheme usages by individuals. For reference, the year is when they declared the scheme which could be different to the year they had gained a tax advantage.
- 23. While the obligation to disclose can fall on different parties within the avoidance arrangement, the table does show a low rate of disclosure when we look at the low number of users who have disclosed use of DR avoidance scheme on tax returns compared against the level of usages in each year, and particularly more recent years.

Table 1: Number of users who disclosed and numbers of schemes usages by year

	Individuals	Number of
	who	usages by
Tax Year	disclosed ¹	individuals ²
2004/2005	550	860
2005/2006	520	3,400
2006/2007	860	4,800
2007/2008	1,180	6,520
2008/2009	430	8,850
2009/2010	1,620	12,270
2010/2011	1,380	12,470
2011/2012	1,070	7,530
2012/2013	1,050	9,280
2013/2014	1,030	12,250
2014/2015	200	11,600
2015/2016	50	10,760
2016/2017	110	6,420
2017/2018	50	7,700

Source: Analysis provided by KAI using data from Counter-Avoidance Operation database² and Self-Assessment tax return data¹

Email0031 attachment 1

Within email sent 27 September 2019 14:14

Supporting vulnerable customers Desk aid

Page 2 of 4

Supporting vulnerable customers: Desk aid

- 1 Take the statement seriously
- Remain calm and listen carefully. Stop what you are doing give the customer or your full attention.
- 2 Summon a colleague to act as a support partner
- If customer is on the phone do not put them on hold. Summon help by holding up yellow card or using your departmental procedures. Support partner will assist by finding contact numbers and witnessing the conversation.
- 3 Gather information to gauge level of risk
- Talk to the customer to gather information. This could include asking: Do they have specific plans? What are they? How imminent are they? Do they have the means to carry out their plans to hand? Have they already taken action? If so, find out what and when? Have they tried to harm themselves before? Have they have received treatment or are they currently receiving treatment? Where is the customer? Do they intend to go anywhere else
- Record key information such as the customer's location and any plans they have to go elsewhere to harm themselves.

For hints on managing the conversation with the customer see below.

This document can be used as a reminder of what to do when supporting vulnerable customers.

Customer indicates they intend to attempt suicide or self-harm:

Page 3 of 4

- 4 Provide referral advice— if situation is non-urgent, e.g. general distress but no immediate plans or means to attempt suicide or self-harm
- Samaritans 116123 MIND 0300 1233393 Citizens Advice Bureau Gingerbread England / Wales 0808 802 0925 Gingerbread Northern Ireland 0808 808 8090 One Parent Families Scotland 0808 801 0323 Further organisations for signposting are available at CSL: Freely available resources
- 5 Summon Emergency help customer is distressed at serious risk or in immediate danger
- You do not need the customer's consent to contact the emergency services but you should tell them what is happening and why. Do not delay in contacting the emergency services if you think this is appropriate. Tell the emergency services the customer's location and any other relevant details you have uncovered. Tell the emergency services if you are calling from a Contact Centre.
- 6 Review Record the incident as soon as possible. Discuss the incident with your manager.

0081-2

Dealing with suicidal customers

If you believe a customer is going to harm themselves, take it seriously and summon help from colleagues, who may have more experience. Any expressions of suicidal intent should be acted upon immediately. If you are concerned someone is suicidal you should:

- let them know that you take them seriously and treat them with respect
- listen and show that you are listening at every opportunity. When we are
 listening actively to someone we respond in a way that explicitly shows 'I heard
 what you said, I care and I want to know more'
- avoid arguments and aim to communicate with patience, sympathy and acceptance
- be prepared to summarise back things they have shared about their circumstances and feelings; for example, "So, things have got much worse since you lost your job and fell behind with your payments - is that right?"
- give the person the opportunity to explain why they feel this way. We can acknowledge feelings by saying what we see and hear: "I can hear how upset you are", "I can hear the anger in your voice". Acknowledging suicidal thoughts and feelings does not reinforce the idea in people's minds.

If you identify that someone is suffering from personal distress make a sensitive referral by saying something like "You mentioned earlier that you felt suicidal - would you find it helpful to talk to the <u>Samaritans</u>?" Referrals can also be for emotionally charged people, it doesn't have to be a suicide case. Anyone can contact the Samaritans on their free help line number 116 123 in the UK or ROI (Republic of Ireland). If you are particularly worried about a person you can make a third party referral with the customer's permission and arrange an appropriate time for the Samaritans to call them.

In the most extreme of cases where you feel the threat of suicide is real then you may consider involving the emergency services. It is not possible to define 'extreme of cases' but the emotional distress would need to be at a level that it could be viewed as a risk to safety or health.

Samaritans offer advice on how not to exacerbate the situation. You should avoid:

- offering any reassurances that things will get better or are not that bad
- telling someone you know how they feel
- attempting to try to solve the problem or come up with lots of possible suggestions
- minimising a person's problems by comparing them to those of others.

If the caller hangs up before you are able to pass the call or calm them down then you should discuss the appropriate course of action with your manager.

It is important to remember that you should not feel responsible in any way for the debt situation the customer may be in and your job is to help the customer based on their individual circumstances and work out a solution that results in payment of the debt according to their needs.

Everyone reacts differently to distressing situations, often based on personal experience, and you may need some time to recover after taking an upsetting call. If you feel that you have been affected, discuss your feelings with your manager and agree the most suitable course of action. Above all it's important to remember you are not responsible for another person's actions.

Email0034 attachment 1

Within email sent 15 October 2019 16:49

Agenda: Meeting between Loan Charge Review Team and HMT/HMRC

Attendees:					
Sir Amyas Morse;					(Loan Charge Review)
Suzy Kantor;			(HMT)		•
Mary Aiston; Caro	Bristow	;	(HMRC)		

<u>Agenda</u>

- 1. Introductory comments from the Reviewer
- 2. Wider context:
 - a. Government approach to addressing off-payroll tax avoidance (IR35 implementation, approach to enforcement, expansion)
 - b. Government approach to combatting promoters of tax avoidance schemes
 - c. Government approach to combatting loan scheme misuse going forward
- 3. Specific points on the Loan Charge:
 - a. Effect of 2011 ITEPA changes (on HMRC's ability to collect tax arising from loan schemes, awareness of 'legitimacy' of schemes with lawyers/advisors)
 - Approach to settlement (voluntary restitution; variance with other settlement terms

 e.g., EBTSO, CLSO I; HMRC communication and implementation of settlement terms)
 - c. Interaction with (including HMRC powers to pursue historic scheme misuse in the absence of the Loan Charge; circumstances in which HMRC transfers employer liabilities to employees)
 - d. HMRC understating of affected population (numbers of people in-scope, ability of scheme users to pay)