



HM Revenue & Customs

Mr Matt Smith

By email: request-720828-
afed7f6b@whatdotheyknow.com

Freedom of Information Team
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6 Floor
Central Mail Unit
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Email foi.request@hmrc.gov.uk

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Date: 21 April 2021
Our ref: FOI2021/00393

Dear Mr Smith

Freedom of Information Act 2000 (FOIA)

Thank you for your request, which was received on 22 January, for the following information:

“Please supply all emails between Jim Harra and Ruth Stanier in 2019 that contained the letters 'DR', meaning 'disguised remuneration', and/or any other standard abbreviations for such used within HMRC.

Such a search should not generate too many false results, but if so please search on 'DR_' where '_' is replaced with a space.”

Please accept my sincere apologies for the delay in our response, in this instance HMRC required additional time to consider the public interest in the disclosure of certain sections of the information.

HMRC identified 15 email conversations within the scope of your request. These emails and their respective attachments have been provided as an annexe to this letter subject to redactions by virtue of sections 44(1)(a), 40(2), 36(2)(b)(i), and 36(2)(b)(ii) FOIA. An explanation to the use of FOIA exemptions is provided below:

Within email 10, the name of a specified taxpayer has been redacted pursuant to section 44(1)(a) FOIA.

HMRC is bound by its duty of confidentiality at section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA):

18(1). Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

There are some circumstances, set out in sections 18(2) and 18(3), in which this prohibition does not apply, but these are not relevant to FOIA. However, the scope of the prohibition is limited, in relation to FOIA disclosures, by section 23. This says that the prohibition on disclosing information in section 18(1) of the CRCA only applies to FOIA disclosures if the information relates to an identifiable person:

23 Freedom of information

(1) Revenue and customs information relating to a person, the disclosure of which is

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prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure—

- (a) would specify the identity of the person to whom the information relates, or
- (b) would enable the identity of such a person to be deduced.

...

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.

Section 40(2) of the FOI Act, by virtue of section 40(3A) provides an absolute exemption for third party personal data, where disclosure would contravene any of the data protection principles set out in Article 5 of the General Data Protection Regulation.

The first data protection principle requires the disclosure of third-party personal data to be lawful, fair and transparent. We believe that releasing the information would breach the first data protection principle, since it would be unlawful and unfair to release the information.

The exemption in section 40(2) is absolute, meaning that there is no need to weigh up the public interest in releasing the information against the public interest in maintaining the exemption. On this basis, all identifying information relating to junior officials and members of the public has been withheld.

Information within emails 3 and 13 is being withheld because it is considered exempt pursuant to sections 36(2)(b)(i) and (ii) of the Freedom of Information Act (the Act). This is because its disclosure would be likely to, inhibit the free and frank provision of advice, and the free and frank exchange of views for the purposes of deliberation.

In this instance, HMRC's qualified person takes the view that the department's senior officials must be able to freely challenge the veracity of any claims made by a third party as well as the department's rebuttals to them without the trepidation that such comments may enter the public domain without additional context, whilst the issue is still ongoing.

It is HMRC's view that were this information to be disclosed at this time it would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and deliberation, leading to poorer decision making.

Section 36 is qualified by the public interest. This means that even though the exemption is considered to be engaged, it is necessary to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

HMRC accepts that there is a clear public interest in government departments being as open and transparent as possible, so as to increase accountability and inform public debate.

However, I would argue that there is a more compelling public interest in preserving the safe space in which officials can deliberate issues and protecting the department's ability to operate effectively.

However, it is also in the public interest for officials to be able to have confidential dialogue in the execution of their duties and for them to exchange views freely and frankly. Advice provided and received must be detailed and candid if it is to be of value. For all of this to occur, officials must be free of any inhibitions that might interfere with their ability to offer comprehensive input based on free and frank discussion.

If such information were to be disclosed, sensitive issues might not be able to be raised in the future, for fear that information about such issues might be disclosed and be exposed prematurely to public scrutiny and comment. Disclosures of the detail of these exchanges would undermine the quality and nature of this dialogue in the future and would not be in the public interest.

On balance, I find that the public interest favours withholding the requested information.

If you are not satisfied with this reply you may request a review within two months by emailing foi.review@hmrc.gov.uk, or by writing to the address at the top right-hand side of this letter.

If you are not content with the outcome of an internal review you can [complain to the Information Commissioner's Office](#).

Yours sincerely,

HM Revenue and Customs

Email 1 – no attachments

From: Harra, Jim (HMRC)

Sent: 25 January 2019 14:07

To: Stanier, Ruth (CS&TD) <ruth.stanier@hmrc.gov.uk>; [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gsi.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gsi.gov.uk>

Cc: Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gsi.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gsi.gov.uk>; Jones, Nick (Counter-Avoidance) <nick.jones@hmrc.gsi.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gsi.gov.uk>; [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gsi.gov.uk>; [REDACTED] (CS&TD Centre for Data Exploitation (CoDE)) [REDACTED]@hmrc.gov.uk>; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gsi.gov.uk>

Subject: RE: Letter to TSC on DR Income Distribution [OFFICIAL-SENSITIVE]

I agree – I was careful to offer no more than what we had already given the HoL Committee.

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] **mob:** [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED] **mob:** [REDACTED];
email: ian.allen@hmrc.gsi.gov.uk)

From: Stanier, Ruth (CS&TD)

Sent: 25 January 2019 14:00

To: [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gsi.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gsi.gov.uk>; Harra, Jim (HMRC) <jim.harra@hmrc.gsi.gov.uk>

Cc: Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gsi.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gsi.gov.uk>; Jones, Nick (Counter-Avoidance) <nick.jones@hmrc.gsi.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gsi.gov.uk>; [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gsi.gov.uk>; [REDACTED] (CS&TD Centre for Data Exploitation (CoDE)) [REDACTED]@hmrc.gov.uk>; Stanier, Ruth (CS&TD) <ruth.stanier@hmrc.gov.uk>

Subject: RE: Letter to TSC on DR Income Distribution [OFFICIAL-SENSITIVE]

Option 2 is precisely in line with the commitment Jim made and simply shares the information we have already given to the HoL (following careful quality assurance).

The analysis set out at option 1 is highly problematic and does not meet an appropriate quality assurance threshold for release. In essence, we are not able to provide appropriately indicative estimates, that are not misleading, to this question using this data. We can only do so on the basis of future case by case analysis.

Therefore I favour option 2, and we need to agree lines for use in the hearing on this point.

Ruth

Ruth Stanier | Director General, Customer Strategy & Tax Design | HM Revenue & Customs | Room 2C/23, 100 Parliament Street, London SW1A 2BQ | Tel. [REDACTED]

Email 2 – no attachments

From: Harra, Jim (HMRC)

Sent: 31 January 2019 08:15

To: Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gsi.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gsi.gov.uk>; Stanier, Ruth (CS&TD) <ruth.stanier@hmrc.gov.uk>

Cc: Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gsi.gov.uk>

Subject: DR

As you might expect, I am receiving tweets from loan charge campaigners following yesterday's TSC hearing. Setting aside all the insults, etc., the main substantive comments are:

- HMRC persistently claims that DR schemes never worked but, despite allegedly challenging DR schemes for the last 20 years, we have not obtained tribunal/court decisions that back up this claim. In particular, we have not obtained decisions establishing that individuals are taxable on DR loans as income. (In recent months I have repeatedly tried to obtain legal analysis to understand the strength of our claim with very little success. For yesterday's hearing we were initially given a summary of avoidance wins, some of which seemed to have nothing to do with DR.)
- It was inappropriate to suggest that people might be required to take out loans secured on their home to pay their DR tax bill. (One campaigner has tweeted the FCA asking them to investigate us for this.)

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED]; mob: [REDACTED];
email: ian.allen@hmrc.gsi.gov.uk)

Email 3 – x 2 attachments

From: Harra, Jim (HMRC)
Sent: 09 April 2019 09:58
To: Thompson, Jon (HMRC) <jon.thompson5416@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>
Cc: [REDACTED] (HMRC) [REDACTED]@hmrc.gov.uk; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>
Subject: RE: DR Loan charge rebuttals document [OFFICIAL-SENSITIVE]

I feel that the internal document is much better than the one intended for external publication. Indeed, I fear that the document for publication will merely add to the criticisms that we dodge the questions and spin.

The sections on officials' conduct simply does not address the criticisms that have been directed at us. The section on taxpayer safeguards seems designed to rile our critics – e.g. by saying that customers always have a right of appeal, when it is argued that the loan charge effectively overrides the taxpayer's right to appeal against HMRC's assertion that their DR loans were taxable.

[REDACTED]

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED]; mob: [REDACTED];
email: ian.allen@hmrc.gsi.gov.uk)

From: Thompson, Jon (HMRC)
Sent: 09 April 2019 08:39
To: Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Harra, Jim (HMRC) <jim.harra@hmrc.gov.uk>
Cc: [REDACTED] (HMRC) [REDACTED]@hmrc.gov.uk
Subject: RE: DR Loan charge rebuttals document

Thanks, on the answers to the questions I am grateful for all the work and the clarity of the answers

On the potential public document I have written a few amendments and [REDACTED] will pass on. I also suggest a reorder as well to lead on the policy, legislation, safeguarding etc before we get to the conduct of officials. And I think we need an opening restatement of our position that this is contrived with the aim of avoiding IT and NICS etc

Otherwise, and obviously subject to Jim, content that this can proceed to SPADS

Thanks

Jon

Sir Jonathan Thompson

Chief Executive Officer & Permanent Secretary

HM Revenue & Customs

From: Stanier, Ruth (CS&TD Director General)

Sent: 09 April 2019 07:36

To: Thompson, Jon (HMRC) <jon.thompson5416@hmrc.gov.uk>; Harra, Jim (HMRC) <jim.harra@hmrc.gov.uk>

Cc: Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>

Subject: DR Loan charge rebuttals document [OFFICIAL-SENSITIVE]

Importance: High

Jon / Jim,

These are the documents touched on at hot topics yesterday. The 2nd attachment is the rebuttal document we would like to publish and put on record. If you are content, we can put it forward to FST / SPADs.

The 1st attachment is a more detailed internal briefing note from Counter-Avoidance on the 15 questions in Ed Davey's latest letter to Jon (this would theoretically be subject to FOI, but has been prepared with that in mind).

Separately we're finalising advice for FST today on possible further concessions / announcements on support for vulnerable customers and payment terms.

Many thanks,

Ruth

Ruth Stanier | Director General, Customer Strategy & Tax Design | HM Revenue & Customs | Room 2C/23, 100 Parliament Street, London SW1A 2BQ | Tel. [REDACTED]

Email 4 – no attachments

From: Harra, Jim (HMRC)

Sent: 11 April 2019 13:20

To: Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>

Cc: Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: RE: Loan charge rebuttals document - revised version [OFFICIAL-SENSITIVE]

Ruth

Fine, I don't think the document will win the PR battle for us, but I suppose it will get something on the record.

You might just want to check that you are content with what we are saying in the final para of the *Litigation* section:

- The Document says the “APPG imply it would have been appropriate to continue to litigate...” In any event, it seems to me that para 74 of the APPG's report does more than imply this – it specifically calls for the restoration of the rights of DR scheme users to defend their tax position in litigation
- The penultimate sentence para admits that the 2011 measure did not achieve its objective of stopping DR avoidance. Is that right?
- The final sentence confirms the APPG's finding that the purpose of the LC is to sidestep the need for HMRC to investigate, argue and, if necessary, litigate every case, in the interests of the efficient use of HMRC's resources. Is that ok? Is it how the LC was justified when it was introduced?

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED]; mob: [REDACTED];
email: ian.allen@hmrc.gsi.gov.uk)

Email 5 - no attachments

From: Harra, Jim (HMRC)

Sent: 25 August 2019 20:55

To: Russell, Beth - HMT [REDACTED]; Stanier, Ruth (CS&TD Director General)
<ruth.stanier@hmrc.gov.uk>

Subject: Re: Loan Charge [OFFICIAL-SENSITIVE] So te

First step, I think, is to determine what questions Ministers want the review to answer; in particular, whether they want it to consider whether the LC should stand or be repealed.

A review could be wide ranging; e.g.

- Does HMRC have the right powers and operational strategies to tackle all players in marketed avoidance?

or

- Does HMRC have the right approach to tackling avoidance by contractors?

Alternatively, it could be narrower; e.g.

- Is the LC a fair way to tackle DR avoidance?

or

- Does the LC as enacted, and HMRC's approach to administering it, contain sufficient protections for those DR users who may be financially distressed by the liability?

The leader of a narrow review could arguably be recruited from a wide pool; a wider review would probably need someone from a legal/tax professional background, perhaps a retired UT judge.

We will also need to take Ministers through the operational implications of a review and its possible outcomes; e.g.

- whether to continue trying to settle cases

- what action to take in relation to enforcement of the end of September information requirement

- whether, if the LC is repealed, we would fall back to pursuing DR liabilities for protected years under the existing law, etc.

- whether to repay those who have settled the DR liabilities in anticipation of the LC (even though, with the exception of voluntary payment for unprotected years, we believe these liabilities were due anyway).

Jim

Email 6 – no attachments

From: Harra, Jim (HMRC)

Sent: 03 June 2019 16:04

To: Russell, Beth - HMT [REDACTED]; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Riley, Paul (CS&TD TAD) <paul.riley@hmrc.gov.uk>

Cc: [REDACTED] (HMRC) [REDACTED]@hmrc.gov.uk; [REDACTED] (HMRC Perm Secs Office) <[REDACTED]@hmrc.gov.uk>; [REDACTED] (CS&TD DG Private Office) <[REDACTED]@hmrc.gov.uk>; Whyte, Lindsey - HMT [REDACTED]>; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: RE: Loan charge comms meeting readout 30/05 [OFFICIAL-SENSITIVE]

I've just had my first meeting with the new FST.

On the LC, he referred to looking for modest concessions or mitigations. I said we had, obviously, been over that territory already but could advise.

I pointed out that our work to tackle DR avoidance schemes is just one manifestation of a longstanding antagonistic relationship between HMRC and a sizeable section of the contractor industry and their advisers, caused by the gulf between our view of what is acceptable tax planning and theirs. Next year's extension of the IR35 reforms is also part and parcel of that. So, alongside the short term problem of how to handle the LC there is a strategic need to steer contractors' tax planning onto more solid ground and re-set the relationship with them.

I also mentioned that the additional powers HMRC has been given in recent years to tackle – [REDACTED]

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] | email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED]; mob: [REDACTED]; email: ian.allen@hmrc.gsi.gov.uk)

Email 7 – no attachments

From: Harra, Jim (HMRC)

Sent: 04 June 2019 16:22

To: Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; MacDonald, Angela (HMRC Director General, Customer Services) <angela.macdonald@hmrc.gov.uk>

Cc: Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Gill, Marc (DM) <marc.gill@hmrc.gov.uk>; Russell, Beth - HMT [REDACTED]; [REDACTED] (CS&TD TAD) [REDACTED]@hmrc.gov.uk>; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gov.uk>; [REDACTED] (HMRC Comms CCG Communications) [REDACTED]@hmrc.gov.uk>; [REDACTED] (Counter-Avoidance) [REDACTED]@hmrc.gov.uk>; Kantor, Suzy - HMT [REDACTED]; [REDACTED] - HMT [REDACTED]; [REDACTED] - HMT [REDACTED]>; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: RE: Draft advice on DR - pre-reading for 5pm meeting Monday [OFFICIAL-SENSITIVE]

Thanks, Carol. Obviously, we have been round all of this before.

It feels to me that the concession that would make the biggest difference in re-setting the narrative (at least with stakeholders who are interested in the principles of the matter) is the removal of unprotected years (from both DR settlements and the LC). As well as showing that the Government is listening and making a concession, it would draw the sting from the principled criticism that the LC retrospectively removes certainty from taxpayers and gives HMRC a second bite of the cherry. Therefore, we need to be ready to advise the FST about:

- its limitations – e.g. it would not draw the sting from the criticism that the LC withdraws access to justice (by rendering arguments about the effectiveness of DR schemes otiose), nor would it satisfy LCAG (whose members don't want to pay their tax, regardless of whether HMRC has enquiry and assessment cover)
- its revenue costs
- the challenges of implementing it.

I can see that, in the absence of a commitment from the Government to bring forward legislation, to remove unprotected years from the LC, HMRC cannot do so across the board as an extra-statutory administrative measure. I note that the HMT report holds out the possibility that we could decide to remove unprotected years in certain circumstances on a case by case basis – what would the criteria be, and how far might this take the Government in resetting the narrative.

Is it likely that there will be opportunities for back bench amendments to the LC in the next FB. If so, and there was an amendment to remove unprotected years, would our advice be to resist such an amendment?

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED]; mob: [REDACTED];
email: ian.allen@hmrc.gsi.gov.uk)

Email 8 – 1 x attachment

From: Harra, Jim (HMRC)

Sent: 13 June 2019 11:11

To: Jones, Nick (Counter-Avoidance) <nick.jones@hmrc.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Stuart-Lacey, Poli (HMRC Comms) <poli.stuart-lacey@hmrc.gov.uk>; Whyte, Lindsey - HMT [REDACTED]

Cc: Holden, Jonathan (HMRC Comms) <jonathan.holden@hmrc.gov.uk>; Gill, Marc (DM) <marc.gill@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; [REDACTED] (Counter-Avoidance) [REDACTED]@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; Barker, Chris (Counter-Avoidance) <chris.barker@hmrc.gov.uk>; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: RE: DR loan charge - letter to users of contractor loan schemes - For information

Thanks, Nick. I have tracked some suggested revisions and queries.

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED]; mob: [REDACTED];
email: ian.allen@hmrc.gsi.gov.uk)

Email 9 – no attachments

From: Harra, Jim (HMRC)

Sent: 10 July 2019 10:26

To: Thompson, Jon (HMRC) <jon.thompson5416@hmrc.gov.uk>; MacDonald, Angela (HMRC Director General, Customer Services) <angela.macdonald@hmrc.gov.uk>; ExCom, ExCom Secretariat (HMRC) <secretariat.excom@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>

Cc: Secs, Perm (HMRC) <perm.secs@hmrc.gov.uk>; Evans, Alan (SOLS) <alan.evans1@hmrc.gov.uk>; [REDACTED] (HMRC) [REDACTED]@hmrc.gov.uk>; [REDACTED] (HMRC Corporate Governance) [REDACTED]@hmrc.gov.uk>; Gill, Marc (DM) <marc.gill@hmrc.gov.uk>; Cunningham, Laura (CS&TD) <laura.cunningham@hmrc.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk>; Barker, Chris (Counter-Avoidance) <chris.barker@hmrc.gov.uk>; [REDACTED] (Counter-Avoidance) [REDACTED]@hmrc.gov.uk>; Armitage, James (DM) <james.armitage@hmrc.gov.uk>; [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk>; [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk>; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk>; [REDACTED] (HMRC Perm Secs Office) [REDACTED]@hmrc.gov.uk>; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>; [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk>; [REDACTED] (Border Delivery Group) [REDACTED]@hmrc.gov.uk>; Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: RE: C18 (19) Means Based Settlements URGENT COMMENTS NEEDED COP 10 JULY

Thanks, [REDACTED].

Closed enquiries

I am content with option 2.

I note that the paper refers to where HMRC “opened an enquiry into that customer’s use of the scheme”. I think we should apply this test broadly to include any case where the enquiry officer:

- knew, or ought to have known, from the information available to him/her that the customer had used a DR scheme, and
- subsequently closed the enquiry without making a relevant adjustment in relation to that scheme.

Communicating our approach to means based settlements

Paragraph 2 adds new conditions that I do not recall being in the original paper on which the Commissioners gave a decision last week. So, I am interpreting this as asking for a revised Commissioners’ decision, rather than merely approval of the communication approach.

I do not understand the implications of the proposed exclusion for property owners. We have already said we will not expect anyone to sell their main home in order to pay their DR tax debt, although we might expect them to raise an affordable loan secured on their home, and we might put a charge on their home in respect of any unpaid balance. Can’t we accommodate that within the means based settlements concession?

Where has the 31 August deadline come from? Why would we impose such a deadline on these customers? What would we do with a customer who meets the conditions for the concession but tries to settle on 1 September?

I feel we need to protect ourselves by making it clear that we will not offer this discretionary concession in cases where the taxpayer has attempted to put money or assets beyond HMRC's reach.

Isn't the FST expecting a statement about how HMRC will go about collecting the tax due not just on DR settlements but also on the LC itself? Therefore, in addition to the Commissioners' decision to arrive at means based DR settlements, don't we also need to set out our general hardship remissions policy, which will apply to people who are liable for the LC? I.e. something like:

- HMRC expects people who owe tax to pay what they can afford, including through realising assets
- where necessary, HMRC will agree to payment by instalments over a period of time
- HMRC will not expect anyone to sell their main home to pay their tax debt, although we might expect them to raise an affordable loan secured on their home, and might put a charge on their home in respect of any unpaid balance of the debt
- HMRC will not force anyone who cannot afford to pay their tax into bankruptcy or insolvency unless
 - they are continuing to accrue further tax debts and there is no reasonable prospect of them being able to pay them, or
 - they have tried to put money or assets beyond HMRC's reach, or
 - they have not cooperated with HMRC in collecting their debt
- HMRC will leave any unpaid balance of a debt on file, to be collected later if the debtor's circumstances change. where someone cannot afford to pay the LC over a reasonable period.

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] **| mob:** [REDACTED] **| email:** jim.harra@hmrc.gsi.gov.uk

(Principal Private Secretary: Ian Allen | tel: [REDACTED] **mob:** [REDACTED] **;**
email: ian.allen@hmrc.gsi.gov.uk)

Email 10 – no attachments

From: Harra, Jim (HMRC)

Sent: 12 July 2019 11:29

To: Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Russell, Beth - HMT
[REDACTED]

Cc: Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: FW: Loan charge - draft advice [OFFICIAL-SENSITIVE]

Ruth/Beth

I am sorry I joined this morning's meeting late. I am broadly happy with where it reached.

Nothing short of full repeal is going to satisfy the LC campaigners. The question is: can we do anything to peel away the support they have gained from MPs and peers.

The main principled objections to the LC that stakeholders have raised are:

1. it overrides users' rights to argue that they are entitled to the tax advantage from their DR scheme
2. it removes their entitlement to certainty for unprotected years.

Only repeal of the LC would address 1, and as the Government are unwilling to do that. So, I think the most we can do is continue making the (much disputed) point that HMRC has already established that DR schemes did not work, and the LC simply puts an end to costly and wasteful tactics by DR scheme users and their advisers to try and delay or frustrate collection of their liability.

On 2, it seems to me we could introduce either be a broad exclusion applying to any unprotected year or a restricted exclusion carving out:

- years where the taxpayer did not disclose their use of a DR scheme to HMRC (in effect, creating the equivalent of a new 20 year enquiry window for non-disclosure); and/or
- post-2011 years.

Neither of these carve outs looks particularly principled to me (e.g. why a 20 year enquiry window for undisclosed DR schemes but not other undisclosed avoidance schemes)?

Another objection to the LC is that we should not tax DR scheme users who were duped into using a scheme by the promoter or forced to use it by their agency/employer. It seems to me that this is a concern that goes broader than DR schemes and the LC, could apply to any marketed tax avoidance schemes, and certainly could apply to other employment/contractor-related avoidance (including IR35 [REDACTED]). I feel we are going to have to look at whether our counter-avoidance strategy does enough to regulate the entire supply chain (including the behaviour of agencies and

employers) and to warn prospective users off avoidance. However, we need to consider that carefully, not as a knee-jerk reaction to the LC debacle. And in any event, I doubt if we would ever be willing to accept a narrative that users of tax avoidance schemes are innocent or naïve victims who should not bear responsibility for their actions.

Beyond that, the main objection to the LC is its affordability. It seems to me a low income exclusion would be a messy and unnecessary step. We should be able to demonstrate that HMRC applies generous policies both for those who need time to pay and for those who, even with time, cannot afford to pay. We have already announced generous TTP arrangements, we are about to announce a means based concession for DR, and I am putting pressure on DM to disclose the hardship remissions policy that will apply to those who cannot afford the LC (including reaffirming that no-one will need to sell their home and making a firmer commitment on bankruptcy than 'we don't want to...').

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

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Email 11 – 1 x attachment

From: Harra, Jim (HMRC)

Sent: 12 July 2019 09:59

To: [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Jones, Nick (Counter-Avoidance) <nick.jones@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk>; Secs, Perm (HMRC) <perm.secs@hmrc.gov.uk>; Kantor, Suzy - HMT [REDACTED]; [REDACTED] HMT [REDACTED]; Whyte, Lindsey - HMT [REDACTED]; Evans, Alan (SOLS) <alan.evans1@hmrc.gov.uk>
Cc: Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>
Subject: RE: Loan charge - draft advice [OFFICIAL-SENSITIVE]

I am sorry I missed much of our earlier meeting.

This all looks pretty horrible. The option I am most concerned about is the exclusion for people who were duped or forced into a DR scheme. Firstly, I suspect it will be very difficult to administer, with lots of scope for new disputes. More worryingly, I fear that accepting a narrative that tax avoiders are innocent or naïve victims, and as a result should be excused from their tax bill, has wider implications for our counter-avoidance strategy (I do think we need to look at our counter-avoidance strategy in this area, but this needs to be done carefully and not as an urgent, crisis-driven response to the LC campaign).

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
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Email 12 – no attachments

From: Harra, Jim (HMRC)

Sent: 27 August 2019 21:12

To: Russell, Beth - HMT [REDACTED]; Whyte, Lindsey - HMT

[REDACTED]; Stanier, Ruth (CS&TD Director General)

<ruth.stanier@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director)

<carol.bristow@hmrc.gov.uk>; [REDACTED]

- HMT [REDACTED] >

Cc: Allen, Ian (HMRC Perm Secs Office) <ian.allen@hmrc.gov.uk>

Subject: RE: Loan charge advice - call with FST

On access to data, I think we should consider giving the reviewer access to identifying data. The LC campaigners have a canny knack for giving misleading accounts of cases, sometimes anonymised to prevent rebuttal. It might be useful to signal that the reviewer will have access to case files to confirm the veracity of any claims made by DR scheme users about their circumstances or treatment.

Re a reviewer, what about [REDACTED] ?

Jim Harra

Deputy CEO and Second Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
email: jim.harra@hmrc.gsi.gov.uk

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Email 13 – no attachments

From: Harra, Jim (HMRC)

Sent: 11 September 2019 06:46

To: [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>

Cc: Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk>

Subject: Re: LC - additional information penalties [OFFICIAL-SENSITIVE]

So, presumably our message would be that, during the review:

- HMRC will continue its work to enquire into tax returns where it suspects taxpayers have under-declared income received under a DR scheme, and may ask taxpayers to agree to settle their dispute, or issue APNs/FNs in relation to these disputes, or refer disputes to the independent appeal tribunal.
- HMRC will not suspend work to administer the LC during the review.
- Taxpayers with outstanding DR loans at 5 April 2019 must therefore report details of those loans to HMRC by 30 September, and HMRC may charge them a penalty if they fail to do so.
- While we might not take any action to charge penalties straight away, we csm give no comfort that we will not do so.

That will not meet the campaigners' or the APPG's demands, and they will criticise HMRC for continuing to pursue DR users despite the announcement of the review. [REDACTED]

[REDACTED]

Speak later.

Jim

Email 14 – no attachments

From: Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>

Sent: 25 October 2019 09:00

To: Kantor, Suzy - HMT [REDACTED]; [REDACTED] - HMT

[REDACTED]; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; Armitage, James (DM) <james.armitage@hmrc.gov.uk>; Dixon, Paul (CS&TD KAI Compliance & Debt Operations) <paul.dixon@hmrc.gov.uk>; Whyte, Lindsey - HMT [REDACTED]; Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Jones, Nick (Counter-Avoidance) <nick.jones@hmrc.gov.uk>; McGeehan, Jackie (CS&TD Individuals Policy, Income Tax) <jackie.mcgeehan@hmrc.gov.uk>; Walker, Angela (Counter-Avoidance) <angela.walker1@hmrc.gov.uk>; Russell, Beth - HMT [REDACTED]; Harra, Jim (HMRC) <jim.harra@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Holden, Jonathan (HMRC Comms) <jonathan.holden@hmrc.gov.uk>; Stuart-Lacey, Poli (HMRC Comms) <poli.stuart-lacey@hmrc.gov.uk>; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk

Cc: [REDACTED] (CS&TD KAI Compliance & Debt Operations) [REDACTED]@hmrc.gov.uk; [REDACTED] - HMT [REDACTED] - HMT [REDACTED]; [REDACTED] (CS&TD Individuals Policy, NI & NINO) [REDACTED]@hmrc.gov.uk; [REDACTED] (SOLS) [REDACTED]@hmrc.gov.uk; Walker, Angela (Counter-Avoidance) <angela.walker1@hmrc.gov.uk>; [REDACTED] (HMRC Comms Press Office) [REDACTED]@hmrc.gov.uk; Gill, Marc (DM) <marc.gill@hmrc.gov.uk>; [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gov.uk; [REDACTED] (HMRC Comms CCG Communications) [REDACTED]@hmrc.gov.uk; [REDACTED] (CS&TD KAI Compliance & Debt Operations) [REDACTED]@hmrc.gov.uk; Barker, Chris (Counter-Avoidance) <chris.barker@hmrc.gov.uk>; [REDACTED] (CS&TD Individuals Policy, Income Tax) [REDACTED]@hmrc.gov.uk; [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk; [REDACTED] (Counter-Avoidance) [REDACTED]@hmrc.gov.uk; [REDACTED] (CS&TD Individuals Policy, Technical) [REDACTED]@hmrc.gov.uk; [REDACTED] (CS&TD) [REDACTED]@hmrc.gov.uk; [REDACTED] (DM Debt Mgmt) [REDACTED]@hmrc.gov.uk; [REDACTED] - HMT [REDACTED]@hmtreasury.gov.uk; [REDACTED] (Counter-Avoidance) [REDACTED]@hmrc.gov.uk; [REDACTED] (HMRC Comms CCG Communications) [REDACTED]@hmrc.gov.uk; [REDACTED] (LB) [REDACTED]@hmrc.gov.uk; [REDACTED] - HMT [REDACTED] - HMT [REDACTED]@hmtreasury.gov.uk; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>

Subject: RE: [for comment 12pm fri] FST advice on the loan charge review [OFFICIAL-SENSITIVE]

Thanks so much for all the work on this. A few comments:

- We need to continue to be vigilant in maintaining the clear independence of the review. This is bound to be the focus of ongoing scrutiny.

- I understand FST is keen to have a clear process for considering / commenting on any criticisms the reviewer may raise eg through the formal opportunity to comment on relevant sections of the report before it's finalised. I'd cover this in the advice.
- Reflecting on the TSC questioning on affordability, we were pushed quite hard on the transparency of our approach, and I wonder if there's more we could offer there that would be more palatable than the other options. It sounded as though more detailed information for MPs and case studies of likely amounts and periods could be of some further benefit.
- On repaying the voluntary restitution part of settlements, do we need more here on how long that would take us to work through and any challenges we'd need to address?
- At para 38, I understand FST is clear that anything said at Budget about promoters would only be a signal, followed up by something more detailed alongside the review, so I'd recast this. In any event, the Budget is now delayed of course.
- More generally on action against promoters, I'm starting to pick up in external discussions real concern about further proliferation of DR schemes as we introduce the off-payroll reforms. I wonder if we need something very explicit targeted at contractors about what tax advice they can trust, to prevent further problems down the line.
- At para. 41, we obviously now have a clearer sense of when the election might be, and will want to firm up our recommendation. This needs thinking through, but just letting things run until a December election feels problematic. I assume Sols are engaging on how C&M powers can appropriately be used in different scenarios.
- At para.s 42 / 43, I'd suggest waiting to see the report until taking a final decision about how we handle the gvt response, if we can.

Ruth

Ruth Stanier | Director General, Customer Strategy & Tax Design | HM Revenue & Customs | Room 2C/23, 100 Parliament Street, London SW1A 2BQ | Tel. [REDACTED]

Email 15 – no attachments

From: Harra, Jim (HMRC)

Sent: 17 December 2019 08:27

To: Aiston, Mary (Counter-Avoidance) <mary.aiston@hmrc.gov.uk>; Bristow, Carol (CS&TD Individuals Policy, Director) <carol.bristow@hmrc.gov.uk>; Ciniewicz, Penny (CCG Director General) <penny.ciniewicz@hmrc.gov.uk>; Stanier, Ruth (CS&TD Director General) <ruth.stanier@hmrc.gov.uk>; Stuart-Lacey, Poli (HMRC Comms) <poli.stuart-lacey@hmrc.gov.uk>

Subject: RE: For Information: HMRC win at First Tier Tribunal against [REDACTED]

That's a(nother) great litigation result.

Can we leverage this alongside publication of the report of the LC Review to demonstrate:

- the highly artificial nature of DR avoidance schemes, which no-one engaging in them could reasonably think was a normal course of action
- the non-compliant tactics being used to try and prevent HMRC from finding out about the use of such schemes
- how HMRC continues to defeat DR schemes through litigation
- how HMRC is prioritising tackling the promoters of such schemes?

Jim Harra

Chief Executive, and First Permanent Secretary, HMRC. Tel: [REDACTED] | mob: [REDACTED] |
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Response to APPG questions of 2nd April – Internal briefing

- 1. Please explain to us why Ruth Stanier would seek to give the impression that the convictions relate to tax avoidance in connection with the Loan Charge when in fact this is not the case?**

Presumably the APPG's reference to convictions "in connection with the Loan Charge" is meant to be a reference to disguised remuneration more broadly, given that the Loan Charge only comes in from 5th April 2019.

Neither Ruth Stanier, nor any other member of HM Revenue & Customs or the Treasury has sought to give the impression that the 20 convictions that HMRC have secured for criminal offences relating to arrangements promoted and marketed as tax avoidance schemes, are in connection with disguised remuneration schemes. The lines used by Ruth Stanier and quoted in the APPG's letter of 2nd April are entirely accurate. HMRC's FOI response, quoted in the APPG's letter is entirely consistent.

The purpose of including this statement in Ruth Stanier's letter of 6th March to the APPG was to fully articulate the range of activities HMRC undertakes to disrupt the promotion of tax avoidance schemes. It is important that the public are made aware of the range of powers available to HMRC, and that the department is using those powers.

- 2. Can you provide details of any convictions of promoters of payroll loan arrangements for promoting/ selling such arrangements? Please provide relevant details for each and every case referenced in your answers, but only where convictions were against promoters of payroll loan arrangements for promoting/ selling such arrangements.**

As the APPG are aware, HMRC have not yet secured any criminal convictions in connection with offences relating to disguised remuneration arrangements (which include arrangements involving loans), as has been made clear and was confirmed in HMRC's reply to the FOI.

For the avoidance of doubt, there are no criminal offences specific to the promotion or marketing of tax avoidance schemes. However, in cases where individuals deliberately misrepresent the facts HMRC may investigate criminally and make referrals to the relevant prosecuting authorities where appropriate.

We have had successes against promoters in connection with disguised remuneration schemes in civil courts.

- 3. Please tell us any court case that has deemed that payroll loan arrangements are taxable?**

The APPG are missing the point here. *RFC2012 v Advocate General* ("Rangers") is the lead case in the context of disguised remuneration. There, the Supreme Court held that contributions made by an employer into an offshore trust for the benefit of employees were subject to income tax and NICs at that point. This means the amounts were already taxable income of the employee, when it was loaned to them.

The same principle has been applied in further cases involving hundreds of appeals.¹ The schemes simply didn't work. The 'loans' were the mechanism for delivering earnings to the employees.

This decision applies equally to the vast majority of disguised remuneration schemes used by contractors before anti-avoidance legislation was put in place in 2011. In a typical scheme the contractor would provide services through a company which instead of paying the contractor

¹ The lead cases were: *Landid Property v HMRC*, *Allen (Concrete) v HMRC*, *La Vita Pizzeria v HMRC*, *OCO v HMRC* and *Toughglaze (UK) v HMRC*.

a salary made contributions to an offshore trust for the benefit of the contractor. Following the Rangers principle that contribution to the trust gave rise to a charge to income tax and NICs. This means the amounts were already taxable income of the contractor, when it was loaned to them.

It should also be noted that the Supreme Court held [at paragraph 57] that the two cases referred to by the APPG, Dextra and Semptra, had been wrongly decided.

A different disguised remuneration scheme used by contractors was considered by the FTT in Boyle v HMRC. Contrary to what is said in APPG's letter, the case is relevant and the Tribunal considered that the loans were not genuine and were taxable.

After 2011, slightly different and even more contrived schemes were developed in an attempt to circumvent the anti-avoidance legislation enacted in Finance Act 2011. The litigation in those cases has not yet reached a final hearing in the courts.

However, the independent GAAR Panel has considered a number of disguised remuneration schemes including ones used by contractors, and considered them to be abusive and therefore liable to counteraction under the General Anti-Abuse Rule (GAAR) enacted in Finance Act 2013.

4. *Can you please explain why HMRC and you personally have so clearly misrepresented the outcome of the Rangers Supreme Court judgement, including to MPs, and how that is consistent with the Civil Service Code?*

HMRC strongly refutes the suggestion it has misrepresented the outcome of Rangers or any other legal case. The Government report published last week sets out the Rangers case in similar terms to that included in the APPG letter, and further detail on its application to disguised remuneration schemes used by contractors is provided above. None of the statements referred to by APPG are inconsistent with that position. HMRC has on occasion simplified the language used to summarise the complex facts or legal arguments in litigation cases, in order for it to be more easily understood by a wide audience, and to do so is entirely reasonable.

5. *Can you please inform us why HMRC considers clear and demonstrable misrepresentation of the outcome of legal cases as a reasonable course of action?*

See Question 4.

6. *Where does the figure of £13,000 originate from and how has it been calculated, on what basis?*

We hold an internal database that records settlement yield in DR cases. For the period April 2016 to 31 December 2018, the median settlement yield figure for individuals was around £13,000. For the same time period, the average yield figure of £45,000 (shared previously with TSC) is distorted by a small number of very large settlements, and as explained to the TSC previously, $\frac{3}{4}$ of settlements by individuals are for less than £40,000.

7. *What are the actual mean and the median figures of liabilities, from all the cases HMRC is aware of?*

We don't have records of liabilities for every DR case. This is because some cases are still being worked and final liabilities of the users are dependent on the income position of the users and the relevant tax reliefs/allowance the individuals might be entitled to when the individuals provide their details to HMRC during the settlement process or when they report their outstanding loan balance on their tax returns and additional information form. Therefore we cannot calculate mean and median liabilities figures.

8. How many contractors who worked for HMRC are now facing the Loan Charge in respect of periods spent actually working for HMRC?

We have responded to the HoL with a straight bat on this one. We know HMRC hasn't, as employer participated in disguised remuneration arrangements.

HMRC does use contractors for specialist or short term work. As a contracting authority, the majority of HMRC's contracts are via an agency and use the Crown Commercial Service's framework contracts, or service contracts with contracted suppliers.

HMRC carries out diligently the checks required by both specific central government guidance and the law. Under HMRC's main contingent labour contracts, details of the individual contractor arrangements are maintained by the labour supplier rather than by HMRC. As the contractor details are maintained by the labour supplier it is possible that contractors could engage in tax avoidance without the participation, or knowledge, of their engager.

We have acknowledged that it is possible for a contractor to use a disguised remuneration scheme without the participation or knowledge of their engager. We have been clear that any contractor identified in the course of our compliance work as using a disguised remuneration scheme would be investigated in the same way as any other contractor.

Following an exercise by WMBC around 18 months ago, fewer than 5 contractors were presented as potentially presenting a risk of having used a DR scheme, and the cases were referred to C-A to look into. We couldn't comment on these potential cases because there are so few of them, it risks their identification.

9. How many contractors working for HMRC did HMRC write to at the time (when they were working for HMRC), warning them not to use these arrangements?

None, as far as we're aware of. If contractors working for HMRC did use DR schemes they would have been subject to investigations in the same way as other taxpayers. They wouldn't have received any specific or tailored correspondence

HMRC has not engaged contractors that we know use DR schemes so there would be no reason to send such a warning to any of them. If, without our knowledge, they have used a scheme then they may have had correspondence from us.

10. How many people have already had to sell their homes to meet settlement payment terms set out by HMRC as an alternative to facing the Loan Charge?

HMRC is not aware of any such cases, and the position on this has been made crystal clear on many occasions. The APPG evidence here is subjective/ speculative

11. How many people now have a charge on their home resulting from the sums demanded by HMRC/ agreed in settlement with HMRC?

If this question is qualified and only applies to settlement of disguised remuneration debts as part of the settlement terms, or since the Loan Charge was announced at Budget 2016, the answer is zero.

12. What is the estimated number of people facing the Loan Charge who will go bankrupt for any and all reasons, i.e. not forced to go bankrupt nor made bankrupt by HMRC?

No estimate of the number of individual bankruptcies has been made, although the original impact assessment, and subsequent government report both acknowledge that there are likely to be some. There a myriad of reasons why someone might enter bankruptcy.

In some cases, it will be appropriate for HMRC to refer a case for bankruptcy action, perhaps to prevent the further accumulation of mounting tax (and other) debts, that a customer has no realistic prospect of paying, or because we suspect fraudulent behaviour, such as the manipulation of assets. However, it is a last resort for HMRC. In other cases, customers may themselves elect to be made bankrupt, rather than service a long time to pay arrangement.

13. Costs of bankruptcy:

- a. What is the current total average cost to the Exchequer per each bankruptcy of an individual citizen?**

Not known, these figures are not maintained

- b. What is the total projected cost to the Exchequer of the estimated number of bankruptcies to individuals facing the Loan Charge?**

No estimate has been made

14. What proportion of the 85% of the payments already paid, that HMRC refers to, have been:

- a. Payments from employers to EBTs, and;**
b. Payroll loans to contractors and freelance workers?

The vast majority of settlement yield to date has come from employers in connection with EBT-type arrangements (over 90 %²).

Most contractors used schemes where the employer was typically offshore or where they were created until the scheme ran its course and then they were closed down. It is only where HMRC cannot reasonably collect from the employer, for example the employer is no longer in existence or is offshore, that the individual will be liable to pay the tax that is due.

15. How do you define 'employers' and do you include small limited companies and Personal Service Companies run by contractors/ freelance workers?

For the purposes of PAYE, the definition of "employer" is provided by s.712 ITEPA. "Employer" is defined in terms of the link with employment and employee. Any legal person may be an employer.

That the vast majority of the settlement yield to date has come from employers in connection with EBT-type arrangements firmly indicates that Personal Service Companies run by contractors/ freelancers (which traditionally did not use EBT schemes) do not make up the 85% of yield paid so far. To put the yield into context, the "Rangers" project which was set up following the Supreme Court decision in 2017 with a view to issuing Follower Notices in cases using EBT (or similar) arrangements (and commenced in earnest in Spring 2018) has so far secured in excess of £1bn³.

² This number is for internal use only, and will require Director sign off and agreement if needed for public release

³ This number is for internal use only, and will require Director sign off and agreement if needed for public release

[joint HMT / HMRC statement to be published on gov.uk]

Disguised Remuneration Loan Charge

The government has set out its position on the charge on disguised remuneration loans in detail in the [recent report](#) on time limits and the loan charge. The All Party Parliamentary Group and its secretariat the Loan Charge Action Group have raised some issues about the report's content, including the conduct of civil servants. Many of these have already been addressed in the report and previous correspondence. This document sets out the government's position on some issues raised which are not specifically covered in the report.

Officials' conduct

All civil servants are bound by the Civil Service code which demands that the highest possible standards of integrity, honesty, objectivity and impartiality are upheld.

HMRC's role as the UK's tax authority is to collect the tax that is due under the law. In doing so, HMRC works to meet individual taxpayers' needs, while maintaining the fairness and integrity of the system as a whole, and using public funding efficiently.

Civil servants have a vital role in supporting the government of the day in developing and implementing its policies, and delivering public services. Civil servants are subject to scrutiny through Parliamentary Committees (assisted by the National Audit Office), through Parliamentary Questions and debates, and correspondence with MPs.

Some critics of the loan charge have suggested that the Civil Service has engaged in misinformation about the loan charge. The government and HMRC refute this accusation. Moreover, it is clear that a great deal of misleading information about this issue has been shared on social media, including some content that is abusive in nature.

It has been suggested that HMRC used inappropriate communications, including behavioural insights. HMRC works to provide clear, tailored communication so that taxpayers are aware of the choices they face. It is never the intention to cause distress, and communication is adjusted in light of feedback. Many governments use behavioural insights to communicate with citizens, with the aims of making decisions easy to understand and actions simple to carry out. The UK government's Behavioural Insights Team was set up in 2010, and many departments use this approach. This is not new or specific to HMRC.

Issues have been raised about HMRC's use of statistics. HMRC's analytical professionals take a rigorous approach to developing and quality assuring all published statistics. Figures are quality assured by an analytical assurer before publications. HMRC adheres to the UK Statistics Authority's Code of Practice to ensure that statistics are accurate and trustworthy.

Safeguards

HMRC has to balance the collection of tax with important taxpayer safeguards. It is important that there are safeguards for customers and sufficient oversight of the department.

HMRC's functions and operations are scrutinised in a range of ways. These include the oversight provided by HMRC's Board, chaired by the lead Non-Executive Director, the new Customer Experience Committee and the independent Adjudicator. Access to the Adjudicator is open to all taxpayers, and customers are advised of their rights to raise their case with the Adjudicator if they are not satisfied with HMRC's handling of their complaint.

All customers have the right to appeal tax decisions made by HMRC, and are informed of this right when decisions are communicated. If the customer is not satisfied with the outcome of the appeal, they can have their case reviewed by a different officer, or have their case heard by an independent tax tribunal.

HMRC has a comprehensive Tax Settlement Assurance Programme. This examines a random sample of recently closed cases in detail. The examination includes looking at the engagement with customers and, if issues are found, the impact on that customer. This work is set out in the Tax Assurance Commissioner's annual report. HMRC routinely and actively learns from feedback, to improve and take remedial action where appropriate.

Litigation

The government report set out the implication of the Supreme Court judgement in *RC2012 v Advocate General*, referred to as the "*Rangers*" case, and other relevant litigation. It has been suggested that the government and HMRC have sought to misrepresent the *Rangers* case. This is not true. The litigation position is set out again here, for the avoidance of doubt:

- *RC2012 v Advocate General* ("*Rangers*") is the lead case in the context of disguised remuneration. There, the Supreme Court held that contributions made by an employer into an offshore trust for the benefit of employees were subject to income tax and National Insurance Contributions at that point. The amounts, which were already taxable income of the employee, were then provided to the employee by way of a 'loan'. This decision applies equally to the vast majority of disguised remuneration schemes used by contractors before anti-avoidance legislation was put in place in 2011.
- The same principle has been applied in further cases involving hundreds of appeals. The lead cases were:
 - *Landid Property v HMRC* (2017)
 - *Allen (Concrete) v HMRC* (2017)
 - *La Vita Pizzeria v HMRC* (2017)
 - *OCO v HMRC* (2017)
 - *Toughglaze (UK) v HMRC* (2017)
- The Supreme Court also held that two earlier cases relating to disguised remuneration – '*Dextra Accessories*' and '*Sempre Metals*' – had been wrongly decided (against HMRC) by lower courts.
- Slightly different and even more contrived schemes were developed in an attempt to circumvent the anti-avoidance legislation enacted in Finance Act 2011. The independent General Anti Abuse Rule Panel has considered a number of disguised remuneration schemes, including ones used by contractors since 2011, and has found them to be abusive.

Some suggest it would have been appropriate to continue to litigate all the different and evolving versions of disguised remuneration schemes through the courts, rather than drawing a line by introducing the loan charge. By the time the loan charge was announced in 2016, there had already been significant resource deployed by HMRC over many years in chasing individual cases, and in introducing legislation in 2011 seeking to stop the avoidance. However, schemes continued to proliferate. The government and HMRC need to ensure that public funding is used efficiently in designing measures to tackle avoidance.

Promoters of tax avoidance

It has been suggested that prosecution figures have been misrepresented. This is not the case. HMRC takes a range of action – including civil and criminal where appropriate – to tackle promoters of tax avoidance. Promoters often engage in various forms of avoidance, of which disguised remuneration is just one. HMRC has been investigating more than 100 promoters and others involved in marketing tax avoidance, including many who sold disguised remuneration arrangements, and has dedicated teams in place to challenge them.

The range of actions taken against promoters has included 20 convictions secured to date for offences relating to the promotion and marketing of tax avoidance schemes. HMRC has not suggested that these are specifically in connection with disguised remuneration schemes, and has confirmed this position in response to a Freedom of Information request.

Case studies

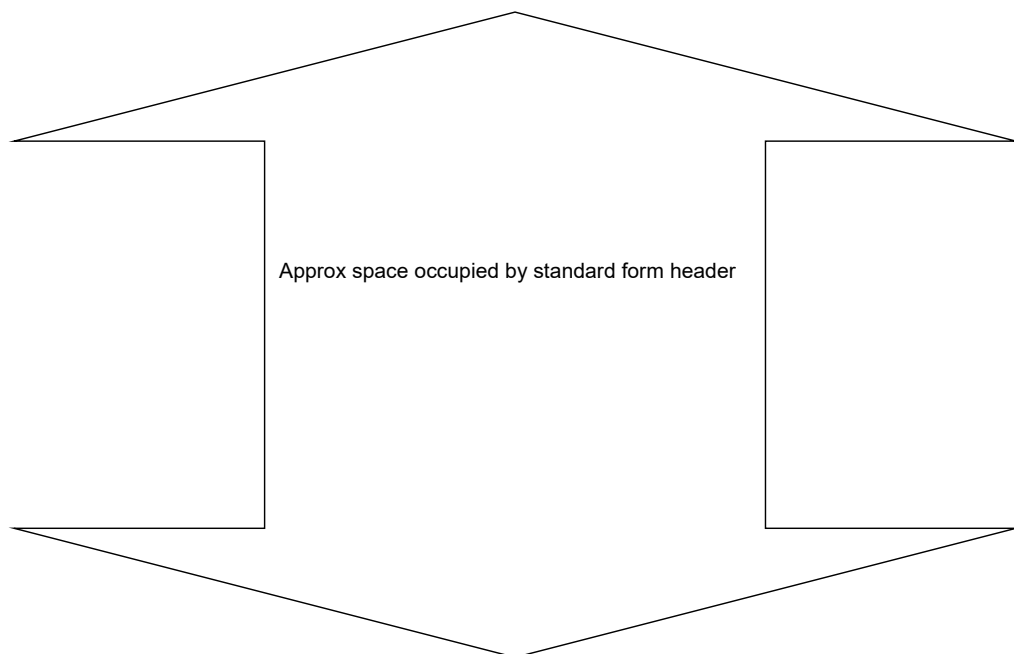
It has been suggested that case studies provided to HMRC by the Loan Charge All Party Parliamentary Group were not handled as agreed. HMRC is bound by a clear statutory duty of taxpayer confidentiality and cannot disclose taxpayer information without lawful authority. A breach of the duty of confidentiality is an offence and can result in criminal sanctions against the HMRC officials involved in disclosing the information.

Express written permission from the individuals concerned would be required for HMRC to comment on individual cases, and this was not provided for any of the case studies. The general statement provided was not sufficient to meet the high bar set to protect taxpayer confidentiality, so HMRC was unable to share the content of the case studies publicly or with any other party. Some case studies also contained specific requests that the information should not be shared with HMRC.

Having carefully reviewed all the submissions, HMRC shared the general themes and concerns identified with HM Treasury to inform preparation of the government report. Where individuals' submissions highlighted difficult personal situations, the information provided is being taken into account to help inform appropriate case handling.

HMRC contractors

HMRC is not aware of any contractors using disguised remuneration avoidance schemes while working for the department. If contractors working for HMRC did use DR schemes, they would have been subject to investigations in the same way as other taxpayers.



Disguised remuneration loan charge: telling HMRC about your outstanding loans and paying the loan charge

You have received this letter because we believe you ~~benefitted from~~used one or more disguised remuneration ~~tax avoidance~~ schemes and may be subject to a tax charge. This is known as the 'loan charge' and applies to all ~~disguised remuneration loans~~ which were outstanding on 5 April 2019. If you think you did not ~~benefit from~~use such a scheme, please contact us on 03000 599110 to confirm this.

Please ignore this letter if you have recently settled your use of these schemes with us.

If you ~~previously contacted us about settling your use of these schemes and~~ gave us all the information we needed by 5 April 2019, we want to help you to settle ~~your use of avoidance schemes~~ rather than have to pay the loan charge. Please respond to us by any dates given in our correspondence to you. If you do this, you will be able to settle under the 7 November 2017 settlement terms. If you don't respond in time, you will have to report all outstanding loans and pay the loan charge.

If you need additional support, please let us know on 03000 599110 as soon as possible. We want to help you get out of tax avoidance and will always offer extra assistance ~~to those who~~if you need it.

How to report outstanding loans and pay the loan charge

The rules ~~on~~for how to report your outstanding loans are based on the scheme you used, not on your past or current employment status.

If you used ~~a trade-based scheme, or an employment-based scheme~~ where the employer who provided you with a disguised remuneration loan ~~does not~~no longer exists or is offshore, you will have to:

- tell us the amount of your outstanding loans by 30 September 2019
- include the total amount of outstanding loans (including any loans for the 2018/19 tax year) on your Self Assessment tax return for 2018/19
- pay the tax due, or agree an instalment arrangement with us, by 31 January 2020.

If you used an employment-based scheme, and the employer who provided you with a disguised remuneration loan still exists and is not based offshore, and you have not received a separate letter explaining what you need to do, please call us on 03000 599110.

How to pay the loan charge

To pay the loan charge you will need to:

Commented [HJ(1)]: I know we think the claims by some contractors that they did not benefit financially is rubbish; nevertheless, I wonder if we should go for this more neutral term?

Commented [HJ(2)]: Surely it only applies to those loans that were taken out after a certain date in 1999?

Commented [HJ(3)]: Will people understand what these terms mean?

- ~~include the total amount of your outstanding loans (including any loans for the 2018/19 tax year) on your Self Assessment tax return for 2018/19~~
- ~~pay any tax due, or agree an instalment arrangement, by 31 January 2020.~~

Commented [HJ(4): I have suggested deleting this because it merely repeats what was said in the previous section.

More information

You should read the enclosed information sheet as it contains more details about the loan charge and what you need to do.

For more information, go to www.gov.uk and search for 'report and account for your disguised remuneration loan charge'. If you have a tax adviser, you may want to talk to them about this letter.

If you are worried you cannot afford to pay the loan charge, please let us know and we can discuss ~~with you an~~ ~~manageable affordable~~ payment plan. You don't have to pay everything in one go. What we agree will depend on your individual circumstances and there is no upper limit to how long we can ~~potentially~~ spread your payments.

~~To help us work out a suitable payment plan.~~ You should complete and submit your 2018/19 Self Assessment return with details of your outstanding loans as soon as possible, so that we know your total tax liabilities for that year. Please then call ~~HMRC-us~~ on 03000 599110 to discuss an affordable payment ~~arrangement plan~~ based on your circumstances.

Yours faithfully

Counter-Avoidance Team

HM Revenue and Customs



Information sheet

Important information

What is disguised remuneration?

There are tax avoidance schemes that claim you can avoid paying Income Tax and National Insurance contributions on your income. These normally involve a loan or other credit being made to employees from a third party instead of paying them a salary. This loan or credit is unlikely to ever be repaid. This is known as disguised remuneration.

About the loan charge

~~The government~~ Parliament has introduced legislation to deal with existing, and prevent the future use of, disguised remuneration schemes. If a disguised remuneration loan or credit was still outstanding on 5 April 2019, ~~there is~~ a tax charge to pay arises for the 2018/19 tax year on that outstanding amount. This is known as the 'loan charge'. If you did not take action to settle your tax affairs or repay your loan(s) by 5 April 2019, you may have to pay the loan charge.

If you need help

If you need support to settle your tax affairs or pay the loan charge, we're here to help. Please call us on:

- 03000 534226 if you are in the settlement process
- 03000 599110 if you need help with the loan charge

and talk to one of our team.

Disguised remuneration loans that you need to tell us about

By 30 September 2019, you will need to must tell us about a loan if any of the following apply:

- it was outstanding on 5 April 2019; or
- it was provided through a self-employment scheme, was outstanding on 5 December 2016 and you then repaid the loan at a later date with anything other than money; or
- your employer provided the loan, either directly or through a third party, and it was outstanding on 17 March 2016. This applies (even if you then repaid it at a later date).
- If you provided us with all the information we needed to settle your disguised remuneration use by 5 April 2019, and you don't settle by the date we give in our correspondence, you will need to tell us about your loan in accordance with the rules set out above.

Commented [HJ(5): The letter refers to a "trade-based scheme"; here we refer to a "self employment scheme". Assuming these are the same thing, I think we need to be consistent in the term we use.

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For the purposes of the loan charge, 'outstanding loans' has a specific definition. A loan is outstanding if the total amounts loaned are more than the total repayments made. This means that a loan is treated as outstanding if it has not been repaid in full, even if it has been written off or the lender has released you from it.

Some tax avoidance promoters offer schemes which they claim enable you to avoid the loan charge. We strongly advise you not to use such schemes as we believe they do not work and we will challenge their use. You may still need to give us your loan information in accordance with the rules set out above, even if you have entered into another tax avoidance scheme arrangement to try and avoid the loan charge.

If you are not sure if you need to tell us about your loan, or if you are not sure if your loan is outstanding, please call us on 03000 599110 and we can advise what you need to do.

Loan charge reporting and payment steps for individuals

The reporting and payment requirements that individuals who have outstanding disguised remuneration loans must fulfil are:

- Complete the additional information form by 30 September 2019
- Register for Self Assessment (where applicable) by 5 October 2019
- Report and pay the loan charge on your Self Assessment tax return by 31 January 2020

Please contact us on 03000 599110 if you need help with any of these points.

How to report the information

To HMRC

You will need to complete a form with information about your outstanding loans. To find the form search for 'report and account for your disguised remuneration loan charge' on www.gov.uk. If you need a paper copy of the form call us on 03000 599110.

Your Self Assessment tax return

~~We consider that if~~ The total of your outstanding disguised remuneration loans is treated as income from employment or self-employed profit in 2018/19. This means you must include it in your Self Assessment tax return for that year.

If you don't usually complete a tax return, you'll need to register for Self Assessment by 5 October 2019 at the latest. To do this, go to www.gov.uk and search for 'register for Self Assessment'.

If you used an employment-based scheme and your employer or former employer no longer exists or is offshore, include the outstanding loans in the additional information section of your tax return.

~~For loans from~~ If you used a trading income schemes

- you will need to complete the 'disguised remuneration additions to profit' box on your tax return with the total amount of the outstanding loans subject to the loan charge
- you must file this with HMRC and pay the tax due, or agree an instalment arrangement, by 31 January 2020.

If you have used a combination of employed and trading income schemes, you will have to meet the reporting requirements for both types of schemes. You should also include your total outstanding disguised remuneration loans on your Self Assessment return as appropriate return:

- the loans from employed schemes as employment income and
- the loans from trading income schemes as trading profits.

Benefit payments

If your outstanding disguised remuneration loans balance is declared as income from employment on 5 April 2019, it will not be treated as income when working out your entitlement to get income-related benefit payments.

These benefits include:

- Universal Credit
- Housing Benefit
- Jobseeker's Allowance
- Employment and Support Allowance
- Pension Credit
- Income Support
- Carer's Allowance
- Tax credits

Difficulty paying

If you believe you'll have difficulty paying ~~be unable to pay~~ the loan charge by 31 January 2020, you should contact us on 03000 599110 after you have submitted your 2018/19 Self Assessment return to discuss available payment options.

If you gave us all the information we needed by 5 April 2019, and you take action to settle your use of disguised remuneration schemes by the date we give in correspondence, simplified payment arrangements may be available to you depending on your personal circumstances.

Commented [HJ(6): I felt this looked odd – it seemed to say this is HMRC's opinion rather than an incontrovertible statement of what the loan charge legislation states.

Commented [HJ(7): Surely the legal obligations are to report outstanding loans by 30/09/19 and self assess and pay the loan charge by 31/01/20? Is there a further legal obligation to register for SA by 31/10/19 or is this just something we would like people to do for our administrative convenience? If the latter, we should not portray it as if it were a mandatory requirement.

Commented [HJ(8): We have previously referred to "trade-based schemes" and "self-employment schemes". Now we are referring to "trading income schemes". Assuming these are all the same thing, please use consistent terminology.

Commented [HJ(9): Surely this applies equally to employment-based schemes referred to in the previous paragraph?

Commented [HJ(10): Another new term. We have previously referred to "employment-based schemes". Please use consistent terminology.

Commented [HJ(11): See previous comment.

Commented [HJ(12): See earlier comments.

Commented [HJ(13): This is inconsistent with the guidance in the preceding two sections, which says to use the "additional information" section of the return to return employment-based loans and the "disguised remuneration additions to profit" box to return self-employment loans.

Reference 1	None	Mandatory	N/A
		If not mandatory, confirm if empty?	N/A
Reference 2	None	Mandatory	N/A
		If not mandatory, confirm if empty?	N/A
Employer case (for capturing employer details only)			N/A
Show "UTR" as a separate input field (for non CPS forms where UTR needs to be captured separately)			N/A
Cancel warning message when "Our ref" is empty			N/A
If Caseflow reference selected; is letter definitely a Caseflow case?			N/A
If definitely a Caseflow case; give user the choice to use the Netherton scanning address?			N/A
If definitely a Caseflow case; hide Caseflow customer service message?			N/A
Type of header	Standard form header		
Data import	None (mail merge)		
Retention period	Do not store	Allow user to change?	N
CPS exception (main product code)	No		
Use an alternate product code (i.e. change the main product code based on a question)?			N
If using an alternate code for a purpose other than to apply a CPS exception to a particular question, enter the question(s) which will be used to change the main product code and enter the alternate codes to be used.	N/A		
If using an alternate code to apply a CPS exception to a particular question, enter the question(s) to be used and the type of CPS exception to be applied. Include the name of any onsets to be added by CPS, if applicable	N/A		
Force user to preview document			N/A
Override user's issuing office and/or personal setup details			Y
If yes, give details (if you want certain questions to insert different issuing office details, make clear which office details go with which questions)	Salutation: TBC if Dear Sir or Madam or Dear Title/Surname Hide fax Dictate phone number: 03000 534 226 Hide opening hours: Hide email address: Dictate web address: www.gov.uk Hide office address No Service Message Include Charter/PTA message		
If letter will can be sent by email, give details of any PDF attachments you want to automatically add to the email.			N
Unprotect document at "preview"			
Set BF checkbox options (if yes, state which options to set)	N/A		
Link to attachment	N/A	Attachment product code	N/A
Trusts letter	Y	Hide last case button	
Deceased case		Hide condolences message	
Set agent option as default		Hide agent / customer options	
Hide SA / Service message	N	Courts letter	
Exclude salutation	Y	Hide the "we have changed our address..." message (RPR message)	
Exclude Charter Message	N	Hide Caseflow message	
Exclude sign-off	Y	Set "De-Caps" function	
List questions to use De-Caps			
DMS key words/reference			
Enter DMS key word OR Question to be used to supply the key word. AND reference you want repeated with the key word (if applicable).			
Form title English	N/A		
Form title Welsh/English	N/A		

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From: [REDACTED]
Tel: [REDACTED]
Approved: Jackie McGeehan (CS&TD)
Tel: [REDACTED]
Date: 12 July 2019

TO FINANCIAL SECRETARY TO THE TREASURY

LOAN CHARGE AND POWERS AND SAFEGUARDS ANNOUNCEMENTS – FOR DECISION

Summary

- ...

Background

1. The key concerns of the Loan Charge All-Party Parliamentary Group (LCAPPG) and campaigners are:
 - ~~Retrospection Fairness~~:- the loan charge effectively removes certainty (by taxing loans received in tax years that are now closed for enquiry), ~~applies to years without enquiries~~ and ~~the right to the option to~~ have your case heard at tribunal (by rendering loans taxable regardless of arguments about whether the underlying avoidance scheme worked).
 - Duped/~~forced~~:- ~~individuals~~ users were miss-sold these schemes by promoters (e.g. as they were assured they were HMRC approved, or were required by their agency/employer to use them, and some did not materially benefit due to high promoter fees.
 - ~~Low incomes; Affordability~~: ~~individuals~~ some users are on low incomes and will struggle to pay.
2. There are also concerns about HMRC's response times, accuracy of calculations and tone of letters.
3. The LCAPPG and campaigners have presented some difficult cases. However, we believe the majority of cases involve ~~individuals~~ people who knew they were ~~entering~~ engaging in tax avoidance, gained financially from it, were well paid and can afford to settle. HMRC has discretion to help those in financial difficulty and we plan to set this out more clearly in early August.

Tools to address concerns

4. The current Parliamentary arithmetic means that it will not be possible to pass any primary legislation without amendment. We would expect any amendment to seek to restrict the loan charge to loans advanced since 2017.
5. HMRC's Commissioners' collection and management powers are limited when legislation, such as the loan charge, gives a clear outcome. We have already used these powers to assist those in financial difficulty through instalment arrangements and the most recent decision to cap settlements based on the taxpayer's means, and there are no other options that will address the key concerns.

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6. The disguised remuneration rules, introduced in 2011, include a power to retrospectively exclude from the charge to tax using negative resolution regulations. We have explored how this power could be used to address the key concerns about the loan charge.

Exclusion options

7. We think there are, in principle, three broad ways ~~we can~~you could exclude ~~individuals~~people from the loan charge using this power, which are:
- based on their circumstances at the time they entered into the scheme;
 - based on their current, or at 5 April 2019, circumstances; and
 - based on whether there is an enquiry or assessment.
8. We ~~will~~would need to set out the circumstances of any exclusion in ~~legislation~~the regulations so we ~~will~~would need to use objective criteria as far as possible. Any circumstances that use subjective criteria ~~will~~would be difficult to apply in practice.
9. The power was introduced ~~ever because of~~ concerns that the 2011 rules would inadvertently apply to non-avoidance arrangements. The exclusion power is widely drafted but should be interpreted within its original intent.

[REDACTED]

10. [REDACTED]

11. [REDACTED]

Exclude based on circumstances at the time the scheme was entered into

12. We think it would be possible to use this power to exclude ~~individuals~~users who were “duped” or “forced” ~~to enter into a DR scheme, or were~~ on a low incomes at the time of ~~the avoidance or duped entering into the scheme.~~
13. Anything considering the original circumstances is going to be hard to evidence as both HMRC and the ~~individuals~~user may no ~~longer~~ have ~~adequate~~relevant records. ~~The loan charge attempted to avoid this difficulty by focusing on the current loan balance, which is available.~~
14. ~~We could exclude individuals who had a low income, including the amount avoided, at the time they entered into the scheme. This would be a blunt tool because the regulations could only exclude cases below a certain threshold, and not apply a tapered approach. We would also need to look at each year individually, as individuals’ income may have fluctuated if they have used schemes for multiple years.~~

Commented [HJ(1)]: Why? Is it a legal issue or a practical one?

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~~15. This approach assists those on low incomes but does not address retrospection. Therefore, we think it have a limited impact on MPs and the LCAPPG, and they would continue to press for a review.~~

~~16.14. We could exclude individuals who were 'duped' into schemes. However, it would be very difficult to define coherently in legislation when ~~an individual~~ someone had been duped or misled forced into a DR avoidance scheme. We can expect users Taxpayers would be expected to provide self-serving evidence, which HMRC would often not be in a position to verify. It is almost impossible to demonstrate that someone was genuinely not aware that the arrangements were tax avoidance. There would also be a significant operational cost for HMRC in examining claims. to be examined and It is likely that we would be forced to cancel previously agreed settlements would have to be reopened where these people can show they fall within the terms of the new exclusion (otherwise there is a high probability that these people would judicially challenge the new regulations). It also raises scope for new litigation as HMRC attempt to establish the true position based on this the definition of the exclusion.~~

~~15. The role of promoters, agencies and employers in DR schemes is an area where we have faced criticism and this would lessen concerns that individuals-users are being held responsible for promoter's-their actions. It is likely to lead to "me too" campaigns from users of other types of tax avoidance scheme, who will also paint themselves as innocent or naïve victims.~~

~~16. You could also exclude individuals who had a low income, including the amount avoided, at the time they entered into the scheme. This would be a blunt tool because the regulations could only exclude cases below a certain threshold, and not apply a tapered approach. We would also need to look at each year individually, as individuals' income may have fluctuated if they have used schemes for multiple years.~~

~~17. This approach would address some of the concerns expressed about the loan charge but would not address the concerns about retrospection and loss of access to justice. Therefore, we think it have a limited impact on MPs and the LCAPPG, and they would continue to press for a full review with the aim of having the loan charge completely repealed or applied only to loans made after 2017..~~

Exclude based on current circumstances

18. We think it would be possible to use the power to exclude those currently with low incomes.

19. We could exclude ~~individuals-people~~ who currently have a low income, or have a high ratio of loan charge liability compared to their current income. This would not be a nuanced approach that considered the circumstances of each individual. The regulations could only exclude cases below a certain threshold, and not apply a tapered approach.

20. Defining current income would be difficult. If we consider the last tax year, or a more recent, shorter period, it might not reflect their current situation. There are also likely to be individuals who have low incomes but are wealthy. For example, a business owner who does not draw a regular salary or a wealthy individual who used a scheme for many years, allowing them to retire without a regular income.

21. We think excluding ~~individuals-people~~ from tax would be a damaging precedent, and would lead to calls for a similar approach elsewhere.

22. As this only addresses ability to pay, and not retrospection or whether they were duped, we think this would have a limited impact on MPs and the LCAPPG on its own.

Commented [HJ(2): Why? Is it a legal issue or a practical one?

Commented [HJ(3): Again, why? A legal or practical issue?

Commented [HJ(4): Really?? Why wouldn't we be simply apply the test to 2018/19 income, which is the year in which the LC applies?

Commented [HJ(5): I do not understand this concern. Surely a low income exclusion would simply be a crude proxy alternative to a case by case means based approach to collection of the LC?

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Exclude based on whether there is an enquiry or assessment

23. ~~We think it~~ would be possible to use the power to exclude loans from unprotected years ~~before the 2011 rules were introduced~~, which would address some of the concerns about retrospection. Unprotected years are where HMRC does not have an open enquiry, or assessment, in place. You could restrict the exclusion to cases where the taxpayer fully disclosed their use of the scheme to HMRC and/or to years before the 2011 anti-DR rules.
24. The loan charge deliberately applied to unprotected years so those who hid their use of a disguised remuneration scheme would not benefit. If you chose not to restrict the exclusion to cases where the user disclosed the scheme, HMRC ~~We~~ could still pursue these individuals under the usual ~~20 year~~ time limit for enquiries, ~~which is resource intensive.~~
25. If you are minded to introduce this exclusion, ~~We~~ would recommend ~~want to~~ restricting this to loans made before the 2011 rules were introduced, which made clear these schemes were unacceptable. This would also ensure that schemes recently entered into were not inadvertently excluded because we have not issued enquiries or assessments yet.
26. If the loan charge only applied to protected years we would remove an aspect of the LC about which there are the most principled objections ~~the most disliked element of the retrospection.~~ It would remove any unexpected bills as individuals with enquiries should be aware they may have to pay. It would address the criticism that HMRC is getting a “second bit of the cherry” to cover for its historic inaction.
27. We would still be open to the accusation that we are denying individuals their chance to have their case decided by a court. We would need to make clear that this is a deliberate choice as we are confident of winning the vast majority of cases and litigating all cases is not in the wider public interest.
28. The cost if it was applied to individuals and employers would be very high. However, if it was restricted to individuals it could have an Exchequer cost between £[160]m to £[320]m. These numbers should only be considered an initial estimate. We do not currently have the data to be able to provide a robust estimate. We would need to undertake a detailed sample exercise that would take around six weeks to complete.
29. The rationale for restricting it to only individuals would be that many were not aware before 2011 they were using an avoidance scheme and HMRC did not inform them by opening an enquiry. Employers actively, and knowingly, entered into avoidance and so the loan charge should apply to all years.
30. We could be criticised because those who do not have an open enquiry and hence benefit from the exclusion are disproportionately ones who used the most egregious schemes and did not disclose anything to HMRC.
31. We think this is a substantial concession that would be well received by ‘amber’ MPs. We also think it would appease the Lords Economic Affairs Committee.

Commented [HJ(6): Is this true? Users allege they received an enquiry notice and then heard nothing further from HMRC, so the bill many years later is unexpected.

Risks

32. Using the power, particular for unprotected years, would be a material concession, which would be watering down the policy design. It would be a tacit admission the policy was too harsh, and acceptance of LCAPPG's view.
33. It may encourage campaigners on this policy and others, such as off-payroll reform, to push for more concessions.

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34. It may simply not be enough to appease and LCAPPG and campaigners continue to demand an independent review and pressure 'amber' MPs. We would then have little further room to manoeuvre to defend the policy.
35. It could draw public and media criticism that the government is 'soft' on tax avoiders but not for, say, tax credits claimants.
36. The impact on those who have not settled yet, but are in the process, will be complicated. We will need to review cases to see if the exclusion applies and reissue calculations where appropriate. This will be resource intensive as we have over [13,000] individuals in the process. The process will likely mean many do not settle until after 30 September 2019, when individuals should complete the information requirement or face a penalty. We would need to consider waiving these penalties for those still in process of settling so we do not penalise those doing the right thing.
37. We would need to re-open settlements that have concluded since 2016 and repay any tax no longer due with interest. This will be resource intensive as we will need to review over [4,000] settlements. We would need to prioritise work on outstanding settlements so we would need to inform individuals we will not refund until 2020.
38. We do not have robust costings for the exclusions, so making any announcement in the near future would mean committing to an approach without full details of the costs involved.

Announcing the exclusion

39. For any of the exclusion options, you would need to lay a written ministerial statement (WMS) setting out the intent to legislate retrospectively. It would need to be before recess on 25 July 2019 to allow it to be applied in settlements over the summer.
40. A WMS will need No. 10 clearance, which usually requires one week's notice. It will be challenging to finalise the policy and draft a WMS by early week commencing 15 July.
41. The regulations would need to be made and laid in September.

Next steps

42. If you want to consider using this power in more detail we recommend:
 - you do not send the 'Dear Colleague' letter; and
 - use your appearance at the EAC as part of your listening period.
43. We will provide more detailed advice on Monday 15 July 2019.