



## DEBATE PACK

Number CDP-2019/0078, 4 April 2019

# Introduction of the 2019 Loan Charge

By Antony Seely

## Summary

Over the last few years the Government has introduced several measures to tackle 'disguised remuneration' (DR) schemes. Initially legislation to counter this form of tax avoidance was introduced in 2011. In the 2016 Budget the Government confirmed that "new schemes have emerged which attempt to sidestep this legislation" often involving "individuals being paid in loans through structures such as offshore Employee Benefit Trusts", and that it would introduce legislation to counter their use, including "a new charge on loans paid through DR schemes which have not been taxed and are still outstanding on 5 April 2019" ([Budget 2016, HC901, March 2016 para 1.216-7](#)). Statutory provision was included in the [Finance \(No.2\) Act 2017](#) with supplementary provisions in the [Finance Act 2018](#). Taxpayers who are potentially liable to pay the Loan Charge may settle their tax affairs with HMRC, before it comes into effect from 6 April 2019.

Many Members have received representation about this from constituents. To date, 145 Members have signed an Early Day Motion, tabled by Stephen Lloyd MP in May 2018, criticising this measure as unfairly retrospective ([EDM 1239 of 2017/18, 8 May 2018](#)). However, this legislation attracted cross-party support when it was scrutinised in the House, and to date there is no indication that Ministers are minded to either scrap the Loan Charge or substantively amend the way it applies.

The House is scheduled to debate [a motion](#) relating to the introduction of the Loan Charge on 4 April. Ross Thomson made an application to the Backbench Business Committee [for this debate on 26 March](#), along with Ruth Cadbury, Adrian Bailey and Tommy Sheppard.

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

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# 1. Background

## 1.1 Introduction

Over the last few years the Government has introduced several measures to tackle 'disguised remuneration' (DR) schemes. Initially legislation to counter this form of tax avoidance was introduced in 2011.<sup>1</sup> Subsequently in the 2016 Budget the Government confirmed that since then "new schemes have emerged which attempt to sidestep this legislation" often involving "individuals being paid in loans through structures such as offshore Employee Benefit Trusts", and that it would introduce legislation to counter their use, including "a new charge on loans paid through disguised remuneration schemes which have not been taxed and are still outstanding on 5 April 2019."<sup>2</sup> Statutory provision was included in the [Finance \(No.2\) Act 2017](#),<sup>3</sup> with supplementary provisions in the [Finance Act 2018](#).<sup>4</sup>

Many Members have received representation about this from constituents, and to date 146 Members have signed an EDM, tabled by Stephen Lloyd MP in May 2018, criticising this measure as unfairly retrospective.<sup>5</sup> However, this legislation attracted cross-party support when it was scrutinised in the House, and there is no indication that Ministers are minded to either scrap the change or substantively amend the way it applies. Treasury Minister Mel Stride set out the Government's position in long written answer to a series of linked PQs in June 2018:

**Asked by Stephen Lloyd :** To ask Mr Chancellor of the Exchequer, what recent steps HMRC has taken in respect of (a) disguised remuneration schemes and (b) the promoters of such schemes.

**Answered by: Mel Stride :** The charge on disguised remuneration (DR) loans is targeted at artificial tax avoidance schemes where earnings were paid via a third party in the form of 'loans' which in reality were never repaid. DR scheme users took home almost all of their pay tax-free. However, these schemes never worked and the amounts paid were always taxable under the law at the time.

The Government has taken this action to ensure that everybody pays the taxes they owe and contributes towards the public-funded services from which they benefit. HMRC has provided a number of opportunities for DR scheme users to settle their tax affairs, and is actively encouraging scheme users to come forward and settle their tax position ahead of the loan charge arising. HMRC will help those who are in genuine financial difficulty by allowing them to pay their tax bill over time. The charge on DR

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<sup>1</sup> s26 & Schedule 2 of [Finance Act 2011](#). See, [Public Bill Committee, Eighth sitting, 19 May 2011 cc 267-315](#).

<sup>2</sup> [Budget 2016, HC901, March 2016 p60](#)

<sup>3</sup> ss34-5 & Schedules 11-12 of [Finance \(No.2\) Act 2017](#). See, [Public Bill Committee, Fourth Sitting, 19 October 2017 cc99-102](#)

<sup>4</sup> ss11-12 & Schedules 1-2 of [Finance Act 2018](#). See, [Public Bill Committee, First Sitting, 9 January 2018 cc27-34](#)

<sup>5</sup> [EDM 1239 of 2017/18, 8 May 2018](#)

loans is specifically targeted at these contrived tax avoidance schemes and is not expected to have significant effects on the economy or the NHS.

The Government estimates that up to 50,000 individuals will be affected by the charge on DR loans. Further information can be found at the [‘Disguised remuneration: further update’ policy paper](#). The loan charge applies to all users of DR tax avoidance schemes. It does not single out a specific group or industry. No estimate of the number of individuals affected at sector level is available. Fewer than 30 individuals declared the use of a loan scheme on their Self Assessment tax returns for the 2016/17 tax year. No estimate has been made of the number of schemes currently operating in the UK. HMRC continues to challenge avoidance schemes that are declared, and carries out extensive investigation work to track down those that are not.

Enquiries into DR tax avoidance cases can be time consuming and take several years because of the very complex nature of the arrangements. HMRC also relies on the cooperation of scheme users to provide information and agree to pay the tax they owe. A breakdown of the number of DR cases open by the number of years they have been open is not available, as HMRC’s operational data is not held in a way where this information is readily accessible.

Pay As You Earn (PAYE) liabilities fall on the employer in the first instance. The loan charge will not change this principle and HMRC will pursue employers who have used DR schemes for the tax that is due. HMRC will only go to the employee to settle their income tax liability in cases where it cannot reasonably be collected from the employer, for example where the employer is no longer in existence.

HMRC pursues those who promote or enable tax avoidance schemes to ensure that nobody profits from selling avoidance. HMRC is able to charge tough penalties of up to one million pounds where promoters do not provide clear and accurate information to their clients, and penalties of 100% of the fees earned by anyone who designs, sells, or otherwise enables the use of tax avoidance arrangements.

HMRC is proactively reporting DR scheme promoters to the Advertising Standards Authority and professional bodies where they make misleading claims about their products and services or provide misleading advice. HMRC will also consider criminal investigation where appropriate. Promoters of tax avoidance schemes have been prosecuted, leading to convictions and jail terms.<sup>6</sup>

As noted in this answer, taxpayers who are potentially liable to pay the Loan Charge may settle their tax affairs with HMRC, before the Charge comes into effect from 6 April 2019.<sup>7</sup>

In January 2019 HMRC confirmed that “approximately 250 different disguised remuneration schemes will be affected by the Loan Charge. These schemes are detailed and complex ... so far over 24,000 scheme users have registered an interest to settle their tax affairs. HMRC has set

<sup>6</sup> [POs152724-157732](#), 20 June 2018. The Minister reiterated the Government’s position at Treasury Questions on 29 January 2019 ([HC Deb cc640-1](#)).

<sup>7</sup> For details see, HMRC, [Disguised remuneration: settling your tax affairs](#), February 2019 & [Disguised remuneration: detailed settlement terms](#), November 2017

up dedicated email and phone lines to help users settle and is working hard to bring all live cases to an appropriate conclusion.”<sup>8</sup> HMRC’s current estimate is that the typical settlement that taxpayers are facing is around £13,000.<sup>9</sup>

## 1.2 The Government’s review of the Loan Charge

On 8 January 2019, at the report stage of the Finance Bill, Sir Edward Davey tabled a new clause – New Clause 26. The clause would require a review of provisions in the Bill to extend the time limits HMRC have to open an enquiry in cases involving non-deliberate offshore non-compliance (set out in clauses 79-80<sup>10</sup>). The review would also have to compare these provisions with other time limits placed on HMRC’s recovery of lost tax, *including* the loan charge.

As Sir Edward explained, his main concern was not about the proposed change to be made by clauses 79-80, but that a general review of time limits in recovering unpaid tax could, in turn, lead to a change in the Government’s position on the way the Loan Charge should apply:

The introduction of loan charges in the Finance Act 2017 to stop future abuse was correct, and the review my new clause proposes would not seek to prevent the Treasury from stopping that abuse from the 2016 Budget announcement. Instead—somewhat inelegantly, due to the rules of Finance Bill debate—new clause 26 aims to focus the minds of Treasury Ministers on the gross unfairness of the way the 2017 Act went about closing an unacceptable tax loophole.

I believe that the review envisaged in the new clause would reveal the unfairness of the retrospective nature of the current loan charge legislation in two ways. First, it would show how that retrospective nature is even more severe than non-retrospective but backward-looking proceedings for the recovery of lost tax elsewhere in our tax legislation. Secondly, it would show that the test of reasonableness included in proposed new section 36A, if applied to the loan charge, would in fact prevent any retrospective tax collection from the loan charge ...

The Treasury should, after the review, ditch the retrospective nature of this measure, delay April’s implementation and amend the charge so it focuses only on payments made after 2016 ... It is simply not acceptable for a Government to introduce a law that makes illegal something someone did years ago, when that action was considered legal. That is a clear principle.<sup>11</sup>

In the event the House did not vote on this new clause, as Treasury Minister Mel Stride announced that the Government would agree to it:

The new clause requires the Government to lay before the House a report reviewing the effects of changes made by

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<sup>8</sup> HMRC, [Tax avoidance loan schemes and the loan charge](#), 15 January 2019

<sup>9</sup> Treasury Committee, [Oral evidence: Tax enquiries and resolution of tax disputes](#), HC 1914, 30 January 2019 Q42

<sup>10</sup> For details see, HMRC, [Extension of offshore time limits for Income Tax, Capital Gains Tax and Inheritance Tax – tax information & impact note](#), 6 July 2018. The proposal was the subject of [a consultation exercise](#) earlier in 2018.

<sup>11</sup> [HC Deb 8 January 2019 c300-1](#)

clauses 79 and 80 no later than 30 March 2019. While I should note that such a report will come too soon for the measures to have had a real effect, the Government of course remain committed to setting out the rationale for their policies as well as their impact, and in that spirit we will not oppose the new clause ...

One issue that has been raised on a number of occasions is the question of whether HMRC's loan charge arrangements are themselves retrospective. They are not retrospective because, critically—this is where I take issue with the right hon. Member for Kingston and Surbiton (Sir Edward Davey)—at the time when they were entered into they were defective. No matter how far we go back, the scheme typically—I have described the way it works—was defective. It did not work then, it does not work now and the tax is due. These schemes have been taken through the courts on many occasions. A scheme used to the benefit of Rangers Football Club was taken to the Supreme Court—the highest court in the land—and was found to be defective...

However, as I have said, the Government will accept this new clause. It is absolutely right that, when HMRC deals with the public, it has a strict duty of care, a duty of proportionality and a duty to be as sympathetic as it can be relevant to the circumstances of those with whom it is dealing. In my dealings with HMRC, I have made those points forcefully clear. ...

HMRC has recently come forward to say that those earning £50,000 or less—which is over twice the average national salary of somebody working in our country—will automatically be granted, without requirement for additional paperwork, a minimum of five years' time to pay as an arrangement to settle their affairs. Of course for those who come forward before April there is effectively in most cases no penalty as such; they will simply be required to pay that tax which was due in the past—and it was always due in the past—plus the interest that is rightly applied.<sup>12</sup>

Sir Edward is one of a number of Members who have established an [All Party Parliamentary Group on the Loan Charge](#), which has published a survey of taxpayers affected by the Charge,<sup>13</sup> and has had correspondence both with Ministers and HMRC.<sup>14</sup>

The Government [published its review](#) on 26 March. Three extracts are copied below.

First, the review addresses the issue as to whether the Loan Charge is retrospective legislation:

Despite HMRC's continued efforts to challenge 'Disguised Remuneration' (DR) scheme use, some correspondents and commentators have criticised the charge, asserting that the legislation is retrospective. The government is clear that the legislation is not retrospective. The charge on DR loans applies a tax charge to outstanding loan balances at 5 April 2019.

It does not change the tax position of any previous year, the tax treatment of any historic transaction, or the outcome of any open

<sup>12</sup> [HC Deb 8 January 2019 cc804-5](#)

<sup>13</sup> Loan Charge APPG, [Loan Charge Inquiry: Survey Results](#), March 2019

<sup>14</sup> The APPG publishes these at: <http://www.loanchargeappg.co.uk/publications/>

compliance checks. Those who used the schemes can escape the charge by repaying the balances of any outstanding loans. Alternatively, they can seek to agree a settlement of the tax due on their income disguised as a loan, which was due under the legislation that existed at the time.<sup>15</sup>

Over the last few months the Treasury Sub-Committee has had an enquiry on [the conduct of tax enquiries](#), and on 10 December last year took evidence on the Loan Charge and the off-payroll rules ('IR35') – from Ray McCann (President of the Chartered Institute of Taxation) and Tony Lennon (from the Prospect Union).<sup>16</sup> Mr McCann addressed the issue of retrospection, arguing that the Loan Charge was not retrospective legislation, but the recovery of lost tax had a retrospective effect. One aspect that he was especially critical of was that these provisions would hit even those taxpayers who had notified HMRC of their use of a scheme registered under the '[Disclosure of Tax Avoidance Schemes](#)' (DOTAS) regime some time ago, but HMRC had failed to use this information to open an inquiry:

[The loan charge] is unprecedented legislation ... From a personal viewpoint, I don't believe it is retrospective in the conventional sense, but it has a retrospective effect. In reality, the retrospective effect actually displaces all the protections that taxpayers are given by Parliament in terms of getting certainty for their affairs of the past. We have a situation where even an individual who has disclosed the loan arrangement to HMRC will still nevertheless be caught in April for quite an extensive period back—say, to 2006 and 2007—and will have a very substantial liability in relation to that. ...

I have seen examples, on request from some of the people who have contacted me, of copies of tax returns with DOTAS numbers on them ... I find it quite irritating that HMRC seems on a number of occasions—I don't know how many, but my hope and suspicion is that it is quite a small number relative to the total—not to have opened inquiries even when there has been a DOTAS number on the return ... [When at the Revenue prior to 2006] I feel a touch of personal embarrassment, in the sense that I put quite a lot of effort during 2004 and 2005 into emphasising that if you put a DOTAS number on your tax return, it was certain to get an HMRC inquiry ...

If it was actually retrospective legislation—let's assume that it is retrospective legislation that is still effective from April next year—the extent to which HMRC could apply it to an individual would be determined by reference to the law as it stands, in terms of how far back HMRC could go. If you go back to my earlier example of an individual who has disclosed the loan arrangements and included a DOTAS reference on their tax return, it seems to me that, without some further change in the law, that person would be beyond the reach of HMRC, in terms of applying the loan charge.

In theory, it would still apply for the year, but that person would be protected by the normal estoppel that is on the Revenue under the Taxes Management Act 1970. If the Revenue had cause to

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<sup>15</sup> HM Treasury, [Section 95 of the Finance Act 2019: report on time limits and the charge on disguised remuneration loans](#), March 2019 para 3.82

<sup>16</sup> Treasury Committee, [Oral evidence: The conduct of tax enquires and resolution of tax disputes, HC 733, 10 December 2018](#)

believe that the person had deliberately evaded tax—as I say, in this context, that is probably unlikely—they would have a longer period of time. In most cases, it would be well beyond the point at which the Revenue could try to collect the tax.<sup>17</sup>

Turning back to the Government’s review, it sets out how the Loan Charge is to be paid ...

#### **Who will pay the charge on DR loans and when?**

Where the loan has been repaid, or where the tax that is due has been settled with HMRC, no charge will arise.

The government has seen evidence which suggests that there may be some confusion about when the charge on DR loans must be paid. Where the individual has not come forward with a genuine intention to settle the charge will apply to outstanding loan balances at 5 April 2019. **The charge does not need to be paid on 5 April 2019.**

Those impacted by the charge who have not agreed, or started the process of agreeing, a settlement by 5 April 2019 will need to submit an information return to HMRC setting out their loan balance by 30 September 2019. They will then need to file a 2018-19 Self Assessment return and **pay the charge by 31 January 2020.**

Individuals who were in an employment-based DR scheme, where the employer with whom they had the arrangement still exists and is based in the UK, will need to tell the employer what their outstanding loan balance is by 15 April 2019. The employer will then need to calculate and pay the PAYE liability on the loan income by 19 April 2019 (by post) or 22 April 2019 (online). 75% of the yield the charge on DR loans is expected to raise is from employers.

Where the employer no longer exists or is offshore, individuals will need to provide an information return to HMRC by 30 September 2019 and file a 2018-19 Self Assessment return and pay the charge by 31 January 2020. Appeal rights are unaffected and individuals can appeal any HMRC decision on this Self Assessment return in the usual way.<sup>18</sup>

... and the settlement terms that HMRC has published for taxpayers who wish to settle *before* the charge comes into effect:

HMRC has taken action to support those who want to get out of tax avoidance and pay the tax that is due with as much flexibility as possible by introducing simplified settlement terms to help them settle their tax affairs in advance of 5 April 2019.

There is no maximum period over which individuals are required to pay the tax due. HMRC will agree the appropriate payment plan for each individual. Under the settlement terms, people who currently have an annual income of less than £50,000 and are no longer engaging in tax avoidance can agree a payment plan of up to five years without the need to give HMRC detailed information about their income and assets. Having listened to representations from affected individuals and their MPs, HMRC has extended this to a period of seven years for those who have annual income less than £30,000.

<sup>17</sup> *op.cit.* Q92, Q94, Q96

<sup>18</sup> HM Treasury, [Section 95 of the Finance Act 2019: report on time limits and the charge on disguised remuneration loans](#), March 2019 para 3.76-80

For those who need to pay over a longer period – including those with an income of £50,000 or more – HMRC can agree longer payment arrangements.<sup>19</sup>

### 1.3 Forthcoming debate on the Loan Charge

The House is scheduled to debate [a motion](#) relating to the introduction of the Loan Charge on 4 April:<sup>20</sup>

#### Introduction of the 2019 Loan Charge

That this House expresses its serious concern at the 2019 Loan Charge which is due to come in on 5th April 2019; expresses deep concern and regret on the effect of the mental and emotional impact on people facing the Loan Charge; is concerned about suicides of people facing the Loan Charge and the identified suicide risk, which was reported to HMRC; believes that the Loan Charge is fundamentally unfair and undermines the principle of the rule of law by overriding statutory taxpayer protections; expresses disappointment at the lack of notice served by HMRC and the delays in communication with those now facing the Loan Charge which has further increased anxiety of individuals and families; is concerned about the nature and accuracy of the information circulated by HMRC with regard to the Loan Charge; regrets further the inadequate impact assessment originally conducted; understands that many individuals have received a miscalculated settlement information; calls for an immediate suspension of the Loan Charge for a period of six months and for all related settlements to be put on hold; and further calls for an independent inquiry into the Loan Charge to be conducted by a party that is not connected with either the Government or HMRC.

Ross Thomson made an application to the Backbench Business Committee [for this debate on 26 March](#), along with Ruth Cadbury, Adrian Bailey and Tommy Sheppard. Some extracts from these exchanges are reproduced below:

**Ross Thomson:** ... To give a bit of context, the reason I am applying for the debate is that I could not understand, when holding a local surgery, why people were queuing out the door. I know that politicians always say they have people queuing out the door, but in this case, it was genuine. People right across the UK have been facing huge bills for back taxes, which are a retrospective thing ... People receiving the bills were left devastated and not knowing why they had received them, given that they believed that they had done everything above board. They had done everything that they were advised to do by their tax advisers and, in many cases, their employers had encouraged them to set up as a private limited company. I have constituents who are being charged huge bills, despite having been told that they were doing absolutely nothing wrong.

We all accept that it is right that the Government will want to take action to address any issue that they believe to be tax avoidance. Our issue has really been with the retrospective nature of this, and how the Government and HMRC are looking back. That is why people are facing these huge bills.

The APPG now has real evidence of the impact this is having on people's and families' mental and emotional health. We have

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<sup>19</sup> *op.cit.* para 3.109-11

<sup>20</sup> [Order Paper No.278, 29 March 2019 pp16-17](#)

been running an inquiry ... Given that there has not been an awful lot of scrutiny on this issue, I think that it merits debate and being highlighted. It has cross-party support. A letter I wrote to the Chancellor was signed by 55 Conservative Back-Bench colleagues. This issue concerns people across the House. We would like to talk about it, given the impending date of 5 April, when this policy will come into play.

**Ruth Cadbury:** The matter is urgent because the deadline for people who may be affected—or HMRC believe to be affected—to respond to HMRC is 5 April, so we really want to get this debated in the House with ministerial responses before a week on Friday. This has been growing. HMRC has not told two thirds of the people who may or may not have been affected. It is demanding settlement of very large amounts, without explaining how it has arrived at those amounts. It has basically been saying, “You must agree that you will settle by a week on Friday,” so there is an urgency to this ...

**Tommy Sheppard:** I just want to underline the fact that there is cross-party support for this application. A lot of us, irrespective of party, have a number of very poignant constituency cases. We are all stricken by the unfairness with which individuals have been treated ...

**Adrian Bailey:** I support this totally. I have a constituent who thinks that he will have to sell his house on 5 April because of HMRC. I recognise that there is a range of issues that need to be debated. Nobody favours tax avoidance as such, but equally you expect a tax collection service to take into account perfectly law-abiding citizens who were conforming to the law, and who have suddenly found, as a result of retrospective legislation, that they are going to be ruined. There is a case based on fairness, justice and accountability there ...

**Patricia Gibson:** I am curious. The title of the debate is “2019 Loan Charge”. It is my understanding, which might be incorrect, that no party in the House of Commons, with the possible exception of the Lib Dems, is committing to reverse the collection of those unpaid taxes. Is the debate just about how HMRC is handling the affair?

**Ross Thomson:** That is a good question. Part of it is that in January, when the Finance Bill was going through, Ed Davey tabled new clause 26, which was taken on by the Government. That asked for a review, so we could review the impact of the policy before the decision is taken about its implementation on 5 April. We were all, as Members of the House, led to believe that that would be a genuine, independent review that would look at the impact of the policy.

I am sorry to say that the report that has been produced is HMRC judging itself; the independent review we were promised has never come. That is why we thought that having the debate, when we could go over the issues again and get a response from the Government, so we could get a genuine review of the impact of the policy, would be a practical, sensible way of assessing it prior to its implementation ...

**Patricia Gibson:** Is the focus of the debate HMRC then, rather than the policy itself?

**Ruth Cadbury:** We are not seeking to further change the Finance Bill. The amendment went in in good faith and it was accepted by the Government that there would be a review. A review has not

taken place. A report has been written that actually provides no new information. Despite questions being put in the House and written questions being answered, we have not had credible responses from Treasury Ministers. That is what we seek by having a debate—to bring the whole gamut of issues to light.

What we would like to see is some kind of pause or deferral by the Government. We are not seeking to reverse the policy at this point, and I am not sure we would anyway, but it is about the way the loan charge has been imposed, the way it has been imposed retrospectively, and the way emotional blackmail is being used on ordinary people who are trying to do the right thing. We have already raised questions in Parliament, and not had satisfactory answers. We know, and HMRC knows, that there has been at least one if not more suicides that, in the suicide notes, have been attributed to the pressure being put on taxpayers by the nature of the demand by HMRC.

**Tommy Sheppard:** ... In answer to Ms Gibson's points, the action we are calling for is mainly to review the executive action of HMRC, rather than the policy framework of this. For example, in correspondence with the Minister, I have been assured that no action will be taken that will lead to someone's becoming homeless, yet my constituent received a letter from HMRC with a six-figure bill and a demand that it be paid immediately, saying that they should dispose of all assets in order to pay that bill. The action that somebody in HMRC has taken is in direct contradiction of the assurance I was given by the Minister.<sup>21</sup>

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<sup>21</sup> [Proposals for backbench debates - oral evidence](#), HC 9999, 26 March 2019 Qs36-41

## 2. Parliamentary material

### 2.1 Early Day Motions

#### [EDM 1239 of 2017-19, The 2019 Loan Charge, 8 May 2018](#)

That this House expresses its concern at the 2019 Loan Charge; notes that it is retrospective applying back to 1999; further notes that as a result of the introduction of IR35, umbrella companies were set up and recommended by professional advisers and employment agencies; recognises that the Charge will affect contractors, freelancers and agency workers, including social workers, supply teachers and bank and locum nurses and doctors; notes that employment was not an option and in some cases the company or organisation insisted on those arrangements, including to avoid paying National Insurance; notes that these individuals did not receive sick or holiday pay; believes it is unfair that HM Revenue and Customs (HMRC) are pursuing people who acted in good faith rather than the client organisations, agencies or umbrella companies all of whom benefited significantly; notes that HMRC are aggressively pursuing individuals through Advanced Payment Notices with no independent right of appeal; further believes that the Charge is likely to cause financial distress and bankruptcies, impeding HMRC's ability to recover these tax liabilities and causing a devastating impact on people; believes that retrospectively taxing something that was technically allowed at the time, is unfair; calls on the Government to revise the legislation to avoid significant damage to independent contractors and freelancers in the UK; and calls for the Charge to apply only to disguised remuneration loans entered into after the Finance Act 2017 received Royal Assent.

Tabled by Stephen Lloyd MP. Signed by 146 Members to date.

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#### [EDM 2241 of 2017-19, 2019 Loan Charge Implementation, 27 March 2019](#)

That this House condemns the UK Government and HMRC's implementation of the 2019 Loan Charge; notes the 2019 Loan Charge was introduced by the Treasury to tackle disguised remuneration tax avoidance schemes through which loans were paid instead of regular forms of remuneration; is dismayed by reports that HMRC's handling of the measure is reportedly leaving individuals facing bankruptcy or homelessness as a result; regrets that tax professionals advised clients to use the mechanism; instructs the UK Government to pursue these organisations; further instructs the UK Government to take steps to tackle tax avoidance and evasion more generally which it has so far proven unwilling to do; notes the importance of people paying their fair share for the public services citizens use, but also the expectation that taxes are collected in a reasonable and responsible manner; demands that HMRC now works with those with an outstanding balance to ensure a reasonable repayment plan can be put in place; further demands the UK Government as a matter of urgency puts in place measures to ensure those affected do not lose their homes or businesses; and instructs UK Ministers to meet with any Parliamentary group wishing to get assurances on the loan charge or MPs making representations on behalf of constituents.

Tabled by Kirsty Blackman MP. Signed by 24 Members to date.

## 2.2 Debate

Consideration in Public Bill Committee of s26 & Schedule 2 of *Finance Act 2011*: [Public Bill Committee \(Finance Bill\), Eighth sitting, 19 May 2011 cc 267-315](#)

Consideration in Public Bill Committee of ss34-5 & Schedules 11-12 of *Finance (No.2) Act 2017*: [Public Bill Committee \(Finance Bill\), Fourth Sitting, 19 October 2017 cc99-102](#)

Consideration in Public Bill Committee of ss11-12 & Schedules 1-2 of *Finance Act 2018*: [Public Bill Committee \(Finance Bill\), First Sitting, 9 January 2018 cc27-34](#)

Westminster Hall debate on the 2019 Loan Charge, 20 November 2018: [HC Deb 20/11/2018 cc 270-296WH](#)

Consideration at the Report Stage of the Finance Bill of New Clause 26 (requirement for HM Treasury to report on time limits and the 2019 Loan Charge), 8 January 2019: [HC Deb 8/1/2019 cc287-317](#)

## 2.3 Selected PQs

[Tax Avoidance: PQs 148628-32, 11 June 2018](#)

**Asked by Hywel Williams :** To ask Mr Chancellor of the Exchequer, what assessment he has made of the effect the introduction of the 2019 loan charge on people who used umbrella companies on the advice of professionals after the introduction IR35.

**Answered by: Mel Stride :** The 2019 loan charge is targeted at artificial tax avoidance schemes where earnings are paid in the form of non-repayable loans made by a third party - "disguised remuneration" (DR) schemes. DR schemes are clear examples of contrived tax avoidance. It is not normal, or indeed reasonable, to be paid in loans that are unlikely ever to be repaid. It is an individual's responsibility to ensure they pay the right amount of tax and to understand the consequences of engaging in tax avoidance.

It is unfair to ordinary taxpayers to let anybody benefit from contrived tax avoidance of this sort, and that is why this Government has taken action to ensure that everybody pays the taxes they owe. The announcement of the loan charge at Budget 2016 provided scheme users with a three-year period to repay their DR loans, or to agree a settlement with HM Revenue and Customs (HMRC) before the charge takes effect.

50,000 individuals are estimated to be affected by the introduction of the DR loan charge across the UK. It is estimated that less than 0.1% of the population of Wales will be affected. Information is not held at constituency level.

The impact of the DR loan charge on these individuals was considered at Budget 2016, when the measure was first announced. HMRC consulted on the measure in August 2016. The latest tax information and impact note (TIIN) can be found at: <https://www.gov.uk/government/publications/disguised-remuneration-further-update/disguised-remuneration-further-update>

[Tax Avoidance: PQs152724-157732](#), 20 June 2018

**Asked by Stephen Lloyd** : To ask Mr Chancellor of the Exchequer, what recent steps HMRC has taken in respect of (a) disguised remuneration schemes and (b) the promoters of such schemes.

**Answered by: Mel Stride** : The charge on disguised remuneration (DR) loans is targeted at artificial tax avoidance schemes where earnings were paid via a third party in the form of 'loans' which in reality were never repaid. DR scheme users took home almost all of their pay tax-free. However, these schemes never worked and the amounts paid were always taxable under the law at the time.

The Government has taken this action to ensure that everybody pays the taxes they owe and contributes towards the public-funded services from which they benefit. HMRC has provided a number of opportunities for DR scheme users to settle their tax affairs, and is actively encouraging scheme users to come forward and settle their tax position ahead of the loan charge arising. HMRC will help those who are in genuine financial difficulty by allowing them to pay their tax bill over time. The charge on DR loans is specifically targeted at these contrived tax avoidance schemes and is not expected to have significant effects on the economy or the NHS.

The Government estimates that up to 50,000 individuals will be affected by the charge on DR loans. Further information can be found at the ['Disguised remuneration: further update' policy paper](#). The loan charge applies to all users of DR tax avoidance schemes. It does not single out a specific group or industry. No estimate of the number of individuals affected at sector level is available. Fewer than 30 individuals declared the use of a loan scheme on their Self Assessment tax returns for the 2016/17 tax year. No estimate has been made of the number of schemes currently operating in the UK. HMRC continues to challenge avoidance schemes that are declared, and carries out extensive investigation work to track down those that are not.

Enquiries into DR tax avoidance cases can be time consuming and take several years because of the very complex nature of the arrangements. HMRC also relies on the cooperation of scheme users to provide information and agree to pay the tax they owe. A breakdown of the number of DR cases open by the number of years they have been open is not available, as HMRC's operational data is not held in a way where this information is readily accessible.

Pay As You Earn (PAYE) liabilities fall on the employer in the first instance. The loan charge will not change this principle and HMRC will pursue employers who have used DR schemes for the tax that is due. HMRC will only go to the employee to settle their income tax liability in cases where it cannot reasonably be collected from the employer, for example where the employer is no longer in existence.

HMRC pursues those who promote or enable tax avoidance schemes to ensure that nobody profits from selling avoidance. HMRC is able to charge tough penalties of up to one million pounds where promoters do not provide clear and accurate information to their clients, and penalties of 100% of the fees earned by anyone who designs, sells, or otherwise enables the use of tax avoidance arrangements.

HMRC is proactively reporting DR scheme promoters to the Advertising Standards Authority and professional bodies where they make misleading claims about their products and services or provide misleading advice. HMRC will also consider criminal investigation where appropriate. Promoters of tax avoidance schemes have been prosecuted, leading to convictions and jail terms.

\*

[Topical Questions, Treasury Questions, 3 July 2018 \(HC Deb 3/7/2018 cc163-4\)](#)

**Stephen Lloyd** : As the Ministers on the Treasury Bench know, there are strongly held and differing views about the fairness of the implementation of the Treasury's 2019 loan charge. Recent media reports have identified the severe impact that this huge retrospective charge is having on the mental health of some contractors, and I have real concerns for their wellbeing. Will the Minister commit to setting up a 24-hour helpline to provide support for individuals caught in this trap?

**Mel Stride** : The issue that the hon. Gentleman identifies is an important element of the tax avoidance that has been happening in our country. The vast majority of people pay the correct level of tax, but there have been schemes, such as the disguised remuneration schemes to which he refers, through which essentially very little tax indeed has been paid. The Government believe that that is wrong and that we should act to clean up the arrangements. We have given individuals until April 2019 to do exactly that. On the support that he mentions, HMRC's door is of course always open for individuals in that situation to have discussions. I would urge all those individuals to make contact with HMRC to find a sensible way forward.

...

**Peter Aldous** : To follow on from the question asked by the hon. Member for Eastbourne (Stephen Lloyd), the retrospective nature of the 2019 loan charge could bankrupt thousands of people. Will the Government revise legislation to ensure that that does not happen, with the loan charge only applying to disguised remuneration loans made after the passing of the Finance (No. 2) Act 2017?

**Mel Stride** : This is not retrospective legislation. The activities and arrangements entered into by those who are in scope of this measure were not legal when they were entered into, even though they may have been entered into in the past. The loan charge is there not to apply penalties for that behaviour, but to ensure that those individuals pay the right amount of tax.

\*

[Tax Avoidance: PQs185525-8, 7 November 2018](#)

**Asked by Mr Nigel Evans** : To ask the Chancellor of the Exchequer, what proportion of the £3.2 billion that the Loan Charge 2019 is estimated to raise for the public purse by 2021 is projected to be recovered from scheme providers.

**Answered by: Mel Stride** : The Government estimates that £3.2 billion from the loan charge policy will be collected from scheme users who can be employers or individuals. 75% of the estimated amount is expected from employers and 25% from individuals.

Since the announcement of the 2019 loan charge at Budget 2016, HMRC has agreed settlements on disguised remuneration schemes with employers and individuals of over £650 million. More than 90% of this amount was collected from employers, with less than 10% from individuals. If scheme users repay the loan or agree a settlement for the tax that they owe with HMRC,

they will not face the charge. Providers or promoters of tax avoidance schemes are not liable for the loan charge unless they themselves have used arrangements caught by the legislation. HMRC pursues those who promote or enable tax avoidance schemes to ensure that nobody profits from selling avoidance.

\*

[2019 Loan Charge: Treasury Questions, 29 January 2019 \(HC Deb 29/1/2019 cc640-1\)](#)

**Mr Alistair Carmichael** : If he will take steps to prevent the 2019 loan charge from being applied retrospectively.

**The Financial Secretary to the Treasury (Mel Stride)** : The loan charge is not retrospective. The schemes that were entered into and to which the loan charge relates have always been defective—they never worked, including at the time when they were entered into. That has been evidenced by a number of court cases, including one put before the highest court in the land, the Supreme Court.

**Mr Carmichael** : Her Majesty's Revenue and Customs is allowed to go back to 1999 to look at tax records. Records that it can look at include those in otherwise closed years. If that is not retrospective, I don't know what it is. What word would the Minister use to describe the loan charge to my constituent, who tells me that he started a business working in the oil and gas industry, living in Orkney but working across the globe, doing everything the Government would want him do? How does he now find himself facing bankruptcy, before his 29th birthday?

**Mel Stride** : An important principle lies at the heart of the whole debate around the loan charge, which is that individuals should pay the tax that is due. If they enter into arrangements that basically mean they disguise income as a loan that they have no intention of ultimately repaying—money that is, more often than not, routed via low or no-tax jurisdictions overseas, via a trust, then brought back into the United Kingdom by way of payment—the Government believe that that is wrong, and the tax should be paid.

**Andrea Jenkyns** : What assessment has the Chancellor made concerning an immediate suspension of the loan charge and all settlement discussions within an appropriate period, to allow the loan charge review to be properly conducted and any recommendations to alter the legislation to be implemented?

**Mel Stride** : My hon. Friend will know that the loan charge was brought into effect in 2016. It allowed three years for individuals to clean up the loans—if they were loans, they could be refinanced on a proper, commercial basis—or to come to an arrangement with HMRC. The most important message that I can give from the Dispatch Box today to those involved in these schemes is to get out of avoidance, to get in touch with HMRC and to settle their affairs. They will have a sympathetic and proportionate hearing.

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[Tax Avoidance: PQ220152, 18 February 2019](#)

**Asked by Grant Shapps** : To ask the Chancellor of the Exchequer, if he will make it his policy to delay the loan charge settlement day until after the conclusion of the review of that charge.

**Answered by Mel Stride** : The Government chose to accept section 95 during the passage of the Finance Bill introduced by a cross party group. As set out by section 95, the Government will lay a report no later than 30 March 2019. The report will review the effect of changes made to the time limits for assessment

where tax loss arises in relation to offshore tax, and compare these with other legislation including the charge on disguised remuneration loans.

The charge on disguised remuneration loans remains unchanged as a result of the requirement for a report, and will apply to disguised remuneration loan balances on 5 April 2019.

The charge on disguised remuneration (DR) loans will apply to outstanding DR loan balances on 5 April 2019. It is targeted at artificial tax avoidance schemes where earnings were paid in the form of non-repayable loans made by a third party. The loans are provided on terms that mean they are not repaid in practice, so they are no different to normal income and are, and always have been, taxable.

The Government estimates that up to 50,000 individuals will be affected by the 2019 loan charge. Information is not held at constituency, borough or regional level.

Since the announcement of the 2019 loan charge at Budget 2016, HMRC has now agreed settlements on disguised remuneration schemes with employers and individuals totalling over £1 billion. Pay As You Earn (PAYE) liabilities fall on the employer in the first instance. The charge on DR loans does not change this principle and the employee will only be liable where the amount cannot reasonably be collected from the employer, such as where the employer is offshore or no longer exists. Around 85% of the settlement yield since 2016 is from employers, with less than 15% from individuals. HMRC will never force somebody to sell their main home to pay for their DR debt, or the loan charge.

HMRC is working hard to help individuals get out of avoidance for good and offer manageable and sustainable payment plans wherever possible. It carefully considers each case and there is no maximum limit on how long a customer can be given to pay what they owe. HMRC considers a customer's ability to pay on a case by case basis and decisions are based on each individual's personal circumstances.

HMRC has simplified the process for those who want to settle their use of DR schemes before the loan charge arises. DR scheme users who currently have an income of less than £50,000 and are no longer engaging in tax avoidance can automatically agree a payment plan of up to five years without the need to give HMRC detailed information about their income and assets. This arrangement has been extended to 7 years for scheme users who have an income of less than £30,000.

Anybody who is worried about being able to pay what they owe should get in touch with HMRC as soon as possible. They have a number of ways to help those who are genuinely unable to make a full payment of tax on time, for example, by arranging payments by instalments.

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[Tax Avoidance: PQ221022, 21 February 2019](#)

**Asked by Anneliese Dodds :** To ask the Chancellor of the Exchequer, pursuant to [Mary Aiston's oral evidence to the Treasury Committee on 30 January 2019](#), what steps HMRC is taking to ensure that people affected by the disguised remuneration loan charge are not forced to sell their homes.

**Answered by: Mel Stride :** HMRC will never force somebody to sell their main home to pay for their Disguised Remuneration (DR) debt, or the loan charge. Anybody who is worried about being able to pay what they owe should get in touch with HMRC as soon as possible. They have a number of ways to help those who are genuinely unable to make a full payment of tax on time, for example, by arranging payments by instalments. HMRC's Debt Management team are also trained to identify customers who are vulnerable and will refer them to HMRC's specialist "Needs enhanced support" team. They will tailor their support to meet the needs of the individual.

DR schemes are contrived arrangements that pay loans in place of ordinary remuneration with the sole purpose of avoiding income tax and National Insurance contributions.

Since the announcement of the 2019 loan charge at Budget 2016, HMRC has now agreed settlements on disguised remuneration schemes with employers and individuals totalling over £1 billion. Pay As You Earn (PAYE) liabilities fall on the employer in the first instance. The charge on DR loans does not change this principle and the employee will only be liable where the amount cannot reasonably be collected from the employer, such as where the employer is offshore or no longer exists. Around 85% of the settlement yield since 2016 is from employers, with less than 15% from individuals.

HMRC is working hard to help individuals get out of avoidance for good and offer manageable and sustainable payment plans wherever possible. It carefully considers each case and there is no maximum limit on how long a customer can be given to pay what they owe. HMRC considers a customer's ability to pay on a case by case basis and decisions are based on each individual's personal circumstances.

HMRC has simplified the process for those who want to settle their use of DR schemes before the loan charge arises. DR scheme users who currently have an income of less than £50,000 and are no longer engaging in tax avoidance can automatically agree a payment plan of up to five years without the need to give HMRC detailed information about their income and assets. This arrangement has been extended to 7 years for scheme users who have an income of less than £30,000.

Anybody who is worried about being able to pay what they owe should get in touch with HMRC as soon as possible. They have a number of ways to help those who are genuinely unable to make a full payment of tax on time, for example, by arranging payments by instalments.

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#### [Tax Avoidance: PQ226209, 4 March 2019](#)

**Asked by Anneliese Dodds :** To ask the Chancellor of the Exchequer, pursuant to the answer of 18 February 2019 to Question 221022 on Tax Avoidance, whether it has always been HMRC's policy that nobody would be forced to sell their main home to pay for their Disguised Remuneration debt.

**Answered by: Mel Stride :** As advised by HMRC officials at the Treasury Select Committee on 30 January 2019 it is not HMRC's policy to force the sale of a main residence in relation to a Disguised Remuneration (DR) debt, or the loan charge.

Since the announcement of the 2019 loan charge at Budget 2016, HMRC has now agreed settlements on disguised remuneration schemes with employers and individuals totalling over £1 billion. Pay As You Earn (PAYE) liabilities fall on the employer in the first instance. The charge on DR loans does not change this principle and the employee will only be liable where the amount cannot reasonably be collected from the employer, such as where the employer is offshore or no longer exists. Around 85% of the settlement yield since 2016 is from employers, with less than 15% from individuals.

HMRC is working hard to help individuals get out of avoidance for good and offer manageable and sustainable payment plans wherever possible. It carefully considers each case and there is no maximum limit on how long a customer can be given to pay what they owe. HMRC considers a customer's ability to pay on a case by case basis and decisions are based on each individual's personal circumstances.

HMRC has simplified the process for those who want to settle their use of DR schemes before the loan charge arises. DR scheme users who currently have an income of less than £50,000 and are no longer engaging in tax avoidance can automatically agree a payment plan of up to five years without the need to give HMRC detailed information about their income and assets. This arrangement has been extended to 7 years for scheme users who have an income of less than £30,000.

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#### [Tax Avoidance: PQ229807, 12 March 2019](#)

**Asked by Anneliese Dodds :** To ask the Chancellor of the Exchequer, pursuant to the Answer of 4 March 2019 to Question 226209, whether HMRC will provide assistance to people affected by disguised remuneration debt who experienced loss of residence prior to HMRC confirming their policy not to force the sale of a main residence in January 2019.

**Answered by: Mel Stride :** The statement made on 30 January confirmed HMRC's policy not to force the sale of a main residence directly in relation to a Disguised Remuneration (DR) debt. HMRC has never forced the sale of a main residence in relation to a DR debt. Anyone who is worried about being able to pay what they owe should get in touch with HMRC as soon as possible.

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#### [Tax Avoidance: PQ227951, 12 March 2019](#)

**Asked by Mr David Davis:** To ask the Chancellor of the Exchequer, what steps HMRC has taken against the promoters of disguised remuneration schemes.

**Answered by: Mel Stride :** This Government is committed to tackling avoidance in all its guises. HM Revenue and Customs (HMRC) has a suite of powers to tackle and challenge those who promote or otherwise enable tax avoidance and HMRC is using its powers to challenge major promoters of avoidance schemes, including disguised remuneration (DR) avoidance schemes.

In recent years, HMRC has been investigating over 100 promoters and others involved in avoidance, including disguised remuneration arrangements. In the last couple of years, HMRC has taken litigation action against 6 scheme promoters for failure to disclose under Disclosure of Tax Avoidance Schemes (DOTAS)

with others deciding to disclose to avoid litigation. Further cases will be litigated in the year ahead.

HMRC has used its powers under the Promoters of Tax Avoidance Schemes (POTAS) legislation to challenge promoters and made three successful complaints to the Advertising Standards Authority about misleading advertising; two of which relate to disguised remuneration schemes.

HMRC consider criminal investigation and referrals to prosecuting authorities where appropriate. Since the formation of HMRC's Fraud Investigation Service on 1 April 2016, more than 20 individuals have been convicted for offences relating to arrangements which have been promoted and marketed as tax avoidance schemes, resulting in over 100 years custodial and more than 7 years suspended sentences being ordered. Additional matters are the subject of ongoing enquiries.

#### [Tax Avoidance: PQ229274, 15 March 2019](#)

**Asked by Vicky Foxcroft:** To ask the Chancellor of the Exchequer, what estimate his Department has made of the number of individuals subject to the 2019 Loan Charge in (a) Lewisham, Deptford constituency, (b) London Borough of Lewisham and (c) London.

**Answered by: Mel Stride :** The charge on disguised remuneration (DR) loans will apply to outstanding DR loan balances on 5 April 2019. It is targeted at artificial tax avoidance schemes where earnings were paid in the form of non-repayable loans made by a third party. The loans are provided on terms that mean they are not repaid in practice, so they are no different to normal income and are, and always have been, taxable. The charge on DR loans is expected to raise £3.2bn for the exchequer. The majority, 75%, is expected to come from employers rather than individuals.

The best option for those individuals who are worried about the introduction of the charge on Disguised Remuneration loans is to come forward and speak to HMRC as soon as possible. They will work with all individuals to reach a manageable and sustainable payment plan wherever possible. HMRC has put special arrangements in place so that they are able to agree a payment plan of up to five years automatically for those with income below £50,000 and seven years for those with income below £30,000 where those scheme users are no longer engaging in tax avoidance. HMRC may be able to offer a longer payment plan for those that need more than five or seven years or with income over £50,000, where further information is provided.

The Government estimates that up to 50,000 individuals will be affected by the charge on DR loans, either by settling with HMRC or paying the charge which applies from 05 April 2019. Information is not held at constituency, borough or local authority level.

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#### [Tax Avoidance: PQs2347768 & 2347768, 25 March 2019](#)

**Asked by Ruth Cadbury:** To ask the Chancellor of the Exchequer, whether HMRC has made an (a) assessment of the risk of suicide and (b) estimate of the number of suicides among people subject to the 2019 Loan Charge; and if he will make a statement.

**Answered by: Mel Stride** : When HMRC is notified that an individual has taken their own life, and had contact with the customer at the time, or shortly beforehand, its standard process is to refer the matter to the Independent Office for Police Conduct within 24 hours of the notification.

On Monday 18 March, HMRC was informed that a customer had, very sadly, taken their own life. The department had previously been told that the individual had used disguised remuneration schemes. Out of respect for the family, and given HMRC's statutory duty of taxpayer confidentiality, it is not in a position to comment further.

Suicide is a complex issue and there is rarely a single cause. It is important to emphasise that it will be for a coroner to determine any cause of death, not HMRC. The department will, of course, co-operate fully with any inquest.

As Sir Jonathan Thompson KCB, HMRC Chief Executive and Permanent Secretary, said in his 13 March 2019 letter to the Loan Charge All Party Parliamentary Group, at that time HMRC was aware of reports but did not possess information that enabled it to identify a named individual.

An impact assessment was published when the measure was announced at Budget 2016. The Government will also publish a report that will set out the rationale for, and impact of, the policy before 30 March 2019.

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#### [Tax Avoidance: PQ237713, 1 April 2019](#)

**Asked by Peter Dowd** : To ask the Chancellor of the Exchequer, pursuant to the Answer on 19 March 2019 given to [Question 232589 on tax avoidance](#), how many promoters of tax avoidance schemes HMRC has challenged.

**Answered by: Mel Stride** : In recent years, HMRC has been investigating over 100 promoters and others involved in the promotion and marketing of tax avoidance schemes. In the last 18 months HMRC has pursued 10 businesses promoting/ marketing avoidance schemes to litigation for failure to disclose under the Disclosure of Tax Avoidance Schemes (DOTAS) regime with others deciding to disclose to avoid litigation. Of the 10 cases, 6 have been heard before a tribunal and in each of the 3 decisions received so far, all have confirmed HMRC's view that the schemes were disclosable, with decisions awaited in a further three cases. Further cases will be litigated in the year ahead.

HMRC uses a range of approaches to challenge promoters and others involved in the design, marketing and supply of avoidance schemes with many leaving the market altogether and with the activity of others being significantly reduced. The approaches can include the use of POTAS and other legislative means but are not limited to these powers.

## 2.4 Select Committee publications

### Treasury Committee

Treasury Committee, [\*Oral evidence: The conduct of tax enquires and resolution of tax disputes\*](#), HC 733, 10 December 2018

Treasury Committee, [\*Oral evidence: Tax enquiries and resolution of tax disputes\*](#), HC 1914, 30 January 2019

Treasury Committee press notice, [\*Treasury Committee publishes correspondence about the Disguised Remuneration Loan Charge\*](#), 1 March 2019

The Treasury Committee is today publishing a series of letters relating to the Disguised Remuneration Loan Charge; a new tax charge on money paid to contractors as loans instead of normal wages. The Loan Charge is intended to stop people arranging to have their earnings paid as loans in order to avoid tax. But the Treasury Committee is concerned about the impact it may have on people now faced with potentially life-changing tax bills many years after they had good reason to believe that their tax affairs were settled and in order.

#### **1. Rt Hon. Nicky Morgan MP, Chair of the Treasury Committee, to Jon Thompson, Chief Executive and Permanent Secretary at HMRC – dated 18 December 2018**

Mrs Morgan asked about the terms of HMRC's Contractor Loan Settlement Opportunity (CLSO), which in certain circumstances requires contractors to agree to make a voluntary payment of tax for years that HMRC would otherwise be out of time to collect.

#### **2. Jim Harra, Deputy Chief Executive and Second Permanent Secretary at HMRC, to Mrs Morgan – dated 24 January 2019**

Mr Harra explained the terms of the Contractor Loan Settlement Opportunity. Mr Harra also confirmed that in some cases where voluntary payments would be required HMRC may have missed opening tax enquiries even where full and complete information about the scheme was provided to HMRC at the time.

#### **3. Mrs Morgan to Mr Harra – dated 20 February 2019**

Mrs Morgan asked a series of questions following HMRC's evidence session with the Committee on 30 January 2019.

#### **4. Mrs Morgan to Rt Hon. Mel Stride MP, Financial Secretary to the Treasury – dated 20 February 2019**

Mrs Morgan acknowledged the government's position on whether the Loan Charge is retrospective legislation but said that there are related issues about the impact of the Loan Charge on taxpayer expectations of certainty that need to be addressed. Mrs Morgan said that tax certainty helps individuals plan for major life events such as setting up home, starting a family or preparing for retirement, and that the way in which the Loan Charge interacts with statutory time limits for charging tax can undo such certainty.

Treasury Committee, [\*Letter from Rt Hon Mel Stride, Financial Secretary to Ms Morgan\*](#), March 2018

To Rt Hon Nicky Morgan MP

Dear Nicky

You raised concerns about tax certainty and assessment time limits for those that have used DR schemes.

As you know, during the debate on the Finance Act, the Government agreed to New Clause 26, now section 95 in the Finance Act, and will publish a report shortly. The forthcoming report will consider the rationale for the policy as well as its impacts, and address the points and questions that you have raised in your letter.

The report will also consider representations provided from correspondence received on the issue as well as the Loan Charge All Party Parliamentary Group (APPG), and the settlement opportunities provided by HM Revenue and Customs (HMRC) will be made clear.

I would like to assure you that I have listened very carefully to concerns about the impact of this policy on those who took advantage of these schemes, and as a result HMRC now has special arrangements in place to agree manageable and sustainable payment plans for those who come forward to settle.

I hope you are assured that the Government is listening to those with concerns about the charge on DR loans, and taking appropriate action to review the policy and its implementation.

Yours ever, Mel

Rt Hon Mel Stride MP

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### **Public Accounts Committee**

Public Accounts Committee, [Oral Evidence: HMRC Progress Review](#), HC 1969, 4 March 2019 (see Qs132-9)

\*

### **Lords Economic Affairs Finance Bill Sub-Committee**

Lords Economic Affairs Finance Bill Sub-Committee, [The powers of HMRC: treating taxpayers fairly, HL Paper 242](#), 4 December 2018 (see [Chapter 4: the 2019 Loan Charge](#))

Lords Economic Affairs Finance Bill Sub-Committee, [Letter from Rt Hon Mel Stride, Financial Secretary, to the Chairman](#), 24 December 2018

HMRC, [The Powers of HMRC: treating taxpayers fairly \(House of Lords Paper 242\) – Government response](#), 22 January 2019 (see Section 3: The 2019 Loan Charge)

## 3. Further reading

### 3.1 Official publications

#### HM Revenue & Customs

HMRC, [\*Disguised remuneration: tax information & impact note\*](#), March 2011

HMRC, [\*Tackling disguised remuneration: tax information & impact note\*](#), 30 March 2016

HMRC, [\*Tackling disguised remuneration – update: tax information & impact note\*](#), 5 December 2016

HMRC, [\*Disguised remuneration: a Supreme Court decision \(Spotlight 41\)\*](#), September 2017

HMRC, [\*Disguised remuneration: settling your tax affairs\*](#), November 2017 (updated February 2019)

HMRC, [\*Disguised remuneration: detailed settlement terms\*](#), November 2017

HMRC, [\*Disguised remuneration charge on loans: issue briefing\*](#), July 2018 (updated February 2019)

HMRC, [\*Tax avoidance loan schemes and the loan charge: issue briefing\*](#), October 2018 (updated January 2019)

HMRC, [\*Rewarding employees and contractors using contrived loan arrangements \(Spotlight 46\)\*](#), 16 January 2019

HMRC, [\*FOI release: Disguised Remuneration loan charge awareness letters\*](#), 7 February 2019

HMRC, [\*Letter from Ruth Stanier to the Loan Charge All Party Parliamentary Group\*](#), 7 March 2019

HMRC, [\*Letter from Sir Jonathan Thompson to the Loan Charge All Party Parliamentary Group\*](#), 14 March 2019

HMRC, [\*Disguised remuneration: asset transfer arrangements set up to avoid the loan charge \(Spotlight 50\)\*](#), 26 March 2019

HMRC, [\*Letter from Ruth Stanier to the Loan Charge APPG\*](#), 2 April 2019

HMRC press notice, [\*HMRC urges loan scheme users to come forward now\*](#), 3 April 2019

#### HM Treasury

HM Treasury, [\*Tackling tax avoidance, evasion, and other forms of non-compliance\*](#), March 2019

HM Treasury press notice, [\*Government details scale of loan scheme tax avoidance\*](#), 26 March 2019

HM Treasury, [\*Section 95 of the Finance Act 2019: report on time limits and the charge on disguised remuneration loans\*](#), March 2019

### Guidance for Members

On 30 January the Treasury Committee held an evidence session on tax enquiries with HMRC officials at which the Loan Charge was discussed at some length.<sup>22</sup> At one point in the session the Chair, Nicky Morgan, noted that many constituents were asking their MP about the Loan Charge, and asked Mary Aiston (Director, Counter-Avoidance at HMRC) if HMRC had “any guidance to Members of Parliament about how we address this in our constituency surgeries?” In response, Ms Aiston said, “I am very happy to give MPs the further support that they need in tackling and answering concerns and questions from their constituents.”<sup>23</sup>

In March HMRC published: [The Loan Charge Briefing Pack](#), March 2019

## 3.2 Press articles & other commentary

[“Tax avoidance clampdown may bankrupt thousands”](#), *Times*, 28 April 2018

[“Freelancers in tax avoidance schemes hit with bill for £1bn”](#), *Times*, 11 July 2018

“Loans, legislation and liabilities”, *Taxation*, 12 July 2018

[“New legal feud over freelance tax claims”](#), *Times*, 11 August 2018

[“HMRC tax crackdown victimises easy targets”](#), *Financial Times*, 25 September 2018

“Self’s assessment : the loan charge”, *Tax Journal*, 30 November 2018

[“Living in the shadow of a tax scandal”](#), *Financial Times*, 25 January 2019

[“HMRC grants contractors more time to pay for loan charge”](#), *Financial Times*, 1 February 2019

[“Readers respond to ‘Living in the shadow of a tax scandal’”](#), 14 February 2019

[“Thousands of workers hit with massive tax avoidance bills”](#), *Guardian*, 16 February 2019

[“Labour joins tussle over ‘unfair’ tax avoidance charge”](#), 15 February 2019

[“Freelancers cry foul as taxman chases them for thousands”](#), *Times*, 23 February 2019

[“Comment: Tax must be more taxing for those who avoid”](#), *Times*, 23 February 2019

[“HMRC powers: a parliamentary perspective by Nicky Morgan MP”](#), *Chartered Institute of Taxation blog*, 27 February 2019

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<sup>22</sup> Treasury Committee, *Oral evidence: Tax enquiries and resolution of tax disputes*, HC 1914, 30 January 2019

<sup>23</sup> *op.cit.* Q55, Q58

"The 2019 loan charge and the human rights challenge", *Tax Journal*, 1 March 2019

["We can't force loan charge victims to pay up, says taxman"](#), *Sunday Times*, 3 March 2019

["Loan charge suicide sparks calls for PM to halt policy"](#), *Financial Times*, 8 March 2019

["Tory peer urges 'tin-eared' Treasury to rethink loan charge"](#), *Financial Times*, 18 March 2019

["Editorial: UK government must act to end tax change distress"](#), *Financial Times*, 18 March 2019

["Comment: The war on tax avoidance has been a remarkable and lucrative success"](#), *Times*, 19 March 2019

"Payment time", *Taxation*, 21 March 2019

["UK refuses to back down on loan charge tax crackdown"](#), *Financial Times*, 26 March 2019

["MP accuses Treasury of loan charge 'lie'"](#), *Financial Times*, 26 March 2019

["HMRC reports itself to the police over taxpayer's suicide"](#), *Financial Times*, 31 March 2019

### **Institute of Chartered Accountants of England and Wales / Chartered Institute of Taxation**

ICAEW tax representation, [\*Finance Bill 2017, cl 48-49 & Sch 17-18 disguised remuneration loan charges\*](#), 20 March 2017

CIOT press notice, [\*Institute welcomes Lords report on HMRC\*](#), 4 December 2018

CIOT press notice, [\*Treasury report – CIOT warns against retrospection and lengthy look backs\*](#), 26 March 2019

### **Low Income Tax Reform Group**

LITRG, [\*Are you affected by the 2019 'loan charge'? Help is available\*](#), 13 September 2018

LITRG press notice, [\*Missed the 30 September loan charge deadline? Don't panic – help is still available\*](#), 12 October 2018

LITRG, [\*Loan charge settlement – separating fact from fiction\*](#), 20 December 2018

LITRG, [\*Loan Charge – decision day looms\*](#), 15 February 2019

LITRG press notice, [\*Loan charge to go ahead as planned – but there is still time to settle\*](#), 29 March 2019

## **3.3 Commons Briefing paper**

[\*Tax avoidance and tax evasion, Commons Briefing paper CBP7948\*](#), 2 April 2019 (see **Section 6: The 2019 Loan Charge**)

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