

Disguised Remuneration: a possible resolution

[Matt Hall focuses on what he hopes will be the denouement of the Loan Charge 'scandal'](#)

In the 2024 Autumn Budget, the government promised to “commission an [independent review](#) of the Loan Charge to help bring the matter to a close for those affected whilst ensuring fairness for all taxpayers”.

The scope of that Review was announced on 23 January 2025 . It will be led by former CIOT President and senior HMRC Inspector, Ray McCann.

The [very narrow scope of the Review](#) will offer little encouragement for those who hoped for more. One thing it absolutely won't review is the Loan Charge! Instead, the focus will be how those who have not yet settled can be 'encouraged' to do so:

The overarching objectives of the review are:

- Bringing the matter to a close for those affected.
- Ensuring fairness for all taxpayers.
- Ensuring that appropriate support is in place for those subject to the Loan Charge.

Drawing on work undertaken by the Low Incomes Tax Reform Group, TaxAid and others, this review will examine the barriers preventing those who are subject to the Loan Charge but have not already settled and paid their tax liabilities in full from reaching resolution with HMRC. It will recommend ways in which they can be encouraged to settle with HMRC.

The review will only consider Disguised Remuneration (DR) schemes used between 9 December 2010 and 5 April 2019. That is, those in scope of the Loan Charge legislation. HMRC's use of the controversial s684(7a) ITEPA 2003 to pursue earlier years is out of scope. Mr McCann will not be allowed to ponder whether this previously unused, hidden, discretionary power was really the type of 'normal' powers Sir Amyas Morse had in mind when he removed pre-9 December 2010 loans from the Loan Charge. Nor to wonder how more than 275,000 users were drawn into DR schemes in 2022-23.

In their letter to Mr McCann the Treasury say “the review must... focus on bringing closure for the unsettled & unpaid Loan Charge populations, with targeted solutions that have the minimum possible impact on the public finances. Solutions should not undermine the fundamental principles of the tax system that individuals are responsible for their own tax affairs and that tax owed.”

The Reviewer has been asked to report to the Treasury by the summer.

Finding a resolution that will appease all involved will be incredibly difficult. Both sides have become ever more entrenched in recent years but there must be a recognition from both taxpayers and HMRC that resolution is indeed the desirable outcome. Very few gain from this dragging on and on. HMRC themselves would undoubtedly benefit not just from the tax that they would recover, but from being able to redeploy the considerable resources they have tied up in dealing with these issues.

For taxpayers able to settle, the financial certainty that would bring would offer some respite. But affordability is key. On current estimates there are still in the region of 20-30,000 cases that remain unsettled five years after the Loan Charge tax was due.

Unfortunately, settlement – even for those able to afford it – is a slow and painful process. Those who approach HMRC for settlement calculations must be advised that it will likely take many months not days or weeks, to get a reply. Progress is rarely anything but glacial.

That so many have yet to settle is, in my experience, largely because HMRC has framed its settlement terms punitively. Those with 'open' or 'protected' years face not only paying income tax but Inheritance Tax on the same loan. Late payment interest (which will rise to 8.75% in April 2025) rapidly adds up, plus for those who can least afford it, HMRC add a 1% premium for future interest on 'time to pay' arrangements. Those with open enquiries often also received APNs and therefore face pursuit of the late payment penalties and interest thereon because even under settlement HMRC do not withdraw APNs. An individual settling under the 2020 DR Settlement therefore pays income tax, Inheritance Tax, interest, penalties and interest on those penalties on a single receipt. That cannot be described as anything other than punishment. To resolve that impasse there must be an acceptance that these taxpayers do not need punishing to dissuade them from entering these types of arrangements in the future. Many claim they didn't know that they were entering into them in the first place. The emotional distress, marital breakdowns and even suicide that HMRC's pursuit of DR schemes has led to is more than enough to dissuade these people from ever doing so again.

HMRC must also accept that you simply cannot get blood from a stone. It is to be hoped that the 'Loan Charge Review' recognises this. HMRC has the power to bring all of this to an end and it is to be hoped that Mr McCann recommends in the strongest possible terms that they grasp this opportunity.

In my view there are several ways in which the current settlement terms could be amended to 'encourage' more to settle. I would suggest the following:

HMRC could, as they did in the very early days of settling EBT Loan Cases, accept that the income tax charge arises upon settlement when loans are written off. This would remove punitive interest costs and IHT.

HMRC do not have to use S684(7A) ITEPA 2003 to pursue loans received "before the law became clear", to quote Sir Amyas Morse. That is a discretionary power. It is not one that HMRC is obligated to use.

HMRC should remove APN late payment penalties and therefore interest thereon by simply repealing the APNs when taxpayers settle.

HMRC should not seek two tax charges on a single source of income. Inheritance Tax that arises under current settlement terms when the loans are written off can be removed if HMRC simply adopt a consistent position across both Income Tax and NIC. If, as HMRC assert when levying an income tax charge, loans were never intended to be repaid, the value leaving the trust when calculating the 'exit charge' must be nil.

HMRC do not need to add forward interest to those who need time to pay. There is no statutory basis for it.

Further, HMRC should extend what they call the residual tax waiver, so that anyone paying the loan charge is not pursued for more tax in earlier years. Settling the Loan Charge should mean full and final settlement for all.

No doubt Mr McCann will receive many other suggestions.

Whatever recommendations arise from the Review, they should be applied to all users of DR schemes; not just those within the scope of the Loan Charge. It would be quite absurd if those who used DR schemes before "the law became clear" are penalized with settlement terms that are worse than those made available to users of later schemes.

Furthermore, it is quite clear that there is a significantly larger group of taxpayers caught up in DR schemes that are expressly outside the Terms of Reference for the Review. If HMRC are to do more than simply scratch the surface then sensible, fair, affordable settlement terms must be made available to everyone – irrespective of their year of use. If bold changes aren't made and applied widely it is quite possible that HMRC will be dealing with some of the estimated 275,000-plus taxpayers caught up in DR schemes in 2022-23 in another 20 years' time!

Now is the time for all sides to grasp the nettle.

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