

James Murray MP
Exchequer Secretary to the Treasury
HM Treasury
1 Horse Guards Road,
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7th August 2024

Dear James,

Meeting regarding the Loan Charge Scandal

We are writing to follow-up the meeting on 23rd July. First of all, thank you very much for inviting and including us. It is very positive that you have convened such a meeting and dialogue on the Loan Charge and related issues and we are happy to be involved in an ongoing dialogue. We will do all we can to assist with the review that the Chancellor has committed to, with a view to resolving the whole mess.

As you know, we have been coordinating a group of independent tax and accounting sector professionals who recognised how misplaced and misdirected the previous Government and HMRC's approach was to this issue. We [wrote to Sir Keir Starmer prior to the election](#) with our proposal for a framework for a resolution that would not only end the nightmare for the thousands affected (which extends to family members, as well as those directly affected) but would also resolve the administrative burden for HMRC and finally resolve what you are well aware has become a very problematic political issue for the Government.

The aim of this framework proposal is to provide a proposal for a legislative framework that would be preceded by the proposed independent review of the Loan Charge to resolve the Loan Charge debacle. Ministers would then need to work with HMRC to implement the conclusions of that review, which would consist of a legislative framework that would incorporate the following principles:

1. That any legislative change to the Loan Charge itself should aim to end the Loan Charge debacle for the benefit of all parties (be it through a repeal of the Loan Charge legislation or otherwise).
2. That it be made clear that s684(7A)(b) ITEPA cannot be used to retrospectively remove or deny a worker's PAYE credit, something that is currently being done in years taken out of the Loan Charge following the Morse review.
3. That any legislative change allow affected taxpayers who have not yet settled with HMRC to have their outstanding tax liability reduced by any PAYE credit that should have applied. The PAYE credit here would represent the amount of PAYE income tax that should have been withheld by the person obliged to pay it, which would typically be a (UK-based) employer, but may also be an agent or other intermediary in the labour supply chain, or in some cases, the end client or end user to whom affected taxpayers provided their services. (Normally, where PAYE income tax is due to be accounted for by an employer, the taxpayer is given a PAYE credit for that tax irrespective of whether or not the employer actually pays it to HMRC.)

4. For affected taxpayers who have already settled their tax liability under the Loan Charge or the threat thereof (typically paying significant sums to HMRC), that they be permitted to have their liabilities recalculated so as to give them the benefit of any reinstatement of any PAYE credit previously denied to them. Such applications could be made (say) within 12 to 24 months after the legislation comes into force.
5. That it be acknowledged that those who were arbitrarily switched to a self-employment arrangement for income tax purposes post 9th December 2010 did so without any change in circumstances or role adjustment. HMRC's removal of the PAYE credit on this basis did not allow for the facts or a true assessment of status.
6. That a mechanism be introduced to not only treat the write-off of a Loan Charge loan as an event with no inheritance tax consequence, but also one that does not pass through a Part 7A gateway (so that the write-off does not count as a "relevant step" that would trigger income tax under Part 7A). (Note that the inheritance tax aspects do not necessarily need a technical solution: HMRC simply need to accept that the loans have no value and therefore no gratuitous benefit is conferred by the write-off of the debt, nor is there a transfer of value for inheritance tax purposes.)
7. To ensure that creditors of record, third party debt collectors, insolvency practitioners and their advisers are legally prohibited from pursuing repayment of Loan Charge loans. This may require new legislation.

A fresh approach is needed, from the new Government (and from HMRC, that must be directed to take one). Affected taxpayers simply cannot afford to pay the sums HMRC are demanding of them, which often involve life-changing sums, typically multiples of their current annual earnings (if indeed they are still earning). This has resulted in serious financial hardship, often with devastating consequences for affected taxpayers' lives and livelihoods. Sadly, as above, this has led to a number of suicides and there are frequent reports of others who are suicidal.

We therefore believe that it would be pointless for HMRC to continue pursuing these individuals for the taxes believed to be due from them. Not only would it cause yet further hardship and misery for those affected, but the current deadlock between HMRC and affected individuals, and HMRC's continued pursuit of them, would only continue to generate negative publicity for both HMRC and the Treasury (under the new Government). We are therefore very heartened by your new approach to us and others that sought to engage with the previous Government, but who were ignored. We first tried to engage with the Government back in December 2021 when we wrote to the then Chancellor Rishi Sunak and the then Financial Secretary to the Treasury, Lucy Frazer. We were dismayed when not only did neither of the Ministers bother to respond to our letter and our offer to engage, but instead Lucy Frazer instructed HMRC instead to respond (when the whole purpose of our letter was seeking to engage with Ministers directly, to assist with a resolution to the whole sorry mess).

In our letter to Sir Keir Starmer, we also welcomed the current Chancellor Rachel Reeves' clear commitment to a fresh, independent review of the issue. We reiterate the offer made at the meeting to engage and advise in any way that might assist with this.

One further point we wish to make concerns the scope and remit of the review. It is important that the review looks at the whole Loan Charge Scandal in the round and unpicks the whole issue and scandal, with evidence from affected taxpayers and independent experts as needed. The Morse Review was a narrow review restricted only to looking at whether the Loan Charge was an 'appropriate response' to what was already presumed to be tax avoidance. This meant that it was not and could not be a proper review of the whole issue, as well as it being effectively based on a biased presumption that the intent of all those who used loan schemes entered into them was to avoid tax. That is not the case and a full (and unbiased) remit must look at the whole issue, including the supply chain, the role and motivation of promoters, recruiters, umbrella companies and employers, as well as looking at why how and why these schemes proliferated and why many contractors and SME directors used them. This therefore needs to consider the role played by legislation (and changes to legislation), the advice given by professional advisers and the motivation of employers/client companies and organisations (including public sector ones, including Government departments) in encouraging or obliging people to operate as 'self-employed' contract workers as opposed to employees. It must also look at the record and role of HMRC in dealing with schemes at the time, the adequacy of warnings and communications to taxpayers as well as how and why the Loan Charge was conceived of and then proposed to Ministers and introduced to Parliament.

At the same time as needing a full review of the whole issue, to come to a fair and fact-based resolution, we also wish to make the point that this is not the same as calling for a review of those other things – IR35/off-payroll legislation, workers' rights, HMRC accountability – or seeking remedies to them. The much needed full, 360-degree, independent review of the Loan Charge Scandal needs to stick to reviewing – and resolving – the situation facing all those caught by HMRC's actions linked to what it terms 'disguised remuneration'. The wider IR35 / employment status – which is a part of this – does need addressing, but will require more in depth reform and should not hold up a proper, full review of the Loan Charge Scandal and a much needed resolution.

It is also essential that, in light of this forthcoming review, all HMRC-related activity is suspended. This means suspending the Loan Charge, any related Accelerated Payment Notices and also any letters purporting to be decisions made under section 684(7A). Not suspending these would render any review meaningless, because HMRC could and would continue to pursue those affected (and would likely do so more promptly and more rigorously, knowing that it may be mandated to change its approach following the review). This would both negate the possibility of a different outcome for many, which would not only render the review pointless for affected taxpayers, but would also prejudice the review and the environment in which it operates.

We hope this is helpful and we again thank you for engaging with us. We and other sector professionals remain committed to working with the Government with regards to the much needed fresh review and resolution that must then follow, in the interests of all, including the Government.

Yours sincerely,

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