Treasury Committee
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Jim Harra CB
Chief Executive and First Permanent Secretary
HM Revenue and Customs
[via email]

5 February 2024

Dear Jim,

Disguised Remuneration Tax Avoidance Schemes and the Loan Charge

On 1 November 2023 you wrote to the Committee providing an update on the settlement of Loan Charge cases. This followed on from the oral evidence you gave to the Committee on 18 October 2023. You will be aware that the Loan Charge and other disguised remuneration tax avoidance schemes have since been debated in the House of Commons.

I would be grateful if you could answer the following further questions on the settlement of tax balances related to the Loan Charge, disguised remuneration schemes, and your efforts to prevent similar tax avoidance schemes in the future.

I understand that this is a comprehensive request, however significant concerns have been expressed about this policy. This letter aims to capture many of the outstanding concerns surrounding the Loan Charge. Please refer to legislation, court judgements and publicly available HMRC guidance where necessary.

Background to disguised remuneration schemes caught by the Loan Charge legislation (December 2010 to April 2017)

1. Please provide a diagram of how typical disguised remuneration schemes work.
2. Please provide the Committee with a timeline regarding disguised remuneration schemes and HMRC efforts to tackle them, beginning in 2000. This should include, but not be limited to; the development of such schemes, HMRC actions, court cases and legislative initiatives, including the General Anti-Abuse Rule (GAAR).
3. Given the above timeline, is HMRC confident that it acted swiftly in seeking to counter disguised remuneration schemes?
    a) Please list any constraints HMRC faced in its actions and the effectiveness of any measures taken by HMRC or HMT listed in the timeline.
4. Were HMRC confident that the department was in a position to win disguised remuneration cases in court prior to the introduction of the Loan Charge legislation? If so, how long would it have taken to clear all the cases through this route alone?
5. Without the Loan Charge legislation announced at the 2016 Budget, what courses of action would have been available to HMRC?
    a) Did you cost those options at the time and what were their estimated costs?
6. What was the initial estimate for the amount of revenue protected by introducing the Loan Charge?
    a) How much revenue and yield do you expect to collect from settlements and from the Loan Charge?

7. Where does the liability and onus of the tax due fall where an employee was 'paid' via a loan caught by the Loan Charge? Please set out the basis for your answer.
8. Are notions of 'illegality' relevant in relation to disguised remuneration schemes caught by the Loan Charge? For example, is a promoter breaking the law to sell a scheme that, in time, when tested in court, fails? If not, why not?

The use of disguised remuneration schemes caught by the Loan Charge legislation (December 2010 to April 2017)

9. In HMRC's online briefing on the Loan Charge[1], you state that 61,000 people have used schemes which have been caught by the Loan Charge. Of this number, how many people have settled with you and how many people will pay the Loan Charge?
10. Has HMRC ever had an estimate of the number of people who knowingly used disguised remuneration schemes and those who unwittingly used such schemes? If so, please provide those estimates.
11. Has HMRC undertaken research on the reason why people may enter into disguised remuneration schemes unwittingly?
    a) What is HMRC doing to counter this?
12. Please provide the amount of money already settled by each individual taxpayer using disguised remuneration schemes via settlements or the loan charge. To protect taxpayer confidentiality, this should be aggregated into numbers of taxpayers per bands of money paid. The bands should be of £25,000 or the smallest amount that protects taxpayer confidentiality. (i.e. £0-£25k, £25k-£50k, etc)
13. Please provide the amount of money still due to be settled by each individual taxpayer using disguised remuneration schemes via settlements or the loan charge. To protect taxpayer confidentiality, this should be aggregated into numbers of taxpayers per bands of money paid. The bands should be of £25,000 or the smallest amount that protects taxpayer confidentiality. (i.e. £0-£25k, £25k-£50k, etc). The data provided in answering questions 12 and 13 should be able to be combined to provide an overall view of those who used a disguised remuneration scheme and caught by the Loan Charge.
14. Please provide a breakdown of the number of people who have used disguised remuneration schemes caught by the Loan Charge by industry and by region.
15. Please provide a breakdown of the number of contractors, employees and company directors who used disguised remuneration schemes caught by the Loan Charge.

Settling and paying disguised remuneration schemes and the Loan Charge

16. Prior to the implementation of the Loan Charge, were you satisfied with the speed at which disguised remuneration cases were dealt with?
17. How will HMRC prevent the build-up of open cases in the future?
18. Where an individual has used a disguised remuneration scheme but wishes to settle the tax due with HMRC, what payment options are available to them?
    a) Are those same options available to those paying the Loan Charge?
    b) Do these differ from HMRC's usual "Time to Pay" arrangements?
19. What support is HMRC offering those who are struggling to pay the Loan Charge or their tax settlement from a disguised remuneration scheme?
20. How has HMRC identified those who need extra support?
21. Is HMRC confident that the department is offering enough support to both those that request it and those that have not come forward?

[1] HMRC issue briefing: settling disguised remuneration scheme use and/or paying the loan charge - GOV.UK (www.gov.uk)

22. Has HMRC gone beyond the support the department would provide other taxpayers who have not used disguised remuneration schemes?
23. Does the support HMRC offer differ depending on whether the individual entered into a disguised remuneration scheme knowingly or was led into the scheme unwittingly by a promoter?
24. To what extent are people not settling with HMRC because of the ongoing public debate around the Loan Charge?
    a) If this debate is having an effect, please outline which aspects of the debate is causing non-payment?
25. What reasons are HMRC provided with from those refusing to settle or pay the Loan Charge?
    a) How is HMRC seeking to counteract such reasoning?
26. How does HMRC treat a taxpayer who has been misled by tax advice they have received?
    a) Does HMRC do any work to identify those who have been misled by tax advice?
    b) How do you identify those who have been misled?
27. Has HMRC ever considered an amnesty? Has HMRC advised the Treasury that there should be an amnesty for settling disguised remuneration scheme cases? If not, why not?
28. How many people have indicated to HMRC that they wish to settle, but have not yet agreed a final settlement? Please indicate in the number of people where the current delay is with HMRC and the number of people where the current delay is with the taxpayer?
    a) Please can you provide the longest current delay?
    b) Please outline any steps being taken to counter any such delays.
29. How many people have requested a time to pay arrangement but have yet to agree such an arrangement with HMRC? Please indicate in the number of people where the current delay is with HMRC and the number of people where the current delay is with the taxpayer?
    a) Please can you provide the longest current delay?
    b) Please outline any steps being taken to counter any such delays.

Action taken to tackle the promoters of disguised remuneration schemes caught by the Loan Charge (December 2010 to April 2017)

30. Please set out in a disguised remuneration scheme, who is responsible for any tax due?
31. What action has HMRC taken against the promoters of the disguised remuneration schemes, including those who have promoted schemes caught by the Loan Charge?
    a) How successful have these actions been?
32. What powers, if any, does HMRC have to pursue a promoter of disguised remuneration schemes caught by the Loan Charge?
    a) If HMRC currently does not have such powers, would you argue for these?
33. Has there ever been a conviction of a promoter of disguised remuneration schemes caught by the Loan Charge?

The 2019 Morse Review

34. Are HMRC satisfied with the process used for the Morse review?
35. Are HMRC confident in the conclusions of the Morse review?
36. Are HMRC satisfied in the department's interaction with the review?
37. Have the recommendations of the Morse review been fully implemented?

Preventing current and future tax avoidance

38. What is HMRC doing to tackle disguised remuneration schemes both currently and in the future?
39. What lessons has HMRC learnt from tackling disguised remuneration schemes and implementing the Loan Charge?

40. How effective are "Stop Notices" in preventing the promotion of tax avoidance schemes, and is there merit in widening the power to promotors rather than single schemes?
41. Does HMRC require further powers or solutions to effectively tackle disguised remuneration and other tax avoidance schemes and their promotors?

Regulating tax advice

42. Discussion around the Loan Charge has suggested that the use of disguised remuneration schemes should be attributed to poor tax advice. Would you agree with this characterisation?
43. Have you ever discussed with the Financial Conduct Authority whether any of the firms (including Independent Financial Advisers) it regulates gave improper advice related to disguised remuneration schemes?
44. A solution to the problem of poor-quality tax advice could be regulation of the advice sector. Should tax advice be regulated?
    a) What are the pros and cons of such regulation?
45. What discussions have you had internally and with the Treasury on the potential regulation of tax advice?

Discourse surrounding disguised remuneration schemes and the Loan Charge

46. In the public discourse surrounding disguised remuneration schemes and the Loan Charge, has HMRC identified 'myths' that the department would like to dispel?

The Committee would welcome any further information or analysis HMRC would like to provide beyond that required to answer the questions above.

In line with the Committee's usual practice, I will be placing this letter and your response in the public domain. I would be grateful for a reply by 4 March 2024.

With best wishes,

H—tt Baldwin

Harriett Baldwin MP
Chair of the Treasury Committee