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Dear Harriett,

Disguised Remuneration Tax Avoidance Schemes and the Loan Charge

Thank you for your letter of 5 February 2024 requesting further information on disguised remuneration (DR) tax avoidance schemes and the Loan Charge. I have provided answers to your questions below with the exception of questions 13 and 25, for reasons which I explain.

The introduction of the Loan Charge and HMRC's approach to the implementation of the measure and to dealing with DR schemes more generally has received, and continues to receive, considerable scrutiny. We have sought to be transparent and forthcoming to assist those scrutinising the approach the Government and HMRC have taken. In this context, significant amounts of evidence and data have already been provided and published, including the evidence HMRC submitted directly to the Independent Loan Charge Review and previous responses to the Committee. I have referred to previous publications and evidence where possible to help you with this important work.

Background to disguised remuneration schemes caught by the Loan Charge legislation (December 2010 to April 2017) – Questions 1 to 8

DR schemes are contrived tax avoidance arrangements that are designed to try to avoid Income Tax and National Insurance contributions on income by disguising it as some other, non-taxable type of payment, typically a loan or other payment that is unlikely to be repaid (see diagram, Annex A).

Our data shows that those who historically used DR schemes often did so across multiple tax years.

HMRC has always been clear that we do not believe these schemes work to reduce tax liability and have taken many steps over the last two decades to ensure people pay the right amount of tax. The first enquiries into DR schemes were opened before 1999 and schemes

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were litigated from 2002. Tens of thousands of enquiries into DR scheme users were then opened and litigation continued from this date.

Alongside HMRC's compliance activity, successive governments have taken action to tackle DR schemes. In 2004, the then Paymaster General tabled a Written Ministerial Statement making it clear that the Government would, if necessary, legislate retrospectively to close down employment-related tax avoidance arrangements and ensure the proper amount of income tax and NICs was paid.

In December 2010, the Government announced legislation to tackle DR schemes, which became Part 7A Income Tax (Earnings and Pensions) Act 2003. HMRC continued to assert that schemes entered into before this date were ineffective under previously existing law and continued to pursue litigation to establish this. However, we consider that this legislation put beyond any doubt that DR schemes entered into on or after 9 December 2010 are ineffective in avoiding tax.

The General Anti-Abuse Rule (GAAR) was introduced in 2013 to counteract abusive tax arrangements and applies to arrangements entered into on or after 17 July 2013. An independent advisory panel, the GAAR Advisory Panel, approves HMRC's GAAR guidance and provides opinions on cases where HMRC considers the GAAR may apply. While the GAAR Advisory Panel has opined that entering into certain DR schemes were not reasonable courses of action, so that HMRC would be justified in using the GAAR to tackle them, HMRC has not needed to rely on the GAAR to tackle DR schemes to date because the courts have found payments to be taxable under existing tax law.

The introduction of the targeted anti-avoidance legislation in 2011 was successful in addressing DR avoidance by large corporate employers, who generally stopped entering into DR schemes after it was introduced and settled their historic use. However, even after the anti-avoidance legislation was announced in 2010, evolution and proliferation of DR schemes continued, with HMRC continuing to open many thousands of enquiries into DR scheme use over the course of subsequent years. Schemes evolved that purported to get around this legislation. These became increasingly convoluted, including those that attempted to obscure the loan elements of the arrangements, and self-employed schemes that did not involve an employer entity.

The introduction of the Loan Charge

Resolving cases via compliance interventions and litigation is lengthy and costly, both for taxpayers and HMRC. This is particularly true where cases are appealed to the senior courts, where it can take many years before a final judgment is handed down.

In an effort to settle these disputes without recourse to the Tribunal and Courts, we offered DR scheme users multiple opportunities to achieve finality through formal published settlement opportunities. Despite our efforts to bring DR cases to a resolution, tens of thousands of employers and individuals who owed tax as a result of participating in DR schemes chose not to take up the settlement opportunities offered by HMRC.

The Loan Charge was therefore introduced to try to draw a line under the historical use of DR schemes. The Loan Charge is a tax charge on DR loan balances that were outstanding on 5 April 2019. It was intended to encourage DR scheme users to settle their affairs before the charge came into effect. The charge was announced at Budget 2016, giving taxpayers

three years to resolve their DR scheme use by repaying their loans or settling with HMRC, before it arose.

The recommendations accepted and implemented following the Independent Loan Charge Review led by Sir Amyas (now Lord) Morse in 2019 resulted in the Government introducing legislative changes to how the Loan Charge worked. The most significant is that it now applies only to DR loans made from 9 December 2010, instead of 6 April 1999. It also no longer applies to loans made in tax years before 6 April 2016 where a reasonable disclosure of the use of the tax avoidance scheme made was made to HMRC and HMRC did not take action, for example by opening an enquiry. Individuals could also elect to spread the amount of their outstanding loan balance evenly across three tax years, to mitigate the impact of being liable for tax in one tax year at a higher rate than they would ordinarily incur.

Following the changes made after Lord Morse's Review, the Loan Charge no longer applies to DR loans made before 9 December 2010. However, Lord Morse said "*HMRC should continue being able to settle and investigate cases prior to this point [9 December 2010] under their normal powers where they have appropriate grounds, and a legal basis, to do so*".

We continue to seek to collect tax from the employer in the first instance. However, we use the powers made available to us by Parliament to collect tax directly from the employee where appropriate. This is consistent with Lord Morse's recommendation and Lord Morse was aware of our intention to do this and the extent of our powers before the conclusion of his review.

When announced, the Loan Charge formed part of a package estimated to yield more than £3.2 billion over the period 2016-17 to 2020-21. Details of this estimate were provided to the review. The forecast was last revised at Spring Statement 2022, to £3.4 billion for the entire package from 2016-17 to 2026-27. The changes made to the Loan Charge following Lord Morse's review have reduced the Exchequer yield by an estimated £620 million over the period 2019-20 to 2026-27.

Litigating DR schemes

Despite our preference to settle disputes by agreement where possible, we have been successful in challenging DR schemes through the courts. As a result, HMRC has a clear set of legal arguments for why tax is due on the income paid through DR schemes, covering the full range of different types of DR schemes, including corporate cases, contractor loans, third party and directly provided loans, and self-employed schemes.

Consequently, taxpayers and their advisers have now moved away from challenging whether disguised income is taxable. Instead, they more frequently challenge whether HMRC can recover the tax that is due under the tax administration framework, such as the procedures used to collect tax through the Pay As You Earn (PAYE) system. HMRC has successfully defended these challenges, endorsing our longstanding view that tax is payable on income received through DR schemes, and that the liability is that of the employee.

HMRC began litigating DR schemes in the early 2000s, with an early case considered by the courts being *Dextra Accessories v Macdonald (Inspector of Taxes)*[1]. The first case directly

[1] Dextra Accessories Ltd v Macdonald (Inspector of Taxes) [2002] STC (SCD) 413

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related to contractors was *Boyle v HMRC*[2], decided by the First Tier Tribunal in March 2013, with the Judge agreeing with both HMRC's arguments that the loans were taxable as employment income or under the transfer of assets legislation. The Tribunal held that the loans were not genuine and were subject to income tax on a number of alternative bases.

The most notable judgment was the 2017 *Rangers*[3] case, where the Supreme Court held unanimously that contributions made by an employer into an offshore trust for the benefit of employees were subject to income tax and National Insurance contributions at that point.

The *Rangers* judgment related to schemes operated in the tax years between 2001-02 and 2008-09 and confirmed HMRC's longstanding position that such payments have always been taxable.

While *Rangers* is a complex decision, the key point is that it confirms the principle that employee earnings paid by an employer to a third party are taxable as employment income of the employee and that tax should be deducted under PAYE. The Supreme Court either held that previous cases lost by HMRC were wrongly decided by the lower courts (*Sempra Metals v HMRC*[4]) or disagreed with their conclusions (*Dextra*). It did not consider provisions in the PAYE system which allow HMRC to collect tax directly from the employee.

HMRC seeks to collect tax due on DR schemes from the employer under PAYE in the first instance where that is possible. However, these schemes are often complex and frequently interpose several layers between the worker, agency and the end client, in an effort to disguise the nature of the arrangements (see Annex A).

PAYE is a collection mechanism which simplifies the collection of an employee's income tax liability on their employment income. Ordinarily the employee will bear the cost of the payment of their tax, whether this is by way of deduction from their earnings through PAYE or direct payment by the employee to HMRC, where steps are taken to collect the tax due from them directly. In some circumstances, HMRC may decide it is appropriate to collect the employee's tax directly from them, rather than from the employer, under powers in PAYE legislation.

In 2022, the Court of Appeal considered the use of one provision under section 684(7A)(b) of the Income Tax (Earnings and Pensions) Act to collect from the employee rather than the employer in *Stephen Hoey and others v HMRC*[5]. The Court confirmed that even where other parties may have obligations to withhold tax under PAYE, the liability for income tax is always that of the employee, and that HMRC was justified in collecting the tax from the employee in that case.

The use of DR schemes caught by the Loan Charge legislation (December 2010 to April 2017) – Questions 9 to 15

<u>Raising awareness of the risks of using DR schemes</u>

[2] Philip Boyle v Revenue & Customs [2013] UKFTT 723 (TC)
[3] RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland) [2017] UKSC 45
[4] Sempra Metals Ltd v Revenue and Customs Comrs [2008] STC (SCD) 1062
[5] Stephen Hoey & Others v The Commissioners for HM Revenue and Customs [2022] EWCA Civ 656

HMRC wants to make it as easy as possible for people to pay the right tax at the right time. We help people to spot tax avoidance schemes before they join, so that they can steer clear of them. We also contact people when we learn they have joined a tax avoidance scheme to give them the opportunity to exit tax avoidance as quickly as possible.

HMRC has consistently warned taxpayers that DR avoidance doesn't work, for example through our regular 'Spotlight' publications. More recently, recognising that we needed to do more to warn individual taxpayers about the risks of using tax avoidance schemes, we have improved what we do to help taxpayers understand the risks and consequences of their involvement before they enter a scheme and as soon as possible after they enter a scheme, through direct awareness campaigns and letter writing.

Using powers provided to us by Parliament in 2021, we publish the names of promoters and schemes to warn taxpayers as early as possible, so they can steer clear of them or leave them. We also aim to write to taxpayers within two months when our data suggests that they might have joined an avoidance scheme. We explain what they need to do to move out of their avoidance schemes before they build up large tax bills.

Taxpayer motivations

It is difficult to determine the level of understanding or motives of an individual DR scheme user, and this is usually not relevant to determining whether tax is due. Our knowledge of the population of DR scheme users and Loan Charge payers is imperfect as many individuals have not engaged with us or provided us with information.

As noted by Lord Morse in his review, "*it is a fundamental principle of the tax system that people are responsible for their own tax affairs, even where another person such as employers or agencies also have reporting or withholding obligations*". He went on to say that "*it is important that this principle remains in place*". The motives of those engaging in tax arrangements do not affect whether tax is due under the rules passed by Parliament.

Taxpayer behaviour is a relevant consideration in applying certain powers which HMRC has available as part of the tax administration framework. This includes charging penalties, which for example consider whether an individual has failed to take reasonable care in their tax affairs, or assessing tax for years that are outside the normal assessing time limit. In most cases HMRC has not sought to apply these powers in respect of DR schemes.

We recognise that people who join a DR scheme may have been given false assurances by the promoter of the scheme and may have varying levels of awareness of the nature and risks of the scheme. We do not have any estimates of how many DR scheme users entered into schemes 'unwittingly'. These challenges also meant that the Morse Review itself was unable to reach a judgement on whether and how many in the population affected by the Loan Charge were 'induced' into schemes or followed recommendations from what they might have regarded as reliable third parties.

HMRC commissioned external, independent research into how and why people enter into avoidance. This has helped us to understand how schemes are advertised and has helped us to build communications and engagement plans to raise awareness of the risks of avoidance and to encourage people to keep clear of schemes.

IFF Research's June 2018 research report '[Understanding tax avoidance arrangements used by contractors]' noted that while promoters may have given false promises about the efficacy of the schemes, including by falsely stating that they were 'HMRC approved', "*most contractors said they ultimately got involved due to the fact that it benefitted them financially*" by increasing their take-home pay. It also noted that "*most contractors said that they considered use of schemes to be 'normal' in the contracting the industry… contractors who participated in the research reported they knew many other contractors were using the same / similar schemes, seemingly without issue, and that this also made the scheme seem attractive*".

Furthermore, while "*most contractors felt that they had got involved with their scheme unwittingly*" because of the assurances they were provided by promoters, some responses suggested those "*who said they had 'doubts' about the scheme or felt that it was 'too good to be true' at the time may have been reluctant to explore the matter further and may have just been willing to take what they were being told by those promoting the schemes at face value due to the purported benefits of joining the scheme.*"

[Further research] by IFF Research published in September 2022 said that "*out of the minority (31%) of contractors who had seen potential tax avoidance schemes, only a small minority went on to sign up*". For those who didn't, the biggest reason was because the schemes seemed too good to be true, that they were not sure if the schemes were within the tax rules or legal, and that they were too risky.

We are committed to raising awareness to help taxpayers spot the signs of tax avoidance to get their tax right, helping them to steer clear of the schemes entirely or get out of them quickly. We do this as it means that taxpayers do not accumulate tax liabilities which they need to pay with interest in the future, and because it helps prevent the build-up of cases which we need to enquire into.

The population affected by the Loan Charge

HMRC has previously estimated that the number of individuals and employers expected to be affected by the Loan Charge prior to the changes made following the independent review were approximately 61,000 and 12,000 respectively. Following the independent review, around 9,500 individuals and 2,500 employers were removed from the scope of the Loan Charge.

Between Budget 2016, when the Loan Charge was announced, and the end of March 2023, about 15,300 individuals and 6,600 employers settled a DR scheme use, including those no longer caught by the Loan Charge following the independent review, bringing into charge £3.9 billion. Around 80 per cent of this amount has been from settlements with employers. The median settlement is £19,000 for individuals and £205,000 for employers. This is a better reflection of the average settlement than the mean, as the latter is skewed by a small proportion of very large settlements by the most prolific scheme users. A full table of the settlements broken down by quartiles is shown at Annex B.

In May 2022, we estimated that around 40,000 individuals and 5,000 employers were affected by the Loan Charge and were yet to settle with HMRC, including those who had settled some but not all of their liabilities. We cannot provide data on how much tax these taxpayers owe because we do not have complete records of the DR loans they had

outstanding. In most cases, this is because they have not provided the information needed to settle their affairs.

We have issued a number of different assessments of the tax due to taxpayers as part of our efforts to collect the Loan Charge from those who are still affected. An initial exercise to identify the average assessment amount across a sample of around half of the 'discovery assessments' issued to individuals who did not report their Loan Charge liability indicates a median value of £17,500. This analysis is subject to ongoing refinement.

We do not hold a recent sectoral and regional breakdown of the population affected by the Loan Charge, and none that has been updated since the changes made to the policy following Lord Morse's review. HMRC previously published analysis setting out that of those affected, 65% worked in business services, including IT consultants, financial advisers and management consultants. Fewer than 3% were thought to work in medical services (doctors and nurses) or teaching and fewer than 2% worked in the social and community services sector. A full breakdown is shown in this policy paper first published in 2018.

The same analysis showed that, when taking into account the DR loan they received, scheme users have on average twice as much income as the average UK taxpayer, and 70% of users have used a scheme for 2 years or more. The tax bills for people who have repeatedly used schemes will generally be higher than those who have used them once.

There is no robust analysis of the regional distribution of those affected by the Loan Charge. HMRC's first Marketed Tax Avoidance Report covered the 2018-19 tax year. Many in this population will have been affected by the Loan Charge, although this does not provide analysis which can be attributed to the whole population covered by the Loan Charge. The data shows that prevalence of avoidance scheme usage was highest in London and the South East.

Settling and paying DR scheme liabilities and the Loan Charge – Questions 16 to 29

Working with taxpayers to agree what they owe

HMRC has for many years worked with taxpayers to settle their DR scheme use, and taxpayers were able to settle with HMRC to prevent the Loan Charge applying. We recognise that taxpayers may be worried about talking to HMRC, particularly if they have not engaged with us for a long time. We want to work with them to resolve their tax affairs and enable them to move forward. Over the period we have been working to help taxpayers out of avoidance, we have introduced changes to our debt management support for all taxpayers, and in particular those affected by the Loan Charge, to make things easier.

Where multiple taxpayers are affected by a similar disputed issue, such as a marketed tax avoidance scheme, we may publish our position on the disputed issue and invite affected taxpayers to resolve their case on the published basis (known as a settlement opportunity). This enables us to handle such issues efficiently, with transparency and consistency.

Since 2011, HMRC has provided taxpayers with several formal opportunities to settle their use of DR schemes, both before and after the announcement of the Loan Charge at Budget 2016. This includes:

- Employer Benefit Trust Settlement Opportunity (April 2011 – July 2015)
- Contractor Loan Settlement Opportunity (July 2014 – Sept 2015)

- Post-EBTSO, also referred to as Paragraph 59 Settlement Opportunity (Budget 2016 – March 2017).

On 7 November 2017 we published settlement terms to help and support those who wanted to settle their liability ahead of the Loan Charge coming into force and issued awareness letters to those affected by the Loan Charge. The 2017 settlement terms remained available until 30 September 2020 which, following the Independent Review, was the extended date by which taxpayers affected could submit their 2018-19 tax return by without incurring a penalty. On 13 August 2020, we published new settlement terms along with guidance to help taxpayers understand their obligations and options, and the support available from HMRC to help them conclude settlement of their DR tax liabilities. The initial publication included settlement terms for liabilities not in scope of the Loan Charge. The terms were updated on 19 November 2020 to include all DR liabilities, including taxpayers who were subject to the Loan Charge. These terms remain available to anyone who wishes to come forward to settle.

Our first aim is to reach an agreement with taxpayers about how much tax they owe. This can be by working with them to resolve any appeal they might have made and/or agreeing a settlement under our published 2020 settlement terms. As set out above, any taxpayer can settle their use of DR schemes under the 2020 settlement terms, including those outside the scope of the Loan Charge. Taxpayers can provide the information we need to help them to settle via the online form on gov.uk.

Currently, approximately 1,200 taxpayers are discussing settlement with HMRC under the 2020 terms. Settling involves multiple stages of correspondence, sharing information and agreeing calculations with taxpayers, so the length of time over which settlement discussions take place does not indicate delays by HMRC. Some settlements, particularly those involving both employers and employees, can require complex and interacting calculations, which we work through with taxpayers. In this context, our longest ongoing settlement discussion has been running since June 2021.

Where we can't reach an agreement with the taxpayer, we will ask them for information to help us establish the tax that we think is due, and then issue formal decisions setting out our view of the tax that is owed. This may be based on an estimate using the information we hold, which may be incomplete if the taxpayer has not engaged with us. Taxpayers can then either agree with our decision or exercise their statutory right to appeal. As part of that process they can provide us with additional information to support their position, ask for a statutory review of their case by another HMRC officer, and/or notify their appeal to the Tribunal.

When sending formal decisions and in our other correspondence, we set out the options so that taxpayers are aware of their rights for progressing their case to resolution. We also remind taxpayers that they can contact us at any point in the process to settle.

Taxpayers need to respond to the formal decisions we send them or, under the law, the tax will become final and due for payment.

Support for taxpayers in paying what they owe

HMRC has support in place to help taxpayers to pay their debts, whether or not they settle their dispute by agreement with HMRC. If a taxpayer cannot afford to pay their tax bill

straightaway, we can agree a payment plan with them – a Time to Pay arrangement. The arrangement we agree will be based on what the taxpayer can afford and there's no limit to how long we can spread payments. Payment plans are tailored to the individual's circumstances. We do not expect anyone to pay more than half their disposable income after living expenses up to £3,000 per month. If a person's disposable income is above £3,000, then we may ask them to pay all of it above that amount. Expenditure deducted in calculating disposable income includes essential items, such as household bills, and other reasonable expenses, for example, gym membership, healthcare plans and private school fees. A payment plan can be renegotiated where circumstances change and the taxpayer needs more time.

We have a dedicated debt management team that deals with DR debt and there are no undue delays in the service. However, we can only agree payment arrangements with taxpayers who engage with us openly.

For those with DR liabilities, if their income is less than £50,000 in the last tax year and they have no other source of wealth, we will automatically agree a payment plan spread over 5 years. If their income was less than £30,000 then we'll agree a payment plan of 7 years. If a taxpayer requires longer than 5 or 7 years or has an income higher than £50,000, they need to provide income and expenditure information as part of the standard Time to Pay process.

We are concerned that some of the misinformation surrounding the Loan Charge debate may be putting some people off engaging with us. Despite what some may claim, we never force someone to sell their main home or access their pension funds early to pay their debts. We will only ever consider bankruptcy as a last resort and we will look to other options such as seeking charging orders first. We will not make someone bankrupt if they keep to their agreed payment plan and do not incur additional tax debt.

We have worked closely with the debt advice sector to implement debt advice referrals to improve the support we provide to taxpayers in financial hardship by signposting them to free independent bespoke debt advice. HMRC is also part of the Debt Respite Scheme, under which taxpayers can apply to a debt adviser for breathing space – this is where creditors stop all enforcement activity, and all interest and late payment penalties are also stopped. This gives time and space for the debtor to engage with debt advice and find a longer-term solution.

Anyone who is worried about paying what they owe should contact us as soon as possible to talk about their options.

We recognise that dealing with large tax liabilities can lead to pressure on people and we are committed to identifying and supporting taxpayers who need extra help with managing their tax affairs, and we have made significant improvements to this service over the last few years. HMRC will ask taxpayers to tell us if they need extra support and we also have guidance and training in place for all our advisors on how to identify taxpayers who need extra support and provide reasonable adjustments to meet their needs. For those taxpayers experiencing circumstances that make them particularly vulnerable, HMRC can also allocate an officer to be the dedicated point of contact and support.

We are working with Samaritans to provide additional guidance to identify taxpayers who might be in vulnerable circumstances and signposting them where needed, to a dedicated

Samaritans helpline for specialist emotional help, where taxpayers can talk through their concerns.

You ask about the reasons HMRC is given by those refusing to settle or pay the Loan Charge. We are unable to provide an answer to this question because generally these taxpayers choose simply not to engage with us.

We want people to engage with us constructively and openly to settle their tax affairs and pay their tax bills. We continue to share draft letters that will be issued to large numbers of taxpayers with representative bodies, such as the Low Incomes Tax Reform Group and TaxAid, to obtain feedback on the tone and content to ensure that they are appropriate and accessible for the full range of taxpayers we are writing to.

We would encourage anyone who thinks they might be involved in a tax avoidance scheme to get in touch with us as quickly as possible. We will help and support them to leave the tax avoidance scheme and settle their tax affairs.

Action taken to tackle the promoters of DR schemes caught by the Loan Charge (December 2010 to April 2017) – Questions 30 - 33

A promoter of a tax avoidance scheme is generally someone who designs or markets the tax avoidance scheme or is responsible for its organisation. DR is just one example of tax avoidance and HMRC's activity to tackle the promoters of tax avoidance extends beyond those promoting DR schemes.

Over the last 15 years or so the avoidance market has evolved. In the past, large professional firms and banks were involved in marketing avoidance schemes to high-net-worth taxpayers, but they have now largely left the market. Today, promoters of DR schemes are rarely members of a professional body that supervises their standards and they mass-market DR schemes to lower-paid workers. They often break the rules (e.g. the obligation to notify their schemes to HMRC), so that they can continue to market their schemes for as long as possible. They often make unrealistic promises to their clients that their schemes will deliver tax savings and do not explain the risks. The vast majority of the schemes they are promoting do not provide the tax advantage that is claimed, leaving users of their schemes with an unexpected tax bill.

Bearing down on the promotion of tax avoidance is a key element of HMRC's strategy for reducing the marketing and take up of DR and other tax avoidance schemes. Our work has led to more than 20 organisations promoting tax avoidance leaving the marketplace entirely and when others start up, we use our powers quickly to shut down their schemes too. Promoters of tax avoidance are constantly changing their methods in an attempt to dodge HMRC's efforts to tackle them. Most companies selling avoidance are short-lived, typically operating for no more than two years before HMRC action forces them to close down.

HMRC uses a wide range of legislation and tools to challenge promoters and other entities in the avoidance supply chain. This includes investigations into the income tax and corporation tax affairs of the main players. Tax disputes of this nature usually require significant time and resource and result in litigation as opposed to settlements, as promoters rarely cooperate with HMRC.

Since 2016, we have taken litigation action against more than 15 promoter businesses for failure to disclose a scheme under the Disclosure of Tax Avoidance Schemes (DOTAS) legislation, with around 40 others disclosing schemes following challenge. The courts have heard cases relating to the DOTAS obligations of promoters of 17 schemes so far, 14 of those in relation to DR schemes. All 16 decisions have confirmed HMRC's view that the schemes are notifiable under the DOTAS regime, one decision is awaited. In July 2022, the First-Tier Tribunal imposed a penalty in excess of £1 million on a promoter for failing to disclose a scheme under DOTAS. In February 2024 the tribunal imposed a penalty of £900,000 on another promoter for failing to disclose a scheme under DOTAS.

Increasingly, HMRC is also seeing success from working with other bodies, such as the Advertising Standards Authority and the Insolvency Service, using their powers to tackle promoters. HMRC has made referrals to the Advertising Standards Authority under the joint Enforcement Notice published in November 2020 to tackle misleading marketing by promoters of tax avoidance, resulting in over 30 websites and adverts being taken down or amended, protecting people from misleading marketing. We are working with the Financial Conduct Authority (FCA) to develop a process for referring on a case-by-case basis people or activities which may fall within the FCA's remit.

In March 2020, HMRC published its strategy for tackling promoters of mass-marketed tax avoidance schemes. The strategy outlines HMRC's policy, engagement and operational work to tackle promoters of tax avoidance through strengthening HMRC powers, disrupting their supply chains and deterring taxpayers from taking up their schemes.

Using powers legislated in Finance Acts 2021 and 2022, HMRC is now publicly naming promoters and their schemes to increase transparency so taxpayers can steer clear of or exit tax avoidance schemes. As of 31 December, HMRC has published the details of 59 promoters, 23 directors and details of 64 tax avoidance schemes. Publishing this information supports taxpayers in identifying tax avoidance schemes so they can steer clear or exit them. HMRC has also issued over 20 stop notices to promoters requiring them to stop promoting the tax avoidance scheme specified in the notice or face penalties of up to £1 million and a criminal sanction if they do not comply. This is to stop promoters from promoting tax avoidance schemes and inform taxpayers to stay away from them or if they're in a scheme to get out of it.

As well as its full range of civil sanctions, where the avoidance scheme involves fraud or other criminal offences, HMRC will use the full range of criminal powers to investigate those who enable the avoidance scheme. Whenever HMRC identifies a promoter or enabler of avoidance schemes we will consider whether there is scope for a criminal investigation and prosecution. Promotion or operation of mass marketed tax avoidance schemes is not by itself a criminal offence. However, there are a range of offences which might be committed by those who promote tax avoidance schemes or advise on their use.

While there have been no prosecutions of individuals for the promotion and/or operation of DR schemes subject to the Loan Charge, one individual involved in selling DR schemes subject to the Loan Charge has been convicted for a related offence. A number of individuals are currently under criminal investigation by HMRC for offences linked to DR schemes subject to the Loan Charge.

Since 1 April 2016, more than 20 individuals have been convicted for offences relating to arrangements which have been promoted and marketed as tax avoidance. These have

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resulted in over 100 years of custodial sentences and 9 years of suspended sentences being ordered, the majority of which relate to promoters.

Finance Act 2024 introduced tougher consequences for promoters of tax avoidance. This includes the introduction of a new criminal offence for promoters of tax avoidance who fail to comply with a notice from HMRC requiring them to stop promoting a tax avoidance scheme (further strengthening our existing 'stop notice regime') and a power that will enable HMRC to expedite the disqualification of directors of companies involved in promoting tax avoidance, including those who control or exercise influence over a company. These measures build on and complement measures introduced in Finance Acts 2021 and 2022 and reinforce the Government's commitment to take further action to tackle promoters. We will continue to evaluate whether the powers we have available are robust enough to continue our fight against promoters.

The 2019 Morse Review – Questions 34 to 37

Recognising the concerns raised around the introduction and implementation of the Loan Charge, the then Chancellor of the Exchequer commissioned the Independent Loan Charge Review in 2019. The Chancellor appointed an independent reviewer, Sir Amyas (now Lord) Morse, to lead the review. Lord Morse had full discretion in running the review and it was fully independent.

The scope of the review was focussed on the impact of the Loan Charge on individuals who had directly entered into DR schemes, rather than employers, because the main focus of concerns was around the impact of the Loan Charge on individuals. The scope also took into account the impact on wider taxpayer fairness and HMRC's ability to tackle avoidance effectively in the future. This scope was set by the Chancellor and agreed with Lord Morse before the review commenced. The Terms of Reference of the Review are set out in full at Annex A of Lord Morse's report. These terms include:

- The Reviewer has final say on what is published in the report.
- It will be for the Reviewer to decide what arrangements are needed to engage with stakeholders during the Review.
- [The Reviewer] will be supported by a team of officials, drawn from HM Treasury (HMT) and Her Majesty's Revenue and Customs (HMRC).

Annex B sets out the details around the stakeholders consulted as part of the review, noting that "*over 700 personal testimonies, provided via email and through the [Loan Charge Action Group], were reviewed alongside submissions by 37 tax and legal experts*".

The Government was asked to provide evidence to support the Review, which was published in full in 2020. HMRC and HM Treasury officials were given restricted access to a hard copy, near-final version of the draft report to provide suggestions for factual changes. These changes did not affect any of the report's findings or recommendations.

As part of his review, Lord Morse recommended that HMRC report to Parliament on its implementation of the review's recommendations before the end of 2020. HMRC delivered its report on 3 December 2020, setting out how it had delivered the 19 recommendations accepted by the Government.

Preventing current and future mass marketed tax avoidance – Questions 38 to 41

We regularly publish information on tax avoidance schemes, suspected promoters and others connected to avoidance schemes in order to warn taxpayers who to steer clear of, so as not to get involved in tax avoidance. Alongside our extensive “Tax Avoidance – Don’t get caught out” marketing campaign, we also write to all taxpayers who we suspect are involved in avoidance schemes, advising them of the risks and providing contacts in HMRC if they want to leave the scheme.

Following a recommendation made by the Committee, since 2020 we have published and regularly updated information about the use of marketed tax avoidance schemes in the UK. The report provides information about the size and distribution of the UK tax avoidance market along with the types of schemes and the employment sectors most likely to be associated with tax avoidance schemes. The report also provides information on how we are supporting taxpayers and tackling those who promote or enable these schemes.

In 2020, we launched a call for evidence on tackling DR tax avoidance, where we sought views and evidence on issues including the drivers of continuing use of DR tax avoidance, and what further action the Government and HMRC can take to tackle this type of tax avoidance. This included seeking views on promoters, employment supply chains and how we can go further to help taxpayers steer clear of and leave avoidance schemes. In March 2021, we published a summary of the 34 written responses and set out next steps, which included continuing to focus on taking action to tackle promoters of tax avoidance schemes, to educate taxpayers and to continue with our ‘Promote, Prevent, Respond’ strategy for tackling these schemes.

We are also working to reduce the use of umbrella companies as a vehicle for DR schemes and for other non-compliance resulting in harm to workers and loss of tax. In 2021, HMRC published guidance to help contractors engaged through umbrella companies to understand how these arrangements work, how they can expect to be paid and how to challenge if unauthorised deductions are made. In 2023, HMRC published guidance for employment businesses working with umbrella companies setting out their responsibilities and information about how to protect themselves and the workers they supply from non-compliant businesses in their supply chains.

Working closely with HM Treasury and the Department for Business, we published a consultation on tackling non-compliance in the umbrella company market in June 2023. The consultation sought views on proposals to tackle non-compliance with both tax and employment rights by umbrella companies. At Budget 2024, the Government announced that it would provide an update on the consultation at Tax Administration and Maintenance Day on 18 April.

Regulating tax advice – Questions 42 to 45

Lord Morse’s report highlighted the need for improvements in the UK’s tax advice market. In particular, he noted that promoters and advisers had misrepresented the DOTAS system to claim that schemes disclosed to HMRC under the system had been approved by HMRC and had provided opinions from barristers suggesting that HMRC would not be successful if they tried to claim the tax.

The subsequent 2020 'Call for evidence: raising standards in the tax advice market' sought views on the impact of poor practice in the market and explored a spectrum of possible interventions. Options ranged from improving the current system, improving market transparency, maximising the self-regulatory role of the professional bodies, to controlling entry to the market. The Summary of Responses noted "*the government's view that, while most tax advisers are competent and adhere to high professional standards, some are technically incompetent, some are unprofessional, and some actively seek to exploit the tax system.*"

Following a consultation in 2021, the Government concluded that mandatory professional indemnity insurance for paid tax agents would not, on its own, be an appropriate mechanism to raise standards, due to costs to industry and likely efficacy.

HMRC has since made changes to tackle some of the most serious behaviour in the market. Following the 2022 consultation on Repayment Agents, at Spring Budget 2023, the Government banned the use of assignments for Income Tax repayments. This removed the repayment agents' rights to receive their clients' income tax repayments, shifting power back to the taxpayer. Since 26 February this year, repayment agents have been required to provide their Agent Reference Number (acquired through registering with HMRC) on claim forms to receive payment on behalf of their client. This will help HMRC to identify tax advisers who are not meeting professional standards and take appropriate action where we need to.

HMRC's Standard for Agents sets a minimum standard for all agents that the Department expects them to meet. The Department published a review of its powers to enforce the Standard for Agents in 2022 and a refresh of the Standard in 2023.

To further address problems in the tax advice market, on 6 March the Government published the consultation 'Raising standards in the tax advice market: strengthening the regulatory framework and improving registration.' This consultation seeks views on measures to protect taxpayers from bad tax advice. Specifically, it asks for responses on proposals to strengthen the regulatory framework by exploring a proposal to require tax practitioners to join a professional body, and requiring tax practitioners to register with HMRC if they wish to interact with HMRC on a client's behalf. The consultation closes on 29 May 2024 and the government will announce next steps after analysing responses, with the aim of publishing the summary of responses within 12 weeks of the closing date.

Discourse surrounding disguised remuneration schemes and the Loan Charge – Question 46

HMRC has a duty to collect the tax that is due under the law. We do not recognise recent claims that HMRC operates without scrutiny, particularly on the Loan Charge. It is simply not the case that HMRC is unaccountable or operates without oversight.

Although HMRC is a non-Ministerial department, we act under the general direction of Ministers as to our operational priorities, targets, strategies and policies. HMRC is also accountable to Parliament; in particular the Treasury Committee and the Public Accounts Committee. HMRC publishes a large amount of transparency data, including Annual Reports and Accounts. HMRC's accounts are independently reviewed each year by the National Audit Office and subject to parliamentary scrutiny. HMRC's Annual Report and Accounts

includes a report by its Tax Assurance Commissioner on HMRC's progress in settling tax disputes. This can be found from page 121 onwards of the most recent report.

It is nearly eight years since the Loan Charge was announced. Throughout this time, HMRC's approach has been the subject of frequent scrutiny, including by the Committee, the Public Accounts Committee, the House of Lords including the Economic Affairs Finance Bill Sub-committee, a series of Financial Secretaries to the Treasury and, of course, the Independent Loan Charge Review.

HMRC has also been subject to several judicial review challenges in respect of the Loan Charge and has successfully defended each one.

If a taxpayer disagrees with HMRC's decisions regarding their tax liability, they have a right of appeal to an independent appeal tribunal and the courts; this includes decisions regarding the Loan Charge. And if they feel that HMRC has given them a poor service or has not treated them in accordance with our Charter and our operational policies, they can complain to the independent Adjudicator, or their MP can refer their complaint to the Parliamentary & Health Service Ombudsman.

We recognise that undergoing an HMRC investigation and facing a large tax bill can be stressful, and we aim to treat everyone sympathetically. Our staff are trained to recognise when someone is especially vulnerable and needs extra support. We do not accept claims that we have been deliberately heavy-handed. We certainly do not intentionally write to taxpayers on specific days, such as their birthday, to increase the impact of our interventions. We do not play with people's emotions. We recognise that there is a human story behind each one of these cases and we take our Charter responsibilities very seriously.

More specifically, we take regular advice on how to work constructively and sensitively with taxpayers, drawing on the insight of expert and independent groups like the Low Incomes Tax Reform Group and TaxAid. We reflect this advice in our approach and our communications. For example, our standard letters that we send to DR scheme users and Loan Charge payers are reviewed by such groups.

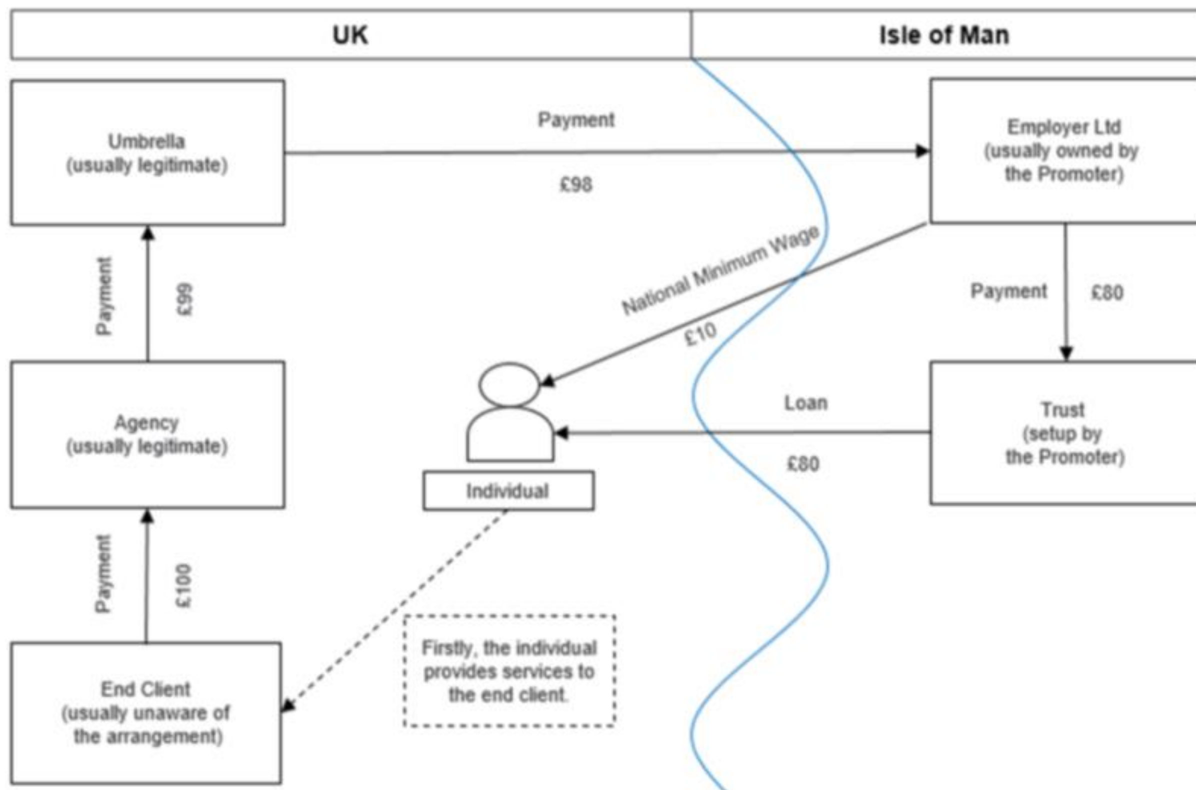
However, we do need taxpayers to work with us. We contact taxpayers with continued offers of support, but there is only so far we can go if taxpayers do not engage with us.

HMRC must do what it can to collect the tax that is due to ensure fairness for all other taxpayers. I welcome the continued debate and scrutiny around these important issues, which helps us continue to learn and to adapt our approach as we do this, particularly for those who experience difficulty engaging with us or who require additional support.

Yours sincerely,

Jim Harra
CHIEF EXECUTIVE AND FIRST PERMANENT SECRETARY

Annex A: Third Party DR Scheme Diagram



Annex B: Distribution of DR settlement values by individuals - Budget 2016 to March 2023

The median settlement amount by individuals is £19,000. The top 25% of the population have settled for £55,000 or higher and the bottom 25% have settled for £5,000 or lower. Note that some users may not have settled all their liabilities.

Average settlement yield	~ £53,000
Lower quartile settlement yield (25% of all individual settlement values fall under this value)	~ £5,000
Median settlement yield (50% of all individual settlement values fall under this value)	~ £19,000
Upper quartile settlement yield (75% of all individual settlement values fall under this value)	~ £55,000

Information is available in large print, audio and Braille formats.
Text Relay service number – 18001