

LOAN CHARGE ACTION GROUP - WRITTEN EVIDENCE (DFE0028)

Draft Finance Bill 2020-2021 inquiry

Introduction

1. The Loan Charge Action Group (LCAG) is a campaign and support group comprised of current and former contractors and freelancers. Its primary purpose is to raise awareness of and challenge the retrospective taxation introduced in the 2017 Budget known as the '2019 Loan Charge'.
2. We act directly on behalf of our members whilst also representing hundreds of thousands of individuals and their families who will be severely and detrimentally impacted by the Loan Charge and settlement demands agreed to by individuals in order to avoid it.
3. This submission is focused mainly on the section of the inquiry relating to 'New proposals for tackling promoters and enablers of tax avoidance schemes.

Background – no action against promoters of loan schemes

4. HMRC have failed thus far to tackle the promoters and operators of the schemes subject to the Loan Charge or to stop these schemes operating (indeed the Loan Charge was introduced in part to cover up this failure).
5. It is grossly unfair, that at the same time as aggressively pursuing the users of these schemes, including actions leading to bankruptcies, loss of homes and suicides, HMRC has not pursued those who promoted and operated the schemes. This is especially unfair, as scheme users were mis-sold schemes as being legitimate, tax law compliant and given assurances about them as entirely in accord with tax law at the time. So it remains a key part of the Loan Charge Scandal that those responsible for mis-selling are not being asked to pay a penny of the disputed tax HMRC claim is owed, nor do they face the Loan Charge, whereas those subject to the mis-selling are being punished and ruined.

Government Proposals

6. LCAG support the closing down of the kinds of payroll solutions subject to the Loan Charge, to avoid the awful life-destroying situation faced by people now subject to the Loan Charge.
7. The Government has stated it intends to (finally) take decisive action, yet from what we can see, despite typically bullish words, little in the way of concrete proposals to actually deliver this. As has been shown throughout the Loan Charge Scandal, Treasury Ministers and HMRC cannot be trusted

and continually seek to give a false/misleading impression of the success of their actions. They need to be pushed to properly lay out their ideas, demonstrate actual evidence and show that they are likely to work in practice.

The profound failure of the Loan Charge

8. The backdrop to the Government's proposals, of course, is that the cruel and draconian Loan Charge has spectacularly failed to do what Ministers and HMRC claimed it would, which is to stop the continued promotion of such payroll solutions.
9. We are aware of numerous schemes currently and openly advertising. HMRC and the Treasury are also aware and therefore know – and should have the honesty to admit – that the Loan Charge has failed to achieve its main stated aim. There are people now still being mis-sold such schemes and at risk of ending up in a similar situation to those who have faced the Loan Charge. We have seen low-paid public sector workers targeted, with little or no apparent action from HMRC towards the promoters involved (companies and individuals known to HMRC and operating in plain sight). Now contractors are also being targeted due to the deeply flawed plans to roll-out the IR35 off-payroll rules (off-payroll tax) by the Government, who yet again have ignored both expert advice and the advice of the Economic Affairs Committee. One thing that is clear is that HMRC and the Treasury refuse to learn lessons and instead continue to make the same mistakes, which is a sadly consistent and deeply worrying trait in policy-making.

The failure to pursue promoters and operators of loan schemes

10. Contrary to their attempts to suggest otherwise, HMRC have not taken any successful action against those who promoted and operated the schemes that are now subject to the Loan Charge. Despite cynical and wilful attempts to mislead MPs and Parliamentary Committees, Freedom of Information (FOI) requests have exposed that there have been no arrests or prosecutions, never mind convictions, of anyone. What's more, it has been admitted in an FOI response that HMRC will not pursue promoters of loan schemes as such schemes were not illegal. In a particularly farcical moment, Financial Secretary to the Treasury Jesse Norman admitted that the Government would need to change the law retrospectively to be able to pursue promoters!
11. So whilst promoters of the schemes now subject to the Loan Charge have not faced any action from HMRC for promoting the schemes, those who used the schemes – and were mis-sold them - have been pursued ruthlessly, aggressively and to the point of bankruptcy and suicide.

HMRC did not warn users about the schemes

12. Another key area the Committee are looking at is whether "HMRC's communications are likely to be effective in informing potential scheme

users about schemes, and so deter them from participating?”. Alas, from the experience of people who ended up facing (or now face) the Loan Charge, the evidence clearly shows that this has been an area of disastrous failure on the part of HMRC.

13. HMRC claimed they warned people, whereas the reality is that they were well aware of scheme use for years, failed to tell most users, and failed even to open enquiries on many tax returns involving scheme usage (which is why they needed the Loan Charge). They began, belatedly, to include warnings in their ‘Spotlight’ newsletters to tax advisers and have sought to claim that this was adequate in terms of warning individuals. In reality, many people had no idea there was any issue with their tax affairs until after 2016/17 when they received a letter telling them they faced action and mentioning the Loan Charge. Many received notifications many months (and some even years) after that.
14. So, going forward, there must be meaningful action to contact customers early and directly, where there are any question marks over their tax arrangements. Had HMRC done this in the past, many lives would not now be scarred and suicides would never have happened.

The difference between tax evasion and tax avoidance must be clarified

15. It remains unfair that those who have faced/who face the Loan Charge have in effect been found guilty of a crime, when no such crime exists and when they have been denied the basic right to defend themselves of the charge in a court. The Loan Charge is legally not tax and it has been a continual and deliberate piece of dishonesty with the way that Treasury Ministers and HMRC have talked about “tax being due” when no tax has been proven to be due. The Loan Charge is in fact a penalty charge imposed without due process and without any right of appeal, even though no crime has been committed (never mind proven).
16. So it is essential that the Government and Parliament decides what is to be legal and what is to be illegal and then clarifies the law, so that it is clear what is tax evasion and is illegal – and that other forms of tax planning are not illegal and cannot then be subject to any retrospective penalty charge, which undermines the rule of law and faith in democracy as well as the tax system.

Proposed action against schemes/promoters

17. Despite the strong words of the Treasury documentation and Ministerial announcements, it still remains unclear how practically the Government/HMRC will actually take the action they say they intend to.
18. LCAG believes that the way to stamp out the marketing and operation of these kinds of payroll solutions is simple, which is to introduce a principle into law whereby those who operate such schemes are personally liable for

any tax that HMRC deem has been avoided. This liability must be extended to the directors of such schemes. This would mean that instead of making huge profits, then disappearing once schemes are investigated and getting off scot-free as those who were lured into these arrangements face huge bills, instead HMRC pursue those individuals involved (even if, as is commonplace, they wound up the scheme/company). Clearly there is an additional challenge with schemes and individuals operating offshore, however HMRC is well aware of individuals who have business interests in the UK as well as in offshore locations such as the Isle of Man and the Channel Islands, and that such individuals also visit the UK on a regular basis. We believe that establishing such a principle is the key to stopping the promotion and operation of schemes as they would become personally exposed should they continue to market such arrangements.

19. LCAG believe that the suggestion made by some tax professionals of using Managed Service Company (MSC) legislation to tackle promoters should be properly explored. This legislation could be extended to cover umbrella companies and other such intermediaries and also allows for a 'transfer of debt' from the company to directors, office holders and associates. If their own assets, including their own homes were at risk, we believe this would make the marketing and operation of such schemes too hazardous. So, we believe the Government should look to introduce this extension of this legislation.

Regulation of umbrella companies/schemes

20. Another area of action currently not it seems being proposed by the Government, is to do the obvious thing and step in and regulate the umbrella company sector. Many contractors use legitimate umbrella companies who are then sometimes unfairly tarred with the same brush as those involved with loan and other such similar arrangements. This is even more important in the light of the roll-out of the IR35 off-payroll working rules in April 2021, with many more contractors closing down limited companies and seeking other ways of structuring their work (and in most cases, with no option to become an employee).

The Government and HMRC must Stop the War on Contracting

21. At the heart of the Loan Charge Scandal and all the misery caused for thousands of people is the botched attempts by successive governments to attack contract and freelance working, in the flawed belief that somehow working in this way must be the same as being an employee, when that is demonstrably not the case.
22. So as well as simply making announcements about "going after promoters", the Government must finally address the failure to tackle this – and work out how they want such flexible working to operate legitimately and pay a fair amount of tax (that reflects the reality that flexible self-employed workers do not enjoy any job security, as has been shown by the

Covid-19 crisis nor received employment benefits such a pension contributions, maternity/paternity, sick and holiday). Rather than falsely presenting this way of working as the same as working as an employee and seeing these millions of workers as a target to demand unfair levels of tax from, the Government should instead support and celebrate contractors and freelancers and the contribution they make to the economy – but in any case, must finally work out how such working should operate and be fairly taxed.

Conclusion

23. The Loan Charge Action Group hopes that once again, the Economic Affairs Committee. Sub-Committee will hold the Government and HMRC to account both for past failures and for currently underdeveloped plans to take effective action in the future.
24. LCAG does support any legitimate effective measures to clamp down on the ongoing marketing and operation of schemes that will lead people into facing huge tax demands and the kind of mis-selling that is still happening must be stopped or more lives will be ruined. LCAG believes that the obvious way to stop the promotion and operation of schemes is to make those involved in doing so responsible for any tax later deemed to have been wrongly avoided, including personal responsibility for those involved.
25. At the same time, the Loan Charge Scandal has shown that HMRC are out-of-control, unaccountable and as a result dangerous in the way it treats people, who it clearly sees merely as opportunities to procure revenue from to show how well it is doing in collecting tax it says should have been paid (even when not proven to be due in a court of law). It is already clear that HMRC has too many powers without adequate accountability or scrutiny. So we believe that there needs to be a proper inquiry into HMRC, the way it operates, the serial disinformation peddled by its senior officials and press office and an overhaul including a new meaningful system of oversight and scrutiny, independent of the Treasury (and Government). It is also time Ministers who act merely as puppets of HMRC, as Mel Stride and Jesse Norman have done, are properly investigated, along with promoters whose names are publicly known and have faced no action.
26. The lessons of the Loan Charge Scandal must be learnt and it is clear that the Treasury and HMRC refuse to learn them. So, whilst we do and will welcome any genuine and legitimate attempts to stop the promotion of loan schemes and similar arrangements and the misery they cause, we do also call on the Committee to continue to hold the Government and HMRC to account over the Loan Charge Scandal.

7th October 2020

