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The Loan Charge: finally some good news for tax payers

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Any trust company or corporate service provider offering employee incentive solutions will have spent the last few years heavily involved in dealing with the "Loan Charge" that was introduced by the UK Finance Act 2016. This was brought into legislation as an anti-avoidance measure to tackle what were seen as "disguised remuneration schemes".

Under these schemes employees were paid by way of loan, rather than direct salary - often from an employee benefit trust or other mechanism offshore - with the tax advantage being that a loan was not income, therefore it was not subject to income tax or national insurance contributions. Following the introduction of the Loan Charge in 2016 all such loans taken out since 1999 and remaining unpaid on 5 April 2019 became immediately subject to tax on that date.

Since its introduction many of us have been involved in what have often been difficult and protracted negotiations between employees, sponsoring employers (if they still existed), and HMRC to try to settle such tax liabilities as favourably as possible and various settlement windows have opened and closed during this time. Many saw the Loan Charge as being grossly unfair, citing examples of employees who were told they would not be employed if they didn't accept payment via loans, numerous cases of miss-selling to unrepresented employees and even suicides of employees facing hefty tax bills they had no means of settling.

An All Party Parliamentary Group was established to investigate such claims and review the implementation of the Loan Charge. Early in 2019 this group successfully campaigned for a review into the Loan Charge and Sir Amyas Morse (former National Audit Office boss) was appointed to carry this out.

The results of his review were published just before Christmas, on 20 December and while Sir Amyas Morse confirmed these types of scheme are tax avoidance, he made a series of recommendations in order to lessen the impact of the Loan Charge and make the system fairer. All but one of his recommendations have been accepted by the Government. The agreed recommendations are:

- the Loan Charge will now only apply to loans taken out on or after 9 December 2010;
- if the loan was disclosed fully and HMRC took no action at the time the charge will not apply;
- users can defer filing their returns and payment of their Loan Charge liability until September this year;
- taxpayers can split the liability over three years to make it more affordable.

Initial reactions to the results are positive and the Government estimates the above will reduce bills for more than 30,000 people and 11,000 taxpayers will be taken out of scope entirely. The review also made provision for repayment where tax payers had voluntarily settled their liability.

The latest guidance highlights what taxpayers need to do now, including what information they should be checking, what evidence they might need to provide and also what should be included on their returns. It does however warn that HMRC will not be able to process any refunds until the legislation is enacted. HMRC has committed to provide further resource towards compliance and litigation, as well as investing around £200,000 on its IT system to deal with the changes to the loan charge policy.

The draft legislation does not cover the final commitment regarding repayments where voluntary restitution has been paid, but the Government has committed to publish this soon, as they intend for the loan charge changes to be dealt with in the Finance Bill to be introduced shortly after the Budget on 11 March.

For anyone with an interest, HMRC has committed to an informal four-week consultation on the draft legislation which should open shortly if they are to stick to the timetable suggested. Those who reached settlement since 2016 should also consider revisiting this to establish if the changes affect them.

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