Written evidence submitted by Armadillo Support Limited (FB25)

Finance Bill submissions to the House of Commons Public Bill Committee

Introduction

1.1. We make these submissions as Chartered Tax Advisors currently representing over 500 taxpayers directly affected by Schedules 11 & 12 Finance Act (No.2) 2017 (the "Loan Charge") and Clauses 14-20 of the Finance Bill.

1.2. The Loan Charge provisions are to be amended by Clauses 14 to 20 following a review of the original clauses by Sir Amyas Morse. Our directors, Matt Hall and Gordon Berry made extensive submissions to that review and met with Sir Amyas Morse on 10 October 2019 having acted for over 2,500 individuals affected by the original provisions at that time.

1.3. The amendments to the Loan Charge are set out within Clauses 14-20 of the Finance Bill (HC Bill 114). It is upon those clauses that we make these submissions.

Our submissions

2. The conclusion of the Morse Review has led to some rather surprising, and in our view, unjustifiable, amendments. They are reflected within clauses 14-20 of the Finance Bill. Below we make proposals for further legislative changes that we believe strike a better balance of fairness and deliver on the stated objectives of Parliament in enacting the Loan Charge (which does not currently prevent the ongoing use of Loan schemes for the Loan Charge is a singular charge arising on loans outstanding on a single, specified, date. Loans made on 6 April 2019 are not currently within its ambit). However, we first address the inherent unfairness of the current changes.

Finance Bill changes benefit the least compliant

3. The effect of the current Finance Bill clauses is quite at odds with sensible tax policy. The current changes reward the least compliant of those captured by the Loan Charge.

4. The practical effect of the three main changes introduced by the Finance Bill clauses leaves those who disclosed their involvement with "disguised remuneration" schemes in a worse position than

those who did not. That is plainly absurd. We believe this to be a consequence of the lack of first-hand experience of these arrangements amongst those advising Sir Amyas Morse and a lobbying campaign in which the most vocal have frequently been the least compliant.

5. The least compliant are those who used undisclosed schemes and made no disclosure of their use of them. They are the very arrangements which HMRC, the tax profession and public see as the most egregious. And yet because of the lack of disclosure it is these cases in which HMRC failed to raise protective enquiries or assessments within statutory time limits (subject to potential "discovery" where the taxpayers conduct was "deliberate) and are thus [perceived to be] 'closed'.

6. It is therefore remarkable that the changes contained within the Finance Bill benefit those with 'closed' years over those who made proper disclosure (and thus have 'open' enquiries or assessments).

Clause 14

7. The effect of **Clause 14** is to remove all loans received before 9 December 2010 from the Loan Charge. This is broadly welcomed (subject to para 18 below).

8. The practical effect of this amendment is to remove those with 'closed' years from the scope of income tax on their loans altogether (at least until and unless those loans are written off).

9. Those with 'open' years will however see HMRC continue to pursue potential liabilities through the Courts and face years more uncertainty and cost. Those with closed years, those who are more likely to have made no disclosure whatsoever, will not.

10. Whilst welcome, the changes in Clause 14 give greater benefit to the least compliant; as do Clauses 15 & 16. The Committee may well find that startling.

11. Whilst addressing Clause 14 it should be noted that the introduction of Part 7A ITEPA 2003 on 9 December 2010 was cited as justification for the Loan Charge applying to the self-employed from that date. But Part 7A ITEPA applies solely to *employment* income *paid through third parties*. It does not apply to the self-employed, or to payments made by the employer. How,

then, it justifies the Loan Charge applying to the self-employed from 9 Dec 2010 is not apparent to those making these submissions.

Clause 15

12. The concession within **Clause 15** to permit the Loan Charge to be spread over 3 years is illusory and a trap for those with 'open' years.

13. The Loan Charge does not close 'open' years. This means that HMRC will continue to pursue further sums in "protected" years in which Loans were received even if the Loan Charge is spread.

14. HMRC has said very clearly that they will do so: *"Paying the loan charge does not resolve the underlying tax dispute with HMRC for the years in which loans were made. Tax years that are subject to an open enquiry or assessment will still need to be resolved, either by way of settlement with HMRC or through litigation"(*https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review/guidance#open-enquiries).

15. This is not a trap that can capture those with 'closed' years. There is no underlying enquiry or assessment under which HMRC can pursue more.

16. Clause 15 is therefore a meaningful concession *only* for the least compliant of those affected.

17. Those accepting the Loan Charge should be afforded finality[1]. This would at least ensure that Clause 15 is of equal benefit to those with 'open' years as those with closed.

Clause 16

18. **Clause 16** also benefits the least compliant over those who made proper disclosure. This clause introduces a concession to refund those who made 'voluntary restitution'. That is those taxpayers who had already settled tax in years for which there was no open enquiry or assessment (under threat of the Loan Charge).

[1] Our proposed changes to the Finance Bill ensure that those paying the Loan Charge have the benefit of closure of historic enquiries or assessments.

19. As we have stated at 5 above, the majority of those with 'closed' years made no or insufficient disclosure to HMRC.

20. The same concession is not afforded to those who settled protected years having made full disclosure. As with Clause 15, Clause 16 therefore benefits the least compliant of those affected by the Loan Charge. It is apparent that Parliament has not understood this practical consequence.

21. Those who settled 'open' years under threat of a charge that no longer applies should also be afforded the option to cancel settlement and see any liability determined by the law in place in the years in which they received loans (via litigation of cases like *Stephen Hoey v HMRC [2019] TC07292* and *Philip Higgs and Others v HMRC [2020] UKFTT 117 (TC)*.

22. Only such an amendment to Clause 16 would see those with open years placed in the same position as those with closed.

Proposed Legislative Solution

23. Armadillo Support has drafted changes that could be made to the current Loan Charge legislation by way of further amendments in the current Finance Bill. In doing so we have sought to strike a balance to achieve a compromise that should be acceptable to Parliament, HMRC and taxpayers alike. That proposed legislation is set out within the appendix below and would need to be replicated within Schedule 12 for the self-employed.

24. Our proposed amendments required to the current legislation seek to:

    - Prevent future avoidance.
    - See only 50% of loans outstanding on 5 April 2019 brought into the Loan Charge. The balance should not be taxed. (We appreciate that different views will be held as to the appropriate percentage).
    - Ensure that those paying the Loan Charge get certainty that no further liabilities can be pursued by HMRC.
    - Prevent loans taxed as income being recalled (as many taxpayers are now facing demands for the loans which HMRC tax as income to be repaid).

25. The effect of these changes would be to put those who used “disguised remuneration” schemes broadly into the same position as those who did not. We have also suggested an amendment which would see the Loan Charge deliver on its original target of preventing further avoidance (which the current legislation remarkably fails to achieve). We have made some annotations within the proposed legislation to help explain our thinking.

Reasons for change

26. We have made these suggestions in the knowledge that tens of thousands of individuals have been significantly affected by the Loan Charge and indeed HMRCs vigorous pursuit of underlying liabilities before a charge intended to make life easier for HMRC was dreamt up.

27. There are a great many reports of individuals suffering mental health issues, matrimonial breakdown, bankruptcy (despite HMRC’s assertions to the contrary) and even suicide. The current clauses 14-16 do nothing to help those with ‘open’ years with the inevitable consequences that HMRC’s initial Impact Assessment that accompanied the original Loan Charge will be shown to be lamentably woeful.

28. But we also recognise that HMRC themselves are unable to effectively manage the current settlement process or indeed the still thousands of cases that might need to be litigated. HMRC, on its own figures, has completed less than 10,000 of an estimated 50,000 settlements in over 2 ½ years and now has less than 4 months to complete the rest. It quite clearly won’t happen.

29. We have clients awaiting responses to correspondence or settlement offers sent to HMRC more than 12 months ago. That is simply unacceptable.

30. Many taxpayers with open years wrongly believe that the amendments within Clause 14 mean that HMRC cannot now pursue them. More still wrongly believe that if the Loan Charge is made prospective they too will be safe. That would be true only for the least compliant of those affected: those who largely made no disclosure. That cannot have been the intention of HMRC or Parliament?

31. Our proposed changes would ensure that taxpayers would have the benefit of certainty that should be inherent in the UK tax system. The amendments would also remove the pressure on HMRC to complete settlements or to litigate large numbers of cases. It should avoid mass bankruptcies and hopefully further suicides.

32. We urge the Committee to act and adopt our proposed amendments.

June 2020

Appendix - Proposed Amendments to Chapters 11 & 12 Finance Act (No.2) 2017

Current legislation. Proposed amendment

SCHEDULE 11 - Employment income provided through third parties: loans etc outstanding on 5 April 2019

PART 1Application of Part 7A of ITEPA 2003

Relevant step

1(1)A person ("P") is treated as taking a relevant step for the purposes of Part 7A of ITEPA 2003 if—

(a)P has made a loan, or a quasi-loan, to a relevant person,

(b)the loan or quasi-loan was made on or after 9 December 2010 and

(c)an amount of the loan or quasi-loan is outstanding immediately before the end of 5 April 2019.

(1A) A person ("P") is treated as taking a relevant step for the purposes of Part 7A of ITEPA 2003 if—

(a)P has made a loan, or a quasi-loan, to a relevant person,

(b)the loan or quasi-loan was made on or after 6 April 2019, and

(c) an amount of the loan or quasi-loan is outstanding immediately before the end of 5 April in the tax year in which the loan was made.

Commented [A1]: The Loan Charge does not currently fulfil its stated aim of ending the use of "disguised remuneration" schemes. That fact is recognised in SAM's Report. The aim of this clause is to introduce an "annual" loan charge that captures loans made after 5 April 2019. The existing double charge provisions should prevent any double counting of loans already treated as earnings.

(2)P is treated as taking the step immediately before—

(a)the end of the approved repayment date, if P has made a loan which is an approved fixed term loan on 5 April 2019, or

(b) the end of 5 April 2019,

(c) in a case where sub-paragraph 1A applies, 5 April following the date on which the loan was made in any other case.

(3)Where P is treated by this paragraph as taking a relevant step, references to "the relevant step" in section 554A(1)(e)(i) and (ii) of ITEPA 2003 have effect as if they were references to the step of making the loan or, as the case may be, quasi-loan.

(4)For the purposes of section 554Z3(1) of ITEPA 2003 (value of relevant step), the step within sub-paragraph (1) above is to be treated as involving a sum of money equal to one half of the amount of the loan or quasi-loan that is outstanding at the time P is treated as taking the step.

Commented [A2]: The sum brought into charge could be whatever % was thought acceptable. Our amendment sees 50% of the Loans outstanding on 5.4.19 treated as earnings. For those taxable at 40% this equates to a tax charge of 20% of the total loans received and thus a net position broadly equivalent to PAYE/Umbrellas (low 60%).

(4A) For the purposes of section 554Z3(1) of ITEPA 2003 (value of relevant step), the step in sub-paragraph (1A) is to be treated as involving a sum of money equal to the amount of the loan or quasi-loan that is outstanding at the time P is treated as taking the step.

Commented [A3]: The purpose of this clause is to capture the full value of loans made after 6 April 2019 (rather than one half).

(5)Subsections (2) and (3) of section 554C of ITEPA 2003 ("relevant person") apply for the purposes of this Schedule as they apply for the purposes of that section.

(6)Sub-paragraph (1) is subject to paragraphs 23 and 24 (accelerated payments).

(7)For the purposes of this paragraph, whether an amount of a loan or quasi-loan is outstanding at a particular time—

(a)is to be determined in accordance with the following provisions of this Schedule, and

(b)does not depend on the loan or quasi-loan subsisting at that time.

(8)References in this Schedule and in Part 7A of ITEPA 2003 to a relevant step within paragraph 1 of this Schedule are to be read as references to a relevant step which a person is treated by this paragraph as taking.

Change to prevent any further charges & Loans being recalled.

PART 4Supplementary provision

Duty to provide loan balance information to B

36(1)This paragraph applies where—

(a)a person ("P") has made a loan, or a quasi-loan, to a relevant person,

(b)the loan or quasi-loan was made on or after 9 December 2010, and

(c)an amount of the loan or quasi-loan is outstanding at any time—

(i)on or after 17 March 2016, and

(ii)before the end of 5 April 2019.

(2)Each of A and P must ensure that the loan balance information in relation to the loan or quasi-loan is provided to B before the end of the period of 10 days beginning with the day after the loan charge date.

(3)The “loan balance information” is—

(a)the information that is necessary for B to ascertain the amount of the loan or quasi-loan concerned that is outstanding immediately before the end of the loan charge date, and

(b)such other information about the loan or quasi-loan as B may reasonably require for the purpose of compliance with B’s obligations under PAYE regulations.

(4)In this paragraph “loan charge date” means—

(a)the approved repayment date, if the loan is an approved fixed term loan on 5 April 2019, or

(b)5 April 2019, in any other case.

(5)If, despite taking reasonable steps, A and P have failed to contact B to provide the loan balance information, each of them is responsible for ensuring that the Commissioners for Her Majesty’s Revenue and Customs are notified of that fact.

(6)A notification under sub-paragraph (5) must be made in such form and manner, and contain such information, as may be specified by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs.

(7)“Loan”, “quasi-loan” and “outstanding” have the same meaning for the purposes of this paragraph as they have for the purposes of paragraph 1.

Double taxation

37(1)Sub-paragraph (2) applies where—

(a)P is treated as taking a relevant step by paragraph 1 by reason of a loan made to a relevant person, and

(b)the loan is an employment-related loan (within the meaning of Chapter 7 of Part 3 of ITEPA 2003).

(2)The effect of section 554Z2(2)(a) of ITEPA 2003 (value of relevant step to count as employment income: application of Part 7A instead of the benefits code) is that the loan is not be treated as a taxable cheap loan for the purposes of Chapter 7 of Part 3 of that Act for—

(a)the tax year in which the relevant step is treated as being taken, and

(b)any earlier or subsequent tax year.

37A (1) where—

(a) P is treated as taking a relevant step by paragraph 1(1) or (1A) by reason of a loan made to a relevant person the effect of Part 7A ITEPA 2003 is that the loan is not to be treated as earnings in any earlier or later year for the purposes of Part 3 of that Act.

(b) P is treated as taking a relevant step by paragraph 1(1) or (1A) by reason of a loan made to a relevant person the loan is no longer to be treated as a loan capable of repayment under the laws of any part of the United Kingdom.

38In section 554Z2 of ITEPA 2003, at the end insert—

"(4)See paragraph 37 of Schedule 11 to F(No. 2)A 2017 for provision about the effect of subsection (2)(a) in a case in which the relevant step is within paragraph 1 of that Schedule."

Commented [A4]: The purpose of this clause is to ensure that any loan captured by the Loan Charge cannot also be treated as earnings in an earlier (or later) year. This should ensure that earlier years are finalised and prevents HMRC chasing those paying the LC for more.