Written evidence submitted by The Loan Charge Action Group (FB26)

Finance Bill 2019-21 Submission

Summary

1. The Loan Charge remains a retrospective charge which will result in the bankruptcy of many thousands of people and their families.

2. The Morse review was flawed in its understanding of the changing nature of the statutory legislation and the developments in case law over the last 20 years.

3. The Loan Charge has failed to achieve its objectives and has in fact enormously damaged the relationship between taxpayers and the government.

4. In the last two years a large number of MPs and members of the House of Lords (specifically, prominent members of the Economic Affairs Committee) have realised the mistakes that were made in passing the Loan Charge legislation and have spoken out against it. More than 220 MPs have now joined the Loan Charge APPG. There is overwhelming evidence that the Loan Charge is not supported by parliament.

5. The impact of the Loan Charge on taxpayers, who feel they are being punished and victimised by the government, is significant. It is clear that if this policy is not reversed and a sensible solution reached, then many more people are at risk of coming to serious harm.

Introduction

6. The Loan Charge Action Group [LCAG] was formed in March 2018 to campaign against the Loan Charge and has since grown to approximately 5,000 members and subscribers who are all facing the Loan Charge. Following initial campaigning, LCAG is now the appointed Secretariat of the Loan Charge All-Party Parliamentary Group [Loan Charge APPG] which now has 234 members (MPs and Peers). LCAG encourages and supports members to engage with their MP. LCAG also operates a telephone support helpline, with a focus on the mental health impact, for people facing the Loan Charge to call

The Loan Charge

7. The Loan Charge was enacted in the Finance (No. 2) Act 2017 with little parliamentary scrutiny and little press coverage. Since then it has been the topic of numerous newspaper articles, radio and television broadcasts. The Loan Charge has resulted in dozens of written and oral parliamentary questions, three debates in the House of Commons, a debate in the House of Lords, a Westminster Hall debate, Select Committee meetings, a parliamentary inquiry by the Loan Charge APPG and a government commissioned review led by Sir Amyas Morse.

8. The Loan Charge is a retrospective charge which seeks to tax monies that are the legal property of trusts or other entities and were loaned to people such as our members. The government appointed review [the Morse review] agreed that the Loan Charge is retrospective, as did the report of the Economic Affairs committee and the reports of the Loan Charge APPG.

9. The tax planning that is now subject to the Loan Charge was heavily marketed by qualified accountants, tax specialists, agencies, and others. The tax planning was always described as entirely legal, reasonable, disclosed as required by law and it was often endorsed by Queens Counsel or the Big Four.

10. The UK tax code is lengthy and complex, cited as spanning 17,000 or 21,000 pages. It's complexity is growing exponentially and it is absolutely beyond the ability of any lay person to understand it. For many people, their only choice is to trust the advice of tax experts. In fact even HMRC's website recommends taxpayers to seek advice from a professional if they need help with their tax affairs. It was those same experts who advised them

to use loan arrangements, often for a significant reduction in their net income, on the premise that all the required fees and taxes due would be paid from the income forgone.

11. The Loan Charge impacts on various tax arrangements with differing structures and unique features. It impacts people from different backgrounds and professions, working in a wide swathe of industries. Such tax planning was and is truly mass-market, a point that HMRC have conceded on several occasions including in evidence to the Treasury Select Committee.

12. LCAG is in a unique position to be able to observe the devastating impact that the Loan Charge is having on the financial position, the mental/physical health and family life of our members who represent a broad cross section of those who are facing the Loan Charge. Surveys conducted by LCAG, both independently and on behalf of the Loan Charge APPG, indicate that potentially 50% of those facing the Loan Charge have been placed at risk of bankruptcy. We have seen nothing to indicate any significant reduction in this percentage as a result of the Morse review and the changes in the draft Finance Bill. Indeed, we have members who have already filed for bankruptcy due to unaffordable demands for Accelerated Payments from HMRC in advance of the Loan Charge.

The Flaws in the Morse Review

13. The Morse Review was conducted in late 2019 to a very tight timetable. LCAG was invited to contribute evidence and met with Sir Amyas Morse on three occasions.

14. The review concluded that the Loan Charge is retrospective but that this retrospection was justified from 9th December 2010 onwards on the grounds of that a change in the law which announced on this date. This legislation was and enacted in 2011 and is hence referred to as the 2011 legislation. Various other changes were announced following the review which have minor impact on both the number of people facing the Loan Charge and on the amount of tax being demanded by HMRC.

15. Following the publication of the Morse report, the Loan Charge APPG examined the key finding, that the 2011 legislation had clarified the law, and found it to be fundamentally flawed. The 2011 legislation had limited scope, was heavily criticised at the time as being overly complex and has subsequently been amended several times to correct identified deficiencies. The 2011 legislation entirely ignored self-employed arrangements, a fact that HMRC noted in 2016 and announced new legislation to correct (prospectively only).

16. The Morse Review also failed to take account of the specific rulings in tax cases and their effect on the tax profession's developing view of the tax law over the time period. Prior to 2017, the law regarding all such loan arrangements was disputed between various parties, but following a landmark decision by the Supreme Court known as Rangers FC much clarity was provided. This ruling is often described as the Employer being liable for the disputed tax. In most cases that we are aware of, HMRC failed to open any form of enquiry on the employers and is now out of time to do so. The Morse Review did not properly examine this issue and the fact that the Loan Charge does not place the liability on the same party as the ruling was made in the Rangers FC case.

17. It has since come to light that many of the independent experts forming the "panel" who consulted on the Morse Review did not agree with his findings or were entirely unaware of the details of some of the arrangements. In particular, one expert was not aware of the existence of self-employed loan arrangements – this is odd, as Schedule 12 of the Finance (No. 2) Act 2017 relates only to such self-employed arrangements.

18. As a result of Freedom of Information requests over 1,000 pages of emails between the Morse Review and HMRC or the Treasury are now available to review. These reveal a clear pattern of the review staff (made up of HMRC and Treasury staff on "loan") liaising regularly with their colleagues on many aspects of the review. The findings and recommendations of the review were discussed with HMRC and Treasury staff ahead of publication, who were provided with the opportunity to provide input to these recommendations.

19. LCAG was not invited to review the report ahead of publication, however HMRC and the Treasury were and they were asked to report back on factual errors. The failure of the Review team to involve parties other than HMRC and the Treasury is likely to have contributed to the serious flaws in the review, including the flawed recommendation for 9th December 2010 to be the relevant cut-off date for the Loan Charge.

20. The central flaw of the Morse Review was discussed at length in a debate in the House of Commons on 19th March 2020. The will of the house was clear that the Loan Charge should apply only from 2017 and that all action by HMRC relating to loans paid prior to 2017 should cease. Such pre-2017 action relates to ongoing enquiries and Accelerated Payment Notices which require tax to be paid up front under threat of additional penalties prior to a case being decided by a tribunal or court.

Loan Charge Failed to achieve its objectives

21. The Loan Charge was announced with the intention to "draw a line under Disguised Remuneration". It is quite clear that it has not.

22. The Morse Review disclosed that, shockingly, HMRC are aware that thousands of people have entered similar arrangements even after 5th April 2019. The "deterrent effect" of the Loan Charge appears to have been limited due to two facts:

23. The Loan Charge does not apply to any new loans entered into after 5th April 2019.

24. The Loan Charge does not target the enablers (designers, implementers, promoters, introducers) of such tax arrangements or even the parties seeking to engage temporary labour via such structures such as multinational financial organisations, oil/gas companies, NHS trusts or local/central government.

25. The Loan Charge has failed to bring clarity to the tax law. It is clear that there are flaws in the UKs tax legislation. HMRC have sought to patch up these flaws for many years whilst tax advice continues to be largely an unregulated profession with membership of professional bodies being voluntary and codes of practice only recently tightened.

26. HMRC continues to take a reactive approach to the emergence of new tax planning structures relying on taxpayers to seek out information from HMRC or to suffer the consequences of a mis-sold tax planning arrangement after having built up months or years of exposure and interest. The Loan Charge has done nothing to change this.

27. The Loan Charge is likely to raise far less revenue than the Treasury anticipate as a result of mass bankruptcies. The Treasury have been asked many times to provide their estimate of the number of bankruptcies that will result from this policy, but have never provided any. The original TIIN simply noted that "The government anticipates that some of these individuals will become insolvent as a result." It went on to say that "This measure is not expected to have a material impact on family formation, stability or breakdown."

28. It is now known that a number of people have committed suicide whist facing the Loan Charge. LCAG conducted two surveys on behalf of the Loan Charge APPG which consistently showed that around 40% of those facing the Loan Charge had seriously considered suicide even going so far as to make plans or to writing final letters. It is quite clear that the Loan Charge has done little of benefit and is in fact leading to the devastation of thousands of people's lives.

Parliament no longer supports the Loan Charge

29. The opposition to the Loan Charge is widespread in parliament with hundreds of MPs taking a public stance against it.

30. Over 40 written questions have been asked on the Loan Charge[1]

31. Hansard lists 12 Debates with "Loan Charge" in the title and it contains nearly 300 references to the Loan Charge.[2]

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[1] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&keywords=%22loan+charge%22%2c%22disguised+remuneration%22

[2] https://hansard.parliament.uk/search?searchTerm=%22Loan%20Charge%22&partial=False

32. The Loan Charge APPG has the support of 234 members, which includes 224 MPs and 10 Peers. The 224 MPs represent six political parties, with 169 of those representing the governing party or the main opposition.

33. The APPG has published several reports calling for the retrospective Loan Charge to be revoked and for other reasonable changes to be made to avoid damaging consequences for people who did nothing wrong.

34. The APPG has seen hundreds of MPs sign open letters questioning the Loan Charge and calling for changes. The retrospection has been questioned as it seriously compromises the rule of law.

35. In March 2020, after the Morse Review had been published, a backbench business committee debate saw unanimous support for the government to go further than the Morse Review. Members called to make the Loan Charge prospective from 2017. They also called for more to be done to target the promoters/enablers of the loan arrangements and for ordinary taxpayers to be offered leniency.

36. The House of Lords has seen calls for the Loan Charge policy to be rethought, in particular from members of the Economic Affairs Committee. Lord Forsyth described in the April 2019 debate[3] how the committee had pleaded with HMRC for leniency for ordinary people

37. Another very notable contribution during a debate in April 2019 was from Lord Judge, former Lord Chief Justice of England and Wales, who cited "the right to unimpeded access to a court." He went on to strongly support the committees call for a full review of HMRC's powers.

38. It is clear that neither the House of Commons nor the House of Lords has confidence in the Loan Charge policy. This policy of punishing people for entering into loan arrangements which they believed at the time to be entirely legitimate is now seen for what it is – unjust.

Risk of further serious harm

39. There have been seven known suicides of people facing the Loan Charge. In three of these cases, LCAG is in direct contact with family members who have cited the Loan Charge as a key contributing factor in the victim's decision to end their life.

40. The LCAG helpline is staffed by volunteers who provide mental health support for those facing the Loan Charge. In recent weeks they have reported a huge surge in calls.[4] People facing enormous bills from HMRC have been living with this situation for many years and have seen HMRC dragging their heels during this time, either unable or unwilling to present coherent arguments as to why they owe the tax demanded.

41. In some cases, different HMRC department have argued contradictorily for Income Tax to be paid on the basis that payments were income and also for Inheritance Tax to be paid on the basis that the payments outstanding loans.

42. The years of stress are having profound mental health impacts. We are aware of many of our members being prescribed medication; a number have seen their family breakdown and have moved out of their family homes. One of the persons who committed suicide was admitted to hospital for their own protection several months prior to committing suicide.

43. A additional stress factor for some is that loans are now being recalled by some lenders or other parties who claim to own the debt.

44. We are aware of several individuals who are already seeking bankruptcy because HMRC have issued Accelerated Payment Notices which require disputed tax to be paid prior to the issues being decided by a tribunal or court. This is money that they simply do not have. Some people are elderly and have no possible way of generating income to service a payment plan with HMRC that would include ongoing additional interest. We expect the number of bankruptcies to increase if the Loan Charge is not made prospective from 2017.

[3] https://hansard.parliament.uk/lords/2019-04-29/debates/44B7E201-925A-4DE5-A0F9-FACD64C9528F/MakingTaxDigitalForVAT(EconomicAffairsCommitteeReport)

[4] https://www.hmrcloancharge.info/helpline-letter-to-hmrc-re-covid/

45. The distress caused to honest people by this punitive policy cannot be overstated. People feel that they are being punished by the government with maximum tax and being labelled as tax avoiders. The demographic of people impacted tends to be older people, professionals and skewed towards non-British ethnicities. The emotional reactions we witness from our members are; shame at having been told that they did something wrong, anger at the authorities for their actions and fear at losing everything they have worked for.

46. The situation has only been exacerbated by the coronavirus situation, which has resulted in complete loss of current and potential future earnings for many people and their (extended) families.

47. LCAG have raised the risk of further tragedies on many occasions. We believe that only the ongoing support from MPs and Peers has given people the hope that the law will eventually be changed and provide relief from this nightmare. This has so far prevented more suicides.

48. If nothing more is done, LCAG are 100% certain that there will be more suicides.

Conclusions

49. The retrospective Loan Charge is unjustified and contrary to the rule of law. It is no longer supported by parliament and must be revoked to restore trust. The argument for applying the Loan Charge from 2010 onwards has proved to be as hollow as the argument for applying it from 1999.

50. The impact of the Loan Charge is unfair and punitive. Further bankruptcies, suicides and breakdown of families can be expected if no further changes are forthcoming.

51. A commission must be established to find a fair compromise solution to deal with the historical tax enquiries that HMRC have failed to conclude in a reasonable timeframe. A voluntary amnesty which allows for a reduced settlement should be part of this.

52. The commission should also oversee the review of all past settlements. Individual taxpayers must not be adversely impacted due to their decisions taken when facing the Loan Charge.

53. HMRC must in future prevent mass marketing of tax planning arrangements to which they are likely to object. Proper regulation of tax advice with protection for taxpayers if they honestly follow regulated tax advice is essential. Indemnity from devastating retrospective tax demands due to incorrect advice should be an industry standard.

54. A full public inquiry is required into what went wrong with HMRC’s response to the rapid rise of mass-market tax planning. This should be tasked with identifying failures and learning lessons from this disaster.

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