Written evidence submitted by Small to Medium Business Group (SMB) supplementary evidence (FB30)

LEGISLATION MAKES DISCLOSURE OF LOANS IMPOSSIBLE FOR TAXPAYERS

Clause 16 of the Finance Bill 2019-2021 (4 June 2020)

The Bill has four very specific requirements to meet HMRC's definition of disclosure, none of which were previously required by HMRC. HMRC have not mentioned the four requirements until today and they were not in previous HMRC guidance nor in any forms. Jesse Norman advised the Finance Bill Committee that the legislation was " …*widely specified*" but in reality not one individual will be removed from the scope of the Loan Charge. In fact, more people will be caught as HMRC have extended their timeframe for taking action by up to five and a half years over and above the four years they already had in law. They have also broadened the current legislative definition of 'action taken' and increased the scope in respect of entities they can have contacted in order to be able to pursue the individual. It is now entirely feasible that an entirely unrelated enquiry against one person can be used against another person to bring the Loan Charge to bear. Finally, and most importantly, this changing of multiple aspects of the rules has been introduced without following the due process for the introduction of retrospective legislation, in exactly the same way as the LC itself was.

Read on to see the details:

- Jesse Norman advised the Finance Bill Committee that the legislation was *widely specified*. "*Disclosure can be made in more than one tax return of the same type and, as I have said, a tax return includes any accompanying accounts, statements or documents and has therefore been widely specified."* *(Finance Bill (Second Sitting) Hansard)*

- The current Loan Charge legislation is VERY different to this implied reasonableness and means that not one single taxpayer will be able to claim reasonable disclosure

HMRC never told people how to disclose loans, but they now want to punish them for disclosing them incorrectly

- In 2011 (9 Years Ago), HMRC had neither published nor provided any process, recommendation or guidance as to how an individual taxpayer, a limited company or their accountants should report the use of a loan

- Prior to 2015, there was absolutely no requirement for employees to inform HMRC they were involved in a Tax Avoidance Scheme. Employers and Promoters were required to disclose via DOTAS. The DOTAS rules meant individual employees did not need to be identified. Indeed, in 2015, HMRC introduced two new forms (AAG6 and AAG7) to request individual employees to identify themselves as having used a Tax Avoidance Scheme, and to disclose the Promoters and Employers they may have been working through.

- Consequently, many people, with help from their accountants, made best efforts to report loans in either their company tax returns, self-assessment return white space and/or in their Limited Company accounts

Draft legislation now makes reasonable disclosure impossible

- Today, reasonable disclosure requires a taxpayer to have told HMRC back in 2011 the following:-

    (a) Identified the Loan
    (b) Identified the person receiving the loan
    (c) Identified the relevant arrangements of the loan

(d) Provided information showing that income tax was due on the loan

- It is highly unlikely, that one single person or company will have provided the information in the detailed way now said to be required to achieve reasonably disclosure.

Draft legislation then covers for HMRC's failure to take action by giving them more time and more flexibility

- Even if you have disclosed your loans, if HMRC took ANY steps to recover the income tax due from ANY PERSON (that means an individual, a Ltd Co, or anyone else for that matter) then disclosure is invalidated

- By serving ANY TYPE OF NOTICE on an employer, HMRC are able to say they took action against an employee, even if that employee knew nothing about the loan or its method of disclosure

- HMRC have clear statutory time limits for taking action but because they FAILED to take that action, the legislation now gives them until 6 April 2019 to have done something.

END RESULT = NOT ONE PERSON TAKEN OUT OF SCOPE OF LOAN CHARGE

Finance Bill 2019-2021 Clause 16

(1) This paragraph applies where—

(a) a person is treated as taking a relevant step within paragraph 1 by reason of making a loan or quasi-loan,

(b) a reasonable case could have been made that for a qualifying tax year ("the relevant year") A was chargeable to income tax on an amount that was referable to the loan or quasi-loan,

(c) at a time when an officer of Revenue and Customs had power to recover (from A or any other person) income tax for the relevant year in respect of that amount, a qualifying tax return or two or more qualifying tax returns of the same type taken together contained a reasonable disclosure of the loan or quasi-loan, and

(d) as at 6 April 2019 an officer of Revenue and Customs had not taken steps to recover (from A or any other person) income tax for the relevant year in respect of that amount.

Here HMRC cover for their previous failure by extending the statutory time limits for action and allow action against an employer to mean action against an employee.

(5) For the purposes of sub-paragraph (1)(c) a qualifying tax return, or two or more qualifying tax returns taken together, contained a reasonable disclosure of the loan or quasi-loan if the return or returns taken together—

(a) identified the loan or quasi-loan,

(b) identified the person to whom the loan or quasi-loan was made in a case where the loan or quasi-loan was made to a person other than A,

(c) identified the relevant arrangements in pursuance of which or in connection with which the loan or quasi-loan was made, and

(d) provided such other information as was sufficient for it to be apparent that a reasonable case could be made that for the relevant year A was chargeable to income tax on an amount that was referable to the loan or quasi-loan.

HMRC did not ask for this in 2011

Real life extract from HMRC correspondence to an individual taxpayer. It shows how HMRC believe that if they took action against a Limited Company EMPLOYER that this counts as taking action against an individual EMPLOYEE

Aside from the disclosure, as detailed in prior correspondence, HMRC did take action to recover the income tax and National Insurance Contributions from use of the Clavis Sasha II EFRBS scheme when we issued a PAYE determination and National Insurance Contribution decision to XXXXXXX Limited on 17 July 2015.

As HMRC had taken steps to recover the income tax for the relevant year, the loan or quasi- loan received from the EFRBS in this year would appear to be still within the scope of the revised loan charge.

(HMRC Letter to individual employee 26 Feb 2020)

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