



HM Treasury

Independent Loan Charge

Review:

Government response to the Review

December 2019

Independent Loan Charge Review: Government response to the Review



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Chapter 1

Introduction

- 1.1 In September 2019, the Government commissioned Sir Amyas Morse to lead the Independent Loan Charge Review. The Loan Charge is designed to tackle Disguised Remuneration (DR) avoidance schemes where a person's income is paid as a loan which is not repaid. Sir Amyas was asked to consider whether the policy is an appropriate response to the tax avoidance behaviour in question and whether the changes the Government has announced to support individuals to meet their tax liabilities have addressed any legitimate concerns raised.
- 1.2 The Government is grateful to Sir Amyas and his team for their work.
- 1.3 DR avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions (NICs) by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance; 99.8% of taxpayers have never used one of these schemes. The use of DR avoidance schemes deprives the Exchequer of vital funds to pay for public services and the Government remains committed to tackling this and all forms of tax avoidance.
- 1.4 The Government welcomes Sir Amyas' recognition that DR schemes are a form of tax avoidance. Sir Amyas sets out the action that the Government took to try to tackle DR avoidance schemes and concludes it was right for the Government to take action to ensure the tax was collected. The Loan Charge was announced in 2016 to draw a line under DR avoidance schemes and gave people three years in which to mitigate the impacts of the Loan Charge, either by paying the tax due under the law or repaying the loans. Sir Amyas does not recommend overturning or revoking the Loan Charge, and the Government agrees that the Loan Charge should remain in force.
- 1.5 However, the Government recognises the concerns raised by the Review about the impact of some aspects of the Loan Charge. The Government will accept the recommendations to mitigate these concerns, including limiting the scope of the Loan Charge to loans taken out on or after 9 December 2010; this is the date on which targeted anti avoidance legislation was announced which put the tax position of DR avoidance schemes firmly beyond doubt. The Government will also accept the recommendation that for loans taken out between 9 December 2010 and 5 April 2016, the Loan Charge will not apply where the individual fully disclosed their use of the schemes to HMRC, and HMRC failed to take action (for example, by opening

an enquiry). Loans taken out after 5 April 2016 and outstanding as of 5 April 2019 also remain within the scope of the Loan Charge. Loans taken out after 5 April 2019 are taxable when they are received under legislation introduced in Finance Act 2011.

- 1.6 Sir Amyas addresses concerns about the affordability of the Loan Charge. The Loan Charge was designed to encourage taxpayers to settle with HMRC or to pay back the loan before the Loan Charge came into effect. But the Government recognises the Loan Charge can involve large payments for some taxpayers. Sir Amyas acknowledges the steps that the Government has taken since the announcement of the Loan Charge to respond to concerns about affordability. He makes recommendations that the Government accepts, including allowing taxpayers to benefit from spreading the loan balances evenly over three years instead of taxing in a single year.
- 1.7 The Government does not accept the recommendation to introduce a write-off of tax due on the loan charge after 10 years for individuals whose time to pay arrangement is longer than 10 years, as this would allow those who have avoided tax through use of DR avoidance schemes more favourable terms than taxpayers with other debts.
- 1.8 HMRC already have robust systems in place to support taxpayers in paying tax debts, including time to pay arrangements for those who need time to pay their debts, and instalment agreements for taxpayers settling the underlying tax liability ahead of the Loan Charge coming into force. Building on this, the Government accepts the recommendations made to improve the transparency of the support available to taxpayers to meet their tax obligations.
- 1.9 Some of the information provided to the Review also raised concerns about the way HMRC engaged with people who used DR avoidance schemes.
- 1.10 HMRC aim to deliver high standards of customer service and acknowledge that they sometimes struggled to meet those standards when tackling tax avoidance of the scale and complexity seen in these cases. HMRC is sorry some people who used DR avoidance schemes experienced delays and a fragmented experience from different parts of HMRC. HMRC are also concerned that some people considered the department's approach towards them aggressive. They have a robust complaints procedure, which they encourage people to use if they are unhappy with the service they receive. HMRC accept Sir Amyas' recommendations for improving their services.
- 1.11 Sir Amyas also raised concerns about HMRC's historic compliance strategy in tackling DR avoidance schemes, including in particular poor communication with taxpayers about their use of avoidance schemes. Sir Amyas recognises HMRC have made changes to their approach since 2014, with a more active approach to communicating with users of avoidance schemes, as well as with those selling them, and on steering taxpayers away from using schemes to reduce the need for enquiries and litigation. HMRC will go further in engaging with users early and tackling the whole supply chain for tax avoidance.

- 1.12 The Review has highlighted the role of promoters in enabling tax avoidance. The Government and HMRC are determined to continue to tackle promoters of tax avoidance schemes. It is not acceptable for promoters to market these tax avoidance schemes which do not work and deprive the Exchequer of tax that is owed. The Government is today announcing further action to tackle their activity.
- 1.13 The Government urges people not to use DR avoidance schemes, which promise something that is too good to be true. These loans are income and they are taxable. The Review notes that use of DR avoidance schemes continues. The Government will reflect on the most effective mechanism to tackle the continuing use of these contrived tax avoidance schemes and will announce further action at the Budget.

Chapter 2

Response to Recommendations

- 2.1 Unless otherwise specified, the recommendations apply to both individuals and employers.

Next steps for affected taxpayers

1 The Government should come forward urgently with a clear timetable for its response to this report and for any necessary legislation to give effect to these recommendations to provide taxpayers with certainty ahead of the 31 January 2020 deadline for assessment to the Loan Charge. This should include appropriate guidance from HMRC to those likely to be affected, and a means of ensuring that taxpayers have time to take appropriate advice before submitting their Self-Assessment return or – for those who remain in the settlement process – whether to settle rather than pay the Loan Charge.

- 2.2 The Government recognises the need for time to implement the changes announced following the Review and the need for taxpayers to have sufficient time to understand their position and act on it. Therefore, the Government is announcing today additional flexibility for taxpayers affected by the Loan Charge.
- 2.3 The Loan Charge remains in force and taxpayers who have not settled their DR tax affairs by 31 January 2020 are still required to submit a Self-Assessment return for the 2018-19 tax year including the outstanding loan balance.
- 2.4 However, HMRC are announcing today, that they can choose to do this by the 31 January 2020 statutory filing date, giving their best estimate of their outstanding loan balance, or they can defer sending their return no later than 30 September 2020. If they choose to defer, HMRC will waive any penalties for late filing or late payment, and not charge any penalties for inaccurate returns (if the inaccuracy relates to the Loan Charge), as long as the taxpayer has submitted their return and paid the tax, or made an arrangement with HMRC to do so, or amends it with accurate figures by 30 September 2020. Taxpayers who have to pay the loan charge will not have to pay interest on amounts falling due at 31 January 2020 as long as the tax is paid by 30 September 2020.
- 2.5 HMRC are publishing more detailed guidance alongside this response on action that these taxpayers can take in relation to the 31 January filing and payment deadline.

2.6 Taxpayers who have already settled or are currently in a payment plan should continue to pay their instalments. HMRC will contact them about changes to their circumstances in due course following the passage of legislation.

2 The review recommends that HMRC run a settlement opportunity in 2020, to allow any taxpayers outside the scope of the Loan Charge but with a liability arising from loan schemes to settle their tax affairs.

2.7 The Government accepts this recommendation.

2.8 Where the Loan Charge is no longer due as a result of changes set out in this response, but HMRC has protected its position and can recover the underlying tax¹, HMRC will continue to ensure tax is paid by pursuing the underlying tax liability where it is legally due.

2.9 HMRC will set out in due course guidance for taxpayers in this position on how to settle the tax due.

Loan Charge design

3 The Loan Charge should not apply to loans entered into before 9 December 2010.

2.10 The Government accepts this recommendation. HMRC have always maintained these schemes did not work, and tax was due. The legislation introduced in 2011² put the matter beyond doubt. Loans taken out from 9 December 2010, when the legislation was announced, will remain subject to the Loan Charge. Loans taken out before 9 December 2010 will not be subject to the Loan Charge.

2.11 The Government estimates that around 15,000 individuals could be affected by this change, of which around 10,000 individuals could be taken out of paying the Loan Charge completely.

2.12 While loans made before 9 December 2010 are removed from the scope of the Loan Charge, the underlying tax liability for loans made prior to this date remains. HMRC will continue to pursue those liabilities through enquiries and assessments, and where necessary through litigation. HMRC will publish updated settlement terms for all taxpayers in this position as set out above.

2.13 The Government will also invest in a new HMRC team to conclude enquiries and bring in the tax due from people who in the past have used DR schemes, and other forms of tax avoidance. The team will engage positively with those who wish to settle their affairs and will have the resources and skills to pursue cases to tribunal and through the courts where that is necessary to collect what is due. This will ensure people who entered into DR avoidance schemes before 9 December 2010 still pay the tax due and

¹ Time limits on HMRC's ability to assess and collect taxes through compliance activity generally depend on the taxpayer behaviour. Assessment time limits are 4, 6 or 20 years depending on the behaviour that led to the inaccurate return. Additionally, Finance Act 2019 introduced a 12-year time limit for assessments involving offshore matters and offshore transfers.

² <http://www.legislation.gov.uk/ukpga/2011/11/schedule/2/enacted>

make their contribution to funding public services. Further detail will be announced at the Budget.

4 Unprotected Years arising from loans entered into on or after 9th December 2010, where the relevant taxpayer made reasonable disclosure of their scheme usage to HMRC and HMRC did not open an investigation, should be out of scope of the Loan Charge (subject to recommendation 5 below). Other Unprotected Years should remain in scope of the Loan Charge. This will ensure that taxpayers do not benefit from failing to disclose their tax affairs to HMRC. The approach to defining "reasonable disclosure" should build upon HMRC's ordinary compliance approach in considering the extent to which a Self-Assessment return is sufficiently clear about the usage of a loan scheme.

5 Any Unprotected Years arising from loan schemes entered into during the 2016-17, 2017-18 and 2018-19 tax years should all be included in the scope of the Loan Charge, to ensure that taxpayers who entered into loan schemes after the Loan Charge was announced do not unreasonably benefit from HMRC having ceased protecting years following the announcement.

2.14 The Government accepts these recommendations.

2.15 These recommendations mean loans taken out between 9 December 2010 and 5 April 2016 inclusive, will remain within the scope of the Loan Charge unless the user of the scheme disclosed full details of their avoidance scheme on their tax return, and HMRC failed to take action to protect its position, for example, by opening an enquiry.

2.16 HMRC will set out guidance in due course for taxpayers on how HMRC will implement these recommendations.

2.17 The Government estimates that this recommendation could result in around 1,000 additional individuals being taken out of paying the Loan Charge completely.

6. HMRC should refund the Voluntary Restitution elements of settlements made since 2016 that were paid to settle Unprotected Years when the relevant loans were entered into:

a) prior to 9th December 2010; or

b) between 9th December 2010 and the start of the 2016-17 tax year, where the scheme user made reasonable disclosure of their scheme usage in their tax return

2.18 The Government accepts this recommendation and recognises that those who have already settled their tax liability have complied with their tax obligations under settlement terms designed on the basis of the Loan Charge applying to all years. These taxpayers should benefit from the decision not to apply the Loan Charge to unprotected years.

2.19 Therefore, HMRC will repay Voluntary Restitution that has been paid by individuals and employers since the Loan Charge was announced in March

2016, for years that would be no longer subject to the Loan Charge because the year was unprotected.

- 2.20 HMRC will set out guidance in due course for taxpayers on how HMRC will implement this recommendation. HMRC require legislation before they can repay part of the settlement. HMRC will process repayments once the relevant legislation has received Royal Assent.
- 2.21 The Government estimates around 1,000 individuals could be affected by this change.

7 Taxpayers should be entitled to opt to spread their outstanding loan balances over three years, to mitigate the impact of taxpayers paying tax at a higher rate than they ordinarily would. This reduces the effect of stacking their outstanding loan balances into a single year, which artificially created an increased exposure to a higher rate of income tax.

- 2.22 The Government accepts this recommendation. The Government recognises that because the tax on outstanding loans become payable in one tax year under the Loan Charge, individuals may face paying tax at higher rates than they would have if they had paid the correct tax at the time or had taken advantage of the opportunity to settle.
- 2.23 HMRC will provide further guidance to taxpayers to help them establish whether they would benefit from this change.
- 2.24 The Government estimates that around 21,000 individuals could be affected by this change.

8 The extent to which the Loan Charge looks back to activity in earlier tax years dating back to 1999-2000, and the manner in which ongoing interest is charged on payment arrangements has given rise to concerns over how policy on interest is applied within the tax system. The Government should review future policy on interest rates within the tax system and report the results to Parliament by 31st July 2020.

- 2.25 The Government accepts this recommendation and will provide further details in due course.

Paying the Loan Charge

9 All individuals subject to the Loan Charge should only be asked to pay up to half their disposable income each year and a reasonable proportion of their liquid assets. No one should have to sell their primary residence or use their existing pension pot to pay the Loan Charge.

- 2.26 The Government accepts this recommendation. The Government recognises people will remain concerned about paying tax due under the Loan Charge and agrees people should be confident that they will be able to agree a suitable arrangement for their circumstances.

- 2.27 Across the tax system and its administration, there are safeguards in place to ensure taxpayers who are not able to pay tax when it falls due are not required to take on unmanageable payment terms. This includes offering time to pay arrangements which ensure that the taxpayer only pays what they can, when they can. Over 90% of these payment arrangements set up with HMRC complete in full and on time, and there is no maximum time limit to these arrangements.
- 2.28 The Review recommends that individuals subject to the Loan Charge should only be asked to pay up to half their disposable income each year and a reasonable proportion of their liquid assets. This is standard practice for HMRC, aside from where people have very high levels of disposable income, and will remain so.
- 2.29 As previously made clear, no taxpayer will be forced to sell their main home to fund a Loan Charge or DR tax bill, and HMRC can confirm that, in line with normal practice, no one will have to release funds from their existing pension pots.

10 Individuals with income of less than £30,000 in 2017-18 should additionally not have the Loan Charge hanging over their head for any longer than 10 years, and any amount left outstanding after 10 years of paying the Loan Charge should be written off to genuinely draw a line under any outstanding balance. This will allow people to move on after paying what they can afford.

- 2.30 Sir Amyas also recommends introducing a 10 year write off for individuals whose time to pay arrangement is longer than 10 years. The other recommendations Sir Amyas makes are estimated in total to benefit more than 30,000 people subject to the Loan Charge, which is over 60% of those affected. This includes 11,000 people who will be taken out of paying altogether. HMRC already have robust systems in place for those who need time to pay their tax debts, and the Government believes that the further actions set out are sufficient and suitably flexible.
- 2.31 Allowing some Loan Charge liability to be written off would treat tax avoiders more favourably than other individuals with HMRC debts (including tax credit claimants), would reduce taxpayers' incentive to pay off the debt, and would have unwelcome wider impacts that change how HMRC and those in debt interact. The Government therefore rejects this recommendation.

11 HMRC should extend to individuals with income from £30,000 up to £50,000 in 2017-18 the same payment terms that were offered to such individuals who settled their tax affairs rather than pay the Loan Charge. Such individuals should be automatically able to pay the Loan Charge over up to five years without having to provide HMRC with further details of their asset ownership.

- 2.32 The Government accepts the recommendation where a taxpayer has no disposable assets. Where taxpayers earn less than £50,000, they should be

automatically entitled to a minimum of a five year payment plan, and where they earn less than £30,000, a minimum of seven years.

1.2 HMRC should fund an external body to provide independent advice to lower income taxpayers who are discussing payment arrangements and debt collection with HMRC, including on potential suitability of an individual voluntary arrangement (IVA) or other arrangements.

2.33 The Government will fund an external body to provide independent advice on options available to people who are unable to pay or are struggling with their debts.

2.34 HMRC have also improved the service they provide to taxpayers undergoing compliance checks. They are introducing a new Extra Support service for taxpayers, building on the approach of its existing Customer Service Extra Support Team. HMRC are also refreshing their compliance professional standards with a strong focus on customer experience.

2.35 In addition, HMRC will implement a number of changes to ensure individuals who cannot pay the tax due, and who are in need of bespoke arrangements to pay their tax debts, understand the options available to them and can make an informed decision about how to proceed. The Government is announcing today that HMRC will:

- Publish the Income and Expenditure form that HMRC uses with taxpayers to understand assets, income, and expenditure, and work out disposable income, and how HMRC uses that to create Time to Pay arrangements; and
- Refer taxpayers to a debt advice charity where their finances suggest they need time to pay in excess of 5 years.

2.36 The Government can also confirm that, in line with current practice, HMRC will:

- Guarantee time to pay arrangements wherever an affordability assessment shows an individual cannot pay in full;
- Accept Single Financial Statements completed by the taxpayer with a debt advice charity as proof of affordability;
- Stop all recovery action where the taxpayer has no ability to pay, until there is a significant change of circumstance; and
- Not seek bankruptcy proceedings for individuals who have engaged with HMRC, completed an affordability assessment, and are solely unable to pay the Loan Charge.

2.37 These changes apply to individuals only.

Other recommendations for the tax system

2.38 The Government and HMRC recognise citizens must know that their tax authority is fair and even-handed, and adheres to its core values in all its work. This extends to protecting the interests of all taxpayers, the vast majority of which have never used a DR avoidance scheme. This also extends to HMRC's dealings with taxpayers who used these schemes and are affected by the Loan Charge. It remains the Government's policy to maintain and develop public trust in HMRC, including building on the actions announced in a Written Ministerial Statement on HMRC's Powers and Taxpayer Safeguards on 22 July 2019.

13 HMRC should update taxpayers at least annually about the status of open tax enquiries and, where they do not do so, have this non-communication taken into account by the First-tier Tribunal (FTT) if a taxpayer applies to have an open enquiry closed.

2.39 The Government agrees HMRC should keep in regular communication with taxpayers whose tax affairs are under enquiry. Sir Amyas welcomes in the Review the fact that HMRC have already started moving to this approach in tax avoidance enquiry cases. Taxpayers already have the right to apply to the FTT for their enquiry to be closed, and non-communication with HMRC may be a factor they raise in that application. HMRC will review their internal guidance and processes to ensure the recommendation is implemented.

14 HMRC should report to Parliament on its implementation of the Loan Charge before the end of 2020, drawing on input from their recently established Customer Experience Committee, representative bodies, charities focused on lower income individuals, and other professionals. This report should also address common themes arising from other recent reports, including from the House of Lords Economic Affairs Committee (EAC) and the Adjudicator.

2.40 The Government accepts this recommendation. HMRC will report to Parliament on its implementation of the Loan Charge changes, once the changes have been implemented.

15 HMRC should review its Charter to set higher expectations of performance during interactions with members of the public, and to ensure that staff are trained to meet these expectations.

2.41 HMRC accept this recommendation and will take it into consideration in HMRC's current review of its Charter.

Future approach to tackling disguised remuneration avoidance schemes

16 Given the one-off nature of the Loan Charge, the Government should explain how it will tackle loan scheme usage in the future.

- 2.42 Tax avoidance is unfair to the vast majority of taxpayers, and the Government remains committed to tackle it.
- 2.43 The Government shares the review's concern that DR avoidance schemes continue to be marketed and used; this year alone, around 8,000 people are using DR avoidance schemes with around 3,000 of them being new users. This is despite HMRC's long track record of tackling tax avoidance involving DR avoidance schemes. The law is clear that they do not work, and there have been many attempts over many years to close down this form of avoidance, including through the Loan Charge. Tackling large scale avoidance of this nature remains challenging and further consideration is required to determine what additional changes are needed. The Government will announce further action at the Budget.
- 2.44 DR avoidance schemes do not work, and income paid through these schemes is fully taxable. The Government and HMRC strongly encourage people not to use these schemes and to get in touch with HMRC if they think they are being sold a scheme.

17 The Government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be mis-selling loan schemes. There should be a new strategy published within 6 months, addressing how the Government will establish a more effective system of oversight, which may include formal regulation, for tax advisers.

- 2.45 The Government and HMRC are determined to continue to tackle promoters of tax avoidance schemes. It is not acceptable for promoters to market these tax avoidance schemes which do not work and deprive the Exchequer of tax that is owed. Facilitating an advantage for some people is unfair to the vast majority of taxpayers who pay in full and on time.
- 2.46 Increasingly, HMRC are seeing promoters who are prepared to use every opportunity to sidestep the rules that require them to disclose these schemes, looking to turn a profit quickly, while selling schemes that are not effective. Too often they sell artificial schemes that do not work, leaving taxpayers with large tax bills when HMRC defeat the schemes, and HMRC with tens of thousands of cases where taxpayers have not paid what they should.
- 2.47 The Government is announcing today further measures to tackle promoters of avoidance schemes that will reduce the scope for promoters to market tax avoidance schemes. The Government will:
- Ensure HMRC can more effectively issue stop notices to promoters to make it harder to promote schemes that do not work;

- Prevent promoters from abusing corporate entity structures that sell schemes to avoid their obligations under the Promoters of Tax Avoidance Scheme (POTAS) rules;
- Ensure HMRC can obtain information about the enabling of abusive schemes as soon as they are identified, and enabler penalties are felt without delay when a scheme has been defeated at tribunal;
- Ensure that HMRC can act decisively where promoters fail to provide information on their avoidance schemes; and
- Make further technical amendments to the POTAS regime so that it continues to operate effectively and to ensure that the General Anti Abuse Rule (GAAR) can be used to counteract partnerships as intended.

2.48 Further detail on these measures will be set out at the Budget.

2.49 Furthermore, the Government will consider carefully the wider implications of the Review for the market for tax advice. The Government will launch a call for evidence on what steps it can take to raise standards in this market to give taxpayers more assurance that the advice they are receiving is reliable.

18 The strategy for communicating what is considered tax avoidance must be improved to reflect the 'mass market' nature of loan schemes. In particular, HMRC should continue enhancing its usage of Pay As You Earn (PAYE) Real Time Information to communicate with taxpayers who they suspect may be engaging in tax avoidance, and proactively put taxpayers directly on notice of its view.

2.50 The Government and HMRC accept this recommendation and HMRC will seek to provide targeted early communication to taxpayers who they suspect may be engaging in tax avoidance to encourage them to stop.

19 That future published Government impact notes of tax changes should take proper account of the direct impact on the affected population. These assessments should also explicitly include interactions between different taxes.

20 That, as campaigns on taxpayer issues such as the Loan Charge are likely to be a feature of debates in tax policy in future, HMRC should learn from the Loan Charge to better respond to such campaigns and communicate more effectively.

2.51 The Government and HMRC accept these recommendations and will take them into consideration in their wider approach to communicating policy and communicating with taxpayers.

Chapter 3

Next Steps

- 3.1 The Government will legislate to implement the recommendations and will set out its legislative timetable in due course. Draft legislation and detailed guidance will be published shortly.
- 3.2 Financial impacts of the changes will be published at the next Budget, after discussion with the Office for Budget Responsibility.
- 3.3 As set out above, the Loan Charge remains in force and the outstanding loan balance should be included in the Self-Assessment tax return for 2018/19. The Government recognises the need for time to implement the changes announced following the Review and the need for taxpayers to have sufficient time to understand their position and act on it. HMRC are publishing guidance alongside the Government's response to set out the actions taxpayers should take.
- 3.4 Taxpayers who have not settled their DR tax affairs by 31 January 2020 are still required to submit a Self-Assessment return for the 2018-19 tax year. They can choose to do this by the 31 January statutory filing date, giving their best estimate of their outstanding loan balance, or they can defer sending their return until no later than 30 September 2020. If they choose to defer, HMRC will waive any penalties for late filing or late payment, and not charge any penalties for inaccurate returns (if the inaccuracy relates to the Loan Charge), as long as the taxpayer has submitted their return and paid the tax, or made an arrangement with HMRC to do so, or amends it with accurate figures by 30 September 2020. Taxpayers who have to pay the loan charge will not have to pay interest on amounts falling due at 31 January 2020 as long as the tax is paid, or an arrangement made with HMRC to do so, by 30 September 2020.
- 3.5 Taxpayers who have already settled or are currently in a payment plan should continue paying their instalments. HMRC will contact them about changes to their circumstances in due course following the passage of legislation.
- 3.6 More detailed guidance on immediate action for taxpayers is available at: <https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review>.
- 3.7 Further detailed guidance will be published in due course to assist taxpayers in determining their Loan Charge tax due.

