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Dear Sir Edward,

This letter provides further information on the charge on disguised remuneration (DR) loans for the Loan Charge All-Party Parliamentary Group. It follows the scope of work set out in your letter of 21 February to Sir Jonathan Thompson, and supplements the information HMT and HMRC officials provided in their recent meeting with you, Ruth Cadbury MP, Greg Mulholland and Phil Manley.

Alongside this letter, I am also enclosing the following information:

- a timeline of key dates relevant to those affected by the charge on DR loans;
- four case studies to show the range of individuals affected and our actions in helping to settle their affairs; and
- the latest position on settlements with HMRC.

In line with section 95 of the Finance Act 2019, the government has agreed to lay a report which will review the effect of changes made to the time limits for recovery or assessment where tax loss arises in relation to offshore tax, and compare these with other legislation including the charge on DR loans. The report is due to be published before 30 March, and at your meeting with officials you agreed to provide initial findings from the APPG work by 8 March.

History of DR tax avoidance schemes

Over the course of the last two decades, HMRC and successive governments have acted to tackle the use of tax avoidance schemes, including DR schemes.

DR avoidance schemes evolved from schemes which claimed to avoid tax and National Insurance Contributions (NICs) by paying bonuses and salaries in different forms. When legislation closed off asset-based avoidance schemes, more contrived arrangements, which often used Employee Benefit Trusts (EBT) and Employer Funded Retirement Benefit Schemes (EFRBS), evolved in the late 1990s.

Information is available in large print, audio tape and Braille formats.
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Contractor loan (CL) tax avoidance schemes, used by contractors, became prevalent from around 2004. Most involved creating offshore 'employments' which were essentially artificial constructs set up for the purposes of the avoidance scheme, rather than being a genuine employment. These schemes often involved a chain of companies, trusts or partnerships through which money was routed.

The majority (75%) of the yield from the DR loan charge measure is expected to come from employers rather than individuals. Our data indicates that around 65% of contractors affected work in the business services sector, for example as management consultants and IT consultants. 10% work in construction, and 3% in medical services or teaching.

Since the DR loan charge was announced, HMRC has agreed settlements on DR schemes with employers and individuals worth over £1 billion. So far, around 85% of tax secured has come from employers, and less than 15% from individuals. Further detail on settlements agreed is at Appendix 3. There are an estimated 50,000 scheme users affected by the loan charge, representing about 0.1% of the UK taxpaying population.

Legality and fairness

It is unfair to the vast majority of taxpayers, who have always paid the right amount of tax at the right time and have not engaged in tax avoidance, to allow anyone to benefit from contrived tax avoidance of this sort. The charge on DR loans is the culmination of action over many years to tackle DR avoidance.

The charge on DR loans was announced at Budget 2016, and means that DR tax avoidance scheme users will be taxed on loans from these schemes made after 5 April 1999 and which are still outstanding at 5 April 2019. The measure is expected to yield an estimated £3.2bn of the UK tax avoided through these schemes. The charge itself does not change the tax position of any previous year, the tax treatment of any historic transaction, or the outcome of any open compliance checks.

While with genuine loans people would have put money aside to pay them back, these loans were taken under terms that mean in practice they are not repaid. The arrangements under which the loans are made are, and have always been, taxable. Scheme users were given three years before the charge took effect to repay their DR loans, or to agree a settlement with HMRC.

HMRC has undertaken extensive compliance activity against DR schemes, and scheme users, since they were first used. This has included opening thousands of enquiries, successful litigation, introducing targeted anti-avoidance legislation in 2011, and several settlement opportunities. HMRC does accept that more could have been done in the early years to stay in more regular communication with those under investigation, and that some individuals did not hear from HMRC for several years. While some people did disclose their use of tax avoidance schemes, this was often incomplete, and many others were not fully open with HMRC about their use.

Details on reporting the DR loan charge are included at Appendix 1. It is reported through a person's tax return, and appeal rights are unaffected. The charge is on outstanding loans made after 5 April 1999 where the tax has not been paid, regardless of the status of any related tax enquiry. The decision on whether to settle or continue to contest any open enquiries remains with the taxpayer. It is also open to taxpayers to settle their tax affairs for some years and not others, but they will still

have to pay the loan charge for years where they do not pay the tax due, if the loans for those years are outstanding.

Promoters

In recent years, we have investigated over 100 promoters and others involved in tax avoidance, including DR arrangements, stopping several major promoters selling avoidance schemes. HMRC is not in a position to provide details of specific cases due to taxpayer confidentiality restrictions, but we can provide general information about this work.

Since April 2016, more than 20 individuals have been convicted for offences relating to the promotion and marketing of tax avoidance schemes. They have received over 100 years of custodial sentences, with an additional seven years of suspended sentences ordered. Prosecutions send a clear message to all those involved in promoting tax avoidance that HMRC can, and will, use all appropriate measures to prevent the sale and use of avoidance schemes.

Recently, we have taken litigation action against 10 individuals or businesses that we consider to be avoidance scheme promoters for failure to disclose under the Disclosure of Tax Avoidance Scheme (DOTAS) regime, with others deciding to disclose to avoid litigation. In addition, any person who knowingly enables the use of a tax avoidance arrangement which is later defeated can face a financial penalty of up to 100% of the fees earned. This legislation came into effect from 16 November 2017 and we are currently considering action against a number of enablers.

Personal circumstances

We recognise that the charge will have a significant impact on some users. We have listened very carefully to concerns about the impact of this policy on some individuals. As a result, we have put in place arrangements to assist individuals who are impacted by the charge on DR loans.

We have introduced simplified settlement terms for DR scheme users to help them settle their tax affairs. Individuals who currently have an income of less than £50,000 and are no longer engaging in tax avoidance can agree a payment plan of up to five years without the need to give HMRC any information about their income and assets. We have recently extended this to seven years for individuals who earn less than £30,000.

People who consider they need more than five or seven years to pay what they owe, or who earn more than £30,000 or £50,000, should still come forward and talk to us about payment terms. There are no defined minimum or maximum time periods for payment arrangements. We are committed to engaging with individual cases appropriately and sympathetically. We have put in more resource to deal with the large numbers of scheme users who have shown an interest in settling their affairs.

We recognise that there are people who are now facing large tax bills, and are fearful of what this may mean for them. HMRC has committed not to make anyone sell their main home to pay their DR tax bills. Fears that people will be made homeless because of HMRC debt enforcement activity in relation to the charge on DR loans are unfounded. It is also the case that HMRC does not want to make anyone bankrupt. Bankruptcy is only ever reached as an absolute last resort, and very few cases ever reach that stage. We would welcome your support in reassuring people on these points and addressing any inaccurate messages.

As set out by HMT and HMRC officials in discussion with you on 28 February, scheme users who come forward with a genuine intention to settle before the 5 April 2019 will not be disadvantaged, and can still benefit from the opportunity to settle under the published terms. A genuine intention to settle means users should provide HMRC with, as a minimum, their name and tax reference numbers (unique taxpayer reference or national insurance number), the amount and period that loans were received and the name of the employer who provided the loans. Employers will need to provide their details, the amounts and, where possible, dates funds were paid into the scheme and details of any Corporation Tax relief claimed on the contributions. Settlement negotiations must move quickly after 5 April 2019 and all settlements must then be reached by 31 August 2019, or the loan charge will apply. Scheme users approaching HMRC after 5 April 2019 will be subject to the charge on DR loans.

As set out in Appendix 1, individuals subject to the loan charge will have until 31 January 2020 to pay their liability, and as necessary HMRC can agree flexible payment terms beyond that point. It is not the case that they will face a tax bill to be paid on 5 April 2019.

Next steps

We stand ready to consider the APPG's initial findings, as well as cases which the APPG would like us to look at. We would also welcome sight of the small number of cases that the APPG's tax adviser, Mr Manley, mentioned and agreed to share of scheme users who claim to have been investigated by HMRC and have evidence that these enquiries had been closed without adjustment specifically in connection with the loan received.

We hope that you will encourage anyone affected by the charge on DR loans to come and speak to HMRC as soon as possible.

Yours sincerely,

Ruth Stanier
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