HM Treasury

Section 95 of the Finance Act 2019:
report on time limits and the charge on disguised remuneration loans

March 2019

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Executive summary

This report has been prepared for the House of Commons by HM Treasury, as required by section 95 of Finance Act 2019.

Section 95 requires the Chancellor to review the effects of sections 80 and 81 of Finance Act 2019, which introduced a new 12-year assessment time limit for lost tax that involves an offshore matter or an offshore transfer; and to compare the effects of these sections with other statutory provisions governing time limits for assessment by HM Revenue and Customs (HMRC), including a comparison with Schedules 11 and 12 to Finance (No.2) Act 2017, the charge on disguised remuneration (DR) loans.

HMRC is responsible for collecting the right amount of tax and ensuring all taxpayers pay their fair share to fund public services. In legislating for tax powers, the government and Parliament need to balance carefully the importance and public expectation of decisive action to tackle tax avoidance and evasion, alongside the need to maintain appropriate safeguards for individual taxpayers.

Sections 80 and 81 of Finance Act 2019

Chapter 2 of this report reviews the effects of s80 and 81 of Finance Act 2019 ("Offshore matters or transfers: income tax and capital gains tax, inheritance tax").

When establishing the size of penalties or the time limits to be applied for an assessment, HMRC is generally required to take account of the taxpayer behaviour that led to the non-compliance and the challenges in enforcing compliance.

Depending on those factors, legislation provides for time limits ranging from four to twenty years. The 12-year time limit for offshore matters and offshore transfers was introduced to allow sufficient time to investigate offshore cases where information is often held outside the UK and is typically harder to obtain. The government considers this a proportionate response to the challenges of offshore tax compliance.

Disguised remuneration loan charge

Chapter 3 of this report focuses on schedules 11 and 12 of Finance (No.2) Act 2017 ("Employment income provided through third parties: loans etc outstanding on 5 April 2019"*)* which introduced a charge on the outstanding balances at 5 April 2019 of any DR loans made on or after April 1999.

DR schemes are a clear example of some of the most contrived avoidance within the tax system. When someone normally receives a loan, the expectation is that it will be repaid which is why it is not taxed as income. In DR arrangements 'loans' are provided in place of ordinary remuneration, usually via an offshore trust, with no expectation that they will ever be repaid. The individual is typically paid enough salary to use-up their tax-free personal allowance and protect future entitlement to the State Pension and other benefits. But the majority of their pay is provided by a loan which is never intended to be repaid. This is therefore no different to normal income and should be taxed.

Contrived tax avoidance is unfair, not least to the more than 99.8% of individual taxpayers who are not involved in this sort of activity. The government believes it is unfair on the vast majority of people who pay their fair share of tax and it deprives the Exchequer of the money needed to pay for vital public services. Every pound of tax avoided through these schemes is a pound more that other taxpayers are required to pay, or a pound lost to our hospitals, schools, police, armed forces, and other vital public services.

While the government recognises the impact the charge on outstanding DR loan balances will have on some individuals, the government believes that it is right to end this form of tax avoidance for good.

Criticism of the loan charge falls into two main areas: whether the legislation is a proportionate response to tackling this form of avoidance and the impact on individuals who, where avoidance has been significant, may face large tax bills as a consequence.

This report will set out the background to DR schemes and the action taken by successive governments to close them down over the last 20 years, as well as HMRC's approach to implementing the charge on DR loans and the steps they have taken to minimise the impact of the charge on individuals.

Anyone worried about the loan charge is advised to contact HMRC to understand their own position. HMRC has measures in place to minimise the impact of the charge on individuals who are affected. At the time of publication there is still time to settle, by contacting HMRC on 03000 534 226.

History of tackling DR and rationale for the loan charge

DR schemes have existed since the 1990s and, in that time, successive governments and HMRC have engaged in sustained activity to ensure that they are closed down and challenged. It has always been the government and HMRC's view that these schemes do not work. Despite the claims made by some promoters, HMRC does not and never has approved tax avoidance schemes.

HMRC has opened tens of thousands of enquiries into these schemes over the last 20 years. As individual schemes have been litigated through the courts, new schemes have been devised with slightly different arrangements requiring fresh litigation.

The majority of DR schemes were never disclosed to HMRC under the Disclosure of Tax Avoidance Schemes (DOTAS) regime. In cases where DOTAS numbers were provided on a tax return, HMRC routinely opened enquiries. Many scheme users did not disclose details, or may have disclosed partial information in a way that would not necessarily have enabled compliance action to be taken at the time.

Despite the government's Written Ministerial Statement in 2004 and legislation in 2011 to tackle this form of avoidance, it was clear by Budget 2016 that these schemes continued to proliferate.

That is why the government announced it would introduce a charge on the balance of any DR loans still outstanding at 5 April 2019, in order to ensure that appropriate time was provided to clear up these arrangements. The charge was legislated in the Finance (No.2) Act 2017 and is part of a package which was estimated to yield £3.2 billion over five years.

The government is clear that the legislation is not retrospective. It applies a tax charge to outstanding DR loan balances at 5 April 2019. It 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. By the time of its introduction on 5 April 2019, individuals will have had three years since the Budget 2016 announcement to act to stop it applying, either by settling their liability with HMRC or repaying their loans. HMRC has encouraged settlement by contacting those affected.

This charge on DR loans is targeted at a particularly artificial and hard to tackle form of tax abuse that has been going on in many forms for many years.

Despite the variety of actions to challenge and prevent DR scheme usage over the course of the preceding decades, including litigation and legislation as described in this document, HMRC continues to see evidence of their use in 2019. These include specific schemes being marketed from offshore locations such as Cyprus, Malta, and the Isle of Man that claim to provide for the avoidance of the loan charge. These schemes continue to be highlighted in HMRC's Spotlight series. HMRC's strong view is that these schemes do not work, and HMRC will continue to clamp down on the promoters of these schemes wherever possible.

The government considers that the rationale for this charge is clear and robust, and has been consistently clear there is no intention to change the relevant legislation which has been enacted by Parliament. This was reflected in the Financial Secretary to the Treasury's statement in accepting a new clause at report stage of the Finance Act 2019, that the government "remain[s] committed to setting out the rationale for [its] policies as well as their impact".

Impact on individuals

The government recognises the impact of this legislation on the individuals affected and the importance of them receiving appropriate support. Some individuals are facing large tax bills, often as a result of using these schemes over a number of years or receiving large sums through the schemes. HMRC understands that tax bills are stressful and is committed to providing affordable payment arrangements and the enhanced support more vulnerable customers may need.

Evidence to inform this report has been considered from a range of sources including HMRC operational and analytical data; correspondence; reports by, and engagement with, Parliamentary committees including the Treasury Select Committee and the House of Lords Economic Affairs Committees; and Ministerial and official led discussions with representatives of the Loan Charge All Party Parliamentary Group (APPG).

In addition, the APPG provided 70 submissions to HMRC from individuals affected by the charge on DR loans. The Chair of the APPG had volunteered a commitment, when meeting the Chancellor and the Financial Secretary, that these testimonies would all be provided on the basis that the taxpayers concerned would give their consent for HMRC to respond transparently to the many particular personal tax issues that they raised. Unfortunately, that commitment was not sufficiently met, and none of the submissions have been provided on that basis. The government is therefore not able to respond to the detail of those cases in this report. However, HMRC has considered these submissions carefully. Where it has been possible to check the submissions against HMRC's records, HMRC does not accept the claims that are made in a number of the cases. However, HMRC recognises there will be difficult cases and is committed to supporting people affected by the loan charge. The general themes and concerns identified in the submissions have been taken into account in preparing this report.

The government also considered the data from a survey carried out by the APPG and has had sight of an early draft of the APPG's report, but not the final recommendations.

Representations have been made that the use of DR schemes was common practice. The government estimates that around 50,000 individuals have been involved in DR tax avoidance over the years who would be affected by the loan charge. This represents around 0.1% of the UK taxpaying population. Over 99.8% of the population did not use DR schemes.[1]

In addition, HMRC data shows that fewer than 1% of DR scheme users have an outstanding loan from before 2003. Around half of outstanding loans were made in the last seven years and 70% of those affected used these schemes for two years or more.

Supporting individuals

The government recognises that for those affected by the charge on DR loans this may not just be a financial issue. Representations point to the fact that the charge affects not just the individual themselves but also their families. Representations have also highlighted the issue of mental health.

HMRC is committed to supporting all its customers to help them comply with their tax obligations. HMRC is always concerned to ensure that the impact of what are often large tax bills are managed sensitively and the needs of those needing extra support are met. Working alongside the Voluntary and Community Sector (VCS), HMRC continues to improve its support to vulnerable customers and will extend its greatly valued Needs Enhanced Support Service to customers undergoing compliance checks.

The government and HMRC takes the wellbeing of customers extremely seriously. HMRC has reached out to loan charge campaigners and individuals about their concerns over individuals' mental health so that they can ensure people are supported appropriately. HMRC's teams are trained to identify and help vulnerable customers and, where appropriate, refer them to organisations such as Samaritans and Mind.

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[1] Discrepancy due to rounding.

The government and HMRC have recognised the need to support those affected by the loan charge and have already put in place a series of additional measures, some of which have been announced and implemented since the government agreed to lay this report, including:

- a separate DR helpline for customers to use to discuss their affairs
- a new, dedicated team who can offer extra support to more vulnerable customers
- made clear that there is no maximum period over which payment can be made and announced simplified payment arrangements for those settling under the published terms. Those with income which is now below £50,000 who are no longer involved in avoidance can have 5 years to pay without providing detailed supporting information, and those with income below £30,000 can have 7 years
- reassurance that, contrary to some campaigners' claims, HMRC will not force anyone to sell their main home to pay their DR debts
- confirmation that no-one will be disadvantaged from benefiting from the published settlement terms if they contact HMRC with a genuine intention to settle before 5 April 2019 and provide the relevant information (as set out later in this report), even if settlement cannot be reached until after that date
- more HMRC resources in place to support people and agree settlements. There are currently the equivalent of over 500 HMRC full-time staff working directly or indirectly on work related to DR.

Where an individual took reasonable care in completing their tax return, no penalties will be chargeable.

In bringing forward the loan charge legislation, the government decided to draw a final line under all DR loans made since April 1999 and still outstanding at April 2019. Claims have been made that some loans were disclosed but compliance action was not taken. In most cases loans were not disclosed, and in other cases disclosure was partial. The decision to introduce the loan charge reflected the fact that individually litigating the hundreds of different and evolving scheme types was not an effective approach to ending this form of avoidance. Genuine loans are repaid; if loans are not repaid, they are income and tax is payable.

What is clear, however, is the importance of government and HMRC providing those facing this tax charge with the information they need to understand their position and the support to help them to pay what is due over a manageable period. Of the 50,000 people impacted by the loan charge, many have already come forward to agree settlement with HMRC. But many others have not; and it is clear from the information provided that some are worried at the prospect of having to pay what might be a large bill, and the impact that is having on them and their families.

The government notes the significant misinformation that is being circulated and is fuelling unwarranted anxieties. Again, **anyone worried about the charge is advised to contact HMRC to understand their own position.**

HMRC has a number of ways to help those who are genuinely unable to make a full payment of tax on time. HMRC carefully considers a customer's ability to pay on a case by case basis and decisions are based on each individual's personal circumstances. Since the DR loan charge was announced, HMRC has agreed around 6,000 settlements with employers and individuals, worth over £1 billion.

For those who do not settle, the loan charge will apply to the balance of any DR loan outstanding at 5 April 2019, though the tax due is not payable on that date. While employers involved need to pay under PAYE in April 2019, individuals filing a Self-Assessment return have until 31 January 2020 to pay. A longer payment period can be agreed with HMRC if needed. More detail is at Annex C.

The role of promoters and employers

The government has heard concerns that individuals were advised by promoters that these schemes were 'legal' or that they had no choice but to sign up. Others have said they were 'forced' to use them by employers or engagers, or that, even though they paid little or no tax, they were unaware they were participating in a DR scheme at all.

The government understands that some of these schemes were marketed in a way that may have convinced people of their legitimacy. Promoters sold schemes with claims of significant tax savings and often asserted, wrongly, that they had been 'approved' by HMRC. To be clear, **HMRC never approves a tax avoidance scheme, and individuals should treat schemes marketed in this way with caution.** The government also recognises that many of those affected by the charge have said that they did not consider themselves to be engaging in contrived tax avoidance and now consider that they were misled.

The government empathises with anyone who believes they may have been misled by unscrupulous promoters. HMRC now has additional powers at its disposal to tackle promoters and enablers of avoidance schemes, and as part of its strategy to further crack down on this activity, is doubling the resources devoted to this work. This includes identifying, challenging and pursuing in court scheme promoters, as well as using communications to better disrupt and deter promotion activity. Scheme users who believe they have been misled should also consider approaching the appropriate regulator for advice.[2]

Promoters are continuing to market DR schemes. HMRC's recent Spotlight, published on 8 March 2019, warns about new schemes that purport to get around the charge.[3] Individuals should be very wary of such claims by promoters.

HMRC will always seek payment of the charge from employers in the first instance. It is only where HMRC cannot reasonably collect from the employer, for example the employer is no longer in existence or is offshore, that the individual will be liable to pay the tax that is due. Around 75% of the overall yield from the charge on DR loans is expected to come from employers and so far, about 85% of the yield from settlements in advance of the charge have come from employers.[4]

2 The relevant regulator or oversight body varies dependent on the facts of the case. e.g. Financial Ombudsman Service, Financial Conduct Authority, or relevant professional or other regulatory body

3 www.gov.uk/guidance/disguised-remuneration-schemes-claiming-to-avoid-the-loan-charge-spotlight-49

4 Correct as at 31 December 2018

However, the government must also uphold the fundamental principle that the UK tax system operates on the basis that an individual is responsible for their own tax affairs.

Conclusion

Overall the government's view is that the charge on DR loans is the right approach to ensure fairness for the vast majority of UK taxpayers who pay the right amount of tax at the right time and draw a line under this form of tax avoidance. However, the government recognises the difficulties that some people are facing and is working to ensure that all cases are treated sympathetically, with payment terms that reflect the circumstances of each individual case, and appropriate support wherever needed.

Chapter 1
Introduction

1.1 At Report Stage of the Finance Act 2019, the government accepted a new clause 95, which requires the Chancellor of the Exchequer to review the effects of sections 80 and 81 of Finance Act 2019 (which introduced a new 12-year assessment time limit for lost tax that involves an offshore matter or an offshore transfer); and to compare the effects of these sections with other statutory provisions governing time limits for assessment by HM Revenue and Customs, including a comparison with Schedules 11 and 12 to Finance (No.2) Act 2017 (the charge on DR loans). Full detail of New Clause 95 is set out in Annex A.

1.2 In accepting the new clause, the Financial Secretary to the Treasury and Paymaster General, the Rt Hon Mel Stride said:

"The new clause requires the government to lay before the House a report reviewing the effects of changes made by clauses 79 and 80 no later than 30 March 2019. While I should note that such a report will come too soon for the measures to have had a real effect, the government of course remain[s] committed to setting out the rationale for [its] policies as well as their impact.[1]

1.3 The government recognises that there is significant interest from MPs and others in the charge on DR loans. HM Treasury has undertaken serious and comprehensive work in compiling this report. This has included considering evidence from:

- HMRC operational and analytical data
- the previously published Tax Information and Impact Note (TIIN)
- responses to consultation on the draft legislation
- correspondence from MPs, lobby groups and individuals, as well as Parliamentary Questions and Freedom of Information Requests, including those made to HMRC
- media coverage of the charge
- reports by, and engagement with, Parliamentary committees including the Treasury Select Committee and the House of Lords Economic Affairs Committee

[1] Clauses 79 and 80 became Sections 80 and 81 of Finance Act 2019.

- discussion with representatives of the Loan Charge All Party Parliamentary Group (APPG), and their secretariat the Loan Charge Action Group (LCAG), including a meeting attended by the Chair, Vice Chair and other APPG members and the Chancellor of the Exchequer and Financial Secretary to the Treasury. The government also considered the data from a survey carried out by the APPG and has had sight of an early draft of the APPG's report but not the final recommendations

1.4 In addition, the APPG provided 70 submissions to HMRC from individuals affected by the charge on DR loans. The Chair of the APPG had volunteered a commitment, when meeting the Chancellor and the Financial Secretary, that these testimonies would all be provided on the basis that the taxpayers concerned would give their consent for HMRC to respond transparently to the many particular personal tax issues that they raised. Unfortunately, that commitment was not sufficiently met, and none of the submissions have been provided on that basis. The government is therefore not able to respond to the detail of those cases in this report. However, HMRC has considered these submissions carefully. Where it has been possible to check the submissions against HMRC's records, HMRC does not accept the claims that are made in a number of the cases. However, HMRC recognises there will be difficult cases and is committed to supporting people affected by the loan charge. The general themes and concerns identified in the submissions have been taken into account in preparing this report.

1.5 This report explains the background on what DR schemes are and their use, the rationale for the charge on DR loans, the proportionality of the response and the wider action that HMRC has taken against DR schemes. It also recognises the areas where the government has heard feedback from those affected by the charge and has responded to support the individuals concerned, including through extended payment arrangements and additional HMRC resources.

Chapter 2
Time limits

2.1 The government continually considers options for reviewing and updating the tax administration framework (the legislation setting out the rules and features of the tax system), to ensure that it is effective in supporting modern tax administration and keeps pace with the changing economy.

2.2 HMRC's powers are balanced by a comprehensive suite of safeguards for taxpayers built into the tax administration and criminal justice framework, helping to ensure HMRC acts proportionately and sympathetically in response to different taxpayer circumstances.

2.3 As set out in the HMRC Strategy, HMRC works to the principles of even-handedness and proportionality, to help taxpayers to get their tax right and to apply the law fairly. HMRC aims to strike the right balance between robustly challenging tax avoidance, evasion and other forms of deliberate non-compliance, and treating all taxpayers fairly.[1]

2.4 HMRC charges penalties and imposes other sanctions (such as seeking securities or publishing some taxpayer details) where they uncover non-compliance. The amount of the penalty is determined by the amount of tax understated, the behaviour that led to the inaccuracy, and the nature and quality of any disclosure made by the taxpayer to HMRC. A penalty is not payable if a person had a reasonable excuse for failing to meet an obligation or took reasonable care to avoid submitting an inaccurate return.

2.5 Where there are grounds to believe that a taxpayer has been involved in fraud, HMRC considers whether a criminal investigation is appropriate. Criminal investigation is reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate. HMRC reserves complete discretion to conduct a criminal investigation in any case. It is for the Crown Prosecution Service (CPS) to take any decision on whether to prosecute.

2.6 For all taxpayers, from individuals to the largest corporates, HMRC follows the Litigation and Settlement Strategy – a framework to resolve tax disputes in a way that is fair, open, and clear, as well as their published Criminal Investigation Policy.[2]

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1 HMRC Strategy, HMRC, July 2017

2 HMRC's criminal investigation policy, HMRC, September 2018

Time limits for assessments

2.7 Time limits on HMRC's ability to assess and collect taxes through compliance activity generally depend on the taxpayer behaviour and the difficulty of enforcing taxpayer compliance in the particular case. If HMRC finds that an individual has not paid the correct tax, it is able to assess the amount the individual is required to pay to make good the loss of tax.

2.8 As set out in Table 2.A, 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.

Table 2.A: Time limits

Discovery assessments	Years		
	Normal time limit	'Careless' behaviour'/mistakes	'Deliberate' behaviour/fraud
Capital Gains Tax	4	6	20
Corporation Tax	4	6	20
Income Tax	4	6	20
Inheritance Tax	4	6	20
PAYE	4	6	20
VAT	4	4	20
Offshore cases (income tax, inheritance tax, capital gains tax)	12	12	20

Source: HMRC

Time limits for offshore matters (section 80 and 81)

2.9 Sections 80 and 81 to Finance Act 2019 brought in a new 12-year assessment time limit where a loss of tax involves an offshore matter or an offshore transfer. This time limit will not apply if a longer time limit applies – for example, as set out above, a time limit of 20 years already applies for deliberate behaviour and in certain other specified circumstances.

2.10 The 12-year time limit for offshore matters and offshore transfers was introduced to allow HMRC sufficient time to investigate offshore cases where information is often held outside the UK and can take longer to obtain using the exchange of information processes, established under international standards, than it would to obtain similar information held in the UK. The extended time limits provide HMRC with more time to access and evaluate the necessary information to calculate the relevant tax due.

2.11 Analysis of compliance data suggests that the majority of the benefit to the Exchequer of extending the assessment time limit in cases involving offshore matters and offshore transfers is gained within a 12-year period. An extension to 12-years was therefore chosen as the right option to secure lost tax, whilst still retaining the full 20-year assessment time limit for cases of deliberate behaviour.

2.12 The 12-year time limit is not retrospective legislation and does not reopen any closed tax years. It applies for tax years 2013-14 onwards for careless behaviour and from 2015-16 for errors despite reasonable care. Time limits in place before the enactment of sections 80 and 81 Finance Act 2019 already allowed assessments to be made for tax years 2013-14 onwards for careless behaviour (6 years) and from 2015-16 for errors despite reasonable care (4 years). Sections 80 and 81 in effect increase the number of tax years potentially subject to assessment prospectively, one year at a time, until the period that HMRC can assess reaches 12 years.

2.13 HMRC consulted with interested parties as part of the design of this measure to ensure the legislation is a proportionate response to the challenges of ensuring offshore tax compliance and includes appropriate safeguards. The 12-year time limit will not apply where, firstly, HMRC receives information from another jurisdiction which is sufficient to permit HMRC to identify the lost tax and, secondly, where it is reasonable for HMRC to be able to make that assessment before the existing time limit (whether 4 or 6 years) has expired.

2.14 In addition, the 12-year time limit does not apply to assessments arising from transfer pricing adjustments. It only applies where the offshore transfer makes the undeclared tax significantly harder to identify.

Time limits for the charge on disguised remuneration loans (schedules 11 and 12 to the Finance (No. 2) Act 2017)

2.15 Schedules 11 and 12 to Finance (No. 2) Act 2017 introduced a charge on the outstanding balances of DR loans made on or after 6 April 1999. This is a new charge which applies to loan balances as at 5 April 2019, and does not alter time limits for HMRC to raise an assessment. As set out in more detail in Chapter 3 of this report, the loan charge is not retrospective legislation and the provisions of Schedules 11 and 12 do not alter the tax position or the outcomes of any compliance investigations into previous years. Similarly, the charge itself is subject to the same taxpayer safeguards and time limits for assessment set out above.

2.16 The government considers that the charge on DR loans is a proportionate approach to deal with this form of calculated and persistent avoidance, and the legislation includes the opportunity for individuals to remove themselves from the impact of the charge in advance of its introduction on 5 April 2019 by agreeing a settlement with HMRC or repaying the loan. Parliament has legislated this new charge; as is always the case for tax legislation, the charge was taken through the Parliamentary process with scrutiny in the House of Commons. It protects substantial tax revenues and ensures that all users of these schemes pay their fair share of tax towards our vital public services.

2.17 Further details on Sections 80 and 81 – including a comparison with Schedules 11 and 12 of Finance Act (2) 2017 – are set out in Annex B.

2.18 Further detail on the charge on DR loans is set out in Chapter 3.

Chapter 3

Disguised remuneration schemes

3.1 Disguised remuneration (DR) schemes are a form of tax avoidance. These schemes are contrived arrangements that pay loans in place of ordinary remuneration to avoid income tax and National Insurance contributions (NICs). Under these schemes, UK employers receive tax relief on payments when they are made to an offshore trust; and the individual is typically paid enough salary to use up their tax-free personal allowance and protect future entitlement to the State Pension and other benefits, with the majority of their pay being provided by a 'loan'. The 'loans' are not made on commercial terms, and there is no expectation that they will ever be repaid. These loans are therefore, in reality, no different to normal income. The arrangements under which they are made are, and always have been, taxable.

3.2 Contrived tax avoidance is unacceptable. The government believes it is unfair on the vast majority of people who pay their fair share of tax and it deprives the Exchequer of the money needed to pay for vital public services. After repeated attempts by governments and HMRC to tackle these tax avoidance arrangements, the charge on DR loans was introduced in the Finance (No.2) Act 2017 as a way of drawing a line under this avoidance once and for all.

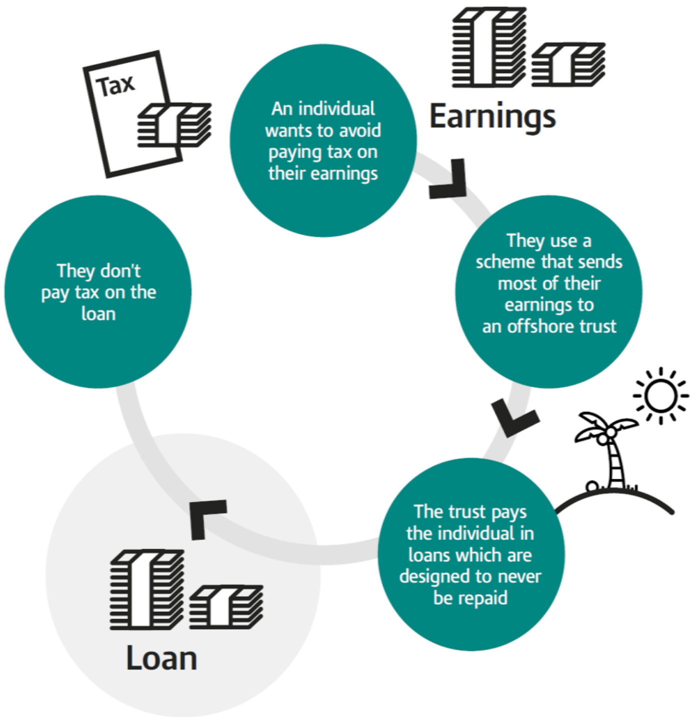
3.3 The following sections set out the rationale for the charge on DR loans, underpinned by the history of DR avoidance schemes, and the support HMRC has put in place to help people pay what they owe.

History of disguised remuneration avoidance

3.4 DR tax avoidance schemes have been in existence in one form or another since the 1990s. Schemes to avoid tax and NICs on earnings and profits evolved over time and were regularly tweaked and refined in an attempt to frustrate HMRC's efforts to secure the tax that was properly due.

3.5 The diagram below sets out a pictorial representation of the way that DR schemes tend to work.[1]

[1] Source: HMRC



3.6 In the 1990s schemes often involved paying salaries or bonuses in different forms, such as gold bullion and fine wines. When legislation closed off these asset-based schemes, more contrived arrangements were devised. These involved exploiting share schemes or diverting money through structures such as Employee Benefit Trusts (EBTs) and Employer Funded Retirement Benefit Schemes (EFRBS). The arrangements were designed to mirror legitimate structures which made them more difficult to identify and challenge.

3.7 These schemes were first used by large employers, such as financial institutions, to deliver purportedly tax-free pay and bonuses to their employees, and later by smaller employers to remunerate their directors and employees.

3.8 Schemes used by contractors became prevalent from around 2004. They operate in a similar way to other DR loans but are used by contractors who enter contractual arrangements based on either:

- employment, or
- trading arrangements (self-employment or partnership)

3.9 Most contractor schemes involve creating offshore "employments" which are artificial constructs set up for the purposes of the avoidance scheme, rather than being a direct employment. These schemes often involve a chain of companies, trusts or partnerships through which money is routed.

3.10 As a response to legislation in 2011 to tackle DR schemes, their use by large businesses decreased, but an increasing number of small and medium sized businesses began using similar schemes. These schemes, which were usually sold by smaller tax agents or tax avoidance scheme promoters, were used primarily as a means to reduce corporation tax liability and to allow directors to extract funds from the business tax-free.

3.11 In a number of cases, the government was told that the primary motivation for individuals entering these schemes was to ease administrative burdens by delegating responsibility for tax and payroll to an umbrella company. The individuals point out that fees were deducted by the scheme providers and allege that, as a result, in many cases, the tax savings were not significant.

3.12 The government accepts that there are legitimate reasons for contractors to use umbrella structures, including as a means to simplify administrative processes. However, it does not follow that by using an umbrella company, individuals were also required to enter into DR arrangements, rather than receiving employment income in the usual way.

Who used disguised remuneration schemes?

3.13 HMRC data shows that around 50,000 individuals have made use of DR schemes. This represents around 0.1% of the taxpayer population and less than 2.5% of an estimated population of 2 million freelancers in the UK. There is no single estimate of the number of freelancers in the UK, however for this purpose it is defined as contractors working in highly-skilled managerial, professional and technical occupations. This estimate is based on data from the Association of Independent Professionals and the Self-Employed.[2]

3.14 HMRC data shows that those who made use of DR schemes worked in the following sectors:

Table 3.A: Users of DR schemes by sector

Sector	Percentage of DR user population
Business services	65%
Construction	10%
Engineering	4%
Medical and education services	3%
Accountancy	2%
Dentistry	2%
Retail distribution	2%
Other professional and technical services	2%
Social and community services	<2%
Recreational services	<2%
Other financial activities	<2%
Other transport and storage	<2%

Source: HMRC

[2] www.ipse.co.uk/resource/exploring-the-rise-of-self-employment-in-the-modern-economy-pdf.html

3.15 The data shows that DR scheme use was more common in some sectors than others, but that the vast majority of freelancers did not make use of such schemes. The government believes it is unfair on the vast majority of both the freelance and wider population to allow DR tax avoidance.

3.16 The APPG has provided HMRC with 70 submissions from individuals impacted by the charge. These set out details of the schemes used by those individuals and their assessment of the impact the loan charge is likely to have on them. The APPG has also published the results of a survey of loan charge users. The government has considered a summary of the evidence from both of these sources, alongside HMRC analysis, to better understand the views of those individuals who used DR schemes and the impact the DR loan charge will have on them.

3.17 In terms of quantifiable data, much of the analysis provided by the APPG supports HMRC analysis. Data on industry sector broadly aligns with HMRC data, for example, that shows the majority of scheme users are working in Information Technology, Financial Services and Oil and Gas. Other claims, such as the assertion that schemes were widespread (which is also made in correspondence received from individuals who used DR scheme since the charge was announced in 2016) are not supported by analysis, as set out above.

3.18 Many of the 70 submissions provided to HMRC state that in advance of the charge on DR loans people assumed HMRC was content with their affairs (37%); that their scheme use was fully disclosed to HMRC (19%); or that scheme use was disclosed with no enquiry opened (9%). However, in many cases the detail provided has not enabled HMRC to identify the individual and verify their exact circumstances. Where it has been possible to identify the individual from the data provided, HMRC does not accept the claims that are made in a number of cases. It is notable that a large proportion did not state that they disclosed their scheme use to HMRC when filing their self-assessment tax returns.

3.19 The government has heard claims individuals were compelled to use a DR scheme, or did not realise what type of arrangement they were entering into. HMRC has not seen cases that support the claim of individuals being forced to use a DR scheme. HMRC will consider the details of each case individually but in principle individuals are responsible for their own tax affairs and it is their responsibility to ensure they pay the right tax and disclose their tax affairs to HMRC. Employers cannot dictate what someone puts on their tax return.

3.20 As the House of Lords report published in December 2018 noted,[3] many scheme users who provided evidence to the committee were aware of the loans and had no intention of repaying them. Taking out these loans would often have involved signing multiple agreements, and most people will have been able to see from their payslip that the money they received was not being taxed.

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[3] House of Lords Economic Affairs Committee, 4th Report of Session 2017-19, publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/242.pdf

3.21 The government has received a number of representations that the employer should be liable for the tax due. A review of HMRC data shows that approximately 10,000 companies used DR schemes. These companies range from small and medium sized businesses to large multinationals, though is likely to be primarily made up of close companies.

3.22 HMRC pursues employers who have used DR schemes for the tax that is due wherever possible. HMRC only goes to the employee to settle this liability where it cannot reasonably be collected from the employer, for example, where the employer is offshore or no longer in existence when the charge arises. Around 75% of the overall yield from the charge on DR loans is expected to come from employers. So far, about 85% of the yield from settlements in advance of the charge has come from employers.[4]

3.23 The arrangements used by many contractors mean the employer entity was only created for the purposes of the avoidance scheme. The "employer" was created offshore and/or has since been dissolved, which means the liability cannot be reasonably collected from the employer. In these cases, HMRC can only collect the tax liability from the individual who benefitted from the scheme and received the income without deduction of tax.

3.24 Many individuals have reported facing very large bills where the corresponding income that has not been taxed results in a significant DR debt. Of the case studies provided by the APPG, many of the amounts shown were much higher than the average settlement amounts based on HMRC data. The table below includes some examples provided by HMRC of how the earnings and tax avoided translates into a tax bill.

Table 3.B: Examples of how earnings and tax avoided translates into a tax bill

Size of tax bill	Can be reached by:
£20,000	Earning: £48,200 a year in 2013-14 and 2014-15 £96,400 in total earnings. £18,000 of tax avoided. £2,000 interest payable, or, Earning £36,600 a year in 2004-05 and 2005-06 £73,200 in total earnings. £13,500 of tax avoided. £6,500 interest payable, or, Earning £38,850 a year in 2012-13, 2013-14 and 2014-15 £116,550 in total earnings. £17,800 of tax avoided. £2,200 interest payable, or, Earning £70,000 in 2013-14 £70,000 in total earnings. £17,800 of tax avoided. £2,200 interest payable

[4] Correct as at 31 December 2018

£50,000	Earning: £82,000 a year in 2013-14 and 2014-15 £164,000 in total earnings. £45,000 of tax avoided. £5,000 interest payable, or Earning £64,000 a year in 2004-05 and 2005-06 £128,000 in total earnings. £35,000 of tax avoided. £15,000 interest payable, or Earning £27,000 a year between 2005-06 and 2014-15 £270,000 in total earnings. £40,000 of tax avoided. £10,000 interest payable
£350,000	Earning £421,000 a year in 2013-14 and 2014-15 £842,000 in total earnings. £320,000 of tax avoided. £30,000 interest payable, or, Earning £331,000 a year in 2004-05 and 2005-06 £662,000 in total earnings. £250,000 of tax avoided. £100,000 interest payable, or, Earning: £94,000 a year between 2005-06 and 2014-15 £940,000 in total earnings. £280,000 of tax avoided. £70,000 interest payable
£700,000	Earning £817,000 a year in 2013-14 and 2014-15 £1.63m in total earnings. £630,000 of tax avoided. £70,000 interest payable, or, Earning £641,000 a year in 2004-05 and 2005-06 £1.28m in total earnings. £500,000 of tax avoided. £200,000 interest payable, or, Earning £165,000 a year between 2005-06 and 2014-15 £1.65m in total earnings. £565,000 of tax avoided. £135,000 interest payable
Source: HMRC.	*Figures subject to rounding.*

HMRC has provided anonymised case studies of individuals affected by the charge on DR loans (based on actual cases). They show a range of users caught by the charge and indicative examples are presented below.

Gurpreet: 54 year-old IT consultant from Bristol

- the scheme Gurpreet used promised take home pay of up to 90%

- the loan agreement he signed when he entered into the arrangements meant he became an employee of a partnership resident in the Isle of Man
- he received a monthly payslip showing a lower amount of employment income subject to tax and National Insurance as well as a loan amount from which no tax or duties were deducted
- Gurpreet received total income of £371,600 for the two tax years 2009-10 and 2010-11 combined. He declared £25,700 of this income to HMRC
- this left £345,900 of additional loan payments that he did not declare, avoiding £136,500 of tax and NICs
- in 2009-10, Gurpreet received average monthly salary of £1,200 and an average monthly loan amount of £12,800. In 2010-11, Gurpreet's average monthly salary was £960 whilst the average monthly loan amount was £15,900
- Gurpreet used a DOTAS disclosed employment scheme and included the SRN on his return for both periods
- HMRC opened an enquiry into the 2010-11 return on 05 December 2012 and issued a discovery assessment for 2009-10 due to the inaccuracy in Gurpreet's return which was a result of careless behaviour
- Gurpreet settled with HMRC under a contract settlement in March 2018
- Gurpreet settled for £154,000 which included £17,500 of interest
- Gurpreet had already paid Accelerated Payment Notices in 2015 so the remaining amount to pay was £78,000
- this amount was paid in full in April 2018. No penalties were charged
- because he has settled his tax on the loan amounts in full, the loan charge will not apply to Gurpreet

Patricia: 48 year-old consultant from Essex

- Patricia used a contractor loan scheme for 2 years. The loans were received through a company based in Hong Kong. The scheme wasn't declared under DOTAS
- Patricia received total income of £77,518 for the two tax years 2014-15 and 2015-16 combined. She declared £26,032 of this to HMRC
- this left £51,486 of additional loan payments that she did not declare, avoiding £10,354 of tax and NICs
- HMRC opened an enquiry into the 2014-15 return on 01 July 2016 and opened an enquiry into the 2015-16 return on 09 June 2017
- Patricia settled her tax affairs in full, including interest of £529. No penalties were charged
- because she has settled her tax on the loan amounts in full, the loan charge will not apply to Patricia

Beth: 34 year-old social worker from Manchester

- Beth used an employment-based scheme for two tax years
- Beth was introduced to a tax avoidance scheme by her recruitment agency. The scheme promised her higher take home pay and her employment contract didn't mention loans
- She received a payslip by email that showed she earned an average gross monthly salary of £790. On the same day she received a separate loan amount for the rest of her income, averaging £2,100 per month
- Beth received total income of £36,000 for the two tax years 2016-17 and 2017-18 combined. She declared £11,000 of this income to HMRC
- this left £25,000 of additional loan payments that she did not declare, avoiding £5,300 of tax and NICs
- she didn't declare her loan amounts on her 2016-17 return and hadn't yet submitted her 2017-18 return when HMRC challenged the arrangements
- Beth was still in time to submit her 2017-18 return. She entered £19,000 of loans as employment income for the year and was taxed accordingly and the remaining £6,000 of loans were settled by way of contract settlement
- tax, student loan payment and interest due on this totalled £1,500. No penalties were charged
- a flexible payment plan was put in place for Beth. An initial lump sum of £500 is required by 05 April 2019, followed by equal monthly instalments of £55 for 18 months
- because she has settled her tax on the loan amounts in full, the loan charge will not apply to Beth

HMRC action to address disguised remuneration avoidance

3.25 The announcement of the charge on DR loans at Budget 2016 represents the culmination of a range of government and HMRC actions to challenge the use of DR tax avoidance schemes, including:

- HMRC enquiries into DR scheme users
- warnings against use of DR schemes
- action against promoters of DR schemes
- litigation against DR users
- targeted DR anti-avoidance legislation, and,
- targeted settlement opportunities for DR scheme users

3.26 This section will set out the action HMRC has taken prior to the introduction of the charge on DR loans and the difficulties faced in each of these approaches.

HMRC Enquiries into DR scheme users

3.27 HMRC has opened tens of thousands of enquiries into thousands of businesses and individuals who have used DR schemes, with the first cases having been opened before 1999.

3.28 However, DR tax avoidance schemes can be difficult to identify, and the schemes are complex and involve multiple parties, not simply a worker and their engager. Depending on the schemes, there could also be trusts, offshore employer(s) and employment agencies. Different parts of the overall picture may be reported on different tax returns sent in by one or more of these parties at different times. HMRC seeks to identify aspects of avoidance and bring all the information together, and enquiries and assessments are likely to be needed on one or more of the parties involved.

3.29 HMRC has faced challenges in identifying and investigating use of DR schemes. This is due to the combined challenges of identifying that avoidance had taken place, investigating the nature of that avoidance across multiple parties and taking the necessary action to open enquiries and raise assessments. This section sets out some of these challenges in more detail. However, HMRC did open tens of thousands of enquiries and made hundreds of assessments on time.

3.30 To open an enquiry or assessment, HMRC needs to know about the scheme use. Cases are difficult to spot without full disclosure because schemes use vehicles such as EBTs that are widely used for entirely legitimate aims.

3.31 Of the individuals that did report the use of a scheme to HMRC, a range of approaches were taken by them on disclosure. These ranged from full disclosure on a tax return to the inclusion of limited information in the wrong part of the return, or the inclusion of relevant information amongst other substantial documents.

3.32 The introduction of the Disclosure Of Tax Avoidance Schemes (DOTAS) regime in 2004 requires avoidance scheme promoters and those who used the scheme to notify HMRC of their avoidance scheme usage, where certain hallmarks are present. Each scheme is issued with a scheme reference number (SRN) which must be reported to HMRC.

3.33 While the DOTAS regime requires scheme users to notify HMRC of their avoidance scheme use, it does not ensure that a full and accurate picture is presented in every case. And not all DR schemes were required to be disclosed from introduction of the DOTAS regime; subsequent updates to DOTAS required more schemes to be disclosed.

3.34 HMRC has seen varying degrees of disclosure ranging from the use of a DOTAS registered scheme where the taxpayer includes the correct reference in the correct section of their return, to the use of a non-disclosed scheme, to someone who puts nothing on their return. A review of HMRC data suggests that less than half the known DR schemes were disclosed under DOTAS.

3.35 In cases where DOTAS numbers were provided on a tax return, HMRC routinely opened enquiries, raised assessments and, where appropriate, pursued cases to litigation.

3.36 However, many scheme users and promoters purposefully did not make a full disclosure, often in an attempt to make HMRC's compliance effort more difficult. Submissions reviewed by HMRC indicate that some of those using these schemes followed the advice of the promoter in completing their tax return, and in some cases allowed the promoter to complete returns on their behalf. It is clearly in the promoters' best interests to ensure that HMRC does not open enquiries and this is likely to have been reflected in the form and extent of the disclosures made.

3.37 The government has heard claims that individuals were under the misapprehension that notification of a scheme under DOTAS and the issuance of an SRN implied HMRC had accepted these tax avoidance arrangements. HMRC does not and never has approved tax avoidance schemes. Where an SRN has been issued under the DOTAS regime, this does not mean the scheme has been "approved" or that the arrangements work[5]. In fact, the opposite applies. An SRN should indicate that scheme users are being put on notice that it is likely HMRC will want to investigate their tax affairs. Some schemes were also not disclosable under the DOTAS regime as they did not trigger the hallmarks defined at that time.

Warnings against use of DR schemes

3.38 Successive governments have been clear that DR schemes do not work, warning strongly against the use of these tax avoidance schemes. Specifically, in 2004, Dawn Primarolo, the then Paymaster General, tabled a Written Ministerial Statement making it clear that the government would close down employment-related tax avoidance arrangements, and would legislate to ensure the proper amount of income tax and NICs are paid on remuneration from employment.[6]

3.39 HMRC has regularly and publicly set out its position in the media and in publications for the accountancy profession, such as its "Spotlight on tax avoidance" series.

3.40 One of the first Spotlights in 2009 was focussed on DR arrangements. Since then there have been a further number of Spotlight articles on DR between 2009 and 2019.[7] These make clear that if individuals use a tax avoidance scheme, HMRC will seek full payment of any tax and NICs due, plus the appropriate interest and penalties.

5 www.gov.uk/guidance/disclosure-of-tax-avoidance-schemes-overview

6 publications.parliament.uk/pa/cm200405/cmhansrd/vo041202/wmstext/41202m02.htm

7 www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight

Actions against promoters of DR schemes

3.41 The government understands that in many cases individuals and businesses have said they took what they considered to be professional advice before entering into a DR avoidance scheme. The government is concerned at the role promoters played in devising and selling these types of schemes and it has taken action to deter the marketing and use of avoidance schemes. It has removed the economic benefit of promoting avoidance by increasing the penalties and consequences for those who fail to comply with disclosure rules, as well as those who devise, enable or use these schemes.

3.42 HMRC has been investigating over 100 promoters and others involved in marketing tax avoidance, including many who sold DR arrangements, and has dedicated teams in place to challenge them. Dozens have been shut down for good as they have found it harder to sell these contrived arrangements. Recently, HMRC has taken litigation action against 10 individuals or businesses that it considers to be major avoidance scheme promoters for failure to disclose under the DOTAS regime, with others deciding to disclose to avoid litigation.

3.43 HMRC also uses strengthened existing and new powers, like the Promoters of Tax Avoidance Scheme (POTAS), introduced in Finance Act 2014, and Enablers Penalty, introduced in Finance (No. 2) Act 2017.[8] 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. Other powers mean promoters can incur a penalty of up to £1 million where they do not provide clear and accurate information to their clients.

3.44 HMRC considers criminal investigation and referrals to prosecuting authorities where appropriate. There are no criminal offences specific to the promotion of tax avoidance schemes but HMRC may conduct a criminal investigation into an individual's actions when, for example, in pursuing a tax avoidance scheme reliance is placed on a false or altered document or the material facts are misrepresented. Records held since April 2016 show that more than 20 individuals have been convicted for offences relating to arrangements which have been promoted and marketed as tax avoidance schemes.

3.45 HMRC also proactively reports scheme promoters to the Advertising Standards Authority when they make misleading claims and works with professional accountancy bodies, the legal profession and other legal and financial regulators to drive out the promotion of tax avoidance. Scheme users who believe they have been misled should also consider approaching the appropriate regulator for advice.[9]

3.46 As part of an ongoing programme of initiatives, and building on the solid foundation of recent legislative powers given to HMRC by Parliament, in 2019-20 HMRC will double the resources involved in tackling promoters. This includes identifying, challenging and litigating promoters, as well as using

[8] https://www.gov.uk/government/publications/promoters-of-tax-avoidance-schemes-guidance

https://www.gov.uk/guidance/tax-avoidance-enablers-of-defeated-tax-avoidance-legislation

[9] The relevant regulator or oversight body varies dependent on the facts of the case. e.g. Financial Ombudsman Service, Financial Conduct Authority, or relevant professional or other regulatory body.

communications to better disrupt and deter promotion activity. Early initiatives will include encouraging greater public engagement with reporting avoidance schemes and their promoters, using the existing Avoidance Hotline, and working even more closely with other agencies (including regulators such as the Financial Conduct Authority) to bring greater pressure to bear on this industry.

Litigation against DR users

3.47 HMRC has successfully challenged DR schemes through the courts.

3.48 The taxpayer's appeal in RFC2012 v Advocate General (known as "Rangers") became an effective lead case in relation to most schemes using EBTs. There, payments were made by the employer football club into offshore trusts and the trust typically loaned the money to the players. The hearings started in the Tax Tribunal in 2010, and culminated in a Supreme Court decision in 2017. The Supreme Court held unanimously that the contributions into the trust were subject to income tax and NICs. The case was decided under the law as it stood at the time of the transactions, from 2001 to 2009. The decision affirmed HMRC's clear and longstanding position that the schemes were tax avoidance and didn't work.

3.49 There were further cases, involving hundreds of appeals, in 2017 which concerned similar arrangements entered into where contributions were made into an offshore trust for employees, with loans being made by the trust.[10] In each of these cases, which relate to years between 2004 and 2008, the Tribunal held that the payments were subject to income tax and NICs.

3.50 HMRC has sought to apply the Rangers precedent to all other cases which used similar arrangements and follower notices have been issued following the Rangers decision. These are issued to known users of tax avoidance arrangements that are similar to those which a Court has found not to work.

3.51 HMRC's litigation strategy has traditionally focused on cases with higher yield (direct and associated) and those most likely to result in a clear outcome, as was the case with Rangers. The aim is that these lead cases establish a judgment that other avoidance cases follow.

3.52 Rangers was not the first time that HMRC successfully challenged DR schemes. The first litigation case directly related to contractors was Boyle v HMRC, decided by the First Tier Tribunal in March 2013. The scheme entered into litigation in 2008 and the judgment, published in November 2013, found comprehensively in HMRC's favour. In this case, the loans were made in a rapidly depreciating currency so that any repayments would have been of economically negligible value. The Tribunal held that the loans were not genuine and were subject to income tax and NICs.

3.53 But despite these court decisions (and settlement opportunities offered to scheme users to settle on more favourable terms as set out in the next section), many employers and individuals who have used a substantial

[10] Landid Property v HMRC, Allen (Concrete) v HMRC, La Vita Pizzeria v HMRC, OCO v HMRC and Toughglaze (UK) v HMRC.

number of DR avoidance schemes have still not settled with HMRC and paid tax.

3.54 Many scheme promoters – those who put together DR schemes and sell them to individuals for a fee – claim that their arrangements are unique and that, as a result, the Rangers decision does not apply to their scheme. This forces HMRC into protracted litigation with each individual scheme. HMRC has found that promoters often seek to delay progress at every opportunity, through a variety of methods, adding many years to an already lengthy process. HMRC has also faced challenges in obtaining information about schemes where they involve offshore arrangements.

3.55 There are also some schemes which were designed to deliberately circumvent the anti-avoidance legislation enacted in 2011 and where the Rangers decision is not directly applicable. These schemes are newer and often even more contrived than previous arrangements. HMRC has always maintained that these schemes were ineffective, but they would have to be litigated separately.

3.56 Frequent adaptation of schemes in response to HMRC's efforts to tackle them is a feature of DR avoidance. Schemes are regularly reinvented and changed, with individuals and businesses who used them over many years signing multiple contracts with different parties, for each period. The loan charge will apply to more than 250 different types of loan schemes.

Targeted DR anti-avoidance Legislation

3.57 In 2011 the government introduced targeted anti-avoidance legislation to tackle DR schemes. This aimed to put beyond doubt that DR schemes are ineffective and discourage their use. However, more than 50% of DR loans now outstanding were taken out after this legislation was introduced.

3.58 The government's aim to address tax avoidance through disguised remuneration was set out by the then Exchequer Secretary to the Treasury the Rt Hon David Gauke MP in a Written Ministerial Statement.[11] Legislation was announced at Autumn Statement 2010 and enacted as part of Finance Act 2011. These rules give rise to an employment income charge on employment income paid through a third party as if it were paid directly to the employee by the employer, and can be found at Part 7A of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003. The government considers this legislation put beyond doubt that any DR schemes entered into since December 2010 are ineffective. DR schemes prior to December 2010 remain ineffective as shown in the courts.

3.59 In an effort to counter avoidance more generally, Parliament also enacted a General Anti Abuse Rule (GAAR) in Finance Act 2014, under which abusive arrangements aimed at obtaining tax advantages are counteracted. This applies to DR schemes. Since then the GAAR Panel has considered eight

[11] Publications.parliament.uk/pa/cm201011/cmhansrd/cm101206/wmstext/101206m0001.htm

different DR schemes, and found each of them to be abusive and therefore liable to counteraction under GAAR.[12]

3.60 While the new legislation in 2011 was effective in largely discouraging large employers from using this type of tax avoidance scheme, the schemes evolved in attempts to get around the legislative conditions and continued to be sold and used. Increasingly convoluted arrangements that attempt to get around the legislation have included schemes where a loan is written-off, or include contrived loan repayments. HMRC continues to see schemes devised which claim to get around the charge on DR loans and has taken action to warn people and businesses of the risks.

3.61 One of these attempts to try to get around the reforms was the increased availability and use of schemes aimed at avoiding income tax and NICs on self-employed trading profits. These schemes seek to exclude an element of the taxable profits of the self-employed individual, whilst at the same time using that element to provide a loan or other benefit (either to themselves or to persons connected with them), and so attempt to avoid a charge to income tax and NICs on what otherwise would have simply been trading income.

3.62 The government took action to counter these schemes through legislative change and following public consultation. Section 35 Finance (No.2) Act 2017 introduced, from 6 April 2017, a tax charge on trading profits disguised as other receipts.

3.63 This also included a tax charge on any loans sourced from avoidance arrangements that were still outstanding at 5 April 2019, in line with the wider loan charge policy. Repayment of the loans or settlement of outstanding tax liabilities by 5 April 2019 prevents the application of the charge on DR loans.

Settlement Opportunities

3.64 HMRC has provided people with several formal opportunities to settle their use of DR schemes, both prior and subsequent to the announcement of the introduction of the charge. HMRC's approach continues to be to encourage people to settle their tax affairs. Guidance on HMRC's settlement terms is available on gov.uk.[13]

The EBT Settlement Opportunity (EBTSO) – April 2011 to July 2015

3.65 This opportunity was available to users of EBT avoidance schemes and details announced through press releases. HMRC contacted around 5,000 employers known to use DR schemes and their agents encouraging settlement under the EBTSO. The majority of those contacted did not settle.[14]

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12 The GAAR Advisory Panel is an independent, unpaid body made up of experts with legal, accountancy and commercial backgrounds. They provide external scrutiny to GAAR cases by considering whether the tax arrangements entered into are a reasonable course of action.

13 www.gov.uk/guidance/disguised-remuneration-settling-your-tax-affairs

14 www.gov.uk/government/publications/employee-benefit-trusts-settlement-opportunity/employee-benefit-trusts-settlement-opportunity

3.66 Those using these schemes could settle by paying income tax, class 1 NICs and late payment interest on the sums contributed into a trust for an employee, or allocated within the trust for the employee by the EBT trustees, depending on the facts of scheme use.

The Contractor Loan Settlement Opportunity (CLSO) - July 2014 to September 2015

3.67 This opportunity was available to users of employment based contractor loans schemes which operated until 5 April 2011. Details were published on gov.uk.[15] HMRC wrote to over 11,000 scheme users and their agents. A press release was issued ahead of its closure encouraging scheme users to come forward. HMRC also promoted the opportunity through agent updates and calls with larger agents and representative bodies.

3.68 To settle, scheme users had to pay tax on DR loans they received in all years to 2010-11 where HMRC had an open enquiry or a valid discovery assessment, along with late payment interest. Like the EBTSO, the majority of those contacted did not settle.

The Post EBTSO (also referred to as para 59 settlement opportunity) – Budget 2016 to March 2017

3.69 Spotlight 31 invited employers or employees to settle by paying income tax, class 1 NICs and late payment interest on the sums contributed into a trust for an employee, or allocated within the trust for the employee by the EBT trustees, depending on the facts of scheme use.[16] Only a small number came forward to settle.

The charge on DR loans – why the government decided to legislate

3.70 The government's view remains that the purpose of DR arrangements – of money loaned each month with no intention to repay and in place of normal salary or other standard income payment – is to avoid tax. The government considers it is unfair to the vast majority of taxpayers who have always paid the right amount of tax at the right time and did not engage in tax avoidance to allow a small minority to benefit from contrived arrangements of this sort.

3.71 Despite the variety of actions to challenge and prevent DR scheme usage over the course of the preceding decades, including litigation and legislation as described in this document, HMRC continued (and continues in 2019) to see evidence of their use. These include specific schemes being marketed from offshore locations such as Cyprus, Malta, and the Isle of Man that claim to provide for the avoidance of the loan charge. These schemes continue to be highlighted in HMRC's Spotlight series. HMRC continues to warn the public against these marketed avoidance schemes and are communicating this message through trade and representative body

15 https://www.gov.uk/government/publications/tax-on-contractor-loans/tax-on-contractor-loans-extended-time-limit-and-more-information

16 https://www.gov.uk/government/publications/employee-benefit-trust-settlements-after-31-july-2015/employee-benefit-trust-settlements-after-31-july-2015

publications, as well as working in partnership with other regulators. It is HMRC's strong view that these schemes do not work, and they will continue to clamp down on the promoters wherever possible.

3.72 The government decided in 2016 that the charge on DR loans was the most appropriate option to tackle both existing DR schemes and prevent future use of DR schemes; and the policy was estimated to yield £3.2 billion over 5 years for the Exchequer.

3.73 The loan charge is a charge on outstanding DR loans made since 6 April 1999 (only 1% of loans were taken out before 2003). It will be charged on all outstanding balances at 5 April 2019, taxing those balances as income or trade profits in the tax year 2018-19. The intention of the charge is to encourage settlement for the right amount of tax that is due for the periods in which DR tax avoidance schemes were used. The government agreed to give three years for people to act by agreeing a settlement with HMRC, which would stop the charge arising.

3.74 Following the announcement of the charge at Budget 2016, the government undertook an extensive consultation process, setting out the details of the way it would work. The consultation documents can be found on gov.uk.[17]

3.75 Parliament passed the charge on DR loans into law in Schedules 11 and 12 to the Finance (No. 2) Act 2017.

Who will pay the charge on DR loans and when?

3.76 Where the loan has been repaid, or where the tax that is due has been settled with HMRC, no charge will arise.

3.77 The government has seen evidence which suggests that there may be some confusion about when the charge on DR loans must be paid. Where the individual has not come forward with a genuine intention to settle the charge will apply to outstanding loan balances at 5 April 2019. **The charge does <u>not</u> need to be paid on 5 April 2019.**

3.78 Those impacted by the charge who have not agreed, or started the process of agreeing, a settlement by 5 April 2019 will need to submit an information return to HMRC setting out their loan balance by 30 September 2019. They will then need to file a 2018-19 Self Assessment return and **pay the charge by 31 January 2020**.

3.79 Individuals who were in an employment-based DR scheme, where the employer with whom they had the arrangement still exists and is based in the UK, will need to tell the employer what their outstanding loan balance is by 15 April 2019. The employer will then need to calculate and pay the PAYE liability on the loan income by 19 April 2019 (by post) or 22 April 2019

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[17] www.gov.uk/government/consultations/tackling-disguised-remuneration-technical-consultation

www.gov.uk/government/publications/disguised-remuneration-transfer-of-liability-technical-note/tackling-disguised-remuneration

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644308/Disguised_remuneration_draft_legilsation.pdf (online). 75% of the yield the charge on DR loans is expected to raise is from employers.

3.80 Where the employer no longer exists or is offshore, individuals will need to provide an information return to HMRC by 30 September 2019 and file a 2018-19 Self Assessment return and pay the charge by 31 January 2020. Appeal rights are unaffected and individuals can appeal any HMRC decision on this Self Assessment return in the usual way.

3.81 Full details of this process are set out at Annex C.

Is the loan charge retrospective?

3.82 Despite HMRC's continued efforts to challenge DR scheme use, some correspondents and commentators have criticised the charge, asserting that the legislation is retrospective. The government is clear that the legislation is not retrospective. The charge on DR loans applies a tax charge to outstanding loan balances at 5 April 2019. It 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. Those who used the schemes can escape the charge by repaying the balances of any outstanding loans. Alternatively, they can seek to agree a settlement of the tax due on their income disguised as a loan, which was due under the legislation that existed at the time.

3.83 While the government recognises the strength of feeling and concerns of those affected by the charge, it also has to take account of the impact of DR tax avoidance on the majority of the over 99.8% of UK taxpayers that have not engaged in this type of avoidance.

3.84 A number of individuals expressed the view that the charge on DR loans is contrary to the rule of law. The government rejects this assertion. The charge on disguised remuneration loans was legislated in Finance (No.2) Act 2017 following Parliamentary scrutiny.

3.85 Some have asked that the charge is restricted only to DR loans entered into after 2011 or 2017. The government believes this would be unfair to ordinary taxpayers as it would mean enquiries for earlier years would continue to have to be pursued through the courts or would allow some people to continue to benefit from highly contrived tax avoidance.

3.86 Suggestions have also been made that the charge is amended so that tax is payable at a reduced rate. However, agreeing a discounted settlement would be unfair on the vast majority of taxpayers who pay their taxes on time and in full.

What years does the charge apply to?

3.87 The charge on DR loans will apply to all outstanding DR loan balances at 5 April 2019, taxing them as income or trade profits in the tax year 2018-19. This is not dependent on the status of any ongoing enquiries or assessments for the years in which the loans were made.

3.88 The government has heard concerns about whether it is appropriate for those who are settling in advance of the loan charge to do so for periods where HMRC has not opened an enquiry, or made an assessment, within the statutory time limits.

3.89 HMRC has opened tens of thousands of enquires into users of DR schemes over the past 20 years as part of a range of actions to challenge their use, which also includes legislative change and litigation. However, HMRC has faced challenges as new schemes are devised which try to get round the legislation.

3.90 During this time, HMRC's ability to open enquiries and make assessments for earlier years has depended on whether the taxpayer disclosed complete and accurate facts in their tax return. That was often not the case despite clear government statements on its commitment to tackling this form of avoidance.

3.91 The APPG survey suggests that there is a poor understanding amongst affected taxpayers of HMRC's powers to raise assessments in relation to their personal situations, in particular the years considered to be unprotected.[18] It is therefore likely that some taxpayers consider that HMRC is out of time to open an enquiry or to make an assessment under normal time limits, when in fact, HMRC is still in time to do so.

3.92 The loan charge announcement in 2016 gave people a three year window to repay their loans to stop the loan charge applying. If loans have not been repaid by 5 April 2019, the charge will apply to the outstanding balance if tax has not already been paid on it. This approach has been taken to draw a line under this form of avoidance. HMRC recognises that in a small number of cases there may have been disclosure, but compliance action was not progressed at the time. However, any previous disclosure of a scheme does not determine whether the tax is due on loans that have not been repaid. HMRC recognises there will be difficult cases and is committed to supporting people affected by the loan charge.

3.93 The intention of the charge is to encourage settlement for the right amount of tax that is due for the periods in which DR tax avoidance schemes were used. Settling under the published settlement terms not only gives certainty that the charge on DR loans will not apply but gives the opportunity to take advantage of a range of benefits.

3.94 Those that wish to take advantage of these benefits should agree a settlement with HMRC for all the years for which they still have loans outstanding. No late payment interest is payable for unprotected years.

3.95 If someone wants to settle only for years for which an assessment has been made or an enquiry has been opened, they can do so without the benefit of the concessions included in the published settlement terms. Where they do not settle a year for which a loan is outstanding, they will have to pay the charge on DR loans for that year, unless the loan is repaid.

18 http://www.loanchargeappg.co.uk/wp-content/uploads/2019/03/Loan-Charge-APPG-Loan-Charge-Inquiry-Survey-Report-March-2019.pdf

Calls to delay the loan charge

3.96 The government has received representations that the charge should be delayed, for example by six months. The announcement of the charge on DR loans at Budget 2016 gave individuals and businesses a three-year period to repay their DR loans, or to agree a settlement with HMRC before the charge takes effect.

3.97 HMRC has provided several formal opportunities for individuals to settle their use of DR schemes with HMRC both prior and subsequent to the announcement of the introduction of the charge. Individuals impacted by the charge who have not agreed a settlement, or come to HMRC with a genuine intention to settle by 5 April 2019 and provided the relevant information, have until 31 January 2020 to pay the charge. HMRC will work with all individuals to reach a manageable payment plan wherever possible.

3.98 The government considers that a delay would add to the uncertainty for those who need to come forward and that the charge remains the right way to tackle the use of DR avoidance schemes and ensure scheme users pay their fair share. The government believes that the best option for those individuals who are worried about the introduction of the charge on DR loans is to come forward and speak to HMRC as soon as possible.

Supporting those affected by the charge

3.99 While the government believes that the loan charge is the best way to draw a line under DR scheme use, it recognises that the charge will have a significant impact on some who have used DR schemes. In particular, the government notes the views expressed by the House of Lords Economic Affairs Finance Bill Sub-Committee and the Treasury Select Committee, as well as the APPG and correspondence from MPs on behalf of constituents.

3.100 The government has listened carefully to concerns from individuals about the impact of having to pay large tax bills. It recognises that the charge on DR loans is not just a financial problem but will have a significant personal impact on some who have used these schemes.

3.101 The government and HMRC have heard the concerns of those affected by the charge, in particular the difficult cases on which representations have been made. In many cases these are life changing amounts and the government does not underestimate the impact that the charge will have. In the tax information and impact note (TIIN) published following its announcement at Budget 2016, HMRC clearly set out that it expected that some individuals would be unable to repay their loans, agree a settlement with HMRC, or pay the loan charge, and that some, as a result, might become insolvent.

3.102 This prospect is a major concern for many of those affected, with some pointing to issues of family breakdown, career and mental health problems.

3.103 Of the submissions provided by the APPG, over half point to the impact of the charge on DR loans on their mental health (59%). HMRC has prioritised these submissions for review to ensure individuals are supported by the appropriate teams.

3.104 The government and HMRC have listened with concern to reports about the effects on the mental health of those facing the charge, as described in correspondence and submissions received. The government and HMRC takes the wellbeing of customers extremely seriously.

3.105 HMRC has set up a settlement helpline, with a new, dedicated team who can offer extra support to more vulnerable customers. While some have called for HMRC to set up a helpline for those in severe mental distress, this would be inappropriate for a tax authority. Instead, HMRC's teams are trained to identify and help vulnerable customers and, where appropriate, direct people to services like Samaritans and Mind who can offer specialist mental health support.

3.106 More broadly, HMRC is committed to supporting all its customers to help them comply with their tax obligations. HMRC is always concerned to ensure that the impact of what are often large tax bills are managed sensitively and the needs of those needing extra support are met. Working alongside the Voluntary and Community Sector (VCS), HMRC continues to improve its support to vulnerable customers and will extend its greatly valued Needs Enhanced Support Service to customers undergoing compliance checks. HMRC is also extending its existing guidance for compliance teams who become aware that a customer is vulnerable to include case studies demonstrating best practice. And they are creating a network of more experienced officers who can support the most complex cases. In addition to the current training HMRC provides to its compliance teams it is also developing further training, drawing on best practice from across the public sector.

3.107 HMRC has stated that it does not want to make anybody bankrupt, and that bankruptcy is only ever considered as a last resort. In line with their long standing approach, HMRC expects individuals who have assets that can be used to raise funds, such as a residence, business premises or life assurance policy, to consider taking out a loan to meet tax debts, including the charge on DR loans. This is a decision for an individual to consider with advice from a financial advisor if required.

3.108 The government notes that much of the external commentary has continued to fuel concerns that people will be made homeless because of HMRC debt enforcement activity, despite HMRC and the government's clear statements to the contrary. This is underpinned by APPG survey data which indicates that 47% of respondents feel they are in danger of losing their home and a further 32% are uncertain.

3.109 HMRC has taken action to support those who want to get out of tax avoidance and pay the tax that is due with as much flexibility as possible by introducing simplified settlement terms to help them settle their tax affairs in advance of 5 April 2019.

3.110 There is no maximum period over which individuals are required to pay the tax due. HMRC will agree the appropriate payment plan for each individual. Under the settlement terms, people who currently have an annual 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 detailed information about their income and assets. Having listened to representations from affected individuals and their MPs, HMRC has extended this to a period of seven years for those who have annual income less than £30,000.

3.111 For those who need to pay over a longer period – including those with an income of £50,000 or more – HMRC can agree longer payment arrangements.

Table 3.C: Examples of indicative monthly instalment options available, including forward interest.

Size of settlement	Instalment Amount Payable Per Month	
	5 Year Payment Terms	7 Year Payment Terms
£20,000	£368	£272
£40,000	£735	£553
£50,000	£936	£681
£100,000	£1,835	£1,362

Source: HMRC

3.112 HMRC's approach has always been to encourage those affected to make contact as soon as possible to allow them to establish the facts, provide certainty over any amounts due, and agree any necessary payment arrangements.

3.113 The government strongly encourages those individuals who are yet to make contact with HMRC to do so by 5 April 2019 and start the process of settling with HMRC, and not be subject to the charge on DR loans.

3.114 The government has been given examples of individuals who want to settle with HMRC but who have not yet received detailed calculations of the amounts due. HMRC acknowledges that as a result of the large numbers of scheme users looking to settle some customers have had to wait longer for a response than they would want. In response to feedback, HMRC has increased the number of people working on this. There are currently the equivalent of over 500 HMRC full-time staff working directly or indirectly on work related to DR.

3.115 Where individuals have already provided information to HMRC they can expect to be contacted before the end of April at the latest. For those that have not yet provided information they can expect calculations within four to six weeks of HMRC receiving what is required, though this could increase based on the number of calculations that need to be processed.

3.116 Those who contact HMRC with a genuine intention to settle before 5 April 2019 can still benefit from the opportunity to settle under the published terms. A genuine intention to settle means individuals 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.

3.117 Those seeking to settle their tax affairs in this way will be expected to ensure that settlement discussions progress quickly after 5 April 2019 and all settlements must then be reached by 31 August 2019.

3.118 Since the DR loan charge was announced, HMRC has agreed around 6,000 settlements with employers and individuals, worth over £1 billion.

3.119 The figures as at 15 March 2019 for scheme users are as follows:

- 26,692 scheme users have registered an interest to settle
- of these, 20,004 have returned their settlement pack with the necessary information
- of those who returned settlement packs, HMRC has issued settlement calculations to 15,649 users

3.120 Settling their affairs with HMRC remains the best option for the vast majority who are affected by the charge on DR loans. The charge itself taxes all outstanding loans on 5 April 2019 in a single year and for most individuals this will result in more income being charged at the higher or additional rate.

3.121 In contrast the settlement terms treat the loans as income in the year they are made, meaning individuals can take advantage of the personal allowance for each of those years.

3.122 The example below sets out the advantage of settling with HMRC for an individual in a loan scheme over three years, receiving £15,000 in income through the arrangements over three years. The table demonstrates that if this individual settles (in advance of the loan charge) the total tax due is £10,360; if the individual does not settle, the charge on the outstanding DR loans will be £14,130. Therefore the individual is better off if they settle.

Table 3.D: Examples of the benefit of settlement terms

Year	Loan Amount	Settlement	Interest	Total	Indicative Loan Charge
2010-11	£15,000	£3,000	£633	£3,633	
2011-12	£15,000	£3,000	£543	£3,543	
2012-13	£15,000	£3,000	£454	£3,454	
Totals	£45,000			£10,360	£14,130

Source: HMRC

Conclusion

3.123 The government is clear that DR loan schemes are contrived tax avoidance. Over many years HMRC has sought to close down these schemes and encourage scheme users to voluntarily settle their outstanding liabilities and has set out settlement terms and payment arrangements to facilitate this.

The government believes it is unfair to the vast majority of taxpayers who have not engaged in tax avoidance to allow anyone to continue to benefit from this type of arrangement. The charge on disguised remuneration loans aims to bring to an end to this form of avoidance, and the years of concerted government and HMRC action to challenge DR scheme use. Parliament has therefore legislated, protecting billions of pounds in tax revenues, to ensure that all users of these schemes pay their fair share of tax towards our vital public services.

3.124 The charge on DR loans comes into effect on 5 April 2019 and levies tax based on loans as they exist at 5 April 2019. It includes the opportunity for individuals to remove themselves from the impact of the charge in advance of its introduction by agreeing a settlement with HMRC or repaying the loan.

3.125 Nevertheless, the government recognises the impact that the loan charge will have on individuals, and has taken steps to ensure that affected individuals will receive the support they need to settle their tax bills while mitigating the impact of the charge. This includes additional HMRC resources and dedicated helplines to support individuals, reassurance and further information about the process of settling, including in this report, and flexible payment plans to help individuals pay their debts on a reasonable timescale.

3.126 The government encourages anyone who has used these schemes who have yet to settle to get in touch with HMRC as soon as possible and by 5 April 2019.

Annex A
Section 95 of Finance Act 2019

Review of changes made by sections 80 and 81

(1) The Chancellor of the Exchequer must review the effects of the changes made by sections 80 and 81 to TMA 1970 and IHTA 1984, and lay a report on that review before the House of Commons not later than 30 March 2019.

(2) The review under this section must include a comparison of the time limit on proceedings for the recovery of lost tax that involves an offshore matter with other time limits on proceedings for the recovery of lost tax, including, but not limited to, those provided for by Schedules 11 and 12 to the Finance (No. 2) Act 2017.

(3) The review under this section must also consider the extent to which provisions equivalent to section 36A(7)(b) of TMA 1970 (relating to reasonable expectations) apply to the application of other time limits.

Annex B

Review of the effects of section 80 and 81 of Finance Act 2019, including a comparison with Schedules 11 and 12 to Finance (No.2) Act 2017

Section 95(1) A Review of the effects of s80 and 81

B.1 Sub-section (1) of section 95 of Finance Act 2019 requires that a review be made of the changes made by sections 80 and 81 of that act.

B.2 Section 80 of Finance Act 2019 amends the Taxes Management Act (TMA) 1970 to increase the assessment time limits for offshore income and gains to 12-years unless a longer time limit applies. It applies to income tax and capital gains tax where a tax loss involves offshore matters or offshore transfers. Section 81 amends the Inheritance Tax Act (IHTA) 1984 to increase the time limit for proceedings for the recovery of inheritance tax (IHT) to 12-years in cases where a tax loss involves offshore matters or offshore transfers unless a longer time limit applies.

B.3 The extension to offshore time limits provided for by s80 and 81 was announced at Autumn Budget 2017. A consultation document to establish the design principles of the legislation was issued on 19 February 2018 and the consultation closed on 14 May 2018. The new rules contain safeguards for taxpayers. The extended time limits do not apply if HMRC could reasonably have been expected to make the assessment within the existing time limits because of information received from an overseas tax authority. In addition it does not apply to transfer pricing adjustments.

B.4 A link to the consultation and response document is available at www.gov.uk/government/consultations/extension-of-offshore-time-limits.

B.5 A link to the Tax Information and Impact Note (TIIN) is available at www.gov.uk/government/publications/extension-of-offshore-time-limits-for-the-assessment-of-tax/extension-of-offshore-time-limits-for-income-tax-capital-gains-tax-and-inheritance-tax

Section 95(2) A comparison of the time limits

B.6 Sub-section (2) of s95 requires the review of changes made by s80 and 81 to include a comparison of the time limits for recovering lost tax that involves an offshore matter with other such time limits. This must include considering the time limits for recovery provided for by Schedules 11 and 12 to F(no2)A 2017 (the disguised remuneration loans legislation).

B.7 The changes introduced by s80 and 81 apply to income tax, capital gains tax and inheritance tax. These taxes will therefore be the focus of this review of time limits. As regards National Insurance Contributions (NICs), other than for Class 4 NICs there is no assessment process equivalent to the income tax assessment provisions and therefore no time limits are included below. The time limits are those that apply at the date of publication of the review and do not include transitional arrangements. The list is not exhaustive.

B.8 A list of assessment time limits can be found in HMRC's Compliance Handbook: www.gov.uk/hmrc-internal-manuals/compliance-handbook/ch56000. There is significant consistency between these time limits following the updating of HMRC powers from 2007 onwards. The descriptions of taxpayer behaviours used to set those time limits were also aligned. The review is limited to legislative time limits. It does not cover extra statutory concessions or administrative practices.

Assessing Time Limits for Income Tax and Capital Gains Tax

B.9 In order for HMRC to make a discovery assessment for loss of tax, it must first have discovered that:

- any income or chargeable gains which ought to have been assessed has not been assessed
- an assessment to tax is or has become insufficient, or
- any relief which has been given is or has become excessive

B.10 Where one of the three initial conditions set above is met an officer of HMRC may make an assessment in the amount, or the further amount, which ought in their opinion to be charged in order to make good to the Crown the loss of tax. This ability to make an assessment is subject to certain other restrictions, including time limits which prevent an assessment being made after a certain period of time has passed. Different time limits apply depending on the situation, as set out below.

B.11 The usual time limits for making an assessment are at sections 34 and 36 TMA 1970:

- ordinarily, an assessment may be made at any time within 4 years after the end of the year of assessment to which it relates
- the time limit is 6 years after the end of the year of assessment if the loss of tax was brought about by a failure to take reasonable care (carelessness), or
- 20 years if the loss of tax was brought about deliberately by the taxpayer

B.12 Where there is a loss of IT or CGT attributable to the taxpayer's failure to notify their liability to those taxes under section 7 TMA 1970, the time limit is 20 years (section 36(1A)(b) TMA 1970). The time limit is also 20 years if there is a failure to provide various information required under the disclosure of tax avoidance schemes legislation (section 36(1A)(c) and (d) TMA 1970).

B.13 However, if the person had a reasonable excuse for the failure to notify chargeability or provide the information required, and notified HMRC without unreasonable delay after the excuse ended, they are treated as though they had not failed to notify or provide information. In those circumstances, the original 4 year time limit applies (see section 118(2) TMA 1970).

B.14 As explained above sections 80 and 81 to Finance Act 2019 brought in a new 12-year assessment time limit where a loss of tax involves an offshore matter or an offshore transfer. This time limit will not apply if one of the longer time limits of 20 years applies – in those circumstances the time limit continues to be 20 years.

B.15 Determinations of income tax due under the Pay As You Earn Regulations (Regulation 80(5) SI 2003/2682) or the Construction Industry Scheme Regulations (Regulation 13(5) SI 2005/2045) follow the time limits within sections 34 and 36 TMA1970.

B.16 Where an amount of income tax or capital gains has been repaid by HMRC which ought not to have been repaid an assessment can be made to recover the tax. For assessments the time limit is in section 30(5) TMA 1970 and is the latest of (i) 4 years from the end of the year of assessment where there is no careless or deliberate behaviour, (ii) the end of the year of assessment following that in which the repayment was made or (iii) where a return was delivered the date of issue of a final closure notice into that return. For cases of careless behaviour (i) increases to 6 years and to 20 years for cases involving deliberate behaviour.

B.17 Section 34A TMA 1970 sets out the normal time limit for self-assessment cases which is 4 years from the end of the year of assessment to which it relates. This applies where no determination has been made by HMRC under section 28C.

B.18 Section 28C TMA 1970 provides for a determination of tax where a person has been given a notice to deliver a return and that return has not been delivered on or before the filing date. This determination can be superseded by a self-assessment. Such a determination must be made within 3 years of the filing date. A self-assessment must be made within 12 months of the date of the determination.

B.19 Section 35 TMA 1970 provides that assessments on employment income, pension income and social security income can be made up to 4 years after the end of the year of assessment in which the income was received. This applies where the income is received in a year later than the year that income is assessable.

B.20 In the case of deceased persons, s40 TMA 1970 provides that any assessment has to be made within 4 years of the end of the year of assessment in which the deceased died. However, no assessment may be made for a year of assessment ending more than 6 years before the date of death. This is the case even where the assessment involves a loss of tax due to careless or deliberate behaviour, or the failure of the deceased to notify chargeability.

B.21 Assessments to withdraw or reduce Enterprise Investment Scheme Relief under s237 Income Tax Act (ITA) 2007 must be made by the later of 6 years from the end of the year of assessment in which (i) the use of money falls or (ii) the event that causes the withdrawal or reduction of relief occurs. For cases of deliberate behaviour the time limit in (i) is 20 years.

B.22 Assessments to withdraw or reduce Community Investment Tax Relief under section 372 of the ITA 2007 must be made within 6 years of the end of the year of assessment for which the relief was obtained. For cases of deliberate behaviour the time limit is 20 years.

B.23 Section 801 Income Tax (Trading and Other Income) Act (ITTOIA) 2005 provides the time limit for an adjustment by way of assessment to give effect to an election or a notice of withdrawal of rent-a-room relief. The time limit is the first anniversary of the normal Self Assessment filing date for which the election was made or the notice given.

B.24 There are a number of provisions in the Taxation of Chargeable Gains Act (TCGA) 1992 which allow HMRC to recover reliefs that are no longer due. For example, section 153A(4) TCGA which provides that where a provisional claim to roll-over relief ceases to have effect, any adjustments by way of assessment (or other means) can be made without regard to assessment time limits. Other examples are at sections 101B(4), 101C(6), 152(4), 169C(9), 226A(4), 248(2) and 248B(5) TCGA 1992.

The Time Limits that Apply to Inheritance Tax

B.25 In the case of a loss of IHT brought about by an error in the IHT account, and where payment has been made and accepted in full satisfaction of the tax due, s240 IHTA 1984 provides that the time limits for proceedings to be brought for recovery of the tax are:

- 4 years from the later of the date on which the (last) payment was made and accepted, or the date on which the tax or last instalment became due
- 6 years after those dates where the error is attributable to careless behaviour, or
- 20 years where the error is attributable to deliberate behaviour

B.26 New s240A IHTA 1984 introduced by s81 of Finance Act 2019 introduces a 12-year assessment time limit for lost tax that involves an offshore matter or an offshore transfer. This time limit does not apply if a longer time limit applies (20 years).

B.27 Where an IHT account has not been delivered, or the payment of the attributable tax has not been made and accepted, the time limit is 20 years from the date of the chargeable transfer unless the loss of tax is brought about deliberately, in which case, there is no time limit (see s240 IHTA 1984).

B.28 Where the additional IHT is within the time limits above but is disputed then HMRC can serve a Notice of Determination under s221 IHTA on the taxpayer(s) as a means of resolving the dispute. An appeal against this notice allows the taxpayer(s) to begin the appeals process, including a right to require a review (see sections 222-224 IHTA 1984).

B.29 In the absence of a valid appeal (or an agreed variation of the Notice) that determination is conclusive for the purposes of IHT (s221(5) IHTA).

Disguised Remuneration loans

B.30 Section 95(2) requires this review to compare the new time limits introduced for tax that involves an offshore matter or offshore transfer with other time limits, including those that apply in respect of DR loans.

B.31 Schedules 11 and 12 to Finance (No. 2) Act 2017 introduce a charge on the outstanding balances of DR loans made on or after 6 April 1999. The charge is a new charge which applies to loan balances as at 5 April 2019. The charge is not retrospective and the provisions of Schedules 11 and 12 do not alter the tax position or the outcomes of any compliance investigations into previous years.

B.32 The DR provisions do not introduce any new assessing time limits so the time limits of 4 years (reasonable care), 6 years (careless), 12 years (offshore) or 20 years (deliberate) will apply in respect of the new charge which starts on 5 April 2019.

Section 95(3) Reasonable Expectations

B.33 Section 95(3) FA 2019 requires this review to consider the extent to which provisions equivalent to section 36A(7)(b) of TMA 1970 (relating to reasonable expectations) apply to the application of other time limits.

B.34 The word "reasonable" appears in many places in the taxes acts but the scope of this review is limited to relevant legislation – that is, legislation that applies an assessment time limit or similar.

"Reasonable Expectations" and Income tax and Capital Gains Tax

B.35 Section 36A(7) of TMA, introduced by s80 of Finance Act 2019, is part of the new assessing time limit legislation that applies to tax that involves an offshore matter or transfer. This provision prevents HMRC from applying the longer time limit of 12 years in cases where, firstly, HMRC received information from another jurisdiction on the basis of which it was reasonable to expect HMRC to become aware of the lost tax and secondly, it was reasonable to expect HMRC to assess that tax before the usual time limit (whether 4 or 6 years) had expired.

B.36 There are other assessing provisions for income tax and capital gains that use concepts similar to that of "reasonable expectations" used in section 36A(7)(b) TMA 1970 and these are set out below.

B.37 Where a tax return has been delivered then s29(3) TMA 1970 only permits an assessment to be made where the condition in either s29(4) or s29(5) is met. The condition in s29(4) is that the loss of tax was brought about by the taxpayer acting carelessly or deliberately. The condition in s29(5) is that an officer of Revenue and Customs could not reasonably have been expected to be aware of the loss of tax on the basis of the information available to him at a time when HMRC was able to enquire into the return. There are similar provisions for partnership statements at section 30B TMA 1970.

B.38 Section 29(2) TMA 1970 provides that where a tax return was delivered and the loss of tax is attributable to an error or mistake in the return concerning the basis of computation of the liability for that year, an assessment cannot be made under s29(1) if the return was made in accordance with generally prevailing practice at the time it was made.

B.39 The taxpayer safeguards in s29(2) and (3) will apply to people subject to income tax assessment who have delivered a tax return relating to disguised remuneration (including the 2019 loan charge). Unless one of the two conditions at s29(4) and (5) are met no assessment can be made under s29. Furthermore, no assessment be made if s29(2) applies.

B.40 Where an assessment is made that relies on the new 12 year time limit in s36A TMA 1970 concerning an aspect of disguised remuneration (one which involves an offshore matter or an offshore transfer), then the protection in s36A(7) will apply. So the assessment could not be made where HMRC received information from another jurisdiction on the basis of which it was reasonable to expect HMRC to become aware of the lost tax and assess that tax before the usual time limit (whether 4 or 6 years) had expired.

"Reasonable Expectations" and Inheritance Tax

B.41 The general rule for IHT is that all tax is payable. There is no direct equivalent of s29(3) TMA 1970 for inheritance tax or the use of the phrase "reasonably expected" in that section.

B.42 Section 239 IHTA deals with transfers on death or where the transferor has died. However, a taxpayer can protect themselves by applying for a clearance certificate under Section s239 IHTA. If a certificate is issued, the tax position covered by the certificate can only be further adjusted in cases of fraud or failure to disclose material facts. In addition, the certificate protects a subsequent purchaser (of the property that has been charged to IHT) who did not have notice of any fact invalidating the certificate.

B.43 In other cases HMRC's ability to collect the IHT is governed by time limits described in the section "Time Limits that Apply to Inheritance Tax".

B.44 As regards the 12 year offshore time limit, s240B(7) applies in the same way as the rule at s36A(7) TMA 1970. Where a calculation or determination of IHT is issued concerning an aspect of disguised remuneration including an offshore matter or an offshore transfer then the protection in s240B(7) will apply. The new 12 year limit will not apply if, before the last date on which proceedings could otherwise be brought, HMRC received relevant overseas information on the basis of which HMRC could reasonably have been expected to become aware of the lost tax. And secondly, if it was reasonable to expect the proceedings to be brought before the last date that applies under the usual rules.

Annex C

Key dates for scheme users to report and pay the loan charge

C.1 Individuals impacted by the loan charge who have not agreed a settlement, or come to HMRC with a genuine intention to settle by 5 April 2019, need to:

- complete and submit an information return to HMRC, setting out their loan balance, by **30 September 2019**
- file a 2018-19 self-assessment tax return and pay the loan charge by **31 January 2020**

C.2 If individuals do not usually complete a tax return, they will need to register for Self Assessment. To do this, they should go to **www.gov.uk** and search for 'register for Self Assessment'.

C.3 If individuals will not be in a position to pay the charge in full by this date, they should contact HMRC to discuss payment terms.

C.4 Individuals who were in an employment-based DR scheme, where the employer with whom they had the arrangement still exists and is based in the UK, also need to:

- tell the relevant employer what the outstanding loan balance is by **15 April 2019**

C.5 The **employer** will then need to:

- manually calculate the PAYE liability on that loan charge income, and make payment either by **19 April 2019** (by post) or **22 April 2019** (online)
- report the loan charge amount to HMRC via RTI in April using an Earlier Year Update (EYU) submission. The EYU will be available from **20 April 2019**

C.6 Where the relevant employer no longer exists, individuals do not need to report the outstanding loan balance to any employer. As set out above, they still need to:

- provide the information return to HMRC by **30 September 2019**
- file a tax return and pay the loan charge by **31 January 2020**

C.7 For users to have agreed to settle with HMRC, or come to HMRC with a genuine intention to settle by 5 April 2019, special arrangements are in place.

C.8 Guidance on how to report and account for the DR loan charge can be found here: https://www.gov.uk/guidance/report-and-account-for-your-disguised-remuneration-loan-charge

Annex D

The All-Party Parliamentary Loan Charge Group

D.1 The All Party Parliamentary Loan Charge Group (APPG) is an informal group of cross-party MPs.

D.2 The secretariat of the APPG is the Loan Charge Action Group, a group formed by and representing individuals who will be affected by the charge on DR loans. LCAG state that they have over 3,000 members and their aim is to lobby to change the charge on DR loans.[1]

D.3 It is a view of the APPG that DR tax avoidance arrangements should be "subject to taxation from the point of the introduction of legislation, i.e. prospective from 16 November 2017, and then should clearly outlaw their usage".[2] This would mean only DR loans taken out after that date would be subject to the charge.

D.4 The APPG has conducted its own work into the charge on DR loans, with the intention of providing their findings to government to inform this report. The scope of this work, as set out on their website, includes the text in the box below.

Scope of the inquiry

The inquiry into the 2019 Loan Charge will look at the Loan Charge legislation, the background and its introduction and how people came to be using loan-based arrangements in such numbers.

It will look at the legal position at the time and what powers HMRC had to close down or tax such arrangements. It will look at whether the Loan Charge is justified by court cases and whether, as has been suggested, it overrides legislation and statutory taxpayer protections.

It will also examine the impact that promoters' fees paid had…the reality of the situation people now find themselves in…HMRC's record when dealing with affected taxpayers…HMRC's claim to pursue promoters of the arrangements over which users are now facing the Loan Charge.

1 https://www.hmrcloancharge.info/

2 http://www.loanchargeappg.co.uk/what-is-the-loan-charge/

D.5 As part of their work, the APPG issued a call for evidence from individuals or professionals with experience of the charge, and a survey for individuals impacted by the charge.

D.6 The government has examined the survey which was published by the APPG on 15 March, setting out a summary of responses received by 1,768 individuals.

D.7 HMRC has also received and considered around 70 personal testimonies provided by the APPG, all of which were provided by from individuals affected by the charge. The Chair of the APPG had volunteered a commitment, when meeting the Chancellor and the Financial Secretary, that these testimonies would all be provided on the basis that the taxpayers concerned would give their consent for HMRC to respond transparently to the many particular personal tax issues that they raised. Unfortunately, that commitment was not sufficiently met, and none of the submissions have been provided on that basis. The government is therefore not able to respond to the detail of those cases in this report. However, HMRC has considered these submissions carefully. Where it has been possible to check the submissions against HMRC's records, HMRC does not accept the claims that are made in a number of the cases. However, HMRC recognises there will be difficult cases and is committed to supporting people affected by the loan charge. The general themes and concerns identified in the submissions have been taken into account in preparing this report.

D.8 Much of the evidence provided in correspondence, or via the APPG, is provided by individuals who have used DR schemes, have loans outstanding and are likely to be required to pay the charge.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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