

Explanatory note

Clauses 1 to 5 and the Schedule

Summary

1. These measures introduce changes to the Loan Charge policy following Sir Amyas Morse's independent review. The Loan Charge is designed to tackle Disguised Remuneration (DR) avoidance schemes where a person's income is paid as a loan which is unlikely to be repaid. The loans are no different to normal income and are taxable. The independent review recommended several changes to the design and implementation of the policy, to which these measures give effect.
2. Under the changes, the Loan Charge will now apply only to loans outstanding at 5 April 2019 that were made on, or after, 9 December 2010. Furthermore, the Loan Charge will not apply to loans outstanding at 5 April 2019 that were made before 6 April 2016 where the avoidance scheme use was disclosed to HM Revenue and Customs (HMRC) and HMRC did not take action (for example, by opening an enquiry).
3. The clauses also introduce changes to allow taxpayers subject to the loan charge to elect to spread their outstanding loan balance evenly across three tax years (2018/19, 2019/20 and 2020/21). This will give taxpayers greater flexibility on when the outstanding loan balance is subject to tax and may mean that the loan balance is not subject to higher rates of income tax.
4. The clauses also provide for no interest to be charged on persons subject to the Loan Charge (including in accordance with the legislation which was in force prior to the amendments to be made in the Finance Act 2020) on any income tax and capital gains tax liabilities due in respect of 2018/19 and outstanding between 1 February 2020 and 30 September 2020, or in respect of 2019/20 prior to 31 January 2021, provided that certain conditions are met.
5. The clauses do not contain details of the Government's commitment that HMRC will repay Voluntary Restitution that has been paid by individuals and employers since the Loan Charge was announced in March 2016, for years that would no longer be subject to the Loan Charge because the year was unprotected. Legislation giving effect to this, together with details of the repayment scheme, will be published separately before the Finance Bill.

Details of the clauses and Schedule

Loan Charge not to apply to loans or quasi-loans made before 9 December 2010

6. Clause 1 amends paragraph 1(1)(b) of Schedule 11 and paragraph 1(2)(a)(i) of Schedule 12 to Finance (No.2) Act 2017 (F(No.2)A 2017) to change the date from which DR loans will be taxed under the Loan Charge.
7. Current legislation states that DR loans received from 6 April 1999 and unpaid at 5 April 2019 will be taxed under the Loan Charge as if a relevant step has been taken or a relevant benefit arises. This clause will amend the 1999 date to 9 December 2010. This change will remove loans made before that date from taxation under the Loan Charge.
8. Consequential amendments relating to this change are included in Part 1 of the Schedule. These changes amend further references 6 April 1999 date in other areas of legislation, and remove references to approved fixed term loans which only relate to loans made before 9 December 2010.

Election for Loan Charge to be split over three tax years

9. Clause 2 introduces new provisions into Schedule 11 F(No.2)A 2017 which will allow the customer to elect to spread their outstanding DR loan balance over three tax years. New paragraph 1A of Schedule 11 sets out that a person with an outstanding loan balance on 5 April 2019 may be treated as having three equal portions of income which are taxed over three consecutive years, starting with tax year 2018/19.
10. New paragraph 1A also sets out that for a customer to split their loan balance over three years the customer must make an election to do so. The customer must also provide full information of their outstanding loans as set out by paragraph 35C of Schedule 11 before they can make an election. This election cannot be withdrawn by the customer and an election made under Schedule 11 will cover all loans captured by that Schedule and by Schedule 12.
11. Consequential amendments relating to this change are included in Part 2 of the Schedule.
12. Clause 2 also introduces a change creating the same effect to Schedule 12 F(No.2)A 2017 which allows those with self-employed income to split their outstanding loan balance in the same way as those with employment income.

Loan Charge reduced where underlying liability disclosed but unenforceable

13. Clause 3 inserts new paragraphs in Schedules 11 and 12 to F(No.2)A 2017 to provide that sums treated as chargeable to tax by virtue of loans or quasi-loans are reduced for years 2015/16 and prior where a taxpayer made a reasonable disclosure of the loan or quasi-loan and HMRC had not, by 6 April 2019, taken steps to recover the tax. No such reduction applies for years 2015/16 and earlier where a reasonable disclosure

was not made, and for years 2016/17 onwards irrespective of whether there has been a reasonable disclosure or HMRC had taken steps to recover the tax.

14. Clause 3(1) inserts a new paragraph 1B into Schedule 11 to F(No.2)A 2017.
15. New paragraph 1B(1) provides that the reduction applies, subject to new paragraph 1B(2), where a person who would be liable to the Loan Charge has in their tax return made a reasonable disclosure of the loan, so that a reasonable case could have been made that the person was chargeable to tax on the amount of the loan in a tax year before 2016-17; but HMRC has not before 6 April 2019 taken any steps to recover the income tax for that tax year.
16. New paragraphs 1B(2) and 1B(3) provide that the reduction does not apply, if a reasonable case could be made that the person is liable to tax on all or part of the loan amount identified in new paragraph 1B(1), or an amount representing that loan amount, in a different tax year and HMRC has before 6 April 2019 taken steps to recover the income tax for that different tax year.
17. New paragraph 1B(4) provides that where the reduction applies, the amount of the outstanding loan balance taxable under paragraph 1 or 1A is reduced by the amount of the loan identified in new paragraph 1B(1).
18. New paragraph 1B(5) defines reasonable disclosure. It provides that a person's tax return or accompanying documents must have identified the loan and the person to whom it was made, the arrangements under which the loan was made, and such other information as necessary for it to be apparent that a reasonable case could have been made that the person was chargeable to income tax on the amount of the loan.
19. New paragraph 1B(6) provides that the conditions for making a reasonable disclosure are met if a single tax return made by a person does not meet the requirements, but two or more tax returns made by that person, when taken together, do meet those requirements.
20. New paragraph 1B(7) provides definitions.
21. Clause 3(2) inserts a new paragraph 1A into Schedule 12 to F(No.2)A 2017. That new paragraph provides for the same changes as described above to Schedule 12.

Relief from interest on tax payable by a person subject to the Loan

Charge

22. Clause 4 provides for relief from interest on tax payable by a person subject to the Loan Charge.
23. Subsection (1) provides that the clause applies where a person who is liable to the Loan Charge, or was liable before the amendments to the Loan Charge described above, delivers a full and accurate tax return for tax year 2018-19 before the end of September 2020.
24. Subsection (2) provides that where the person pays their income tax and capital gains tax (CGT) liability for tax year 2018-19 in full by 30 September 2020, no late payment interest is payable notwithstanding that the tax was due on 31 January 2020. It also provides that the payments on account made by that person for the tax year 2019-20 do not carry interest.

25. Subsection (3) provides that where a person enters into an agreement with HMRC for paying their income tax and CGT liability for tax year 2018-19 by 30 September 2020, no late payment interest is payable on any amounts paid before that date (notwithstanding that the tax was due on 31 January 2020), and the late payment interest for any payments made after that date under the agreement is calculated from 1 October 2020. It also provides that the payments on account made by that person for the tax year 2019-20 do not carry interest.
26. The effect of subsections (2) and (3) is that that if the person has not paid their 2018-19 liability by 30 September 2020, nor entered into any agreement with HMRC regarding paying their liability, the interest will be calculated from the statutory due date, 31 January 2020.
27. Subsection (4) provides that if the person has not paid their 2019-20 liability by 31 January 2021, nor entered into any agreement with HMRC regarding paying their liability, interest will be charged on the payments on account from the existing statutory due dates, 31 January 2020 and 31 July 2020.

Minor amendments relating to the Loan Charge

28. Clause 5 makes minor amendments to Schedules 11 and 12 to F(No.2)A 2017.
29. Clauses 5(2) and 5(4) change the date before which the additional Loan Charge information required under paragraph 35C of Schedule 11 and paragraph 22 of Schedule 12 must be provided to HMRC. The date is changed from 1 October 2019 to 1 October 2020.

Background note

30. At Budget 2016, the Government announced a package of changes to tackle existing DR avoidance schemes and prevent their future use. The Loan Charge was a new charge on DR loan balances outstanding at 5 April 2019.
31. DR avoidance schemes are tax avoidance arrangements that seek to avoid income tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.
32. In September 2019 the Government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the Government had previously announced to the policy addressed any legitimate concerns raised.
33. The Review was published on 20 December 2019 alongside the Government response. The Government welcomed Sir Amyas's recognition that DR schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's

recommendations. To the extent needed, legislation is now being introduced to give effect to these recommendations.

34. The draft legislation relating to the Government's commitment that HMRC will repay Voluntary Restitution that has been paid by individuals and employers since the Loan Charge was announced in March 2016, for years that would no longer be subject to the Loan Charge because the year was unprotected, will be published together with scheme details before the Finance Bill.
35. If you have any questions about this change, or comments on the legislation, please email: loanchargeconsultationresponses@hmrc.gov.uk.