

Explanatory Note

Clauses 1 to 2

Summary

1. Clause 1 requires the Commissioners for HM Revenue & Customs (“the Commissioners”) to establish a scheme to repay or waive all, or part, of an amount of Voluntary Restitution (an amount that HM Revenue & Customs (“HMRC”) had no power to enforce) paid or due to be paid under an agreement made between 16 March 2016 and 11 March 2020. The Voluntary Restitution must have been paid, or be due to be paid, in respect of a loan or quasi-loan for unprotected years that would no longer be subject to the Loan Charge.
2. Clause 2 enables HMRC to set out in the scheme conditions that will apply to any applications for a repayment or waiver. This includes the process for applications and the factors that may be taken into account by the Commissioners in calculating a repayment or waiver.

Details of the clauses

Clause 1: Repaying sums paid to HMRC under agreements relating to certain loans etc

3. Subsection (1) requires the Commissioners to establish a scheme under which they may, if an application is made before 1 October 2021, repay or waive all or part of a qualifying amount paid, treated as paid, or due to be paid under a qualifying agreement.
4. Subsection (2) defines a ‘qualifying agreement’ as an agreement made with the Commissioners on or after 16 March 2016 and before 11 March 2020, that requires a party to the agreement to pay income tax that is directly, or indirectly, referable to a qualifying loan or quasi-loan.
5. Subsection (3) defines an amount paid, treated as paid or due to be paid under a qualifying agreement, as a ‘qualifying amount’ if it is directly or indirectly referable to a qualifying loan or quasi-loan and, at the time the qualifying agreement was made, HMRC had no power to recover the amount.
6. Subsection (4) provides that where an amount is directly or indirectly referable to a loan or quasi loan made after 9 December 2010 it is not a qualifying amount unless a reasonable disclosure of the loan or quasi-loan was made in a tax return, or two or more tax returns taken together, at a time when HMRC had power to recover the amount.
7. Subsection (5) defines ‘reasonable disclosure’ for the purposes of subsection (4). It provides that a tax return, or two or more tax returns taken together, or accompanying documents must

have identified the loan or quasi-loan and the person to whom it was made, the arrangements under which the loan or quasi-loan was made, and such other information as necessary for it to be apparent that a reasonable case could have been made that the amount referable to the loan or quasi-loan was payable to the Commissioners.

8. Subsection (6) provides that a qualifying amount includes interest paid, treated as paid or due to be paid on any qualifying amount paid, treated as paid or due to be paid under the qualifying agreement.
9. Subsection (7) defines a loan or quasi-loan.
10. Subsection (8) provides definitions for the purposes of this section.
11. Subsection (9) provides for details of the repayment scheme to be set out in clause 2.

Clause 2: Operation of the scheme

12. Subsection (1) provides that the scheme may make provision in relation to all qualifying agreements and qualifying amounts or to specified descriptions of such agreements and amounts only.
13. Subsection (2) provides for the scheme to set out circumstances when an amount will be treated as a qualifying amount where the conditions set out in subsection (4) of clause 1 are not met.
14. Subsection (3) provides that the scheme may set out requirements for applications to the scheme, including who is eligible to apply, conditions to be met in order to apply, the form an application should take, and information or evidence to be provided in support of an application.
15. Subsection (4) provides that the scheme may set out how applications will be determined, including setting out the way in which the Commissioners will determine whether or not to repay or waive the payment of a qualifying amount, and how the amount they will repay or waive will be determined.
16. Subsection (5) provides that the scheme may authorise the Commissioners to make any repayment or waiver conditional on the applicant, or any other person, agreeing to the termination or variation of the qualifying agreement or to the making of a new agreement. Subsection (5)(c) enables the Commissioners to also specify in the scheme other conditions that must be met before a refund or waiver is made.
17. Subsection (6) provides that the scheme may set out other factors that the Commissioners may, or must, take into account in determining the amounts, if any, to be repaid or waived. Subsection (6)(a) and (b) set out that this may, or must, include the effect the qualifying agreement, or a repayment or waiver, has had or may have, for example on any liability, relief or benefit. Subsection (6)(c) provides that other matters to be taken into account may be specified in the scheme.
18. Subsection (7) provides for the scheme to set out that a repayment under the scheme may be ignored in determining a person's entitlement to any specified payment, benefit or relief and the amount or value of that payment, benefit or relief. Subsection (7)(b) also provides that a repayment under the scheme may be ignored in determining whether a person is subject to any specified liability and, if so, the extent of that liability.

19. Subsection (8) provides for the scheme to set out that the Commissioners may recover any amount repaid under the scheme where they consider that the amount should not have been repaid or to recover any amount that has been waived under the scheme where they consider that the waiver should not have been granted.
20. Subsection (9) allows the Commissioners to amend the scheme.
21. Subsection (10) provides definitions.

Background note

22. At Budget 2016, the Government announced a package of changes to tackle existing disguised remuneration (“DR”) avoidance schemes and prevent their future use. The Loan Charge was a new charge on DR loan balances outstanding at 5 April 2019.
23. 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.
24. 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.
25. 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.
26. In its response to the review, the Government agreed that HMRC should repay Voluntary Restitution that has been paid by individuals and employers since the Loan Charge was announced in March 2016, for any unprotected tax years where:
 - the loan charge no longer applies (loans made before 9 December 2010);
 - the loans were made in any tax years before 6 April 2016 where a reasonable disclosure of the avoidance scheme use was made to HMRC and HMRC did not take action (for example, by opening an enquiry).
27. HMRC have published the draft scheme setting out the process for repaying or waiving payments and how variations to settlement agreements, and any consequent refunds, will be calculated alongside this document.
28. If you have any questions about this change, or comments on the legislation, please email: loanchargeconsultationresponses@hmrc.gov.uk

