

[DRAFT] THE DISGUISED REMUNERATION REPAYMENT SCHEME 2020

1. Establishing the Scheme

- 1.1. This scheme (the “**Disguised Remuneration Repayment Scheme 2020**” or “**Scheme**”) is established pursuant to section [*to be inserted*] of the Finance Act 2020.

2. Operation of the Scheme

- 2.1. This Scheme is operative from [*the date of Royal Assent of the Finance Act 2020*] 2020.
- 2.2. This Scheme may be amended by the Commissioners from time to time.

3. Defined words and phrases

- 3.1. In this Scheme:

- 3.1.1. “**Acceptance**” means a written notice sent by the applicant to the Commissioners satisfying the requirements set out in paragraph 6.10;

- 3.1.2. “**Adjustment Amount**” means an amount representing tax or any other liability that the Commissioners decide is necessary to account for so as to prevent any party from obtaining a tax advantage as a result of a repayment or waiver of voluntary restitution under this Scheme and which shall include but not be limited to:

- 3.1.2.1. where relevant, an amount representing the corporation tax that would have arisen had any party that reduced its profits chargeable to corporation tax for any accounting period on account of the payment of voluntary restitution under the settlement agreement not done so;

- 3.1.2.2. where relevant, an amount representing the income tax that would have arisen had any party that reduced its profits for any accounting period on account of the payment of voluntary restitution under the settlement agreement not done so;

- 3.1.2.3. where relevant, an amount representing the income tax that would have arisen had any party that benefitted from a reduction in the value of a chargeable step by an amount representing the return on earnings under paragraph 59(2)(a) of Schedule 2 to the Finance Act 2011 on account of the payment of voluntary restitution under the settlement agreement been denied that benefit; and
- 3.1.2.4. where relevant, an amount representing the income tax that would have been payable had any party that benefitted from a payment of voluntary restitution under the settlement agreement being treated as a payment on account under section 554Z11C of ITEPA 2003 been denied that benefit;
- 3.1.3. **“applicant”** means a person or persons making an application and where more than one applicant is making an application any reference in this Scheme to the applicant is a reference to all of the applicants acting jointly;
- 3.1.4. **“application”** means an application under this Scheme for a repayment and / or waiver of voluntary restitution;
- 3.1.5. in the context of National Insurance contributions, **“Class 1”**, **“Class 2”** and **“Class 4”** shall have the meanings given to them in section 1(2) of the Social Security Contributions and Benefits Act 1992 or section 1(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as applicable;
- 3.1.6. **“Commissioners”** means the Commissioners for Her Majesty’s Revenue and Customs;
- 3.1.7. **“Confirmation”** means a written notice sent by the applicant in response to a Continuation Notice and received by the Commissioners within 3 months of the date the Continuation Notice was sent;
- 3.1.8. **“Continuation Notice”** means a written notice sent by the Commissioners to the applicant seeking confirmation that the applicant wishes to continue with the application;
- 3.1.9. **“counterparty”** means a signatory to a settlement agreement other than the Commissioners;

- 3.1.10. **“Default Interest”** means such interest as is decided by the Commissioners to have been paid to them, or to be due to be paid to them, under a settlement agreement on account of the non-payment or late payment of an amount of voluntary restitution due under that settlement agreement;
- 3.1.11. **“deputy”** means the person appointed under section 16 of the Mental Capacity Act 2005 to make decisions on the counterparty’s behalf in relation to the counterparty’s property and affairs or such other person as the Commissioners may accept has authority to act on the counterparty’s behalf where the counterparty lacks the required mental capacity;
- 3.1.12. **“Forward Interest”** means such interest as is decided by the Commissioners to have been paid to them, or to be due to be paid to them, under the settlement agreement by reason of payments of voluntary restitution being made under an instalment payment plan;
- 3.1.13. **“full and final satisfaction”** of an application means that the applicant, their personal representative and any deputy of theirs shall cease to be eligible for a repayment or waiver of voluntary restitution under this Scheme;
- 3.1.14. **“Interest”** comprises Default Interest, Forward Interest and Statutory Late Payment Interest;
- 3.1.15. **“ITEPA 2003”** means the Income Tax (Earnings and Pensions) Act 2003;
- 3.1.16. **“Legal Documentation”** means any documentation that when legally binding on all parties to it discharges, varies or supplements the legal obligations contained in the settlement agreement;
- 3.1.17. **“loan”** and **“quasi-loan”** have the meaning given to them in Part 1 of Schedule 11 to the Finance (No 2) Act 2017 and Schedule 12 to that Act;
- 3.1.18. **“month”** means calendar month;

- 3.1.19. “**National Insurance contributions**” means a liability arising under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- 3.1.20. “**New Settlement Amount**” means the amount an applicant eligible for a waiver of voluntary restitution under this Scheme will be required to pay under the terms of the Legal Documentation;
- 3.1.21. “**Notice of Intention to Recover**” means a written notice sent by the Commissioners to the applicant satisfying the requirements set out in paragraph 8.2;
- 3.1.22. “**officer of Revenue and Customs**” has the meaning given to it by section 2(1) of the Commissioners for Revenue and Customs Act 2005;
- 3.1.23. “**personal representative**” means the person entitled under the law of England and Wales to administer a deceased person’s property situated in England and Wales;
- 3.1.24. “**reasonable disclosure**” has the meaning given to it in section [*insert section*] of the Finance Act 2020;
- 3.1.25. an amount of income tax is “**referable (directly or indirectly) to a loan or quasi-loan**” if and to the extent that the Commissioners decide it is charged on, or arises on or in respect of, an amount of income that is or overlaps with the subject of the loan or quasi-loan;
- 3.1.26. “**Repayment Amount**” is the amount the applicant is or may be eligible to receive in full and final satisfaction of their application, such amount being equal to the voluntary restitution and Interest after accounting for any Adjustment Amounts;
- 3.1.27. “**Repayment Decision**” means a written notice sent by the Commissioners to the applicant satisfying the requirements set out in paragraph 6.6;
- 3.1.28. “**Repayment Demand**” means a written notice sent by the Commissioners to the applicant demanding the repayment of the amount stated in a Notice of Intention to Recover (or some lesser amount) and stating the date by which the repayment must be made;
- 3.1.29. “**Review Request**” means a written notice sent by the applicant to the Commissioners satisfying the requirements set out in paragraph 6.14;

- 3.1.30. **“settlement agreement”** means an agreement:
- 3.1.30.1. made with the Commissioners;
 - 3.1.30.2. on or after 16 March 2016 and before 11 March 2020;
 - 3.1.30.3. for, at the Commissioners’ discretion, the settlement of liabilities arising out of the use of one or more disguised remuneration schemes; and
 - 3.1.30.4. which imposes an obligation on any party to the agreement to pay an amount of income tax that is referable (directly or indirectly) to a loan or quasi-loan made on or after 6 April 1999 and before 6 April 2016;
- 3.1.31. **“Statutory Late Payment Interest”** means such interest as is decided by the Commissioners to have been charged on voluntary restitution and paid to them, or that is due to be paid to them, under a settlement agreement;
- 3.1.32. **“tax return”** shall have the meaning given to it in section [*insert section*] of the Finance Act 2020;
- 3.1.33. **“Updated Repayment Decision”** means a written notice sent by the Commissioners to the applicant following a Review Request either confirming the Repayment Decision to which the Review Request relates or satisfying the requirements set out in paragraph 6.6;
- 3.1.34. **“voluntary restitution”** means an amount paid or due to be paid under a settlement agreement that, having regard to paragraph 3.1.35, the Commissioners may decide satisfies the requirements of being:
- 3.1.34.1. an amount of:
 - 3.1.34.1.1. income tax; or
 - 3.1.34.1.2. National Insurance contributions;
 - 3.1.34.2. referable (directly or indirectly) to a loan or quasi-loan made on or after 6 April 1999 and before 6 April 2016;
 - 3.1.34.3. that an officer of Revenue and Customs had no power to recover at the time the settlement agreement was made;
 - 3.1.34.4. that was treated for the purposes of the settlement agreement as an amount an officer of Revenue and Customs had no power to recover; and

- 3.1.34.5. that, in a case where the loan or quasi-loan mentioned in paragraph 3.1.34.2 was made on or after 9 December 2010, at a time when an officer of Revenue and Customs had the power to recover the amount a tax return, or two or more tax returns taken together, contained a reasonable disclosure of the loan or quasi-loan;
- 3.1.35. for the purposes of paragraph 3.1.34.3, an officer of Revenue and Customs will be treated as having had power to recover the amount at the time the settlement agreement was made if at that time they had:
- 3.1.35.1. where the amount is an amount of income tax, Class 2 National Insurance contributions or Class 4 National Insurance contributions, opened an enquiry under section 9A or section 12AC of the Taxes Management Act 1970, made an assessment under section 29 of the Taxes Management Act 1970 or issued a determination under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003 in respect of any year for which the amount may have been payable or had power to open such an enquiry, make such an assessment or issue such a determination; and
- 3.1.35.2. where the amount is an amount of Class 1 National Insurance contributions, taken action to protect or recover the amount or could have taken action to protect or recover the amount; and
- 3.1.36. **“waiver of voluntary restitution”** means the discharge (given effect to however the Commissioners may decide) of an obligation contained in a settlement agreement to pay an amount of voluntary restitution due to be paid under that settlement agreement.

4. Eligibility to make an application

Applicants

- 4.1. A counterparty has discretion as to whether to make an application.
- 4.2. Where there is one counterparty an application can be made only by that counterparty.
- 4.3. Where there is more than one counterparty an application can be made only by all of the counterparties jointly.

- 4.4. Where a counterparty has died, an application can be made only by the counterparty's personal representative.
- 4.5. Where a counterparty lacks the mental capacity to make an application an application can be made only by that counterparty's deputy.

Assuming an application

- 4.6. Where a counterparty dies subsequent to making an application, the counterparty's personal representative may assume the deceased counterparty's application.
- 4.7. Where a counterparty loses mental capacity subsequent to making an application, the counterparty's deputy may assume the counterparty's application.
- 4.8. Where a deceased counterparty's personal representative assumes an application under paragraph 4.6, or a counterparty's deputy assumes an application under paragraph 4.7, they will become the applicant for the purposes of that application.

5. The application process

The application

- 5.1. To be valid an application must:
 - 5.1.1. be made in accordance with paragraph 4;
 - 5.1.2. be made using the form provided by the Commissioners for the purpose of making an application under this Scheme;
 - 5.1.3. include the information requested in the form provided by the Commissioners;
 - 5.1.4. be submitted:
 - 5.1.4.1. by post to [*address to be confirmed*];
 - 5.1.4.2. by post to such other address as the Commissioners may provide for the purpose; or
 - 5.1.4.3. by such other method as the Commissioners may specify;and
 - 5.1.5. be received by the Commissioners after [*insert date Scheme becomes operative*] 2020 and on or before 30 September 2021.

- 5.2. The Commissioners may request further information from the applicant where such information is reasonably required:
 - 5.2.1. to make the application valid in accordance with paragraph 5.1; or
 - 5.2.2. to enable the Commissioners to determine whether an application is valid in accordance with paragraph 5.1.
- 5.3. Where the applicant sends the further information requested under paragraph 5.2 to the Commissioners by the date notified under paragraph 5.5.2 the Commissioners will notify the applicant of whether their application is valid.
- 5.4. Where the applicant does not send the further information requested under paragraph 5.2 to the Commissioners by the date notified under paragraph 5.5.2 the Commissioners may terminate the application.
- 5.5. Further information requested under paragraph 5.2 must be so requested by the Commissioners notifying the applicant of:
 - 5.5.1. the further information requested; and
 - 5.5.2. the date by which the further information must be sent to the Commissioners.

Withdrawal of an application

- 5.6. The applicant may withdraw their application at any time prior to the date the Legal Documentation becomes legally binding on all parties to it by notifying the Commissioners.
- 5.7. Where an applicant withdraws an application under paragraph 5.6 the withdrawal will be effective on the date the notification is received by the Commissioners.

6. The determination process

- 6.1. A valid application will be considered by the Commissioners and determined in accordance with this Scheme.
- 6.2. The Commissioners may at any time request further information from the applicant where such information is reasonably required to enable the Commissioners to determine:
 - 6.2.1. any of the items that must be stated in a Repayment Decision under paragraph 6.6; or
 - 6.2.2. any other matter related to the determination of the application.

- 6.3. Where the applicant does not send the further information requested under paragraph 6.2 to the Commissioners by the date notified under paragraph 6.4.2 the Commissioners may terminate the application.
- 6.4. Further information requested under paragraph 6.2 must be so requested by the Commissioners notifying the applicant of:
 - 6.4.1. the further information requested; and
 - 6.4.2. the date by which the further information must be sent to the Commissioners.

Repayment Decisions

- 6.5. After considering a valid application and any further information received in response to a request under paragraph 6.2 the Commissioners will send a Repayment Decision.
- 6.6. A Repayment Decision must state:
 - 6.6.1. the date it was issued;
 - 6.6.2. the Commissioners' decision as to whether or not the applicant is eligible for a repayment and / or waiver of voluntary restitution;
 - 6.6.3. if the applicant is not eligible for a repayment and / or waiver of voluntary restitution, the reason(s) why it is not eligible; and
 - 6.6.4. if the applicant is eligible for a repayment of voluntary restitution:
 - 6.6.4.1. the voluntary restitution;
 - 6.6.4.2. Interest;
 - 6.6.4.3. Adjustment Amounts; and
 - 6.6.4.4. Repayment Amount; or
 - 6.6.5. if the applicant is eligible for a waiver of voluntary restitution:
 - 6.6.5.1. the voluntary restitution;
 - 6.6.5.2. Interest;
 - 6.6.5.3. Adjustment Amounts; and
 - 6.6.5.4. the New Settlement Amount.
- 6.7. The Commissioners may, at any time prior to the full and final satisfaction of the application, send an amended Repayment Decision.
- 6.8. Section 102 of the Finance Act 2009 applies to the payment of the Repayment Amount.

Acceptances

6.9. If an applicant wishes to accept the Repayment Amount in full and final satisfaction of their application they must send an Acceptance.

6.10. An Acceptance must state:

6.10.1. the name, address and bank details of the person to whom the Repayment Amount should be paid; and

6.10.2. where the Repayment Amount is to be paid to more than one person, the names, addresses and bank details of the persons to whom the Repayment Amount should be paid and the amounts or proportions each payee should receive.

6.11. If an applicant wishes to accept the New Settlement Amount in full and final satisfaction of their application they must notify the Commissioners.

6.12. The Commissioners must receive an Acceptance (for the purposes of paragraph 6.9) or a notification (for the purposes of paragraph 6.11) within 2 months of the date of issue of the Repayment Decision.

Review Requests

6.13. If an applicant wishes the Commissioners to review any of the matters stated in a Repayment Decision they must send a Review Request.

6.14. A Review Request must state:

6.14.1. the grounds on which the applicant is seeking a review;

6.14.2. the deficiency the applicant has identified in the Repayment Decision;
and

6.14.3. the correction the applicant wishes the Commissioners to make to the Repayment Decision.

6.15. The Commissioners must receive a Review Request within 2 months of the date of issue of the Repayment Decision.

6.16. A Review Request must include any evidence the applicant wishes the Commissioners to consider in support of their Review Request.

Updated Repayment Decisions

6.17. In response to a Review Request the Commissioners will reconsider the application.

- 6.18. The reconsideration of the application will be undertaken on behalf of the Commissioners by an officer of Revenue and Customs who was not involved in making the Repayment Decision to which the Review Request relates.
- 6.19. The Commissioners may request further information from the applicant where such information is reasonably required to enable the Commissioners to reconsider the application to which the Review Request relates.
- 6.20. The Commissioners will send an Updated Repayment Decision within 2 months of the date they received the Review Request.
- 6.21. Paragraphs 6.9 to 6.12 apply in respect of an Updated Repayment Decision as they do to a Repayment Decision.
- 6.22. An Updated Repayment Decision issued under paragraph 6.20 is not subject to a review under paragraph 6.13.

Determining the application

- 6.23. If the Commissioners do not receive:
- 6.23.1. in response to a Repayment Decision, an Acceptance, a notification in accordance with paragraph 6.11 or a Review Request;
 - 6.23.2. in response to an Updated Repayment Decision, an Acceptance or a notification in accordance with paragraph 6.11; or
 - 6.23.3. in response to a Continuation Notice, a Confirmation;
- they may terminate the application.
- 6.24. Where the Commissioners decide to terminate an application under paragraphs 5.4, 6.3 or 6.23 they must send a written notice to the applicant stating that the application has been terminated.
- 6.25. Termination of an application is effective on the date the notice referred to in paragraph 6.24 is sent to the applicant.
- 6.26. Termination of an application is treated for all purposes as the full and final satisfaction of that application.

7. Legal Documentation

- 7.1. The Commissioners will send the Legal Documentation to the applicant.

- 7.2. No right to payment of the Repayment Amount, or obligation to pay the Repayment Amount, shall arise under this Scheme or otherwise until the Legal Documentation becomes legally binding on all parties to it.
- 7.3. The parties' rights and obligations under the settlement agreement are unaffected until such time as the Legal Documentation becomes legally binding on all parties to it.
- 7.4. When the Legal Documentation becomes legally binding on all parties to it the Commissioners will pay the Repayment Amount in accordance with paragraph 6.10.

8. Recovering Repayment Amounts

- 8.1. Where the Commissioners decide that an application, Repayment Decision, Updated Repayment Decision or Legal Documentation contains an error or omission that has resulted in an applicant receiving a repayment or waiver of voluntary restitution that they would not otherwise be entitled to, the Commissioners may send a Notice of Intention to Recover.
- 8.2. A Notice of Intention to Recover must state:
 - 8.2.1. the date it was issued;
 - 8.2.2. the Commissioners' intention to recover an amount from the applicant;
 - 8.2.3. the amount the Commissioners intend to recover from the applicant; and
 - 8.2.4. the reason(s) the Commissioners intend to recover the amount from the applicant.
- 8.3. Within 2 months of the date of issue of the Notice of Intention to Recover the applicant may make representations to the Commissioners in response to the Notice of Intention to Recover.
- 8.4. Having considered any representations made under paragraph 8.3, the Commissioners may decide to:
 - 8.4.1. withdraw the Notice of Intention to Recover by notifying the applicant of its withdrawal; or
 - 8.4.2. uphold the Notice of Intention to Recover.
- 8.5. Where the Commissioners decide to uphold the Notice of Intention to Recover they may send a Repayment Demand.

8.6. The applicant must pay to the Commissioners the amount demanded in the Repayment Demand by the date stated therein.

9. Effect of payment of a Repayment Amount on certain reliefs

9.1. The payment of a Repayment Amount to an applicant under this Scheme shall not affect:

9.1.1. any person's entitlement to benefit from relief available under section 554Z5 of ITEPA 2003 that depended or depends on:

9.1.1.1. the income tax in respect of which voluntary restitution was paid under the settlement agreement having been paid in full for the purposes of section 554Z5(4)(b)(i) of ITEPA 2003; or

9.1.1.2. a person having agreed terms with an officer of Revenue and Customs for the discharge of the income tax in respect of which voluntary restitution was paid under the settlement agreement for the purposes of section 554Z5(4)(b)(ii) of ITEPA 2003; or

9.1.2. any person's entitlement to benefit from relief under paragraph 59(2)(a) of Schedule 2 to the Finance Act 2011 that depended or depends on the payment of the voluntary restitution to the extent (and only to the extent) that the value of the chargeable step is reduced by an amount reflecting the extent to which, as determined under sub-paragraph (1)(f) of that paragraph, the value represents (or still represents) the earnings mentioned in sub-paragraph (1)(f)(i) of that paragraph.

9.2. A waiver of voluntary restitution given to an applicant under this Scheme shall not affect any person's entitlement to benefit from relief under section 554Z5(4)(b)(ii) of ITEPA 2003 that depended on a person having agreed terms with an officer of Revenue and Customs for the discharge of income tax in respect of which voluntary restitution was paid under the settlement agreement.

10. Effect of payment of Repayment Amount on benefits

10.1. The payment of a Repayment Amount to an applicant under this Scheme will not have effect in any case so as to:

10.1.1. remove any person's entitlement to a contributory benefit, contribution-based jobseeker's allowance or statutory payment; or

10.1.2. reduce the amount of any such benefit, allowance or payment to which any person has an entitlement.

10.2. The terms used in paragraph 10.1.1 shall have the meanings given to them in the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as applicable.

11. Miscellaneous

Time periods

11.1. The Commissioners may, at any time, at the request of the applicant or on their own initiative, extend the time periods provided for in paragraphs 3.1.7, 3.1.28, 5.5.2, 6.12, 6.15, 6.20, 6.4.2, 8.3 and 8.6.

Notices

11.2. Anything to be sent, notified or otherwise communicated to the Commissioners under or in connection with this Scheme must be in writing and sent:

11.2.1. by post to [*address to be confirmed*];

11.2.2. by post to such other address as the Commissioners may provide for the purpose; or

11.2.3. by such other method as the Commissioners may specify.

11.3. Anything to be sent, notified or otherwise communicated to the applicant under or in connection with this Scheme will be effective if it is sent to the applicant's address as stated on the application form or, where the applicant has subsequently notified the Commissioners in writing of an alternative address, to that alternative address.

Liability

11.4. Irrespective of any repayment or waiver of voluntary restitution made under this Scheme, the Commissioners do not accept liability for any costs or losses howsoever incurred by the applicant directly or indirectly related to the settlement agreement or the application.

Solicitor's Office

26 February 2020

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