Independent Loan Charge Review 2025

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Foreword from the Independent Reviewer, Ray McCann

If *"the art of taxation consists of plucking the goose so as to obtain the largest possible amount of feathers with the least possible amount of hissing*", then, by that measure, the 2017 Loan Charge has failed and become the most controversial anti-avoidance measure of our time.

By any standard the Loan Charge is an extraordinary statutory provision. In terms of its design, the scale of adverse reaction to it, and not least in its harmful effects upon many of those within its scope, it has gone well beyond anything we have seen. In January 2025, against a background where ten individuals had taken their own lives, in whole or in part as a result of the anxiety and stress caused by the Loan Charge, and where many more were living in despair, I was asked to carry out a further independent review of the Loan Charge by the then Exchequer Secretary to the Treasury, Mr James Murray MP[1].

My Review is specifically focused on how to bring the Loan Charge to a close for those still to settle, and their families. The indirect effect on families is easily overlooked, but it is important since whilst some 45,000 or so were directly impacted by the Loan Charge, many times that number have suffered an indirect effect, in some cases leading to family and relationship breakdowns and employment difficulties. Finding a solution to the current impasse was always going to be challenging, however, from the outset, I was clear what issues the Loan Charge would cause. I explained this to Parliament in 2017 and in more detail in 2018. Most obviously, large numbers of individuals would be unable to pay the amount the Loan Charge demanded since very many were paid amounts that would not easily allow them to have high levels of financial resilience in the wake of the financial crisis. And, unless HMRC carefully planned how it would encourage the maximum take up of whatever settlement arrangements it might make, this would not only prevent those who would want to settle from doing so, it would require HMRC to commit more and more resources since, one way or another, tax disputes must at some point end.

There are unpalatable truths that those involved and those who have campaigned on their behalf dislike, but which are nevertheless part of the story of how we got here. For those who cared to look, even before 2010, it was only a matter of time before some form of counteraction to these schemes appeared, since no government tolerates attacks on the tax system forever. In truth, and especially from 2010, loan schemes were (even if it could have been claimed they worked) unlikely to be tolerated for long, and the risk of changes to outlaw them being retrospectively applied was clear. The Government had warned of this in late 2004 following aggressive marketing of a loan scheme earlier that year. If it was ever in doubt, this Review has made clear that many fewer individuals would have become involved in them had the risks of doing so been fully, adequately and, most importantly of all, realistically explained to them by the promoters and others involved, and by HMRC.

Hindsight is, of course, a perfect science. As they say, it is far better to keep the stable door closed than to try to catch the horse (in this case 45,000 'horses') after it has bolted. For HMRC, bringing loan schemes to an orderly close, without some alternative to the Loan Charge in the form of a (generous) settlement offer to those involved (who were protesting loudly, with justification, that they were being treated unfairly), was always going to be enormously difficult and costly. And, as the protests against the Loan Charge gathered pace, increasingly impossible. My own experience told me that today's difficulties grow from seeds planted years before. Loan schemes have their roots in the 1980s. I first encountered what we now refer to as a "loan scheme" in the late 1990s. Those earlier Employee Benefit Trust schemes were very different from loan schemes, not least in that they were typically designed by large accounting firms adhering to some professional standards.

Since 2005, scheme promoters of all sorts have been marketing abusive schemes inadvertently helped by a too-slow-to-react HMRC strategy that allowed loan schemes to spread from the larger companies to a point where they involve even relatively low paid workers in the NHS. At their peak, they denied the Government tax revenues at a time of significant economic financial stress and the promoters who marketed them knew the Government was determined to bring them to an end.

Some have said that I was starting in the wrong place, that is, that "I considered that the tax was due." Where else would you start? There are legitimate questions as to whether those involved should be required to pay the

[1] Daniel Tomlinson MP was appointed Exchequer Secretary on 1 September 2025.

tax and, if so, whether they should be required to pay everything HMRC might demand. But there could be no question that the tax was due; that was and is the law. In 2017, the Supreme Court made the position clear in *Rangers*. But the Court went further, casting doubt on the correctness of the 2002 decision in *Dextra* that was for most loan schemes the foundation stone upon which they were marketed. The promoters of these later schemes intended that everyone who participated would pay less (or no) income tax or National Insurance Contributions (NICs). Only that way could they justify the fees. Eventually the Government introduced what we know as Part 7A and later the Loan Charge. As explained in this report, the Loan Charge is unfair and the settlement terms HMRC offered failed to have regard to the ability of those involved to pay and were nowhere near as generous as those offered to much more serious tax avoidance and tax evasion in the past. Thousands of individuals who say they were duped by the promoters into believing that these schemes were compliant were left with a mix of confusion, anger and anxiety.

Since 2019, there has been little or no progress towards bringing the loan scheme scandal to a close and, without some significant intervention, the current impasse that HMRC and those who continue to have a Loan Charge liability find themselves in cannot be resolved. In 2017, HMRC set out to bring loan schemes to an end. However, bound to its no compromise approach, there was no exit plan, no plan B, and a plan A that was poorly thought through, unrealistic and in which many of the lessons of the past had been forgotten. And such efforts as HMRC did make to ease the overall liability were lost in the furore. As a result, both HMRC and those who remain in scope seem caught in a quagmire from which there appears to be no easy escape.

Some of my professional colleagues suggested that the liability should be lifted entirely from those involved; against a background where there are allegations of mis-selling this would obviously seem broadly reasonable. However, with some exceptions, everyone who participated in a loan scheme did pay less or no tax and NICs and, in a relatively small number of cases, on very substantial amounts. Others questioned why should those caught by the Loan Charge expect better treatment than those involved in other tax schemes? Again, this is not an unreasonable question. However, it is, in my view, the wrong question to ask. Instead, we should ask: why have they been treated so harshly? And why should HMRC be able to simply reach through long standing and important statutory protections, when every other taxpayer involved in a tax scheme (often more egregious and involving more substantial amounts of tax) escapes where there is no open HMRC enquiry or HMRC has missed a time limit? And, importantly, why have Loan Charge enquiries, in some instances involving amounts that would be rounding errors in many cases, been allowed to just go on and on for a decade or longer with no progress, only for those involved to find that their right of appeal has *effectively* been removed retrospectively?

I differ from Lord Morse. Most obviously, I'm a tax professional with some experience of tax schemes as an HMRC Inspector and, for the past almost twenty years, as a tax adviser. I was also the President of the Chartered Institute of Taxation at the point the Loan Charge came into effect. I also differ in that, whilst I have supported the policy of ending these schemes, using a Loan Charge or otherwise, I have been a consistent critic of the terms set by HMRC upon which those subject to the Charge have been asked to settle their liability.

I have tried to keep practical reality at the heart of the work undertaken for this Review. There is criticism of HMRC and the "one-size-fits-all" approach of both the Loan Charge and HMRC's efforts to enforce a policy that was not capable of delivering the Government's objectives (of ending loan-based employment tax schemes and recovering unpaid tax from the past) in a way that did not cause significant and unacceptable harm. And, as was Lord Morse, I am critical of the promoters who continued to market the use of loan schemes, even after the enactment of what became Part 7A in 2010, and the Loan Charge itself in 2017.

The fact is that the promoters intended to, and did, undermine the tax and NICs revenues ordinarily paid by those in work for their own enrichment. Often basing themselves outside of the UK, they enjoyed very substantial profits. And, whilst the schemes varied in complexity, sophistication, and value, they all shared that common objective, whether those who participated in them realised that to be the case or not. Even after the Loan Charge was announced, some promoters marketed new schemes, along with more dubious schemes intended to circumvent the Loan Charge itself, trying to squeeze even more fees from those involved. There is also criticism of the professionally qualified individuals who often failed to provide any or adequate warning to their clients that they were treading on dangerous ground and in some instances offered financial incentives to existing clients to encourage even wider use of loan schemes.

Academics might study aspects of the disguised remuneration aberration for years to come, and, as a profession we will, I hope, learn lessons that mean promoters of tax schemes do not enjoy the marketing opportunities of the past and, taxpayers will stop believing in seemingly magic tax schemes.

Sadly, as mentioned at the start, it is too late for some ten individuals[2]; others have passed away from ill health leaving their families to try to resolve matters, often with no support. Many others told me that they suffer from mental and physical health issues causing long-term effects on their families and working lives. Others said they lived with a sense of shame and anxiety that they have not shared with their families.

I hope that this report marks a turning point from which we all, and most importantly those subject to the Loan Charge, can begin a process that puts it behind us. Whatever else we might say, this has gone on far too long for everyone involved. What is certain is that Government, HMRC, the tax and legal professions, regulators, and taxpayers all have a shared responsibility for ensuring that something like this can never be allowed to happen again.

I was very ably assisted in this Review by three highly capable Civil Servants, seconded from outside of HMRC and HM Treasury, and without their commitment and hard work, often responding to distressing impact statements, this report could not have been delivered. All three will go on to new roles within the various Civil Service departments to which they belong. It has been a pleasure to work with them, and I wish them well for their future careers. I have no doubt that we are in excellent hands.

Ray McCann CTA (Fellow), ATT
Independent Reviewer

[2] As this report was being finalised, the Review was advised by HMRC of a possible eleventh suicide.

Executive Summary

1. In drafting this report, the Review has, so far as possible, avoided jargon or detailed explanations of relevant statutory provisions and decisions of the Tribunals and courts. And, unless it is otherwise clear, the evidence provided by those who answered the Call for Evidence or otherwise responded to the Review, has been accepted at face value.

2. The Loan Charge was announced in 2016 and enacted in 2017 with an operational date of 5th April 2019. But the history of loan schemes goes much further back into the 1980s, and the increasing importance of National Insurance Contributions (NICs) levied on employers.

3. The Employee Benefit Trusts (EBTs) that appeared in the 1990s were the successor to Readily Convertible Asset (RCA) schemes. And EBTs, in turn, gave way to the contractor loan schemes and other loan-based schemes that remain within scope of the Loan Charge. Even they have in turn been replaced by new types of schemes promoted by umbrella companies and others that in many cases sail very close to the wind and appear to lack any kind of credible basis.

4. Following the introduction of what is known as IR35 in 2000, the tax avoidance industry took what were previously trust-based schemes, typically used by medium and large size companies, and industrialised them, repackaging them for much broader use. Typically those earlier EBTs were largely intended to facilitate the tax advantaged payment of *bonuses and other benefits*, but from around 2005, new loan schemes appeared that were intended to pay *normal wages* and contract values in a tax advantaged way.

5. To those workers anxious to avoid the complexity of IR35, this new industry marketing largely the same EBT-based scheme but to individual workers and on the surface seemed a good solution. The schemes boasted of IR35 compliance and reduced administrative overheads, but also – for many – the advantage of increasing take-home pay by utilising a “loan” to avoid income taxes and NICs on part of their earnings.

6. HMRC had been aware of the burgeoning use of EBTs for tax avoidance. They began challenging them in the courts in 2002 in *Dextra* and 2004 in *Sempra*. But in both cases, HMRC were not successful in persuading the courts that income tax and NICs were due on contributions to the EBT that were lent to employees (though HMRC were successful in arguing that corporation tax was owed). This litigation, and the subsequent case law it created, likely acted as a green light to scheme promoters eager to monetise what they saw as a loophole to grow the loan scheme market. HMRC’s lead case strategy had intended to set principles against which the remainder of cases could then be resolved swiftly; the problem was that HMRC’s litigation was struggling to win on the key principle that income tax and NICs were due.

7. Having mostly failed to succeed through litigation, in 2010, Government changed tack with the introduction of the Disguised Remuneration (DR) Rules in Part 7A ITEPA 2003. But by this point thousands were already involved in loan schemes.

8. HMRC eventually achieved success with the Rangers case, but this was not finally decided until 2017 and by then HMRC were on the back foot. In 2016 the Government announced its intention to legislate in order to finally bring DR to a close and the Loan Charge was enacted in 2017. **The history is summarised more fully in Part 2 and HMRC’s litigation strategy is discussed further in Part 7.**

9. For the promoters, loan schemes had become a lucrative industry. Relying upon HMRC’s lack of success before the courts and the absence of further litigation, the market continued to grow. When legislative change finally came, not to be deterred, promoters devised tweaks and changes to their schemes in attempts to claim continued compliance with the new rules. From 2010, with the introduction of Part 7A, the risk of using such schemes became very high – so high that some promoters left the market entirely. But, despite this, many promoters simply ramped up their marketing with bold

claims about the validity of their schemes, claiming them to be fully compliant, claiming endorsement by barristers, implying approval by HMRC, and often describing the schemes as "low risk".

10. In the contemporaneous context of continued government action to tackle these schemes, and the clear statement of intent to legislate retrospectively if needed, such statements seem at best unwise, and (in the absence of any warning about HMRC/the government's views and intentions) lead to a conclusion that these schemes may have been mis-sold. **The role of promoters is discussed further at Part 8.**

11. Despite the introduction of Part 7A, HMRC continued to struggle to resolve thousands of open enquiries. Additional statutory measures were enacted, including a General Anti-Abuse Rule (GAAR) in 2013. In 2014 Accelerated Payment Notices (APNs) and Follower Notices (FNs) were introduced. APNs allowed HMRC to enforce payment of tax before a tax dispute was finally resolved. FNs were issued to taxpayers where a court decision was considered relevant to a taxpayer even though their own appeal had not been decided, again allowing HMRC to enforce payment in tax disputes.

12. However, except for *Rangers* and perhaps a handful of other much later cases, there appears to have been little material tribunal action after 2010. HMRC continued to open enquiries to protect their position, but it is not evident that they were progressing cases from this point. It seems all were awaiting the outcome of *Rangers*. But this left thousands of taxpayers with lengthy open enquiries. Combined with HMRC's limited direct communication with taxpayers, which left promoters – all too happy to peddle their version of events – in control of the narrative. This lack of progress with enquiries seems to have contributed to the belief that there was in fact little case to answer.

13. The announcement of the Loan Charge in 2016 attracted significant criticism for the harshness of its approach. Somewhat uniquely for tax legislation, it created a future charge based on past events (its so-called retroactive effect); it effectively voided the usual protections afforded to taxpayers where HMRC was out of time to make an assessment; and it stacked all untaxed loan income into a single year of earnings. It was undoubtedly harsh. **The Loan Charge approach is discussed further at Part 6.**

14. But, it appears, it was never HMRC's intention that those within its scope would *pay* the Loan Charge. Rather, HMRC hoped it would act as a backstop that would encourage most individuals to settle their loan scheme use with HMRC for the years in which they had participated in a DR scheme.

15. This, the Review considers, is the crux of the issue. The settlement terms offered in 2017-2020 (i.e. to settle before the Loan Charge arose) were never capable of generating the levels of voluntary settlement HMRC hoped for. The Loan Charge was extraordinary; and the terms of the accompanying settlement opportunity needed to be extraordinary too. They were not. They took no account of the extenuating circumstances that had allowed loan scheme use to proliferate, there was little regard to ability to pay (even though HMRC knew it was a significant issue), and HMRC's insistence upon voluntary restitution (i.e. for individuals to pay up even when HMRC hadn't opened an enquiry) was always going to be prohibitive.

16. HMRC's strategy in 2017 was never capable of bringing loans schemes to an end in an orderly fashion, but the current impasse most likely goes beyond what might have been HMRC's worst case scenario, with only a fraction of those within HMRC's original estimates having settled. Very many have been unable to. HMRC's efforts to encourage compliance have generated increasing frustration and fostered an environment unlikely to be conducive to constructive dialogue. HMRC is battling (largely unsuccessfully) on multiple fronts. **HMRC's strategy is considered in the findings at Part 7.**

17. This is the basis on which the Review has made its recommendations. Certainly after 2010, it is probable that many individuals may well have been mis-sold the schemes by promoters, whose marketing material (or at least that which the Review has seen) seems to imply their product has little to no risk despite the context at the time being to the contrary. This was compounded by the referral tactics they used to incentivise more and more individuals to join. HMRC's lead case litigation strategy, such as it was, failed. After the early losses in *Sempra* and *Dextra*, too much time was allowed to lapse with little material further judgments until *Rangers*. This enabled promoters to present the picture that

these arrangements were not controversial. When HMRC did open compliance interventions, they struggled to progress them speedily. Finally, the Loan Charge, though successful in making incontrovertibly clear Government's intent that loan schemes would not or would not be allowed to work, failed as a mechanism to resolve the tax affairs of 45,000 taxpayers, largely because it was not married with a settlement strategy that was both commensurate to the extraordinary legislation enacted, and equitable against the actions of promoters, and (in)action of HMRC.

18. The Review recommends a new and final settlement opportunity, the terms of which are more commensurate to the extraordinary circumstances of the Loan Charge, and the role of HMRC and promoters in the current situation. The overarching objective of the recommendations is to create a means whereby everyone who wants to settle their tax position through agreement with HMRC, can settle. Its method, as part of a structured approach to settlement, is to use a series of standard adjustments to suspend a portion of an individual's current liability which, if the terms of the suspension and payment plan are met, would in time be written off. This is intended as an incentive to reach a settlement with HMRC and as a deterrent against further involvement in tax schemes. **Specifically, the Review recommends a new approach to settlement which suspends (subject to conditions) part of the overall tax owed to make allowance for the proportion of the income taken by the promoters and further suspends part of the overall liability equivalent to late payment interest and penalties.**

19. In doing so, this approach provides a mechanism for consistently and efficiently arriving at a settlement which represents an amount that would – were HMRC, in normal circumstances, minded to accept a substandard offer (as they have discretion to do under their care and management powers) – be regarded as representing a cost-effective return for taxpayers generally and an affordable settlement for the individual involved.

20. The recommendations also provide backstop arrangements, for those who, notwithstanding these adjustments, would still have difficulties in meeting the liability due to genuine means constraints. These include a maximum ten-year payment period.

21. **The recommended settlement approach is set out in full at Parts 9-10 and summarised below.**

22. The Review has also made a small number of further recommendations, aimed at improving HMRC's processes and approach to tackling tax avoidance. **These are set out in full at Part 11.**

Summary of Recommendations

Settlement Recommendations		
1	**Introduce a new settlement opportunity for individuals**	*The Review recommends that HMRC introduce a new settlement opportunity for those who used loan schemes, who have yet to settle their liability.*
2	**Suspend part of the liability**	*Through the new settlement, individuals and HMRC can agree a reduced settlement amount, with the difference to their current Loan Charge liability suspended. If the terms of the suspension (e.g. continued compliance) are met, the suspended amount should be written off after an agreed period of time.*
3	**Calculating the suspended liability**	
The recommendations below, taken together, calculate a new settlement amount. The difference between that and the current Loan Charge liability is the suspended element.		
	a) Unstack the tax years	*Calculate the tax owed in the years in which the income was earned*
	b) Suspend a proportion to account for promoters' fees	*Suspend up to 10% (tapered by income) of gross scheme income per tax year to account for fees paid*
	c) Suspend late payment interest	*Suspend late payment interest*
	d) Do not seek to apply penalties	*Do not seek to apply penalties, as standard*
	e) Do not collect inheritance tax	*Do not seek to claim IHT through this settlement*
4	**More straightforward payment plans**	
	a) Five- and ten-year plans	*Allow payment plans of up to five years by default; and up to ten years with HMRC approval.*
	b) A ten-year time limit	*Ten years should be the maximum length of payment plan. If an individual cannot afford to pay the liability over ten years, then, as a backstop, the remainder could be suspended.*
5	**Individuals on only State Pension/Universal Credit**	*Where, in a very small minority of cases, there is no reasonable prospect of recovering much of the liability due to the economic circumstances, take an exceptional approach.*
6	**Improved time to pay for businesses**	*Where liabilities are settled with employers rather than the employees, do not disallow any corporation tax deduction, and as with individuals, do not apply penalties or IHT, and ensure sufficient time to pay is available.*
Supplementary Recommendations		
7	**Improve DOTAS notifications**	*Replace the current notification system with a clear certificate promoters must provide to taxpayers making clear the scheme is tax avoidance. Consider criminal offences for failure to provide it.*
8	**Prohibit promoters from providing additional tax services**	*Avoid conflicts of interest by prohibiting those promoting tax schemes (or linked entities) providing further tax advice, including doing self-assessment returns, for the same individual.*
9	**Improve customer communication**	*Improve HMRC correspondence with customers, by reducing the use of templates not more specific to the circumstance and considering certain clauses within contract settlements that have proven prohibitive to resolution.*

1) Methodology

1. In all, the Review considered close to a thousand pieces of individual testimony submitted by those affected by the Loan Charge, shared either through our Call for Evidence or other engagement with the Review, those introduced by third party organisations (to whom the Review extends its thanks), and impact statements shared with the All-Party Parliamentary Group on the Loan Charge, to whom the Review is grateful for sharing their evidence base. Importantly, the Review thanks those individuals who, having given written evidence, agreed to meet with the Review to discuss their experiences further. These conversations, that in many cases covered difficult topics, have been invaluable in understanding the extraordinary situation in which these individuals are currently placed.

2. In addition to this, the Review has been grateful to receive from professional firms and individuals alike, a strong body of evidence relating to the marketing, sale, and operation of the schemes themselves. Contemporaneous marketing material, such as flyers, webinars, email correspondence, and other such documentation is important because it has enabled the Review to develop as accurate an understanding as possible of how taxpayers came to be involved in these schemes. Over 800 pieces of documentary evidence to this effect were considered by the Review.

3. The Review has also been able to speak to individuals who were involved in the development, operation, promotion, marketing, or sale of these schemes, to understand their position and question them on their activities. Whilst the Review is largely critical of those who promoted these schemes, and certain of the statements they provided were treated with due scepticism, the Review is nonetheless grateful for their evidence in helping provide the background that enabled the development of this report.

4. In its work, the Review engaged with experts across the legal and tax professions, whose knowledge and expertise has greatly enhanced the Review's understanding of the relevant technical and legislative context. Specific thanks are owed to Christopher Tidmarsh KC, who provided independent legal counsel on elements of this Review as it was required.

5. The Review submitted to HMRC a substantial request for information covering a wide spectrum of areas. This included requests for quantitative data regarding their estimates of the numbers of people and amounts of money involved, questions about their operational handling of cases from 2010, and inquiries about the policy reasoning behind their overall approach. Whilst the Review alights upon areas of deserving criticism for HMRC, thanks are owed to those who prepared responses to our large requests for information, all of which has added to our understanding, and much of which is reflected in this report. The Review is grateful, too, for their commitment to transparency: as agreed in the Terms of Reference, information provided by HMT and HMRC to the review team and factual comments provided on draft reports will be published after the review has concluded".

6. Some former senior HMRC staff contacted the Review, and this offered valuable additional insights as to HMRC's strategy over the period including the introduction of the Loan Charge and earlier.

7. The terms of reference for this Review (reproduced at Appendix B) make clear that the objective of this Review was to bring about closure to the Loan Charge for those involved. Significant emphasis has been placed on understanding the context and history that led to the introduction of the Loan Charge. Much has been written about the Loan Charge and DR generally, so the Review has not sought to present an exhaustive history but to include enough historical detail to put the Review and its findings in context.

8. The first section is, therefore, a brief history of how the use of loan-based schemes led up to the Loan Charge, followed by a short aide-memoire to how typically the schemes worked. The subsequent parts then set out the findings of the Review, split into the two high-level barriers to closure: ability to pay and fairness (which include examination of the roles of HMRC and promoters). The final sections set out the Review's proposed way forward and its recommendations.

2) The History: how we got here

1. The history of DR tax planning and loan schemes could easily be titled the "anatomy of a scandal" since, for both those involved and HMRC, that is surely what it is. In 2019, the Morse Review report examined the policy underlying the Loan Charge and its implementation. It also explained in detail the history of DR schemes, and HMRC's efforts to combat them. What follows does not detract from what was explained in the Morse Report and attempts only to sketch the main events in the period since the late 1980s to provide the historical context for this Review.

2. In the past, and perhaps still, PAYE and NICs have always come a poor second in terms of priority both for HMRC and for those who carefully watch the movement of what is referred to as the "Tax Gap", the annual measure prepared by HMRC to show the tax it estimates is unpaid due to error, avoidance and evasion[3].

3. Over the past twenty years the tax gap has been at the heart of HMRC's compliance strategy. Tax avoidance by large companies and the wealthy has always grabbed the headlines, despite the tax at risk from schemes targeting employers and smaller businesses and compliance levels of small business typically putting at risk much greater amounts of tax[4].

4. The mass marketing of tax schemes is largely a phenomenon that originates from changes in the taxation of earnings in the 1980s, where even large corporates (typically more cautious where marketed schemes are concerned) were keen to explore with the large accounting firms how they could manage their exposure to employee costs and employer taxes.

1980s – the rise of employer National Insurance Contributions

5. As a result, over the past several decades, HMRC has engaged in a seemingly never-ending struggle to deter the use of what is now commonly referred to as "disguised remuneration". HMRC's efforts have often been described as "whack a mole", and with good reason. The activities of the scheme promoters have kept HMRC and HM Treasury busy for years. It has also absorbed much Parliamentary time and has resulted in some of the most complex statutory provisions we have, involving hundreds of pages of legislation.

6. From the 1980s, employer NICs began to increase and quickly became an important levy paid by medium- and larger- sized businesses. As rates increased, for some larger businesses, NICs could be the single largest tax contribution they would pay, and the "status" of workers became an important employer compliance issue for HMRC. Originally, this had involved some employers unilaterally deciding that a particular individual worked on self-employed terms. The advantage was simple: it reduced the cost to the employer of labour (through having no liability to employer NICs or employment related benefits such as holiday pay) and it increased the net reward of the individual. Over time this expanded into the use of personal service companies (PSC), through which an individual would provide services to a single (or multiple) end user through a limited company they had set up as part of the arrangements and of which the individual would typically be the only director/employee.

7. Leaving aside any business-related advantages, the use of a limited company in this way allowed the individual to be paid not only through salaries and bonuses but also by way of dividend. The latter was attractive from a tax and NICs perspective as dividends were taxed far less heavily than earnings and did not attract a liability to NICs[5].

8. This made the use of a PSC very popular and in turn led the Government to introduce a counteraction in the form of IR35 in 2000. IR35 is not discussed in detail in the report, however, suffice to say that it is far from clear that it has successfully counteracted the full range of PSC use that HMRC might have expected. Thousands of self-employed individuals moved from a conventional self-employed tax status

[3] There is no detailed discussion in this report of the tax gap. Further information can be found at gov.uk/government/statistics/measuring-tax-gaps
[4] https://taxpolicy.org.uk/2025/06/19/the-small-business-tax-crisis-40-of-tax-due-isnt-paid/
[5] The differential between the taxation of earnings and the tax on dividends has been substantially narrowed over the past fifteen years

to a limited company status, and, overall, IR35 has become an unpredictable measure for both taxpayers and HMRC. Many of those involved in loan schemes have said that the use of a loan scheme was explained to them as an alternative to the uncertainty caused by IR35.

9. The increase in NICs rates resulted in an avalanche of exotic schemes intended to reward individuals, typically directors and senior employees, entering the market in the form of Readily Convertible Assets (RCA). These were widely promoted by accounting firms to medium and larger sized companies, as well as smaller family entrepreneurial type businesses. RCA schemes involved paying earnings in the form of gold and silver bullion, platinum sponge, diamonds, fine wines, indeed almost any commodity for which there was a ready cash market. The employee would receive a certificate conferring ownership of the asset, where arrangements had already been made by the employer so that the asset could be quickly turned to cash. RCA schemes were intended to eliminate NICs since the rules at the time did not impose a charge on employers when earnings were paid in this way. At their peak, RCA schemes involved tens of thousands of employees and many millions in unpaid employer NICs. Whilst the Government over time eventually outlawed such schemes, the tax planners - not to be undone - had already moved on, and, increasingly, Employee Benefit Trusts (EBTs) became widely used as part of the senior executive remuneration arrangements of many large concerns.

The 1990s-early 2000s – Employee Benefit Trusts

10. Whilst EBTs often had a benign purpose (even today a form of EBT is an uncontroversial element in many employee share ownership arrangements), from the mid-1990s, EBTs were increasingly used to reward employees in a way the tax planners intended would reduce the corporation tax charge on the employer, whilst not incurring a PAYE or NICs charge. Typically, for most EBT schemes used by larger employers, the employee would relinquish any entitlement to any discretionary bonus in favour of becoming a beneficiary of an EBT that had been established by their employer. The Channel Islands and the Isle of Man were common jurisdictions for the location of EBTs.

11. Whilst in some cases the EBT was used to pay cash bonuses, the provision of overseas holiday accommodation, school fees, and similar benefits were also common. Within a short period of time, however, the offer of a "soft loan" (a loan with very low or no interest charged and no fixed repayment date) from the trustee of the EBT became the most common benefit enjoyed by employee beneficiaries and EBTs were popular with financial services businesses and larger private companies across several industries.

12. The employer would fund the EBT in cash and each year provide recommendations to the trustee of those employees the employer thought deserved to benefit from the trust (i.e., be paid a 'bonus'). It was essential to the tax planning that the trustee was under no obligation to follow such recommendations, although trustees almost always would. Well-advised businesses typically required the trustee (under the terms of the trust or by letter of wishes) to retain some of the trust fund (or the trustee had power within the trust deed to recover amounts paid to beneficiaries) as a safeguard in the event HMRC challenged the EBT arrangements. In this way, if income tax and/or NICs was found to be payable, the employer was protected and one way or another any tax/NICs liability would be paid by the employee beneficiary[6].

13. In general, as the number of EBTs increased, such enquiries that were made by HMRC involved only the question of whether a corporation tax deduction should be given. Employment tax experts have said that HMRC's emphasis on combatting DR has helped to change HMRC's priorities, although still today the focus for many remains on corporation tax and the challenge to HMRC from large business. Some former HMRC Officers made the point that, in specialist parts of HMRC, such as the Special Investigations Section (SIS) and the Large Business Office, it was difficult to persuade relatively senior inspectors to take PAYE avoidance seriously; and whether PAYE and/or NICs were payable was not pursued in the majority of (even larger) HMRC enquiries.

[6] Such arrangements meant that many former employees settled their tax and NICs liabilities between 2017 and 2019.

14. A significant issue for HMRC was that identifying the use of an EBT was not always straightforward. The employer's contributions to the EBT might often be simply included within the total salaries or bonuses in company accounts or some other general expense deduction. There was no specific statutory requirement that mandated disclosure, and accounting practice at the time did not require specific disclosure, as is the case now. There was also disagreement within the accounting profession as to the whether the accounting standards in force at the time applied to EBTs.

Dextra and the rise of the loan scheme

15. Higher value EBTs did attract the more specialised parts of HMRC, including the Special Compliance (SCO) and SIS teams. In 2002 the Special Commissioners[7] found against the Revenue in an SIS case: Dextra Accessories Ltd & Ors v Macdonald Inspector of Taxes. *Dextra* was the first significant case in which HMRC had argued that EBT transactions resulted in PAYE and NICs liabilities where contributions were made to an EBT. HMRC lost on two issues. Firstly, the Commissioners did not accept that it was inevitable that the funds contributed by Dextra to the trust would be paid to the employees i.e., the trustees would not simply follow the wishes of the employees. On this basis the Special Commissioners concluded that loans paid to the employees were genuine and not disguised distributions; or - more precisely - the appointment of funds to the EBT, and the later appointment to individual sub-trusts, did not trigger a PAYE or NICs liability. Secondly, since the trustee could distribute the trust contributions made by Dextra in different ways, they were not "potential emoluments", so that the restriction, then in the S43 Finance Act (FA) 1989, did not apply to prevent them being deducted in the corporation tax calculation.

16. HMRC appealed against the judgment so far as it related to the corporation tax deduction; however, given the findings of fact by the Special Commissioners, HMRC did not pursue the PAYE/NICs issue before the High Court. The High Court also gave judgment in favour of Dextra on the corporation tax deduction. HMRC appealed again to the Court of Appeal that this time found in favour of HMRC, thus denying Dextra a corporation tax deduction for the EBT contributions. In July 2005 the House of Lords agreed with the Court of Appeal.

17. Even before the final judgment in *Dextra*, the Government had amended S43 FA 1989 with effect from 27 November 2002. However, by then the larger accounting firms had begun marketing an alternative form of trust: the Family Benefit Trust or FBT. Under this arrangement the employee would be excluded from benefiting from any trust made by their employer and instead other family members would be appointed as beneficiaries. In this way it was hoped to avoid the fate of Dextra whilst also still avoiding PAYE and NICs on payments made by the trustee.

Sempra & Household Estates

18. HMRC next challenged EBT and FBT arrangements in 2004 in the case of Sempra Metals Ltd[8], a London based trader that had used trust arrangements as part of its employee remuneration strategy going back to 1995. Here, again, HMRC argued that the use of an EBT, and later an FBT, gave rise to both employment income and earnings, so triggering PAYE and NICs liabilities. As in *Dextra*, the Special Commissioners rejected HMRC's arguments, so far as PAYE and NICs were concerned, however, Sempra was, like Dextra, denied a corporation tax deduction.

19. In a further case, *Household Estates Ltd*[9] in 2007, HMRC once again attempted to persuade the Commissioners that PAYE and NICs liabilities arose on the trust contributions. But again, the Commissioners refused to be swayed by HMRC's contentions, albeit Household Estates were eventually, like Dextra and Sempra, denied a corporation tax deduction by the High Court.

20. After *Household Estates* and in the run up to the announcement of what is now Part 7A ITEPA 2003 in 2010, there is little evidence of HMRC pursuing PAYE and NICs through the Tribunal and Courts in

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[7] The *Special Commissioners* were the predecessor of the current Tribunal system
[8] Sempra Metals Ltd. v Inland Revenue & Anor [2004] EWHC 2387 (Ch)
[9] Revenue and Customs v Household Estate Agents Ltd [2007] EWHC 1684 (Ch)

relation to EBTs. A notable and important exception is *Aberdeen Asset Management*[10], where the First Tier Tribunal upheld an HMRC challenge to EBT arrangements that were intended to provide millions, tax and NICs free, to the company's employees. However, it is unlikely that, even had a contractor been aware of the Tribunal (and, later, Court) decision, they would have associated their arrangements with those of a large investment company paying tens of millions to its employees through complex share transactions and an EBT.

21. So far as large business was concerned, for HMRC *Dextra* was a success since it encouraged a number of banks to settle with HMRC and some in the tax profession were pessimistic as to the value of an EBT as part of a remuneration tax planning strategy going forward. In 2003 for example, Patrick Way, now Kings Counsel (KC), described the outlook as "bleak", since, denied a corporate tax deduction, the cost of the EBT was "likely to be prohibitively expensive"[11]. It is reasonable to conclude that the use of EBT arrangements by larger concerns as a means of avoiding PAYE and NICs was substantially curtailed by the decision in *Dextra*.

Limited further litigation

22. Otherwise, and despite the fact that in the period from 2005 contractor loan schemes[12] were on an increasingly upwards trajectory in terms of numbers, there is no evidence of HMRC pursuing contractor loan schemes through the tax tribunal and this has largely continued in the post 2010 period.

23. Given the very large number of contractor loan scheme cases HMRC had under enquiry, this lack of litigation activity is very difficult to understand. Based upon individual testimony provided to the Review, it is possible that, had HMRC pursued a number of the contractor loan schemes through the Tribunal, what we have seen in the past fifteen years could have been avoided. Instead, HMRC's strategy, so far as loan schemes are concerned, appears to have been almost exclusively an enquiry response. This is at odds with HMRC's assertion that "loan schemes never worked".

24. Having regard to HMRC's failure to persuade the courts that PAYE and NICs were payable by EBTs in 2002, and that there was no later attempt to litigate contractor loan schemes in the period up to 2010, it may be reasonable to conclude that HMRC lacked confidence in that period as to whether litigation would succeed, and that Part 7A was a realisation that, in terms of number of cases, DR and loan schemes in particular had gone beyond what HMRC could reasonably expect to manage. HMRC's strategy is discussed more fully later in this report.

2010 - The Disguised Remuneration Rules – Part 7A

25. In 2010, the Government announced its intention to legislate for what is now referred to as "Part 7A"[13]. This provided that a PAYE and NICs charge would arise where a range of transactions commonly associated with an EBT were carried out, including, for example, earmarking trust funds for specific employees, making a loan to an employee, and so on. By the time of this announcement, thousands of individuals were involved in various loan-based tax schemes. Part 7A was intended to bring this expansion to an end. However, it made no attempt to recoup the tax and NICs that HMRC considered should have been paid for the years before 2010.

26. Given the history of DR tax schemes, it was perhaps inevitable that, even if many of the accountants and tax advisers in the regulated profession[14] moved away from such schemes (as has been claimed), the introduction of Part 7A triggered a new wave of promoters keen to market schemes that they claimed would give the same benefits of earlier loan schemes, but which would be free of Part 7A

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[10] Finally heard at the Scottish Court of Session in 2013: Aberdeen Asset Management Plc v The Commissioners for Her Majesty's Revenue and Customs [2013] CSIH 84
[11] Employee Benefit Trusts – RIP? Patrick Way April 2003
[12] Contractor loan schemes varied from the traditional EBT / director bonus-style schemes. Contractor loan schemes essentially acted as a payroll/resourcing umbrella to contract workers to companies for the duration of project(s) or contracts; rather than acting as a mechanism to allow tax-advantaged payment of bonuses to senior employees or directors of firms. Although they relied on similar mechanisms, they are distinct schemes.
[13] Part 7A, Income Tax (Earnings and Pensions) Act 2003, as amended by Finance Act 2011
[14] Members of PCRT professional bodies

concerns. In many cases, this involved employees being reclassified as self-employed. As a result, the use of loan schemes has continued, even after Part 7A became law[15].

The Glasgow Rangers Case

27. In 2010, news that HMRC was investigating the EBT arrangements made by Glasgow Rangers Football Club became known and, later that year, the case came before the First Tier Tribunal. From the outset, the case was controversial, with the impact of the HMRC investigation upon Rangers Football Club front page news in Scotland and elsewhere. The First Tier Tribunal did not publish its decision in favour of Rangers (on a majority decision, Judge Poon dissenting) until 2012. HMRC suffered a further set back when, in 2014, the Upper Tribunal confirmed its agreement with the First Tier Tribunal. Rangers were, however, by this time, in severe financial difficulty.

28. For HMRC, the tide finally appeared to turn in 2015, both in its case against Rangers and (HMRC no doubt hoped) loan schemes generally, when the Inner House of the Court of Session accepted an HMRC argument that the contributions to the EBT made by Rangers were a redirection of earnings and so Rangers (as the employer) should have deducted PAYE and NICs from the trust contributions. In 2017, the Supreme Court upheld the judgment of the Scottish court. In his leading judgment, Lord Hodge went further still, concluding that *Sempra* had been wrongly decided so far as the decision of the Special Commissioners was concerned. He also disagreed with the decision reached by the Special Commissioners in *Dextra,* albeit he acknowledged that the Special Commissioners in that case had not been presented with the arguments HMRC had used in *Rangers*.

The Employee Benefit Trust Settlement Opportunity

29. In 2011, HMRC launched its Employee Benefit Trust Settlement Opportunity (EBTSO). This initiative was targeted at employers and offered a range of very generous incentives to companies to encourage settlement of PAYE and NICs liabilities by employers. These incentives included forgiveness of some PAYE/NICs liabilities where the EBT had been disclosed. And, on reaching agreement with HMRC, trust funds could be distributed to employees with no further tax liabilities under Part 7A or otherwise. The EBTSO had no requirement where a company should voluntarily pay such PAYE and/or NIC that HMRC might contend was due, and where the company had disclosed the use of the EBT, but HMRC had not acted on the disclosure, HMRC treated the PAYE and NIC that would otherwise have been due as paid for the purposes of Part 7A whether the PAYE and NIC had in fact been paid or not. In other cases, companies could voluntarily pay the PAYE and/or NIC free of late payment interest in which case any remaining trust fund could be distributed to the employees free of any tax. It was also easier for companies to satisfy the requirements for “disclosure” under the EBTSO, than it is for individual taxpayers to do so under the restrictive Finance Act 2020 “reasonable disclosure” requirements, introduced following the Morse Review recommendations.

30. At the time, many larger companies were attracted to the terms of the EBTSO but had held off from settling as uncertainty over whether EBT structures were effective in avoiding PAYE and NICs continued, due to the then ongoing HMRC dispute with Glasgow Rangers that had begun its journey through the Tribunal and courts. Once it was clear that Rangers was likely to be finally decided in favour of HMRC, the number of companies accessing the EBTSO increased.

31. Where the EBT had been used prior to 2006, the EBTSO was especially generous so that many companies were able to settle on low effective rates when compared to the maximum value of tax (including IHT) and NICs that would otherwise have been payable.

32. HMRC withdrew the EBTSO in 2015.

[15] See p32 for HMRC estimates as to the use of loan schemes

2016 - The Loan Charge

33. The Loan Charge was first announced by then Chancellor George Osborne in 2016. It was intended by the Government to bring DR tax planning to a close. Originally planned for inclusion in the Finance Act 2017, it was eventually enacted in the Finance (No 2) Act 2017, having been dropped from the Finance Bill 2017 due to the announcement of the 2017 General Election.

34. On completion of its passage through Parliament in 2017, the statutory position appeared to be that new usage of a loan scheme (including a further loan on a pre-2010 loan scheme) would come within Part 7A and so incur a liability to PAYE and NICs. The Loan Charge would seek to recover tax and NICs on the historical use of loan schemes. It did this by treating the balance of any loan still outstanding on 5 April 2019 as a single amount of income for the year of assessment 2018/2019. The amount to be taxed was the outstanding amount of any loans made in the period from 1999 to 2019.

35. As originally enacted, the Loan Charge was widely and heavily criticised for its retrospective effect. This has been, and remains, its most controversial aspect and one that made the protests against the charge inevitable. Even many tax experts who were supportive of Government moves to crack down on DR schemes were uncomfortable with this unique and unusual approach.

36. HMRC has defended this part of its design on the basis that the Loan Charge is a "new charge". However, this is not a particularly persuasive argument and, in any event, one that is of little consolation to the large number of individuals faced with a tax liability that appeared to be beyond their means to pay. It also, in large part, disconnects the Loan Charge from the 2004 Government statement on possible retrospection since, as originally enacted, the look-back period went well beyond what the Government made clear they would consider then: i.e. retrospection back to December 2004.

37. The retrospective effect was also criticised by many as allowing HMRC a "second bite of the cherry" and compensating HMRC for its own failings. In the context of the Review, much individual criticism was levelled at HMRC for not having properly policed the contractor market, including umbrella companies and agencies.

38. The Loan Charge Action Group and others have asserted that DR tax schemes have, if anything, increased in usage since 2019. Some HMRC data would seem to support that conclusion, although the nature of schemes marketed since 2019 seems to have significantly changed[16].

39. Following the Morse Review, the look-back period was shortened to 2010.

The starting population, settlements to date and the current position

40. Understanding where HMRC is in terms of compliance with the Loan Charge and associated DR liabilities is difficult, given its complexity. Overall, however, it appears that most DR schemes contain some element of loan or other unspecified payment that has not been subject to tax. It seems clear that more recent schemes have departed from any kind of legal basis and have become increasingly lacking in merit, verging on outright scams.

41. A specific difficulty with DR schemes is that, inherently, some of the use, either in terms of the people or the income involved, is disguised. On that basis, the data provided to the Review by HMRC is what HMRC considers its best estimate to date as to the numbers of individuals involved and the amount of tax at stake. However, what is clear is that a large majority of the individuals within HMRC's original estimate in 2017 have yet to settle. The numbers in the below are rounded approximations.

[16] HMRC data provided to the Review.

Settlements

42. HMRC currently estimates there are c.45,000 individuals in scope of the Loan Charge (In 2017, the estimate was up to 50,000[17]). By the time of the Morse Review, the number of individuals in scope (prior to the changes in scope that Review recommended), had been revised up to over 60,000[18].

43. Of these c.45,000, only around 12,000 individuals have resolved their scheme use with HMRC either via contract settlement (whether or not they have yet paid in full), HMRC concluding that there is no tax to pay, or the closure of a compliance intervention with payment in full. There are also a further 1,000 for whom no Loan Charge compliance intervention is in place and HMRC is out of time to open one. This leaves around 32,000 for whom loan scheme use remain unresolved and/or who have outstanding liabilities with no contract settlement in place.

44. Around 7,000 individuals have reached a contract settlement with HMRC. The overwhelming majority of these did so prior to the Loan Charge arising. HMRC has only been able to agree contract settlements including the Loan Charge with around 800 individuals since the Loan Charge arose in 2019. This is despite HMRC estimating their current total annual DR compliance resource cost to be around £41 million per year, with Loan Charge compliance making up £31 million of this. This is – perhaps – the figure that shows just what a stalemate the Loan Charge saga has become.

Individuals yet to settle

45. HMRC estimates the liability of the remaining group of 32,000 individuals (based on the Loan Charge and including late payment interest, estimated as being approximately an additional 25% where no direct operational data is available) to be in the region of £1.7 billion.

46. This group represents a myriad of individual circumstances. Some c.23,000 appear to be in a situation where there has been no or insufficient progress to reach a settlement.

47. There is a clear divide between some with very high liabilities at the top end and a very large group with much smaller liabilities at the bottom. Almost three-quarters (73%) of the population who have an outstanding Loan Charge liability[19] owe less than £50,000, representing only around 22% of the overall tax owed. By contrast, the top 1% of individuals with the highest liabilities (£500,000 and over) owe 19% of the overall tax – similar to the proportion owed by the lowest 73%. The individuals with the top 5% of liabilities owe 38% of the total amount, almost double that owed by the bottom three-quarters.

48. The Review accepts that many individuals owe amounts of money that could be said to be life changing. However, based on HMRC data, the median current income[20] for individuals with an outstanding Loan Charge liability is £50,000, which is above the national median income of £28,400[21]. The median liability for this group is £21,000, just over 5 months' income if earning the median of £50,000.

49. The median individual user, then, while not considered extremely wealthy by this Review, should have the means to agree some form of payment plan, provided affordability and fairness considerations are built into any new settlement offer.

50. One significant problem is time. Many are approaching pension age and, as things stand, approximately 26% of the individuals HMRC includes in its estimate will be 65 or over within five years (approximately 13% already are). This proportion will increase to approximately 43% within the next ten years. Retirement will have a significant impact upon their ability to pay and will inevitably increase further the

[17] https://www.gov.uk/government/publications/disguised-remuneration-further-update/disguised-remuneration-further-update
[18] https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-settling-disguised-remuneration-scheme-use-andor-paying-the-loan-charge#customers-subject-to-the-loan-charge
[19] More specifically, these are individuals who have at least one unresolved DR usage within scope of the Loan Charge that can be pursued by HMRC or have had all relevant DR usages resolved (via contract settlement or closure of a compliance intervention or determination of tax) since the Loan Charge arose but have not yet paid in full. It does not include those who reached a contract settlement prior to Loan Charge arising and have not yet paid in full.
[20] Throughout this report, 'current income' statistics are calculated from the average income reported to HMRC across the most recent three tax years, where that data is available.
[21] https://www.gov.uk/government/statistics/distribution-of-median-and-mean-income-and-tax-by-age-range-and-gender-2010-to-2011

stress and anxiety that many of these individuals currently experience over the possibility of looming pension-age poverty.

51. For that reason alone, the Review believes that, without significant intervention, the likelihood is that HMRC would need to reduce its yield expectations. Indeed, delay in finding a solution will inevitably mean that HMRC's actual yield is reduced, whilst HMRC's costs would continue to increase.

52. Having regard to the fact that some of those involved will never be able to pay the full amount required to meet the liability HMRC expects, HMRC's actual yield is already unlikely to meet its current estimate of outstanding liability.

53. HMRC's compliance costs also need to be factored in. Over the same ten-year period, on current estimates, HMRC will spend at least £310m if the current impasse were to continue. If HMRC were to resort to a more enforcement-focussed posture, that financial and resource cost could increase significantly when costs such as increased tribunal/court activity is factored in.

54. These cost estimates do not include HM Treasury or Parliamentary time.

55. The table below provides a material insight into the distribution of individuals with an outstanding Loan Charge liability, including their outstanding liabilities and estimated current income levels.

Table 1: Individuals, outstanding liabilities and incomes

Mean and median liability, income 'now' and years of DR usage for individuals who have an outstanding Loan Charge liability, by liability bracket.

Liability bracket	Number of Individuals in liability bracket	Liabilities		Current reported income		Years of scheme use	
		Median liability	Mean liability	Median reported income 'now'*	Mean reported income 'now'*	Median no. of known years of DR usage**	Mean no. of known years of DR usage**
£0 - £9,999	10,700	£4,000	£4,000	£40,000	£47,000	2	3
£10,000 - £19,999	4,900	£15,000	£15,000	£48,000	£59,000	3	3
£20,000 - £29,999	3,100	£25,000	£25,000	£48,000	£63,000	3	3
£30,000 - £39,999	3,200	£34,000	£34,000	£59,000	£93,000	3	4
£40,000 - £49,999	1,600	£44,000	£45,000	£55,000	£79,000	4	4
£50,000 - £59,999	1,200	£55,000	£55,000	£57,000	£68,000	4	5
£60,000 - £69,999	1,100	£64,000	£64,000	£63,000	£75,000	5	5
£70,000 - £79,999	800	£75,000	£75,000	£68,000	£84,000	5	5
£80,000 - £89,999	800	£85,000	£85,000	£67,000	£81,000	5	6
£90,000 - £99,999	600	£95,000	£95,000	£66,000	£85,000	6	6
£100,000 - £109,999	600	£105,000	£105,000	£71,000	£98,000	6	6
£110,000 - £119,999	400	£115,000	£115,000	£71,000	£87,000	6	7
£120,000 - £129,999	400	£125,000	£125,000	£66,000	£81,000	7	7
£130,000 - £139,999	400	£134,000	£134,000	£68,000	£88,000	7	7
£140,000 - £149,999	200	£145,000	£145,000	£75,000	£86,000	7	7
£150,000 - £159,999	200	£155,000	£155,000	£67,000	£80,000	8	8
£160,000 - £169,999	200	£164,000	£165,000	£81,000	£84,000	8	8
£170,000 - £179,999	200	£175,000	£175,000	£64,000	£99,000	9	8
£180,000 - £189,999	100	£185,000	£185,000	£86,000	£96,000	9	8
£190,000 - £199,999	100	£196,000	£195,000	£72,000	£93,000	8	8
£200,000 - £299,999	500	£234,000	£238,000	£71,000	£92,000	8	8
£300,000 - £399,999	200	£343,000	£345,000	£83,000	£161,000	7	7
£400,000 - £499,999	200	£452,000	£450,000	£83,000	£120,000	6	6
£500,000 and over	300	£753,000	£1,217,000	£92,000	£159,000	8	8

** For income 'now' estimates: about 8,000 individuals are excluded from this analysis because for the period 2021/22 to 2023/24: (i) there is no income data for the customer; (ii) they have an average reported income of £0; or (iii) they are known to be using avoidance schemes and will have suppressed incomes*

*** For 'years of DR usage' estimates: about 1,800 individuals are excluded from this analysis where HMRC holds information suggesting that the customer received DR income subject to the LC but has not yet established in which specific years the DR scheme was used.*

3) How did the schemes work?

1. The background to the proliferation of EBT-style loan schemes into the contractor market is set out in the history, but it might neatly be summarised here that a combination of factors conspired to create something of the perfect storm in the economic context of the 2000s. The introduction of IR35 created uncertainty around what were compliant contractor arrangements; the contractor market, well used to payment structures more complex than simple PAYE, would not be deterred by the complex model promoters offered; and the economic uncertainty following the financial crisis in 2008 only increased pressure on workers in a more volatile job market.

2. On top of this, schemes were able to offer a very attractive take-home compared to other market alternatives at the time – this was the key tenet of their marketing. Many offered individuals the ability to take home in excess of 80% of their contract value. This was undoubtedly attractive in and of itself, but set against the context discussed above, it is not difficult to understand why this marketing was effective.

3. In large part, HMRC's difficulties in controlling the use of loan-based schemes are that numerous variants appeared, and - as measures were taken to stem this flow - these variants would be revised by the promoters of the schemes. This was supported by a relatively small group of barristers who would provide opinions that promoters used to make claims about the schemes' legal effectiveness.

4. A common factor in most loan schemes was the use, or claimed use, of a trust from which loans were made. Following the introduction of Part 7A, a number of schemes claimed to have transferred the individuals' employment so that they were employed by the trust itself or otherwise by an employer who would then make loans. Loan schemes where the individuals were employed by the trust, or the loans were claimed to be paid by the employer, faced the difficulty that the regular weekly or monthly payment of "loans" might be regarded as earnings by a Tribunal where the individual was otherwise paid minimum wage.

5. That said, the Review was not persuaded that the trust actually existed in some of the schemes it was able to consider, and few of those the Review met with said that they had had any dealings with a trustee. Unlike in *Dextra* and similar earlier arrangements, in later iterations there appears to have been little (or no) process, and the "loans" were simply paid each week or month. The fees enjoyed by the promoter for these arrangements varied.15-20% appears to have been typical.

6. Promoters often made further tweaks to the claimed structure. Whilst offshore trusts were typically the norm, some promoters would later assert that the arrangements were entirely UK based as concern over the offshore arrangements affected their marketability. Some schemes altered the structure more significantly, making the individual self-employed. Some left companies that they owned and were then contracted as consultants back to their own company through scheme providers with a loan scheme arrangement in place. In others, Limited Liability Partnership (LLP) models were used. And in many cases, schemes used additional parties to outsource the administration, increasing the complexity and number of actors involved.

7. But, in almost all cases, a few typical hallmarks were exhibited:

    a. The worker was employed by an umbrella entity and that entity contracted the services of the worker to the end client. In many cases, workers appear to have been introduced to umbrellas through agencies. This seems to be particularly the case with relatively low paid workers (in the NHS or social care sectors, for example).

    b. The umbrella would invoice the end user a contract value (usually pre-negotiated by the worker and the client) for the work completed, which the end client would pay to the umbrella.

    c. From that contract amount, the umbrella would deduct its fee.

d. Of the remainder, what the contractor or worker received comprised two parts (although the exact mechanism of payment to the individual varied from schemes):

  i. An amount at or close to the minimum wage, from which (minimal) tax and NICs would be paid; and

  ii. further payment, often (but not always) described as a loan, on which no PAYE or NICs would be paid. The Review heard that more recent schemes appeared to simply pay this second amount separately with no explanation to the worker as to what it is.

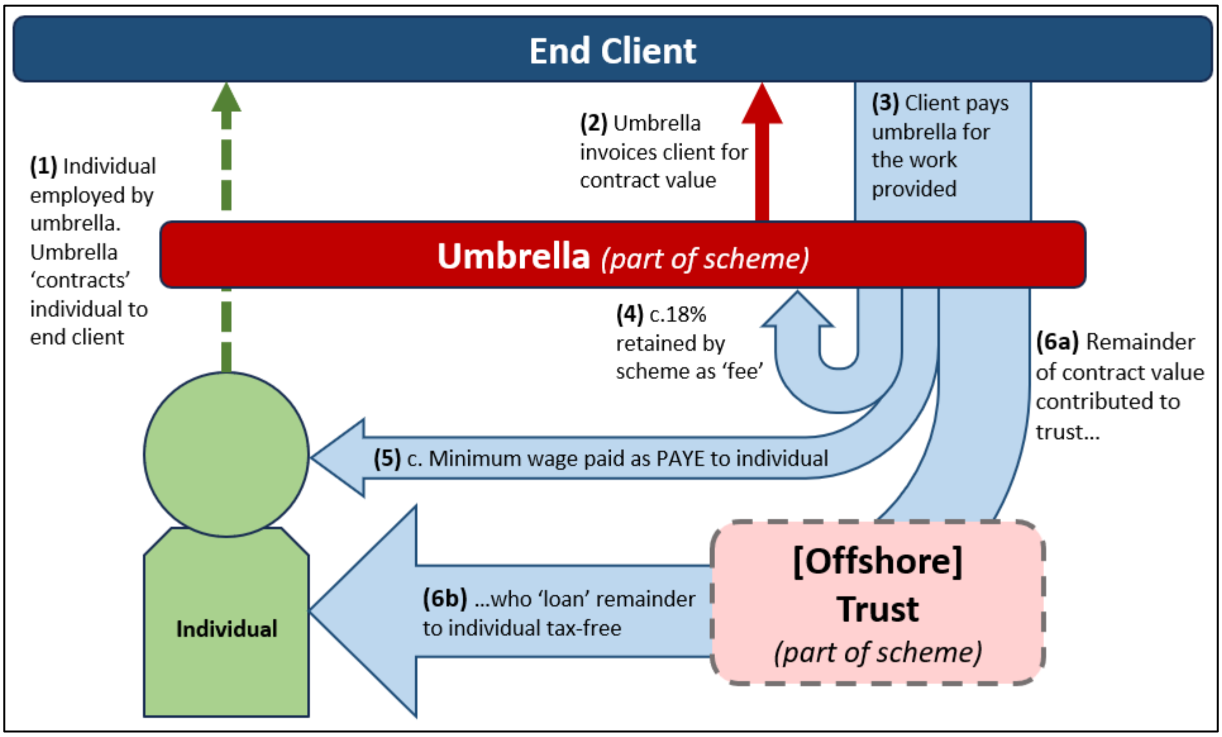

Figure 1: Diagram of a typical scheme. n.b. Illustrative only; many schemes were variants on this.

8. For obvious reasons, promoters did not typically commit to writing that the loan would not need to be repaid - with one respondent stating that "theoretically *it had to be repayable otherwise it was not a loan"* - but they did typically provide some reassurance that it was unlikely. And amongst contractors there was a general understanding that they would never be asked to repay the "loan" element. Indeed, some schemes did not even use the word loan (despite in many cases the fact it was a loan was the main basis for the tax advantage) to describe these payments in promotional material. In some cases (especially later), slightly different mechanisms (quasi-loans) were used to make the payments.

9. How these "loans" were reflected on self-assessment returns varied. Some were returned as benefits in kind, resulting in small tax charges; whilst in many cases they were not disclosed to HMRC at all.

10. Many of the promoters offered additional services including tax return preparation and HMRC enquiry defence. There are many reasons why contractors and others would be attracted by such additional services and how they would add to the marketing of the schemes if the promoter, at their expense, stood by them in the event of an enquiry.

4) Findings: Introduction

1. The Review has been asked to consider the current impasse in settlements, and ways in which all parties can be encouraged to come to an arrangement that draws a line under their tax affairs and concludes the long-running saga of loan schemes.

2. The Review has considered a large body of evidence, covering the experience of individuals, and the actions of promoters and HMRC.

3. From this evidence, the Review has found that the majority of issues can be summarised into two main barriers. It is these two barriers that form the greatest obstruction in trying to settle the tax affairs of tens of thousands of individuals and, therefore, it is on these two issues that the recommendations of the Review will focus.

4. In very broad terms, the Review has concluded that the main barriers to settlement have been:

    a. **Ability to pay –** whether on current income levels, any settlement was affordable; and

    b. **Fairness** – whether the responsibility for any tax liability was properly recognised by the design of the Loan Charge and associated settlement approach (having regard to the roles of promoters and HMRC).

5. The subsequent sections set out the findings of the review as they constitute these two barriers.

5) Findings: Ability to pay

1. The Review heard evidence from many respondents that made clear that there was a willingness to pay, but an inability to pay what was being demanded, leading to frustration and anger. The Review attempted to meet with a broad cross section of individuals. Each evidence submission was carefully considered, from which a series of issues were identified that the Review considers will be very common across the entire population of individuals who remain in scope of the Charge.

The economic situation of those who used loan schemes

2. With a current median income of £51,000 the Loan Charge population are above the national average income. HMRC has said that the highest prevalence of scheme usage was in London and the South-East, where the cost of living is higher, and so disposable income remaining after housing and living costs would not easily allow great scope to build up significant savings. And at that income level, promoter fees would significantly reduce the net economic effect of any saving in tax and NICs, compared to having simply been on PAYE.

3. For those who used a scheme for multiple years, the tax liability kept rising but their economic resilience did not, since what they received during scheme years funded their living costs, likely leaving little from which to build savings. It is the severity of this impact that has encouraged the criticism of HMRC for not taking any action against promoters or warning individuals of the dangers of these schemes.

4. This, as mentioned elsewhere, is a key difference between the early EBT arrangement such as Dextra and the typical contractor loan schemes which came later. Early EBT schemes were in many cases concerned mainly with the payment of bonuses and other benefits, put simply, the icing on the employment cake. The loan schemes marketed to contractors were intended to pay only the cake; the icing, such as it was, simply filled the pockets of the promoters.

5. At an operational level HMRC could see these difficult issues emerging. The Review was shown internal HMRC reports that discussed the burgeoning difficulty of Loan Charge compliance, and the affordability problems on which this hinged.

6. One report noted that HMRC operational staff expected widespread non-compliance among even "*cooperative taxpayers*" because they would *be "unable to deal with the process, which they will see as very complex."* It continued - *"even with a compliant taxpayer, the size of the task might overwhelm them"* - but ultimately recognised that the economic situation was likely to be one of the biggest constraints: "p*robably the main reason why taxpayers will feel* "overwhelmed" *is the sheer size of the anticipated tax payment".*

7. One section included specific detail on means constraints, setting out clearly that *"we anticipate large numbers of cases where the taxpayers will not be able to pay their full LC liability, or will have serious difficulty doing so due to their financial situation".* It went on: *"the size of any recovery will be limited by a particular taxpayer's ability to pay,"* and in the appendices were more explicit still that *"the repayment levels are expected to be unaffordable to many of the population".*

8. It was not clear to the Review what action was taken in response to these reports, but they were clearly a warning to HMRC that, even internally, concerns were rising about the disaster the Loan Charge represented for very many of those involved and the resource and cost implications for HMRC of handling compliance with the Loan Charge on account of the profile (especially economically) of the taxpayers involved.

Age profile

9. The time that has elapsed since scheme use and the present is significant and for many of those involved their economic circumstances have changed. More than 25% of those in scope of the Loan Charge will be 65 or older (i.e. approaching or at State pension age) in five years' time, and this will exceed 40% in ten years. Fear of pension age poverty is very real in the mind of many of those the Review met, since few are likely to enjoy significant occupational pensions or have other sources of income. Many also fared badly during the pandemic and, like many, the cost-of-living crisis has had an effect. Many have changed jobs or careers as a result, with a higher proportion now in full time regular employment. The Review heard from a number of individuals who, due to health reasons, were now unable to work.

Conclusion

10. As matters stand, a high proportion of those who are yet to settle do not appear to have the means to do so. Many will require time, so creating the risk that further changes in their circumstances will have the effect of simply kicking the settlement can down the road unless there is a significant change in direction. Above all, irrespective of how it is paid, the liability must be fair and affordable to those still to settle and the barriers to settlement must be removed. Payment plans are already available, although the Review has heard of issues accessing them. HMRC told the Review that its current approach allows those involved to have as long a period as they need.

11. The Review considers such approaches (i.e. very long time to pay arrangements) to be unwise given the age profile of those involved and the higher risk highlighted above that circumstances will almost certainly change during the course of a payment plan. There must also be recognition that, for a very small group, the liability may never be affordable. This most obviously involves those who, even whilst they were involved in a scheme, were receiving amounts of income where the promoter fees left them at best in only a slightly better position than had PAYE income tax and NICs been paid.

12. Inevitably, to bring the Loan Charge to a conclusion, those involved will also need to accept, as many who spoke to the Review did, that their use of a scheme meant that they paid less or no tax and less or no NICs. Although, the Review also heard from individuals who hoped to keep their head below the parapet in the hope the debt would just disappear.

13. The Review is clear that individuals (in almost all cases) bear at least *some* responsibility (albeit mitigated for the reasons set out above) and that HMRC simply going away is not a realistic outcome.

6) Findings: Fairness - the Loan Charge and associated approach

1. The Loan Charge was an extraordinary piece of tax legislation. Although technically prospective because it created a future charge based upon past events. This *retroactive effect* of the charge brought two decades (later revised to one) of tax years into scope. Its length of look-back voided the normal protections afforded to taxpayers by bringing back into scope individuals who, in the usual course, time limits would have excluded.

2. This approach treated those who used loan schemes uniquely compared to any other taxpayer: if two individuals avoided the same amount of tax in 2011, one via a loan scheme and the other by alternative means, the individual who used a loan scheme was now suddenly liable, while the other remained protected by time limits[22]. The Loan Charge simply bypassed the statutory protection afforded to taxpayers by creating an alternative tax charge for a year of assessment that was otherwise beyond HMRC's powers to collect.

3. The stacking of liabilities, taxing all loan income in a single year rather than addressing incomes in the year in which they were earned, was also unusual. It negated the normal benefits of the annual personal allowance and potentially taxed a greater proportion of income in higher tax brackets than it ordinarily would have. The impact of the stacking is particularly penal for those on lower incomes, where it could move individuals who may have never paid above basic rate tax into the higher, or potentially even the additional, rate of tax[23].

4. Whether this harsher approach was merited is debatable. In 2010 the UK was still in the process of recovering from the financial crisis and the Government had announced new legislation aimed at shutting down DR schemes (Part 7A). Despite this, scheme use had continued and the scheme promoters - now desperately trying to keep their various schemes afloat - were using more aggressive marketing and claimed that they could circumvent this changed landscape.

5. From 2014, the Government had begun introducing significant provisions aimed at promoters, with much tougher sanctions[24]. These were strengthened further in the 2015, 2016, 2017, and 2021 Finance Acts. By 2016, the use of loan schemes to avoid tax had proliferated to an unprecedented degree. In no small part due to the marketing techniques that had encouraged thousands of taxpayers who were now in arrangements which promised much but ultimately could not deliver (and which certainly do not appear to have fulfilled the 'compliant' assurances given).

6. This meant the scale of challenge for HMRC in preventing tax avoidance was increasing at an alarming rate. From the perspective of the Government, there was a very large group of individuals who had enjoyed a very low tax rate, and the country needed the tax revenues. In the Government's view, an extraordinary approach was merited if the schemes were to be controlled. The Loan Charge was announced in 2016 and legislated for in the Finance (No. 2) Act 2017.

7. Now that the Loan Charge is in place, the Review does not consider repeal the answer. Given the proliferation of loan scheme-based tax avoidance in the lead up to its announcement, it is difficult to disagree that a new (and perhaps even extraordinary) approach was needed. However, the Review's ultimate assessment, which speaks to many of the issues highlighted throughout this report, is that the Loan Charge went too far and HMRC failed to appropriately marry the extraordinary legislation that was the Loan Charge with an innovative strategic approach to settlement. This was needed to persuade thousands of individuals, typically for whom participating in a contractor loan scheme would be their only experience of any form of tax scheme, to settle their tax affairs.

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[22] Assuming no open HMRC enquiry.

[23] *The impact of this stacking on someone around the median salary is stark. The higher rate threshold in 2019 (when the Loan Charge stacking occurred) was £46,351. The median salary in 2015 (to take a year in the middle of in-scope years) was £27,600 (ONS Annual Survey of Hours and Earnings: 2015). It is easy to see how, if multiple years at this salary became stacked, it would quickly exceed the higher rate threshold, despite this individual never having annual earnings that would ordinarily be taxed above basic rate.*

[24] E.g. Part 5, Finance Act 2014

8. HMRC's approach should have been designed to help individuals settle their previous tax years promptly by incentivising settlement through terms that were materially better than would be the case with the Loan Charge, so that the Loan Charge served only as a backstop. Indeed, HMRC told the Review that their preference was that the Loan Charge would encourage those involved to settle their tax position for the years in which they had participated in a loan scheme. Given the number of individuals brought back into scope by the Loan Charge (from whom HMRC may have otherwise had no basis to claim the tax), arguably whatever was collected by way of the Loan Charge could have been seen by Government as something of a windfall rather than ordinary tax receipts, on which basis there might have been scope to offer better terms to the hardest hit.

9. But with the tax position of around two-thirds of those who used loan schemes still not resolved, it is clear that this approach has not worked. The Review believes that this failure is due to the settlement terms offered not sufficiently recognising the circumstances that led up to the Loan Charge, and that thousands faced very serious financial issues as a result.

10. Inevitably, for taxpayers to come forward to settle their liability, the terms upon which they could settle needed to feel equitable. Overnight the right of appeal had effectively been removed from thousands of individuals who believed that, other than the Loan Charge, their arrangements were compliant, even if disliked by HMRC. Significant "noise" through social media channels over harsh treatment cited examples of HMRC behaviours that appeared anything but equitable and likely deterred many others from even contacting HMRC. Among those within scope, deep resentment developed at what was considered HMRC's failure to warn those involved or to pursue the promoters.

11. The terms HMRC offered did not sufficiently account for the following issues, each of which is discussed further later in this report:

    a. That HMRC's strategy of employing a single, lead case (*Rangers*), especially having already lost on important elements in *Sempra/Dextra*, created a litigation vacuum that allowed loan schemes to prosper on claims of having never been (successfully) challenged.

    b. That HMRC's strategy did not sufficiently target individuals in their communications early enough; and when they did it was typically through compliance interventions only, when preventative communication might have had greater successful impact: for example, opportunities to use Disclosure of Tax Avoidance Scheme (DOTAS) declarations as a means to rapidly encourage individuals to abandon schemes early on were missed.

    c. That, once announced, HMRC's compliance activity has been unable – for reasons that now probably cannot be fully explained – to bring individual cases to swift conclusion, with correspondence delays of months and in many cases years at a time being seen, despite HMRC reassuring Parliament that it had sufficient resource[25].

    d. That the marketing of these schemes has often been misleading, including:
        i. dubious representation of what DOTAS meant (it was not an 'approval' mechanism);
        ii. widespread reference to legal opinions to lend gravity to the claimed compliance; and
        iii. unclear phraseology around the taxes actually paid that was easily misconstrued.

    e. That, in many cases, these schemes were suggested to individuals by otherwise trusted professionals and, in relation to contractors, through a peer environment that was encouraged by the offer of referral fees from the promoter, accountants, and other tax advisers. The Review has seen sufficient evidence to support the claim that some accountants and tax advisers (including members of professional bodies) were failing to provide due warning to their clients and continuing to receive and offer referral fees even after Part 7A in 2010.

    f. That individuals paid for professional advice and therefore trusted these paid advisors. On some occasions, the Review was assured that appropriate warnings were given to individuals, but it is

[25] https://committees.parliament.uk/oralevidence/1453/pdf/, https://committees.parliament.uk/oralevidence/8624/pdf/

not immediately apparent that sufficient risk warnings were given by these professionals since no credible contemporaneous evidence of this was seen by the Review.

12. All the factors above were exacerbated by a population of individuals who typically did not match the popular image of a 'tax avoider' (i.e. wealthy individuals acting on the basis of sophisticated tax advice given by "clever accountants and lawyers"). Rather, they were much closer to the 'normal' taxpayer economically. Former members of HMRC told the Review that the operational teams considered those involved to be "closer to tax credit debtors than tax avoiders."

13. This meant that individuals most often took at face value the advice of those paid to advise them when they entered into schemes and were easily trapped by the ongoing 'support' often offered by the scheme promoter for their duration. On exiting the scheme, they would not necessarily have the expertise to handle, nor means to pay for professional help to manage, the complications and pressures of extensive HMRC compliance interventions. This only exacerbated the delays caused by an already overburdened HMRC.

14. The fundamental problem then – and certainly this was the impression from the testimony received by the Review – was that, for the factors summarised above and covered in greater detail in later parts of this report, responsibility for the use and spread of these schemes was shared between the individual taxpayers involved, the scheme promoters, accountants, barristers (or, at least, the claims about their opinions), and HMRC who all had a hand in this saga, alongside the individual taxpayers. Yet the practical reality appears to many that the Loan Charge created a liability – often significant – solely on the individual, despite promoters retaining a substantial portion of any tax advantage.

15. The role of others in the saga was not sufficiently recognised: the perception was, and remains, that the promoters were not effectively pursued for their part nor made liable for any of the outstanding tax. Individuals who met with the Review felt they had been scapegoated; left carrying the can for a wider group who appeared to have gotten away with it. The most common complaint voiced by those involved is they have been held solely responsible and there has been little visible effort made to hold the promoters to account by HMRC.

16. It is not that most (if perhaps not all) individuals bear no responsibility whatsoever for their involvement in a tax avoidance scheme. They do – many the Review met accepted this. Rather, it is that they appear to be presently shouldering an outsize proportion of the blame, compared to the other parties involved. Properly understood, the main grievance of those involved appeared to the Review to be that they are being singularly held responsible for the loss of tax.

17. On the law, as it stands, this is inevitably going to be the case. It is, however, clear that responsibility for how we got here is shared. Earlier recognition of that, together with a suitable settlement opportunity that incentivised settlement, would likely have led to more individuals settling, given that a number of those the Review met recognised that they had been involved in a tax scheme and had not paid the tax and NICs that would otherwise have been due.

18. HMRC starting at a point where the approach did not feel equitable, and subsequently doubling down on this approach, in many cases adding additional unexpected liabilities (such as IHT), has entrenched positions in a way that is a material contributor to the current impasse. HMRC's attempts to persuade those involved to settle their Loan Charge liability are met with a Loan Charge user base who continue to feel the shared responsibility has not been recognised. Cases have dragged on, many for years with no movement, exacerbating the issue for both sides. That's the current impasse – and with only 800 contract settlements agreed since the Loan Charge was enacted almost seven years ago, the Review has little confidence that this position is going to change, unless these grievances are addressed.

19. A new settlement approach, that appropriately recognises the circumstances that have brought us to this point, offers the chance for both sides to reconcile; and the Review urges both sides to engage with such a process in good faith to allow all parties to move on.

7) Findings: Fairness - the role of HMRC's strategy

Introduction

1. The statutory provisions relating to employment tax issues represent a formidable body of legislation. Even highly experienced tax experts will admit to uncertainty as to the interpretation of some aspects of the overall code and as HMRC has tried to reduce or eliminate the scope for avoidance and error, further layers of complexity have been added.

2. And this complexity not only exists in the various technical issues but in the administration of PAYE and NICs. In the past, the ability of the Inland Revenue to effectively manage large scale issues involving employment issues was found wanting. The problem is easily stated: issues affecting employees can typically involve many employers and thousands of individual employees being case managed across multiple HMRC offices, involving hundreds of HMRC staff. And, since tax disputes can take inordinate amounts of time to finally resolve, the risk that the case management strategy is ineffective and cannot later be corrected is very high.

3. In the Reviewer's knowledge, on a least two occasions the Inland Revenue found itself unable to collect income tax and NICs from thousands of taxpayers in long running disputes as a result of confusion within the Department due to poor coordination between "Head Office" staff and Inspectors at operational level that had resulted in no or ineffective action being taken to protect the Department's position.

4. Many of the same issues have impacted upon HMRC's efforts to respond to loan scheme-based avoidance.

DOTAS and HMRC "approval" of schemes

5. Some have asserted (including some Members of Parliament and in the media) that HMRC approved or signed off loan schemes. The Review saw no evidence that HMRC ever specifically approved a tax avoidance scheme; and indeed, HMRC has stated that it does not do so.

6. From the evidence seen by the Review, the DOTAS regime has proven to be far less effective against loan schemes, and the promoters have been too easily able to exploit it to give an impression of HMRC approval or legitimacy. The Review also saw one example (see paragraph 16) where HMRC incorrectly advised a promoter that the scheme was not notifiable to HMRC under DOTAS. This HMRC correspondence was then used to boost the marketing of the scheme.

Background

7. In the Finance Act 2004 the Government enacted DOTAS to improve HMRC's understanding of the tax avoidance market. This was the first substantive supply side measure intended to regulate tax schemes via those who promoted them, at the time considered to be mainly larger and medium sized accounting firms and a small number of boutique tax planning firms[26]. DOTAS required those marketing tax schemes (promoters) to notify HMRC within five days of the scheme being made available to a potential client. In response to a disclosure, HMRC would issue a scheme reference number (SRN) to the promoter, who was then required to provide this number to any client participating in the tax scheme. The client was required to include the SRN on their tax return[27].

8. Separate arrangements existed for those situations where the promoter was a lawyer (and legal privilege was in point) or where the promoter was based offshore.

[26] Finance Act 2004 S304
[27] Different rules applied to employer-based schemes

9. The purpose of DOTAS was straightforward: the earlier HMRC knew of a scheme, the quicker it could respond by either opening an enquiry or in recommending changes to the law. Whilst DOTAS was aimed at tax schemes generally, "employment products" were specifically targeted.

Issues: Exclusions

10. At the urging of the tax profession, schemes already being marketed on Budget Day 2004 were excluded from DOTAS. This inevitably meant that many loan schemes being marketed at the time were immune from DOTAS, even where they continued to be marketed after 2004. This exclusion was repeated in 2007 when DOTAS was amended to introduce a "Standardised Tax Product hallmark" where again such products being marketed in 2006 were excluded from the disclosure requirement.

11. The increase in loan scheme usage from 2006 shows how these exclusions allowed the use of loan schemes to expand and, going forward, each subsequent move by HMRC was met with a counter move by the promoters such that variations in the design of loan schemes emerged that the promoters intended should be one step ahead of HMRC whilst benefiting from the 2007 exclusion for existing standardised tax products. That said, given the extent to which loan schemes were regularly adapted to avoid any HMRC counteraction it is probable that reliance on such exclusions from DOTAS was in many cases incorrect.

Issues: Exploitation and language

12. The introduction of DOTAS did result in the larger and many medium sized accounting firms reducing their involvement in mass marketed tax schemes. However, overall, it has not had the effect expected of it when applied in the context of loan scheme promoters. Promoters have found it relatively easy to imply in marketing material that DOTAS was a form of HMRC approval or an acceptance of the arrangement by HMRC. This combined with what appeared to be a seemingly slow or no response by HMRC in many cases allowed promoters to reassure clients that everything was fine. **The apparent exploitation of DOTAS by promoters is discussed further in Part 8.**

Non-compliance

13. The alternative approach taken by promoters has simply been not to comply. HMRC has told the Review that, since 2014, promoter non-compliance with DOTAS is estimated as being close to 100% for all forms of DR and that those schemes that have been disclosed have only been disclosed following HMRC compliance action. Notable such examples include AML[28], Curzon Capital[29], and Hyrax[30].

14. In April 2025, the First Tier Tribunal imposed a £1m penalty upon Industria Umbrella Ltd (in liquidation) for non-compliance with DOTAS[31]. Although these judgments are in favour of HMRC, it is unclear whether any penalties have or will be recovered. Indeed, it is unclear whether HMRC has successfully recovered any of the penalties imposed by the Tribunal in the lengthening list of promoters that HMRC has pursued for failing to make an appropriate DOTAS disclosure.

15. Perhaps more saliently, such judgments invariably come years after possibly thousands of individuals have already become involved in these schemes.

An inadvertent "approval"

16. While the Review received no evidence of HMRC approving any schemes, the Review was provided with copies of correspondence in which HMRC's then Anti-Avoidance Group (AAG) stated in 2012 that the loan scheme in question was not disclosable under DOTAS, as it was not a "standardised tax product." This was in response to a request by the promoter of the scheme who had asked HMRC to say whether the scheme he was marketing (an LLP based loan scheme) was considered a tax avoidance scheme.

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[28] Revenue & Customs v AML Tax (UK) Limited [2022] UKUT 81 (TC)
[29] Revenue & Customs v Curzon Capital Ltd [2019] UKFTT 63 (TC)
[30] Revenue & Customs v Hyrax Resourcing Ltd & Ors [2019] UKFTT 175 (TC)
[31] Revenue and Customs v Industria Umbrella [2025] UKFTT 494 (TC)

17. The exchange of correspondence with HMRC was subsequently used by the promoter as part of his marketing and to provide comfort to clients that the arrangement was not a tax avoidance scheme. Plainly the scheme was highly questionable, since, whatever else might be said about loan schemes, they are typically the epitome of a standardised tax product.

18. Eight years later, in 2020, HMRC's CI Resolution team (a part of HMRC that dealt with known tax schemes) wrote to one of the individuals who had used the scheme to say that following internal discussions between CI Resolution and the AAG, it was agreed that the 2012 AAG letter was incorrect.

19. This exchange with the scheme promoter is important for several reasons. The original exchange was clearly not HMRC approval of the loan scheme in question, but it did likely amount to a form of non-statutory clearance even though no such clearance arrangements existed. Assuming a sufficient level of disclosure by the promoter at the time, it would have made any action HMRC might take against the promoter to enforce DOTAS obligations difficult. One participant in the scheme that the Review spoke to made clear that this HMRC correspondence was instrumental in their decision to participate in the scheme and that as soon as they became aware that HMRC did consider the arrangement was a tax scheme they withdrew from it. They have now been under HMRC enquiry for over twelve years.

20. The Review considers that, upon being shown relevant HMRC correspondence that the arrangements were not to be disclosed under DOTAS, it was not unreasonable for a lay person to take this as meaning that the relevant arrangements were not considered by HMRC to be a tax avoidance scheme.

Litigation and Legislation

Up to 2010

21. From at least 2001, the Inland Revenue Senior Management knew that EBTs were being widely used for tax avoidance purposes.

22. HMRC's approach throughout their counter-DR work has been to pursue a small number of cases to establish legal principles, meanwhile taking steps to protect their position by opening enquiries into taxpayers' affairs in relevant years. These were not properly "lead cases", since they did not determine the tax position otherwise than for the taxpayer involved. Promoters put considerable effort into differentiating Tribunal decisions from their schemes (whether or not such differences were accurate).

23. But, as this report's outline history explains, HMRC was not successful in the period up to 2010 in attempts to persuade the Tribunal that PAYE and NICs were payable (e.g. in *Sempra* and *Dextra)*. It did not establish any of the desired principles.

24. Contractor loan schemes, whilst relying upon the perceived tax and NICs advantage of (and the tax analysis that had protected) Dextra/Sempra-style EBTs, increasingly replaced this more conventional EBT planning. As it has been explained to the Review, contractors increasingly saw loan schemes as an alternative to the uncertainty IR35 created. So, whilst promoters relied upon *Dextra/Sempra* as authority that money paid to a trust coupled with loans by the trust did not give rise to PAYE and NICs, in truth contractor loan schemes were very different from Dextra/Sempra, and HMRC should have done more to pursue contractor loan schemes through litigation/legislation from the outset.

25. Meanwhile, the number of individuals using DR schemes was continuing to rise, and so arguably it should have been clear that the current approach was not succeeding in reducing DR use; and a change of approach (possibly to something legislative) was going to be required.

2010 and Part 7A

26. By 2010, around 10,000 individuals were now using DR schemes, and HMRC must have recognised the growing problem loan schemes created and that the cost of its enquiry/litigation approach was likely to be hugely expensive. This appears to have been the justification for Part 7A in 2010-11.

27. Whilst Part 7A made clear the Government's intent that all loan scheme planning would be caught, and so liable to PAYE and NICs, HMRC data suggests that, barring an initial short-term drop in scheme usage, loan scheme use actually continued to increase.

28. This appears, in large part, due to the fact that Part 7A was designed around an EBT-style scheme and was specific to loans made by a party other than the employer. The result of this specificity was that promoters amended schemes so that, for example, loans were then claimed to be made by the "employer" thus, it was asserted, avoiding Part 7A.

29. Later legislative changes, including the introduction of the GAAR as well as APNs and FNs, combined with tough new rules on promoters, have helped, but most of the pressure of these changes has been felt by individual contractors and not by the promoters who very often simply melted away. Few of the individuals the Review met have had access to professional help with their liability.

Rangers

30. HMRC can, with some justification, point to the decision in *Rangers* as a breakthrough in tackling loan schemes.

31. Some tax barristers the Review spoke to considered that, had there not been side letters relating to the trust arrangements, there was every likelihood *Rangers* would have followed *Dextra*, since Rangers had more in common with Dextra than a typical contractor scheme. Certainly, the decisions of both the First Tier and Upper Tier Tribunals had followed *Dextra*.

32. But technical analysis aside, this continuing litigation strategy had other issues. The length of time taken to achieve this breakthrough (*Rangers* was not finally concluded in the Supreme Court until 2017), while progressing no other significant litigation, allowed promoters to market schemes on the basis of having not been successfully challenged. The final decision in *Rangers* was 15 years after the Special Commissioners decision in *Dextra* in 2002, by which time thousands of taxpayers were now in loan schemes.

33. Whilst there may be many reasons why HMRC has not pursued a broader range of contractor loan schemes by way of litigation, not doing so is nevertheless a key failure in HMRC's strategy and one that emboldened promoters, allowing them to more easily persuade individuals that the scheme was compliant. The emphasis that some promoters put on the absence of an HMRC challenge (whether true or not) makes clear the importance the lack of litigation has in the story of how we got here.

34. The typical individual using a loan scheme would not easily have associated with cases involving very highly paid investment managers or extremely well-paid footballers. Even a small number of what were clearly contractor loan schemes being litigated would have made an enormous difference in removing all doubt as to HMRC's position. Here, the Review found that many individuals abandoned loan schemes at what they regarded as the first sign of trouble, although most remain under HMRC enquiry many years later.

35. If HMRC intended Rangers as a lead case, and there is no doubt that it is hugely important, in the context of loan schemes it is possible it has failed, since:
    a. there was a history of continual reinvention and differentiation by promoters and there was no reason for HMRC to believe that *Rangers* would be of sufficient precedential importance as to bring loan scheme planning to a close;

b. HMRC should have had a much broader litigation-based approach rather than rely upon a single case, important though it was. Promoters have been able to distinguish *Rangers* as a case dependent upon its own facts;
c. the length of time taken to conclude lead cases created a litigation vacuum that promoters exploited and likely contributed to the rapidly increasing number of individuals entering into, and/or continuing to use (and so rapidly increasing their liabilities as a result of), loan scheme arrangements.

36. Nevertheless, the final decision in *Rangers* coincides with the introduction of the Loan Charge and together they have strongly deterred the loan schemes that emerged after *Dextra*. The current breed of scheme appears unlikely to pay attention to statutory rules or decisions of the courts, so that very many of the loan schemes that have been seen since 2017 seem to lack any merit whatsoever. Government attempts to pursue those responsible should be supported.

Settlement opportunities

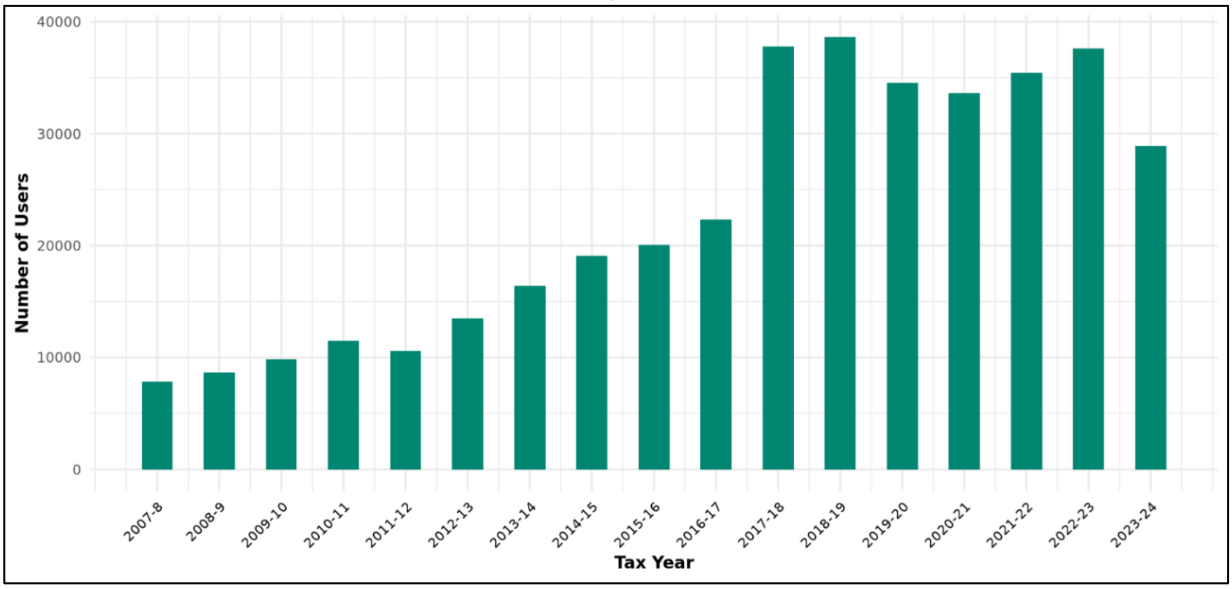
2011-2015

37. In the years after 2011, when Part 7A came into force, HMRC did move to attempting to bring taxpayers to a voluntary resolution through a series of settlement opportunities:
    a. In 2011, HMRC opened the Employee Benefit Trust Settlement Opportunity (EBTSO). This was for DR schemes involving EBTs used typically by large corporate employers. The EBTSO was withdrawn in July 2015.
    b. In 2013, HMRC opened the Employer Funded Retirement Benefit Scheme Resolution Opportunity (EFRBSRO). This was for DR schemes involving EFRBS rather than EBTs used by employers. It had two settlement options, one of which broadly mirrored EBTSO.
    c. In 2014, HMRC opened the Contractor Loans Settlement Opportunity (CLSO) to individuals who had used schemes prior to 6 April 2011.

38. However, these opportunities aside, it appears that HMRC's strategy otherwise continued largely unchanged. Whilst it took steps to protect its position, for example by opening enquiries into relevant tax years, HMRC does not appear to have sought to materially progress open cases while it tried to establish principles through litigation on a small number of lead cases.

39. Whatever HMRC's strategy was during this period, it was unequivocally failing to reduce DR scheme use. The chart below explains the rise of scheme use from 2007.

Chart: Number of individuals using DR schemes, 2007-08 to 2023-24



Source: HMRC data supplied to the Review

n.b. this chart includes all DR scheme usage, not just those in scope of the Loan Charge. From 2018-19 onwards, HMRC analysis suggests that umbrella scheme use has now become the primary DR scheme used by individuals

40. Despite this continuing increase, even after 2010 HMRC appears to have persisted with a lead case approach, with *Rangers* (discussed above) the only obvious case proceeding through litigation in this period, even after the introduction of Part 7A and it being clear that scheme use was continuing to rise. Meanwhile, individuals continued to accrue tax liabilities as promoters adapted their schemes in efforts to avoid Part 7A and continued seemingly unhindered. From what HMRC has told the Review, DOTAS was simply ignored by promoters in the period after 2010.

2017 Settlement Opportunity

41. In 2017, HMRC published it settlement terms for a further settlement opportunity[32]. The terms of this settlement opportunity were far less generous than any loan scheme settlement opportunity that had gone before, for example the Employee Benefit Trust Settlement Opportunity (EBTSO), and much less generous than was offered to many other tax avoidance schemes. It also did not compare well to the terms offered to individuals evading tax through the use of secretive offshore jurisdictions such as Liechtenstein, Switzerland, and the Crown dependencies[33].

42. During meetings with HMRC, officials were unable to explain in detail why the 2017 and 2020 settlement terms lacked the same degree of pragmatism evident in earlier such incentives.

Errors in the Settlement Strategy

43. That there remain around 32,000 individuals with an outstanding Loan Charge liability is some of the clearest evidence that the settlement approach failed, given that HMRC told the Review its intent was that individuals would settle their affairs prior to the Loan Charge arising (either through this settlement or resolving underlying years).

44. Ultimately, the Review considers that the fundamental error was to assume that the Loan Charge would act as an incentive to settle and to fail to have proper allowance for the fact that many were unable to settle due to limited means. Once decided, HMRC's strategy simply created widespread resistance to the Loan Charge and made the distressing personal outcomes evidenced by the personal impact statements inevitable.

45. By late 2018, it was becoming increasingly clear to HMRC and that there were serious issues both with HMRC's compliance strategy and the ability of taxpayers to both pay the tax due and understand the process. An internal report prepared by a cross-cutting group within HMRC from that time makes clear that senior HMRC management and operational teams were not aligned as to HMRC's objectives:

> *"There remains considerable uncertainty as to exactly what the LC is intended to achieve, and what HMRC sees as its priorities in respect of the LC. Without clear direction on what are the 'hoped for' outcomes of the LC, devising any operational structures for LC compliance is very challenging because we don't know where our destination lies."*

Non-compliance and ability to pay

46. First, the Review considers HMRC failed to properly assess or misjudged how a large group of individuals might be expected to react to the introduction of a measure such as the Loan Charge that they widely resented as retrospective.

47. Alongside this, HMRC internally had begun to recognise that the extensive requirements to provide detailed information dating back years would be prohibitive even for what they described as "cooperative" taxpayers.

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[32] https://www.gov.uk/government/publications/disguised-remuneration-detailed-settlement-terms/disguised-remuneration-detailed-settlement-terms
[33] https://www.gov.uk/guidance/liechtenstein-disclosure-facility

48. The resentment to the Loan Charge's approach, and the prohibitive requirements to settle, created a fertile environment for non-compliance.

49. It is clear from the internal HMRC report seen by the Review that very serious issues *were* emerging that would have very severe impacts upon the individuals involved and on HMRC's efforts to encourage compliance with the Loan Charge. The report made the point that:

> *"…amongst senior staff who are experienced in DR avoidance a figure of 30,000 users who will not comply with the information requirement is considered reasonable, and possibly conservative."*

50. The report also highlighted that tens of thousands of individuals would be severely impacted by the Loan Charge, to the extent that many of them would be unable to pay the tax required and it stated that:

> *"…we anticipate large numbers of cases where the taxpayers will not be able to pay their full LC liability or will have serious difficulty doing so due to their financial situation".*

51. The Review was told by former HMRC staff that efforts to persuade senior management that some leeway was required by operational teams, so that those unable to pay could be more easily resolved, were refused. Even by late 2018 it was not too late to have reconsidered the approach to settlement if for no other reason than a sudden liability in the tens of thousands would be significant to a group of taxpayers, a large number of whom were not, by and large, considered wealthy.

52. Overall, the Review considers that it was less a case that HMRC did not understand what impact the Loan Charge would have, but more a case that it refused to respond effectively, even to the evidence being produced by its own experienced operational teams.

Complex compliance processes

53. Had these points been better understood and acted upon by senior management, HMRC might also have more appropriately had regard to the very significant difficulties (and cost) HMRC itself would face in trying to resolve the tax position of almost 50,000 individuals, on anything approaching a conventional basis, in its approach to settlement[34].

54. Those difficulties are only compounded by a seeming lack of regard by HMRC to the fact that, for many of those involved, the only tax advice they had or would receive would be that given by the promoter and/or accountants directly linked with the scheme. From those the Review spoke to, or who sent in evidence, it seems very few had access to high quality and truly independent professional advice that was experienced in handling HMRC enquiries of the nature likely required to resolve loan scheme usage through compliance interventions.

55. This, in turn, allowed the most brazen promoters to misrepresent the situation many individuals found themselves in, although in most cases they eventually abandoned them altogether. It also allowed some promoters scope to market questionable schemes intended to avoid the Loan Charge. The activities and behaviour of the promoters is discussed in more detail at Part 8.

56. The simpler point, however, is that how HMRC operates, and the tone of its correspondence inevitably appears more overbearing and threatening to unrepresented taxpayers, who are inexperienced in the cut and thrust of HMRC compliance activities. In the Reviewer's experience, there are very few individual taxpayers who are capable of handling more serious HMRC investigations without professional help.

57. The result has been the emergence of a deep sense of injustice, bitterness, and fear on the part of the individuals involved. Many respondents believed that HMRC considered that they were criminals and used the language of the criminal law to describe how they believed HMRC viewed their participation in

[34] By "*conventional basis"* the review means though the usual HMRC enquiry and Tribunal process

a loan scheme, so increasing the stress they were under. HMRC processes considered by experienced tax advisers as important but nevertheless routine (such as the wording of a standard HMRC "letter of offer") were viewed as threatening or a form of "psychological warfare" by many of those involved. Many also referred to being hugely concerned that HMRC required them to admit "guilt" as part of any settlement. This again was very common among unrepresented taxpayers.

The counterfactual

58. The obvious counterfactual to these misjudgements is that offering more generous terms might have achieved a better outcome for the individuals involved, and for HMRC. The Review considers that not designing the contractor settlement opportunity in a more pragmatic fashion was a tactical error by HMRC. The less generous terms offered in the settlement opportunities (compared to, for example, the EBTSO) have been a very important contributory factor in explaining why so few of those involved have settled their liability.

59. Some issues in particular stand out. Avoiding the Loan Charge required individuals to pay such tax as HMRC considered had been avoided, whether or not HMRC had an open enquiry or was still in time to make a discovery assessment. This side-stepping of statutory time limits was unprecedented. In no other context (including cases of tax evasion) is a taxpayer required to make voluntary restitution to HMRC to avoid a tax charge. Further, the design of the Loan Charge effectively removed, retrospectively, the right of appeal from taxpayers, who, in many cases, had been under enquiry for ten or more years.

60. There appears to have been little justification for this level of penal approach or for HMRC to, in effect, reach into a year for which there was no open enquiry and collect tax. Combined with the effective removal of appeal rights, no other group of taxpayers has been subject to a change of law of this nature.

61. The stricter approach to settlement, with little substantive concession at its outset, seems to have had little or no regard for the fact that many thousands of individuals would be faced with huge liabilities that they would be unable to pay. This has persisted even past the point it was clear to HMRC that the means of many of those involved to pay the Loan Charge meant bringing these schemes to a conclusion would be much more difficult. This was compounded by the fact that the arrangements HMRC offered in 2019, whereby additional time to pay could be agreed, were nowhere near as generous as they would become in the ensuing years. So, few looked at them as representing a way out and, as a result, saw little point in engaging with HMRC.

62. This lack of awareness of practical reality made HMRC's compliance challenges much more difficult, an issue that became even more important once the extent of the revolt against the Loan Charge became clear and HMRC has allowed itself to be seen, whether justified or not, as uncaring and callous.

63. In addition, some of the tax advisers the Review met questioned how well advertised and explained the settlement opportunities had been. In particular some noted the 2020 HMRC commissioners decision not to pursue any residual tax where the Loan Charge was paid, which in effect meant that the Loan Charge was a de facto alternative to settling on a year-by-year basis.

Compliance activity

64. Those involved feel very unfairly treated in how HMRC's approach to compliance has impacted them. It is likely that, had HMRC moved quickly to engage individual contractors, its compliance efforts would have been more effective. Many contractors stopped using schemes when it became clear, in one way or another, they were not approved by HMRC and, for far too many, short periods of scheme use have resulted in many years of slow enquiries with the inevitable uncertainty and stress that this has involved.

65. Given that Part 7A and the Loan Charge were reactions to the large numbers of individuals involved and the increasing use of loan schemes, HMRC should have anticipated significant issues with compliance

and planned appropriately. The almost 700 HMRC staff currently deployed on DR scheme compliance makes clear the extent of the challenge for HMRC. By the time it was clear to HMRC that contractors were being hit very hard by the Loan Charge and, more importantly, that very many of them lacked the means to pay it, the Loan Charge was almost upon them and there appears to have been a reluctance at senior level to effectively find some way of softening the impact for those on lower income levels.

Enquiries

66. A frequent criticism levelled by respondents was the inconsistency in the opening of enquiries. Some respondents had gaps in their tax years where enquiries weren't opened; or enquiries were only opened after several years of scheme use. Individuals made the point that continued use without HMRC action only bolstered their belief that the scheme was legitimate. Some told the Review that they only received enquiries years after ceasing scheme use. Whilst it seems clear from these individuals' testimony that the many of those who participated in a loan scheme were not subject to HMRC enquiry for at least some of the years of assessment involved, HMRC data shared with the previous Morse Review[35] suggests that this number was nearer 15-20% of users.

Delay

67. Every tax adviser the Review met (many were former HMRC Officers) highlighted delay as the key issue that had prevented progress. Many participants told the Review that years passed between HMRC opening its enquiry and any substantive communication. One individual told the Review that they received an enquiry notice in 2007 but had heard nothing since. Clearly, this lack of effective action has allowed very many individuals, who are under some form of enquiry but who received little or no further HMRC communication, to keep their head down in the hope that the problem would simply go away.

68. On the other hand, some of those involved maintained a meticulous record of all correspondence with HMRC. In one case considered by the Review, this record made clear that even where there was more activity, there remained little or no progress.

69. Loan Charge controversy aside, any taxpayers being under enquiry for such long periods of time (the Review is aware of loan scheme enquiries remaining open as early as 2002) should itself be a concern.

70. Compounding this was the fact that, in many cases, the eventual calculation issued by HMRC was disputed, incomprehensible or difficult to reconcile (even for professional advisers) with what the contractor believed they had been paid. That said, some latitude is owed, as 'loan elements' of the schemes were not in all cases disclosed to HMRC.

Tone of letters

71. Many respondents found the tone of letters used by HMRC frightening, with a number referring to HMRC's approach as akin to "psychological warfare". The Review investigated this point. It seems that, in most cases, the letters sent to those who used loan schemes at various compliance intervention points were from templates used across counter-avoidance. Respondents told the Review that they found some of these stock phrases threatening or hard to understand, which speaks to in large degree to the customer base involved in loan schemes (i.e. not the typical 'tax avoider' and largely unrepresented).

72. Many found it difficult to process the standard contract settlement letters that have been used by HMRC for many years and were not specific to loan schemes. Many individuals believed that the wording required them to admit to guilt, even though tax avoidance is not illegal and they believed that they had acted on professional advice and did nothing wrong.

[35] https://www.gov.uk/government/publications/independent-loan-charge-review-summary-of-evidence/section-1-use-of-disguised-remuneration-avoidance-schemes-over-time

73. The Review considers that this is more evidence as to the difficulty that unrepresented taxpayers and HMRC faced, and it has contributed to the current stalemate. It is not unreasonable for an individual, who is unfamiliar with HMRC enquiry processes, and in many cases unrepresented, to have such concerns, and it is not uncommon across other areas of HMRC's compliance activity. Some respondents told the Review that they had felt unable to settle if it involved an admission of 'guilt' or that they had settled but only under 'duress'.

74. The concerns felt by those the Review met are issues of perception, and, in truth, there is no criminal law connotation to a draft HMRC standard letter of offer. HMRC should, however, be more aware of how unrepresented taxpayers are likely to react to such wording. The use of more neutral language should be considered in such situations.

Misidentification of cases

75. One accounting firm highlighted a number of clients that they had acquired from another firm associated with a promoter but who had not been involved in any DR schemes. Despite this, a number of the clients had been under enquiry for years, with efforts to persuade HMRC seemingly falling on deaf ears. It is likely that similar cases exist. In a small number of cases, the Review asked HMRC, with the individual's permission, to examine individual cases, including where there appeared to be no DR use.

Case Management

76. The Review was shown evidence of HMRC upholding complaints over its case handling including delay, errors, and/or repeating parts of the process. Much of this appeared to be caused by frequent changes in the HMRC Officer responsible for the individual case. The Review welcomed HMRC's acceptance that there were issues in HMRC's approach in the past, and the introduction of dedicated case officers.

77. Despite the ongoing abuse of HMRC through social media platforms, few of those who responded to the Review were critical of the specific HMRC officers responsible for their case. There were some exceptions, but generally individual HMRC officers were described as courteous or kind. Some participants expressed sympathy for the HMRC officers who they assumed were hamstrung by HMRC's process and procedure. One individual described an event in which a person claiming to be with HMRC, on overhearing a conversation about the Loan Charge, then verbally abused her at a location near an HMRC office.

Difficulties in agreeing settlements

78. The Review was especially interested in those individuals who had tried to reach agreement with HMRC but had a settlement offer rejected. Many the Review met said that they had offered the maximum they could, without selling the family home. Despite this, the Review saw no example of any constructive dialogue following HMRC's rejection of the offer that would have possibly resulted in a settlement being reached. The inevitable result is that the amount owed has simply continued to rise. Numerous tax advisers told the Review that its use of "negotiation" in the Call for Evidence was misplaced, as HMRC allowed no negotiation.

79. HMRC accepts that the current rate of late payment interest means that an individual's overall debt can increase at a rate that is in excess of what many of those involved can afford to pay. As a result, those who made a settlement offer to HMRC that was not accepted are now in a position whereby the amount they are expected to pay is higher than where they started, making settlement on HMRC's terms for those with means constraints even more difficult.

80. The Review agrees that HMRC should charge late payment interest where a *taxpayer* delays payment of tax due. But, at present, the rules that statute requires HMRC to apply to late payment interest are weighted against taxpayers and, in the context of the Loan Charge, have acted to create an almost insurmountable barrier to settlement. The Review received compelling evidence of delays being largely

due to HMRC despite the extensive powers available to HMRC with which to progress enquiries having been very significantly strengthened since 2005.

81. The Review found no evidence that where HMRC refused a settlement offer that it offered a clear way forward and explanation of what, in the alternative, HMRC might or would accept. A number of examples were given to Review of (in truth) minor issues and failings that prevented settlement of liabilities including:

    a. Offers being made in line with HMRC expectations being refused due to it being submitted days after HMRC deadlines;
    b. HMRC refusing to credit tax paid on APNs against the overall settlement resulting in double tax charges only to relent years later;
    c. HMRC agreeing contract settlements, only to return (sometimes) years later looking for more;
    d. HMRC agreeing settlements but refusing to include other charges. For example, penalties on late payments on APNs;
    e. HMRC issuing incomprehensible calculations (even experienced tax specialists complained about this);
    f. HMRC issuing spreadsheet-based calculations in PDF form so causing advisers considerable difficulty in understanding the basis of calculation; and
    g. HMRC often issuing inaccurate calculations of settlement liabilities.

82. In discussions with the Review, HMRC highlighted the difficulties they have had with some taxpayers reluctant to explain to HMRC the full extent of their income and assets.

83. The Review met with one individual being assisted by TaxAid who is not in a position to make a settlement offer acceptable to HMRC due to being on Universal Credit. As a result, the ongoing HMRC enquiry, which should have been concluded given the low amount involved, is now more than a decade old.

Spotlights & Public Communication

84. HMRC maintains that its position on the effectiveness of loan schemes was always clear, with campaigners inevitably arguing the contrary. The simple reality is that, barring some obvious failures, to most people, a tax scheme appears to "work" until a Judge decides that it does not. Even if, as HMRC maintain, loan schemes did not work, questions remain over how effectively HMRC communicated its views. Lord Morse's report in 2019 made a similar point. The use of "Spotlights" by HMRC have not proven an effective tool in communicating with the taxpayer.

85. Spotlights are more effective in communicating with the tax profession who should, as outlined above, be expected to understand HMRC's position even if they don't in all cases agree with it. But it was perhaps overly optimistic to expect individual taxpayers to be aware of Spotlights, as they are published. In the context of loan schemes, as regulated tax advisers moved away from loan schemes after 2010, the landscape was effectively left to the promoters, who had every reason *not* to update clients on such developments in a realistic way and who were able to control the narrative.

86. The media scrutiny around loan schemes such as K2 and the involvement of Jimmy Carr in 2012 was, however, difficult for anyone to miss. Even today, Mr Carr refers to his tax affairs in his live shows, and they were widely referenced at the time during his television shows. Many news channels in the UK covered the then Prime Minster describing Mr Carr's tax arrangements as "morally wrong"[36].

87. Some individuals told the Review that they ceased scheme use at this time, but this scrutiny does not seem to have precipitated any significant reduction in scheme use. Others said that, encouraged by remarks from promoters, they were led to believe that Mr Carr had abandoned K2, not because it was wrong or did not work, but simply in view of the adverse publicity. Certainly, at this juncture, the Review would agree that scheme users (for whom it would be difficult to argue ignorance of this coverage, given

[36] https://www.theguardian.com/politics/2012/jun/20/jimmy-carr-tax-david-cameron

its prominence in mainstream media) should have seen this, and the statements of Government Ministers, in particular, as clear indicators of the Government's intent to close these schemes down.

88. Nonetheless, HMRC does not appear to have capitalised on the controversy surrounding the use of the K2 scheme by Jimmy Carr to increase its influence with those who used loan schemes, by taking advantage of the communications opportunities this coverage might have presented. The promoters remained undeterred.

89. The Review considers that such events, though rare, present hugely advantageous opportunities to HMRC's broader counter avoidance strategy, which were missed in this case. HMRC should discuss with government the use of mainstream media through which it could make its position on tax avoidance issues clear and unfiltered. The Review welcomes HMRC's attempts since 2020 to utilise mainstream campaign tools more, such as with its *"Don't get caught out"* campaign.

90. In 2016, the Government announced the Loan Charge. Criticism of the design of the Loan Charge is already set out above, but communication challenges clearly persisted and the initial response to it was muted. The Review has seen much evidence of individuals, not just remaining in schemes after this point, but joining schemes anew. The real issue, in summary, is that it tackled individuals' use, but did not directly challenge the scheme promoters who attempted to come up with new schemes or found ways to market their scheme as outside the Loan Charge. A move to so-called 'self-employed' loan schemes and individuals becoming members of a partnership and so being able to draw funds from their 'capital account' seem to have appeared in large numbers, resulting in later changes to Part 7A.

The 2017 Impact Assessment

91. If there were tactical errors in the approach to settlement (perhaps on the basis of a misunderstanding of the loan scheme population), then the 2017 Impact Assessment is a useful lens through which to consider what HMRC's analysis of the population base (and the impacts of the Loan Charge on it) was.

92. HMRC explained that the reference to insolvency in the Impact Assessment reflected HMRC's assumption that some individuals would choose bankruptcy rather than pay the Loan Charge. HMRC also said that there was no expectation within HMRC that it would seek bankruptcy petitions on any large scale, since in many cases the individual would have no assets that would result in any significant recovery, rendering any bankruptcy proceeding pointless. In most cases involving individuals, HMRC considered that it was better for the Exchequer for taxpayers to remain solvent and thus able to work and continue to contribute taxes in the future. HMRC said that in some cases, for example where an individual did have realisable assets and was refusing to pay, they could take a different approach[37]

93. The Review team also asked HMRC to explain the basis of HMRC's assessment that the Loan Charge was *"not* expected *to have a material impact on family formation, stability or breakdown."* This was of particular interest, since very many of those responding to the Review had cited anxiety over fear of possible bankruptcy and the consequential negative impact on physical and mental health, the loss of the family home, job prospects, etc. as a constant worry, and often the most stressful aspect of their experience. Many admitted to having "brown envelope anxiety," with some speaking of regular suicidal thoughts. Alcohol issues were regularly mentioned and a number of those responding admitted to hiding the issue from families and feeling embarrassed that they had ended up in a situation where they had lost any element of financial security. Many were living in fear of their current employer finding out about their tax debt, which was especially a concern among those who still held public sector employment. A few who responded claimed to have no assets other than the family home, and so the loss of this and the consequential impact upon their families was an overwhelming concern.

94. HMRC said the statement was not intended to refer only to the effect upon those in scope of the Loan Charge, but instead the macro impact across the whole of the UK. Whilst the Review understands that this is the standard approach to an impact assessment, it found this approach in the context of the Loan Charge unsatisfactory.

[37] The review saw no evidence of HMRC seeking a bankruptcy petition in relation to a Loan Charge debt.

95. Based upon HMRC's 2017 impact estimate the Loan Charge was expected to directly affect around 50,000 individuals. Its indirect impact on family members can only be guessed at however the demographic involved was such that there was inevitably a high indirect impact, perhaps involving more than 100,000 individuals once regard was had to family members. Some family members have taken to social media to make clear that there is a significant wider impact and the Loan Charge does not just affect the individual involved. A number of those who responded to the Review highlighted that the stress had led to marital and relationship breakdown and issues affecting their working lives.

96. It seems inescapable that, absent steps taken by the Government to ameliorate the potential level of insolvency in the face of the resulting backlash against the Loan Charge, Ministers would have been faced with the prospect of many thousands of insolvent individuals and families. Furthermore, it seems reasonable to conclude from the testimony provided that the assurances made by the Government simply temporarily eased the anxiety felt by those caught by the Loan Charge as they merely delayed rather than removed the concern over the possible loss of the family home, typically the only asset that the large majority of those in scope of the Loan Charge told the Review that they had.

97. The Review met one individual who had agreed to HMRC taking a charge over his family home. The Review considers that, in the majority of situations, it is far better for HMRC to negotiate a reduced cash offer, payable over time, that the individual can afford, rather than seek a charge over a partly owned family home that may not be realised until very many years later.

98. The assurances given by Government ministers did nothing to ease the level of resentment that was building against them and HMRC. If the liability was to be settled as set out by HMRC, it would inevitably be the case that thousands of individuals would eventually face the choice of bankruptcy or having to agree to an inordinately long instalment arrangement. During the time of such instalment arrangements, their circumstances were almost certain to change, likely not for the better, risking them reaching a stage where they could no longer continue to pay what had been agreed so resulting in renewed fear of bankruptcy or HMRC eventually having to write off the balance of any debt at that point.

99. In conclusion, with a measure such as the Loan Charge that HMRC knew, or should be expected to have known, would have a wide impact and would give rise to many hard cases, there was no value whatsoever in an Impact Assessment that bore no relation to how the measure would impact on those directly and indirectly affected by it. In many respects, this approach rendered the Impact Assessment meaningless.

8) Findings: Fairness - the role of promoters[38]

The Marketing Approach: how individuals became involved

1. The approach of the promoters and how they marketed their schemes was effective in encouraging large numbers to participate. The professional presentation of schemes gave them a veneer of respectability that was a difficult starting position to displace. Most schemes offered glossy promotional brochures and well-designed internet presences. As well as the professional presentation, the very fact the schemes were able to so openly advertise contributed to the sense that they were acting above board.

2. The Review saw hundreds of examples of advertising materials, and it is certainly true it was well presented for the most part. Many schemes offered well-presented personal illustrations setting out the financial benefits (and in some cases relative risks) of using their scheme for a specific individual, which must also have contributed to the professional appearance.

3. The Review heard that the arrangements around their recruitment for roles was a contributing factor. Respondents told the Review that certain recruitment agencies had preferred supplier lists for payroll services, oftentimes pushing contractors towards umbrella companies where the use of DR schemes was common. This practice appears to have been more common at lower levels of contractor earning.

4. Whatever the reason, it seems that due diligence was either not conducted, or its conclusion did not sufficiently account for the risk that later legislation could render any scheme non-compliant. The result was that many said they became involved in loan schemes through such agencies. The Review agrees that, where there was use of preferred supplier lists, this, combined with less secure employment/contract work in the "Gig economy", would have increased the pressure on individuals to use these schemes.

5. There were also a series of referral schemes in place that inevitably incentivised new use. The Review saw evidence of schemes offering workers referral fees for bringing in new users; schemes paying accountants fees to encourage clients to join them; and accountants offering referral fees to existing clients to bring them new individuals that they could, in turn, introduce to the scheme. The involvement of professionally qualified advisors, or colleagues and friends, in the referral system doubtless added an additional layer of comfort to those entering schemes.

6. Promoters targeted certain industries in particular with these schemes, creating something of a snowball effect among workers: many respondents told the Review that parts of their own checks into whether these schemes were legitimate involved speaking to colleagues and friends in the same or similar industries and such enquiries were typically met by positive responses. With HMRC not litigating individual cases for a substantive period, those using loan schemes were enjoying good returns on contract value, an efficient payroll service, and not necessarily encountering much (if any) HMRC challenge. This would make it difficult not to recommend a scheme, especially in tandem with the referral schemes also available.

The case for mis-selling

7. There is no doubt that if there is a villain in this story, it is the tax scheme promoters. It was a consistent theme of the evidence received by the Review that individuals who had been caught up in loan schemes had a deeply held feeling that they had been 'mis-sold'.

[38] This report uses the term 'promoters' broadly to include all those involved in the creation, operation, marketing, referral or introduction, sale or indeed any other activity related to individuals' involvement in the schemes. This includes a number of entities such as accountants, tax agents, scheme promoters or operators, legal advisors, trustee services and so on. No part of this Review should be read as using "promoter" in the technical use of the word 'promoter' in its statutory description in tax avoidance legislation. Further, the themes laid out below (as they are throughout) are generalisations based on the evidence received and testimony heard by the review and should not be read as relating to any specific individual or organisation.

8. The Review has engaged independent legal counsel to assist it on the question of mis-selling and/or misrepresentation of tax schemes. Based upon the advice received, the Review considers that there is a *prima facie* case for mis-selling in the broadest sense of the term (whether or not that would give ground for redress). Of particular concern, in this regard, are the assurances given and lack of realistic warnings offered by those promoting the schemes.

9. The Review considers that, in light of the Government's intention to tackle loan schemes in the period after 2010, including the enduring statement that retrospective legislation would be considered, there was always a very real risk that the promised tax advantages would not be achieved. As such, there is a case that schemes promising a higher rate of take-home, etc. without a clear warning, were being mis-sold in that broad sense, especially in the context of individuals largely unfamiliar with the prevailing context, such as the clear statement of intent that was part 7A, or earlier government statements about possible retrospective action against these schemes.

10. The Review has seen significant evidence to support taxpayers' general arguments in this regard, especially in respect of the claims about the compliance and risk of these schemes. The Review understands that bringing any specific case of mis-selling is likely to be difficult, most obviously due to the passage of time, in addition to which many of the promoters involved have disappeared or become insolvent.

11. However, any specific requirements of the legal framework notwithstanding, the Review set out to understand the real experience of the taxpayers involved, regardless of the legal technicalities. That is the threshold required for the Review to make its recommendations.

12. The Review has not investigated each scheme individually but did pose specific questions to some of the promoters referenced as part of its inquiries[39]. The Review was not persuaded by the responses. Some leeway can be offered to a lay person, even in the period post the introduction of Part 7A, that they may not have appreciated the extent of the HMRC enquiry/retrospective legislation risk. However, the same cannot be said for the promoters. They knew, or can be expected to have known, that the risks were far greater after 2010. They should have ceased to market loan and other forms of disguised remuneration scheme with or without appropriate and realistic risk warnings.

13. Instead, as discussed below, they continued to market schemes, generally without an appropriate and realistic risk warning, to those willing to use them, adapting them in ways that they thought would escape HMRC counteraction. Sufficient evidence has been received to indicate that the behaviours discussed in this section were sufficiently prevalent that the Review should make recommendations on the basis that they were universally present. It was clear that, in response to the Review, some promoters asserted that their schemes were taxable only because of the Loan Charge, which again highlights the lack of litigation against post-2010 loan schemes.

14. Numerous schemes were referenced in evidence, and it is likely that there were just as many to which the Review has not been privy. The relative simplicity in how the schemes operated was such that there was not a restrictively high barrier on entering the market of promoting them. The Review has also seen examples of the same or very similar schemes being marketed under different names, whether from rebranding exercises or promoters copying from one another; in *Hyrax* the tribunal found that the promoter was 'phoenixing[40]' – that is, "*as legislation was coming into force which was perceived as taking away the tax advantage of the previous iteration, a new iteration was introduced which was intended to avoid the new legislation.*"[41] The overall effect of this is that it is difficult with certainty to create an exhaustive list; suffice to say there were many schemes in operation at any time.

[39] Some of the more prominent promoters were and seemingly remain members of professional bodies. That they were promoters was not accepted by those with whom the Review had contact.
[40] In business, 'phoenixing' is used to describe when businesses or directors thereof, trade successively through a series of distinct (limited) companies. When one fails, another entity, offering in essence the same goods or services provided by the same people, appears.
[41] Revenue & Customs v Hyrax Resourcing Ltd & Ors [2019] UKFTT 175 (TC) paras 50-53

Legal context

15. In the 2019 Review, Sir Amyas (now Lord) Morse said that the prevailing opinion was that in 2010 the law became clear: i.e. the introduction of Part 7A (which would become known as the Disguised Remuneration Rules) was a watershed moment. Even while case law on the position prior to the introduction of Part 7A was still being tested through the prolonged *Rangers* case, the Review agrees that Part 7A was a clear signal of Parliament's intent, even if, as some attempted to do, schemes could be adjusted in some way to allow them to continue seemingly untroubled by Part 7A.

16. And, even if it could be said that Part 7A was ineffective, there could be no doubt of the Government's intention to bring DR schemes to an end, and the higher risk of retrospective legislation, in keeping with the Government's statement in 2004, remained. This was something that tax professionals and promoters active in this area were clearly aware of. The Review heard evidence that several promoters left the DR scheme market shortly after this, including the closing down of RSM Tenon's Premier Strategies division[42]. Despite this, other promoters continued to heavily market these schemes, and tax advisors, accountants, and the like continued their involvement, albeit in reducing numbers.

Inadequate risk warnings

17. From 2010, the Review considers that loan-based tax schemes that did not include in its marketing material at least some realistic explanation of the risk of HMRC enquiry and retrospective legislation was probably open to claims of mis-selling.

18. The Review saw very little marketing material that included appropriate warnings. Some promoters did refer to HMRC enquiry risk but would also assert that the planning had never been challenged by HMRC, or never successfully challenged. Others highlighted that there was some general risk but typically the risk of using their scheme was lower than their competitors. The Review has seen one promoter defending the use of a "low risk" rating to their loan scheme on the basis that their scheme was lower risk to the user than IR35. The Review does not accept that this is an appropriate measure by which to judge the risk of using a loan scheme since such comparisons are less capable to being understood by the participant. Prior to 2010 there is perhaps some leniency to be afforded. But that is (largely) the basis on which the Morse Review excluded the pre-2010 years. For the purposes of this Review, then, it is considered that the legal context (i.e. that these schemes either did not work, and/or the Government would continue to legislate, perhaps even retrospectively, to make it so) should have been clear to tax professionals operating after 2010.

19. Individuals told the Review that such risk warnings were not regularly offered. In some cases, indemnity/liability waivers were used – i.e., some who used schemes signed a statement acknowledging that they were advised of the risks. The Review rejects this as nothing more than a device intended to let the promoter off the hook if the scheme went wrong. The issue is twofold:

    a. Firstly, it was left up to the individual (who was, by definition, the layperson in this arrangement) to determine whether the risks were adequately explained to them. The problem is obvious: how can someone who does not understand the risks confirm that the risks have been adequately explained?

    b. Second, even if some risks *were* explained; the Review questions whether any risk warning is invalidated if it is accompanied by assurances about the scheme being 'low risk' or compliant.

20. The use of such waivers supports the view that there was, in reality, a level of concern amongst certain promoters as to the effectiveness of the scheme, which would appear to undermine any assurance about their 'low risk' nature. Again, in such circumstances, the Review considers that such schemes should have ceased to be marketed.

[42] https://www.taxjournal.com/articles/press-watch--tax-avoidance-no-longer-worth-risk-admits-tenon--46661

21. Properly and realistically advised, it is likely that many fewer individuals would have participated in a loan scheme after 2010, although the Review did hear testimony from a few individuals who accepted that, at the time, they knew that the tax advantages were probably too good to be true. Nonetheless, the Review considers it unlikely that, in many cases, the risks to the individual from participating in the scheme were properly and realistically explained or appreciated.

Abuse of trusted positions: the involvement of accountants and tax advisors

22. The Review saw examples of tax advisors and accountants, including members of professional bodies, actively encouraging existing clients to refer friends and colleagues, on the promise of referral fees. That professional advisers acted in this way is at the heart of the deep feeling of injustice many individuals feel. Looked at from their perspective, they paid for advice from a professionally qualified individual that they trusted based on their title, professional qualification, and so on. Their involvement offered significant comfort that the use of the scheme was above board.

23. The Review also saw some evidence that accountants and tax advisors were part of referral schemes through which they received payments from promoters in relation to clients they referred to the promoter. It was not clear whether these payments were in all cases disclosed to the client, although the Review did see some evidence that they were.

24. Plainly, such arrangements have the potential to influence the advice given and 'trust' was mentioned consistently by those individuals who met with the Review. One accountant defended the receipt of such payments on the basis that he had been assisting the client prior to 2010 and since then he had been assisting his clients on a pro-bono basis to try to resolve the client's loan scheme issues.

25. The Review does not believe that a professionally qualified adviser should have reasonably been involved with loan schemes after 2010 without providing a significant accompanying warning of risk to the client (or even then), other than where they were assisting a taxpayer to settle their tax liability.

26. Some accounting firms with clients known to have used schemes were invited to contribute to the Review's understanding of how loan schemes were marketed but the Review received little response. The Review met with one chartered accountant who maintained that they had provided due warnings, though they did not provide contemporaneous documentary evidence that this was so.

27. The Review saw no evidence suggesting that the larger accounting firms remained active in this area after 2010 and, other than as explained above, the Review saw no evidence of widespread involvement by members of professional bodies after 2010 actively encouraging the use of loan schemes.

28. The accountancy and tax professions remain unregulated by statute. However, the main professional bodies have, since 2017, very significantly strengthened their professional standards and conduct requirements in the updated 'Professional Conduct in Relation to Taxation', or PCRT. At the time PCRT was amended, it was intended to prevent members of these bodies from, in effect, acting in a way that facilitated the use of tax schemes, so potentially bringing the tax profession into disrepute.

29. Members of professional bodies had also regularly complained in the past to their professional bodies that promoters insisted that tax returns had to be completed in accordance with how the promoter wanted the transactions disclosed and this had caused issues with the client, for example where the member disagreed with the promoter as to the merits of a scheme or level of disclosure to HMRC that was required.

30. Members of PCRT bodies can no longer be associated with transactions that have no credible basis, and these requirements are common across seven main professional bodies and applied on a voluntary basis by several more.

31. The Review met with the CIOT, ICAEW, ICAS and the Taxation Disciplinary Board. The Review has no specific recommendations directed at professional bodies, save that the receipt (and offer) of referral fees should be looked at carefully to ensure that such arrangements are not acting as an incentive to

encourage the use of tax schemes. **Whilst involvement in a tax scheme may in some circumstances breach existing requirements in PCRT and/or codes of conduct, the use of referral fees in any situation where the scheme is within scope of DOTAS and/the General Anti-Abuse rule should not be allowed.**

32. **The Review would also encourage professional bodies to ensure that the limitation periods that they apply in relation to their disciplinary proceedings are realistic in the context of a tax scheme where failings in the quality of the advice or the activities of the adviser may not become known for a number of years after the scheme is used.**

33. The Review brought the behaviour of one firm to the attention of its professional body.

Legal opinions and QC approval

34. Most schemes were marketed on the basis that Tax Counsel, often a QC, had considered the arrangements and confirmed they were compliant. It is clear from what the Review was told that the claim a barrister had seemingly approved the scheme gave very many participants comfort that the scheme was "legitimate". The Review was able to obtain a small number of these opinions. Some were inevitably not specific to the individual participant, instructed as they were by the scheme promoter, and so these were generic and often lacked the satisfactory consideration of the risks that participating in the scheme might expose the *individual taxpayer* to.

35. There also appeared to be a level of misrepresentation around how these legal 'approvals' were presented. In one case seen by the Review, promotional material referred to an opinion given by a named QC. With the assistance and cooperation of the barrister and Chambers in question, we were able to confirm that the marketing material was stating it had a QC opinion some years prior to that barrister having become a QC.

36. More concerningly, while supporting certain elements of schemes (e.g. the implications of its offshore element), the Review was not convinced that the opinions seen could fairly be said to approve the schemes in their entirety in the way that much marketing material went on to imply. In any case, the opinions the Review was able to obtain would, realistically, have required a legal or tax expert to decipher in full; and often contained specific caveats about circumstances that would create issues.

37. Perhaps more reckless were references to non-specific and undisclosed opinions, and the use of general (but strong) language such as 'QC Approved' or 'supported by leading tax counsel', etc. It is quite reasonable that many took this at face value, supplied as it was by tax and/or accounting professionals. Few of those involved appear to have seen such opinions.

38. The Review saw evidence of marketing material implying counsel approval or endorsement even after 2010. Once Part 7A had been enacted (and noting the legal precedent set by the Primarolo statement), the Review considers that it would have been difficult for a barrister to provide an opinion that could wholeheartedly support a scheme but not also make clear reference to the increased risk of HMRC challenge and possible retrospective legislation. Marketing material that relied upon such opinions, but which did not refer to these risks, would also potentially have misrepresented the risks of participation.

39. It is inevitable that lay individuals, inexperienced in complex tax matters, will place considerable faith in the written opinions of members of the Bar. The Review has discussed some concerns with the Bar Standards Board around how opinions provided by barristers and in turn used by scheme promoters are used in marketing material. Whilst some misuse of an opinion is likely to be impossible to prevent, it should be made very clear in opinions precisely who can rely upon the opinion and, where the client is a promoter, how the barrister expects their opinion to be used. Such opinions should take account of the wider context within which such opinions are offered, specifically that the Tribunals and courts view facts realistically with greater regard to the purpose of the relevant statutory provisions. Otherwise, there is the risk of the reputation of the Bar being brought into disrepute.

Misleading language

40. In many cases the implications of using the scheme were not made clear and it was not difficult to understand why individuals would become comfortable with their use. The Review had concerns about how the marketing material described both the loan portion of the scheme, and what taxes were paid.

Loans

41. The loan portion of the reward was often not well understood. Some schemes were more explicit than others in their labelling of this part, whereas others made no reference to loans, instead describing these elements as 'discretionary employee awards' or other similarly benign sounding phrases, with little or no warning that the structure created loans. Some individuals told us they did not understand the 'loan' portion of their pay to be a loan in any real sense of the word. While some promoters made the point that the loans had to have *some* possibility of repayment, otherwise they were not loans, in many cases respondents to the Review did not understand them to be loans in the real sense of the word – i.e., repayment was theoretical only. Few held any expectation that they would need to be repaid.

42. But this does create an inherent contradiction within the marketing material that few of those the Review met seemed to realise at the time. The main marketing claim of schemes was that they offered an increase in take home or a greater return on contract value. As explained above, the schemes resulted in an individual receiving a (usually) small amount of pay and an additional loan (which was not always described as a loan) and it was the total amount received which made up the promised "return" or "take home" of the individual.

43. Even at a theoretical level this claim has to be considered misleading where a (genuine) loan is involved, because a loan which replaces regular pay, and which (by definition) creates an obligation of repayment at any time cannot sensibly be regarded as giving a "greater return" or "take home" than normal pay. In any genuine loan situation, the individual now has a repayment liability equal to (or, with interest, exceeding) the loan element.

44. Such approaches created a 'through the looking glass world' in which the marketing pitch of one scheme promoter proclaimed at the outset, despite advertising that the scheme allowed a user to take home more than 80% of their contract value on the same page, that:

"[we] specialise in reducing your tax liability by reducing the income you take home. The less you earn the less tax you are liable for."

Taxes paid

45. Marketing material typically assured those participating in the scheme that their taxes were being paid. One example described the take-home pay totals compared to PAYE as '*after deduction of Tax, NI and costs'*, with no clear distinction that tax was not being paid on part of the reward. Other material claimed that *'all your personal income is taxed under UK mainland tax laws.'* It would have been clear only to a relatively sophisticated reader that the schemes' claims in this regard were intended to refer only to the element of the scheme paid as wages, and that no taxes were being paid on the loan element.

46. Promoters may, doubtless, have argued that all (relevant) taxes *were* paid – the problem is their assumption that the 'loan' portion of their remuneration package could not give rise to an income tax and/or NICs liability. This ignored the potential impact of Part 7A, possible retrospective legislation or a Tribunal potentially concluding that such a 'loan' was income. By the time Part 7A was announced in late 2010, it is reasonable to conclude that every loan scheme, without exception, relied upon *Dextra* and *Sempra* as authority that contributions made to an EBT coupled with the making of loans to employees would not trigger a liability to PAYE and/or NICs.

47. However, there was a material difference between a typical contractor loan scheme and Dextra and Sempra. In Dextra and Sempra the loans were regarded as genuine loans. In contractor schemes, a

value for the contractor's work was agreed with the client; a small element of that value (generally the minimum wage, or little above it) was paid as normal salary to the individual (typically by an umbrella company), with the balance (less promoter fees) being paid as a loan from the trust. The marketing material used by various schemes made clear that the small wage paid to the contractor combined with the loan element (and promoter fees) made up the contract value.

48. This might well support a conclusion (which as mentioned was reached by individuals) that the loans were not intended to be repaid and so were not genuine loans. On those facts, there was no certainty that a Court would have followed Dextra.

DOTAS numbers and 'HMRC approval'

49. The Review saw evidence of schemes using DOTAS (disclosure of tax avoidance schemes) in ways that implied HMRC approval of schemes. The Review saw no evidence that HMRC had approved any of these schemes (the Review did, however, receive evidence of HMRC erroneously advising that a scheme was not within scope of DOTAS[43]).

50. The Review was told that where a scheme had been disclosed to HMRC, the wording on marketing material often implied that this was some form of approval. The Review has seen evidence of promotional material that referred to schemes that were 'disclosed to', 'registered with', 'lodged with' HMRC in such a way as to give the impression that this meant the scheme was above board. The Review saw no evidence of promoters consistently and meaningfully setting out the implications of a DOTAS SRN, despite the risks it ought to imply.

51. Some of those the Review met also explained how such approaches were used during discussions with the promoter as a reassurance to individuals. In a recent Tribunal case, *Tonkin,* the judgement noted that the individual involved believed DOTAS to mean that the scheme in question was "legitimate".[44]

52. The Review accepts that to a lay individual, who is not a tax professional, a claim in marketing material worded in this way could have a reassuring effect. Whether this was *intended* by the promoter is arguable, however there can be no doubting the impact this had with many participants.

53. The approach to DOTAS by promoters was not static, with schemes at other points using various explanations to say the scheme was not within the scope of DOTAS. A scheme promoter based in the Isle of Man included in marketing material that the scheme was not within the scope of DOTAS but made no reference to the fact that, where the promoter is offshore and does not disclose the scheme to HMRC, the DOTAS obligation falls on the user of the scheme who must make their own judgement as to whether a disclosure is required.

54. Overall, the Review makes clear that the current arrangements, whereby a DOTAS SRN is notified to promoters, allows the promoter too much scope to manage what the individual understands DOTAS to mean. HMRC must ensure that there is no scope for ambiguity and no means whereby a promoter can lawfully caveat or alter the messaging issued by HMRC when it notifies a promoter of the SRN[45].

The employment relationship

55. The Review saw evidence of advice being offered by promoters saying that, should HMRC challenge the scheme, then the risk would fall on the employer, and/or that in the case of a challenge the scheme would fight it. In some cases, this was offered as a specific reassurance, and some of those who met the Review made clear that it strongly influenced their decision to participate.

56. Respondents who were members of some schemes spoke about promises made about legal defence, should it be needed. Some schemes specifically spoke about legal defence funds and gave (rather high)

[43] See the discussion on DOTAS in Part 7
[44] Tonkin v Revenue and Customs [2025] UKFTT 750 (TC) §6(9)
[45] See recommendation 7

estimates of how much money was saved especially for this. Some gave fewer specific assurances. In any case, many respondents spoke of promises being made about fighting claims against the scheme and/or those who used it by HMRC.

57. These claims offered what has generally transpired to be a false reassurance and acted as an incentive to participants to remain in schemes (lest they then lose said ‘benefits’). Whether the legal defence funds ever existed has been questioned by some of those who met the Review but, more pertinently, in many cases the legal employer has ceased to exist, so leaving individuals carrying all the risk in any event.

Wider services offered through the promoters

58. The Review noted that in many cases the scheme promoters included accountancy or other tax advisory services as part of the scheme’s package; either offering to complete tax returns for individuals in-house or referring them to a preferred accountancy practice with whom they had an arrangement. This was in addition to the aforementioned legal defence services in the case of a challenge by HMRC.

59. Respondents told the Review that this arrangement had two particular impacts: firstly, by centralising more of the services needed, it made the scheme harder to leave as a service provider (as it impacted many of a worker’s needs); secondly, it reassured individuals of the schemes’ legitimacy, because accountancy/tax services were being undertaken by the same or linked firms. But it also gave promoters undue control, both over the reporting of an individual’s tax affairs, and the narrative of engagement with HMRC, which the promoter (or their affiliate accountant) would take over.

60. The Review considers that promoters (and businesses associated with a promoter) should be prohibited from offering such additional services. Giving the promoter control over how an individual’s tax return is completed inevitably allows the promoter too much sway over the level of disclosure. While some promoters told the Review they always supported (and even now continue to support) clients in such cases, few of those the Review met considered that they had been properly represented by the promoter when HMRC opened an enquiry. In most cases, the Review was told that the promoter very quickly disappeared, leaving the individual high and dry.

Loan Charge-busting schemes

61. The announcement of the Loan Charge resulted in a last throw of the dice by some tax avoidance promoters in the form of so called “Loan Charge busters.” Such schemes were not taken up on a widespread level even though they purported to allow those with outstanding loans to circumvent the Loan Charge.

62. Such schemes varied in operation, but in broad terms they created ways to provide individuals with a ‘statement of no liability’, or similar, implying there was no outstanding loan on 5 April 2019 and so no liability to the Loan Charge. Some schemes claimed to consolidate large outstanding loan balances into a single, much smaller loan that could then be more easily paid off. Others charged a fee, typically 5% of the outstanding loan balance, which would then be released or written off. There were many other variants.

63. HMRC moved quickly on this occasion to prevent the widespread use of such schemes. Spotlight 36 was published in February 2017. This made HMRC’s view that it did not consider that such schemes worked. HMRC has continued to update the information available on these schemes in Spotlights 39, 44, 49, 50. The Review understands that more than one hundred ‘loan buster’ appeals are likely to be heard by the First Tier Tribunal.

64. Some loan scheme promoters actively introduced individuals to these new schemes. Whether the entities were formally linked is unknown (some in the media have made this claim), but the fact that these schemes provided statements of no liability/repayment etc from the original scheme implies at

least some level of working relationship. In some ways, that is unimportant – the salient point is that the same individuals who had been subject to failed loan schemes were then the targets of new scheme promoters. And, far from using the previously advertised legal defence funds to help represent their clients, it seems the solution of some promoters was to refer their clients onwards into new, even more dubious avoidance schemes.

9) Conclusion: a new approach to settlement

Introduction

1. The purpose of this Review was to identify the barriers to resolution for those who have yet to settle their Loan Charge and associated liabilities, and to propose ways in which those barriers could be overcome or reduced.

2. Many such barriers have been identified: mistrust of HMRC, anger, confusion, and fear on the part of those involved; HMRC inflexibility; individuals continuing to place reliance on dubious advice given by scheme promoters; and, most commonly of all, individuals lacking the means to meet the large amounts required by HMRC, in part due to the unique retrospective effect of the Loan Charge.

3. HMRC inherited loan schemes from the Inland Revenue, with the resource requirements and costs now acting like an anchor against HMRC's efforts to improve its customer service and compliance. **The recommendations that follow are intended to allow those who want to settle, to settle.** They are also intended to allow HMRC to focus its efforts on the small minority of those involved, who, the Review has been told, are determined not to pay regardless of any new approach.

4. The Review considered whether the Loan Charge could be amended to allow HMRC to settle cases on what would be a just and reasonable basis where the charge was otherwise causing hardship. In 2017, at the same time as the Loan Charge was enacted, the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) was amended with the introduction of S507A.

5. This allowed HMRC to, in effect, disapply the strict letter of the law where the taxable gains on some insurance policies (such gains are charged to income tax) were "wholly disproportionate." This had been the culmination of a campaign to have the law amended since it was causing hardship in circumstances where the Tribunal had been unable to come to the assistance of taxpayers who had challenged HMRC's application of the relevant rules.

6. Such an approach is attractive, for example, where the individual faces a liability that cannot be paid, or cannot be paid in full, as a result of their tax position being changed years after the event. However, the numbers within scope of the Loan Charge are many times greater than would benefit (or need to benefit) from S507A. Equally, designing an approach that could apply without a subjective consideration of every single case would be difficult, costly, and time consuming for HMRC. It would also rely upon engagement with those yet to settle. But, without some clear indication as to where any such engagement would lead, it is unlikely that sufficient numbers would be interested in an uncertain outcome.

The participants in loan schemes

7. The Review found that among scheme participants there is a deep resentment of the scheme promoters and HMRC's approach, such that, without some new approach that lifts some part of the responsibility off the individuals involved, there is little prospect of persuading them that it is now time to settle.

8. The self-assessment tax system relies in very large part upon voluntary compliance by millions of individuals, only a minority of whom have regular access to quality professional advice. Under this system, it is for the taxpayer to decide what is returned to HMRC each year. Taxpayers face obvious difficulties in meeting this responsibility, not least due to the notoriously complex legislation and administrative processes. These are especially difficult for unrepresented taxpayers.

9. Nevertheless, and despite these challenges, the important principle that the taxpayer is ultimately responsible for their tax affairs cannot easily be disregarded. As with every other aspect of this saga, across the range of individuals involved, responsibility for their being involved in a loan scheme varies.

10. A very small selection of individuals admitted to the Review that they knew at the time that it was intended to avoid tax or was too good to be true. But others just went along with whatever arrangements the umbrella they were told they had to use, put in place. Others relied upon questionable assurances given by promoters. For some, their peer group of work colleagues provided comfort that the arrangements were not controversial. There appears some mitigation in almost all cases.

11. So, whilst this Review respects the principle that taxpayers are responsible for their tax position, it does not consider that this is incompatible with an approach whereby, in some situations, taxpayers are assisted in regularising their tax position for the past, even if this requires the overall burden of that liability to be reduced from what would be the "strict" application of the law. Indeed, HMRC has taken this approach on numerous occasions. The Review considers that this is particularly important where strict adherence to principle causes (or will cause) harm. In such circumstances, it is right for the Government and HMRC to make such adjustments as are necessary to reduce or prevent that harm.

12. In this regard, the unprecedented design of the Loan Charge removed certainty from thousands of taxpayers and imposed an alternative tax position upon those within scope many years after the transactions in question, also whilst, for all practical purposes, removing their right of appeal. The extent of this distortion in taxpayer rights is illustrated by the fact that, as originally enacted and absent the subsequent concession made by HMRC, the Loan Charge legislation would have applied to an employee of Dextra who had an outstanding loan from the Dextra EBT in 2019 despite their tax position having been settled by the courts seventeen years before.

13. It was clear that many individuals withdrew from loan schemes once they realised that HMRC did not approve them. This was often, but not always, at the point HMRC opened an enquiry. Many of those who met with the Review stressed that they wanted to reach a resolution with HMRC and assured the Review that they would do so if the terms of any settlement were "fair", which they did not consider was the case to date. However, relatively few of those individuals still to settle had the means to employ specialist help, with organisations, such as the charity TaxAid, stepping in to support those on lower income. Some mitigation to this has been provided by some tax advisory firms who have been able to keep an individual client's cost down by having a large number of clients in scope of the Loan Charge[46].

14. Far too many individuals have faced unacceptable delay and a lack of clarity when they have attempted to reach agreement with HMRC; others have had settlement offers rejected in circumstances where the amount offered represented the best they could do, even if it fell short of what HMRC calculated. In many cases, HMRC calculations have been incorrect, and for many incomprehensible, with even some highly experienced tax specialists admitting to the Review that they had struggled at times to reconcile the various calculations HMRC issued. This reflects underlying legislation that is highly complex, and transactions that could give rise to multiple types of tax, alongside the relatively low understanding among taxpayers of any concessions HMRC has made. The resulting perception is that HMRC appears to many to be levying every possible liability on those involved, thus making settlement seem less and less achievable.

15. Delay has become such an inevitable part of HMRC compliance that we risk simply getting used to it, with many cases heard by the Tribunal involving transactions that occurred a decade or more previously. All of the tax advisers who contacted the Review, in many cases experienced former HMRC Inspectors, highlighted delay and complexity of the process as major barriers to progress. In many cases considered by the Review, HMRC enquiries have gone many years longer than the period of time during which the individual participated in a scheme, with, in some cases, a decade or more of HMRC enquiry, during which there has been no progress whatsoever towards a resolution.

16. While the Review is, in this report, critical of HMRC's role in delay, individuals must also now be proactive in coming forward to settle and be open with HMRC to enable fair and accurate resolution of their affairs. HMRC can only make assessments and act on the data they have. DR inherently disguises part of individuals' remuneration – and so individuals will need to act in good faith with HMRC if a resolution is to be found, and a line drawn under this saga.

[46] Nevertheless, these represent a very small proportion of those still to reach agreement with HMRC

The promoters

17. Few of the promoters have been held to account. HMRC has acted against some, but this has not been sufficiently visible; and, at times, HMRC has failed to apply penalties[47]. The Review is clear that more needs to be done to hold promoters to account (where possible). As explained, the body of evidence seen by this Review supports *prima facie* the claim that many were to a greater or lesser extent mis-sold a tax product. The marketing claimed many things, but perhaps most egregious were their bold statements of tax compliance, and the implications that all relevant taxes would be paid. It is difficult for this Review to understand how, post 2010, confident assurances could be offered, given that the intention of the Government was, by this point, very clear, with the possibility of retrospective legislation to counter any continuing DR scheme use very real.

18. Some promoters told the Review that they gave detailed information to those participating in their schemes, explaining the risks including HMRC enquiry and possible retrospective legislation. This raises further questions: why would anyone proceed if the risks were fully and realistically explained to them, and, more importantly, why would a promoter continue to market a product that they knew was likely, one way or another, to fail to deliver?

19. Anecdotally, some promoters were said to have enjoyed fees of, in one case, over £100m and, in another, more than £300m. Profits of this magnitude, if true, dwarf any financial sanctions HMRC can impose upon a promoter. To be fair to HMRC, there is much going on that is not yet in the public domain, and HMRC's counter avoidance activities are much more visible today through social media platforms than has been the case in the past.

20. The criticism of HMRC that it has not acted sufficiently quickly or adequately against the loan scheme promoters is justified. It does not compare well to the actions the Government and HMRC took against, for example, the promoters of Stamp Duty Land Tax (SDLT) schemes in 2013 that proved much more effective, with promoters required to disclose their schemes under DOTAS, even where they had previously been so disclosed. The standardised tax product hallmark was abolished, and two rounds of retrospective legislation were enacted to ensure that the schemes failed. As a result, several SDLT scheme promoters left the market and HMRC was better able to recover unpaid SDLT for many thousands of individuals who had participated in the schemes.

HMRC

21. The Review considers that, in 2017, HMRC at a senior level did not understand sufficiently well the concerns of its operational teams or – if they did – their operational strategy for handling these cases doesn't appear to match up to concern being expressed. The taxpayers involved presented a wide diversity of situations, for which the one-size-fits-all approach of the Loan Charge was far too blunt.

22. The internal HMRC reports spoke of expectations of widespread non-compliance, both because of the complexity of the reporting requirements the Loan Charge imposed, and the cost of the liabilities that would arise. And even among those who would comply, HMRC told the Review that their analysis in 2016[48] assumed around 30% non-payment from those complying with HMRC.

23. While many did settle their liabilities in the run up to the Loan Charge, any upward trend appears to have been illusory, and, as the clock ticked down to April 2019, it must have become clear to HMRC that the majority of individuals would be unable to resolve their liability prior to the Loan Charge arising. Arguably, the current impasse proves the point made by the authors of that aforementioned internal report: there has been widespread non-compliance, whether because of the information requirements or economic situation of the individual taxpayers. And yet, with hindsight, even armed with this understanding, HMRC's strategy for resolving compliant but means-constrained individuals has not been successful, with so many outstanding more than six years after the Loan Charge arose.

[47] Paul Baxendale-Walker v The Commissioners for HM Revenue and Customs [2024] UKUT 00154 (TCC)
[48] https://assets.publishing.service.gov.uk/media/5a8169cae5274a2e8ab53dae/PU1912_Policy_Costings_FINAL3.pdf

24. Following the Morse Review, many of those who had settled in the run up to April 2019 had their settlement repaid when the Government limited the Loan Charge to 2010. While this reduced overall case numbers a little, it appears that it had much less effect on the 'hard' (i.e. means-constrained) cases, leaving these as a greater proportion of those remaining. The effect of this was that the amended Loan Charge (and HMRC's efforts in attempting to enforce it) was focused on a large group of (by then very well organised) contractors and agency workers.

25. Lord Morse also recommended excluding pre-2016 cases where "reasonable disclosure" had been made but HMRC had not opened an enquiry. This appears to have failed, since the resulting statutory test was drafted in a way that few of those who could potentially benefit could meet. The Review does not have data on the number of individuals who were not protected by this change; however, it is likely that those where the promoter had offered tax return services were at highest risk of their disclosure being considered as falling short. Realistically, it is difficult to imagine many taxpayers meeting the statutory test in the Finance Act 2020[49].

26. And, despite Lord Morse concluding that the law was sufficiently clear by late 2010 and, as such, that this date should be the starting point for the Loan Charge, some barristers told the Review that they remain unclear as to what some aspects of Part 7A mean. In *Marlborough DP*, heard some twelve years after the introduction of Part 7A, whilst ultimately the Upper Tribunal held that part 7A did apply, and The Court of Appeal dismissed Marlborough DP's further appeal in June 2025,[50] the First Tier Tribunal did not apply Part 7A. The First Tier Tribunal, however, did apply Part 7A in both *Cia Insurance*[51] and *Strategic Brandings*[52], despite these cases involving essentially the same loan scheme. The fact that the First-Tier Tribunal did not originally hold part 7A to apply in *Marlborough* does suggest its application was not obvious. There have been similar inconsistencies in the application of the *Rangers* decision.

27. It is not necessary for the purpose of this Review to analyse these decisions in detail, since they simply make clear that how the law should apply is determined by a careful investigation of the facts and the application of the relevant law to those facts. However, the nuances involved are difficult or impossible for a lay person to understand. And, whilst promoters appear to have ignored the approach of the Tribunal whereby it considers the facts realistically and applies the law purposively, as matters stand there remains a lack of case law with which to evidence how the Tribunals and courts would regard contractor loan schemes, because HMRC has not brought such cases before the Tribunal.

28. HMRC must accept considerable responsibility for such a state of affairs. Many more cases should have come before the Tribunals to put substance behind HMRC's assertion that the schemes never worked. The Review received no satisfactory explanation from HMRC as to why enquiries have gone on for, in some cases, over fifteen years, and where, despite HMRC having thousands of open enquiries, there is not any substantial body of case law directly relevant to the contractor type loan schemes that comprise the majority of the open cases. To be fair to the senior officials who met with the Review these were inevitably difficult questions to answer given the very long period of time involved and that many individual decisions would have been made over the years. Perhaps there is no answer. However, a situation where year after year passes with no progress of any kind in bringing an HMRC enquiry to a close should not be acceptable to HMRC or anyone else.

29. One consequence of this lack of litigation is that a scheme promoter maintained to the Review that the scheme they were marketing was taxable only because of the Loan Charge.

30. Inevitably, those within HMRC who are now responsible for Loan Charge compliance have inherited a legacy that will take time to improve and HMRC cannot, in the Review's opinion, end the use of loan-based DR schemes without a concerted attack on the supply of such schemes (i.e., the promoters). Here, the Review notes recent consultations on tax scheme promoters and umbrella companies and

[49] This is a further example of the loan charge deviating adversely from the principles established by the courts where HMRC's "discovery" powers are in point.
[50] Marlborough DP Ltd v Commissioners for His Majesty's Revenue and Customs [2025] EWCA Civ 796
[51] CIA INSURANCE SERVICES LTD v Revenue & Customs [2022] UKFTT 144 (TC)
[52] STRATEGIC BRANDING LIMITED v Revenue & [2021] UKFTT 474 (TC)

the Government's intention to make greater use of the criminal law as part of a package of sanctions aimed at tax scheme promoters.

31. Central to reaching a conclusion on the Loan Charge is rebuilding trust in HMRC. Again, in discussions with the Review, HMRC's senior leadership fully acknowledged that trust is a huge issue in relation to the Loan Charge and that trust (or lack of) has had a very serious impact on the level of engagement between HMRC and the taxpayers who remain in scope, and the campaign groups who have represented them.

32. HMRC's approach to tax avoidance is articulated in its Litigation and Settlement Strategy (LSS), which has been in place since around 2007. The LSS makes strategic sense in the context of large companies and wealthy individuals who engage in high value complex transactions where existing law may not always offer an obvious analysis and where litigation may ultimately be the most effective means of concluding a tax-based dispute. However, in the context of the generality of those individuals who remain subject to the Loan Charge, it makes little strategic sense to employ an all or nothing approach for the obvious reason that many of those involved were and are unable to pay the full amount and the passage of time has increased the number of individuals who face means constraints.

33. For HMRC, as well as a loss of trust, such approaches have a serious impact upon the level of voluntary compliance, and, consequently, they have substantially increased the staff resource (and cost) needed to enforce compliance. HMRC has told the Review that it currently estimates the resource cost of DR compliance as being some £41 million annually and requiring almost 700 HMRC staff at various levels. Of that, over 75% is spent on Loan Charge compliance activity.

34. It is also possible that the HMRC resource employed on loan schemes and DR generally has distorted HMRC efforts in other areas. R&D tax credits and landlord taxation have also seen the widespread promotion of tax schemes, where, again, HMRC has played catch up to social media. One experienced HMRC Officer told the Reviewer that only recent media exposure of landlord tax schemes had moved landlords up the priority list, with resource otherwise too focussed on DR. Repayment claims for often non-existent "allowable tax expenses" have risked millions, with many taxpayers caught up in what are often wholly bogus claims. It is, of course, impossible to put a value on any lost opportunity cost for HMRC caused by so much time being spent on Loan Scheme compliance; but it is an important factor to consider.

35. As mentioned earlier, most of those who responded to the Review had little criticism of the individual, front-line HMRC Officers. Many, however, were angry and stressed by the overall strategic approach to which those officers appeared bound, the very long delays, the tendency of HMRC to issue calculations that they found impossible to understand, and the number of times the HMRC Officer responsible for their case changed. All were highly critical of HMRC as an institution.

36. The Review actively followed up respondents' (often damning) criticisms of HMRC and discussed these with the individuals concerned. While some criticism was often warranted, at times it appears that, once reviewed with fresh eyes, the approach of HMRC and/or its case officers was not as sinister as perceived – with some misconceptions perhaps fuelled by the prevailing narrative around the subject on social media. The Review also noted that, in some instances, social media posts and claims by individuals did not always stand up to scrutiny.

PAYE Credits

37. The Review considered the question of PAYE credit as it was pressed to do by some who responded to the Call for Evidence. Of course, where HMRC has pursued unpaid tax and NICs from an employer a PAYE credit should ordinarily follow. The difficulty, however, is that many of these arrangements would not have a UK-based employer who would have been responsible for deducting PAYE and NICs, or the employer has long since ceased to exist.

38. There are other difficulties with a PAYE credit. In most normal situations, the employer would have a right of recovery from the employee. HMRC can also assess the employee on the value of any tax not

reimbursed to the employer, so providing a PAYE credit would alleviate only some of the liability, and the individual would therefore still have an outstanding bill for tax.

39. And as is clear, HMRC has discretion to remove an obligation to operate PAYE from an employer, so denying a PAYE credit and meaning that the tax can be collected from the employee. These powers have been considered by the Tribunal and Courts, and the Review considers that the legal position is settled.

Agency Provisions

40. Some who responded to the Review asserted that a major part of the problem was HMRC's failure to enforce the Agency legislation[53]. In some cases, an agency would outsource the payroll aspects to an umbrella company. The umbrella would in turn 'enrol' the worker in a loan scheme. The Review saw some evidence that this could happen without the knowledge or understanding of the worker. In most or all such cases, HMRC treated the umbrella as the employer.

41. It is unclear to what extent agencies were aware of any tax avoidance schemes operated by the umbrellas. A Sky News report in March 2025 explained how even some of the UK's largest recruitment agencies used umbrella arrangements, resulting in individuals becoming involved in a loan scheme. Although, there was no suggestion that any of the agencies mentioned in the report were aware of any tax avoidance schemes the umbrella companies had used[54].

42. The Review also received a submission from a senior barrister on how any failure to apply the agency provisions, which they considered to be a "blatant failure" by HMRC, might be rectified. Evidence of what in fact occurred in individual cases is not available to the Review. So, whether in fact the agency in many or all cases was "the employer", and so responsible for the operation of PAYE, and not any umbrella is open to debate and would (the Review expects) be contested by the agencies. Likewise, whether in all cases HMRC incorrectly regarded the umbrella as the employer in circumstances where the agency provisions applied is not something that the Review is in a position to conclude upon.

43. The possible responses suggested in that submission would in effect result in a PAYE credit to the individual that would be set against any Loan Charge liability, albeit it was recognised that no tax had been paid. In that case, it was suggested that there could be a widespread apportionment of financial responsibility between the agencies, umbrella companies, and the individuals involved, with some professional advisers also contributing.

44. So far as the Review is aware, there is currently no provision that would allow HMRC to seek payment of unpaid PAYE, other than from the employer or an employee, so any such solution would, as Counsel indicated, require retrospective legislation.

45. The Review has no recommendations so far as the agency provisions are concerned, other than that HMRC should ensure that those situations where the agency is the employer are properly monitored.

46. The Review does, however, note the Government response to the 2023 consultation on the umbrella market and would expect that substantial evidence of poor behaviour by umbrella companies will have been provided as part of that consultation[55] and so be available to HMRC to pursue further, if it sees cause. It also notes that current proposals would resolve many or all the issues whereby PAYE goes unpaid.

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[53] Chapter 7 Part 2 Income Taxation (Earnings and Pensions) Act [ITEPA] 2003
[54] https://news.sky.com/story/major-uk-recruiters-linked-to-tax-avoidance-schemes-after-workers-hit-with-crippling-hmrc-demands-13326107
[55] https://www.gov.uk/government/consultations/tackling-non-compliance-in-the-umbrella-company-market

10) Settlement Recommendations

Recommendation 1: Introduce a new settlement opportunity for individuals

1. **The Review recommends that HMRC introduce a new settlement opportunity for those who used loan schemes who have yet to settle their liability.**

2. The Review concludes that current settlement arrangements are not capable of persuading a sufficient number of those involved to voluntarily settle. There is too great a concentrated body of hostility and grievance directed at the Loan Charge and HMRC.

3. The evidence shows that the prospects of settling where the taxpayer's means are constrained are low. HMRC's processes are daunting and there is now insufficient trust, so discouraging engagement with HMRC. Very many individuals are "keeping their head down", as it was put to the Review, plainly making HMRC's task harder still.

4. The Review was not persuaded that HMRC's expectations as to how quickly it could bring cases to a close, absent a new approach to settlement, were realistic. Even if HMRC could conclude a larger number of cases by way of its enquiry/litigation compliance processes, that would result only in many cases moving from compliance to collection in which case it would leave HMRC facing a choice between little or no recovery through insolvency or HMRC writing off some or all of the debt on a large scale. *In short, the number of concluded cases might look better, but large amounts of tax would still not be being paid, and the misery experienced by many of those involved would continue*.

5. The Review identified a number of principles that should underpin the proposed settlement approach as follows:

    a. Settlement under this opportunity should be final – that is, agreement should resolve all outstanding years and all issues for which the taxpayer has a DR usage.

    b. The terms should be sufficiently generous so as to:

        i. encourage the maximum number of people to come forward and resolve their loan-based DR; and

        ii. remove or substantially reduce the unfairness in the impact of the Loan Charge.

6. Where there is a difference between the total amount for which the taxpayer is currently liable to pay, and what is agreed to be payable under any new settlement proposal, this amount should be regarded as a "suspended amount." HMRC would be able to agree terms for this suspension and, providing the taxpayer met the terms of the suspension, the suspended portion would not need to be paid. This is explained further below.

7. With a more generous approach, the Review would expect the Government to make clear that this will be the last opportunity to resolve matters, other than through the usual HMRC enquiry (and, where necessary, litigation) process. All previous concessions might be removed where an individual refused to engage with the settlement process or otherwise refused to engage with HMRC.

Recommendation 2: Suspend part of the overall liability

8. The recommendations of the Review take as their starting point that very many of those still to settle would be unable to meet their current liability by way of a standard offer - i.e., that where an individual could make an offer, it is assumed that this amount would in many instances be "sub-standard" i.e. below what HMRC would in the ordinary course regard as acceptable.

9. HMRC already has management discretion to accept sub-standard offers and in some cases it has done so. Here, tax advisors have criticised the inconsistency and lack of transparency in HMRC's approach. HMRC is entitled to refuse such a sub-standard offer where the taxpayer attempts to inflate their outgoings or does not disclose all their income and assets.

10. Through this settlement opportunity, individuals should be able to agree a reduced (or sub-standard) settlement amount compared to their current liability under the Loan Charge, by having certain elements suspended, as recommended below. In return for this, individuals would be required to enter into a contract settlement with HMRC to pay the unsuspended amount, whether by lump sum or instalment plan, and meet the suspension conditions.

11. The agreement of the suspension amount would be conditional on the taxpayer, so far as reasonably possible (having regard to the lengthy passage of time), providing sufficient and accurate information to HMRC in respect of their relevant DR scheme usage. Any deliberate misrepresentation of an individual's usage or means would void any settlement under this opportunity.

12. The suspended amount would be subject to the taxpayer meeting conditions set by HMRC. These could include:

    a. agreement not to participate in any further DR or other tax avoidance arrangements;

    b. agreement to cooperate with HMRC in resolving any other DR or tax avoidance arrangements not within scope of the Loan Charge;

    c. agreement to keep the individual's tax affairs in order (e.g. timely tax returns); and

    d. such other conditions as HMRC consider appropriate.

13. The length of the suspension period should be the length of any instalment arrangement plus 1 year, with a minimum of three years (including where any settlement is paid in a single lump sum).

14. Where the taxpayer meets the terms of the suspension, the suspended amount would be written off at the conclusion of the suspension period.

15. Failure to meet the conditions would mean that the suspension was void. HMRC would have discretion to ignore minor breaches of the conditions (for example a slightly late return), however, any further use of a DR or other tax avoidance arrangement would render the suspension void.

16. This approach is intended to allow a taxpayer who cannot otherwise settle their liability within a reasonable period of time a means of doing so, whilst incentivising the taxpayer not to engage in future avoidance activity. It would also incentivise those taxpayers who have other existing, non-Loan Charge related tax avoidance arrangements to cooperate with HMRC in bringing those to a close.

17. Suspension would not be available to any person who is subject to litigation relating to the use of a loan scheme, unless the matter has not yet come before the First Tier Tribunal. In such cases, a suspension condition would be that the taxpayer withdraws any appeal, as part of reaching a settlement with HMRC.

18. This approach is also intended to provide HMRC with protection against further avoidance activity in return for the settlement terms and would ensure value for money for the wider taxpaying population by incentivising continued repayment and compliance, whilst minimising any additional burden on HMRC from those individuals who remain compliant and who do not engage in tax avoidance activity in future.

19. It would be for HMRC to decide whether the suspension conditions have been met. Most individuals told the Review they had never intended to avoid tax or act contrary to HMRC requirements in that regard, and so these conditions should not represent any additional constraints to those individuals.

Recommendation 3: Calculating the suspended liability

20. The terms of the settlement set out below recognise that responsibility for the current situation is shared between scheme promoters, HMRC, and those who took part in the schemes. Those involved, however, range from individuals who had no understanding of what they were involved in and who received relatively low amounts of untaxed income; through to individuals who, whilst perhaps unwisely accepting assurances from promoters, knew that they were participating in a tax scheme or, as some of those the Review spoke to honestly admitted, "something too good to be true".

21. As the Review has concluded, whilst individuals ought not have entered into tax avoidance schemes, the promoters may have mis-sold these schemes, resulting in the loss of significant tax owed to the Exchequer. At the same time, HMRC's strategy to tackle these schemes has failed to deter the promoters. HMRC could and should have done more to curtail the use of these schemes.

22. The Review has no power to hold promoters to account, and it is likely that the passage of time means that in most or all cases it is too late in any event. The Review's approach nonetheless attempts to apportion these responsibilities in a way that answers the consistent complaint from those involved that they are being held singularly responsible. This has the practical effect of reducing the burden of liability on the individuals, as if that burden were transferrable to those responsible.

23. The recommendations set out herein are a mechanism by which an individual and HMRC can arrive at a settlement figure. They are not a comment on the technical or legal arguments as to whether any deduction is owed.

24. Given the length of time involved in many cases, HMRC should consider the minimum viable amount of information required from which these calculations can be made. In cases where taxpayers are cooperating but full data for every month is not available, it may be necessary to rely upon reasonable estimates to prevent information requirements being restrictive.

Recommendation 3a: Unstack the tax years, and calculate the tax owed in the years in which the earnings were received

25. The fairest way of calculating the suspension is by reference to the years in which the individual participated in the scheme. For many this may be no more than three years, and, in those years, the combined liability may not have exceeded the basic rate, which would simplify the calculation further.

26. This would mean that stacking in a single or three-year period would not be required. The approach in the Loan Charge was unique in the way it stacked liabilities, with no other precedent in the UK tax system, and it was massively unfair to those on lower income levels who may never have otherwise been liable to higher rates of tax. The Morse Review alleviated some of this unfairness.

27. The outstanding liability per year will consist of the unpaid income tax and employee's NICs on the untaxed (loan) portion of earnings, calculated on top of any already declared income (i.e., the PAYE element of any scheme, plus other relevant income in that year).

Recommendation 3b: Suspend a proportion of the principal to account for promoter fees

28. How to deal with the fees charged by the promoters is difficult. Promoters charged fees of typically between 18% and 20% of the total income or contract value. The Review was provided with substantial evidence to support the view that individuals could reasonably believe that a larger portion of this was being paid to HMRC in tax, given statements in promotional material, than was in reality.

29. The Review has concluded that, in all cases, the fees charged were not commensurate with the services provided in the period post-2010. Most obviously, the tax benefits were never capable of being enjoyed once HMRC became aware of the scheme and, either through litigation or retrospective legislation, the benefits were likely to be denied.

30. Those around the median income or lower were at the greatest risk of being mis-sold, as these individuals were economically no better off, or only slightly so, by using a loan scheme compared to PAYE[56].

31. Having regard to typical promoter fees, an individual needed to be earning close to £50,00 before the scheme would be providing any significant advantage. At or below this level, the deductions would likely have equated to (or exceeded) the expected deductions under PAYE. However, as income received through the schemes increased, so did the obvious tax advantages over a PAYE arrangement; and higher income also presented a greater ability to obtain independent tax advice – both of which ought to place an increased burden on individuals to have realised the likelihood of compliance issues with these schemes. The recommendation therefore tapers the suspension according to the relative tax advantage in each year of scheme use.

32. **The Review therefore recommends that, for simplicity, a proportion of the principal owed in each year is suspended according to the following:**

    i) **10% of an individual's gross loan scheme income in the given year of scheme use for the first £50,000 of gross income; and**

    ii) **5% of an individual's gross loan scheme income in the given year of scheme use for income between £50,000 and £150,000**

    iii) **No further amount is suspended on annual income above £150,000**

33. Under this settlement, the amount is calculated per year of scheme use, allowing up to £10,000 per tax year to be suspended. For partial years of use, the amount should be pro-rated. Gross loan scheme income only applies to income through PAYE plus loans from the loan scheme (i.e. income from other sources does not count towards this suspension).

34. This suspension is designed to be approximate to up to half the fees paid to promoters.

Recommendation 3c: Suspend late payment interest

35. The Review considers that the delay in resolving scheme use has largely been the result of a flawed HMRC strategy that failed to have proper regard to the scale of the task. The expectation that large numbers of individuals would resolve their DR use rather than pay the Loan Charge was far too optimistic in light of the reaction to the Loan Charge and HMRC's own evidence as to the impact the charge was having on large numbers of low-income individuals and those individuals whose circumstances had materially changed for the worse since they had participated in a loan scheme.

36. The Review noted that there was no wish on the part of Ministers that there should be large-scale insolvency (internal HMRC reports allude to Ministers wanting to avoid this), so, as means constraints became clear, an impasse was inevitable. And, as the reaction to the Loan Charge gathered pace, making progress towards resolution on any large scale was impossible for HMRC to achieve.

37. HMRC provided the Review with modelled liabilities that included late payment interest estimated at 25%. For those who have attempted to reach an agreement with HMRC, the addition of late payment interest often proved to be an insurmountable barrier and where an offer was not accepted there was no further progress. The Government through the Financial Conduct Authority and the Lending Code encourages financial institutions to take a more lenient approach to late payments charges, including considering reducing or stopping interest or charges, where a customer is in financial difficulty[57].

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[56] Promoter fees were roughly equivalent to the basic rate of tax but did not have any personal allowance (though some national insurance was also often avoided).
[57] https://www.lendingstandardsboard.org.uk/wp-content/uploads/2016/06/The-Lending-Code-Mar-2011-revised-2015-1.pdf §224-227

38. Our recommendation on promoter fees lifts some of that burden from the individuals, even though it is unlikely that any recovery from the promoters is possible after so many years or at all on the law as it stands. The Review supports the general principle that HMRC should charge interest in cases where taxpayers are responsible for late payment of tax owed. **However, since the Review considers that in this case HMRC bears significant responsibility for the lack of progress, the Review recommends that any late payment interest should be treated as suspended in arriving at the settlement amount.**

Recommendation 3d: Do not seek to apply penalties

39. The Review noted that social media channels regularly included posts from individuals criticising HMRC for its perceived heavy-handed approach to those involved in loan schemes, with many alluding to the imposition of penalties.

40. However, the Review saw little evidence supporting these criticisms: HMRC has told the Review that penalties have been imposed very rarely in such cases, with late return penalties being the most common. Nonetheless, for the benefit of removing all doubt, given the role of the promoters and those tax advisers who remained active post 2010, the Review does not consider individuals will have met the threshold for penalties in most cases. **Therefore, HMRC should not seek to apply penalties as part of a settlement, unless there is clear evidence of egregious behaviour.**

Recommendation 3e: Do not collect Inheritance Tax (IHT)

41. Central to many of the loan schemes considered by the Review was the involvement of an offshore trust. The Review has doubts as to whether for most of those involved a meaningful trustee/beneficiary relationship exists or has ever existed. Some of those the Review met questioned whether the trust had ever formally or legally existed.

42. Across the entire population of those still within scope, it is not clear when HMRC would seek an IHT charge and when it would not. Such uncertainty in relation to a complex tax, the imposition of which to a living person would seem unusual, is unhelpful. For those reasons, claims by HMRC to Inheritance Tax have had the effect of delaying final settlement even where some taxpayers have otherwise been able to reach agreement with HMRC. Some referred to having settled their loan scheme use only for HMRC to return years later with a demand for IHT.

43. The Review noted the very recent decision of the First Tier Tribunal in *Tonkin*, where Judge Gauke took the view that income tax and IHT should not be charged on sums on which income tax had been paid in the context of a convoluted loan scheme. Some tax advisors have also made clear to the Review that IHT has served as a significant barrier to reaching a resolution. The Review considers that similar issues arise here. Like late payment interest, IHT has acted as a barrier to settlement and added to the sense of unfair treatment on the part of those involved who in the main struggle to understand the basis of any charge.

44. In addition, IHT may not arise in every case and/or what HMRC might collect in IHT could easily be exceeded by the cost of collection across a very large taxpayer population. **On this basis, the Review recommends that HMRC does not charge IHT as part of any new settlement opportunity.**

Recommendation 4: More straightforward instalment arrangements

45. The combined recommendations 1-3 will identify an amount payable by the taxpayer that reflects a fair settlement based on their use, and the extenuating circumstances discussed in this report. However, the Review has also concluded there will be some individuals for whom even this reduced settlement may still be unaffordable, and arrangements will need to be made that account for this.

Recommendation 4a: Five- and ten-year payment plans

46. For some, even with the reductions proposed, the liabilities may remain significant relative to current income or assets. Therefore, as a default, individuals should be permitted to pay the settlement amount via an instalment plan.

47. **The Review recommends that, where a taxpayer requires time to pay via an instalment plan, a plan of up to five years should be automatically accepted. Where a taxpayer requires longer than five years to pay, a plan of up to ten years should be available, but subject to HMRC agreement (which might be based upon a straightforward statement of means[58]). In all these cases, *forward* interest would apply as normal**.

Recommendation 4b: A ten-year time limit

48. The Review recognises the need – both for government, HMRC and taxpayers – to finally draw a line under the Loan Charge. The Loan Charge has now been hanging over thousands of individuals and their families for almost seven years, with almost ten years since it was first announced. Almost 15 years have passed since Part 7A was introduced.

49. But there are many who have been under enquiry even longer. Some advisers told the Review about clients who have enquiries that commenced as far back as 2002. Lord Morse originally recommended a maximum time to pay period of 10 years and that what remained unpaid at that point should be written off. We are now six years further on from the Morse Review, but we are little closer to resolution than we were in 2019.

50. This Review considers that, with hindsight, the then Government should have accepted Lord Morse's recommendation. If they had done so, assuming a reasonable level of engagement, many would now be well on the way to finalising any payment plan. Since 2019, it is likely that HMRC's cost of Loan Charge compliance has been over £150m and this will increase by at least £31m a year for each year that the thousands of individual cases remain unresolved.

51. **For this reason, the Review first recommends that a ten-year payment plan should be the maximum length available. With an additional year of suspension, as described above, Loan Charge liabilities would be fully resolved by the end of the eleventh year.**

52. The Review also recognises that there will be a very small number of individuals who, for whatever reason, including – but not limited to – changes in circumstances, may be unable to afford the settlement, even spread over 10 years.

53. **The Review therefore also recommends that a backstop arrangement exists so that, in those cases, individuals will still be able to resolve their affairs within ten years**.

54. Here the individual would be required to provide HMRC with a straightforward assessment of current means (the same as at paragraph 47 above) and, where HMRC was satisfied that the taxpayer's means would not allow payment of the settlement figure over 120 months, **the Review recommends that the following terms would apply:**

    a. **A monthly payment plan of no more than 50% of disposable income[59] (which is already HMRC's standard), payable for the 10-year period.**

    b. **The difference between the calculated settlement value (following Recommendation 3, above), and the monthly payment plan described at (a) would be added to the suspended**

[58] There are extant HMRC processes through which individuals can submit statements of income, assets and outgoings to determine affordable payment plans.
[59] Save for exceptional circumstances

liability; and therefore, subject to the conditions of suspension at Recommendation 2, be written off at the end of the eleventh year.

55. The Review expects that for most of those involved, the settlement process could be streamlined with reduced need for HMRC scrutiny. Where the settlement could not be paid within the ten-year period HMRC would need oversight to ensure that honest information was provided so that HMRC can confirm the means position of the taxpayer. HMRC would be entitled to refuse any settlement offer where it was not satisfied that the taxpayer had properly explained their income and expenditure.

Recommendation 5: Individuals on only State Pension and/or Universal Credit

56. There are a small number of individuals who participated in loan schemes in the past but who are now reliant upon State Pension or who are unable to work and in receipt of Universal Credit.

57. With the assistance of TaxAid, the Review met some individuals who had become involved in a loan scheme in the past. In one case it was far from clear that the individual was aware of the scheme at the time, since their income level was such that the promoter fee was equivalent to what would ordinarily be deducted in tax and NICs. Their current income level does not allow the agreement of an instalment plan with HMRC.

58. In another such case, the individual relies upon State Pension and a small occupational pension but admits to "living in terror of a brown envelope and HMRC taking their home."

59. **The Review recommends that in cases such as these, where an individual has no income beside state benefit (and so their disposable income is likely to be close to nil), and where there is no reasonable prospect of that economic situation changing, HMRC should agree a small, nominal settlement amount or simply remit any remainder as uncollectable.**

Recommendation 6: Improved time to pay arrangements for companies

60. The Review also recognises that there is also a relatively small number of UK employers where HMRC has open enquiries into loan scheme usage. In some cases, the schemes were used to reduce the liabilities to PAYE and NICs on employees whereas in others, the owners/directors of the company participated in schemes that were loan based. Whilst the loan schemes varied, with some similar to Dextra, there were also more aggressive schemes where the directors ceased to be employed by their own company and were then contracted back as consultants to their own company.

61. Most of these schemes involve large amounts of tax and NICs, making it difficult to make specific recommendations as to how HMRC should look to conclude these cases. From discussions with tax advisers, there was some concern that too rigid an approach by HMRC could cause companies to fail, despite them having the ability to trade out of their financial position, caused by the company's use of a DR scheme, provided sufficient time was allowed by HMRC in which to pay the outstanding liability.

62. The Review met with some of the directors of the companies involved and, whilst there was a similar degree of anger directed at the promoters of the schemes and HMRC, HMRC having increased flexibility would, it seems to the Review, allow these companies to resolve their liabilities whilst remaining solvent.

63. The Review considers that in these higher value cases there is less risk of mis-selling, since, in general, individuals experienced in business should be better able to recognise that what is promised appears too good to be true. One director the Review met said that he simply wanted HMRC to agree an extension to his existing settlement agreement to allow the company to pay over a slightly extended period and HMRC had refused, so putting increased financial pressure on the company.

64. **Where a settlement is agreed at the employer level then:**
    a. **there should be no disallowance of any corporation tax deduction;**
    b. **where required, HMRC should offer payment arrangements, with forward interest, subject to a maximum period of ten years;**
    c. **no IHT should be included in any settlement amount.**

65. **Where HMRC has commenced litigation against the company, these settlement terms would not be available unless the matter has not yet been heard by the First Tier Tribunal.**

66. As with individuals, any reduction in the settlement amount will be treated as suspended and subject to a suspension period for the length of any payment agreement plus one year, with a minimum of three years. HMRC can set suspension conditions as for individuals.

67. Where cases involve Personal Service Companies (PSCs) or similar entities, the taxpayer in question is demonstrably more akin to an individual contractor than an employer, and so HMRC ought to exercise discretion in allowing an individual to settle under the individual settlement terms recommended above.

Worked example: how this might work for individuals

68. This section takes a hypothetical 'median' case and walks through how the settlement would work. It takes the median current outstanding Loan Charge liability (c.£21,000) and the median years of use for someone in this liability bracket (3), to construct a case that would equate approximately to this. This is not representative of any specific individual, where circumstances may differ, but is illustrative of the approach.

- Jo Bloggs earned £30,000 per year for three years using a loan scheme in 2013, 2014, 2015 before leaving when they heard that HMRC did not approve such schemes. They still earned £30,000pa in 2019.
- In those years, Jo should have paid a total of £20,495 in tax (income tax and NICs). In fact, they paid only £4,208 (NMW x 40h x 52 weeks), on the PAYE element of the scheme.
- Under the Loan Charge, Jo would have had to declare all of their untaxed loan income, on top of their ongoing £30k salary. That means **their Loan Charge is £17,090, plus late payment interest (calculated as at 31/03/2025), so their current liability is £21,422 (approximate to the median liability of c.£21,000).**
- Under this settlement recommendation, because this approach instead calculates the tax in years owed (based on all annual scheme income [PAYE plus loan]), applies a discount of 10% of gross scheme income (£3,000 per year of use), and subtracts the tax already paid in those years, **Jo's new liability is £7,287.** For context, HMRC data suggests this individual's current salary is c.£48,000[60].
- Jo can now pay that in a lump sum; or in a payment plan of up to ten years. With forward interest, a ten-year plan would cost £89 a month. One year after the final payment, the suspended portion of £14,135 would be written off.
- **If affordability test is required:** If Jo cannot afford that payment plan, they can submit a statement of earnings/outgoings and apply for a lower payment plan rate. If HMRC agreed their disposable income was £100 a month, then their max payment amount would be £50 per month. At the end of the 10-year period, the unpaid amount (compared to what was owed under a ten-year plan) is added to the suspended liability, which is written off at the end of the following tax year.
    - If Jo knowingly provided HMRC with incorrect details of their income/outgoings to claim they could only afford a lower amount per month, in an attempt to have more written off, the full amount of £21,422 would be immediately collectible and the settlement agreement would be void.

[60] The median current salary for an individual whose Loan Charge liability is £20,000-£29,999 is £48,000

69. The following table shows how this could work at different hypothetical liability/income levels.

Table 2: Illustrative worked examples of the settlement approach against hypothetical liability and income amounts, and years of scheme use

Numbers used to generate illustrative liability							**Illustrative current liability[61]**			**Following the recommendations**		
Annual income during scheme use	Years of use[62]	Income tax due as calculated in years of earning[63]	NICs due as calculated in years of earning	Assumed income tax paid[64]	Assumed NICs paid	**Outstanding Income tax / NICs owed in years of earning**	**Total**	***Of which:*** Loan Charge[67]	Late payment interest[68]	**Potential new settlement liability[65]**	Amount suspended	Monthly payment in 10-year payment plan[66]
£25,000	2 *(2013-2014)*	£6,491	£4,159	£1,655	£1,242	**£7,753**	**£6,796** (c. 25th percentile[69])	£5,422	£1,374	**£2,753**	£4,043	£34
£30,000	3 *(2013-2015)*	£12,491	£8,004	£2,311	£1,897	**£16,287**	**£21,422** (c. median[70])	£17,090	£4,332	**£7,287**	£14,135	£89
£38,000	4 *(2012-2015)*	£23,396	£14,577	£3,326	£2,518	**£32,129**	**£54,190** (c.75th percentile[71])	£43,231	£10,959	**£16,929**	£37,261	£206
£100,000	3 *(2013-2015)*	£89,333	£15,783	£2,311	£1,897	**£100,908**	**£149,975**	£119,645	£30,330	**£78,408**	£71,567	£956
£200,000	3 *(2013-2015)*	£230,351	£21,783	£2,311	£1,897	**£247,926**	**£316,390**	£252,405	£63,985	**£217,926**	£98,464	£2,656

[61] Liability percentiles are based on the data on liabilities for individuals with an outstanding Loan Charge liability, that is, those who have at least one unresolved DR usage that can be pursued by HMRC or have had all relevant DR usages resolved (via contract settlement or closure of a compliance intervention or determination of tax) since the Loan Charge arose but have not yet paid in full.

[62] The examples which map roughly onto the 25th percentile, median, and 75th percentile liabilities use the median years of scheme use for the relevant £10,000 liability bracket, as per Table 1. For the £100,000 and £200,000 annual income examples, median years of scheme use for the whole population (three years) have been used. Year referenced means the tax year ending

[63] The full tax and national insurance that should have been paid by the individual during the years of scheme use, according to their full income

[64] The tax paid assuming that the individual in question was paid the National Minimum Wage (25+ National Living Wage from 2016) at the time through PAYE, working 40 hours per week

[65] This 'unstacks' income into the years of scheme use, for the purposes of calculating the tax owed, subtracts the tax already paid in those years, and subtracts 10% of the full income value in each year

[66] This includes paying off the full forward interest that will accrue over the ten-year period

[67] This calculates the Loan Charge liability by adding the untaxed portion of income from years of scheme use to 2018/19 income (assumed to be the same as during years of scheme use) and subtracting the tax that would ordinarily have been paid on that income in 2018/19

[68] This is estimated assuming a payment date of 31/03/2025

[69] The estimated 25th percentile liability, to the nearest £1,000, is £7,000

[70] The estimated median liability, to the nearest £1,000, is £21,000

[71] The estimated 75th percentile liability, to the nearest £1,000, is £54,000

11) Supplementary Recommendations

Introduction

1. During the course of the Review, it became clear that, as part of the marketing process, promoters of loan schemes were able to exercise almost complete control over the narrative surrounding the schemes they were marketing, HMRC activity, and decisions of the Tribunal and courts, so influencing what taxpayers understood. As a result, there appears to have been a widespread assumption that being registered with HMRC in some way meant that the tax scheme was legitimate.

2. In the recent Tribunal case of *Tonkin*, the taxpayer is recorded as stating to the Tribunal that she thought the fact that the loan scheme in her case had a DOTAS number meant that the scheme was "legitimate".

3. A number of promoters offered tax return and enquiry defence services. Acting in this way, whilst convenient for taxpayers, creates a clear conflict of interest so that precisely whose interests the promoter is representing will not be clear. It is likely that those taxpayers considered by HMRC not to have made a reasonable disclosure failed to do so due to advice given to them by the promoter. It is plainly not in the promoters' interests for substantial disclosure to be included in tax returns given that doing so makes an HMRC enquiry more or less certain.

4. Likewise, with HMRC enquiry defence, many of those the Review met had been abandoned by promoters despite the promises made at the marketing stage.

5. The Review makes the following additional recommendations:

Recommendation 7: Improve DOTAS notifications

6. Where a tax scheme is disclosed to HMRC under DOTAS, HMRC issues a Scheme Reference Number (SRN) to the promoter of the scheme which is in turn given by the promoter to the person who uses the scheme.

7. HMRC has adapted its approach to DOTAS over time and can now issue SRNs independently of the promoter. One positive change was to bring in a form, AAG6, that the promoter must use to notify the taxpayer they are involved in a tax avoidance scheme. That form contains language that makes clear an SRN is not an approval, and that HMRC considers that those participating in the scheme are avoiding tax.

8. However, that form is currently a two-page, text-based form; and it is clear from testimony that, even if this was used (and respondents made little reference to it), it is not having the intended effect.

9. **The Review recommends HMRC adapts the SRN process so that the promoter is issued with a much clearer 'certificate' that contains the SRN and clear instructions as to the duties imposed on the promoter and the taxpayer. It should also make clear that an SRN is not HMRC approval and that enquiry and litigation may result.**

10. It should be a criminal offence to fail to provide the certificate to the client or to alter or caveat any of the information contained on the certificate.

Recommendation 8: Prohibit promoters providing additional tax services

11. The Review saw significant evidence that the additional services promoters offered failed to work in the individual taxpayer's interest and, in many cases, are likely to have been adverse to the interests of the taxpayer, whilst also making it more difficult for HMRC to identify scheme use at the appropriate time.

12. As a parallel, accounting firms are in many cases prohibited from providing tax services to the companies they audit.

13. In a similar way to audit restrictions, **the Review recommends that the promoters of tax schemes (and associated entities) should be prohibited from offering, where they promote a scheme, tax return services and HMRC enquiry defence services to those clients.**

14. **As this would apply only to those clients to whom the promoter had marketed a scheme, firms with broader client service offerings would not be disadvantaged.**

15. The definition of promoter in DOTAS would apply and the restrictions would apply only where the scheme was within scope of DOTAS and/or the GAAR, although they could be made broader.

16. Doing so would require the participant in the scheme to obtain independent advice on the merits of the scheme when completing their self-assessment tax returns. Likewise, in the event of an HMRC enquiry, promoters would be unable to act on behalf of the participants in the scheme, so again requiring the individual to seek independent professional support.

17. The restriction could be extended to prevent promoters from providing tax advice and assurance as to the tax benefits the scheme was claimed to generate, so putting tax scheme promoters in a similar position to banks and other financial concerns, who make clear that they do not provide tax advice.

Recommendation 9: Improve customer communications

18. At the heart of many individuals' issues with HMRC has been the templated communication style.

19. While the Review recognises that, in many cases, there is benefit to the use of templates to create a consistent approach with all taxpayers, the Review uncovered two particular areas where adaptations to the approach might have yielded better results and reduced the frustration with HMRC by being clearer and more specific to the circumstances.

20. Firstly, in many cases, HMRC appears to use the same standardised letters for enquiries and other such engagement across all tax affairs. The non-specificity of this in the case of loan schemes was exploitable by promoters who claimed this was all part of the norm.

21. **The Review therefore recommends that HMRC considers its approach to template letters, and whether it would be advantageous to have adapted versions of these, better targeted to specific circumstances (e.g., if an enquiry is opened due to DR scheme use, or other tax avoidance, compared to other reasons).**

22. Secondly, the wording of HMRC contract settlements has been a particular source of controversy. The Review accepts that such contracts have to be worded in order to conform to contract law, so that in the event of default HMRC can take action to recover any amounts that remain unpaid.

23. However, whilst the wording used has been used for many years and is generally regarded by tax advisers experienced in this area as routine, to many of those involved (especially those not professionally represented) the wording used seemed to require them to admit guilt when in fact the wording is in intended to reflect only that the taxpayer has not complied with all the requirements of the Taxes Acts. This is not the same as "guilt" and it carries no criminal connotations. Many told the Review that this had been a material barrier in concluding a settlement, and some respondents said they had caveated any signatures to make clear this clause was agreed "under duress".

24. **The Review therefore recommends HMRC should consider whether these clauses in contract settlements could be made more neutral.**

Other issues

25. The recommendations of the Review, if accepted by the Government, would potentially raise questions of fairness for those taxpayers who have previously settled their liability.

26. As the Review does not have details of previously settled cases, it will be for HMRC to decide on how such cases should be concluded, in the event that the taxpayer wishes to have their settled position reviewed.

27. The Review was made aware of some cases where the individual involved is in distress due to the financial pressures caused by the monthly payments required by an earlier settlement agreement. In some cases, the settlement agreement pre-dates the relaxation of the time to pay arrangements. The Review would urge HMRC to relax such existing agreements where it is clear that the existing agreement is causing the individual involved financial difficulties or putting an otherwise viable business at risk of failure.

28. The Review is also aware that there are some 2,500 individual cases and around 500 employers that remain subject to HMRC enquiry for years of assessment prior to 2010. Some of these individuals might also have open enquiries for years of assessment after 2010.

29. Such pre-2010 cases are outside the scope of this Review since any liability they had to the Loan Charge was removed following the Morse Review. However, they have an analogous liability, and it would be remiss of the Review not to highlight the fact that these individuals are some of the oldest HMRC enquiry cases that remain unsettled, the most recent of which will have been opened at least 15 years ago. The Review understands that one such case dates from 2002, with others from 2005.

30. Why these cases remain open is unknown, but this in itself should be a cause for concern and unacceptable to HMRC. After such a long period of time, fully establishing the facts and having access to contemporaneous documents becomes much more difficult. The individuals involved would also have become involved in loan schemes at a time when the legal position was less clear and, had the matter been litigated at a much earlier point, it is uncertain that any HMRC position would have been supported by the Tribunal (the Review obviously has no visibility of the full range of individuals, or the type of schemes involved).

Appendix A: Summary of Evidence and Acknowledgements

In the course of this Review, the following pieces of evidence were received and considered:

Type	Count
Pieces of Individual Testimony[72]	999
Pieces of evidence relating to Promoters[73]	924
Relating to HMRC correspondence / Action	339
Other evidence[74]	225
Data from HMRC and HM Treasury	*As agreed in the Terms of Reference, information provided by HMT and HMRC to the review team and factual comments provided on the draft report will be published after the review has concluded*

Alongside these submissions, the Review has also considered a significant volume of open-source information, including reviewing Parliamentary debates and Select Committee discussions regarding the Loan Charge and related topics, and a wide range of Freedom of Information requests (some of which were also shared with the Review by individuals).

The Review has also considered legal judgments on the topic, including (but not limited to) those commonly referred to as *Sempra*[75], *Dextra*[76], *Rangers*[77], *Hoey*[78], *Marlborough*[79]; and the tribunal's judgments on *Hyrax*[80] and *AML*[81] on disclosure requirements. The Review has also considered the relevant Judicial Reviews that have taken place.

The Review has been grateful to have instructed, and received independent legal counsel from, Christopher Tidmarsh KC on specific elements of this Review.

In addition, the Review is grateful to the many individuals who spoke to the Review in person about their testimony. They will not be named to protect their identities, but will know who they are, and should know that their contributions have been invaluable.

As well as individual taxpayers, the Review also engaged individuals and organisations with a professional interest in the Loan Charge, who have supported the work of the Review.

Some elected to retain their anonymity, but those who have agreed to be named and thanked for their contribution are below.

The conclusions the Review has reached are those of the Reviewer alone and may not represent the views of those thanked and acknowledged below.

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[72] This figure includes responses received formally through the Call for Evidence, statements of impact shared by the APPG, individual testimony shared directly with the Review outside the call for evidence process, or sent in via other organisations. Due to the anonymity of some material, a small amount of double-counting between sources may be present
[73] This uses the definition as throughout the report, including all entities involved in an individual's loan scheme usage, rather than the technical definition
[74] This includes, amongst other things, a range of material such as FOI responses, documents setting out engagement with third parties, legal opinions, information relating to adjudicators and evidence of circumstantial facts (such as mortgage affordability) that are related to the Loan Charge liabilities
[75] Sempra Metals Ltd. v Inland Revenue & Anor [2004] EWHC 2387 (Ch)
[76] Dextra Accessories Ltd & Ors v Macdonald Inspector of Taxes [2005] UKHL 47
[77] RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) [2017] UKSC 45
[78] Stephen Hoey & Others v Commissioners for Her Majesty's Revenue & Customs [2022] EWCA Civ 656
[79] Marlborough DP Ltd v Revenue & Customs [2021] UKFTT 304 (TC)
[80] Revenue & Customs v Hyrax Resourcing Ltd & Ors [2019] UKFTT 175 (TC)
[81] Revenue & Customs v AML Tax (UK) Limited [2022] UKUT 81 (TC)

Professional Bodies	
The Bar Standards Board	
The Chartered Institute of Taxation (CIOT)	
The Institute of Chartered Accountants in England and Wales (ICAEW)	
The Institute of Chartered Accountants of Scotland (ICAS)	
The Institute of Financial Accountants (IFA)	
The Tax Disciplinary Board (TDB)	
Other Organisations	
Loan Charge Action Group (LCAG)	
Low Incomes Tax Reform Group (LITRG)	
TaxAid	
Government & Parliament	
The All-Party Parliamentary Group on the Loan Charge and Taxpayer Fairness	
HM Revenue and Customs	
HM Treasury	
Individuals	
Glyn Fullelove	*Chartered Tax Advisor; Former president, CIOT*
Sarah Gabbai	*Counsel, McDermott, Will & Schulte UK LLP*
Keith Gordon	*Barrister, Temple Tax Chambers*
Simon Howley	*Managing Partner, Bell Howley Perrotton LLP*
Hui Ling McCarthy KC	*11 New Square*
Dan Neidle	*Tax Policy Associates*
David Pett	*Barrister, Temple Tax Chambers;* *Author of Disguised Remuneration and the Loan Charge (Claritax Books)*
Andrew Thornhill KC	*1EC Barristers*
Christopher Tidmarsh KC	*5 Stone Buildings*
Ray Trew	*The Claims Compensation Group Ltd*
Professional Firms representing taxpayers affected by the Loan Charge	
Armadillo Support Ltd	
Gilbert Tax Investigations Ltd	
Jon Preshaw Tax Ltd	
WTT Consulting Ltd	

It is important to note that among those with a professional interest whom the Review engaged, but who have retained their right to anonymity, are a number of individuals involved in the operation or promotion of schemes, including accountants, advisors, lawyers and named promoters of schemes. Thanks is also owed to them for their candour. There are a further number of promoters and individuals involved in schemes to whom the Review wrote but from whom no response was received.

Appendix B: Terms of reference

1. Introduction

The Exchequer Secretary to the Treasury has commissioned an independent review of the Loan Charge.

Disguised remuneration schemes have been considered by the courts. In the most notable case in 2017, the Supreme Court agreed with HMRC that schemes that redirect earnings and ultimately pay them in the form of loans do not succeed in avoiding tax. In a further decision in 2022, the Court of Appeal confirmed that even where other parties (such as employers or agencies) have obligations to operate PAYE, the liability for income tax is that of the employee.

The Loan Charge was announced at Budget 2016 and introduced into law through Finance (No.2) Act 2017. Its purpose was to tackle historical use of contrived tax avoidance schemes that sought to avoid income tax and National Insurance by disguising remuneration as a form of non-taxable payment (typically a loan).

The government believes that it is right that those who did not pay the right amount of income tax and National Insurance are required to resolve their affairs with HMRC. Accepting otherwise would be contrary to the decisions of the courts and would be unfair to the vast majority of taxpayers who have never used these schemes.

Following concerns expressed by Parliamentarians and others, the previous government commissioned an independent review of the Loan Charge in 2019, led by Lord Morse.

However, the government recognises that concerns continue to be raised about the Loan Charge and some feel strongly that it has not been handled appropriately. The aim of this review is to provide a fresh perspective on the matter. It is also an acknowledgement that this issue has not been brought to a close and there are ongoing concerns that warrant further scrutiny.

While the review is being conducted, the legislation giving effect to the Loan Charge remains in force.

2. Objectives and scope

The overarching objectives of the review are:

- Bringing the matter to a close for those affected;
- Ensuring fairness for all taxpayers; and
- Ensuring that appropriate support is in place for those subject to the Loan Charge.

Drawing on work undertaken by the Low Incomes Tax Reform Group, TaxAid, and others, this review will examine the barriers preventing those who are subject to the Loan Charge but have not already settled and paid their tax liabilities in full from reaching resolution with HMRC. It will recommend ways in which they can be encouraged to settle with HMRC.

The reviewer is being asked to draw on the available evidence and expertise, engaging with stakeholders as appropriate, to consider in detail:

- The settlement terms available to those who are subject to the Loan Charge who have not yet settled and paid their tax liabilities in full to HMRC and whether HMRC's settlement and debt management processes sufficiently take into account their ability to pay and behaviours;
- How that population could now be encouraged to reach resolution with HMRC; and
- What decisions would be required to ensure that, as far as possible, any new settlement proposals were properly targeted whilst not imposing significant additional administrative burdens upon HMRC.

The review is specific to the Loan Charge and will not consider uses of disguised remuneration schemes that are outside its scope. That is, the review will only consider disguised remuneration scheme use between and including 9 December 2010 and 5 April 2019 that is in scope of the Loan Charge legislation (Schedules 11 and 12 to the Finance (No.2) Act 2017). It will consider both outstanding Loan Charge liabilities and the related outstanding liabilities arising from the underlying income received via this use of disguised remuneration schemes.

2. Timing and recommendations

The review will commence on 23 January 2025 and the reviewer will report and present their recommendations to the Exchequer Secretary to the Treasury by Summer 2025.
The review's findings and recommendations will be published in a report. The reviewer will have the final say on what is included in that report. The timing of its publication will be determined by the Exchequer Secretary to the Treasury.

The government will consider the review once concluded and publish a response by Autumn Budget 2025.

4. Leadership, structure and ways of working

The reviewer, Mr Ray McCann, has been appointed by the Exchequer Secretary to the Treasury. He will be supported by a team of officials who have not previously worked on this policy area. They will be based outside of His Majesty's Treasury (HMT) and His Majesty's Revenue and Customs (HMRC) offices.

The number of people working on the review, and the amount of their time spent on it, will be agreed between HMT and the reviewer.

It will be for the reviewer to decide what arrangements are needed to engage with stakeholders during the review.

The reviewer is expected to draw upon information and analysis provided by HMT and HMRC during the review. HMT and HMRC must make all possible efforts to support the review team's work by providing them with any information that they request in a timely fashion unless there is a legal reason not to. Any such reason must be detailed to the review team.

If there is an administrative reason why the information cannot be shared (such as the disproportionate time required to produce it), then the reviewer has the right to raise this issue to the Director of Personal Tax, Welfare & Pensions in HMT, who can then make a final decision, following consultation with HMRC.

The final report will be shared with HMT and HMRC before publication, who may be asked to provide factual comments on it. This will include reviewing the use of any statistics provided by the departments.
Information provided by HMT and HMRC to the review team and factual comments provided on draft reports will be published after the review has concluded. No confidential taxpayer information will be published as part of this.

The review team will publish and comply with its own records management policy.