Tax Experts Renew Call for Affordable Loan Charge Resolution

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By Andrew Goodall

A fresh approach to the controversial U.K. loan charge is needed because affected taxpayers “simply cannot afford to pay” the taxes demanded by HM Revenue & Customs, according to a group of U.K. tax professionals.

The tax demands “often involve life-changing sums,” typically multiples of the taxpayer’s annual earnings, the group said in a statement published October 7. “This has resulted in serious financial hardship, often with devastating consequences for affected taxpayers’ lives and livelihoods,” it said.

The 12-member group, led by Sarah Gabbai of McDermott Will & Emery, includes tax barrister Keith Gordon of Temple Tax Chambers — a long-standing critic of the loan charge — and Pete Miller, head of corporate tax at Jerroms Miller. It is asking U.K.-based tax professionals who have not promoted or operated tax avoidance schemes to add their names to a proposal for a “disguised remuneration settlement opportunity.”

“It’s time for a fair resolution to the unjust loan charge,” Gabbai tweeted October 7.

The group set out five arguments for a settlement opportunity to “promptly resolve open inquiries and encourage affected taxpayers to settle unprotected years on individually negotiated terms, thus ensuring finality for affected taxpayers.” The settlement should be affordable — significantly lower than other settlement opportunities — and easy to understand and should “ensure that where an individual had tried in the past to be compliant, they are given credit as appropriate,” it said.

The proposal is intended for contractors and freelancers, “many of whom were either inadvertently dragged into these schemes or who were inadequately advised of the risks,” the group said, adding that many of those people were not eligible for grants under HMRC’s COVID-19 support schemes. It is not intended for individuals who “knowingly took a risk” with a tax avoidance scheme.

Mis-selling

“The vast majority” of taxpayers affected by the loan charge took and followed professional advice and were “genuine victims of misselling,” according to the group. “Surveys have shown that the main motivation for contractors was not to seek to avoid tax, but rather to avoid the danger of being deemed to be ‘inside [the scope of antiavoidance legislation] IR35’ and the lack of clarity about how to structure freelance work,” it said, adding that “unsatisfactory legislation has thus played a key role in the whole loan charge debacle.”

The group said HMRC and the government "should be able to justify automatically admitting any taxpayer who considers him/herself to have relied on a [scheme] promoter's statements in good faith, or to have been inadvertently caught up in one of these schemes, as a suitable candidate for the settlement opportunity."

Gabbai told *Tax Notes* that her group's proposal is "a slightly reworked version" of a proposal sent in December 2021 to Rishi Sunak, then chancellor of the Exchequer, and Lucy Frazer, then financial secretary to the Treasury.

"Because their response was unsatisfactory, and with a new chancellor and economic secretary to the Treasury in place, we are now taking advantage of a fresh opportunity to reengage the U.K. government, this time with what we hope will be a more sympathetic and constructive approach to resolving this important issue," Gabbai said.

In July Frazer's role was taken on by Richard Fuller, who was given the title of economic secretary to the Treasury with responsibility for tax policy.

HMRC should not insist on written proof of mis-selling, the group suggested, "since many of those affected will no longer have the paperwork."

The group cited a May 2021 report published by the All-Party Parliamentary Loan Charge & Taxpayer Fairness Group (APPG), which had noted that people were mis-sold the schemes, "as they were never given any sense" of the risk of HMRC opening inquiries.

"People were given the impression that the schemes were entirely compliant with tax law and that there was nothing to worry about, even though advisers and promoters knew that government and HMRC wanted to stop the operation of schemes and that the direction of travel politically was that they would do so," the APPG said.

In July the APPG asked Nadhim Zahawi, then chancellor of the Exchequer, to set up a fully independent review of the loan charge. It warned that, based on evidence it had received, "there can be no doubt that the loan charge, as a policy, has led to suicides and that more suicides are a real possibility." Zahawi was appointed as chancellor July 5 and was replaced by Kwasi Kwarteng September 6.

Implementation Would Benefit HMRC

Gabbai's group's revised proposal "outlines the same terms as before," she said. "A key difference is that it now includes a section on how its implementation would benefit HMRC. From HMRC's perspective, resolving the loan charge debacle now would allow affected taxpayers to continue working and paying taxes in the future, thus securing future revenue flows to the Exchequer in the medium to long term. If the aim of the game is to maximize revenues, then this approach must surely be preferable to wringing every last pound out of affected taxpayers who cannot afford the sums being demanded of them," she added.

Some commentators have suggested that the proposal is "unworkable due to the amount of time and resources that would be required to resolve each individual case," Gabbai noted. That argument "does not really stand up," given the amount of time and resources HMRC must have already spent in "dealing with the loan charge itself, as well as litigating disguised remuneration cases that fall outside the loan charge," she said.

"It remains to be seen how the new Liz Truss-led government will respond to the proposal — if it does so at all," Gabbai wrote in an October 7 article for the ContractorUK website. "A good place to start would be to engage with this proposal seriously and work with representative bodies such as the [Chartered Institute of Taxation] and the Institute of Chartered Accountants in England and Wales to arrive at a sensible solution."

"It's hard to assess this proposal without knowing what it means in practice," Dan Neidle, founder of Tax Policy Associates, told *Tax Notes*. "Would the loan charge still be collected? Would other related tax liabilities be forgiven? Would there be generous payment schedules? And then a point of principle: Some of those entering into loan schemes did so knowing they were avoiding the tax that people usually pay on their income," he said.

"It doesn't seem right to me for people in that category to keep the benefit of their avoidance. The challenge for those who understandably want to reduce the burden on people hoodwinked into loan schemes is how to do that without benefiting people who set out to game the tax system," Neidle added.

'Untold Distress'

The loan charge was expected to "bring in an overall Exchequer yield of £3.4 billion" when it was announced in 2016, Fuller told members of Parliament during Treasury questions in the House of Commons October 11. Changes arising from the 2019 independent review of the charge reduced the estimated yield by £620 million.

Labour MP Mike Amesbury told Fuller that "too many everyday people are facing huge bills, untold distress, and personal harm" because of the loan charge. He asked for a commitment to a "truly independent review to deal with this mess."

Fuller said all MPs who have met people affected by the loan charge "cannot fail to be moved by the emotional and psychological impact it has had on many of them." He said he will "engage all interested parties on this matter."