

30 September 2021

Dear Sir / Madam

Budget Representation in relation to the assignment and enforcement of loans which have been the subject of the loan charge

Over the last 12-18 months, many individuals have been contacted about the repayment of a loan that originated in a disguised remuneration (DR) scheme, often set up by an agency or umbrella company, rather than the end user of the services (which can often be the NHS or a similar large body). The organisations (or their solicitors) making contact with the individuals affected now claim to own or control their loans. These organisations, which are sometimes based offshore such as in the Isle of Man, may be liquidators of the original loan providers or, as seems to be more common, claim that:

- the original provider of the loan scheme has sold on their book of 'loans';
- the loans are legally valid; and
- they can be enforced by the new owner.

This is happening even though tax legislation regards the loans as taxable income, being pay for work done (ie not genuine loans), and the individual has often become subject to the loan charge, or has come to a settlement agreement with HMRC on the outstanding tax. Those individuals affected are in the unenviable position of having a third party seeking to enforce repayment of sums, which have usually been spent without anticipation of repayment as they were always intended to stand in for remuneration, as the Government recognised (so far as protecting the public revenue is concerned) in introducing the loan charge.

The time has come to recognise this by protecting employees now being pursued for repayment of their pay for work performed, especially as many are vulnerable individuals on low income with no tax avoidance motive.

HMRC has, understandably given its remit, said in its guidance that it cannot get involved in matters between third parties, saying 'Any such dispute should be resolved through the courts in the normal way without government interference'¹ and 'You should seek independent legal advice'.

¹ <https://www.gov.uk/government/publications/loan-schemes-and-the-loan-charge-an-overview/repaying-a-disguised-remuneration-loan-to-a-third-party>

However, finding appropriate legal advice and paying for it is beyond the means of many of those affected, particularly as this is such an unusual situation that cuts across several different areas of law (tax, trust, contract etc), that specialist legal representation (as opposed to a general high street solicitor for example) is likely to be needed in order that the lawyer can fully understand and articulate the case. Furthermore, the way the organisations are attempting to enforce the debt (via Statutory Demands) means that if people do not dispute it properly (on strong or proper grounds) – or do not dispute it at all – the organisation can in effect, ‘win’ by default.

As such, we believe that the Government should take action to make the assignment and/or enforcement of these DR loans uneconomic. Whilst the debate over the fairness or otherwise of the loan charge will continue, we believe that the government has an obligation to protect individuals from exploitation and, in the absence of any other regulatory body, must intervene here. Many of the individuals involved in DR schemes and subject to the loan charge were on low incomes, unaware of the abusive nature of the arrangements, or in such a weak labour market position that they cannot be regarded as on a par with aggressive tax avoiders. Even those who had some suspicions potentially face much worse consequences than anyone might consider reasonable. The enforcement of these loans will be a further complicating factor in encouraging more people to meet their tax obligations with HMRC, as individuals will naturally resent– being made to pay tax on past pay that they are now coming under real pressure to repay – and be placed in further real and genuine financial difficulties as a result.

Recommendation

We would recommend that the government consults with interested stakeholders with a view to introducing legislation to prevent assignment and/or enforcement of these loans. Options might include a 100% tax charge on any proceeds or profits arising from such activities, the imposition of penalties on assignors / assignees, or (looking beyond simply tax measures) legislating to make such loans unenforceable as contrary to public policy. Clarification of the law for trustees of the trusts making the original DR loans, in respect of obligations to beneficiaries, might also help.

There is a particular difficulty in dealing with cases where this has already happened. However, there must be legal questions as to whether these loans can properly be enforced, even as the law now stands, when the expectation of the parties was very much that the ‘loans’ were pay for work and would never be repaid. Action by the Government to highlight and start the process of dealing with this issue might help encourage people to resist enforcement, and the courts to examine the issues thoroughly and come to the right conclusions.

We would therefore urge the Government to make an early announcement of its intention to make these activities uneconomic, in an attempt to prevent, so far as possible, the abusive enforcement of these loans, particularly where vulnerable individuals, with no understanding of DR schemes, are being asked repay pay for work done that has already been taxed.

We would be pleased to discuss this matter with you.

Yours faithfully

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The Chartered Institute of Taxation

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Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.