

## Finance Bill: Disguised remuneration loan charge

### (Lecture P1198 – 10.02 minutes)

'Disguised remuneration schemes' is the generic term used by HMRC to describe schemes which sought to avoid Income Tax and National Insurance contributions (NICs) by paying scheme users their income in the form of loans. In most cases, the loans were never intended to be repaid and so HMRC's view has always been that these are, in reality, normal employment income and therefore taxable as such.

Legislation was introduced in FA2011 to stop further loans being made (although not necessarily very successfully) and HMRC continued to try to collect tax on pre-existing loans. They also pursued some cases to litigation.

However, they got frustrated at the resistance to people settling cases and so introduced legislation to tax outstanding disguised remuneration loans. Any loan made since 6 April 1999 that was still outstanding on 5 April 2019 where the recipient had not settled the tax due was to be subject to tax at that date. This was announced at the time of the Budget 2016.

As the 5 April 2019 date approached, the disquiet about the charge became more vocal and HMRC asked Sir Amyas Morse to lead an independent review of the policy. He made a number of recommendations which are now included in FB2020.

1. The date from which disguised remuneration loans will be taxed under these provisions is moved from 6 April 1999 to 9 December 2010. Any loan made before 9 December 2010 will not be subject to the Loan Charge. (Clause 14 and Sch.14 Pt 1)
2. Taxpayers subject to the Loan Charge can elect to spread the loan balance over three tax years so that the tax charge also arises over those three years. The years will be 2018/19, 2019/20 and 2020/21. The election is made via an online form and cannot be withdrawn. In order to be eligible to make the election, a person must submit information in an online form reporting all disguised remuneration loans received in the relevant period. (Clause 15 and Sch.14 Pt 2)
3. The charge arising for years 2015/16 and earlier will not be levied if there was a reasonable disclosure of the loan and HMRC had not taken steps prior to 6 April 2019 to recover the tax. A reasonable disclosure is defined by the legislation which provides that the person's tax return (or two or more tax returns) must have identified the loan, the person to whom it was made, the arrangements under which the loan was made and other information which would have made it apparent that it might be chargeable to income tax. It is suggested that this might be a difficult test to pass. Chargeable to tax in this context does not include being subject to the beneficial loan charge for cheap loans. (Clause 16)
4. The due date for payment of any tax liabilities for 2018/19 for a person subject to the Loan Charge is effectively moved to 30 September 2020 as no interest will be charged on tax due between 1 February 2020 and 30 September 2020. This covers all tax liabilities for that person. No interest will be charged on any payments on account for 2019/20 so that the tax for this year effectively does not have to be paid until 31 January 2021. (Clause 17)

5. The date by which the taxpayer must provide information on their loans is moved to 1 October 2020. (Clause 18)
6. Where tax has been paid under a settlement between HMRC and the taxpayer but that tax would not have been payable after the amendments made now, the tax can be repaid (or waived if not yet actually paid) if the taxpayer makes an application before 1 October 2021. (Clause 19)
7. Legislation is introduced which will allow HMRC to make further provisions by secondary legislation for implementation of the rules (for example the format of elections/applications). (Clause 20).