# April 2019 Disguised Remuneration Loan Charge

Employment Tax | Tax voice




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Tina Riches makes some further observations

In his helpful article on the new loan charge, Lewin Higgins-Green mentions that around 50,000 individuals are expected to be affected by the new tax charge. While many employers will have already reached settlement with HMRC, some employers, including employers based offshore and some that have “disappeared”, have not. Their employees, some of which are on low incomes, are left to face the dilemma of settling with HMRC or paying the loan charge, or even a combination of these,

themselves. This further commentary will focus on this unfortunate group.

Lewin also highlights the recent Finance Bill amendment, now in FA2019 s.95, which requires a review of narrow aspects of the loan charge and a comparison with other provisions. In addition to the ‘severe lack of time between the outcome of any such review and the date the of the charge (5 April 2019)’, there is generally minimal or no expectation that the legislation will be changed as a result of the review, although I’d be pleased to be proved wrong on this point. While pressure to make change is mounting, the latest indications are that HM Treasury have no intention of moving their position.

Unfortunately, some other commentators have been suggesting that there might be significant changes and implied that there is no point in engaging with HMRC with a view to settling. In my view that is inappropriate. While it might be wise to keep options open, it seems to make sense to engage and as a minimum try to elicit an offer from HMRC to settle, making the choice around which way to jump after that.

## Outstanding amount of the loan

A number of employees with outstanding loans have been approached by third parties or scheme providers offering to arrange to write off the loan for a fee, part of which is related to the amount of the loan. Some of the communications imply that HMRC are requiring this to happen. **HMRC have recently stated that they are not requiring loans be repaid or written off.** Any employees considering making such payments need to take care, potentially taking advice on whether the payment is a repayment that reduces the amount of the loan for the purpose of the loan charge and for inheritance tax (IHT) purposes – see further comments below on IHT.

In addition, as Lewin alludes to, invitations to pay a fee to enable the loan to be written off could lead to a tax charge under general earnings provisions or the loan charge, depending on the detail.

## Inheritance Tax (IHT)

There is also some confusion over the IHT position. HMRC have not been able to provide categorical guidance on the IHT position relating to loans as this depends on the exact terms of the individual loans and any trust making the loan. HMRC have

indicated that in many, if not most, cases IHT will not be in point, for example where the nil rate band is available.

## Next steps

Since Lewin drafted his article, the previous situation, that '*HMRC are still inviting people to contact them and settle their affairs before 5 April 2019 in order to avoid the loan charge*' has moved on. As indicated on the website of the Low Incomes Tax Reform group, '*HMRC have recently indicated that those who provide all the required information before 5 April 2019 and respond promptly to any further requests or queries, will not be disadvantaged if a settlement is not finalised before the loan charge comes into effect.*'

What 'will not be disadvantaged' will mean in practice remains to be seen. It is not clear whether the loan charge will be waived providing a settlement is made, or whether it will be limited so that after double tax relief no additional tax is due.

This recent development does mean that employees have a renewed incentive to submit all their information to HMRC before 5 April. At worst they can refuse to settle and pay the loan charge. At best they may get an improved result, especially as HMRC have also indicated that employees with current income under £30,000 who agree to settle outstanding liabilities will now be offered up to seven years to pay, without having to provide income and expenditure or other information to justify an extended time to pay.

A further step that employees need to be aware of relates to reporting. In addition to and indeed in advance of reporting the loan to HMRC before 1 October 2019, employees themselves will in most cases have to report the details of any outstanding loans to the original employer, if they still exist, or ensure that the trust or lender reports this to the employer. This has to be done by **15 April 2019**.

Employees with outstanding loans will no doubt wish to check if the employer relating to the loan exists, before deciding what to do. The tax only has to be paid once and double tax relief is available. However, if the employee has not settled and the employer exists, it is the employer's responsibility to pay the loan charge PAYE and NIC, yet they can recover this from the employee. This might make settling more attractive, and hence a need to get information to HMRC before 5 April, so enable their case to be in the queue of cases to receive a settlement offer.

## HMRC guidance

HMRC have recently published some further helpful guidance on reporting for and paying the loan charge.

## Special cases

HMRC have made no announcement regarding what it will do in particular hardship cases. However, if you have any cases where the taxpayer currently has a low income, limited savings and special needs relating to, for example, their health, you may wish to discuss them with the charity TaxAid, which has experience of dealing with vulnerable clients.