President’s page

Welcomes

29 September 2020

As I approach the end of my Presidency, I would like to address an issue that has been running since well before I became President, and looks like it will continue for some time afterwards. That issue is the loan charge.

The measures enacted in Finance Act 2020 have reduced the impact of the loan charge for some, and the Covid-19 outbreak has pushed the issue down the news agenda. However, many people remain affected and face substantial tax liabilities. There is continuing media coverage of the loan charge, the Parliamentary APPG remains active and lobbying of government continues.

There is also continuing disguised remuneration activity. There has been publicity around schemes targeting agency workers returning to work in the NHS; and HMRC has a specific call for evidence open in regard to tackling promoters of disguised remuneration schemes.

The nature of the debate has changed during the course of my Presidency. Back in early 2019, the loan charge was definitely seen as a problem of tax avoidance. On social media, some were still defending the use of loan schemes. There was a great deal of discussion and criticism about how HMRC was pursuing enquiries, and a debate amongst tax professionals about whether the loan charge was a proportionate response to the avoidance schemes the charge targeted.

There was recognition that this disguised remuneration avoidance was unusual, in that loan schemes had been used by a relatively large number of taxpayers compared to most avoidance schemes. Alongside the eye-catching 20 year ‘look back’ in the loan charge provisions, this demonstrated that all sides were dealing with something going beyond past experience with tax avoidance. The traditional HMRC enquiry approach was under considerable strain, and it was no surprise when the review into the loan charge headed by Sir Amyas Morse was announced about a year ago.

The CIOT's evidence to the Morse enquiry is available elsewhere. In short, we advised that the loan charge was clearly a disproportionate approach for at least some of those involved in loan schemes; however, it could be an appropriate remedy for some recalcitrant taxpayers who did fully appreciate the nature of what they were doing. We acknowledged that there was a continuum of cases between those extremes.

The Morse review resulted in a number of now-enacted relieving measures which were welcomed by the CIOT, though these still leave many taxpayers with life-changing tax liabilities.

A key factor was the change in law in the Finance Act 2011, announced in December 2010; Sir Amyas Morse concluded that this put beyond doubt the fact that such schemes did not work. Some still have concerns, but as someone said to me recently, after the 2011 changes no reputable tax adviser would touch loan schemes with a barge-pole. HMRC has acknowledged that after this legislation, the market for such schemes was increasingly driven by a relatively small number of unregulated promoters.

Sir Amyas Morse concluded that the tax position was sufficiently clear after December 2010 for taxpayers to have been aware of the position and their responsibilities. This is hard to argue with, but leaves the question of why schemes still continued to be sold and used so extensively? One answer would be that after December 2010, loan schemes were being mis-sold by promoters. This suggests to me that for these more recent years we should look at the selling of disguised remuneration schemes – including loan schemes – as less of a tax avoidance issue, and more of a consumer protection issue. In its current consultations on tackling the promoters of disguised remuneration schemes, HMRC recognises that there is a significant consumer protection element to stopping the sale of abusive schemes.

Where does that leave those still facing large liabilities under the loan charge provisions? Ongoing campaigns to change tax legislation have been firmly resisted by the government, and seem to have little chance of success.

My view is that if any further relief is to be available to such taxpayers, their campaign needs to shift to focus onto the mis-selling element; the focus should be on whether these schemes were basically mis-sold financial products, rather than on the tax avoidance involved. This could open up a fresh approach to resolving this

issue, without the need for further tax changes. It also firmly places those who promoted such schemes, when it was clear they would not work, at the centre of enquiries.

The times remain strange and challenging. However, I hope you all have a good month, and I will return with some wider reflections on my Presidential term in November.

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