Loan charge review conclusion

Employment Tax **General Features**

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After considering the recommendations made in Sir Amyas Morse's review, the government has decided to make some changes to the loan charge.

The review, the government response and some initial guidance have been published on GOV.UK (https://tinyurl.com/yyjjav3z).

The main changes to be aware of (and some important points to note) are set out below.
The loan charge will no longer apply to loans taken out before 9 December 2010; nor will it apply to users of loan schemes between 9 December 2010 and 5 April 2016 who fully disclosed their schemes on their tax return and where HMRC failed to take action. Further details of what is meant by 'disclosed' will be issued in 2020.

If the loan charge does not apply to earlier years, but HMRC have an open enquiry or assessment, the tax covered will still need to be finalised, either through settlement (guidance on a new settlement opportunity will be issued in 2020) or through litigation. HMRC will be investing in a new team tasked with concluding pre-2010 cases.

Refunds for those who have 'voluntarily' settled years where the loan charge no longer applies will be processed in summer 2020, once the changes to the loan charge legislation have been enacted. People currently making settlement payments, who no longer need to as a result of the changes, should contact HMRC rather than simply stop paying.

Our understanding is that HMRC will allow those with loan charge issues to defer filing their 2018/19 tax returns/paying their 2018/19 tax liability until 30 September 2020, without consequence, even if there is tax to pay for another reason. This also means that those settling have until 30 September 2020 to finalise their settlements, without needing to register for Self Assessment if they are not already in it (or without the need to include any loan charge income, if they are).

Rather than have all their outstanding loans treated as income in the 2018/19 tax year, those paying the loan charge can have a third treated as income in 2018/19 and pay the tax (or arrange a payment plan) on that amount, a third treated as income in 2019/20 and a third treated as income in 2020/21. This may help people avoid paying higher rates of tax, losing their personal allowance, etc. But beware: paying the loan charge does not resolve any underlying tax disputes, so if there is an enquiry/assessment, although there should ultimately be no double taxation, if the amount agreed or assessed is higher, they will end up paying the higher amount.

For those with no disposable assets who are facing the loan charge, HMRC will now extend 'automatic' payment terms as follows: earnings of less than £50,000, a minimum of five years; and earnings of less than £30,000, a minimum of seven years. Forward interest will be payable on any payment arrangements made. Note the 'disposable assets' restriction – we are clarifying with HMRC exactly what is meant by this.

Sir Amyas Morse also made other recommendations for changes to the tax system, for example around HMRC's future approach to tackling disguised remuneration avoidance schemes.

We await further guidance and draft legislation in 2020.

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