The April 2019 loan charge – what now?

Employment Tax Tax voice

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Lewin Higgins-Green considers the government's response to the loan charge review and what affected taxpayers should be doing

In last year's edition of Employment Taxes Voice we discussed the legislation introduced by the Finance Act (No 2) 2017 to tax the value of any pre-existing disguised remuneration loans dating back to 6 April 1999 – the "loan charge". HMRC was originally expecting up to 50,000 individuals to be impacted and that the loan charge would raise £3.2 billion in tax revenue (https://tinyurl.com/qng774b).

As we mentioned before, a House of Lords report ("The Powers of HMRC: Treating Taxpayers Fairly (https://tinyurl.com/y8qeuuye) published in December 2018 was particularly critical of the retrospective effect of the loan charge. As a result of the report, in 2019, the Government commissioned an independent review by Sir Amyas Morse and, in December 2019, published their response to that review (https://tinyurl.com/vhj26ob).

The government's response

The government accepted all but one of the independent review's proposals and have announced some key changes to the loan charge, including:

- a reduction to the retrospective effect of the legislation: it will now only apply to loans made on or after 9 December 2010 (but note that any underlying tax liability for loans made on or before 8 December 2010 will still exist – further details below);
- additional flexibility for taxpayers: affected individuals can defer the submission of their 2018-19 tax return and any required payment until 30 September 2020 without penalty or interest;
- a settlement opportunity in 2020 for any taxpayers who are now outside the scope of the April 2019 Loan Charge, but still have an underlying tax liability (for example, where a previous enquiry was opened by HMRC and HMRC has, therefore, "protected its position" to recover the underlying tax);
- the refund of voluntary payments already made by taxpayers to prevent the loan charge arising: this is for settlement agreements reached that relate to either (i) loans made before 9 December 2010 (and to which, therefore, the loan charge no longer applies); or (ii) loans made before 6 April 2016 where reasonable disclosure was made to HMRC and no enquiry was opened by HMRC in the normal statutory time limits;
- the possibility for individuals to spread the taxable amount of any loan caught by the charge evenly across the 3 tax years 2018-19 to 2020-21: this will mean that some of the loan may now be taxed at a lower rate of tax, depending on the income levels in each year.

Draft legislation to implement these changes was published on 20 January 2020 (https://tinyurl.com/tumj226). Further draft legislation was then published on 27 February to refund certain voluntary payments ('voluntary restitution') made on or after 16 March 2016 as part of a settlement with HMRC, in relation to loans made in unprotected years. This article does not consider the scheme being set up by HMRC to administer refunds.

For loans that remain caught the amount of income subject to income tax and NIC in 2018-19 (or across 2018-19 to 2020-21 if appropriate) is the outstanding amount of any caught loan. This will normally be the original amount of the loan, less any amounts actually repaid and not written off.

However, loans that are not caught by the loan charge do not escape taxation under the disguised remuneration legislation more broadly – see below.

Action for affected individuals

Individuals with loans that are potentially caught by the loan charge will first need to be clear on when any potentially affected loans were originally made – as mentioned above the loan charge will now only apply to loans made on or after 9 December 2010. HMRC have confirmed that it may be possible to apportion a total loan balance on a just and reasonable basis for an individual who received loan payments straddling the “cut off” date (e.g. where equal payments were received throughout the 2010-11 tax year and it is not possible to clarify when the loans were actually made).

Loans to individuals between 9 December 2010 and 5 April 2016 that were appropriately disclosed to HMRC at the time, and where no previous enforcement action was taken by HMRC within the normal statutory time limes (e.g. an enquiry into a tax return), will also not be in scope of the loan charge. Therefore, individuals will need to ascertain whether they made a “reasonable disclosure” to HMRC. Where individuals have provided enough information in the relevant tax return to allow HMRC to identify the loan scheme, the loan recipient and the loan arrangement, HMRC have stated they consider reasonable disclosure has been made.

Any loans which are caught by the loan charge need to be reported to HMRC. This can be done via an online form from HMRC (available in April 2020) and the revised deadline is 30 September 2020. Individuals who have already reported their loans by the original deadline of 31 January 2020 should not need to take further action (even if the tax liability has changed, or the loans are no longer within scope of the charge), unless they want to spread the loan balance over the three tax years 2018-19 to 2020-21, in which case they will need to complete the online form.

What about loans that are now out of scope of the loan charge?

Any outstanding loans that are not caught by the loan charge will not be subject to an income tax and NICs charge in 2018-19 on the outstanding amount of the loan. However, this does not mean there will be no tax consequences in the future.

The disguised remuneration legislation is still likely to catch any waiver or write-off of outstanding loan amounts, creating an employment income tax and NICs charge (together with associated employer NICs) at the time of any such waiver or write-off. Therefore individuals and their employers will still need to plan for such circumstances, ensuring that any such amounts are processed through payroll at the appropriate time.