



## WRITTEN SUBMISSION TO INDEPENDENT LOAN CHARGE REVIEW

Issued 30 September 2019

ICAEW welcomes the opportunity to make this written submission to the Independent Loan Charge Review published by the Chancellor, Sajid Javid on 11 September 2019, a copy of which is available from this [link](#).

This letter is further to a meeting with Sir Amyas Morse following the launch of this review. It focuses on three themes which should be considered during the review: fairness and proportionality with respect to the policy; how a lack of effective legislative scrutiny around this policy is causing a negative impact on the UK's tax system; and the importance of considering the impact of any further changes on those taxpayers who have already entered into settlement agreements.

This response of 30 September 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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For more information, please contact: [taxfac@icaew.com](mailto:taxfac@icaew.com)



26 September 2019

Sir Amyas Morse  
Lead Reviewer  
Independent Loan Charge Review

SENT VIA EMAIL

Dear Sir Amyas

#### **CALL FOR EVIDENCE: WRITTEN SUBMISSION**

Thank you for your letter of 17 September 2019 following our meeting to discuss the independent review of the Loan Charge. ICAEW is happy to provide further written evidence – please consider this letter to be our submission, along with the attached documents.

There are three themes which this letter will cover that I believe you should consider as part of your review: fairness and proportionality with respect to the policy; how a lack of effective legislative scrutiny around this policy is causing a negative impact on the UK's tax system; and the importance of considering the impact of any further changes on those taxpayers who have already entered into settlement agreements.

#### *Fairness and Proportionality*

ICAEW stated our concerns regarding the Disguised Remuneration Loan Charge legislation while it was being scrutinised in Parliament. For example, we submitted Rep 108/17 – *Employment Income And Trading Income Provided Through Third Parties, Alias Disguised Remuneration Loan Charge* – to the House of Commons Public Bill Committee. We also produced Rep 52/17 – *Disguised Remuneration: Employment Provided Through Third Parties: Loans and Quasi-Loans Outstanding On 5 April 2019*. I have enclosed these submissions for your convenience.

ICAEW cautioned that while we support measures to counter tax avoidance, we were concerned about the potential hardship that the policy would cause in certain circumstances. ICAEW also advised that, while there were some taxpayers using disguised remuneration schemes for the sole purpose of avoiding tax, some taxpayers were misled into such arrangements or had little choice but to accept them and thought that the arrangements were in order. We suggested that HMRC should take a 'sympathetic and flexible approach' to resolving such cases rather than looking to make the taxpayers concerned bankrupt.

*Impact on the UK's Tax System*

As we noted in Rep 108/17, ICAEW cautioned Members of Parliament that we had fundamental problems with the legislation as drafted, and that HMRC had not acted quickly enough to address the problems when they first emerged, as well as subsequently. However, the legislation was not amended to address our concerns (which were made by many others). We do not think that there was sufficient scrutiny of the relevant clauses in the Public Bill Committee stages: there was no substantive debate about the provisions and their effect on taxpayers which, given the acknowledged far-reaching impact of the loan charge, was very disappointing.

We now have a situation where individuals, having had to rearrange their tax affairs based on the introduction of the loan charge, now face uncertainty over whether there will be further changes in this policy area and therefore potentially further rearrangements of their tax affairs.

This situation would have been less likely to occur if the concerns had been listened to and the legislation more thoroughly scrutinised. We believe that it is for Parliament to now resolve this situation. However, the controversy surrounding the Loan Charge has damaged the integrity of the UK tax system and lessons need to be learned for the future to ensure it does not happen again.

*Fairness for those who have settled*

Whatever decision is made by your Review, and ultimately by Parliament, it is important that those taxpayers who have entered into contract settlement arrangements in good faith are treated fairly. They should not be disadvantaged by any changes introduced. To do otherwise would further damage the integrity of the UK tax system, and the fundamental tenant of fairness.

In the event that new terms are offered following this Review, such terms should also be offered to those who came forward and settled. It would also not be unreasonable for those who did so to seek redress for the time and cost they have incurred in seeking to comply with the law.

Thank you again for the opportunity to make a written submission to your review, and we would be happy to discuss our comments further.

Yours sincerely

Frank Haskew  
Head of Tax, ICAEW Tax Faculty

T +44 (0)20 7920 8618  
E frank.haskew@icaew.com

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*Rep 52/17: Disguised Remuneration: Employment Provided Through Third Parties: Loans and Quasi-Loans Outstanding On 5 April 2019*

*Rep 108/17: Employment Income And Trading Income Provided Through Third Parties, Alias Disguised Remuneration Loan Charge*