

BY E-MAIL

The Financial Secretary to the Treasury
The Rt Hon Mel Stride MP
The Treasury
London SW1

22 January 2019

Dear Mr Stride

I write on the assumed basis that you are a politician of integrity and principles and one who respects the concepts of fairness and the rule of law.

For my part, I am a practising barrister, specialising in the resolution of tax disputes. Throughout my 27-year experience in the tax profession (initially training as a chartered accountant and later as a chartered tax adviser, before spending 3½ years at the then Inland Revenue, and then retraining for the Bar), I would like to think that I have consistently advocated for simplification of the tax regime and balance between the often-competing interests of the right of the tax authorities to collect “the right amount of tax” and taxpayers’ need for certainty and finality.

It is with this background that I wish to write about the Loan Charge due to bite in 2½ months but also the subject of a review to be prepared by the end of March.

When the loan charge legislation was first announced I, like many others I presume, took very little interest – it had no obvious impact on my work and I had plenty of other matters to keep me busy. However, as I prepared to give evidence first to the Commons’ Treasury Sub-Committee last June and later in the year to the House of Lords Economic Affairs Sub-Committee, I recognised that I had made an error of judgment: rather than just let the matter rest, I realised that I had a moral duty to speak out.

The loan charge is an affront to the principles on which this country is based and by which the state should operate.

I readily accept that the loan charge is designed to combat tax avoidance and, for the sake of this argument, I will proceed on the assumption (which, for the record, I do not fully accept) that the loan schemes it targets amount to egregious tax avoidance by all their participants. However, such activity has long been carried out by all sorts of sectors of the society. Furthermore, all tax avoidance is governed by the statutory provisions which fairly impose a balance between “the right amount of tax” and taxpayers’ entitlement to finality. If time limits are missed by HMRC then the tax is and should be written-off.

In addition, the risk of HMRC missing a time limit should, in most cases, be completely eradicated by the introduction of the Disclosure rules (DOTAS) with effect from 1 August 2004.

There is no reason why the arrangements targeted by the loan charge should be any different. Yet, contrary to the present wishes of over 100 non-government MPs, the loan charge legislation was enacted so as to drive a coach and horses through any concept of fairness and balance.

The question that clearly arises is how this has come about. Having considered the matter for some time, it is my regrettable view that you and your fellow Treasury ministers have simply been misled by your officials at HMRC. I base this on the following:

- The fact that the justifications given for the loan charge do not withstand scrutiny.
- The fact that both you and the Chancellor have spoken publicly using briefing notes which falsely refer to the arrangements as “unlawful” or “evasion”, suggesting that the author(s) of those notes was/were hoping to justify the unjustifiable by using the emotive language of implied criminality.
- The responses given by HMRC officials to the Parliamentary Committees which have sought to examine this issue. I have in mind in particular the clear attempts to deflect questions from the House of Lords about whether HMRC themselves had paid contractors involved in these schemes. The answers given were less embarrassing politically but did not address the question repeatedly put.
- The fact that, within days of the Report Stage of the Finance Bill, HMRC went onto the offensive seeking to justify the loan charge. In my view, that course of action was wholly inappropriate.
- The fact that HMRC’s purported justifications did not withstand any scrutiny if one actually stopped to consider what was being said: see my own responses collated at <https://threadreaderapp.com/thread/1086011650535288833.html>.
- The fact that this entire debacle is as a result of prior HMRC incompetence, as confirmed by the (now former) officer who introduced the DOTAS disclosure rules said in his evidence to the Treasury Sub-Committee:

Wes Streeting: Mr McCann, some of the specific loan scheme examples we have seen, such as disguised remuneration loan schemes, seem to have become a major and widespread problem. Why do you think that those schemes are so widespread, and why is it so difficult for HMRC to get a handle on them? Lots of us have been struck by the fact that the enforcement is coming now, but these schemes have been running for the best part of a decade, including schemes that were given a number by HMRC and conducted under tax returns to HMRC. Why do you think it did not spot them and act sooner?

Ray McCann: I am sympathetic to that charge in so far as HMRC is concerned. I have seen examples, on request from some of the

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people who have contacted me, of copies of tax returns with DOTAS numbers on them. Because of my personal background and connection to DOTAS, I find it quite irritating that HMRC seems on a number of occasions—I don't know how many, but my hope and suspicion is that it is quite a small number relative to the total—not to have opened inquiries even when there has been a DOTAS number on the return. I feel a touch of personal embarrassment, in the sense that I put quite a lot of effort during 2004 and 2005 into emphasising that if you put a DOTAS number on your tax return, it was certain to get an HMRC inquiry. That is slightly personally disappointing.

[\[http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-subcommittee/the-conduct-of-tax-enquiries-and-resolution-of-tax-disputes/oral/93722.html\]](http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-subcommittee/the-conduct-of-tax-enquiries-and-resolution-of-tax-disputes/oral/93722.html)

- The further fact that, had HMRC publicly stated their opposition to these arrangements before 2016, the schemes would not then have festered for seventeen years and would therefore not have given participants the false sense of HMRC approval.
- The fact that in the course of my daily work I routinely see HMRC saying whatever suits them with no real care as to the accuracy of their assertions.

In short, it is my view (as unpalatable as it sounds) that no-one (taxpayer, minister, judge, journalist or indeed anyone else) can safely rely on the veracity or accuracy of any statement uttered by HMRC on the mere basis that the statement is being made by a public servant.

Whilst I realise that there is a lot on your plate at the moment, so far as the Chancellor's review is concerned, I would nevertheless strongly advise ministers to engage with the many independent sources of policy advice that you can obtain beyond HMRC: for example, the Chartered Institute of Taxation, the various Institutes of Chartered Accountants etc. Any failure to engage more widely and reliance instead solely on HMRC's own policy advisers would mean that the review will be fatally flawed – for the simple reason that HMRC themselves cannot and should not be trusted, particularly on this topic.

I would like to publish this letter on Twitter in due course. However, if before 31 January 2019 you request that I keep it confidential I will fully consider your request. Nevertheless, for your information, I am sending copies to my constituency MP and a number of MPs with whom I have had prior dealings.

Of course, if I can be of any further assistance to you then do please let me know.

Yours sincerely

Keith Gordon