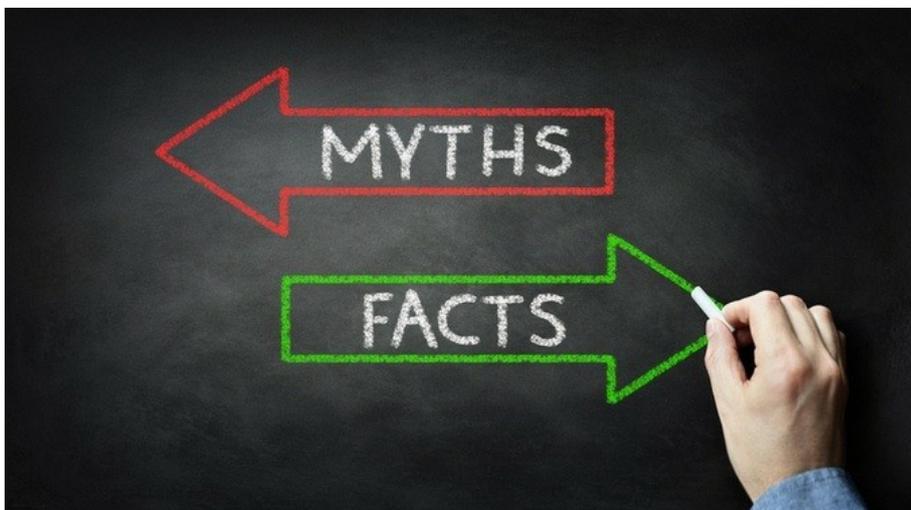


## Loan Charge APPG publish report exposing fundamental flaw in Morse Review



Today in there is a Backbench debate in the House of Commons, around a motion that calls on the Government to remove all retrospection in the Loan Charge legislation, thereby aligning with the APPG report conclusions. You can watch it on [Parliament TV](#) - likely to be in the afternoon. The press release by the Loan charge APPG.

The All-Party Parliamentary Group on the Loan Charge have today [published a comprehensive report](#) which exposes the fundamental flaw in the Government commissioned Morse Review into the Loan Charge. The APPG report follows two witness sessions and written evidence, as well as the APPG contacting and seeking views from all the experts listed in the Morse Review report. Most experts contacted confirmed that they did not agree with the Morse Review conclusion that the “law was clear” after December 2010, which then unravels the key Morse Review recommendation, to leave the Loan Charge in place from this date.

The APPG report exposes how the Treasury commissioned Morse Review came to a flawed and unjustified conclusion which still leaves an estimated 35,000 – 40,000 people facing Loan Charge demands, that they cannot legally challenge, despite it not having been legally proven that the tax is due.

The main conclusion of the Morse Review was that the “law was clear” after December 2010. This is simply not the case in terms of the legislation itself, HMRC’s lack of action or court rulings. What is more, the Review stated that experts agreed on this point, something that has now been exposed as simply not being the case.

The Morse Review, which had restricted terms of reference set by the Treasury, reported in December and made a series of recommendations about how the Loan Charge legislation should be changed. In response, the Loan Charge APPG held evidence sessions and asked a wide range of experts, including all those who were listed as having given input to the Review, for their views on whether the law was clear. The conclusion from the evidence and from further analysis of the Morse report is that the law was certainly not clear. Loan arrangements which people entered into were not covered by the 2010/11 legislative change, which is why advisers, including chartered accountants and chartered tax advisers, were recommending them.

This finding by the APPG therefore undermines the entire justification for the Loan Charge to apply retrospectively to 2010. The Loan Charge APPG have called on the Government to now do the right and obvious thing and to make the Loan Charge prospective, from when the law did become clear, in 2017.

The reasons why the main Morse Review conclusion is wrong (and hence why there is no justification for the Loan Charge to retrospectively apply from 2010) are as follows:

- The 2011 legislation applied to payroll loans made by an employer to an employee, with loans advanced by a third party, but it did NOT say anything about self-employed loan arrangements, loans to company directors or direct loans from an employer.

- Many arrangements that were sold and entered into by people post December 2010 were not covered by the 2010 law. This is why advisers (including from chartered accountants and chartered tax advisers) recommended them.
- The Morse Review claims that experts agreed that the law was clear. However, this is actually not the case. The Loan Charge APPG consulted the same experts who are named in the Morse review and they largely disagreed with the conclusion about the December 2010 cut-off date.
- The law was actually not made clear until the Finance Act 2017 which retrospectively changed the legislation to include those categories of payroll loans that had not been covered by the original 2011 legislation. The whole point of the Government changing the law at this stage was to cover those arrangements that had not been covered by the 2011 legislation.
- HMRC were aware – and made clear to Government – that the 2011 legislation missed many types of arrangements. This is documented in a December 2016 Technical Note from HMRC.

There are NO court rulings to support HMRC's view that self-employed loans or direct loans are subject to the 2011 legislation introduced in 2010 and passed in 2011. In fact, HMRC's position even with regard to pre-2010 employed loans from a third parties was not supported by the courts until at least 2015, with the final ruling on the Rangers case only being handed down by the Supreme Court in 2017 – and which found an employer to be liable for the tax due, not an employee.

As well as it not being correct that the 2011 legislation made the law clear, HMRC certainly did not make it clear to taxpayers that payroll loan arrangements were deemed by HMRC to be unacceptable and could be subject to tax. The Morse Review even states that HMRC's communications focused on tax professionals until at least 2014 via their 'Spotlight' online articles which had a very limited audience (c. 500 readers).

The Morse Review conclusion that the Loan Charge is justified because the law was clear and people must have, or should have, known this is simply wrong. The law was not clear even after 2010 for many, perhaps all, post-2010 loan arrangements, hence the additional legislation which was passed in 2017. The Loan Charge APPG are calling for the Government to do the right thing and to make the Loan Charge prospective, only applying it to loans taken out after the 2017 legislation had been passed.

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