Official review launched into disastrous retrospective Loan Charge

BREAKING NEWS: Boris Johnson announced in the House of Commons on Wednesday 4th September 2019 at 12:45pm that there would be a review into the Loan Charge, as requested by hundreds of Parliamentarians who have recently written to the Chancellor.

ContractorCalculator speaks to Phil Manley, ex tax inspector, expert on the Loan Charge, and representative for hundreds of tax payers affected by the retrospective Loan Charge.

Q) What has been announced?

The PM, Boris Johnson, has committed to a review of the policy known as the Disguised Remuneration Loan Charge.

Q) Why has the Loan Charge been so controversial?

Most members of society would recognise and indeed support Taxation. We need everybody to pay the correct amount to fund vital public services and the economy as a whole. However, the correct amount of tax is the amount due as per law. The Rule of Law dictates that all of society respect this, yet the Loan Charge effectively displays that HMRC do not.

There are, and have been for many years, such things as enquiry windows. These windows provide taxpayers with the absolute necessary requirement of certainty when it comes to their tax affairs. Indeed these enquiries, found primarily at Section 9 of the Taxes Management Act 1970, are the backbone of the entire tax system for the UK.

The Loan charge absolutely demolishes this certainty and ignores the windows completely. The Charge exists purely as a fig leaf to cover up HMRCs own inactions for the past 20 years. They already had sufficient powers to enquire/warn people about Loan schemes and indeed claim they have, but this is simply not what the facts tell us.

HMRC themselves hired contractors on these schemes, as did the Treasury. For HMRC to now say that such schemes do not work is fine and acceptable. But to retrospectively apply this going back 20 years is an affront to natural justice and brings down the aforementioned walls of certainty and crushes the vital protections in place to protect the taxpayer.

Indeed the impact already seen, purely from the fear of this policy continuing, has been hundred of families broken up, mental health difficulties arising and most tragically of all, 6 known suicide cases.

This is all despite HMRC very clearly being warned in advance that if they went ahead such tragedies would occur. They were told, by myself and many others, that if they implement the loan charge then people will die because of it. They went ahead and implemented it, and people died.

Q) Who is conducting the review? Is it independent?

We do not know yet, but we sincerely hope that it is a judge led independent review. With considerable accusations of wrongdoing being cast in HMRC's direction, it would be difficult for them to take a balanced view when marking their own homework, so to speak.

Q) What is the likely outcome of the Loan Charge review?

There are a number of outcomes possible, which range from matters carry on the same, to the Loan Charge being completely removed.

There are many middle ground options to consider. Personally I would suggest that HMRC already has sufficient powers to protect the exchequer from any loss and therefore the Loan Charge should be removed, allowing HMRC to utilise their normal powers to work enquiries and litigate where necessary.

By HMRC's own admission, the Loan Charge was designed to save them having to litigate and prove tax was due. It enabled them to circumvent following the rules, laws and procedures in place to protect the taxpayer.

Q) What should affected taxpayers do now

At this stage, it's difficult to say until we understand more of the detail about how the review will be conducted, and whether a suspension is announced alongside the review.

It will always be up to each individual/family to decide on their next steps as too many personal variables are involved in such decisions.

If a suspension to the Loan Charge and settlement process is granted, then there is no detrimental financial impact by people pausing and waiting to hear the outcome of such a review. It's important to understand that the settlement process is classed as voluntary, which means that if you choose to settle and then the Loan Charge is cancelled, then such changes will not affect you as a settlement contract will have already been signed.

Q) What next for HMRC?

When HMRC introduced the Loan Charge it was not a quick knee-jerk strategy. Rather it was the result of many years of a build up of powers for the tax authority.

This can be traced back to the merger of Inland Revenue and Customs when the more aggressive Customs culture was integrated into what was once a respected Tax Authority. Numbers became more important than people. The damaging effect of the Loan Charge has hopefully reminded them, that if you push the numbers too far then the people behind them will be left with no choice but to fight back. What is needed therefore is not just a removal of the Loan Charge but an absolute overhaul of HMRC.

About Phil Manley:
Phil Manley is an ex-tax inspector who left HMRC after being disillusioned with the move towards what he describes as a "max tax culture rather than a correct tax" approach. At HMRC he was the tech lead for the APN representation team. Phil has dedicated the last three years of his life and working career, often on a voluntary basis, to supporting victims of the Loan Charge. He has worked closely with the Loan Charge Action Group, the APPG, and provided advice and guidance to victims who have suffered extreme mental health issues as a result of the retrospective charge.

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