The 5 April 2019 loan charge - guide for employees

In 2017 the Government passed legislation which imposes a 'disguised remuneration' charge upon loans from EBTs, EFRBS and similar arrangements. The 'Loan Charge' applies to any individual who received a loan via a disguised remuneration scheme on or after 6 April 1999 that was still outstanding on 5 April 2019.

The purpose of this guide is to explain the implications of the loan charge for employees (including contractors employed via an intermediary) and how tax liabilities are to be assessed/reported.

Background

EBTs and similar schemes were commonly used in the past as a way of rewarding employed and self-employed individuals. The typical EBT structure would involve the employer making contributions into a trust, usually offshore, which would then be used to make loans to the individual.

HMRC's view is that such schemes are tax avoidance arrangements seeking to avoid income tax and National Insurance ('NIC') by paying scheme users their income in the form of loans.

The introduction of 'disguised remuneration' rules in 2010 generally closed off this type of arrangement. However, HMRC had no ability, outside the scope of normal enquiries, to assess previous loan arrangements to tax. As a result, the Government legislated to introduce the Loan Charge.

What is the loan charge?

The loan charge operates by treating the outstanding amount of any loans on 5 April 2019 as if it was the individual's earnings on that date. The amount will therefore be subject to income tax and potentially NIC in the 2018/19 tax year.

Taxable amount

The amount that is taxable is the total of all the loans and credits (including 'quasi-loans' – acquired debt) provided since 5 April 1999 and still outstanding on 5 April 2019.

In addition, anti-forestalling arrangements were put in place so that after **16 March 2016** loan repayments had to be made in cash and not as part of a further tax avoidance scheme in order to avoid the loan charge.

Implications for individuals

The practical implications of the loan charge i.e. who must pay the tax and NIC and what must be reported to HMRC will depend upon the status of the employer.

a) UK Employer still exists / in liquidation

Where the employer is based in the UK then they are primarily responsible for accounting for and paying the tax and NIC due on the loan charge via the PAYE system. This includes employers that are in an insolvency arrangement.

In most cases, this should already have happened, unless a settlement negotiation with HMRC was underway.

HMRC still expect the individual to include the loan charge on their self-assessment tax return. The total amount of loans which are subject to the charge should be included on the employment page (SA102) in Box 1 together with ticking Box 8.1. Any amount paid by the employer under PAYE should be included in Box 2. The tax return must be submitted to HMRC by 31 January 2020.

There may be cases where the employer fails to pay. HMRC has said it will pursue the employer for payment in the first instance, although has indicated that it may seek to transfer PAYE liabilities to employees in situations where the employer does not comply.

In many cases, the employer may have no funds due to the employee from which the employer can withhold the PAYE. If the employer pays the liability then the employee must reimburse the employer (known as 'making good') within 90 days (i.e. by **5 July 2019** for payments due on 5 April 2019) otherwise a benefit in kind charge will arises under ITEPA 2003 S222 and S223.

b) Employer wound up / not UK based

For employers that have been wound up or that are not UK based HMRC expect the individual to include the loan charge on their self-assessment tax return. However, no NIC will be due.

The total amount of loans which are subject to the charge should be included on page Ai4 of the Additional Information page (SA101). The tax return must be submitted to HMRC by 31 January 2020 with the tax payable on the same date.

Other reporting requirements

In addition to the above, employees are required to make a report to HMRC by **1 October 2019** to disclose details of their disguised remuneration loans. Our separate guide on 'Reporting disguised remuneration loan charges' provides further details.

How we can help

If you are an employee or employer affected by the loan charge, or if you have a client who is affected and need advice and/or assistance in completing tax returns then please contact us.

To discuss how we can help, please contact:

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