



Loan Schemes

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Agenda

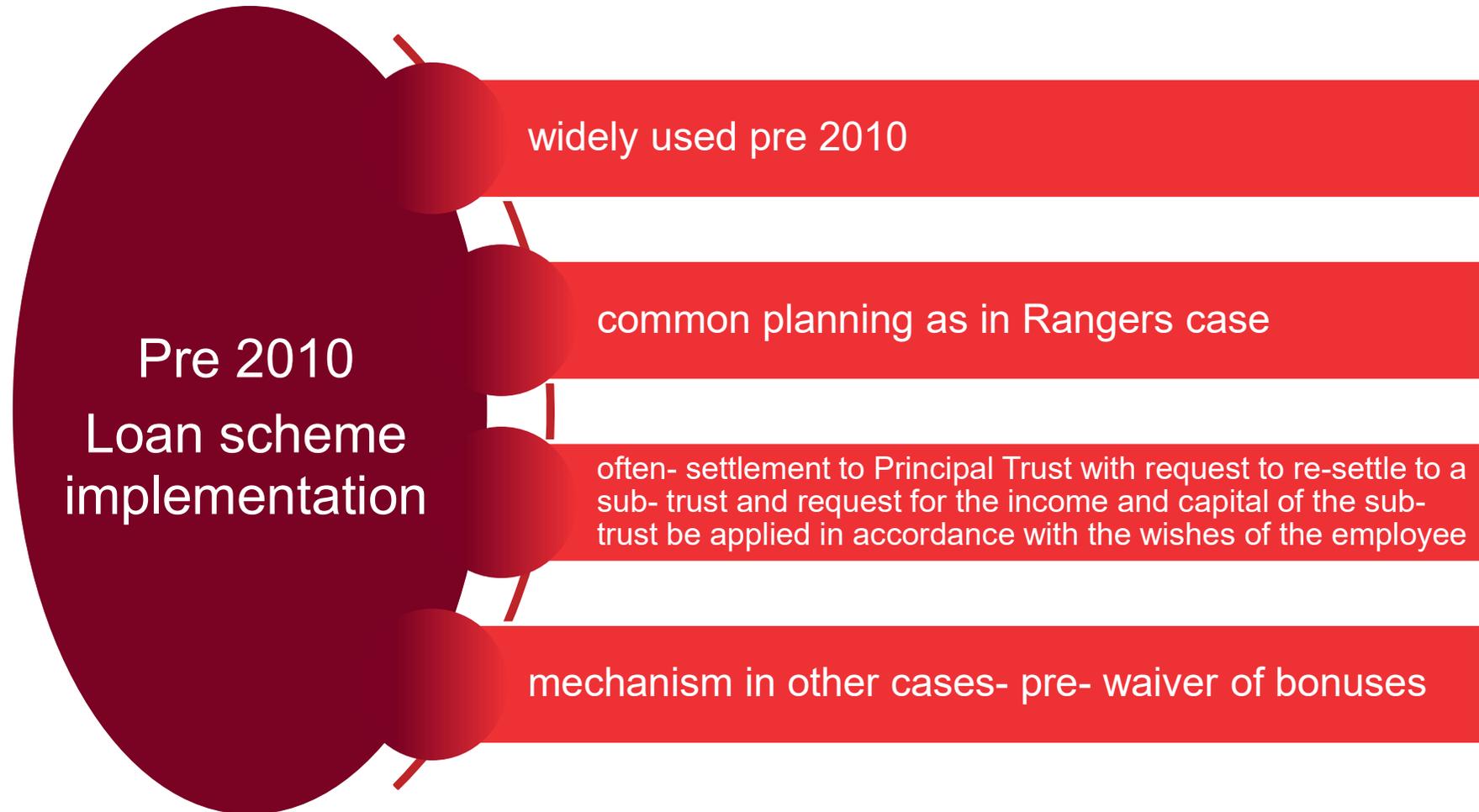
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- 1 Loan schemes- historic and latest position
 - 2 HMRC Settlement Opportunity
 - 3 Trustee considerations
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Loan Schemes- Historic and Latest Position

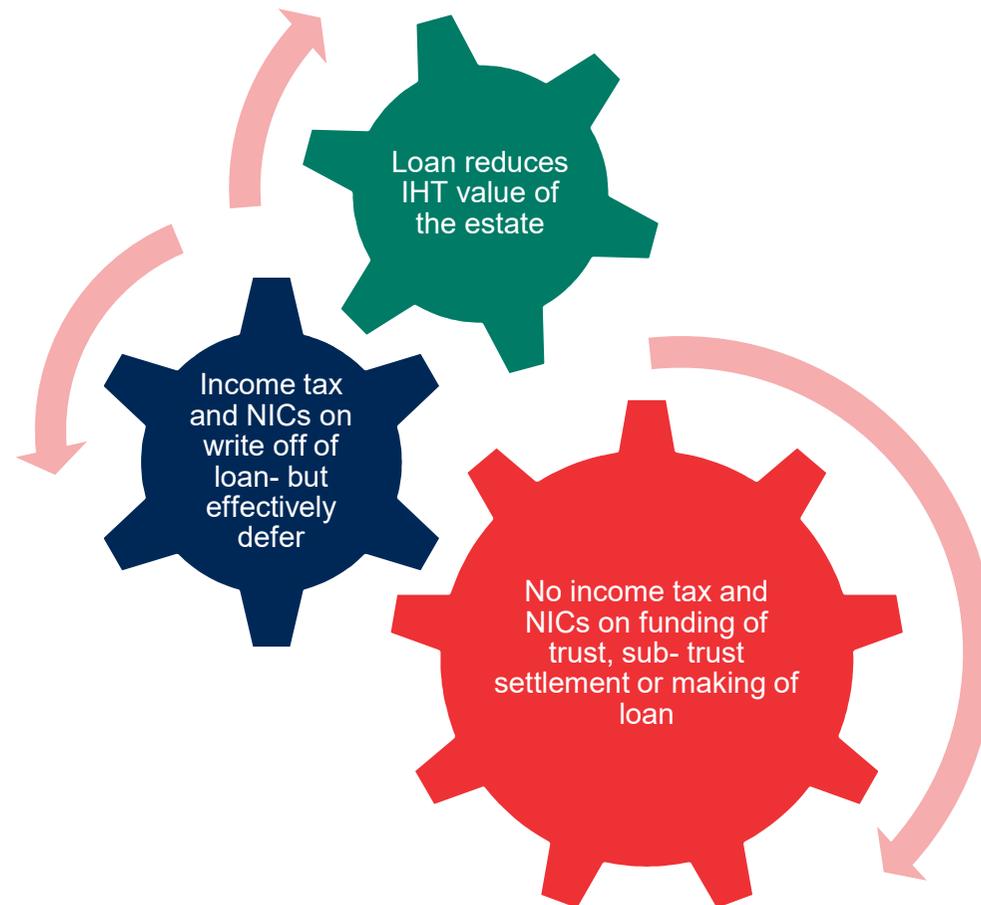
Historic Position

Pre 2010 Implementation



Loan schemes- historic position

Pre- 2010 Benefits

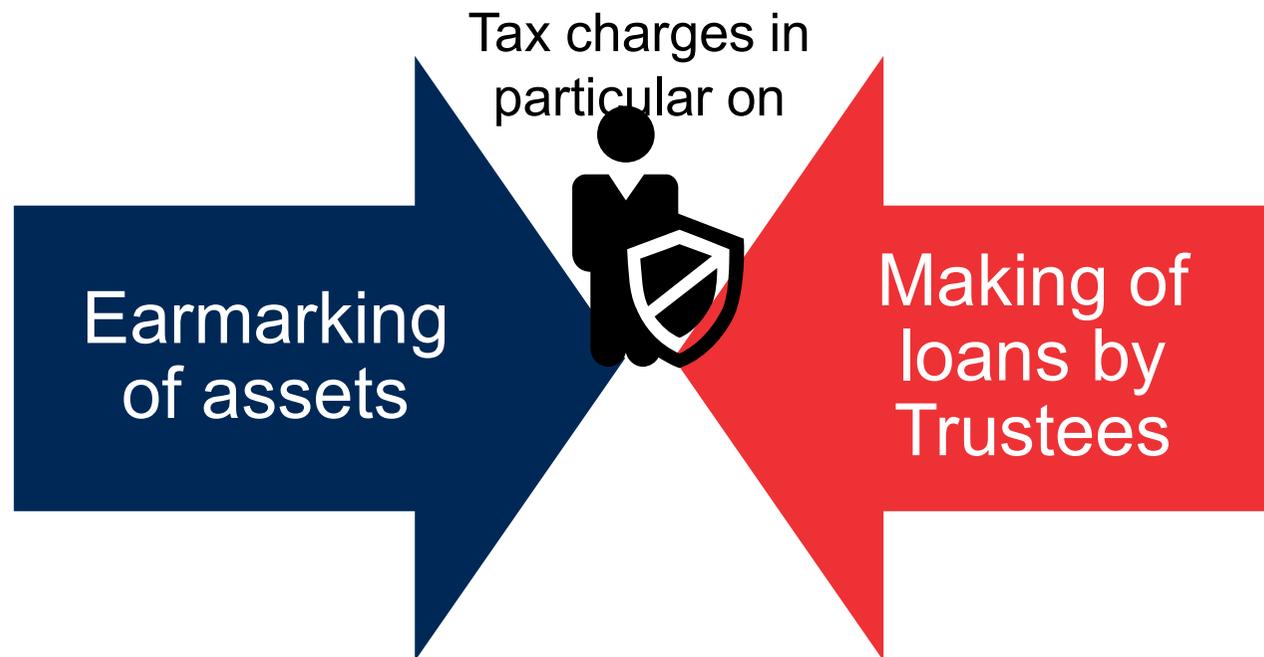


Loan Scheme Crack Down

Disguised Remuneration Legislation

Effectively outlawed new loan schemes from 2010

Made life more difficult with existing schemes



Loan scheme crackdown

HMRC Litigation

HMRC wins
Rangers case-
Supreme Court-
July 2017

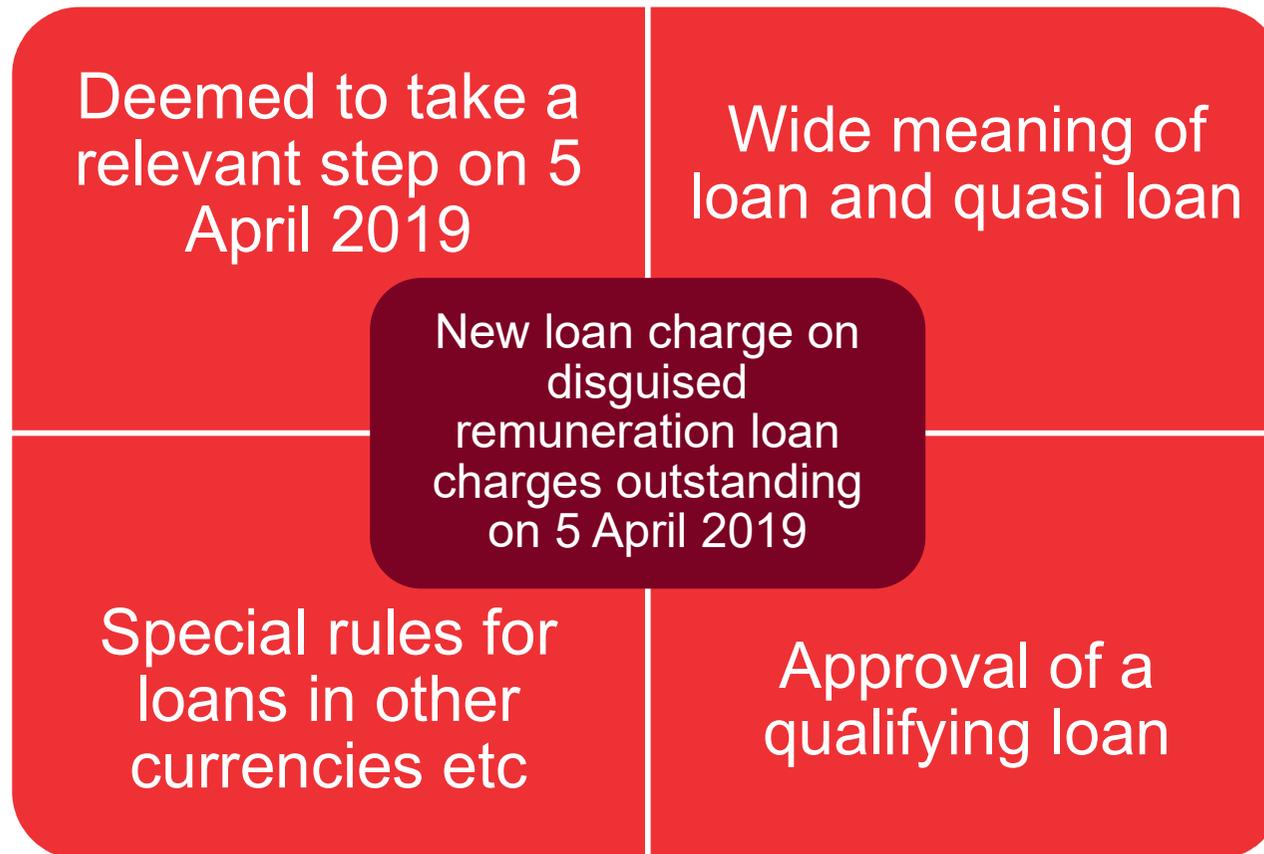
- see RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland)- [2017] UKSC 45

Supreme court
conclusion that
simple re-
direction of
earnings

- Leading case- other cases were stayed
- Follow on notices could be issued
- But some cases out of time?

Loan scheme crackdown

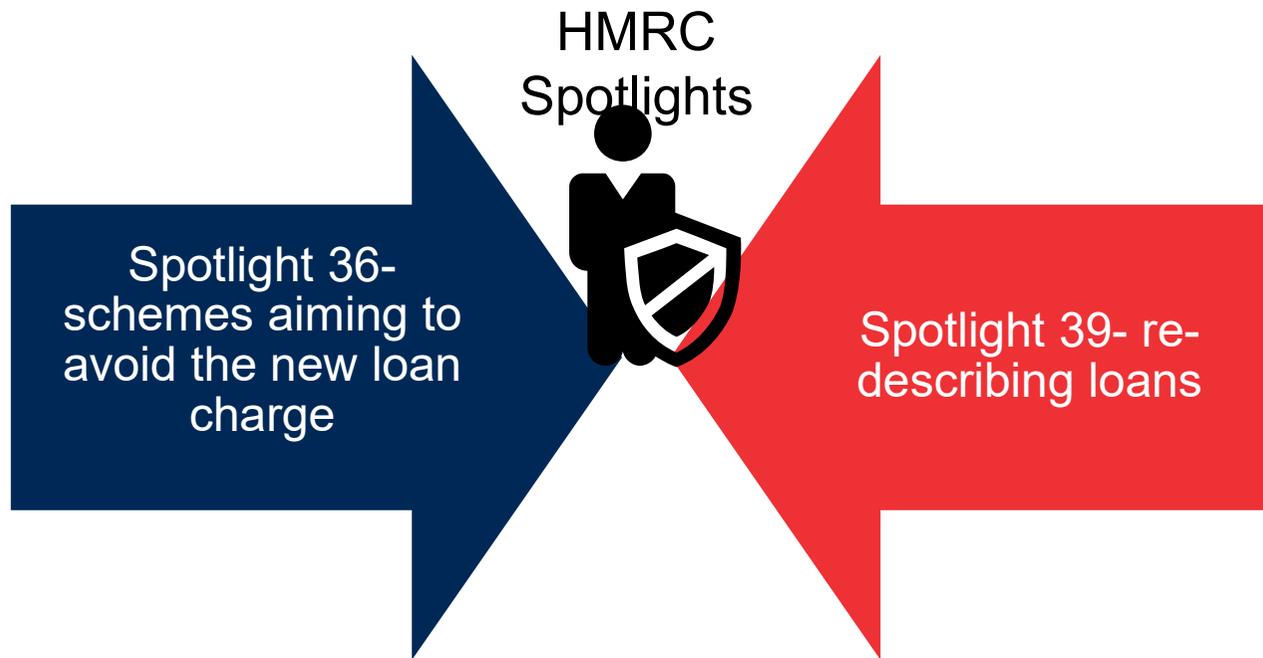
Finance (No.2) Act 2017- Schedule 11



Loan Scheme Crack Down

Finance (No. 2) Act 2017

HMRC is very hot in tackling avoidance schemes to new legislation





HMRC Settlement Opportunity

HMRC Settlement Opportunity

To settle or not to settle, that is the question!

Settlement opportunity guidance-
August 2012:
Withdrawn on 4 April 2017

Original

7 November 2017

Amended

Amended settlement
opportunity to 30
September 2018

**Still
Open?**

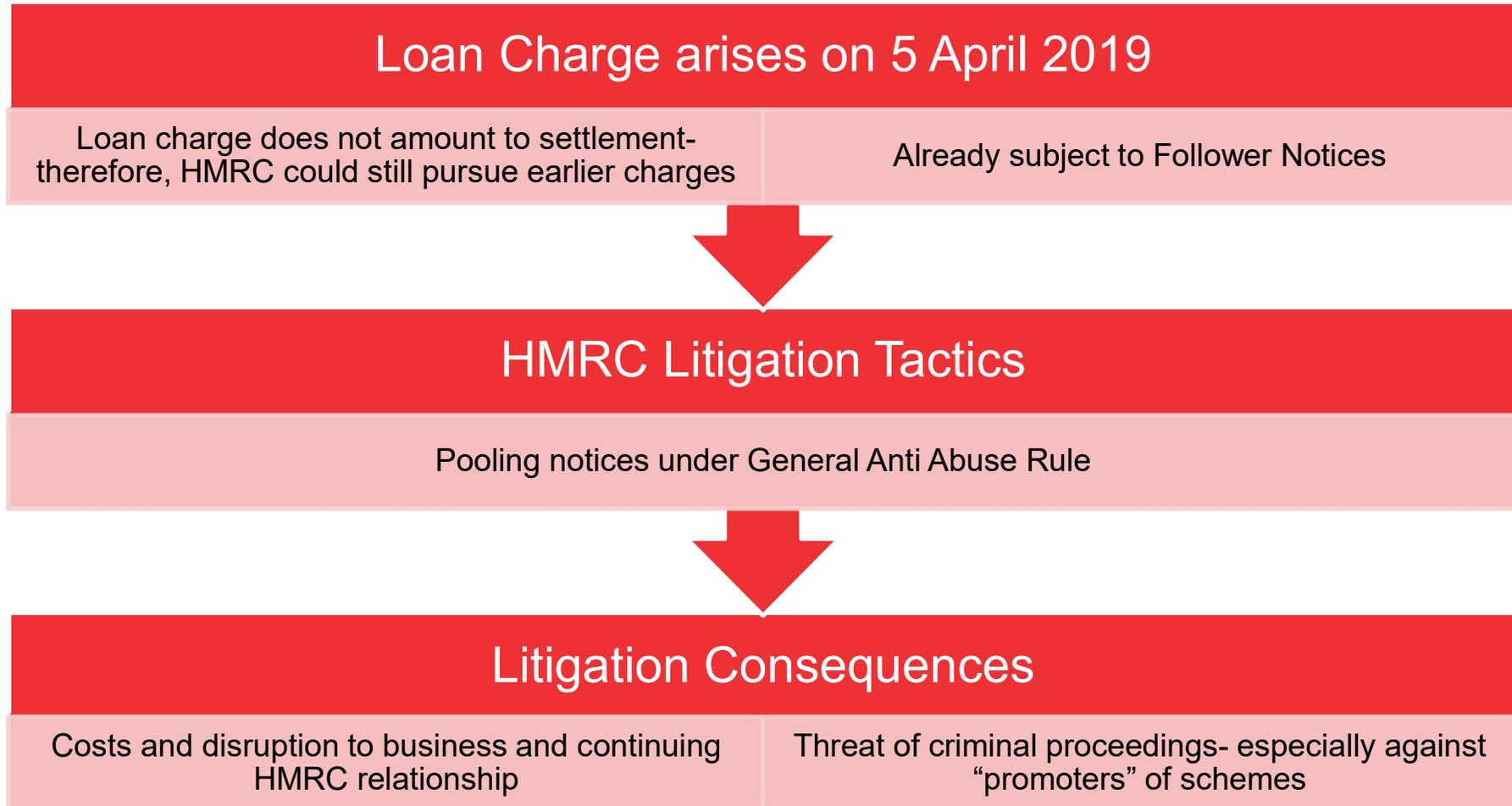
HMRC Settlement Opportunity

Snapshot: Key considerations and developments



HMRC Settlement Opportunity

HMRC Weapons





Trustee Considerations

Trustee Considerations

- In 2010, our case book had ~650 Sub Funds sat below 50 Corporate Settlers.
- 98% settled with HMRC.
- It is unlikely that the beneficiary is monitoring HMRC notifications in regard to tax deadlines.
- CCO, the Trustee has to ensure that its processes comply with the legislation.
- RTC legislation did not cover PAYE we as a Trustee did make declarations in regard to a number of our structures
- We understand that there are primarily four options for the beneficiary:
 - (1) Settle with HMRC now;
 - (2) Repay the loan in money to the Sub Fund;
 - (3) Pay the 2019 Loan Charge; or
 - (4) Consider insolvency process



Role of the Trustee

Education, Education, Education.....

Notify both the beneficiaries and the Settlor Companies in advance of the 5th of April deadline and subsequent deadlines.

Settlement, it's likely that companies will look to the trustees to help facilitate dialogue with beneficiaries;.

Repayment, beneficiaries have sufficient liquid assets to repay the loan in advance of the 5th April deadline, there remains a requirement to declare their participation in the DR scheme.

Distribution, Sub Fund have not reached the 10th anniversary and plan to recommend the full distribution of assets held and the settlement of the PAYE and NI due.

The Trustee has to act in the best interest of the beneficiary class and would have to consider whether to recall for the repayment of the loan and enforce insolvency proceedings.



Case Study 1

- Trust established in 2002
- Shares settled into the Trust from another EBT plus additional cash.
- 9 Sub Funds established over a period of 6 years
- HMRC Settlement Opportunity entered into negotiations as soon as possible.



Calculation of the Cost of Settlement

- Calculations were prepared using “tax on appointment” methodology
- Settlor Company was willing to pass on 100% of any corporation tax deduction
- The numbers were provided to beneficiaries.
- All of the beneficiaries agreed in principal to Settlement with the exception of one which felt:

“each beneficiary should pay the proportionate contribution that reflect his/her benefit from the P59 and that this entire process should be looked at as purchasing the P59 for beneficiaries divvy the contribution up on a basis that doesn’t disproportionately favor some whilst proportionately penalizing others, simply because of the chosen set of facts.”



What next for the Trustee?

- The Trustee sought legal advice.
- Settlement should be calculated on the basis of the value of the shares on the date of appointment to each of the sub-funds.
- Represented the income tax that would have been due had the shares and cash been awarded to the beneficiaries directly at that time.
- Considered the representations made, but were unable to apportion the settlement costs in any other way because by doing so they would be compromising their duty to the beneficiaries of the Trust as a whole.



The End Result

All beneficiaries agreed to HMRC Settlement on an “Appointment” basis.



Case Study 2

- Trust established in 1999
- Shares settled into the Trust plus additional cash.
- 24 Sub Funds established over a period of 4 years
- Settlor Company was dissolved
- Trustee entered into HMRC negotiations



Calculation of the Cost of Settlement

- Calculations were prepared using “tax on appointment” methodology
- HMRC agreed to pass on the Tax paid under 2008 Settlement
- The numbers were provided to beneficiaries where possible.
- All of the beneficiaries agreed in principal to Settlement
- One beneficiary offered to settle the liabilities of the missing beneficiary however HMRC stated:

“ the Trustee has no legal authority to make him party to an agreement of which he has no knowledge”.



The End Result

- All beneficiaries settled with the exception of 1
- The Trustee has continued to contact the remaining beneficiary to advise them of the loan charge
- Contact made in August 2018 and his accountant is now assisting him with his next steps.





Company Considerations

Company Considerations

Assessing The Position

Is current management aware of the loan arrangements?

Have the beneficiaries left or are they still employees?

What has been promised to the employees?

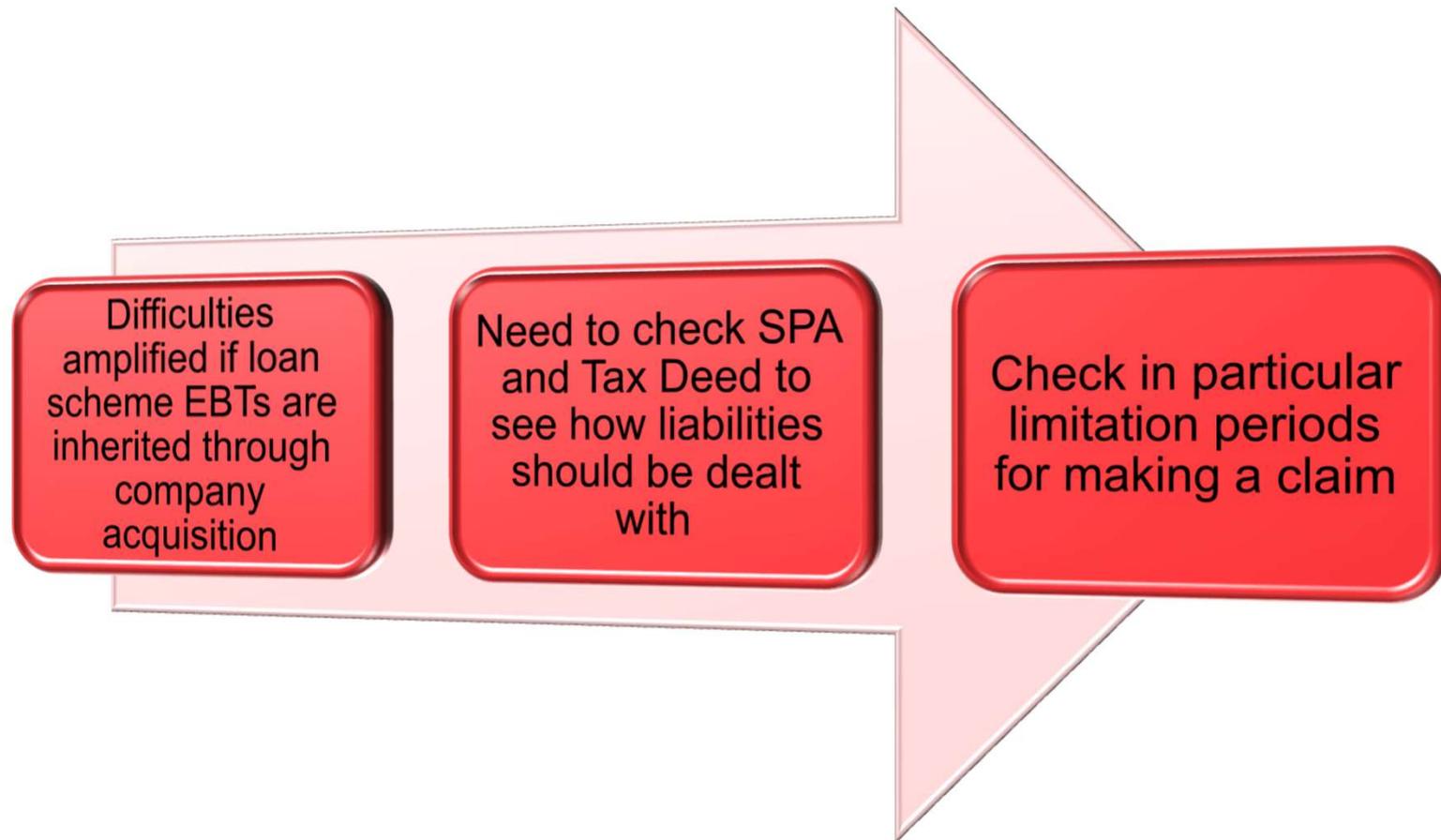
How valued are the employees in the current set up?

Difficulties and costs of dealing with a historic structure

Structure may be an embarrassment in current Compliance culture

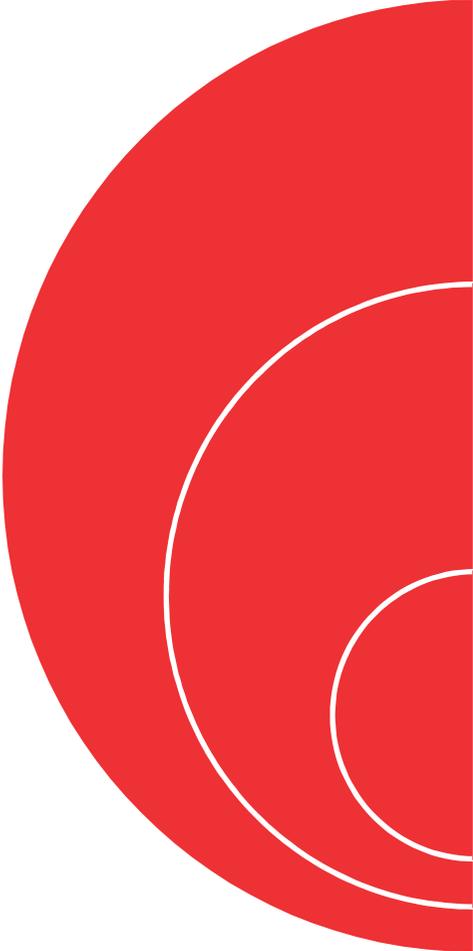
Company Considerations

Assessing The Position



Company Considerations

How far can Company re-claim amounts due from employees?



Review Trust Documentation to check ability to recover PAYE and NICs	<ul style="list-style-type: none">• Trust Deed• Other Documents
PAYE Regulations	<ul style="list-style-type: none">• General• Regulation 81 of PAYE Regulations
Restitutionary Rights	<ul style="list-style-type: none">• McCarthy V McCarthy & Stone• Interlink with other documentation

Company Considerations

HMRC Statements on PAYE

Non UK employer- limited
disapplication of section 689
ITEPA

HMRC intends to use
Regulation 81 to transfer
income tax liability
Employee not liable for Class 1
NICs

Dissolved Employer
Employee responsibility under
the Taxes Management Act
1970
Employee not liable for Class 1
NICs

Loan Charge Additional
Information
- Employees
- Employers



Discussion

Any Questions?

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