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Economic Affairs Committee

4th Report of Session 2019–21

New powers for HMRC: fair and proportionate?

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Select Committee on Economic Affairs Finance Bill Sub-Committee

The Economic Affairs Finance Bill Sub-Committee was appointed by the House of Lords in this session “to consider the draft Finance Bill 2021.”

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Declarations of interests

See Appendix 1.

A full list of Members’ interests can be found in the Register of Lords’ Interests:

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Q in footnotes refers to a question in oral evidence.

SUMMARY

In the draft Finance Bill 2021, the Government has set out legislation for new powers in a range of areas to combat tax avoidance and promote compliance. Our inquiry into the draft Bill focuses on the more notable of these proposals. We welcome some of the measures in the draft Bill, but we conclude that others need be revisited wholesale.

In relation to the specific proposals, our conclusions are as follows:

On the proposals for tackling promoters of mass-marketed tax avoidance schemes, we welcome the Government's intention to take further tough action against the known 'hard core' of promoters, but urge it to redouble its efforts in this respect, and to take further measures to combat the continued proliferation of new schemes. We also highlight the vulnerability of lower income taxpayers to these schemes, and their continued use by some employment intermediaries.

On proposals for amendments to HMRC's civil information powers, we are very concerned about the removal of important taxpayer safeguards for information requests, particularly the need to request permission from the tax tribunal. We believe the Government's reasoning behind these proposals is flawed and not supported by evidence. We call for the tribunal approval requirement to remain and for HMRC to undertake a full review of the information request process to find alternative ways in which it could be streamlined.

With regard to plans for notification of uncertain tax treatments, we note that the Government has now said that it will be undertaking a further consultation, delaying its introduction until 2022. We welcome this move: it was clear from our evidence that the plans were poorly thought out and difficult to understand and apply in practice. We are concerned that the Government only appears to have recognised that there were significant problems with the measure after committing to legislate in 2021. We also urge the Government to look again at the cost of compliance and to consider whether the measure should apply so widely.

On proposals for new tax checks for licence renewal applications, we are worried about a potential 'mission creep' in the proposals which risks them going beyond a simple check for tax registration, which was thought to be the original intention. If the introduction of the checks results in more traders becoming unlicensed so as to avoid them, this could pose risks to the public. We also note that 'conditionality' is an unproven principle: HMRC should thoroughly assess its effectiveness before extending this principle to other sectors.

We also came to a number of cross-cutting conclusions that apply to all of the proposals.

First, the Government needs to take more care to abide by basic policy principles when proposing new or extended powers for HMRC. Without following such principles, there is a risk that measures will be poorly targeted, ineffective and counterproductive.

Second, we believe that HMRC is still not making full and effective use of its existing powers, and should look to how these might be better used before considering new legislation. We are concerned that the Government has decided to initiate and extend the powers of HMRC before considering the outcome

of its evaluation of how HMRC uses its existing powers, which has yet to be published. We also call for HMRC to look more closely at how it might use non-legislative actions to deal with problems in this area before seeking further legislation.

Third, we are concerned that the Government does not always follow good practice for consultation when initiating new policy proposals, and that it should be more methodical and rigorous in consulting, so that plans are properly tested before they become draft legislation.

Fourth, some new Government proposals do not appear to have a strong or transparent evidence base, and this is particularly concerning when plans have been turned into draft legislation.

Fifth, we note that there is a pattern of new HMRC powers being disproportionate, poorly targeted and without sufficient safeguards. In some cases, expansive new powers are being granted to deal with problems that appear to be marginal and only affecting a small minority, increasing compliance costs for everyone. The Government should review its approach in this respect. Similarly, the Government appears to be too cavalier in removing safeguards over the use of HMRC's powers: internal procedures can never be a substitute for independent oversight.

Finally, there appears to be an increasing trend of HMRC outsourcing its compliance responsibilities—for example, in requiring licensing authorities to undertake tax checks. For any future outsourcing proposal, the Government must explain what the justification for it is, and why it cannot be done by HMRC.

New powers for HMRC: fair and proportionate?

CHAPTER 1: INTRODUCTION

1. The Finance Bill Sub-Committee is appointed by the Economic Affairs Committee to consider technical issues of tax administration, clarification and simplification arising from the draft Finance Bill. In recognition of the House of Commons' financial privileges, the Sub-Committee does not inquire into rates or incidence of tax.
2. This year our inquiry covered a number of measures provided for in the draft Finance Bill 2021,¹ published on 22 July 2020. We also considered a further measure the Government had said it would enact in the Finance Bill but has subsequently said will be delayed until 2022, pending further consultation. The measures are:
 - Tackling promoters of tax avoidance (including the related calls for evidence on raising standards in the tax advice market and disguised remuneration schemes);
 - Amendments to Her Majesty's Revenue and Customs (HMRC) civil information powers;
 - A new requirement on large businesses to notify HMRC of an uncertain tax treatment (now delayed until 2022); and
 - New tax checks on licence renewal applications.
3. Although these measures are generally standalone in their objectives, they each involve creating new powers for HMRC or expanding the scope of existing HMRC powers. In addition, they link to the steps being taken by HMRC to address what is commonly referred to as the 'tax gap'.
4. The Economic Affairs Committee usually publishes the report prepared by the Finance Bill Sub-Committee shortly before the Budget and publication of the Finance Bill itself. However, COVID-19 meant that the Budget planned for November 2020 was postponed, and so this year the report is being published at a time when the date of the Budget, and publication of the Finance Bill, is unknown.²
5. As in previous years, we took written and oral evidence from business organisations, tax professionals and individuals. We also heard evidence from HMRC officials and the Financial Secretary to the Treasury, Rt Hon Jesse Norman MP. We thank all who provided written and oral evidence. We would also like to thank our two specialist advisers, Robina Dyall and Sarah Squires, for their invaluable support and assistance throughout our inquiry.

1 The Bill was originally dated 2020–21, but has been redated to 2021 following the postponement of the Budget.

2 'Coronavirus: Autumn Budget to be scrapped this year', *BBC News*, 23 September 2020: <https://www.bbc.co.uk/news/business-54267795> [accessed 15 December 2020]

6. The Sub-Committee's findings on each of the proposed Finance Bill measures are in Chapters 3 to 6. In addition, in our inquiry into each of the proposed measures we identified several cross-cutting issues which we discuss in Chapter 7.

CHAPTER 2: A PRINCIPLED APPROACH TO POWERS

7. This report is about proposals in the draft Finance Bill which would confer on HMRC new or extended powers. In our 2018 report *The Powers of HMRC: Treating taxpayers fairly*,³ we commended the policy design principles adopted in the review Modernising Powers, Deterrents and Safeguards (commonly known as the Powers Review). We recommended that the Government recommit to these principles, with additions which we proposed in the report, and that they should be formally incorporated into the policy-making process.⁴
8. It remains important to have a clear set of principles by which to judge proposals for new HMRC powers, or for the extension of existing powers. For the purposes of this inquiry, the following principles are most relevant:
 - **A clear policy objective and justification:** the purpose of a proposal should be clearly explained and the need for any new or extended powers justified by reference to the problem they are intended to address—and why existing powers are insufficient. Good policy needs to be evidence-based;
 - **Simplicity:** the definition of the new power, and the laws or regulations which govern its use, should be easy to understand;
 - **Targeting:** a proposal should be closely targeted on the population of taxpayers it is intended to affect. If a proposal is directed only at a subset of those taxpayers, every effort should be made to restrict the effect of the legislation to that subset;
 - **Proportionality:** the effect of a proposal needs to be proportionate to the issue which it is intended to address;
 - **Safeguards:** there should be safeguards for taxpayers and others affected to provide a check on the use of HMRC's powers. These need to be independent of HMRC if they are to have credibility and maintain confidence in the fairness of the tax system. Safeguards should include rights of appeal whenever a new power is introduced or an existing power is extended—such rights are fundamental to the protection of taxpayers and the balance between taxpayer and tax authority; and
 - **Sanctions:** sanctions for non-compliance must be proportionate to the failure being punished and effective in deterring non-compliance.
9. In response to our 2018 report on HMRC powers, the Financial Secretary to the Treasury made a written ministerial statement on 22 July 2019.⁵ This included an announcement of the commissioning of a review by HMRC of its operation of powers and safeguards introduced from 2012 to 2018. This review should have reported earlier this year, but work on it was paused because of the COVID-19 pandemic. As a result, a report is not expected until the end of 2020.

3 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

4 *Ibid.*

5 HC Deb, 22 July 2019, [col 78WS](#)

10. The Government chose to proceed with proposals in the draft Finance Bill, which introduce new powers for HMRC or extend existing powers, before the report of its review was published. The report could have informed the decisions on and design of those powers. We put this point to the Financial Secretary to the Treasury. His response was:

“We are simply trying to improve our understanding of powers and safeguards as we go, and that work is already bearing fruit. We do not need to delay work that is already in progress in order to do that. In fact it would be wrong to delay things, because HMRC has a statutory duty to try to collect tax ... the evaluation goes to the implementation of powers rather than the passage of powers. The passage of powers is for Parliament, but our focus is on making sure they are appropriately and properly implemented.”⁶

11. In our 2018 report *The powers of HMRC: treating taxpayers fairly*,⁷ we said:

“Evaluating changes to HMRC powers enables review of their effectiveness, addresses unintended consequences, informs future policy developments and ensures the balance between HMRC powers and taxpayer rights is maintained. It is important to consider their cumulative impact.

“We recommend that all powers granted to HMRC since the conclusion of the Powers Review in 2012 should be evaluated, and those evaluations published.”

12. **We believe the Government should have awaited the outcome of its own review into the operation of its powers and safeguards before further powers were proposed for HMRC. The outcome of its review should have been used to inform and frame the draft Finance Bill proposals. Evaluation of what has gone before must always be a useful means to determine the best way forward.**

6 [Q 101](#) (Financial Secretary to the Treasury)

7 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

CHAPTER 3: TACKLING PROMOTERS OF MASS-MARKETED TAX AVOIDANCE SCHEMES

13. In our 2018 report on the evolution of HMRC powers, we highlighted the need for HMRC to take effective action against those engaged in the promotion of tax avoidance schemes.⁸ The same point was made by Sir Amyas Morse in the Independent Loan Charge Review (ILC Review),⁹ which was set up by the Government to examine the impact of the 2019 loan charge on affected taxpayers.¹⁰ The ILC Review, published in December 2019, referred to evidence of more than 20,000 new usages of loan schemes since the loan charge was announced in 2016 and that, in the first half of the 2019–2020 tax year alone, there were approximately 3,000 new users.¹¹ The ILC Review told the Government it must tackle promoters of disguised remuneration schemes.¹²
14. In response to the ILC Review, the Government confirmed its determination to continue to tackle promoters and announced it would introduce new measures intended to reduce the scope for promoters to market avoidance schemes.¹³
15. Further detail of the new measures was provided in March 2020. The Government confirmed that the relevant provisions would be in the Finance Bill 2020–21, and published the policy paper *Tackling promoters of mass-marketed tax avoidance schemes*, setting out its overall strategy for combatting the continued marketing of such schemes.¹⁴ As part of its “new promoters” strategy the Government issued two calls for evidence. One, on raising standards in the tax advice market, is discussed in Chapter 3. The other, on tackling disguised remuneration schemes, seeks input on options for possible future action by the Government to stop these schemes¹⁵ and is relevant to the issues discussed in this chapter.
16. Draft provisions for these measures was published in the draft Finance Bill in July 2020 accompanied by a Stage 2 consultation document in which the Government asked interested parties for feedback on whether the

8 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

9 Independent Loan Charge Review, *Report on the policy and its implementation* (December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf [accessed 15 December 2020]

10 Independent Loan Charge Review, *Terms of reference*: <https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review> [accessed 15 December 2020]

11 *Ibid.* See also Independent Loan Charge Review, *Summary of evidence to Independent Loan Charge Review* (23 April 2020): <https://www.gov.uk/government/publications/independent-loan-charge-review-summary-of-evidence> [accessed 15 December 2020]

12 Independent Loan Charge Review, *Report on the policy and its implementation* (December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf [accessed 15 December 2020]

13 HM Treasury, *Independent Loan Charge Review: Response to the Review* (December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_response.pdf [accessed 15 December 2020]

14 HMRC, *Tackling promoters of mass-marketed tax avoidance schemes* (19 March 2020): <https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes> [accessed 15 December 2020]

15 HMRC, ‘Call for evidence: Tackling disguised remuneration tax avoidance’, (21 July 2020): <https://www.gov.uk/government/consultations/call-for-evidence-tackling-disguised-remuneration-tax-avoidance> [accessed 15 December 2020]

measures are appropriately targeted.¹⁶ The outcome of that consultation is not yet known. However, on 12 November 2020 the Financial Secretary to the Treasury announced that, in 2021, the Government would consult on further measures designed to tackle promoters of tax avoidance that would build on the proposals in the draft Finance Bill.¹⁷

17. These further measures, which the Government says will include powers under which HMRC can shut down promoters who sidestep the existing rules, are outside the scope of this report.
18. **We welcome the Government’s continued focus on tackling promoters of tax avoidance schemes through the Finance Bill measures and the related calls for evidence. Aggressive tax avoidance is unfair on those taxpayers who follow the rules. However, it is critical that the Government takes effective action against the people who promote aggressive tax avoidance.**

Background

19. The measures in the draft Finance Bill mainly amend three legislative regimes designed to deter the marketing of tax avoidance schemes. These regimes are the Disclosure of Tax Avoidance Schemes rules (DOTAS), first enacted in 2003; the Promoters of Tax Avoidance Scheme rules (POTAS), introduced in 2014; and the enablers rules, which came into effect in November 2017.¹⁸ The consultation document¹⁹ includes a summary of how these regimes generally operate and the issues that HMRC has faced in applying them to promoters. It details the amendments proposed to these regimes that the Government says should enable HMRC to deal more effectively with those promoters who frustrate HMRC’s attempts to apply the regimes to them.
20. HMRC highlights three particular areas of difficulty in applying the existing rules to promoters. First, some promoters are failing to provide details of the schemes they promote under DOTAS, which means that HMRC itself has to find out about those schemes to be able to take action. Second, where HMRC takes action, the safeguards—including the right of appeal to a tax tribunal—that were properly built in to these regimes can be used by promoters to delay that action having effect (potentially for several years given the time involved in bringing a tribunal case), during which time promoters can continue to sell their schemes to users. Finally, as and when action can be taken by HMRC, some promoters will then close down their business, but then start a new business to resume their activities, meaning that HMRC has to start again as and when that new entity comes onto its radar.
21. The measures the Government proposes are intended to deal with all three areas of concern. An overview of the existing regimes and the proposed changes is in Box 1.

16 HMRC, ‘Tackling Promoters of Tax Avoidance’, (21 July 2020): <https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance> [accessed 15 December 2020]

17 HC Deb, 12 November 2020, [col 44WS](#)

18 The Finance Bill also includes amendments to the UK’s general anti-abuse rule (the GAAR) relating to the steps taken once a scheme has been entered into by a partnership.

19 HMRC, *Tackling Promoters of Tax Avoidance Consultation* (21 July 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902352/Tackling_Promoters_of_Tax_Avoidance_-_consultation.pdf [accessed 15 December 2020]

Box 1: Disclosure, promoters and enablers of tax avoidance schemes

Disclosure of tax avoidance schemes (DOTAS)

Under the existing DOTAS rules, a promoter of a tax avoidance scheme is generally required to provide information about the scheme to HMRC who will issue a scheme reference number (SRN). Users of the scheme are required to include the SRN in their tax return.

A number of promoters have failed to notify HMRC of schemes. Under existing rules, HMRC can apply to the tax tribunal for an SRN to be issued if this is the case. HMRC says that this is a lengthy process during which a promoter can continue to market its scheme. The draft Finance Bill measures are intended to help shorten that period, enabling HMRC to issue SRNs earlier.

Promoters of tax avoidance schemes (POTAS)

Under the POTAS rules, HMRC may impose conditions on the activities of a promoter. In addition, once a tax avoidance scheme has been defeated by HMRC, HMRC can issue a stop notice which tells a promoter to stop selling it.

The draft Finance Bill provisions are intended to counter the behaviour of some promoters who, as a notice is about to be issued, close down the relevant business, before starting again in a new company. This 'phoenixism' has made it difficult to apply the POTAS rules effectively. The changes should allow HMRC to apply POTAS to companies controlled by the same person as if they were effectively 'one' company.

Enablers of tax avoidance schemes

The enablers rules apply to anyone involved in the tax avoidance supply chain whose role can be said to 'enable' the use of a tax avoidance scheme (whether by promoting or helping design the scheme or being involved in its implementation). Once HMRC have successfully defeated the scheme, an enabler can be charged a penalty of an amount equal to the fees received for 'enabling'.

The changes proposed to the enablers rules allows HMRC to bring action under these rules, both to obtain information about schemes and to impose penalties at an earlier stage (in particular it will be able to take action without having to wait for all users of a scheme to be defeated).

22. Being able to act more quickly and reduce the number of people caught up in schemes is clearly desirable in principle. However, this means managing the risk of acting too quickly to avoid action being taken against the wrong people. There is therefore a need for appropriate checks and balances. The Government clearly faces difficulties in identifying a proportionate response to the issues HMRC has faced to date.
23. **Although the loan charge is outside the scope of this inquiry, the evidence we received in 2018 suggested that HMRC has spent considerable time and resources focusing on individuals who participated in disguised remuneration schemes, while some of those who promoted such schemes have continued to be able to profit from their activities. We question whether HMRC has struck the right balance between focusing on individuals who used these schemes and the promoters of such schemes. HMRC must prioritise taking effective action against promoters.**

24. **We accept that HMRC has faced some significant challenges in applying the existing rules, given the steps taken by promoters to frustrate their efforts. We are, however, concerned that it is only now that HMRC is proposing changes we are told are needed to ensure existing rules apply effectively. Nevertheless, we welcome the action being taken by HMRC to rethink its approach to promoters in light of its experience.**

The tax avoidance marketplace

25. HMRC has said that the main types of avoidance scheme currently being promoted are disguised remuneration schemes²⁰ which (if effective) would lead to avoidance of income tax and National Insurance Contributions.²¹ Some examples of disguised remuneration schemes, taken from HMRC's *Spotlights*, are set out in Box 2. Although the Government has not published a figure for the tax gap attributable to such schemes, it has said that around £0.6 billion of the estimated tax gap for tax year 2018/19 was attributable to income tax, national insurance contributions and capital gains tax.²² As we said in our 2018 report into HMRC's powers, disguised remuneration schemes are an example of unacceptable tax avoidance.²³
26. HMRC says that it is aware that 20 promoters have left the market in recent years as a result of the measures in place, particularly POTAS. This is clearly a welcome development, and our witnesses told us that credit should be given to HMRC for its work in reducing the tax avoidance tax gap.²⁴ However, HMRC acknowledges that there are still a number of promoters active in the UK market²⁵—it estimates 20–30 promoters—and, between April 2019 and May 2020, it identified 45 schemes in circulation.²⁶ Based on the Government's evidence to the ILC Review, it appears that a not insignificant proportion of users of those schemes are joining schemes for the first time.²⁷

20 HMRC defines disguised remuneration schemes as contrived arrangements that pay people amounts that purport to be non-taxable in place of salary, with such amounts being described as a loan, an advance, shares or an annuity.

21 HMRC, 'Call for evidence: Tackling disguised remuneration tax avoidance', (21 July 2020): <https://www.gov.uk/government/consultations/call-for-evidence-tackling-disguised-remuneration-tax-avoidance> [accessed 15 December 2020]

22 HMRC, *Measuring Tax Gaps (2020 edition)* (9 July 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907122/Measuring_tax_gaps_2020_edition.pdf [accessed 15 December 2020]

23 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

24 Q 2 (Frank Haskew, ICAEW) and Q 12 (Yvonne Evans, Law Society of Scotland)

25 HMRC, *Tackling promoters of mass-marketed tax avoidance schemes* (23 March 2020): <https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes> [accessed 15 December 2020]

26 HMRC, 'Call for evidence: Tackling disguised remuneration tax avoidance', (21 July 2020) <https://www.gov.uk/government/consultations/call-for-evidence-tackling-disguised-remuneration-tax-avoidance> [accessed 15 December 2020]

27 Independent Loan Charge Review, *Report on the policy and its implementation* (December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf [accessed 15 December 2020]. In its evidence to the Review, HMRC said it had identified 12 new disguised remuneration schemes since April 2019 that had been used by 8,000 individuals of which 3,000 were new users.

27. HMRC's evidence to the ILC Review describes how the tax avoidance market has changed in recent years.²⁸ Its evidence also says that the market has moved towards targeting a higher volume of less affluent users.²⁹ Our witnesses told a similar story.³⁰ For example, the Low Incomes Tax Reform Group (LITRG) told us that, although some users of disguised remuneration schemes are still "voluntary adopters", others "are often completely unaware that they are in any kind of scheme or, if they are, they have been convinced it is legitimate".³¹ This accords with evidence submitted by individuals affected by the loan charge in connection with our 2018 inquiry, where we found that some of those who had engaged in such schemes did so at the direction of their employer, and without being given an opportunity to enter into a more normal employment contract.³²
28. LITRG also told us that, at the lower income end of the market, these schemes still proliferate, often driven by employers seeking to avoid PAYE obligations and employer national insurance contributions.³³ Where individuals on lower incomes, who are taxed at the basic rate of income tax, end up in such a scheme, Tax Watch told us that they are unlikely to receive any financial benefit once the promoter has taken its fees: the saving in such cases instead falls to the employer, often a form of umbrella company.³⁴ When the scheme is successfully challenged, HMRC told us it "will always seek to recover the tax from the employer wherever we can" when it is the employer that put their employee into the scheme. It added, however, that if the employer disappeared, then it would "need to pursue the tax" from the employee.³⁵
29. Numerous schemes continue to be openly advertised online.³⁶ The opportunism and audacity of some of these promoters is perhaps best illustrated by their recent targeting of staff returning to the NHS to assist in its response to the pandemic with a scheme that HMRC set out in Spotlight 54.³⁷ Although some witnesses described these promoters as being under the radar,³⁸ the need to market schemes and build business means "it [is] depressingly easy to find these companies".³⁹ For example, Tax Watch found a scheme (and its promoter) after a 3-minute "secret shopper" internet search. It seems that, in any event, these promoters are not necessarily under

28 The Government sets out further information on the tax avoidance market place in HMRC, *Use of marketed tax avoidance schemes in the UK* (November 2020): <https://www.gov.uk/government/publications/use-of-marketed-tax-avoidance-schemes-in-the-uk/use-of-marketed-tax-avoidance-schemes-in-the-uk> [accessed 15 December 2020].

29 Independent Loan Charge Review, *Report on the policy and its implementation* (December 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf [accessed 15 December 2020]

30 Q 2 (Susan Cattel, ICAS) and Q 45 (Tom Henderson, LITRG)

31 Q 45 (Tom Henderson, LITRG); see also written evidence from Tax Watch (DFE0013).

32 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

33 Q 45 (Tom Henderson, LITRG). The LITRG's response to HMRC's call for evidence on Tackling Disguised Remuneration includes an example of the anticipated scheme benefits to umbrella company and taxpayer.

34 Written evidence from Tax Watch (DFE0013)

35 Q 102 (Mary Aiston, HMRC)

36 Written evidence from Loan Charge Action Group (DFE0028) and Loan Charge All-Party Parliamentary Action Group (DFE0029)

37 HMRC, 'Tax avoidance promoters targeting returning NHS workers (Spotlight 54)', (30 March 2020): <https://www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54> [accessed 15 December 2020]

38 Q 2 (Frank Haskew, ICAEW); Q 2 (Richard Wild, CIOT) and written evidence from ICAS (DFE0008)

39 Q 80 (George Turner, Tax Watch)

HMRC’s radar: the Financial Secretary to the Treasury had “no doubt” that HMRC was fully aware of who many of these promoters were.⁴⁰

Box 2: Examples of disguised remuneration schemes

The following examples of disguised remuneration scheme are based on particular schemes publicised by HMRC in its *Spotlights*: HMRC’s view is that these schemes do not work, in that all payments received by the worker are taxed as salary.

Disguised remuneration scheme involving a loan to the employee

An employer pays the worker the national minimum wage. Under a separate arrangement, the employer makes a payment of £10,000 to an offshore trust set up for the benefit of the worker and their family (an employee benefit trust). The trustees, who are independent of the employer, have discretion in relation to using the payment received from the employer to benefit the worker. The worker asks to borrow money from the trust and the trustees decide to lend £7,500. The loan is repayable on demand—and if not demanded, on the death of the worker. The worker receives the national minimum wage plus the cash amount lent under the loan. The employer says that the loan by the third party trustees is not taxable as salary.

Disguised remuneration scheme involving a loan then repaid with betting winnings

A worker becomes employed by an umbrella company, through which they provide services to company A. The umbrella company receives £10,000 from company A, but only pays the worker the national minimum wage. It also makes a payment to an employee benefit trust set up for the benefit of the worker. The trustees lend the worker £7,500, repayable on demand. The worker then enters into a ‘bet’ with the trustees which the worker is very likely to win. The worker wins £7,500 under the bet, and asks the trust to use the winnings to repay the loan: the end result is that the worker receives £15,000 (through the loan and winnings) but pays out £7,500 (winnings to repay the loan), and so ends up with a net £7,500 in addition to the national minimum wage. The umbrella company says the cash winnings used to repay the loan are not taxable as salary.⁴¹

Disguised remuneration scheme involving loyalty rewards which are ‘cashed in’

A worker is employed by an umbrella company and receives the national minimum wage. The umbrella also agrees to advertise the worker’s services on a job board operated by a third party—and the third party awards ‘loyalty points’ to the worker for allowing their details to be on that board. After a certain time, the worker ‘cashes in’ their loyalty points. The worker ends up receiving the national minimum wage from the umbrella company plus the cash for the loyalty points. The umbrella company says that the ‘cashing in’ of the loyalty points by the worker is not taxable as salary.⁴²

40 [Q 105](#) (Financial Secretary to the Treasury)

41 HMRC, ‘Disguised remuneration: schemes claiming to avoid the new loan charge (Spotlight 36)’, (February 2017): <https://www.gov.uk/guidance/disguised-remuneration-schemes-claiming-to-avoid-the-new-loan-charge-spotlight-36> [accessed 15 December 2020]

42 HMRC, ‘Disguised remuneration: job board avoidance scheme (Spotlight 37)’, (March 2017): <https://www.gov.uk/guidance/disguised-remuneration-job-board-avoidance-scheme-spotlight-37> [accessed 15 December 2020]

30. During our 2018 inquiry we received a significant amount of written evidence from individuals affected by the loan charge, a specific measure brought in to combat a particular type of disguised remuneration scheme. At that time, we expressed concern that HMRC appeared to be prioritising recovery of tax from individual users over taking action against promoters.⁴³ We received further evidence on this subject during our current inquiry,⁴⁴ highlighting the continuing need for Government to tackle—and be seen to tackle—promoters of such schemes.
31. The Financial Secretary to the Treasury assured us the Government was committed to driving these promoters out of business, and told us that the reduction in the avoidance tax gap was due to effective action that HMRC had taken against promoters to date.⁴⁵ Describing their activities as “vicious and wrong in every way”, he said that the Government would not hold back from further measures where needed to “bring promoters to justice”.⁴⁶ He told us that: “People have to feel that you are not just going after people who owe tax but going after the promoters and the enablers who may be trapping them”.⁴⁷ We also heard that, if those who promote these schemes are seen as getting away scot-free, confidence in the integrity of the tax system is damaged.⁴⁸
32. **The evidence received in our 2018 inquiry concerning the loan charge showed how individuals can become involved in disguised remuneration schemes without being aware of their true nature—and the harm and distress, both financial and emotional, that then results where the scheme is challenged. We are troubled that these types of scheme continue to proliferate, and that many of those people unwittingly caught in these schemes are on lower incomes. The continued sale and marketing of disguised remuneration schemes, most recently to returning NHS workers earlier this year, shows the need for the Government to act more effectively, using the full range of measures at its disposal, if it is to be able to close these schemes down.**
33. **As was the case with the loan charge, it seems that the involvement of some individuals in these schemes is at the instigation of their employer, and solely for their employer’s benefit. The Government should prioritise action against such employers, to stop the growth in lower paid workers at risk of being targeted by scheme promoters. HMRC also needs to learn from the loan charge experience and do more to protect individual taxpayers, particularly those on lower incomes, from being unwittingly caught up in such schemes.**

HMRC’s use of existing measures

34. Our witnesses were generally supportive of the action the Government has taken against promoters.⁴⁹

43 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

44 [Q 45](#) (Will Silsby, ATT) and written evidence from Mr Martin ([DFE0012](#))

45 [Q 104](#) (Financial Secretary to the Treasury)

46 [Q 107](#), [Q 108](#) (Financial Secretary to the Treasury)

47 [Q 104](#) (Financial Secretary to the Treasury)

48 [Q 45](#) (Will Silsby, ATT) and written evidence from Mr Martin ([DFE0012](#))

49 For example, written evidence from Tax Watch ([DFE0013](#)), the Chartered Institute of Taxation (CIOT) ([DFE0017](#)) and [Q 12](#) (Yvonne Evans, Law Society of Scotland).

35. Looking at the specific regimes with which the draft Finance Bill is concerned, we note that HMRC reports a significant reduction in the number of schemes reported under DOTAS in recent years, although it acknowledges that in some cases promoters are failing to notify schemes.⁵⁰ In relation to POTAS, which allows HMRC to issue various notices to identified promoters, HMRC says that no monitoring notices have been issued (and only a handful of conduct notices have) but we were cautioned that this does not necessarily mean the rules were ineffective—as one witness put it, “in some cases, the mere existence of the power puts people off”.⁵¹ HMRC has said that the enablers legislation is having an impact, even though no penalties have been charged; as the legislation is still very new, further time is needed before conditions for penalties are met in particular cases.⁵²
36. Some witnesses suggested that more time be given to seeing how some of its more recent existing powers “settled down”⁵³ before HMRC added more powers to its armoury, or at least that HMRC should await the outcome of the powers implementation evaluation review. However, there was recognition that, as one witness put it, HMRC is engaged in a “game of cat and mouse”⁵⁴ with promoters who appear to be able to sidestep or otherwise frustrate HMRC’s efforts under the existing rules, whether in the ways set out in the consultation document or by moving offshore, which makes tackling them more difficult.⁵⁵ Criticism of HMRC’s effectiveness by witnesses tended to be directed at its perceived failure to bring criminal proceedings or to use non-legislative measures in this area (both of which we comment on below), rather than how it used its powers under these three regimes.
37. Though HMRC reports that its existing measures are effective in persuading promoters and those that help them to leave the market, witnesses told us that the remaining hard core is an “exceptionally difficult nut to crack”.⁵⁶
38. **We are disappointed that, notwithstanding the various powers HMRC has accumulated in recent years, a number of promoters—the so-called ‘hard core’—remain in business, despite HMRC knowing who these promoters are. Action against this remaining core of promoters must be a priority.**

Scope of the new measures

39. The Government has stated that, although the new powers provided to HMRC in the draft Finance Bill are far-reaching, they are not aimed at tax advisers who adhere to high professional standards.⁵⁷ The consultation

50 HMRC, *Tackling promoters of mass-marketed tax avoidance schemes* (19 March 2020): <https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes> [accessed 15 December 2020]

51 [Q 4](#) (Susan Cattell, ICAS). HMRC says that the introduction of POTAS was itself sufficient to persuade some promoters out of the market.

52 HMRC, *Independent Loan Charge Review summary of evidence*, 23 April 2020: <https://www.gov.uk/government/publications/independent-loan-charge-review-summary-of-evidence> [accessed 15 December 2020]

53 [Q 4](#) (Susan Cattell, ICAS)

54 [Q 2](#) (Richard Wild, CIOT)

55 Written evidence Anonymous 2 ([DFE0032](#)) and the Institute of Chartered Accountants in England and Wales (ICAEW) ([DFE0022](#))

56 [Q 2](#) (Frank Haskew, ICAEW)

57 HMRC, ‘Tackling promoters of tax avoidance’ (21 July 2020): <https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance> [accessed 15 December 2020]

document asked for stakeholder feedback on whether the measures were, as the Government considered, appropriately targeted.

40. Our witnesses included representatives of professional bodies who responded to the consultation. Although they were reassured by the public statements that their members were not the target of these measures,⁵⁸ they were concerned about how the rules were drafted. Fiona Fernie of the Tax Investigations Practitioners Group (TIPG) told us:

“Although the proposals strengthen the Revenue’s powers to deal with promoters, they also strengthen its ability to deal with a lot of people, because they are so widely drafted”.⁵⁹

41. This was echoed by the Law Society of England & Wales, which saw a risk that the rules could capture “an awful lot of advisers who are advising in the mainstream”⁶⁰ and asked if HMRC could use its knowledge of the remaining promoters to target the rules more effectively.⁶¹ The Institute of Chartered Accountants in England and Wales (ICAEW) asked whether “good” advisers could be excluded.⁶²
42. There were concerns that HMRC had lowered the bar significantly for some of the measures, basing them on “suspicion” of particular conduct. Will Silsby of ATT thought that, as an ex-HMRC inspector, this was “not so much a question of lowering the bar as removing it completely” given that suspicion was part of the job.⁶³ We were told that, given the degree of subjectivity involved, it was important that appropriate governance and safeguards were put in place to ensure that use of these powers was limited to achieving the Government’s stated policy objectives.⁶⁴
43. A number of witnesses⁶⁵ told us of their concern that a breach of DAC6, the new cross-EU tax disclosure regime, had been included as a trigger for HMRC being able to take action under POTAS; the Chartered Institute of Taxation (CIOT) referred to “previous assurances from HMRC that DAC6 compliance would not creep into other regimes”.⁶⁶ DAC6 was described as a “very difficult piece of legislation ... with traps for the unwary”, and capable of applying to commercial arrangements where there is no tax avoidance.⁶⁷
44. In the consultation on changes to the enablers rules, HMRC raised the possibility of making the new penalty regime retrospective to when the rules originally came in (November 2017) on the basis that “where there are clearly abusive tax arrangements which have been enabled ... there is a case for saying that issuing penalties to the enablers who sold the scheme should not be delayed”.⁶⁸ The Financial Secretary to the Treasury told us that the

58 [Q 4](#) (Richard Wild, CIOT)

59 [Q 12](#) (Fiona Fernie, TIPG)

60 [Q 12](#) (Lydia Challen, Law Society of England & Wales)

61 Written evidence from the Law Society of England & Wales ([DFE0019](#))

62 Written evidence from ICAEW ([DFE0022](#))

63 [Q 46](#) (Will Silsby, ATT)

64 Written evidence from Anonymous 2 ([DFE0032](#))

65 Written evidence from ICAS ([DFE0008](#)), CIOT ([DFE0017](#)), Law Society of England & Wales ([DFE0019](#)), ICAEW ([DFE0022](#)), the Law Society of Scotland ([DFE0025](#))

66 Written evidence from CIOT ([DFE0017](#))

67 [Q 15](#) (Lydia Challen, Law Society of England & Wales)

68 HMRC, *Tackling Promoters of Tax Avoidance Consultation* (July 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902352/Tackling_Promoters_of_Tax_Avoidance_-_consultation.pdf [accessed 15 December 2020]

Government took retrospection “very seriously” and so had consulted on this measure, receiving useful feedback.⁶⁹ The professional bodies who gave evidence to the inquiry did not consider that the case for retrospection had been made,⁷⁰ noting the “high bar” that applied to justify retrospective legislation.⁷¹

45. **We agree that HMRC needs to ensure that the new measures cannot be gamed by promoters trying to argue that they are not within scope. However, these new HMRC powers must also reflect the design principles established by the 2012 Powers Review and, in particular, need to be appropriately targeted at the few they are intended to affect.**
46. **We recommend HMRC revisits the triggers for POTAS to minimise the risk of these rules affecting bona fide professional advisers. Specifically, we question whether DAC6 should be a trigger for a POTAS, particularly given the assurances HMRC appears to have given stakeholders that DAC6 would not feed into other areas of the UK tax code.**
47. **Retrospective legislation should only be introduced in exceptional circumstances, and the case for doing so must be clearly made. Although we acknowledge our witnesses’ concerns about the proposed retrospective changes to the enablers rules, we consider that, in this case, retrospective action is justified; a robust response is important in demonstrating HMRC’s willingness to tackle promoters effectively. In taking any such action, HMRC must apply symmetry to taxpayers and promoters; neither should be pursued for actions before HMRC found they were illegitimate, but both should be held accountable for their actions after that point.**

Likely effectiveness of the new measures

48. The Financial Secretary to the Treasury told us that the Government is looking to solve the ongoing operation of promoters “by every legal and administrative means we can” in order to “drive these people out of business”.⁷² The new measures are designed to give HMRC new powers with which to do this. Mary Aiston, Director of counter-avoidance in HMRC’s Customer Compliance Group, told us that the measures reflect HMRC’s determination to be as effective as possible in tackling promoters, disrupting their business and getting to them more quickly.⁷³
49. In many cases, the measures are a response to specific promoter behaviours employed to prevent or defer action being taken by HMRC under the existing rules, often based on the safeguards provided for in existing legislation.

69 [Q 104](#) (Financial Secretary to the Treasury)

70 For example, [Q 10](#) (Richard Wild, CIOT), (Frank Haskew, ICAEW), (Susan Cattell, ICAS), and written evidence from Law Society of England & Wales ([DFE0019](#)).

71 Written evidence from CIOT ([DFE0017](#)) and Law Society of England & Wales ([DFE0019](#)). The Protocol on unscheduled announcements on tax law states that changes to tax legislation that take effect from a date earlier than the date of announcement will be wholly exceptional: see HM Treasury/HMRC, *Tackling Tax Avoidance* (March 2011): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/197112/Tackling_tax_avoidance.pdf [accessed 15 December 2020]

72 [Q 105](#), [Q 108](#) (Financial Secretary to the Treasury)

73 [Q 100](#) (Mary Aiston, HMRC)

50. To try to tackle the problem, the draft Finance Bill measures concern these legal processes and safeguards available under the regimes. Richard Wild of CIOT told us, for example, that the changes to POTAS should mean “that HMRC can actually apply the measures it wanted to apply when they were introduced back in 2014”.⁷⁴
51. Witnesses were clear that no one measure by itself would have much impact; the new measures needed to be considered cumulatively.⁷⁵ Even then, witnesses were unsure whether proposed changes would have a material effect on those promoters still active in the UK;⁷⁶ we were told that measures “could” make life sufficiently more difficult so that some promoters would leave the market.⁷⁷ The Law Society of England & Wales warned of the risk of promoters continuing to try to circumvent these regimes given that they appeared to operate at the “margins of legality” in any event.⁷⁸ Fiona Fernie of TIPG considered that the number of promoters “might go down to 15 to 25 instead of 20 to 30”,⁷⁹ whilst the Association of Taxation Technicians (ATT) said that, unless something radical was done, there will always be promoters:
- “It is unsurprising, of course, that those whose business is to find ways around the legislation can also find ways around anti-promoter legislation.”⁸⁰
52. Witnesses had differing views on which of the measures were most likely to help in combating avoidance schemes. One witness highlighted the changes to the DOTAS rules that should make it easier for HMRC to issue SRNs where it identified a scheme.⁸¹ Another described changes to the POTAS rules to allow HMRC to look beyond a particular company to the people who control it as helpful in combating ‘phoenixism’ (where, in response to HMRC action, a promoter closes down one business and then starts again with a new company).⁸² Others singled out measures designed to allow HMRC to intervene earlier in the life cycle of an avoidance scheme, by issuing a stop notice under POTAS or publishing the ‘name’ of a scheme (and its promoter), in order to try to “stop the schemes before they get out of hand”,⁸³ as useful weapons to add to its armoury.
53. **Although the evidence we heard suggests the proposed measures to target promoters are worth pursuing, we are unconvinced that they will be sufficient to drive the hard core out of business. The Government should continue to look for new approaches to tackling promoters.**
54. **The Government should keep the efficacy of measures under review, and not hesitate to respond swiftly if there is evidence that the hard**

74 [Q 2](#) (Richard Wild, CIOT)

75 [Q 2](#) (Susan Cattell, ICAS)

76 For example, written evidence from CIOT ([DFE0017](#)) and Law Society of England & Wales ([DFE0019](#))

77 [Q 2](#) (Susan Cattell, ICAS)

78 Written evidence from Law Society of England & Wales ([DFE0019](#))

79 [Q 13](#) (Fiona Fernie, TIPG)

80 [Q 45](#) (Will Silsby, ATT)

81 [Q 13](#) (Fiona Fernie, Tax Investigations Practitioners Group)

82 [Q 13](#) (Lydia Challen, Law Society of England & Wales) and written evidence of Anonymous 2 ([DFE0032](#))

83 [Q 13](#) (Lydia Challen, Law Society of England & Wales). See also written evidence from the Law Society of Scotland ([DFE0025](#)).

core of promoters are continuing to frustrate HMRC’s ability to stop the marketing of tax avoidance schemes.

Safeguards

55. Witnesses were clear that the new powers had to be accompanied by adequate safeguards for those within their scope. The importance of proportionality was raised by a number of witnesses, who were concerned about the discretion given to HMRC in relation to some of the new powers. For example, Lydia Challen of the Law Society of England & Wales told us:

“Because of the width of the drafting ... and the risk of mission creep, relying on the Revenue to exercise self-restraint and apply the powers only to the 20–30 it is really targeting is something we are rather concerned about.”⁸⁴

56. One of a number of concerns was that, under certain of the new powers, it seemed that HMRC was to be judge, jury and executioner. For example, in relation to POTAS and DOTAS, HMRC can take certain action⁸⁵ where it “suspects” or “has reasonable grounds to suspect” the relevant conditions are met. Taking that action is the first step in allowing HMRC to name a person as a promoter. Although the recipient has a right to make representations to HMRC before it is named, it seems that these will be made to a more senior officer in same HMRC team.⁸⁶ The recipient can then appeal to a tribunal⁸⁷ but will remain named as a promoter at least until the appeal has been decided. Incorrectly ‘naming’ a person as a promoter would cause significant reputational damage and an internal review may not necessarily provide sufficient protection regardless of how robust the internal governance process is.
57. HMRC told us that it needs the ability to name a person as a promoter at this earlier stage to be able to warn the public about the scheme, and that strong internal governance processes would be in place, with published guidance explaining how these powers are intended to be used.⁸⁸
58. Our witnesses were not necessarily convinced that the proposals struck the right balance between HMRC and taxpayer, particularly given the subjectivity involved in HMRC determining whether it had reason to believe or not.⁸⁹ Witnesses felt that oversight of HMRC’s exercise of its powers was key.⁹⁰ Although some witnesses focused on the importance of strong internal processes, others suggested an independent body should be set up.⁹¹ One suggested that the legislation should be amended so that HMRC’s ability to act would be based on “reasonable grounds” rather than just “reason to believe”.⁹² It may be that, in considering responses to the consultation, the Government accepts the case for change on some, if not all, of these areas.

84 [Q 14](#) (Lydia Challen, Law Society of England & Wales)

85 This could be the issue of a stop notice under POTAS or an information notice under DOTAS.

86 Although we note that HMRC has not yet provided guidance on how this will work in practice.

87 Within DOTAS, any appeal is against any SRN issued by HMRC following the information notice.

88 Written evidence from HMRC ([DFE0035](#))

89 [Q 12](#), [Q 14](#) (Lydia Challen)

90 [Q 4](#) (Frank Haskew, ICAEW); [Q 89](#) (Malcolm Gammie, Tax Law Review Committee); written evidence from ICAS ([DFE0008](#)), Law Society of England & Wales ([DFE0019](#)) and Law Society of Scotland ([DFE0025](#))

91 [Q 46](#) (Will Silsby, ATT) and written evidence from Anonymous 2 ([DFE0032](#)) and Law Society of England & Wales ([DFE0019](#))

92 Written evidence from Law Society of Scotland ([DFE0025](#))

59. **In our 2018 report we recommended that new powers should be accompanied by a right of appeal against the exercise of the power and not just against the underlying tax liability. This is not the case in the draft Finance Bill clauses. Although we acknowledge that at some point a right to appeal may be available, this will generally only be available later, by which point the relevant person will have had to deal with the consequences of HMRC’s exercise of its new power, including being named as a promoter. Whilst we appreciate HMRC’s concerns about promoters abusing safeguards, we regret that the measures do not include anything more than HMRC discretion as the means of protecting mainstream advisers from being caught.**
60. **‘Naming and shaming’ is an important weapon in tackling the hard core of promoters; shining a light on their activities is key to ensuring HMRC’s warnings are effective. But it should only be used where clearly justified. The Government should revisit the safeguards in the draft Finance Bill to balance more effectively the importance of being able to name promoters against the risk of identifying the wrong people.**

Tackling promoters differently by reducing supply: criminal prosecution

61. The measures in the Finance Bill link mainly to administrative action available to HMRC to prevent the selling of the schemes, with sanctions for non-compliance generally limited to financial penalties.⁹³
62. A few witnesses questioned whether financial penalties alone were a sufficient deterrent, suggesting that HMRC should bring more criminal prosecutions against promoters. The Law Society of Scotland were not aware of any concerted effort by HMRC to prosecute those repeatedly involved in selling aggressive schemes, and suggested that this should change.⁹⁴ Tax Watch said that starting a criminal investigation should be HMRC’s default response on discovering a new scheme.⁹⁵
63. When asked about its strategy for taking criminal action, HMRC said that since 2016 it has successfully prosecuted 20 individuals for involvement in schemes marketed as tax avoidance, and that a further nine individuals were arrested in tax year 2019–20 for selling schemes that purported to get round the loan charge.⁹⁶ HMRC told us:
- “In tackling a promoter, HMRC will always consider the opportunity to go down the route of investigating with a view to a criminal prosecution for fraud”.⁹⁷
64. However, HMRC explained that bringing a criminal prosecution against a promoter was not feasible in many cases because of the need to prove dishonesty: “a promoter asserting that a tax treatment is successful that ...

93 Under the POTAS rules, certain failures to comply with requests for documents can be a criminal offence.

94 Written evidence from Law Society of Scotland (DFE0025)

95 Written evidence from Tax Watch (DFE0013)

96 For example ‘Five people arrested on suspicion of loan charge fraud’ *Yorkshire Post*, (27 February 2020): <https://www.yorkshirepost.co.uk/business/five-people-arrested-suspicion-loan-charge-fraud-2002104> [accessed 15 December 2020]

97 [Q 100](#) (Mary Aiston, HMRC)

a tribunal decides does not stand up is not of itself sufficient to demonstrate fraud”.⁹⁸ The Financial Secretary to the Treasury made the same point, adding that difficulties in bringing a successful prosecution, as well as the length of the process, meant that criminal sanctions may in any event be of limited deterrence.⁹⁹ Some witnesses agreed that under the current system criminal proceedings are “expensive, time-consuming and difficult to prove”.¹⁰⁰ The Loan Charge All-Party Parliamentary Group expressed reservations as to whether criminal action was generally the solution to the continued promotion of schemes.¹⁰¹

65. **Where possible, HMRC should pursue criminal action against promoters, including against those who have sold schemes in the past to which the loan charge applied. This could be a valuable deterrent, and we recommend that more publicity is given to these cases.**

Tackling promoters differently by reducing demand: non-legislative approaches

66. Witnesses generally agreed that there was a limit to what could be done by legislative measures against the hard core of remaining promoters, but felt that there were non-legislative approaches which could be explored more fully.

Reducing demand—communication

67. We heard that more needed to be done to inform taxpayers about the risks of disguised remuneration schemes, including providing early warning of particular schemes that HMRC becomes aware of and intends to challenge.¹⁰² There was concern that HMRC appears to have a blinkered approach to communication, reflected in a reluctance to change how they approach communicating with the public, even though current methods do not appear to be effective.¹⁰³
68. A focus on the demand side of the tax avoidance market was seen as an “important way forward” in combating the continued marketing of the schemes,¹⁰⁴ with Richard Wild of CIOT telling us that “there should be simpler messages transmitted in a more mainstream way”.¹⁰⁵ Witnesses referenced the need to ensure that, when a promoter approached a taxpayer with a scheme, they knew enough to “set alarm bells ringing”.¹⁰⁶
69. Witnesses were clear that reliance on HMRC Spotlights was not enough. As one put it: “the average taxpayer has never heard of Spotlights, would not know where it was and would not know where to look for it”.¹⁰⁸ In our 2018 report on the powers of HMRC, we commented that Spotlight publications

98 *Ibid.*

99 [Q 108](#) (Financial Secretary to the Treasury)

100 [Q 13](#) (Lydia Challen, Law Society of England & Wales)

101 Written evidence from Loan Charge All-Party Parliamentary Group ([DFE0029](#))

102 For example, [Q 2](#) (Frank Haskew, ICAEW) and written evidence from ICAS ([DFE0008](#)) and Law Society of Scotland ([DFE0025](#)).

103 Written evidence Anonymous 2 ([DFE0032](#))

104 [Q 12](#) (Lydia Challen, Law Society of England & Wales)

105 [Q 2](#) (Richard Wild, CIOT)

106 [Q 3](#) (Richard Wild, CIOT). See also [Q 12](#) (Lydia Challen, Law Society of England & Wales) and [Q 15](#) (Yvonne Evans, Law Society of Scotland).

107 [Q 45](#) (Tom Henderson, LITRG) and written evidence from ICAEW ([DFE0022](#)) and CIOT ([DFE0017](#))

108 [Q 15](#) (Fiona Fernie, TIPG)

“are neither well-known or well-read”.¹⁰⁹ HMRC recognised that Spotlights are not written for mass-market communication and is exploring other methods of communication, including via social and other media.¹¹⁰

70. One suggestion was that HMRC publish a list of schemes which they were investigating that could be easily found through an internet search, with such messaging reinforced through campaigns on traditional and social media.¹¹¹ Another witness proposed including details of the promoter in any anti-scheme publicity, as that was what a taxpayer was likely to search for online.¹¹²
71. HMRC recognised that communication is key.¹¹³ The Financial Secretary to the Treasury said he continued to press HMRC to make sure taxpayers were aware of the danger; there were plans for much more activity in relation to public communication later this year.¹¹⁴ However, behavioural experts had warned HMRC against “accidentally implying that tax avoidance is more widespread than it really is”¹¹⁵ because of a perceived risk that taxpayers may think they are missing out on something everyone else is doing.¹¹⁶ We queried this notion with the Financial Secretary, who assured us of his agreement that the message about the dangers should be communicated by every possible means.¹¹⁷
72. Witnesses highlighted the importance of direct communication with taxpayers when HMRC suspects a scheme has been used.¹¹⁸ This was echoed by evidence from an individual who had been sold a disguised remuneration scheme in the past, who emphasised the need for HMRC to communicate in a timely way¹¹⁹—a point we made in our 2018 report.¹²⁰ Institute of Chartered Accountants Scotland (ICAS) told us of a pilot scheme being run by HMRC to identify possible scheme users through use of real-time information reported under PAYE, who it will then contact.¹²¹ Witnesses saw this as a helpful development and hoped that it would be expanded.¹²²
73. **Taxpayers need to have better information about schemes so that they can see through a promoter’s sales pitch and recognise when**

109 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

110 [Q 101](#) (Mary Aiston, HMRC)

111 [Q 15](#) (Fiona Fernie, TIPG). See also [Q 45](#) (Tom Henderson, LITRG) and written evidence from ICAEW (DFE0008) and the Law Society of Scotland (DFE0025).

112 Written evidence from the Law Society of Scotland (DFE0025)

113 [Q 101](#) (Mary Aiston, HMRC)

114 [Q 108](#) (Financial Secretary to the Treasury) and [Q 101](#) (Mary Aiston, HMRC). HMRC subsequently launched a new campaign directed at contractors as a first stage of a wider campaign intended to raise public awareness of the dangers of tax avoidance: see HMRC, ‘Tax avoidance: don’t get caught out’: <https://taxavoidanceexplained.campaign.gov.uk> [accessed 15 December 2020]

115 [Q 101](#) (Mary Aiston, HMRC) and [Q 109](#) (Financial Secretary to the Treasury)

116 [Q 101](#) (Mary Aiston, HMRC)

117 [Q 109](#) (Financial Secretary to the Treasury)

118 Written evidence from Loan Charge Action Group (DFE0028) and Loan Charge All-Party Parliamentary Group (DFE0029)

119 Written evidence from Mrs Clark (DFE0010). See also written evidence from Loan Charge Action Group (DFE0028) and the Loan Charge All-Party Parliamentary Group (DFE0029).

120 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

121 [Q 3](#) (Susan Cattell, ICAS). A case study on how HMRC is using real-time information to identify scheme users is included in the policy paper Tackling Promoters of Tax Avoidance (21 July 2020): <https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance> [accessed 15 December 2020]

122 [Q 3](#) (Susan Cattell, ICAS)

they are being sold an aggressive tax avoidance scheme. A page on a website telling taxpayers how to identify a tax avoidance scheme is insufficient. HMRC must find ways to communicate directly with taxpayers; for example, there could be a single-page warning notice each year as part of its standard communications on self-assessment filing obligations.

74. **HMRC should be capable of planning a communications campaign to provide such warnings, without these warnings acting as a perverse incentive to take part in these schemes. It could look at what other agencies have done for guidance—for example, the Financial Conduct Authority’s communications regarding unscrupulous pensions advisers.**

Reducing demand—employers

75. Witnesses told us that some individuals continue to be pushed into disguised remuneration schemes by umbrella companies; one said that action was needed to “stamp out [disguised remuneration] schemes at each stage of the worker supply chain”.¹²³ One option was to regulate the umbrella companies.¹²⁴ LITRG suggested that HMRC could use existing powers, such as requiring security deposits for PAYE debt, to protect the Exchequer.¹²⁵ Both ICAS and the Law Society of Scotland suggested that employment agencies providing staff to government departments or other public sector bodies should be required to give assurances that they are not involved in disguised remuneration schemes.¹²⁶
76. HMRC is “thinking very widely” about steps that can be taken to protect individuals from unscrupulous employers, referencing ongoing work with the Advertising Standards Agency to remove misleading advertisements.¹²⁷ We note that the call for evidence on disguised remuneration schemes asks for evidence on how to tackle employment agencies and umbrella companies that use such schemes.¹²⁸
77. **Although the call for evidence on tackling disguised remuneration schemes is welcome, it is disappointing that it has taken until now for the Government to seek external input on tackling these schemes, given the high public profile of this issue in recent years.**
78. **We recommend that the Government collaborates with relevant specialists to decide what further steps could be taken to prevent disguised remuneration schemes being used by employment**

123 [Q 47](#) (Tom Henderson, Low Incomes Tax Reform Group)

124 [Q 45](#) (Tom Henderson, Low Incomes Tax Reform Group) and written evidence from Loan Charge Action Group ([DFE0028](#))

125 [Q 46](#) (Tom Henderson, Low Incomes Tax Reform Group). LITRG included other suggestions on how to improve standards in the employment supply chain in its response to the Call for Evidence on Disguised Remuneration. LITRG, ‘Call for evidence: tackling disguised remuneration tax avoidance’, (23 September 2020): <https://www.litr.org.uk/latest-news/submissions/200923-call-evidence-tackling-disguised-remuneration-tax-avoidance> [accessed 15 December 2020]

126 Written evidence from ICAS ([DFE0008](#))

127 HMRC, *Tackling promoters of mass-marketed tax avoidance schemes* (21 July 2020): <https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes> [accessed 15 December 2020]

128 HMRC, ‘Call for evidence: Tackling disguised remuneration tax avoidance’, (21 July 2020): <https://www.gov.uk/government/consultations/call-for-evidence-tackling-disguised-remuneration-tax-avoidance> [accessed 15 December 2020]

intermediaries. A first step would be to ensure that no government or public sector body contracts with an intermediary operating a disguised remuneration scheme, and to publicise this requirement along with the protocols that public bodies are expected to follow.

Reducing demand—improved working with professional bodies

79. HMRC told us that it works closely with the accountancy and taxation bodies in areas including effective communications for their clients focused on highlighting the risks in using tax avoidance schemes.¹²⁹ However, the Law Society of England & Wales and the Law Society of Scotland said that HMRC should provide more information on schemes it was concerned about to the professional bodies, so that they could disseminate the information to their members.¹³⁰
80. The CIOT told us:
- “The professional bodies have a vested interest in driving those people out of the marketplace because, for want of a better term, they drag us down.”¹³¹
81. The Law Society of England & Wales reported that members had told them that HMRC did not engage effectively with offers of information about promoters’ activities.¹³² This is disappointing, particularly as HMRC says it encourages people to provide details of schemes they know about so that HMRC can investigate.¹³³ Witnesses suggested that HMRC improve its systems for receiving reports of tax avoidance schemes¹³⁴—we were told that an internet search for “how can I tell HMRC about a tax scheme” failed to link to any relevant details.¹³⁵
82. **To be effective, the new measures depend on HMRC becoming aware of new schemes. We recommend that HMRC creates a dedicated tax avoidance reporting service which enables taxpayers and advisers to report schemes easily. HMRC should work with its communications team to ensure a high level of search engine optimisation for any online reporting service. Any information that helps close down a scheme or promoter should be highlighted by HMRC, with details anonymised.**

129 Written evidence from HMRC (DFE0035)

130 Q 16 (Lydia Challen, Law Society of England & Wales) and written evidence from Law Society of Scotland (DFE0025)

131 Q 2 (Richard Wild, CIOT)

132 Written evidence Law Society of England & Wales (DFE0019). Also see Q 81 (George Watch, Tax Watch).

133 HMRC, ‘Call for evidence: tackling disguised remuneration tax avoidance’, (21 July 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902667/Tackling_disguised_remuneration_tax_avoidance_-_call_for_evidence.pdf [accessed 15 December 2020]

134 Written evidence from CIOT (DFE0017), Law Society of England & Wales (DFE0019) and the Law Society of Scotland (DFE0025). We note that currently reporting of schemes is dealt with through HMRC’s fraud reporting service.

135 Written evidence from Law Society of England & Wales (DFE0019). Currently, reporting is through HMRC’s tax fraud reporting service—although, as part of HMRC’s new communications campaign, a link to the fraud reporting service has been set up under the title “Report a Suspicious Scheme”: see HMRC, ‘Tax avoidance: don’t get caught out’: https://taxavoidanceexplained.campaign.gov.uk/#report_a_suspicious_scheme [accessed 15 December 2020]

Call for evidence on raising standards of tax advice

83. In March 2020 the Government published a call for evidence on raising standards in the tax advice market.¹³⁶ This was in response to the recommendation of Sir Amyas Morse’s Independent Loan Charge Review that “the government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes.”¹³⁷ The call for evidence was specifically linked with the consultation and draft legislation on tackling promoters of tax avoidance and the call for evidence on disguised remuneration discussed above.
84. The timetable for responses to the call for evidence was extended because of the COVID-19 pandemic. The Government issued a summary of responses on 12 November 2020, in which it set out how it proposes to take matters forward.¹³⁸
85. The call for evidence ranged widely across different kinds of tax advice and tax services. It extended beyond the promotion of tax avoidance to the sort of advice and services which individuals and businesses seek on a regular basis to assist with meeting their tax obligations.

Promoters of tax avoidance schemes

86. Over the last 20 years there have been changes in the way tax avoidance schemes have been promoted. Most reputable tax advisers have now largely withdrawn from these activities. HMRC has succeeded in forcing many operators out of the market. Although the promotion of disguised remuneration schemes continues despite all the counter-action which has been taken, this is a specialist area which is best tackled directly by targeted measures such as those in the draft Finance Bill and by good communications to alert potential users to the risks involved.
87. Will Silsby of ATT told us: “the professional bodies, without being complacent about the wider picture of standards in the tax market, have tended to see tackling promoters and enablers as a completely separate issue”.¹³⁹
88. Frank Haskew of ICAEW said: “We still do not know whether, even if you had a fully regulated market, it would necessarily drive out that sort of behaviour [promoting tax avoidance] ... those people are not providing tax advice; they specifically say they are not tax advisers. We need to get to those people, but whether regulation is the answer is not clear”.¹⁴⁰
89. LITRG said that, “there should be a more targeted approach at the intermediaries in this space ... in the context of unrepresented taxpayers and disguised remuneration schemes, one must recognise that the advice that is being given, if it is being given at all, comes from the employment intermediary, but neither the employment intermediary nor the individual

136 HMRC, ‘Call for evidence: raising standards in the tax advice market’, (March 2020): <https://www.gov.uk/government/publications/call-for-evidence-raising-standards-in-the-tax-advice-market> [accessed 15 December 2020]

137 HMRC, *Disguised remuneration: independent loan charge review* <https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review> [accessed 15 December 2020]

138 HMRC, ‘Call for evidence: raising standards in the tax advice market’, (March 2020): <https://www.gov.uk/government/publications/call-for-evidence-raising-standards-in-the-tax-advice-market> [accessed 15 December 2020]

139 [Q 45](#) (Will Silsby, ATT)

140 [Q 3](#) (Frank Haskew, ICAEW)

taxpayer sees that as an occasion where tax advice is being given ... you have to place your emphasis on the other approach, which is to stamp out disguised remuneration schemes at each stage of the worker supply chain”.¹⁴¹

Mainstream tax advice and services

90. On tax advice and services more generally, our main focus was the 30 per cent of tax advisers who are not members of professional bodies. We heard differing views about how the risks posed by this unregulated sector should be addressed and consumers protected. LITRG had responded to the call for evidence, arguing in favour of mandatory professional body membership.¹⁴² ATT’s response included a road map designed to bring non-members of professional bodies within the scope of the bodies.¹⁴³ Introducing a new form of regulation would be a big step which would require detailed consultation and an extended transitional period.
91. ATT were also interested in the idea floated in the call for evidence of a public register of tax advisers, which could encompass both tax advisers who are members of professional bodies and ones who are not.¹⁴⁴ Another idea with some support was to require all tax advisers to have professional liability insurance, which would give their clients some protection.
92. Lydia Challen of the Law Society of England & Wales told us: “One of the issues about tax advice is that, frankly, it is expensive to provide well, because tax is so complicated. It [regulation] would not necessarily increase access to tax advice for the low paid”.¹⁴⁵
93. LITRG were also concerned about people on low incomes. They and ACCA argued that it was wrong to assume the low paid had simple tax affairs and they had an equal need for high-quality advice. Tom Henderson told us:

“There needs to be a structured provision of non-profit tax advice. The publicly available guidance needs to be as good as it can be. HMRC staff need to be well trained. Funding for charitable organisations needs to be well-targeted. ... [HMRC] needs to get better at signposting other sources of independent advice, such as the tax charities Tax Aid and Tax Help for Older People”.¹⁴⁶

Lydia Challen agreed that there should be more emphasis on, and resources for, charities that advise the low paid.¹⁴⁷

94. On guidance, Jason Piper of ACCA said: “We and the other professional bodies would be delighted to help [HMRC] work better on material that can be handed out and shared”.¹⁴⁸

141 [Q 47](#) (Tom Henderson, LITRG)

142 [Q 47](#) (Tom Henderson, LITRG)

143 [Q 47](#) (Will Silsby, ATT)

144 *Ibid.*

145 [Q 16](#) (Lydia Challen, Law Society of England & Wales)

146 [Q 48](#) (Tom Henderson, LITRG)

147 [Q 16](#) (Lydia Challen, Law Society of England & Wales)

148 [Q 48](#) (Jason Piper, ACCA)

Response to call for evidence

95. In its response to the call for evidence in November 2020,¹⁴⁹ the Government outlined four steps it proposes to take:
- Raising awareness of HMRC’s Standard for Agents and reviewing HMRC’s powers to enforce the Standard;
 - Consulting on a requirement for tax advisers to have professional indemnity insurance;
 - Working collaboratively with the professional bodies to understand the role they play in supervising and supporting their members and raising standards; and
 - Tackling the high costs to consumers of claiming refunds.
96. **We welcome the Government’s response to the call for evidence on raising standards in the tax advice market. However, in light of evidence we have heard, we are surprised that the Government has chosen to move straight to consultation on a single proposal (professional indemnity insurance). This seems inconsistent with the Government’s declared approach to tax policy making, and it should reconsider this.**

Conclusions

97. It has not been possible in this inquiry to do justice to this far-reaching and complex subject. Many witnesses thought that the call for evidence raises two separate issues: the need to counter the promotion of tax avoidance schemes by promoters and intermediaries such as umbrella companies and employers; and whether the 30 per cent of tax advisers supplying day-to-day tax advice and services who are not members of professional bodies should be regulated. In the former case, we made recommendations earlier in this chapter.
98. **We support greater protection for those currently using unregulated tax advisers, and recommend that the Government consults on options for how they might be regulated. We also recommend that HMRC works closely with the tax professional bodies on non-legislative action which can be taken in the interim to help taxpayers source reliable tax advice (such as a register of tax advisers) and to improve advisory material. HMRC should also consider what more it could do to support charities who provide tax advice.**

149 HMRC, *Raising standards in the tax advice market: summary of responses and next steps* (November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934614/Raising_standards_in_the_tax_advice_market_-_summary_of_responses_and_next_steps.pdf [accessed 15 December 2020]

CHAPTER 4: CIVIL INFORMATION POWERS

99. Draft legislation was published on 21 July 2020 introducing a new power for HMRC to issue a Financial Institution Notice (FIN) requiring financial institutions to provide information about a specific taxpayer to HMRC when requested. The information will be used for checking the tax position of the taxpayer and for debt collection purposes. HMRC already has powers to obtain such information for checking a person's tax position (though not for debt collection purposes), but at present it first has to seek the agreement of the taxpayer or the approval of the tax tribunal. The proposed measure would remove that safeguard, except in cases where HMRC wishes to obtain the information from a financial institution without the taxpayer being aware of it.

Background

100. There was a consultation on this proposal, *Amending HMRC's civil information powers*, published in July 2018.¹⁵⁰ The consultation document explained that HMRC receives a large number of requests for third-party information from other countries' tax authorities; where an application to the tax tribunal is necessary it takes an average of 12 months to deal with the request, compared with the target under international standards of 6 months. This was attributed largely to the need to get tribunal approval. The contemporary report of the OECD's *Global Forum on Transparency and Exchange of Information for Tax Purposes*, covering the UK's compliance with international standards, claimed that the UK's processes unduly delayed the effective exchange of information, imposed additional information requirements on other tax authorities and did not cover debt collection. Overall, the OECD ranked the UK as 'largely compliant' but for this aspect the UK's performance was ranked 'partially compliant'.¹⁵¹ The Government considered that requests should be dealt with more promptly in order for the UK's OECD ranking to improve.
101. In the section of our 2018 report *The Powers of HMRC: Treating Taxpayers Fairly*, in relation to the Government's proposals on civil information powers we concluded:
- “Oversight by the tax tribunal of HMRC attempts to obtain information from third parties is an important taxpayer safeguard, which should not be removed without good reason. HMRC has not offered a convincing rationale.
- “We recommend that the proposal is withdrawn until full consultation can take place on how new legislation could be better targeted.”¹⁵²
102. After nearly two years, with no further consultation, the draft legislation for this proposal was published, along with a response to the 2018 consultation.¹⁵³

150 HMRC, 'Amending HMRC's civil information powers', (July 2018): <https://www.gov.uk/government/consultations/amending-hmrCs-civil-information-powers> [accessed 15 December 2020]

151 OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: United Kingdom 2018 (Second Round)* (15 October 2018): https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-united-kingdom-2018-second-round_9789264306189-en [accessed 15 December 2020]

152 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

153 HMRC, 'Amending HMRC's civil information powers: summary of responses', (July 2020): <https://www.gov.uk/government/consultations/amending-hmrCs-civil-information-powers> [accessed 15 December 2020]

The response aimed to make a positive case for the measure the Government is introducing but indicated that views of stakeholders were mixed, with some expressing considerable concerns. Those opposed to the loss of this taxpayer safeguard made various suggestions for how it might be retained, querying why HMRC and the Ministry of Justice could not streamline the tax tribunal approval process to reduce the delay in processing applications. Other stakeholders suggested restricting the proposed new rule to international information requests. All these suggestions were dismissed. The response explained that different rules for international and domestic cases are not allowed for legal and treaty obligation reasons, and added that HMRC and the Ministry of Justice had already made the process as efficient as possible: “any remaining efficiencies are likely to be marginal”.

103. The response said that HMRC would put various internal procedures in place aimed at ensuring that the new powers were used appropriately. These included FINs having to be approved by a specially trained officer of HMRC and (in most cases) copied to the taxpayer, and internal checks to ensure that information is needed. The Government rejected a suggestion that HMRC sets up an internal review panel. It pointed to the availability of judicial review if taxpayers wanted to challenge the use of the power. However, our 2018 report noted that judicial review “is expensive and effectively inaccessible to ordinary taxpayers”.¹⁵⁴
104. The Government committed to keeping the measure under review through communications with affected taxpayer groups, and to requiring HM Treasury to issue an annual report to Parliament setting out the number of notices issued in a financial year.

Proportionality

105. To explore whether the Government’s draft legislation was a proportionate response to delays in dealing with international requests for information, we asked HMRC for relevant figures. These showed that the number of international requests going to the tax tribunal was small in relation to the total requests the UK receives. Notices to financial institutions going to the tax tribunal for approval which involve international requests is a small minority of financial institution notices going to tribunal.

Table 1: International requests

Year	Number to tribunal	Involving international requests	Total international information requests
2016/17	215	31 (14.4%)	1,848
2017/18	296	41 (14.1%)	1,838
2018/19	462	45 (9.7%)	1,649
2019/20	426	49 (11.5%)	1,780

Source: Written evidence from HMRC ([DFE0035](#))

¹⁵⁴ Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

106. **The case for this removal of safeguards for taxpayers and financial institutions has not been made. It is wrong in principle and not justified by the small proportion of international information requests which require tribunal approval to obtain the information. The overwhelming majority of cases which go to the tax tribunal are domestic. It is disproportionate to deny UK taxpayers the tribunal safeguard for the sake of speeding up a small minority of cases involving international requests.**

Removal of safeguards

107. A number of witnesses expressed concerns about the removal of safeguards for the use of HMRC powers. Tom Henderson of LITRG summed up these concerns:

“The removal of the tribunal safeguard is just one of three safeguards that are being removed here. We have the removal of the tribunal safeguard, the removal of the right of appeal, and the extension of the purposes for which the notice can be issued. It is hugely concerning to think that HMRC could combine all three new powers—if I can equate a new power with the abolition of a safeguard—and issue these financial institution notices simply as a matter of course or routine whenever a taxpayer has a tax debt.”¹⁵⁵

Removal of the tribunal safeguard

108. Many witnesses were opposed to the removal of the need to obtain tribunal approval for FINs. As ICAS put it:

“No internal HMRC process would be an adequate replacement for the independent scrutiny of the tribunal ... it is not acceptable to dispense with taxpayer safeguards. If no distinction can be made between overseas and domestic cases, we believe that independent oversight of FINs should be retained in all cases because it is essential to maintain taxpayer confidence in the tax system and ensure HMRC exercises its powers proportionately.”¹⁵⁶

109. Joint evidence from the Investing and Saving Alliance, Building Societies Association and UK Finance emphasised the need for all parties to have confidence in the fairness of the tax system: “HMRC’s use of these powers must be proportionate and confined within the limits set by the UK Parliament. The removal of tribunal approval and the replacement arrangements will not provide the current level of assurance”.¹⁵⁷

Extension of powers

110. Investing and Saving Alliance, Building Societies Association, UK Finance and LITRG were concerned about the extension of information requests to financial institutions to tax debt. They thought it was unclear how the draft legislation would interact with the Direct Recovery of Debt (DRD) regime.¹⁵⁸ LITRG felt that the safeguards for FINs related to debt should

155 Q 50 (Tom Henderson, LITRG)

156 Written evidence from ICAS (DFE0008)

157 Written evidence from the Investing and Saving Alliance, Building Societies Association and UK Finance (DFE0006)

158 DRD allows HMRC to recover tax owed directly from a taxpayer’s bank account in certain circumstances.

be comparable with those for Direct Recovery of Debt. Joanne Green of Building Societies Association said:

“When you look at direct recovery of debt and the number of safeguards in place compared with the number of safeguards that will come out of this, the number is a lot higher. If it was deemed necessary for direct recovery of debt, it is a worry to financial institutions that this process, with the removed safeguards, puts customers and members at a much higher risk of incorrectly recovering debt.”¹⁵⁹

111. Witnesses were concerned about how HMRC would use FINs once the need to justify their use to the tax tribunal was removed. Although the information must be “reasonably required” for checking the person’s tax position or collecting tax debt, Keith Gordon said: “My experience to date leads me to worry that HMRC will interpret “reasonably required” as meaning ‘HMRC would like’”.¹⁶⁰ Investing and Saving Alliance, Building Societies Association and UK Finance described it as giving “the appearance of HMRC ‘marking its own homework’”.¹⁶¹ Others felt that HMRC resources were under pressure and making notices too easy to issue would encourage a laxer approach. Tom Henderson of LITRG said: “If you remove the safeguard you also remove the incentive to take care over the cases that you choose to pursue”.¹⁶²
112. On the proposal for a report to Parliament on the use of FINs, Sarah Wulff-Cochrane of UK Finance said: “A report is not a substitute for real-time safeguards that operate on a request-by-request basis. We had experience in the past with the direct recovery of debts regime that a requirement to report to Parliament does not necessarily mean that HMRC will consult with relevant stakeholders and ensure that their experience is reflected in the report. I do not think the report to Parliament will be an equivalent safeguard to tribunal oversight”.¹⁶³
113. The Law Society of Scotland pointed out that the consultation document had suggested that if the requirement for tax tribunal approval was to be removed, the third party would have a right of appeal against the notice “on the grounds that it is too onerous” but this was not included in the draft legislation, which provided a right of appeal for a financial institution only against any penalties levied.¹⁶⁴ Instead there was a requirement “that the information or document is, in the opinion of the officer giving notice, of a kind that it would not be onerous for the institution to provide or produce”.¹⁶⁵ A number of witnesses thought that an employee of HMRC is unlikely to have the detailed knowledge to form such an opinion,¹⁶⁶ though HMRC said that officers trained in this work often had “decades of experience of these notices and of discussion with financial institutions about onerousness”.¹⁶⁷ Investing

159 [Q 59](#) (Joanne Green, Building Societies Association)

160 Written evidence from Keith Gordon ([DFE0005](#))

161 Written evidence from Investing and Saving Alliance, Building Societies Association and UK Finance ([DFE0006](#))

162 [Q 50](#) (Tom Henderson, Low Incomes Tax Reform Group)

163 [Q 55](#) (Sarah Wulff-Cochrane UK Finance)

164 Written evidence from the Law Society of Scotland ([DFE0025](#))

165 Draft Finance Bill 2021, HM Treasury, July 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902629/Information_powers_Draft_Legislation.pdf [accessed 15 December 2020]

166 Written evidence from Keith Gordon ([DFE0005](#)) and Investing and Saving Alliance, Building Societies Association and UK Finance ([DFE0006](#))

167 [Q 95](#) (John Shuker, HMRC)

and Saving Alliance, Building Societies Association and UK Finance had heard from HMRC that its guidance might provide an opportunity for financial institutions to make representations about onerous requests, but this “would not give the same level of comfort to our members as a statutory right”.¹⁶⁸ They regretted the loss of the precursor notice which gives financial institutions an opportunity to express concerns to HMRC before decisions are made.¹⁶⁹

Alternatives

114. We considered whether there were ways of dealing with international requests more quickly. The Government’s response to the consultation dismissed the alternatives which had been suggested. We were not convinced that nothing could be done and our inquiry therefore covered the cause of those delays and how they might be addressed.
115. The tax tribunal introduced greater flexibility in its proceedings in response to COVID-19 with telephone and video hearings. Judge Sinfield, the President of the Tax Chamber, told us that all third-party information notices had moved to video hearings and that this was expected to continue: “In total I would expect the whole process to take about a month or maybe six weeks ... we have agreed a new guidance for the format of the application. These applications are now made entirely electronically”.¹⁷⁰ He added that “for all domestic applications, those that arise from an HMRC internal inquiry as opposed to a foreign tax authority request, we have agreed exactly what the package will contain. I think we have also reached agreement for the foreign tax authority request, but that needs a final bit of tweaking”.¹⁷¹
116. The new arrangements for video hearings should remove the need for HMRC officers to travel to London for hearings.¹⁷² Lydia Challen of the Law Society of England & Wales told us: “Not only are the tribunals adopting virtual hearings, but more judges have been trained in dealing with the applications and there has been the development of a standard form of application. ... that should streamline the process considerably”.¹⁷³
117. We heard from Investing and Saving Alliance, Building Societies Association and UK Finance that financial institutions are allowed 30 days to respond to requests once approval has been given, so there is no undue delay there. Despite this, they considered that there was scope for streamlining the process, albeit in minor ways, such as HMRC communicating electronically rather than by second-class post, and standardising information requests to financial institutions.
118. It appears that the bulk of the time taken to deal with international requests is accounted for by work in HMRC and correspondence with overseas tax authorities. HMRC told us:

“When we looked at the timeline for obtaining the information, the step of getting the additional information required from the other tax

168 Written evidence from Investing and Saving Alliance, Building Societies Association and UK Finance (DFE006)

169 Q 56 (Joanne Green, Building Societies Association)

170 Q 74 (Judge Sinfield)

171 Q 79 (Judge Shenfield)

172 Q 49 (Will Silsby, ATT)

173 Q 17 (Lydia Challen, Law Society of England & Wales)

jurisdiction was taking over eight months on average. Even on its own, that step means that it is not possible for the UK to meet the international standards”.¹⁷⁴

119. Yet HMRC also told us it believed that, with the new FIN, the UK would be able to meet international standards.¹⁷⁵ It is difficult to see how this could be, other than by making the process for authorising an FIN less rigorous than it is now.
120. On this subject, Lydia Challen of the Law Society of England & Wales said: “There needs to be a certain amount of education of our treaty partners about the kinds of information that the tribunals require before they will make orders, and ensuring that it is provided by those tax authorities in a timely way”.¹⁷⁶ She added that “HMRC has already developed a document setting out information that requesting jurisdictions can provide to support HMRC’s application for tribunal approval. Reading between the lines of the [OECD] review document, there may be further scope to explore whether that process could be improved in collaboration with international partners.”¹⁷⁷

Conclusions and recommendations

121. **The civil information powers proposals are poorly targeted, disproportionate in their effect on UK taxpayers and lacking necessary safeguards and rights of appeal. They remove safeguards for taxpayers and financial institutions which prevent arbitrary use of the information powers, and are not supported by the evidence. We regret that the Government did not take the opportunity following its 2018 consultation to consider alternatives to these measures before taking them to this stage.**
122. **We recommend that:**
- **The requirement for tribunal approval for a third-party information request to a financial institution should remain;**
 - **Financial institutions should have a right of appeal against any request they consider unduly onerous;**
 - **The Government should clarify the interaction between the use of Financial Information Notices for debt collection and the direct recovery of debt provisions, and ensure that the safeguards for Financial Information Notices relating to debt are no less stringent than those for direct recovery of debt;**
 - **HMRC should review the whole process for dealing with international information requests requiring tribunal approval, working with financial institutions, the tax tribunal and others, to find other means of streamlining the process; and**
 - **Given the lack of consultation, HMRC should reconsider the implementation date. In doing so, they should undertake further consultation and communication to ensure that**

174 [Q 93](#) (John Shuker, HMRC)

175 *Ibid.*

176 [Q 18](#) (Lydia Challen, Law Society of England & Wales)

177 Written evidence from Law Society of England & Wales ([DFE0019](#))

financial institutions are fully appraised of the implications of the measures and have sufficient time to prepare for them. Any revised implementation date should be determined in light of this consultation.

CHAPTER 5: NOTIFYING UNCERTAIN TAX TREATMENT

123. In March 2020 the Government launched a consultation on a new requirement for large businesses to notify HMRC of any matter where they believed HMRC may take a different view to them on the tax treatment.¹⁷⁸ A large business is one with a turnover of at least £200 million and/or a balance sheet of over £2 billion.
124. The consultation document stated that this new obligation for companies to notify uncertain tax treatment would be legislated for in the Finance Bill 2020–21, with draft legislation published in late summer 2020 and the new measure applying to tax returns filed after April 2021.¹⁷⁹
125. As a result of COVID-19, the consultation period was extended, with stakeholders asked to respond by 27 August 2020 instead of the initial date of 27 May 2020. In consequence, the Government did not publish draft provisions on this measure when the draft Finance Bill was published on 21 July 2020.
126. On 12 November 2020 the Financial Secretary to the Treasury announced that the new requirement for large businesses to notify HMRC of any uncertain tax treatment would be delayed until April 2022. The delay would allow “more time to get the policy and legislation right following the recent consultation, including through further engagement with stakeholders”.¹⁸⁰
127. **We welcome the Government’s delay to the start date for the requirement to notify uncertain tax treatment and its commitment to engage with stakeholders to get the policy right. However, the Government should learn the lesson from this episode: until a measure complies with the policy principles set out above in Chapter 2, it should not be proposed.**

Background

128. The consultation document explained that the measure was required to provide HMRC with “timely and accurate information regarding tax treatments adopted by large businesses which HMRC may disagree with”.¹⁸¹ It said that this information was needed by HMRC to allow it to address the tax gap resulting from legal interpretation issues, described as when a taxpayer and HMRC disagree on how tax law applies in a particular situation.¹⁸²
129. The Government estimated the legal interpretation tax gap for tax year 2017/18 at £4.9 billion. The Financial Secretary to the Treasury told us

178 HMRC, ‘Notification of uncertain tax treatment by large businesses’, (21 July 2020): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses> [accessed 15 December 2020]

179 *Ibid.*

180 HC Deb, 12 November 2020, col 44WS

181 HMRC, *Notification of uncertain tax treatment by large businesses* (19 March 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873538/Consultation_document_Notification_of_uncertain_tax_treatment_by_large_businesses.pdf [accessed 15 December 2020]

182 The definition used in the consultation document is taken from HMRC, *Measuring Tax Gaps 2020 edition* (9 July 2020), and excludes cases involving avoidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907122/Measuring_tax_gaps_2020_edition.pdf [accessed 15 December 2020]

that more than half of that came from the largest businesses.¹⁸³ However, a witness made the point that, with HMRC estimating an additional £45 million per year by 2023/24 as a result of this new requirement, the impact of this measure on the tax gap was “relatively modest”.¹⁸⁴

130. The consultation was issued as a Stage 2 consultation, meaning that its focus was on the detail of a measure to which the Government was already committed. Some witnesses felt that this was a mistake, with Malcolm Gammie of the IFS Tax Law Review Committee (TLRC) telling us that “there was a complete lack of background or explanation as to why this provision is needed and what it is seeking to address”.¹⁸⁵ Frank Haskew of ICAEW added that “when we took this to our committees ... almost to a man they have not understood why HMRC needs it”.¹⁸⁶
131. Witnesses considered that a Stage 1 consultation, setting out the issue of concern, the Government’s objectives and possible policy responses for comment, would have been best for this measure.¹⁸⁷
132. There was concern about the detail of the proposal, some of which we discuss later in this chapter. The TLRC told us that, overall, “it is not possible to conclude that the proposal is a sensible, proportionate or necessary additional compliance obligation.”¹⁸⁸ A number of witnesses told us that the best thing the Government could do would be to abandon the current proposals and start again.¹⁸⁹
133. HMRC, acknowledging that “considerable concerns about the design of the measure” had been raised during the consultation, told us it was “refining” its approach in light of the criticism before producing draft legislation for consultation.¹⁹⁰ A week later, the Financial Secretary to the Treasury told us that we should not assume that the measure was “settled” and that the Government hoped to update the Sub-Committee “shortly” on next steps.¹⁹¹
134. On 12 November 2020 the Financial Secretary announced the delay to April 2022.¹⁹²
135. **We regret that the Government chose to consult on its uncertain tax treatment proposals at Stage 2. A Stage 1 consultation would have much more appropriate.**
136. **When the Government consults on new proposals, it should clearly state its case and the evidence for it. This is common sense and is what the Government’s Tax Consultation Framework requires. It is clear from our evidence that these requirements were not met by this consultation. We recommend that the Government should issue a new**

183 [Q 113](#) (Financial Secretary to the Treasury)

184 Written evidence from the Tax Law Review Committee (TLRC) ([DFE0016](#)). See also written evidence from CIOT ([DFE0017](#)) and ICAEW ([DFE0022](#)).

185 [Q 85](#) (Malcolm Gammie, Tax Law Review Committee)

186 [Q 9](#) (Frank Haskew, ICAEW)

187 For example, [Q 9](#) (Richard Wild, CIOT) and written evidence from TLRC ([DFE0016](#)).

188 Written evidence from TLRC ([DFE0016](#))

189 [Q 87](#) (Malcolm Gammie, Tax Law Review Committee). See also written evidence from the Confederation of British Industry (CBI) ([DFE0031](#)), CIOT ([DFE0017](#)) and Law Society of England & Wales ([DFE0019](#)).

190 [Q 94](#) (Paul Riley, HMRC)

191 [Q 114](#) (Financial Secretary to the Treasury)

192 HC Deb, 12 November 2020, [col 44WS](#)

Stage 1 consultation, so it can work with business and representative bodies to develop a more targeted, proportionate measure than that now proposed.

HMRC's existing compliance measures

137. We were told that HMRC's existing strategy for dealing with large businesses was "very clear" and it already had a "bevy of measures for securing compliance".¹⁹³ These include the allocation of a customer compliance manager (CCM) to the largest businesses who has overall responsibility for their relationship with HMRC.¹⁹⁴ HMRC also uses a business risk review to help determine where best to deploy its resources. Paul Riley, Director of Tax Administration at HMRC, told us that business risk review was "the bedrock of our relationship with large businesses".¹⁹⁵ The business risk review process was subject to review in 2018, with a new version introduced in tax year 2019–20.¹⁹⁶
138. Malcolm Gammie told us that: "If, for some reason these measures are not working ... it is for the Revenue to explain itself. It is not for it to pull a new compliance obligation like a rabbit out of a hat, on a nice to have basis".¹⁹⁷ He added that, given the interaction between taxpayer and HMRC that results from existing processes, "it is not entirely clear why placing an obligation on the taxpayer to notify under this separate provision advances the Revenue's knowledge to any positive effect".¹⁹⁸
139. HMRC and the Financial Secretary to the Treasury acknowledged that the majority of large businesses have an open, collaborative working relationship with HMRC.¹⁹⁹ HMRC described its overall relationship with large businesses as "pretty productive and healthy".²⁰⁰
140. Some witnesses told us that their understanding, gleaned from discussions with HMRC officials after the consultation had been published, was that the measure was intended to address "continued aggressive, and often undisclosed, tax planning activity undertaken by a minority of large business customers".²⁰¹ Witnesses questioned why this proposal had not been targeted at the businesses that HMRC has concerns about.²⁰² One suggestion was that the measure should apply only to businesses with a high risk rating within business risk review; other businesses would continue working with their CCMs as now.²⁰³ The CIOT, in response to the consultation, said that the measure risked eroding the collaborative working relationship that had

193 [Q 85](#) (Malcolm Gammie, Tax Law Review Committee)

194 HMRC, 'How HMRC works with large businesses', (April 2018): <https://www.gov.uk/guidance/hm-revenue-and-customs-large-business> [accessed 15 December 2020]

195 [Q 97](#) (Paul Riley, HMRC)

196 HMRC, Consultation on the Business Risk Review (13 September 2017): <https://www.gov.uk/government/consultations/consultation-on-the-business-risk-review> [accessed 15 December 2020]

197 [Q 85](#) (Malcolm Gammie, Tax Law Review Committee)

198 [Q 86](#) (Malcolm Gammie, Tax Law Review Committee)

199 [Q 97](#) (Paul Riley, HMRC) and [Q 113](#) (Financial Secretary to the Treasury)

200 [Q 94](#) (Paul Riley, HMRC)

201 Written evidence from CBI ([DFE0031](#))

202 [Q 9](#) (Susan Cattell, ICAS), [Q 86](#) (Malcolm Gammie, Tax Law Review Committee), and written evidence from ICAEW ([DFE0022](#)), Law Society of England & Wales ([DFE0019](#)), and the Law Society of Scotland ([DFE0025](#))

203 [Q 9](#) (Susan Cattell, ICAS) and written evidence from ICAEW ([DFE0022](#))

been developed with business.²⁰⁴ CIOT added that “it seems unlikely to us that this proposal will change the behaviour of those that do not wish to engage with HMRC”, and queried whether HMRC could meet its objective by making further improvements to the business risk review process.²⁰⁵

141. **While it is positive that HMRC has established a constructive relationship with most large businesses, it seems unnecessary and counter-productive to make a requirement to notify uncertain treatment apply to all, regardless of their risk status. We recommend that this new measure should be targeted only at the minority of large businesses that are of concern to HMRC.**

Definition and test of uncertainty

142. The requirement to notify is intended to apply where a large business identifies an “uncertain tax treatment”. HMRC’s proposal is that an uncertain tax treatment be defined as one where the business believes that HMRC may not agree with the business’ interpretation of legislation, case law or guidance.²⁰⁶
143. Witnesses told us that the definition of uncertain tax treatment itself creates significant uncertainty.²⁰⁷ The test is subjective, with witnesses describing having to ‘second guess’ HMRC.²⁰⁸ The CBI said:
- “To implement a regime whereby business is required to guess the mind of HMRC, as to what they may or may not believe the mind of Parliament to have been when making the law, is in our view a highly uncertain exercise which will be fraught with disagreement, inefficiency and error.”²⁰⁹
144. Witnesses told us that divining HMRC’s view on a tax issue relied on HMRC having set out that view clearly and publicly. Although HMRC has published extensive guidance on many areas, witnesses told us that, in practice, that guidance may be out of date or not deal with particular issues, or HMRC may have decided not to follow it.²¹⁰ Witnesses therefore asked how, in the absence of clear, published HMRC guidance, a taxpayer could identify that their view was not the same as that of HMRC.²¹¹ HMRC accepted the importance of providing high quality, up-to-date guidance so businesses would know where they stood.²¹²
145. HMRC referred in the consultation document to similar measures in other countries. Witnesses told us that the tests which these countries had adopted were less subjective and generally more straightforward. The proposals bore little relationship to the relevant accounting test (IFRIC23), which meant

204 CIOT, *Response to consultation on notification of uncertain tax treatment by large businesses* (26 Aug 2020): <https://www.tax.org.uk/policy-technical/submissions/notification-uncertain-tax-treatment-large-businesses> [accessed 15 December 2020]

205 *Ibid.*

206 HMRC, *Notification of uncertain tax treatment by large businesses—consultation document* (19 March 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873538/Consultation_document_Notification_of_uncertain_tax_treatment_by_large_businesses.pdf [accessed 15 December 2020]

207 **Q 51** (Jason Piper, ACCA) and written evidence from ICAEW (**DFE0022**)

208 **QQ 85–86** (Malcolm Gammie, Tax Law Review Committee) and written evidence from CBI (**DFE0031**), CIOT (**DFE0017**) and TLRC (**DFE0016**)

209 Written evidence from CBI (**DFE0031**)

210 **Q 9** (Richard Wild, CIOT) and written evidence from CBI (**DFE0031**) and TLRC (**DFE0016**)

211 **Q 9** (Richard Wild, CIOT; Susan Cattell, ICAS) and written evidence from TLRC (**DFE0016**)

212 **Q 99** (Paul Riley, HMRC)

businesses would have to introduce additional risk management measures to deal with this new requirement.²¹³ HMRC agreed that the UK was taking a different route.²¹⁴

146. We heard that the range of taxes covered by the requirement was too broad, and in consequence the de minimis had limited benefit.²¹⁵ It was suggested that HMRC limits the number of taxes in scope, as was the case in the USA where the requirement applied only to income taxes. The CBI said that the test should be based on materiality, whereby uncertainty would be notified only if the amount of tax at stake was significant in terms of that business' overall position, as is the case in Australia, rather than a specific numerical limit.²¹⁶
147. HMRC said it was “listening to the feedback” and acknowledged that the proposed test was “probably too subjective and difficult”.²¹⁷ HMRC accepted the importance of providing high quality, up-to-date guidance so businesses would know where they stood.²¹⁸ Based on the evidence we heard, it is notable that HMRC did not identify the problems with the proposed test from the outset.
148. **We are concerned that HMRC did not recognise the likely difficulty of applying the test for uncertain tax treatments when the policy was being formulated for consultation. Tax obligations should be based on objective criteria that can be easily understood, and a business should not have to second guess HMRC to know if it is subject to a tax obligation. We therefore welcome the Government’s acceptance that it got the test for uncertain tax treatments wrong.**

Penalties for non-compliance

149. The consultation proposed two penalties for failure to notify: one for the business and another for the individual officer of the company responsible for tax compliance.
150. Many witnesses were against penalties being imposed on individuals within a company, telling us that tax compliance is a “business-wide decision, not that of an individual”.²¹⁹ HMRC told us that it was looking into this further.²²⁰
151. Although some witnesses regarded the level proposed for penalties as acceptable, a number raised concerns about the principle of penalties applying to this requirement: the CBI described it as “troubling”.²²¹ This was because, if HMRC decides to challenge a tax position that had not been notified, that challenge would itself mean a penalty was due, regardless of the merits of the challenge. As HMRC acknowledges, it is not always right—so a business could face a penalty when its view of the law was correct.²²² A particular concern was that in some cases a lack of familiarity with a

213 [Q 51](#) (Jason Piper, ACCA) and written evidence from CBI ([DFE0031](#)), Law Society of England & Wales ([DFE0019](#)) and TLRC ([DFE0016](#))

214 [Q 98](#) (Paul Riley, HMRC)

215 Written evidence from CIOT ([DFE0017](#)) and CBI ([DFE0031](#))

216 Written evidence from CBI ([DFE0031](#))

217 [Q 97](#) (Paul Riley, HMRC)

218 [Q 99](#) (Paul Riley, HMRC)

219 [Q 51](#) (Jason Piper, ACCA) and written evidence from ICAS ([DFE0008](#))

220 [Q 97](#) (Paul Riley, HMRC)

221 Written evidence from CBI ([DFE0031](#))

222 Written evidence TLRC ([DFE0016](#)) and Law Society of England & Wales ([DFE0019](#))

particular sector can result in an HMRC officer challenging something that is generally acknowledged to be right.²²³

152. **Tax is a business-wide matter and so liability for failure to notify should sit with the business alone, and not individual officers.**
153. **HMRC's ability to create a failure to notify simply by challenging the position a taxpayer has taken in its tax return creates a 'Catch-22' for businesses. The Government needs to remedy this: a taxpayer should not be at risk of a penalty because of a mistaken or overzealous inspector raising an enquiry without merit.**

Potential compliance costs

154. The consultation document contained no information on the cost implications for business of the proposal, saying they would be fully explored and detailed following the consultation. HMRC told us that an estimate of compliance costs had not yet been made.²²⁴ HMRC anticipated that, for most businesses, compliance costs would be low, because most businesses already notified any tax uncertainty voluntarily.²²⁵
155. Other witnesses took a different view of what this measure would mean for businesses in compliance activity. When we put these concerns to the Financial Secretary to the Treasury, he told us that he would ask HMRC to look at compliance costs in light of the evidence we received.²²⁶
156. Both the CIOT and ICAS expected the vast majority of compliant large businesses to make notifications where there was any possibility of uncertainty to avoid the risk of penalties.²²⁷
157. The CBI wrote that the requirement would entail a large increase in compliance time and expense for businesses.²²⁸ Malcolm Gammie suggested that business compliance costs could easily exceed the expected yield from the measure.²²⁹
158. **Businesses could face significant costs in seeking to comply with the proposed measure on uncertain tax treatment. We are also concerned that this could lead to an overall negative yield for the Exchequer, to the extent that those additional costs are themselves tax deductible.**
159. **Any measure which risks costing taxpayers more in compliance than the revenue it generates is not good tax policy. Businesses should also not be asked to incur costs in providing information to HMRC which it accepts is already being provided in most cases. We welcome the Government's commitment to look into the costs to business of complying with this measure.**

223 [Q 51](#) (Jason Piper, ACCA)

224 [Q 94](#) (Paul Riley, HMRC)

225 [Q 94](#) (Paul Riley, HMRC)

226 [Q 115](#) (Financial Secretary to the Treasury)

227 [Q 9](#) (Richard Wild, CIOT and Susan Cattell, ICAS)

228 Written evidence from CBI ([DFE0031](#))

229 [Q 87](#) (Malcolm Gammie, Tax Law Review Committee)

Potential resourcing issues for HMRC

160. Witnesses pointed to the risk that measures would increase HMRC's compliance systems, putting additional strain on resources that may already be stretched.
161. ICAS told us that, with some companies already finding it difficult to get real-time engagement with CCMs, these measures may make the position worse as CCMs dealt with notifications that HMRC did not necessarily want "from compliant businesses erring on the side of caution".²³⁰ ICAS suggested that if the aim of the measure was to help HMRC, "it might backfire" with notifications "clogging up" HMRC's systems, making it harder for HMRC to identify the problem areas.²³¹
162. **The relationship between a business and its customer compliance manager appears to be key to HMRC's success in managing large business tax risk. We are concerned to hear that this may be under strain. We recommend that the Government identifies what steps can be taken to support existing customer compliance managers and to expand the number of companies benefiting from a customer compliance manager relationship. If this proposal goes ahead, the Government should commit to ensuring that every business affected has a customer compliance manager.**

230 [Q 9](#) (Susan Cattell, ICAS) and written evidence from ICAS ([DFE0008](#))

231 [Q 9](#) (Susan Cattell, ICAS)

CHAPTER 6: NEW TAX CHECKS ON LICENCE RENEWAL APPLICATIONS

163. A new measure proposed in the draft Finance Bill would require a person applying to renew a licence to drive a private hire vehicle (taxi or minicab), operate a private hire business, or carry on a scrap metal business to undergo a tax check. Unless this check is successfully completed the licensing authority will not consider the application for renewal. The purpose of the tax check is to establish that the person is appropriately registered for tax and has been reporting income from the licensed activity to HMRC. The measure applies to initial applications, but here the licensing authority only has to signpost applicants to guidance about their tax obligations and obtain confirmation that the applicant is aware of them. The difference in treatment seems to be because first-time applicants may not begin trading until after the licence is obtained. The new rules will come into effect in April 2022.
164. The measure introduces a new concept of ‘conditionality’ into the tax system, essentially in this case making a licence which a trader needs to run their business legally conditional on compliance with their tax obligations. The Government says it is being introduced to tackle the hidden economy and prevent non-compliant businesses gaining an advantage over compliant ones.²³² Although tax law already requires taxpayers to notify HMRC of liability to tax, to make returns of income as required and to pay tax due with penalties for non-compliance, and HMRC already has powers to obtain information from licensing authorities, HMRC finds it difficult to track down non-compliant traders operating in the hidden economy and enforce these rules. HMRC estimates that this measure will result in £155million additional revenue between 2022/23 and 2025/26.²³³
165. The Law Society of England & Wales referred to a 2020 Budget announcement: “Tax conditionality refers to a principle whereby businesses are granted access to government awards and authorisations (such as approvals, licences, grants) only if they are able to demonstrate good tax compliance”.²³⁴ This appeared to add a further dimension to the concept.
166. The new legislation is expected to affect 400,000 businesses, the majority of them small or micro businesses. The individuals affected are more likely to be male, in older age groups and from BAME groups than in the working population as a whole.²³⁵
167. Conditionality has been the subject of two rounds of public consultation. The first consultation document *Tackling the hidden economy: conditionality*,²³⁶ published in 2016, was a high-level ‘Stage 1 type’ consultation exploring the concept and the areas of activity in which it might be applied. A response document issued in March 2017 reported that the response was broadly

232 HMRC, *Tackling the hidden economy: conditionality* (26 August 2016): <https://www.gov.uk/government/consultations/tackling-the-hidden-economy-conditionality> and HMRC, *Tackling the hidden economy: public sector licensing* (8 December 2017): <https://www.gov.uk/government/publications/tackling-the-hidden-economy-public-sector-licensing> [accessed 15 December 2020]

233 HMRC, *New tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewals> [accessed 15 December 2020]

234 Written evidence from Law Society of England & Wales (DFE0019)

235 HMRC, *New tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewals> [accessed 15 December 2020]

236 HMRC, *Tackling the hidden economy: conditionality* (26 August 2016): <https://www.gov.uk/government/consultations/tackling-the-hidden-economy-conditionality> [accessed 15 December 2020]

favourable. A second consultation document, *Tackling the hidden economy: public sector licensing*,²³⁷ was published in December 2017. This focused on particular businesses licensed by public authorities considered suitable for conditionality and on how the system could work in these cases, including the roles of the applicant for a licence, the licensing authority and HMRC; how administrative burdens could be minimised; and what information should be shared.

168. A response document was published in November 2018. This consultation produced a more mixed response and, in light of the feedback, some of the sectors originally discussed were deemed to be unsuitable for conditionality. In the response document, the Government announced its intention to introduce tax checks for licence renewals in the private vehicle hire, scrap metal and waste management industries.²³⁸ However, only private hire vehicle, taxi and scrap metal trades are in the draft legislation.

Policy objective

169. The draft legislation was published on 21 July 2020 but the accompanying policy paper²³⁹ did not explain why the particular sectors affected had been selected, for example by reference to their compliance record. (The 2017 consultation focused on licensed trades because the licence provided the mechanism for applying the tax check, but did not consider the compliance records of the particular sectors.) Witnesses from the licensing authorities and trade sectors did not know why these sectors had been chosen. They speculated that this might be because of a perception of a prevalence of cash transactions in the private hire vehicle and taxi trades (although this is changing, particularly in larger cities) but this is not relevant to scrap metal dealers who are not permitted to trade for cash.²⁴⁰ Antonia Gray of the British Metals Recycling Association made a Freedom of Information request to HMRC to find out why scrap metal dealers had been chosen, but said the department refused to answer it.²⁴¹
170. The professional bodies were not unsympathetic to the concept of conditionality but had questions. Lydia Challen of the Law Society of England & Wales said:

“There is a philosophical question about conditionality that needs to be addressed. The Revenue says that the justification for it is that if you have access to a government authorisation there are prices to be paid for that, including being compliant and showing you are compliant. I question whether the range of things it has suggested really falls into the bucket of authorisations. We license taxi drivers, because otherwise anybody could get in their car and perform a taxi service.”²⁴²

237 HMRC, *Tackling the hidden economy: public sector licensing* (8 December 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665924/Tackling_the_hidden_economy_-_public_sector_licensing.pdf [accessed 15 December 2020]

238 HMRC, *Tackling the hidden economy: public sector licensing, summary of responses* (7 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754225/Tackling_the_hidden_economy_public_sector_licensing.PDF [accessed 15 December 2020]

239 HMRC, *New tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewal-applications/new-tax-checks-on-licence-renewal-applications> [accessed 15 December 2020]

240 Q 22 (James Button, Institute of Licensing)

241 Q 37 (Antonia Gray, British Metals Recycling Association)

242 Q 21 (Lydia Challen, Law Society of England & Wales)

171. Fiona Fernie of the Tax Investigations Practitioners Group thought that the way conditionality was being applied seemed at variance with HMRC's charter:

“Whether it is meant or not, it gives the impression that the Revenue assumes that a taxi driver or a scrap metal merchant is inherently likely to be dishonest and likely not to want to file their tax returns. The Revenue's charter says that it will treat everybody as being honest in the first instance.”²⁴³

172. Against this background we asked HMRC why these sectors were chosen. It told us:

“An initial list of six licensed areas was included in consultation; these were—alongside other criteria—because a number of factors make them vulnerable to hidden economy activity. However, the decision to proceed with the two sectors included within the draft legislation was based on a wider range of criteria and informed by feedback from stakeholders. In particular, stakeholders reported that existing licence conditions aligned with the concept of a tax registration check. ... this reflects a careful approach towards identifying licensing schemes where there is suitable alignment with the aims of a tax check.”²⁴⁴

173. We asked for the analysis on which the decision was based. HMRC gave general information about the tax gap attributable to the hidden economy, adding: “although HMRC does not narrow down these tax gap estimates by sector, we have considered other information to develop understanding of the sectors included within the draft legislation. This includes data from HMRC systems, insight from compliance activity, consultation responses and the experience of other tax administrations”.²⁴⁵

174. **Before 400,000 businesses are required to undergo a tax check, we would have expected HMRC to publish an analysis of tax compliance in the relevant sectors to support the decision to apply conditionality first to them. In line with the policy principles set out earlier in our report, more information is needed to support the application of tax checks in these circumstances.**

175. **Therefore, before the tax check legislation is introduced in Parliament, the Government should publish an analysis of compliance in the sectors affected, to demonstrate that the problem of hidden economy activity is such that the tax check proposed is a proportionate response.**

Effectiveness

176. Some witnesses were sceptical about whether conditionality would achieve the Government's objectives. They argued that traders who were non-compliant for tax might be non-compliant with the licensing rules, and so would not be affected. Antonia Gray of the British Metals Recycling Association said: “I fear it will not work, because a lot of non-compliant operators in the scrap metal business are not licensed and therefore not visible to HMRC in that way” and “this is policing the policed; they are not going to discover those

243 [Q 21](#) (Fiona Fernie, Tax Investigations Practitioners Group)

244 Written evidence from HMRC ([DFE0035](#))

245 *Ibid.*

people who are unlicensed and we have a lot of unlicensed operators in the sector”.²⁴⁶ LITRG agreed.²⁴⁷

177. Concern was expressed that, rather than improving compliance, the checks might deter some traders who are currently compliant for licensing, but not for tax, from renewing their licences and so becoming non-compliant for both. Antonia Gray commented: “We will see people deciding not to renew”.²⁴⁸ John Miley of the National Association of Licensing and Enforcement Officers (NALEO) agreed: “There is always potential for it to drive those dishonest people underground”.²⁴⁹ LITRG said “those determined to avoid paying tax may even be encouraged by the measure to operate on an unlicensed basis”.²⁵⁰
178. Another risk was ‘phoenixism’, whereby traders change the name or status of their business when a renewal was due, so that each application appeared to be a first one and thus escapes the check. Witnesses noted that while the tax check established whether a trader was registered for tax and returning income from the trading activity, it would not in itself tackle the problem of traders underreporting income. James Button of the Institute of Licensing told us that: “It does not go any further to ensure they put all their cash income though their books”.²⁵¹ This raises the question of whether it would have been more effective for HMRC to tackle those active in these sectors who are evading tax or under-reporting their income through increased compliance activity.
179. The Law Society of England & Wales argued that HMRC could have used its existing powers to target evaders more effectively: “We would question whether HMRC’s existing powers are insufficient to tackle these issues in a more targeted way, for example by themselves cross-checking tax details against the relevant registers of licence holders, which seems unlikely to be more onerous for HMRC than responding to individual taxpayer requests for tax checks”.²⁵²

Information for first-time applicants

180. Witnesses welcomed the requirement for new applicants to be given information about their tax obligations and to confirm that they were aware of them. LITRG thought that this could educate new applicants about their responsibility for tax and how to become fully compliant. Tom Henderson of LITRG said: “This has the potential to be really useful, because it will help people who would otherwise end up in the hidden economy out of ignorance or neglect of their obligations, and not as a result of any deliberate avoidance motive”.²⁵³ Similarly, the Law Society of England & Wales said: “We support the proposal that for first time applicants, the licensing authority should give them information about their potential liability to be registered for tax. This seems to us a helpful addition to public awareness of tax issues”.²⁵⁴ When it comes to evaluating this policy it would be helpful to evaluate this aspect

246 Q 32 (Antonia Gray, British Metals Recycling Association)

247 Q 41 (Tom Henderson, Low Incomes Tax Reform Group)

248 Q 41 (Antonia Gray, British Metals Recycling Association)

249 Q 24 (John Miley, NALEO)

250 Q 41 (Tom Henderson, Low Incomes Tax Reform Group)

251 Q 22 (James Button, Institute of Licensing)

252 Written evidence from Law Society of England & Wales (DFE0019)

253 Q 41 (Tom Henderson, Low Incomes Tax Reform Group)

254 Written evidence from Law Society of England & Wales (DFE0019)

separately, as it may achieve more than the ‘stick’ of tax checks and would be relatively easy to extend to other areas.

Concerns

181. In evidence, representatives of the licensing authorities and trade sectors and representative bodies such as the Low Income Tax Reform Group were under the impression that the tax check was to be confined to ensuring that the applicant was registered for tax. LITRG told us:

“Throughout the consultation process, it has been made clear that tax conditionality would be concerned with whether or not a person had properly registered for tax—and not whether or not the person had submitted a tax return which was complete and correct.”

182. However, LITRG noted that the draft legislation “seems to extend this to include a taxpayer’s obligation to file a return. This appears to be outside the scope of the policy intent”,²⁵⁵ and added that “we think there is a bit of mission creep”.²⁵⁶

183. The Law Society of England & Wales said: “In our view the limit of this should be registration for tax. The range of information that HMRC can request in the current draft legislation appears to go well beyond that”.²⁵⁷ John Miley of NALEO said: “We are happy to support [HMRC] on drivers being registered. We would not want to go any further than that”.²⁵⁸

184. The draft legislation goes beyond registration for tax to reporting relevant income. It is not clear whether this was a misunderstanding of the policy intention, or if the policy developed after the response to the second consultation document (that consultation document discussed the tax checks in terms of registration). The policy paper published with the draft legislation refers to “applicants completing checks that confirm they are appropriately registered for tax”.²⁵⁹ LITRG said: “it is quite bizarre that on the same day, 21 July, you have the policy paper on this matter confirming that conditionality would just relate to registration, yet the draft legislation seems to say something different”.²⁶⁰

185. **New proposals must be clear and comprehensive. Once there has been a consultation, major changes to proposals should not be made without explanation. We are concerned about the possibility of ‘mission creep’ in cases such as the tax check proposals. HMRC must communicate clearly with licence holders about the new tax check policy before it is introduced in 2022, so that any misunderstandings are dispelled.**

186. **We recommend that the tax check is limited to confirming that the applicant is registered for tax and has a unique tax reference (UTR). This is the basis on which consultation has been conducted, and we are not persuaded that the case for going further has been made.**

255 Written evidence from Low Incomes Tax Reform Group ([DFE0003](#))

256 [Q 43](#) (Tom Henderson, Low Incomes Tax Reform Group)

257 Written evidence from Law Society of England & Wales ([DFE0019](#))

258 [Q 30](#) (John Miley, NALEO)

259 HMRC, *New tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewal-applications/new-tax-checks-on-licence-renewal-applications> [accessed 15 December 2020]

260 [Q 43](#) (Tom Henderson, LITRG)

187. One concern raised by witnesses related to paragraph 5(1)(b) of the draft Schedule on tax checks.²⁶¹ The breadth and vagueness of the wording here worried ATT and ACCA, who wondered what it was supposed to cover. Will Silsby of ATT said that “it appears to suggest that the tax check for, say, a taxi driver might require them to provide opinions as opposed to factual information, or perhaps details of other persons in the industry”.²⁶²
188. HMRC explained that this provision was “to evaluate the effectiveness of the measure in bringing people out of the hidden economy. It is important to clarify that any information requested as part of the tax check would relate solely to the applicant’s own affairs”.²⁶³ The Financial Secretary to the Treasury said:
- “There was a concern about some language in the legislation about evaluation and whether it might open the door to something wider. I hope I can give you reassurance on that. All that language says is that HMRC needs to be able to run evaluations of its own on how effective the policy is. I think, therefore, that it should be taken entirely at face value”.²⁶⁴
189. **Paragraph 5(1)(b) of the draft Schedule in the legislation should be amended to define more tightly the information which can be required of applicants for licence renewals.**
190. Institute of Licensing expected to pass the costs they would incur in operating the new system to applicants in the form of increased fees: “Any additional costs of administration incurred by licensing authorities can be recovered via the licence fees”.²⁶⁵ This might appear to be unfair and a ‘double whammy’ for compliant applicants who paid their taxes and had to meet the cost of tax checks seeking to identify the non-compliant. The Financial Secretary said “HMRC has had extensive consultation on this and would expect to support licensing bodies, local authorities and Transport for London with financial assistance in the event that there are costs”.²⁶⁶
191. A third concern was that the purpose of licensing—to protect consumers in the case of private hire vehicles and taxis—might be lost in adding a tax check to the process. If, as a result of the new rules, some licenced operators became unlicensed, this would also adversely affect consumers. The Financial Secretary did not think this was a risk: “in some respects the system can be made more effective if there is a bit more linkage and joining up”.²⁶⁷ James Button of Institute of Licensing said: “I do not see this will dilute the overriding aim that public safety is paramount. Drivers have to be assessed for fitness and propriety. Operators have to be assessed for fitness and propriety”.²⁶⁸ John Miley of NALEO agreed.²⁶⁹

261 HMRC, *Tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewals> [accessed 15 December 2020]

262 [Q 43](#) (Will Silsby, ATT)

263 Written evidence from HMRC ([DFE0035](#))

264 [Q 119](#) (Financial Secretary to the Treasury)

265 Written evidence from Institute of Licensing ([DFE0024](#))

266 [Q 120](#) (Financial Secretary to the Treasury)

267 [Q 121](#) (Financial Secretary to the Treasury)

268 [Q 26](#) (James Button, Institute of Licensing)

269 [Q 26](#) (John Miley, NALEO)

Future plans

192. The Government has ambitious plans to extend conditionality. The second consultation, published in 2017, described its proposals as “a first step in a longer-term roadmap for delivering conditionality”.²⁷⁰ The 2018 response document²⁷¹ referred to “conditionality offering an important step towards integrating the tax system with wider government regulation”. In that response document and in the policy paper published in July 2020 it said it is considering extending this measure to Scotland and Northern Ireland (the measure applies to England and Wales only at present), and intends to consult on extending the principle of conditionality to other sectors over time. We heard no objection to applying this measure to Scotland and Northern Ireland, provided that the devolved authorities are consulted and fully involved in the extension.²⁷²
193. On conditionality generally, the Law Society of England & Wales told us “conditionality is a big stick and there may be unintended consequences, so any measures introducing it should be strictly limited to prevent disproportionate effects”.²⁷³
194. **Conditionality is an unproven policy. It remains to be seen whether it will achieve the Government’s objectives for it. The Government should proceed cautiously. We recommend:**
- **Before conditionality is applied to other sectors, the effectiveness of the legislation in the private hire vehicle, taxi and scrap metal sectors should be evaluated. This evaluation should look separately at the educational and information element relating to applicants for new licences, and at the impact of the tax checks, in particular whether it has led to unintended consequences, such as an increase in unlicensed operations;**
 - **The application of conditionality to other sectors should be justified by reference to a specific problem in the relevant sector; and**
 - **Before introducing tax checks, HMRC should work with stakeholders to communicate clearly to applicants for licences what the tax check is for and what it consists of, bearing in mind the diversity of the sector and the need to cater for those who cannot be reached using digital methods and for whom English is not their first language.**

270 HMRC, *Tackling the hidden economy: public sector licensing* (8 December 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665924/Tackling_the_hidden_economy_-_public_sector_licensing.pdf [accessed 15 December 2020]

271 HMRC, *Tackling the hidden economy: public sector licensing, summary of responses* (7 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754225/Tackling_the_hidden_economy_public_sector_licensing.PDF [accessed 15 December 2020]

272 [Q 28](#) (Susan Cattell, ICAS)

273 Written evidence from Law Society of England & Wales ([DFE0019](#))

CHAPTER 7: CROSS-CUTTING THEMES

195. This final chapter will cover themes that emerged during our evidence gathering which go beyond the specific points of draft legislation and consultation discussed in earlier chapters. It is intended to highlight issues that recurred across the topics and discuss how they might be addressed, both through the Finance Bill and in how HMRC approaches these matters more generally in future.

Use of existing powers

196. One question often posed in the course of our inquiries is “are new or extended powers really needed?”. Another common theme is that HMRC were being given new powers when it was not making optimal use of the powers it already possessed, or pursuing other non-legislative ways of tackling issues. The alternative approaches our witnesses suggested often involved the use of powers or processes that HMRC already has. For example, HMRC could use information to which it already has access and its existing enquiry powers to deal with evasion in the sectors covered by tax checks.²⁷⁴ Similarly, it could use the Business Risk Review process to tackle uncooperative large businesses²⁷⁵ without resorting to wide-reaching new powers.

197. While witnesses were supportive of HMRC’s efforts to tackle promoters of tax avoidance schemes and to plug any gaps in existing legislation which made it less effective than Parliament intended, there was nevertheless a feeling that all the powers already available to them were not being used to the full. LITRG said: “we would like to see HMRC make greater use of pay-as-you-earn security deposits” and “debts of a limited company might transfer to directors in certain circumstances”.²⁷⁶ There was also a perception that HMRC were not making sufficient use of criminal prosecution.²⁷⁷

198. **When proposing new or extended powers for HMRC, the Government should specifically explain why existing powers are insufficient to achieve the policy objective. This was done in the case of the promoters legislation where the problems with the current legislation were explored in the consultative document, along with the impact this was having on HMRC’s ability to defeat promoters’ activities in a timely way.**

199. **We also recommend that the Government adopts a standard practice of providing detailed analysis to justify any new proposal conferring new or extended powers on HMRC.**

Non-legislative action

200. When assessing whether new powers are needed, another question that needs to be asked is whether there are alternative non-legislative approaches that will enable the policy objective to be met, obviating the need for new legislation. Although tax obligations themselves must be clearly set out in legislation, the issues considered in this inquiry all highlight the usefulness of non-legislative approaches in helping the Government achieve its objectives. This is particularly relevant to issues relating to compliance, where good

274 Q 9 (Will Silsby, ATT) and written evidence from Law Society of England & Wales (DFE0019)

275 Q 9 (Susan Cattell, ICAS)

276 Q 46 (Tom Henderson, LITRG)

277 Written evidence from Tax Watch (DFE0013)

communication and well-designed and straightforward processes play an important part in ensuring taxpayers understand their obligations.

201. The need for effective and straightforward communication with taxpayers was raised in the evidence we heard on both the tax check provisions and also the promoters measures. It is clear from the legislation in these two areas that the Government recognises the role communication can play in supporting its policy aims. For example, the tax checks measure includes a statutory obligation on licensing authorities to provide information to first time applicants, which was welcomed by witnesses.²⁷⁸ Witnesses were also encouraged, in the context of the promoters measures, by HMRC's focus on getting information early enough to allow it to issue warnings and contact scheme users. But witnesses stressed the importance of HMRC structuring its communications on tax avoidance effectively—so that they not only reach their intended audience, but also can be understood easily. One witness commented that HMRC has “a very blinkered view as to how it should communicate with people and did not seem incredibly willing to come out of that”,²⁷⁹ and, as in 2018, we heard criticism of HMRC's Spotlights as a means of warning individuals about new schemes.
202. The evidence also highlighted the use of non-legislative action as a means of addressing particular issues, particularly around compliance. We were encouraged to learn of how HMRC has used customer compliance managers to improve its engagement with the majority of large businesses: for some witnesses, these relationships, rather than a broadly drawn notification requirement, are seen as the best way of identifying areas of uncertainty.²⁸⁰
203. We welcome the steps taken by the tribunal service to deal with the impact of COVID-19; the new processes around virtual hearings offer an opportunity to improve efficiency, and to reduce some of the delays that can result when a case is referred to a tax tribunal. We have highlighted in Chapter 4 the scope for HMRC to improve processes in relation to third party information notices and international information requests to help speed up the process.
204. **We consider that non-legislative solutions, whether operating independently or in tandem with legislation, can usefully support the Government's policy aims in relation to tax, and so recommend that they should be considered as an important element in the development of policy solutions.**

Tax policy consultation framework

205. A framework for carrying out consultations on tax policy was set out by the Government in 2011.²⁸¹ It consists of a formal commitment to full and open consultation, except in exceptional circumstances, at every stage in the development and implementation of a new tax policy proposal. Five specific stages for the development and implementation of tax policy are outlined, with Stages 1 to 3 covering development of policy and legislation.²⁸²

278 For example, [Q 41](#) (Tom Henderson, Low Incomes Tax Reform Group).

279 [Q 15](#) (Fiona Fernie, Tax Investigations Practitioners Group)

280 [Q 9](#) (Susan Cattell, ICAS)

281 HM Treasury and HMRC, *Tax Policy Framework* (March 2011): <https://www.gov.uk/government/publications/tax-consultation-framework> [accessed 15 December 2020]

282 Stages 4 and 5 are implementation and review.

206. In our inquiry into the Finance Bill 2011, we welcomed the new approach to tax policy making reflected in this framework and noted the importance of the Government abiding by its own rules.²⁸³ In that, and subsequent inquiries,²⁸⁴ we have referred back to the framework to check whether the Government has, in practice, lived up to the standards it set itself. We have done the same this year.
207. In terms of the measures to be included in this year's Finance Bill, we consider the Government's performance against its own standards mixed:
- (1) Consultations on only two of the measures officially started at Stage 1 (tax checks on licence renewals and civil information powers), but, of those, one then leapfrogged to Stage 3 (civil information powers) after a hiatus of nearly two years.²⁸⁵
 - (2) The consultation on uncertain tax treatment was a Stage 2 consultation (and no explanation was offered as to why Stage 1 had been omitted).²⁸⁶ Our witnesses were clear that this proposal should have begun at Stage 1. The issues raised by stakeholders during the consultation were such that the Government has recently announced it will delay this measure in order to get both policy and legislation right. This shows the Government has listened to stakeholders—but a 'start/stop' like this should not be necessary if the consultation framework is followed.
 - (3) Although the general tenor of the promoters measures was announced (without consultation) in response to the Independent Loan Charge Review, a consultation on certain aspects of the policy was published alongside the legislation—and, as these measures are about revenue protection, this approach can be understood. The consultation document provided details on each of the measures, both in relation to context, objective and intended outcome, which was helpful and ensured that questions for stakeholders were put in context.
 - (4) The framework says that the policy objectives and broader policy content need to be set out clearly. On uncertain tax treatment, witnesses felt that consultation had not explained the nature of the problem properly—even tax professionals were struggling to understand what the problem is.
 - (5) The framework also says that the consultation needs to be clear as to what has already been decided (and where there is scope to influence design). A Stage 1 consultation generally invites broader discussion on options, yet, on civil information powers, one stakeholder said “we have not had a real discussion about the underlying policy rationale for it, and ... whether there are alternatives that could be explored”,²⁸⁷ a point also made by UK Finance (who said it would have preferred HMRC to

283 Economic Affairs Committee, *Finance Bill 2011* (4th Report, Session 2010–12, HL Paper 158)

284 For example Economic Affairs Committee, *The Draft Finance Bill 2014* (2nd Report, Session 2013–14, HL Paper 146), Chapter 6.

285 [Q 58](#) (Sarah Wulff-Cochrane, UK Finance). The consultation on HMRC's civil information powers was launched on 10 July 2018, with the Government saying it would publish its response in Autumn 2018. The summary of responses was, however, not published until 21 July 2020, alongside draft legislation implementing the Government's preferred policy response. No explanation for the delay was given.

286 In paragraph 7 of the 2011 framework, the Government said where it was necessary to deviate from the framework, it would be “as open as possible about the reasons for such deviation”.

287 [Q 7](#) (Frank Haskew, ICAEW)

spend more time exploring alternatives)²⁸⁸ and the CIOT who asked, “are there other options that we can explore? We should explore them fully, rather than just giving HMRC an opportunity to draw a few lines against them in a consultation document”.²⁸⁹

- (6) On tax checks for licences, although overall it seemed that the Government had consulted widely, both formally and informally, on both policy and design,²⁹⁰ we noted that there appeared to be a disconnect between what witnesses understood the check to involve from the consultation process, and what the draft legislation actually provided for.²⁹¹
208. Our inquiry also extended to two calls for evidence published by the Government in connection with its promoters strategy. Calls for evidence are not provided for in the tax consultation framework; they represent a preliminary step, intended to inform and assist the Government in identifying next steps in relation to specific issues. If the evidence received confirms the Government’s assessment of the need for action, we would expect that those next steps would include consultation on options in accordance with the framework. However this does not seem to be what the Government is proposing on tax advice. Instead of a consultation on possible options, it is instead planning to take four specific steps, including a consultation on a single option, that it “believes ... will significantly move the market towards the desired outcomes”.²⁹²
209. **Consultation plays an important role in getting tax policy and its implementation right. Views of stakeholders help ensure that Government objectives are met in a proportionate way; they look at proposals through a different lens to that employed by HMRC. Taking account of those views—and being seen to take account of them—assists in building confidence in the tax system.**
210. **As we said in our 2011 report, the Government should abide by its own rules: it is disappointing to have to note, once again, that in relation to certain of the measures we consider in this report, it clearly has not.**
211. **Starting a consultation at the right stage is important to ensure that ‘start/stops’ do not happen: it does not inspire confidence in the Government’s own policy making process if it publicly commits to a measure which it then has to admit was wrong.**

288 [Q 53](#) (Sarah Wulff-Cochrane, UK Finance)

289 [Q 8](#) (Richard Wild, CIOT)

290 [QQ 22, 25](#) (John Miley, NALEO) and [Q 33](#) (Steve Wright, LPHCA)

291 See [Q 25](#) (John Miley, NALEO), [QQ 32-33](#) (Steve Wright, LPHCA), [Q 41](#) (Will Silsby, ATT) and [Q 43](#) (Tom Henderson, Low Incomes Tax Reform Group). See also written evidence from Law Society of England & Wales ([DFE0019](#)).

292 HMRC, *Raising Standards in the Tax Advice Market—summary of responses and next steps* (November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934614/Raising_standards_in_the_tax_advice_market_-_summary_of_responses_and_next_steps.pdf. [accessed 15 December 2020]. These four steps are: (a) certain actions linked to HMRC’s standard for agents; (b) working with professional bodies; (c) an internal HMRC review of options for action in relation to the costs of obtaining tax refunds (which could lead to a subsequent consultation) and (d) a consultation on requiring all tax advisers to have professional indemnity insurance.

Lack of evidence

212. Another area of concern is that the Government has not presented sufficient evidence in support of the policy proposals we have looked at. We emphasised the importance of this in Chapter 2. However, as noted in Chapter 6 above, more information should have been published to support the case for applying conditionality to private hire vehicle and taxi businesses and scrap metal dealers in terms of analysis of those sectors and the impact on the hidden economy. Otherwise, there is a sense that the government has determined the policy in simply because licensing affords it the opportunity. That is an inadequate foundation on which to base a tax check for hundreds of thousands of businesses. Similarly, the notification of uncertain tax treatment was predicated on the basis of addressing the tax gap arising from interpretation of tax law, but our witnesses pointed out that the impact of this measure would be negligible.²⁹³
213. On civil information powers, the case made for changing the process and removing safeguards did initially appear to be evidence-based—on the OECD review of the UK’s performance in dealing with international information requests. However those facts and figures were not set in the context of third party notices to financial institutions or international information requests as a whole. Once that was done the evidence demonstrated that this was actually a minor problem, and the case for removing the safeguards fell away under scrutiny.
214. In the case of the promoters legislation, HMRC helpfully provided evidence about the problems it had been encountering in applying the existing provisions and the adverse effects this had had in terms of delaying or frustrating action against promoters.²⁹⁴
215. **Good tax policy needs to be evidence-based and not just with a theoretical justification or rationale but with analysis, facts and figures. We are concerned that in some cases policy and legislative proposals are being advanced without providing the evidence to back them up or with a flawed analysis that takes account of only part of the available evidence leading to the wrong solution. This should not happen even in consultation, let alone in legislative measures being brought before Parliament.**

Disproportionate and poorly targeted action

216. The three proposals for tax checks, notifying uncertain tax treatments and civil information powers also shared a further common characteristic. In each case, witnesses told us they were poorly targeted and disproportionate to the problem they were intended to tackle. The Government appeared to acknowledge that only a minority of licensed private hire vehicle, taxi and scrap metal businesses are believed to be evading tax,²⁹⁵ and only a small minority of large businesses are not already voluntarily notifying HMRC of uncertain tax treatments,²⁹⁶. In addition, we established that the number of Financial Institution Notice cases going to the tax tribunal to approve use of

293 Written evidence from CIOT ([DFE0017](#))

294 HMRC, *Tackling promoters of tax avoidance* (21 July 2020): <https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance> [accessed 15 December 2020]

295 HMRC, *Tackling the hidden economy* (8 December 2017): <https://www.gov.uk/government/consultations/tackling-the-hidden-economy-public-sector-licensing> [accessed 15 December 2020]

296 [Q 19](#) (Lydia Challen, Law Society of England & Wales)

HMRC's civil information powers which involve international requests are only a small proportion of the total.²⁹⁷

217. In the case of the promoters legislation, it was the broad scope of the legislation which caused concern that “although intended to capture only the hard core of 20 to 30 promoters, the way in which [the proposals] are drafted ... is quite broad and could cover an awful lot of advisers who are advising in the mainstream of the tax advisory market”²⁹⁸. We were also told that “you are introducing legislation that affects everybody for the purpose of dealing with a small minority.”²⁹⁹
218. We understand that it is not always possible to target tax measures precisely and that this is generally accepted but, as one of our witnesses put it in relation to tax checks, this is only justified “provided that the compliance burden on the compliant is outweighed by the benefit to compliant taxpayers”.³⁰⁰ The risk of broad, badly targeted legislation is that, as we concluded in our 2018 report, not only can it adversely affect compliant taxpayers, but it also leaves too much to the exercise of HMRC discretion;³⁰¹ this was criticism we heard about some of the measures discussed in this report.³⁰²
219. Our witnesses suggested that the perceived problems with these tax measures could have been dealt with in other ways which would have focussed action on the taxpayers the proposals were intended to impact, rather than the much larger number of taxpayers in the relevant sectors. For example, ICAS suggested that notification of uncertain tax treatment could be limited to companies receiving a high risk rating under HMRC's Business Risk Review process.³⁰³ Similarly, the Law Society of England & Wales felt that HMRC could use information already available to it to target evasion in the private hire vehicle, taxi and scrap metal trades.
220. **It seems wrong to legislate powers which operate in a scattergun way, burdening thousands with additional compliance obligations, depriving hundreds of safeguards or rendering compliant businesses vulnerable to sanctions, in order to address minority problems. Better ways should be found of targeting more directly those uncooperative taxpayers whose behaviour needs to change.**
221. **In line with the principles we set out in Chapter 2, tax legislation should be targeted on the taxpayers it is intended to affect. We recommend that consulting with stakeholders about how action can best be targeted is made a standard feature of all calls for evidence and consultations.**

297 See table in Chapter 4 above.

298 [Q 12](#) (Lydia Challen, Law Society of England & Wales)

299 [Q 19](#) (Lydia Challen, Law Society of England & Wales)

300 [Q 41](#) (Jason Piper, ACCA)

301 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

302 [Q 8](#) (Susan Cattell, ICAS), [Q 14](#) (Lydia Challen, Law Society of England & Wales), [Q 46](#) (Will Silsby, ATT) and [Q 50](#) (Jason Piper, ACCA and Tom Henderson, LITRG)

303 Written evidence from ICAS ([DFE0008](#))

Safeguards

222. In our 2018 report *The powers of HMRC: Treating taxpayers fairly*, we discussed the importance of adequate taxpayer safeguards.³⁰⁴ Our recommendations related to particular areas where we considered safeguards needed to be strengthened, particularly in relation to ensuring taxpayers had recourse to an independent review of HMRC's actions. We commented:

“HMRC's internal governance procedures, however robust, cannot be infallible”.³⁰⁵

223. As a result, we recommended that where HMRC was given a new power, the exercise of that power should carry a right of appeal to a tax tribunal. The Government's response said that, although a right of appeal was considered as part of the policy process for all new powers, there may be cases where it was not appropriate; for example, where it risked slowing down the process and thereby rendering the measure ineffective.³⁰⁶

224. In 2018, our concern was that, whilst HMRC continues to expand its powers, taxpayer safeguards were not keeping pace. In relation to the measures considered in this inquiry, our concern is that the safeguards taxpayers currently have are being reduced, given the shift away from independent scrutiny to self-policing. Under the promoters measures, we set out in Chapter 3 the concerns expressed by witnesses about the reliance being placed on internal HMRC governance to monitor how the new powers will be used, in particular given that action can be taken under certain of the provisions simply because HMRC 'suspects'. The justification given for this is that safeguards delay HMRC in taking action against promoters.

225. In relation to Financial Institution Notices, the Government seems to be relying heavily on the aim of meeting a specific OECD target in relation to a relatively limited number of international requests for information. Where HMRC wishes to access taxpayer data held by a financial institution, the reassurance obtained from the independent scrutiny provided by the need to obtain tax tribunal approval (and, for the financial institution, its right of appeal where a notice has been issued) will be lost. Instead, HMRC will itself determine if the conditions are met, with internal processes the only protection against the risk of misuse.

226. **We are troubled by HMRC's seeming increased reliance on internal processes as a means of governing the exercise of its powers . However rigorous the processes put in place, non-statutory internal processes are not, and cannot be, an adequate substitute for independent oversight.**

227. **HMRC cannot be infallible. Public confidence in the tax system, and those who administer it, requires there to be a proper balance of interest between individual and tax authority. That balance relies on independent scrutiny and oversight of HMRC.**

304 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242) Chapter 5

305 *Ibid.*

306 HMRC, *The powers of HMRC: treating taxpayers fairly: Government response* (22 January 2019): <https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs/Govt-HMRC-Powers-report-22-Jan-2019-.pdf> [accessed 15 December 2020]

Outsourcing compliance

228. In our last report *Off-Payroll working: treating people fairly*³⁰⁷ we noted that HMRC had acknowledged that over a period of 20 years it had been unable to enforce compliance with the IR35 rules, and the effect of the off-payroll legislation was to shift HMRC's responsibility for compliance with those rules, first to public sector engagers, and then to private sector businesses using contractors. One of our witnesses said: "It seems quite wrong that HMRC is effectively delegating its enforcement role to business".³⁰⁸
229. We have noted two more examples in the course of this inquiry. The proposed tax checks on public sector licence renewals appear to be a response to HMRC's struggles to tackle the hidden economy effectively. Part of HMRC's role is to enforce the rules on those who try to evade them. However, tax checks will effectively outsource part of that responsibility to licensing authorities, who will have to ensure that applicants for renewal of licences demonstrate that they are registered for tax and reporting relevant income before they can be relicensed.
230. It was clear that our witnesses from the licensing authorities were not entirely comfortable with the role the tax checks proposal would thrust upon them. John Miley of NALEO told us: "I have a concern that we are being used as an HMRC resource",³⁰⁹ and added that "my honest opinion is that I would rather do without it".³¹⁰
231. Similarly, the proposals for notifying uncertain tax treatment effectively transfer to large businesses the responsibility for identifying (and drawing to HMRC's attention) applications of tax law which HMRC might want to challenge. That, again, is HMRC's responsibility as part of its compliance role.
232. We are concerned that this outsourcing of HMRC's responsibilities seems to be a developing trend. We had assumed that this might be due to resource issues within HMRC. However, when we asked the Financial Secretary about HMRC resourcing in the context of uncertain tax treatment, he told us: "The answer to the question whether this measure is driven by HMRC's resources is absolutely not... HMRC has been well-resourced for the purposes of managing its business".³¹¹ This was not, however, the perception of our witnesses.³¹²
233. If resources are not the issue, we want to understand what is. With tools provided by the internet and digital data bases it seems that HMRC has never before had so much access to information to assist in enforcing compliance. It also appears to be relatively straightforward to find promoters online.³¹³ The source of the problem is therefore not clear.
234. This issue is becoming particularly important as the Government clearly has ambitions to use conditionality more widely, not just in terms of extending it to other licensed trades but potentially to other situations where something

307 Economic Affairs Committee, *Off-Payroll working: treating people fairly* (1st Report, Session 2019–20, HL Paper 50)

308 *Ibid.*

309 [Q 25](#) (John Miley, NALEO)

310 [Q 24](#) (John Miley, NALEO)

311 [Q 116](#) (Financial Secretary to the Treasury)

312 [Q 9](#) (Susan Cattell, ICAS)

313 [Q 80](#) (George Turner, TaxWatch)

a person needs for their livelihood can be withheld until they can prove their tax status.³¹⁴ James Button of the Institute of Licensing, who is a solicitor, told us: “I have to have a practising certificate... it would no surprise me if at some stage in the future I had to tick a box and produce a note that I am registered with the taxman”.³¹⁵

235. **The trend towards outsourcing HMRC’s responsibilities seems to be happening without any public or parliamentary debate about whether this is an acceptable direction of travel. HMRC is funded to do tax compliance work, not so that it can outsource its responsibilities to licensing authorities, public sector engagers or private sector businesses who are understandably reluctant to take on that work.**
236. **We recommend that, for any future proposal involving outsourcing, the Government specifically explains why HMRC is not carrying out the function itself, and what the justification for outsourcing is.**

Principles for action

237. In Chapter 2, we set out the principles by which to judge proposals for new HMRC powers, or for the extension of existing powers, based on those set out in the Modernising Powers, Deterrents and Safeguards Review. These were a clear policy objective and justification, simplicity, targeting, proportionality, safeguards and sanctions. The evidence we have heard in our inquiry, and the themes that have emerged through it, have suggested HMRC may not always be adhering consistently to these principles.
238. **When considering the introduction or extension of powers, HMRC must have regard to core principles to guide their approach and ensure public and business confidence. We hope that, as it considers the draft Finance Bill and related legislative plans, HMRC refers back to such principles and applies them as a standard.**

314 [Q 44](#) (Will Silsby, ATT)

315 [Q 28](#) (James Button, Institute of Licensing)

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

A principled approach to powers

1. We believe the Government should have awaited the outcome of its own review into the operation of its powers and safeguards before further powers were proposed for HMRC. The outcome of its review should have been used to inform and frame the draft Finance Bill proposals. Evaluation of what has gone before must always be a useful means to determine the best way forward. (Paragraph 12)

Tackling promoters of mass-marketed tax avoidance schemes

2. We welcome the Government's continued focus on tackling promoters of tax avoidance schemes through the Finance Bill measures and the related calls for evidence. Aggressive tax avoidance is unfair on those taxpayers who follow the rules. However, it is critical that the Government takes effective action against the people who promote aggressive tax avoidance. (Paragraph 18)
3. Although the loan charge is outside the scope of this inquiry, the evidence we received in 2018 suggested that HMRC has spent considerable time and resources focusing on individuals who participated in disguised remuneration schemes, while some of those who promoted such schemes have continued to be able to profit from their activities. We question whether HMRC has struck the right balance between focusing on individuals who used these schemes and the promoters of such schemes. HMRC must prioritise taking effective action against promoters. (Paragraph 23)
4. We accept that HMRC has faced some significant challenges in applying the existing rules, given the steps taken by promoters to frustrate their efforts. We are, however, concerned that it is only now that HMRC is proposing changes we are told are needed to ensure existing rules apply effectively. Nevertheless, we welcome the action being taken by HMRC to rethink its approach to promoters in light of its experience. (Paragraph 24)
5. The evidence received in our 2018 inquiry concerning the loan charge showed how individuals can become involved in disguised remuneration schemes without being aware of their true nature—and the harm and distress, both financial and emotional, that then results where the scheme is challenged. We are troubled that these types of scheme continue to proliferate, and that many of those people unwittingly caught in these schemes are on lower incomes. The continued sale and marketing of disguised remuneration schemes, most recently to returning NHS workers earlier this year, shows the need for the Government to act more effectively, using the full range of measures at its disposal, if it is to be able to close these schemes down. (Paragraph 32)
6. As was the case with the loan charge, it seems that the involvement of some individuals in these schemes is at the instigation of their employer, and solely for their employer's benefit. The Government should prioritise action against such employers, to stop the growth in lower paid workers at risk of being targeted by scheme promoters. HMRC also needs to learn from the loan charge experience and do more to protect individual taxpayers, particularly those on lower incomes, from being unwittingly caught up in such schemes. (Paragraph 33)

7. We are disappointed that, notwithstanding the various powers HMRC has accumulated in recent years, a number of promoters—the so-called ‘hard core’—remain in business, despite HMRC knowing who these promoters are. Action against this remaining core of promoters must be a priority. (Paragraph 38)
8. We agree that HMRC needs to ensure that the new measures cannot be gamed by promoters trying to argue that they are not within scope. However, these new HMRC powers must also reflect the design principles established by the 2012 Powers Review and, in particular, need to be appropriately targeted at the few they are intended to affect. (Paragraph 45)
9. We recommend HMRC revisits the triggers for POTAS to minimise the risk of these rules affecting bona fide professional advisers. Specifically, we question whether DAC6 should be a trigger for a POTAS, particularly given the assurances HMRC appears to have given stakeholders that DAC6 would not feed into other areas of the UK tax code. (Paragraph 46)
10. Retrospective legislation should only be introduced in exceptional circumstances, and the case for doing so must be clearly made. Although we acknowledge our witnesses’ concerns about the proposed retrospective changes to the enablers rules, we consider that, in this case, retrospective action is justified; a robust response is important in demonstrating HMRC’s willingness to tackle promoters effectively. In taking any such action, HMRC must apply symmetry to taxpayers and promoters; neither should be pursued for actions before HMRC found they were illegitimate, but both should be held accountable for their actions after that point. (Paragraph 47)
11. Although the evidence we heard suggests the proposed measures to target promoters are worth pursuing, we are unconvinced that they will be sufficient to drive the hard core out of business. The Government should continue to look for new approaches to tackling promoters. (Paragraph 53)
12. The Government should keep the efficacy of measures under review, and not hesitate to respond swiftly if there is evidence that the hard core of promoters are continuing to frustrate HMRC’s ability to stop the marketing of tax avoidance schemes. (Paragraph 54)
13. In our 2018 report we recommended that new powers should be accompanied by a right of appeal against the exercise of the power and not just against the underlying tax liability. This is not the case in the draft Finance Bill clauses. Although we acknowledge that at some point a right to appeal may be available, this will generally only be available later, by which point the relevant person will have had to deal with the consequences of HMRC’s exercise of its new power, including being named as a promoter. Whilst we appreciate HMRC’s concerns about promoters abusing safeguards, we regret that the measures do not include anything more than HMRC discretion as the means of protecting mainstream advisers from being caught. (Paragraph 59)
14. ‘Naming and shaming’ is an important weapon in tackling the hard core of promoters; shining a light on their activities is key to ensuring HMRC’s warnings are effective. But it should only be used where clearly justified. The Government should revisit the safeguards in the draft Finance Bill to balance more effectively the importance of being able to name promoters against the risk of identifying the wrong people. (Paragraph 60)

15. Where possible, HMRC should pursue criminal action against promoters, including against those who have sold schemes in the past to which the loan charge applied. This could be a valuable deterrent, and we recommend that more publicity is given to these cases. (Paragraph 65)
16. Taxpayers need to have better information about schemes so that they can see through a promoter's sales pitch and recognise when they are being sold an aggressive tax avoidance scheme. A page on a website telling taxpayers how to identify a tax avoidance scheme is insufficient. HMRC must find ways to communicate directly with taxpayers; for example, there could be a single-page warning notice each year as part of its standard communications on self-assessment filing obligations. (Paragraph 73)
17. HMRC should be capable of planning a communications campaign to provide such warnings, without these warnings acting as a perverse incentive to take part in these schemes. It could look at what other agencies have done for guidance—for example, the Financial Conduct Authority's communications regarding unscrupulous pensions advisers. (Paragraph 74)
18. Although the call for evidence on tackling disguised remuneration schemes is welcome, it is disappointing that it has taken until now for the Government to seek external input on tackling disguised these schemes, given the high public profile of this issue in recent years. (Paragraph 77)
19. We recommend that the Government collaborates with relevant specialists to decide what further steps could be taken to prevent disguised remuneration schemes being used by employment intermediaries. A first step would be to ensure that no government or public sector body contracts with an intermediary operating a disguised remuneration scheme, and to publicise this requirement along with the protocols that public bodies are expected to follow. (Paragraph 78)
20. To be effective, the new measures depend on HMRC becoming aware of new schemes. We recommend that HMRC creates a dedicated tax avoidance reporting service which enables taxpayers and advisers to report schemes easily. HMRC should work with its communications team to ensure a high level of search engine optimisation for any online reporting service. Any information that helps close down a scheme or promoter should be highlighted by HMRC, with details anonymised. (Paragraph 82)
21. We welcome the Government's response to the call for evidence on raising standards in the tax advice market. However, in light of evidence we have heard, we are surprised that the Government has chosen to move straight to consultation on a single proposal (professional indemnity insurance). This seems inconsistent with the Government's declared approach to tax policy making, and it should reconsider this. (Paragraph 96)
22. We support greater protection for those currently using unregulated tax advisers, and recommend that the Government consults on options for how they might be regulated. We also recommend that HMRC works closely with the tax professional bodies on non-legislative action which can be taken in the interim to help taxpayers source reliable tax advice (such as a register of tax advisers) and to improve advisory material. HMRC should also consider what more it could do to support charities who provide tax advice. (Paragraph 98)

Civil information powers

23. The case for this removal of safeguards for taxpayers and financial institutions has not been made. It is wrong in principle and not justified by the small proportion of international information requests which require tribunal approval to obtain the information. The overwhelming majority of cases which go to the tax tribunal are domestic. It is disproportionate to deny UK taxpayers the tribunal safeguard for the sake of speeding up a small minority of cases involving international requests. (Paragraph 106)
24. The civil information powers proposals are poorly targeted, disproportionate in their effect on UK taxpayers and lacking necessary safeguards and rights of appeal. They remove safeguards for taxpayers and financial institutions which prevent arbitrary use of the information powers, and are not supported by the evidence. We regret that the Government did not take the opportunity following its 2018 consultation to consider alternatives to these measures before taking them to this stage. (Paragraph 121)
25. We recommend that:
 - The requirement for tribunal approval for a third-party information request to a financial institution should remain;
 - Financial institutions should have a right of appeal against any request they consider unduly onerous;
 - The Government should clarify the interaction between the use of Financial Information Notices for debt collection and the direct recovery of debt provisions, and ensure that the safeguards for Financial Information Notices relating to debt are no less stringent than those for direct recovery of debt;
 - HMRC should review the whole process for dealing with international information requests requiring tribunal approval, working with financial institutions, the tax tribunal and others, to find other means of streamlining the process; and
 - Given the lack of consultation, HMRC should reconsider the implementation date. In doing so, they should undertake further consultation and communication to ensure that financial institutions are fully appraised of the implications of the measures and have sufficient time to prepare for them. Any revised implementation date should be determined in light of this consultation. (Paragraph 122)

Notifying uncertain tax treatment

26. We welcome the Government's delay to the start date for the requirement to notify uncertain tax treatment and its commitment to engage with stakeholders to get the policy right. However, the Government should learn the lesson from this episode: until a measure complies with the policy principles set out above in Chapter 2, it should not be proposed. (Paragraph 127)
27. We regret that the Government chose to consult on its uncertain tax treatment proposals at Stage 2. A Stage 1 consultation would have been much more appropriate. (Paragraph 135)
28. When the Government consults on new proposals, it should clearly state its case and the evidence for it. This is common sense and is what the

Government's Tax Consultation Framework requires. It is clear from our evidence that these requirements were not met by this consultation. We recommend that the Government should issue a new Stage 1 consultation, so it can work with business and representative bodies to develop a more targeted, proportionate measure than that now proposed. (Paragraph 136)

29. While it is positive that HMRC has established a constructive relationship with most large businesses, it seems unnecessary and counter-productive to make a requirement to notify uncertain treatment apply to all, regardless of their risk status. We recommend that this new measure should be targeted only at the minority of large businesses that are of concern to HMRC. (Paragraph 141)
30. We are concerned that HMRC did not recognise the likely difficulty of applying the test for uncertain tax treatments when the policy was being formulated for consultation. Tax obligations should be based on objective criteria that can be easily understood, and a business should not have to second guess HMRC to know if it is subject to a tax obligation. We therefore welcome the Government's acceptance that it got the test for uncertain tax treatments wrong. (Paragraph 148)
31. Tax is a business-wide matter and so liability for failure to notify should sit with the business alone, and not individual officers. (Paragraph 152)
32. HMRC's ability to create a failure to notify simply by challenging the position a taxpayer has taken in its tax return creates a 'Catch-22' for businesses. The Government needs to remedy this: a taxpayer should not be at risk of a penalty because of a mistaken or overzealous inspector raising an enquiry without merit. (Paragraph 153)
33. Businesses could face significant costs in seeking to comply with the proposed measure on uncertain tax treatment. We are also concerned that this could lead to an overall negative yield for the Exchequer, to the extent that those additional costs are themselves tax deductible. (Paragraph 158)
34. Any measure which risks costing taxpayers more in compliance than the revenue it generates is not good tax policy. Businesses should also not be asked to incur costs in providing information to HMRC which it accepts is already being provided in most cases. We welcome the Government's commitment to look into the costs to business of complying with this measure. (Paragraph 159)
35. The relationship between a business and its customer compliance manager appears to be key to HMRC's success in managing large business tax risk. We are concerned to hear that this may be under strain. We recommend that the Government identifies what steps can be taken to support existing customer compliance managers and to expand the number of companies benefiting from a customer compliance manager relationship. If this proposal goes ahead, the Government should commit to ensuring that every business affected has a customer compliance manager. (Paragraph 162)

New tax checks on licence renewal applications

36. Before 400,000 businesses are required to undergo a tax check, we would have expected HMRC to publish an analysis of tax compliance in the relevant sectors to support the decision to apply conditionality first to them. In line with the policy principles set out earlier in our report, more information

is needed to support the application of tax checks in these circumstances. (Paragraph 174)

37. Therefore, before the tax check legislation is introduced in Parliament, the Government should publish an analysis of compliance in the sectors affected, to demonstrate that the problem of hidden economy activity is such that the tax check proposed is a proportionate response. (Paragraph 175)
38. New proposals must be clear and comprehensive. Once there has been a consultation, major changes to proposals should not be made without explanation. We are concerned about the possibility of ‘mission creep’ in cases such as the tax check proposals. HMRC must communicate clearly with licence holders about the new tax check policy before it is introduced in 2022, so that any misunderstandings are dispelled. (Paragraph 185)
39. We recommend that the tax check is limited to confirming that the applicant is registered for tax and has a unique tax reference (UTR). This is the basis on which consultation has been conducted, and we are not persuaded that the case for going further has been made. (Paragraph 186)
40. Paragraph 5(1)(b) of the draft Schedule in the legislation should be amended to define more tightly the information which can be required of applicants for licence renewals. (Paragraph 189)
41. Conditionality is an unproven policy. It remains to be seen whether it will achieve the Government’s objectives for it. The Government should proceed cautiously. We recommend:
 - Before conditionality is applied to other sectors, the effectiveness of the legislation in the private hire vehicle, taxi and scrap metal sectors should be evaluated. This evaluation should look separately at the educational and information element relating to applicants for new licences, and at the impact of the tax checks, in particular whether it has led to unintended consequences, such as an increase in unlicensed operations;
 - The application of conditionality to other sectors should be justified by reference to a specific problem in the relevant sector; and
 - Before introducing tax checks, HMRC should work with stakeholders to communicate clearly to applicants for licences what the tax check is for and what it consists of, bearing in mind the diversity of the sector and the need to cater for those who cannot be reached using digital methods and for whom English is not their first language. (Paragraph 194)

Cross-cutting themes

42. When proposing new or extended powers for HMRC, the Government should specifically explain why existing powers are insufficient to achieve the policy objective. This was done in the case of the promoters legislation where the problems with the current legislation were explored in the consultative document, along with the impact this was having on HMRC’s ability to defeat promoters’ activities in a timely way. (Paragraph 198)
43. We also recommend that the Government adopts a standard practice of providing detailed analysis to justify any new proposal conferring new or extended powers on HMRC. (Paragraph 199)

44. We consider that non-legislative solutions, whether operating independently or in tandem with legislation, can usefully support the Government's policy aims in relation to tax, and so recommend that they should be considered as an important element in the development of policy solutions. (Paragraph 204)
45. Consultation plays an important role in getting tax policy and its implementation right. Views of stakeholders help ensure that Government objectives are met in a proportionate way; they look at proposals through a different lens to that employed by HMRC. Taking account of those views—and being seen to take account of them—assists in building confidence in the tax system. (Paragraph 209)
46. As we said in our 2011 report, the Government should abide by its own rules: it is disappointing to have to note, once again, that in relation to certain of the measures we consider in this report, it clearly has not. (Paragraph 210)
47. Starting a consultation at the right stage is important to ensure that 'start/stops' do not happen: it does not inspire confidence in the Government's own policy making process if it publicly commits to a measure which it then has to admit was wrong. (Paragraph 211)
48. Good tax policy needs to be evidence-based and not just with a theoretical justification or rationale but with analysis, facts and figures. We are concerned that in some cases policy and legislative proposals are being advanced without providing the evidence to back them up or with a flawed analysis that takes account of only part of the available evidence leading to the wrong solution. This should not happen even in consultation, let alone in legislative measures being brought before Parliament. (Paragraph 215)
49. It seems wrong to legislate powers which operate in a scattergun way, burdening thousands with additional compliance obligations, depriving hundreds of safeguards or rendering compliant businesses vulnerable to sanctions, in order to address minority problems. Better ways should be found of targeting more directly those uncooperative taxpayers whose behaviour needs to change. (Paragraph 220)
50. In line with the principles we set out in Chapter 2, tax legislation should be targeted on the taxpayers it is intended to affect. We recommend that consulting with stakeholders about how action can best be targeted is made a standard feature of all calls for evidence and consultations. (Paragraph 221)
51. We are troubled by HMRC's seeming increased reliance on internal processes as a means of governing the exercise of its powers. However rigorous the processes put in place, non-statutory internal processes are not, and cannot be, an adequate substitute for independent oversight. (Paragraph 226)
52. HMRC cannot be infallible. Public confidence in the tax system, and those who administer it, requires there to be a proper balance of interest between individual and tax authority. That balance relies on independent scrutiny and oversight of HMRC. (Paragraph 227)
53. The trend towards outsourcing HMRC's responsibilities seems to be happening without any public or parliamentary debate about whether this is an acceptable direction of travel. HMRC is funded to do tax compliance work, not so that it can outsource its responsibilities to licensing authorities, public sector engagers or private sector businesses who are understandably reluctant to take on that work. (Paragraph 235)

54. We recommend that, for any future proposal involving outsourcing, the Government specifically explains why HMRC is not carrying out the function itself, and what the justification for outsourcing is. (Paragraph 236)
55. When considering the introduction or extension of powers, HMRC must have regard to core principles to guide their approach and ensure public and business confidence. We hope that, as it considers the draft Finance Bill and related legislative plans, HMRC refers back to such principles and applies them as a standard. (Paragraph 238)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members of the Finance Bill Sub-Committee

Baroness Bowles of Berkhamsted
Lord Bridges of Headley (Chair)
Lord Butler of Brockwell
Viscount Chandos
Lord Forsyth of Drumlean
Baroness Kramer
Lord Monks
Lord Rowe-Beedoe

Declarations of interests

Baroness Bowles of Berkhamsted
Director, London Stock Exchange Plc

Lord Bridges of Headley (Chair)
Paid Adviser, Banco Santander
Shareholder, Banco Santander
Paid member, KPMG's UK Advisory Council

Lord Butler of Brockwell
No relevant interests

Viscount Chandos
Director, Ambie Media Limited
Chairman, Credit Services Association
Vice Chair, London Academy of Music and Dramatic Arts (LAMADA)
Chairman, The Theseus Agency Limited
Chairman, Thomson Foundation

Lord Forsyth of Drumlean
Chairman and Non-executive Director, Secure Trust Bank plc
Director, Denholm Enterprise Ltd (investment company whose principal investments are shares in J&J Denholm and Denholm Oilfield Services)
Non-executive Director, Denholm Logistics Group Limited
Non-executive Director, J&J Denholm Ltd (parent company of Denholm Group which has four divisions: shipping, logistics, seafoods and industrial services)

Baroness Kramer
No relevant interests

Lord Monks
No relevant interests

Lord Rowe-Beedoe
Chairman, Board of Advisors-Clarke Capital Partners
Senior Advisor, Orthios Group (Holdings) Ltd

Members of the Economic Affairs Committee

The Economic Affairs Committee agreed this report by correspondence.

Baroness Bowles of Berkhamsted
Director, London Stock Exchange Plc

Lord Burns
No relevant interests

Viscount Chandos

Director, Ambie Media Limited
Chairman, Credit Services Association
Vice Chair, London Academy of Music and Dramatic Arts (LAMADA)
Chairman, The Theseus Agency Limited
Chairman, Thomson Foundation

Lord Cunningham of Felling

No relevant interests

Lord Forsyth of Drumlean (Chair)

Chairman and Non-executive Director, Secure Trust Bank plc
Director, Denholm Enterprise Ltd (investment company whose principal investments are shares in J&J Denholm and Denholm Oilfield Services)
Non-executive Director, Denholm Logistics Group Limited
Non-executive Director, J&J Denholm Ltd (parent company of Denholm Group which has four divisions: shipping, logistics, seafoods and industrial services)

Lord Fox

No relevant interests

Baroness Harding of Winscombe

No relevant interests

Baroness Kingsmill

No relevant interests

Lord Livingstone of Parkhead

No relevant interests

Lord Monks

No relevant interests

Lord Skidelsky

No relevant interests

Lord Stern of Brentford

Climate Advisor, The Royal Bank of Scotland/NatWest Group
Director and Non-executive Chair, SYSTEMIQ Ltd (company's purpose is to catalyse good disruptions in critical economic systems)

Lord Tugendhat

No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Specialist Advisers

Sarah Squires

Member of the Tax Law Committee of the Law Society of England and Wales
Consultant on tax issues to the British Property Federation

Robina Dyall

No relevant interests

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at: <https://committees.parliament.uk/committee/230/finance-bill-subcommittee/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Sub-Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

- ** Richard Wild, Head of Tax Technical Team, Chartered Institute of Taxation (CIOT) [QQ 1–10](#)
- * Frank Haskew, Head of Tax, Institute of Chartered Accountants in England and Wales (ICAEW)
- ** Susan Cattell, Head of Tax Technical Policy, Institute of Chartered Accountants of Scotland (ICAS)
- * Fiona Fernie, Tax Investigations Practitioners Group (TIGF) [QQ 11–22](#)
- * Lydia Challen, Chair of Tax Committee, The Law Society
- ** Yvonne Evans, The Law Society of Scotland
- ** James Button, President, Institute of Licensing [QQ 23–30](#)
- * John Miley, National Chair, National Association of Licensing and Enforcement Officers (NALEO)
- * Antonia Grey, Public Affairs and Communications Manager, British Metals Recycling Association (BMRA) [QQ 31–45](#)
- * Steve Wright, Chair, Licensed Private Hire Car Association (LPCHA)
- ** Steve McNamara, General Secretary, Licensed Taxi Drivers Association (LTDA)
- * Jason Piper, Head of Tax and Business Law, Association of Chartered Certified Accountants (ACCA) [QQ 46–57](#)
- * Will Silsby, Technical Officer, Association of Taxation Technicians (ATT)
- ** Tom Henderson, Technical Officer, Low Incomes Tax Reform Group (LITRG)
- ** Joanne Green, Tax Accountant, Building Societies Association (BSA) [QQ 58–67](#)
- ** Sarah Wulff-Cochrane, Principal of Taxation Policy, UK Finance

- * Judge Greg Sinfield, Chamber President, First-tier Tribunal (Tax Chamber) [QQ 68–86](#)
- ** Malcolm Gammie QC, Tax Law Review Committee, Institute for Fiscal Studies (IFS)
- ** George Turner, Executive Director, TaxWatch
- ** Mary Aiston, Director, Counter-Avoidance Directorate, Her Majesty’s Revenue & Customs (HMRC) [QQ 87–99](#)
- ** Jamie Horton, Assistant Director, Hidden Economy, Her Majesty’s Revenue & Customs (HMRC)
- ** Paul Riley, Director of Tax Administration, Her Majesty’s Revenue & Customs (HMRC)
- ** John Shuker, Deputy Director, International Collaboration and Transparency, Her Majesty’s Revenue & Customs (HMRC)
- ** Angela Walker, Deputy Director, Promoters and Upstream Policy, Her Majesty’s Revenue & Customs (HMRC)
- * Rt Hon Jesse Norman Member of Parliament (MP), Financial Secretary to the Treasury (FST), Her Majesty’s (HM) Government [QQ 100–122](#)

Alphabetical list of witnesses

- Ed Adjei, Senior Software Developer, CV Library [DFE0025](#)
- Anonymous 1 [DFE0009](#)
- Anonymous 2 [DFE0032](#)
- Anonymous 3 [DFE0033](#)
- * Association of Chartered Certified Accountants (QQ 46–57)
- * Association of Taxation Technicians (QQ 46–57)
- * British Metals Recycling Association (QQ 31–45)
- ** Building Societies Association (QQ 58–67) [DFE0006](#)
- Mrs Caroline Clark [DFE0010](#)
- Confederation of British Industry [DFE0031](#)
- Keith Gordon, Barrister, Temple Tax Chambers [DFE0005](#)
- ** Chartered Institute of Taxation (QQ 1–10) [DFE0017](#)
- * Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, Her Majesty’s Government (QQ 100–122)
- ** Her Majesty’s Revenue & Customs (QQ 87–99) [DFE0035](#)
- ** Institute for Fiscal Studies (QQ 68–86)
- ** Institute of Chartered Accountants of Scotland (QQ 1–10) [DFE0008](#)

**	Institute of Chartered Accountants in England and Wales (QQ 1–10)	<u>DFE0022</u>
**	Institute of Licencing (QQ 23–30)	<u>DFE0024</u>
	The Investing and Saving Alliance	<u>DFE0006</u>
**	The Law Society of England and Wales (QQ 11–22)	<u>DFE0019</u>
**	The Law Society of Scotland (QQ 11–22)	<u>DFE0025</u>
*	Licenced Private Hire Car Association (QQ 31–45)	
**	Licenced Taxi Drivers Association (QQ 31–45)	<u>DFE0011</u>
	Loan Charge Action Group	<u>DFE0028</u>
	Loan Charge All-Party Parliamentary Group	<u>DFE0029</u>
**	The Low Incomes Tax Reform Group (QQ 46–57)	<u>DFE0003</u>
	Mr E. Martin	<u>DFE0012</u>
*	National Association of Licensing and Enforcement Officers (QQ 23–30)	
*	Judge Greg Sinfield, Chamber President, First-tier Tribunal (Tax Chamber) (QQ 68–86)	
**	TaxWatch (QQ 68–86)	<u>DFE0013</u>
*	Tax Investigations Practitioners Group (QQ 11–22)	
**	Tax Law Review Committee	<u>DFE0016</u>
**	UK Finance (QQ 58–67)	<u>DFE0006</u>

APPENDIX 3: CALL FOR EVIDENCE

The Finance Bill Sub-Committee, chaired by Lord Bridges of Headley, is appointed annually by the Economic Affairs Committee to consider the draft Finance Bill. The Sub-Committee focuses on issues of tax administration, clarification and simplification rather than on rates or incidence of tax.

The draft Finance Bill was published on 21 July 2020. The Sub-Committee's inquiry intends to focus on three areas of the Bill in particular:

- New proposals for tackling promoters and enablers of tax avoidance schemes;
- New tax checks on licence renewal applications; and
- Amendments to HMRC's civil information powers.

The Sub-Committee is also interested to hear views on the Government's proposals on new notification requirements for uncertain tax treatments, and on the use of retrospective provisions in other areas of the draft Bill.

The Sub-Committee invites interested individuals and organisations to submit written evidence to this inquiry.

Written submissions are requested by 7 October 2020. After it has concluded its inquiry the Sub-Committee will make recommendations in a report to the House of Lords.

Areas of interest

The Sub-Committee welcomes views on any of the following questions relating to the areas of focus. In relation to the new proposals for tackling promoters, the Sub-Committee would welcome comments on the related calls for evidence issued by HM Revenue & Customs on raising standards in the tax advice market and on tackling disguised remuneration schemes, as well as the draft legislation itself and related consultation document.

The Sub-Committee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses. There is no obligation to answer every question.

New proposals for tackling promoters and enablers of tax avoidance schemes

1. How effective are the existing powers of HMRC in tackling promoters and enablers of tax avoidance schemes?
2. What has been your experience of the Promoters of Tax Avoidance Schemes (POTAS) rules and the enablers rules in practice?
3. Are HMRC's communications likely to be effective in informing potential scheme users about schemes, and so deter them from participating?
4. How effective will the proposed measures be against those who promote aggressive tax avoidance schemes, and in informing and deterring potential scheme users? What else could HMRC be doing in this area?
5. Are the safeguards being proposed sufficient to ensure an appropriate balance is struck between HMRC and taxpayer?

New tax checks on licence renewal applications

6. Are the proposals for tax checks on licence renewal applications fair and proportionate? How effective is the legislation likely to be, and is any amendment needed?
7. What is your view of the principle of conditionality and its use in the tax system?
8. How do you view the Government's stated intention to extend conditionality to Scotland and Northern Ireland, as well as to other trades?
9. Could the problems this measure is designed to address have been tackled effectively by other means? If so, what are they?

Amendments to HMRC's civil information powers

10. What is your view of the removal of the requirement to obtain tax tribunal approval before issuing a Financial Institution Notice? Are the safeguards promised instead adequate and, if not, what more should be done?
11. Is the scope of the new power in terms of the information to be reported to HMRC appropriate and sufficiently clear?
12. How can the need for adequate taxpayer safeguards and timely international exchange of information be balanced? What steps should be taken to ensure that taxpayer safeguards are not treated as dispensable when they make it more difficult to meet other obligations?

Other measures of interest

The Sub-Committee is also interested in the proposed introduction of new requirements for certain businesses to notify uncertain tax treatments, where the business considers that HMRC may have a different view of the tax treatment to its own. We welcome general views on this proposal.

In addition, the Government proposes to make certain technical amendments to the corporate interest restriction retrospective to 2017. The Sub-Committee is interested in views on the impact and appropriateness of proposed retrospective measures in the Finance Bill, in relation to uncertainty within the tax system.