

Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Draft Finance Bill 202021

Monday 5 October 2020

4 pm

Watch the meeting

Members present: Lord Bridges of Headley (The Chair); Baroness Bowles of Berkhamsted; Lord Butler of Brockwell; Viscount Chandos; Lord Forsyth of Drumlean; Baroness Kramer; Lord Monks; Lord Rowe-Beddoe.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 10

Witnesses

I: Richard Wild, Head of Tax Technical Team, Chartered Institute of Taxation; Frank Haskew, Head of Tax, Institute of Chartered Accountants of England and Wales; Susan Cattell, Head of Tax Technical Policy, Institute of Chartered Accountants of Scotland.

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Examination of witnesses

Richard Wild, Frank Haskew, and Susan Cattell.

Q1 The Chair: Good afternoon and welcome to this evidence session of the Finance Bill Sub-Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website. You will have the opportunity to make corrections to that transcript, where necessary.

I declare a registered interest that I am a paid adviser to, and have shares in, Banco Santander.

I am delighted to welcome to this first virtual meeting in our investigations three experts: from the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in England and Wales and the Chartered Institute of Taxation. Would you each introduce yourselves before we ask the first question?

Richard Wild: I am head of tax technical at the Chartered Institute of Taxation.

Susan Cattell: I am head of tax technical policy at the Institute of Chartered Accountants of Scotland.

Frank Haskew: I am the head of tax at the Institute of Chartered Accountants of England and Wales.

Q2 The Chair: Thank you all very much for joining us. I hope you will bear with us if we have any technical issues. Fingers crossed that we do not. Let me dive straight in and start with the proposals from HMRC on the proposed measures against promoters. HMRC says that between 20 and 30 promoters continue to sell tax avoidance schemes. Which of the proposed measures do you consider are likely to be the most effective against those remaining promoters, and why?

Susan Cattell: Individually, the measures will not have much impact, because we are now down to a real hard core of promoters who have been sidestepping the existing provisions. Cumulatively, the effect of tightening up all the measures could make life sufficiently more difficult that it might force a few more of those promoters out of the market, particularly if it is combined with other things that I think we may discuss later, such as trying to persuade taxpayers not to get into schemes and other approaches to try to stop people getting embroiled in schemes. I am not sure that any of the individual measures would be decisive on their own, but the cumulative effect of making all of them more effective might persuade some of the promoters that it is no longer worthwhile.

Frank Haskew: I concur with what Susan has just said. If you look at the tax gap reports, in 2012 tax avoidance was £5 billion; in the current tax gap report, it is down to £1.7 billion. We should give HMRC a lot of credit for bearing down consistently on tax avoidance.

As Susan says, we are now approaching a real hard core of people who are very difficult to crack. There are five main measures in the promoters' proposals, and, taken together, they will certainly have some impact. At this stage, it is still probably too early to know exactly what will happen.

Those people are operating totally outside what we might call the proper bona fide tax services market with professional standards; they are just not doing that.

Richard Wild: We are very much behind the approaches by the Government and HMRC to drive out uncooperative and unscrupulous promoters who dodge, sidestep and even operate outside the rules. HMRC notes that the people who promote in today's market are not typically members of the professional bodies. The professional bodies have a vested interest in driving those people out of the marketplace because, for want of a better term, they drag down the rest of us. We are very much behind measures that will increase standards.

The Chair: Rather than these new powers, could HMRC use existing powers?

Richard Wild: Even though the existing powers came in six years ago, they are still relatively new in tax terms. HMRC has been utilising the powers, but it is a bit of a game of cat and mouse. In the avoidance market, you put measures in place and people look to try to sidestep them. It seems as though promoters have been doing that in a number of ways, by closing the business and reincorporating or moving offshore. That is what a lot of the measures are trying to prevent. It is almost about second-guessing the next step that promoters might take, so that HMRC can actually apply the measures that it wanted to apply when they were introduced back in 2014.

Lord Forsyth of Drumlean: Do you not think that HMRC's efforts have been pretty pathetic, if you look at the number of people who have been prosecuted or fingered by HMRC and compare that with the vigour with which it has pursued, for example, victims of the loan charge? I find it very surprising that you think that the use of the existing powers is an indication of the enthusiasm with which HMRC is going after those people, who promote misery for many people.

Frank Haskew: HMRC is charged to reduce the tax gap through tax avoidance. The fact is that we are now down to a group of, as HMRC has said, 25 to 30 people. I do not think we really know who those people are. They all seem to be operating below the radar and are proving an exceptionally difficult nut to crack, for want of a better term. You only have to read the consultation document to realise that they will not engage. They will try every trick in the book. How do you deal with people who are in effect gaming the tax system?

Lord Forsyth of Drumlean: That was the Chairman's question to you. The answer seemed to be, "well, we think that the additional powers and these powers will be sufficient", which is contrary to what you have just said.

Frank Haskew: The current position is, as we said, that HMRC has used its existing powers successfully in bringing down the tax gap significantly,

but we have reached a hard core of people who it is very difficult to address through the existing powers.

Lord Forsyth of Drumlean: I am not really asking about the tax gap. I am asking about people who create misery for people who do not understand tax. We had many examples of that when we looked at the loan charge.

Susan Cattell: HMRC has had some success, in that it knows that around 20 promoters left the market between 2014 and 2020. One of the problems with the remaining promoters is that they are increasingly tackling people on middle or lower incomes who probably do not take independent advice and thus do not get any view other than the view of the promoters. That comes back to what I was saying earlier about needing different approaches. There are approaches through the tax legislation, but other approaches would be HMRC directly contacting taxpayers when it thinks they are getting drawn into a disguised remuneration scheme and advising the taxpayer that it will be looking to challenge those schemes.

Baroness Kramer: If I was sitting at HMRC and I wanted to eliminate abuse, I would go for the hard-core group first. If you eliminate the hard core, you eliminate all the problems. I am rather troubled by the pattern of picking the easy target—all the little people—crushing them and beating them up, which discourages the good guys who may have somewhat mistakenly been in that area and only needed a nudge to get out of it. Then HMRC suddenly decides that it does not have enough power to go after the hard core; it wants more power, but with very little confidence that it is ever going to get any of those people. I do not understand the order of play; it does not make sense to me.

Richard Wild: What we have seen over time is that, as you try to drive avoidance out of the marketplace, it just becomes much more difficult to do so. You can take legislative steps to drive people out, but they have to be proportionate legislative steps. We will look later at whether there are enough safeguards in some of the measures if there is no tribunal route either before or afterwards. Sometimes, you have to walk a very fine line on the measure that you introduce.

The HMRC promoters document, issued in March, describes a number of other steps that HMRC is taking in order to disrupt the market. As Susan said, it uses real-time information data from payroll when it thinks people have been either inadvertently or knowingly drawn into an avoidance scheme; it gets in touch with the Insolvency Service to stop people winding up businesses they have promoted and starting over again, and with the Advertising Standards Authority to attack people who use misleading and inappropriate adverts.

There is a whole armoury that HMRC is using. We are not saying that it is easy to do. It is a very small bunch of people, invisible to the likes of most such as the institutes of Frank and Susan.

The Chair: Thank you. Baroness Bowles, do you want to pick up on that point in the next question?

Q3 Baroness Bowles of Berkhamsted: Is HMRC doing enough to publicise warnings about schemes to potential users? If not, what more could be done to deter potential users and to help users extricate themselves from schemes? Following the discussion that we have just been having, is the problem the fact that advising on tax is not regulated and that would be the only way to stop it?

Frank Haskew: We are all agreed that more needs to be done on publicity for those schemes. For instance, HMRC publishes documents called Spotlights, where schemes are highlighted, but I do not think they have any visibility, I do not think that Spotlight is the right name, and certainly taxpayers would struggle to find them. More could be done to encourage us as a profession, working with HMRC, to make sure that there is proper transparency in the market about those schemes.

Turning to your other point about regulation of the tax profession, you are entirely right that the tax profession is not regulated. HMRC published a call for evidence on that earlier this year. HMRC's figures seem to suggest that about 30 per cent of the tax agent market, by number of providers, is not affiliated to a professional body. We still do not know whether, even if you had a fully regulated market, it would necessarily drive out that sort of behaviour. Those people are not providing tax advice; they specifically say that they are not tax advisers. We need to get to those people, but whether regulation is the answer is not clear.

Richard Wild: I agree with the point about communication. As advisers or professional bodies, we know where to find HMRC Spotlights. Does the individual taxpayer know about them? Probably not. Are they in accessible language? Again, probably not. We need more promotion in simple language.

We tried to look earlier for schemes online and struggled to find them. If you are told that you can take home 82 per cent of your gross salary, it should set alarm bells ringing, but nobody is telling taxpayers that that should set alarm bells ringing. There should be simpler messages transmitted in a more mainstream way to hit a wider population.

Susan Cattell: It is also important for HMRC to contact taxpayers directly. It is running a pilot at the moment, using the data it gets from Pay As You Earn through real-time information to try to identify people who sign up to the sort of scheme Richard just mentioned. They have been promised 82 per cent of their pay. HMRC writes to them to say, "It looks as though you may be signing up to one of these schemes", explaining that HMRC will challenge the schemes and giving some idea of why they do not work.

It is very important that HMRC tries to expand that approach, particularly in the case of employment income-related schemes, where a lot of the people using them do not have access to an independent adviser. Unless

HMRC can get to them directly, they will probably not be put on notice that what they are doing is probably not a good idea.

Baroness Bowles of Berkhamsted: Should there not be something a bit stronger, such as what the FCA is doing on pension scams, on television and elsewhere, to tell people that if somebody offers you something it is probably a scam, especially if you are lower paid?

Richard Wild: We would welcome that.

Susan Cattell: Yes, we would welcome that.

The Chair: That is a good practical suggestion.

Q4 Viscount Chandos: HMRC has said that it recognises the importance of the measures being appropriately targeted. However, in most cases the only safeguards will be set by internal governance processes. Is that sufficient given the nature of the new powers HMRC is seeking?

Richard Wild: We would normally have concerns if the only safeguards were HMRC's own internal governance procedures. We have some concerns about civil information powers, which we might talk about later.

We are slightly reassured by the scope of the measures being very focused on the hard-core rump of promoters. Most professional advisers will not be in the scope of them at all. However, we think that it should be kept under review, particularly because there is no right of appeal against the new information notice that forms part of the DOTAS changes. A measure that we do not like either is the inclusion of what is known as DAC 6—the international tax enforcement disclosure arrangements regulations—in the definition of defeated arrangements.

We do not normally like it when HMRC is judge, jury and executioner, but this is such a defined and narrow area that we are happy to monitor it and see how the powers are used.

Frank Haskew: I concur with Richard. It is a difficult balancing act. The more processes and safeguards you have, the more people are going to sidestep and try to game the system. The whole purpose of the measures is to try to stop them in their tracks. It is a difficult balancing act.

When the enabler penalties were introduced a few years ago, in the guidance HMRC specifically scoped out, in broad principle, advisers who were professional advisers and had professional conduct in relation to taxation. They had professional obligations, and HMRC said that those people were not the target of the provisions. I think it has stated the same thing with the promoters rules. It would be helpful to make it clear that ordinary bona fide professional tax advisers would normally be scoped out of the provisions.

Lord Forsyth of Drumlean: Do you not think that you are being boiled like a frog? With each step, the Revenue is taking more powers, for good reasons, but there seems to be a trend where the main objective of the HMRC is to get in as much revenue as possible, and bit by bit additional

powers that reduce the freedom of the individual and the fairness of the system are being added. Of course, they can all be justified in each particular case, but can you not see a pattern?

Frank Haskew: That is a major concern, Lord Forsyth. It is a concern we have had for many years. I know the House of Lords had the same concern when it undertook its own review of powers. It is a point very well made and it is of great concern to us. We share those concerns.

Lord Forsyth of Drumlean: You go along with them.

Frank Haskew: We share your concerns about a drip by drip increase in powers, yes. That is why they need to be exercised proportionately, and why there needs to be scrutiny and oversight. In its report, the House of Lords encouraged the Government to announce the review of powers and safeguards. That was a very valuable exercise.

Lord Forsyth of Drumlean: It is kind of you to say so, and indeed we looked at that and made recommendations, but here is HMRC adding more powers before it has actually concluded the review.

Frank Haskew: It is fair to say that the review was expected to be complete by now, but it has been hampered by Covid. It is taking longer, but it is more important that we take time to get it right and that we have proper outcomes from it that ensure we have proper scrutiny and oversight of the provisions.

Viscount Chandos: Is there not a danger that HMRC is fighting the last war and not the next one? The existing schemes that have caused the greatest problems are being narrowed down, but the Chair expressed disappointment at the lack of focus on the 25 or 30 identified aggressive promoters. It is possible that the next hot scheme will be a different subset of advisers; that is not to say that they are major professional advisers who are properly regulated. HMRC does not seem very fast on its feet, while taking powers that it does not demonstrate great effectiveness in applying.

Susan Cattell: HMRC so far has not actually issued a single monitoring notice under the POTAS regime, but it is probably a mistake to see that as its being completely ineffective. At least one of the promoters who dropped out of the market between 2014 and 2020 apparently gave the POTAS regime as one of the main factors that had led them to do that. The fact that it existed was deterring them. They knew that, if they persisted, presumably HMRC would be able to name them, and their details would be published. Of course, once the details of a promoter are published it makes it easier for the professional bodies. Their members would not deal with somebody who had been served with a monitoring notice. They are flagged as to professional conduct in relation to tax guidance.

To some extent, you would hope that HMRC does not need to use all the powers against every single promoter. The mere fact that they exist might, hopefully, persuade promoters that it is no longer worth the

trouble of carrying on, and, indeed, does seem to appear to have persuaded some of them. Although I completely share some of the concerns that have been raised about giving HMRC more and more powers, particularly without waiting to see how some of the existing powers have settled down and how much effect they have had, we need to be slightly careful about thinking that just because HMRC has not used every power all the time against every single promoter it is not having some kind of effect. In some cases, the mere existence of the power puts some people off.

The Chair: The next topic is tax checks for licence renewal applications and the concept of conditionality.

Q5 Baroness Kramer: We can deal briefly with that given the cohort of the panel. I direct my question to Richard Wild since at present this is only an English matter. What view do you take of the concept of making licences to trade conditional on compliance with tax obligations? If I were to point to the broader, underlying issue, are we beginning to see HMRC more and more attracted to outsourcing responsibility for tax collection and tax enforcement, and does that raise concerns with you?

Richard Wild: As a concept, it seems like a good idea. Why would you not use information that the Government already hold on somebody's legitimacy to trade and read that information across to their tax affairs? We have a number of concerns.

Baroness Kramer: Surely, it is the other way round.

Richard Wild: Our concerns are, first of all, that we do not want to drive people further into the hidden economy by them operating on an unlicensed basis. You need to make sure that the licensing authorities are undertaking sufficient efforts, if not stepping up their own efforts, to make sure that licence applications are going through correctly in conjunction with the new tax check process with HMRC.

We need to make sure that the system is easy to use and that it works effectively. It will involve a new system that HMRC says will be simple and easy to use, but we need to make sure that is up and running and tried and tested before we start it from April 2022. Obviously, we also need to make sure that an alternative process is in place for those who are digitally excluded or have trouble with digital tools. We must protect people's livelihoods in case there is a risk of something going wrong within HMRC such that the tax check or the authorisation is not granted.

Moving on to the point about HMRC outsourcing its compliance efforts, the hidden economy is a very difficult part of the tax gap to challenge and reduce. It needs innovative measures to challenge that. By its definition it is hidden. Whether you have more HMRC officers looking out for people operating in the hidden economy, or whether you use an existing process, such as the licence application process, and build that in to see whether they are complying with their tax affairs, it makes sense to try out the licence application route first. It is very much a toe in the water to start with scrap dealers and taxi drivers. Let us try to build it properly

and see if it works. If it works, build on it. If not, we will see what else we need to try do.

The Chair: Lord Monks, do you want to come in on any aspect of this? There is a range of issues, not least the application of the process territorially, and the simplicity of the process.

Q6 Lord Monks: I have a brief question about extending the tax check measures. How do you feel about the Government's stated intention to extend this sort of measure to other trades beyond taxis, private hire vehicles and scrap metal merchants, and to extend it to Scotland and Northern Ireland? Perhaps Susan Cattell would be the appropriate person to answer that point.

Susan Cattell: I am very happy to comment on extending it to Scotland and Ireland. On that, we think that liaison is important. It is very important that the Westminster Government liaise with the devolved administrations, particularly when, as in this instance, one of the elements is devolved and the other is reserved; for example, notifying HMRC of your chargeability to corporation tax is a reserved matter, but the licensing of the business is a devolved matter.

We see it as an area where it is important for the Westminster Government to talk to the devolved administrations, preferably before announcing measures, and to work together to develop the sort of processes for implementing new tax policies that make sure that they take account of the overlap between devolved and reserved matters; otherwise, there are possible unintended consequences for devolved taxes, or indeed other devolved matters such as licensing.

We do not have strong views about this particular measure, as it happens, but we would put it in the wider context that we need broad collaboration between Westminster and the devolved Administrations.

Lord Monks: What about extending the trades to which the measures apply beyond the three that are mentioned at the moment?

Frank Haskew: Your Lordships might be interested to learn, if you do not know already, that in the Republic of Ireland they have had a measure called tax clearances for many years. I think the UK proposals are modelled on those. There is a good explanation of the process on the Irish tax and customs website. They have extended it quite considerably to all sorts of licences; for example, if you have a licence for selling liquor, you need tax clearance.

My understanding is that in Ireland they have found it very successful in attacking the hidden economy and evasion. It would be worth at least understanding their experience of those provisions and how successful they are. We need to remember that those two together are £7 billion of the tax gap of £31 billion. It is a significant figure.

Lord Monks: Thank you very much. Maybe we should have the Irish as witnesses, Chair.

The Chair: I think that would be very useful. If you could provide us with any other evidence that links to that, Mr Haskew, it would be extremely helpful.

Lord Forsyth of Drumlean: I start from this standpoint: should people not be entitled to be treated as honest and law-abiding? Where does it end? You have given the example of the Irish. Certainly, it is for HMRC to carry out its work and ensure that it gets appropriate tax, but why pick on taxi drivers and scrap dealers? Why do we think that, if we add to the burden of people who are running small businesses within the law, that will not encourage people to move outwith the law? That is an easy question to answer because nobody knows the answer, but I am very concerned.

I am back to my boiling the frog: where does it end? Are we going to say that everyone who requires permission for planning or other matters has to be subject to a tax check? I am surprised that you are so relaxed about it, although it will of course create more business for the professional bodies.

Richard Wild: I cannot obviously see how much it will create extra work for professional bodies. As I said earlier—

Lord Forsyth of Drumlean: Because if people's tax has to be checked, presumably they will get their accountant to do the work.

Richard Wild: I would like to think that, if they have an accountant already engaged, they are not a business operating in the hidden economy. I would have thought that—

Lord Forsyth of Drumlean: Sorry to interrupt you. I may have misunderstood. I thought the proposition was that when you applied for a licence you had to have a tax check. Presumably, that is also on renewal of your licence. If you have an accountant and you have to have a tax check, would you not get your accountant to do the work?

Richard Wild: Yes, you may well do so, but if it is a straightforward process—as it has been explained that it should be—we cannot see that that would take up a significant amount of time. One of the issues at the moment is that we have the legislation, so we have the framework, but it is an area that relies on systems. Until we see the system, the software and the platform that you have to use to do it, although in principle it looks like a good idea, if it does not work, or there are gaps, clearly we will have concerns.

Lord Forsyth of Drumlean: Why pick on scrap metal dealers and taxi drivers?

Susan Cattell: I think the original consultation looked at other groups as well, including landlords of houses in multiple occupation. One of the reasons why that was left out was simply that a lot of concerns were raised about the effect on tenants, if it pushed people into non-

compliance. That was one of the points that came out of the responses to the consultation. It also looked at the security industry.

In a way, it is seen as testing the water. It may be extended to other groups over time, which comes back to your point about whether it is the thin end of the wedge. I agree with Richard. Of course we will not know until we see what HMRC puts in place, but my understanding is that the tax check is very simple. It is merely to check that you are registered with HMRC. It is not checking that all your submissions are correct or anything like that. It is a straightforward check to make sure that you are not in the hidden economy, but until we see the full details of the system HMRC puts in place we do not know how onerous it will be.

The Chair: Thank you very much. I suggest that in the interests of time we move to the next topic, which is civil information powers. That is another issue regarding the creeping power of HMRC.

Q7 Lord Butler of Brockwell: I gather that the case of the Inland Revenue for removing the requirement to get tribunal authority before seeking information is that the present system takes a very long time. It can be up to 12 months if you are engaging the tribunal, and therefore HMRC does not want to. It also argues that there is not a similarly ponderous requirement in the case of other countries. Do you think that case is made? What is your view of it?

Frank Haskew: We have concerns about the civil information powers, obviously in relation to the banks. Our particular concern is not so much with the offshore element but with the onshore element. The proposal is billed as an attempt to speed up exchanges of information in relation to requests from overseas tax jurisdictions, which is probably not unreasonable, but it is also proposed that that cannot be done without extending it to the UK as well, onshore.

That is where we see the real problem. It gives the nature of the measure a completely different complexion and is potentially a major extension of the existing powers to obtain information, which, as you say, could be done without a clear right of appeal. We are very concerned about the provisions, particularly in relation to the onshore element.

Lord Butler of Brockwell: I have some sympathy with that. I previously served on the Intelligence and Security Committee. A great preoccupation then was protecting citizens to make sure that officials could not require information, or indeed intrude on their privacy, without proper authority.

If the issue is that the present system, through the tribunal, is too ponderous and takes too long, can you think of a quicker way of doing it? In the case of the intelligence agencies, you had to go to a single judge, a commissioner, to review it and get authority that way. Is there a way of squaring this circle by a more convenient and rapid process that still provides external protection for the private sector?

Frank Haskew: It is something that should be explored. We have concerns about the measure, as we have said, and it would be interesting

to know what processes other countries have, how they apply them and what safeguards they have. We should explore whether there are cheaper or more straightforward options that could expedite the process.

One thing about the consultation is that we have been presented with it further down the line, so to speak, and we have not had a real discussion about the underlying policy rationale for it and, as you say, whether there are alternatives that could be explored.

Lord Butler of Brockwell: Do you think, for example, that there is the possibility of using a single independent commissioner, or would that just be adding a fifth wheel to the coach of the tribunal system?

Frank Haskew: I am not sure I am sufficiently qualified as to whether the existing tribunal system is sufficient. It is under severe pressure anyway of manpower and resources in dealing with all the cases. The truth is that we do not know, but we should at least explore it. There may be other ways to achieve at least some oversight, but there should at least be some attempt to explore what the options might be and the pros and cons of each approach.

Lord Butler of Brockwell: Thank you. That is very helpful.

Q8 Lord Rowe-Beddoe: We understandably have a problem with delays in providing and supplying information to other tax jurisdictions. Obviously, it is a reciprocal situation. Could it have been tackled in other ways and, if so, how?

Richard Wild: I am afraid I am not going to offer a great number of suggestions. A number of options were looked at in the consultation and put forward by recipients. It seemed as though HMRC had an answer for each of them as to why they would not work.

I go back to what Frank said. 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 response. We should flesh out what the options are and see whether they are viable alternatives.

Lord Rowe-Beddoe: That is a very interesting response. What can we do about that? It would appear that HMRC does not take it too seriously. It is satisfied with the situation and therefore offers, if I may say so, a paltry response. Do you have a comment?

Richard Wild: We have limited powers. We make representations on the Finance Bill and we normally send them to parliamentarians so that they can form part of the debate on the Bill as it makes its way through Parliament. Assuming the provision reaches the Finance Bill, we can set out our concerns and what the alternatives might be, but to a large extent how it progresses further is out of our hands.

The Chair: To what extent should we be concerned that the power can be used just for domestic investigations? How does that fit with, I think, Schedule 36 of HMRC's powers, thereby undermining the need for a

tribunal in the vast majority of cases? Is that correct? Can you clarify the position? Mr Haskew, what impact will the measure have, if it is brought in as is, on HMRC's overall activities?

Frank Haskew: As I said at the beginning, we are concerned about the extension of the power to the domestic UK position. It will be very interesting to know in how many cases HMRC might look to apply the power in relation to the UK, as compared to offshore and offshore requests from other jurisdictions. At the moment, we have no visibility on that.

There is serious concern that this power, which has been ostensibly introduced in relation to overseas information exchange, makes a fundamental change to the Schedule 36 powers. It will effectively allow HMRC to request information from financial institutions without the need, currently, for a tribunal. The extension of it is of serious concern to us, so we need to know how it will be applied in a UK domestic context. We need some proper oversight of it.

The measure talks about an annual report to Parliament. We are certainly going to need that, and we need to understand how the provision is actually going to be used. Up to a point, it overrides the existing Schedule 36 provisions.

Susan Cattell: I totally agree with Frank. The concern would be that as it is in effect being made easier for HMRC to go straight to the bank or financial institution because it will not need to get tribunal approval, it may make that the default immediate option in domestic cases. It will not bother going to the taxpayer or the agent with a normal taxpayer notice that has some safeguards built into it.

Even if the taxpayer and the agent are co-operating, HMRC will think, "Well, we don't need to worry about all that. We'll just go straight to the bank", which is extremely intrusive and could cause serious problems. A risk-averse bank might decide to stop dealing with a customer because it thinks that issue of the notice indicates some sort of wrongdoing. We have serious concerns that taking out the safeguard will make HMRC more inclined to use that type of notice at an early stage when perhaps we would not consider it appropriate.

The Chair: Thank you very much. If Mr Wild has nothing to add, we will move to the next topic, which is the notification of uncertain treatment—another enormous subject.

Q9 Baroness Bowles of Berkhamsted: HMRC says that requiring taxpayers to inform it of uncertain tax treatment will allow it to address areas of dispute more quickly. Will it have that effect? How much do you see it as trying to address resource constraints in HMRC?

Richard Wild: We are not at all convinced that it will help HMRC to address areas of dispute more quickly, that it will resolve matters quickly or that it will have a material impact on the legal interpretation part of the tax gap, which is what the measure is trying to achieve. It will be

extremely difficult to identify uncertain tax treatment. It may be covered in HMRC's guidance; it may not. HMRC might not be currently following its own guidance, or it may need updating.

You do not have to tell HMRC what it already knows, but how do you know what HMRC already knows? I think that in reality HMRC would get bombarded with notifications; people would err on the side of caution and would want to make sure they were compliant and not liable to a penalty. The penalty itself is not substantial, because businesses, especially large businesses, want to be fully compliant.

We do not think that the measure is particularly well thought through. It started at stage two of the consultation process rather than at an earlier point. We do not have great confidence that it will achieve what it is trying to achieve.

Susan Cattell: I agree with what Richard has just said. The vast majority of large businesses already want to work constructively and collaboratively with HMRC. That is the whole point. HMRC has a business risk review process that it applies to all the largest businesses already. As part of that, they all have a customer compliance manager appointed. The feedback we get from our members, both those who are working in large businesses and those who are advisers to large businesses, is that they are very keen to tell HMRC about areas of uncertainty and to discuss them with their customer compliance managers in real time. When there is a problem with that, it is usually because HMRC does not have adequate CCM resources. It is a resource problem.

I personally think that the measure will make that resource problem worse. As Richard says, the vast majority of compliant large businesses will make notifications because it is not clear what is or is not an uncertain tax treatment. The definition is very subjective. They will put in notifications of things that HMRC does not want to know about or could have ascertained from the accounts anyway. That will clog up HMRC's system, so it will make it much harder for HMRC to identify the problem areas, which are probably confined to a very small number of businesses that do not engage properly through the business risk review process and do not want to work collaboratively with HMRC.

Our feeling is that the measure would be better targeted if it applied only to businesses that get a high risk rating in the business risk review process, or if HMRC was given the power to issue a direction that a business should be within the proposals, therefore restricting it to businesses that HMRC is concerned about, rather than targeting the vast majority of compliant large businesses that actively want discussions with HMRC, and want to work collaboratively and discuss any uncertainties.

Baroness Bowles of Berkhamsted: Will it also possibly bear down on the small guys?

Susan Cattell: It should not do so, because the threshold is turnover above £200 million and/or a balance sheet of over £2 billion. We do not

have concerns on that score, because that would definitely confine it to the largest businesses.

It says in the consultation document that HMRC thinks it will bring in a few businesses that are currently dealt with by its mid-size group. Those businesses would not have a customer compliance manager. Our view is that, if it goes ahead, HMRC would need to give those slightly smaller businesses—not small in relative terms, because they would still have turnover of over £200 million—a customer compliance manager if they do not currently have one. We think it is very important that they have one if the measures go ahead.

Lord Forsyth of Drumlean: In my mind, there is a parallel with what happened on IR35. To pick up the point that Susan Cattell made, is it about HMRC's resources? In other words, "we can't cope with the people who are playing the game fairly, so if we introduce a system that means that they're very uncertain about what might happen, perhaps people won't be looking for more innovative ways of organising their businesses". At the root, is it perhaps the lack of resources in HMRC to deal with people who are playing fairly and using the existing system, or am I seeing demons where they do not exist?

Susan Cattell: If part of the plan behind it is to help HMRC, I think it might backfire. In fact, the impact assessment acknowledges that HMRC will need more resource to deal with the notifications. It is not clear that HMRC thinks it will save resources in that sense. As I said earlier, I agree with Richard that the fact that HMRC is likely to get lots and lots of disclosures it does not want will put pressure on the customer compliance managers, who already seem to be struggling.

I think it will have the opposite effect on HMRC resources, because HMRC will come under considerable pressure to update guidance much more frequently. If people are trying to decide whether something is uncertain, HMRC's guidance needs to be absolutely clear. It needs to be up to date and to cover the difficult, grey areas; otherwise, people will make disclosures, or indeed will ask their customer compliance manager to confirm that they have provided enough information so that they do not need to make one of the notifications. All of that is going to take up more HMRC resource.

One of our biggest concerns, and where we have already had feedback, is that people cannot get the real-time engagement with their CCM that they want. We are concerned that the measure could actually make that worse, because it will divert the CCMs into dealing with notifications that are not useful, or dealing with people asking them for confirmation that they have provided enough information and do not need to make a notification. Our concern is that it could adversely affect HMRC's resources.

The Chair: Mr Haskew, you have not spoken about this. Would you like to come in?

Frank Haskew: I concur with everything that Richard and Susan have said. When we have taken the provision to our committees, which include our very large firms, almost to a man they have not understood why HMRC needs it. The consultation document talks about Australia and the US having such a provision, but with no explanation of how theirs works and why they need it. They have very different tax systems. We have a very different system as regards large business and interaction. The bottom line is that the case for the provision has not been made.

Q10 The Chair: We have one remaining question, which I will ask you to answer very quickly. If you would like to add anything in writing, please do so. It is to do with retrospective legislation.

The draft legislation on the corporate interest restriction retrospectively provides a "reasonable excuse" provision as a defence against penalties. The Government have suggested that there is a case for making the new penalty provisions for enablers of tax avoidance schemes retrospective. Do you consider that the use of retrospection in these cases is acceptable? Is it in line with government policy on retrospection?

Richard Wild: We are happy with the "reasonable excuse" provision being built in retrospectively. It should have been there all along. It just brings in a safeguard for the taxpayer, so we are very happy that it has been brought in retrospectively.

We are more sceptical about the enabler penalty being backdated. A firm decision has not been made on that as yet. It was always intended that the penalty would be in place from the outset, but if we are to respect the policy on retrospection it should apply from a future date.

Frank Haskew: I agree entirely with what Richard has just said. That is our position as well. As we are over time, I will stop there.

Susan Cattell: I agree with Richard and Frank. You would expect any penalty regime to have a "reasonable excuse" provision, and probably a lot of people expected that it was there when the legislation was introduced. The omission was certainly unintended, so we think that is not true retrospection; it is appropriate to correct that mistake, to make sure that the regime works as people were expecting it to work.

On the enabler penalties, as a policy principle in general we do not agree with retrospection. Our view is that the changes there should take effect from Royal Assent, which is the current proposal, but the question in the consultation said that because there had been some issues with applying the penalties there may be a case for retrospection. We think it is probably better to stick with the general policy principle on that.

The Chair: I thank all three of you very much indeed for joining us virtually this afternoon. I am sorry that we cannot be together in person. Thank you for your time and your contributions. As we said, we would love to hear more about the Republic of Ireland scheme, which was mentioned earlier. If you could provide any information on that, it would be great. Thank you very much.