



Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Draft Finance Bill 2020-2021

Monday 5 October 2020

5.05 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-Beedoe.

Evidence Session No. 2

Virtual Proceeding

Questions 11 – 22

Witnesses

I: Lydia Challen, Chair of Tax Committee, The Law Society; Yvonne Evans, Tax Law Sub-Committee, The Law Society of Scotland; Fiona Fernie, Tax Investigations Practitioners Group.

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Examination of witnesses

Lydia Challen, Yvonne Evans and Fiona Fernie.

Q11 The Chair: Welcome to the second session of the Finance Bill Sub-Committee. This meeting, like the previous one, is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website, and witnesses joining us will have the opportunity to make corrections to that transcript. Would our three witnesses introduce themselves?

Lydia Challen: I am the chair of the tax law committee of the Law Society of England and Wales.

Fiona Fernie: I am a tax dispute resolution practitioner, and I am on the committee of the Tax Investigation Practitioners Group.

Yvonne Evans: I am a member of the tax committee of the Law Society of Scotland.

Q12 The Chair: I shall kick off the session with a question about promoters. It comes down to a very simple point: HMRC says that there is a hard core of 20 to 30 promoters still operating. A question we tackled in our first session was whether the existing powers of HMRC were sufficient for it to act against that 20 to 30 hard core, and whether it needs extra powers. Could you give us your views on that question?

Lydia Challen: We essentially support the Revenue's efforts in that respect. I think all the professional bodies would be aligned behind the comments made in the previous session about discouraging the sale of aggressive tax avoidance schemes. We are all at a bit of a disadvantage, in that in the regulated sector we do not have a complete view of the activities being undertaken or HMRC's actions to try to counteract them, but we have some general observations.

The powers of HMRC have grown enormously over the last decade. As has been referred to, a review is being undertaken about the extent to which those powers provide adequate safeguards for taxpayers, and whether HMRC is using them effectively. Our sense is that that review should be allowed to take its course before additional powers are taken.

Our concern with the proposals is that, although they are intended to capture only the hard core of 20 to 30 promoters, the way in which they are drafted, building on the existing disclosure rules, is quite broad and could capture an awful lot of advisers who are advising in the mainstream of the tax advisory market. The risk we see is that they penalise legitimate advisers without necessarily having the effect that the Revenue wants on the hard core.

In some senses, there is only so much you will be able to do by rules against the hard core, so looking at more inventive use of existing powers is something we would very much encourage. We may come on to that later. It may be that dealing with it largely through the demand side of

the market and wider public education on tax issues, so that people know when they are being sold something abusive, is a very important way forward. The Revenue getting better at its communication with the wider public on tax issues and probably all of us being better at communicating on tax issues, so that people are more generally informed about tax, rather than it being always done for them by somebody else, are quite important ways of dealing with it.

Fiona Fernie: I agree with everything that Lydia said. My concern is that, although the proposals strengthen the Revenue's ability to deal with promoters, they also strengthen its ability to deal with a lot of people, because they are so widely drafted. In my mind, it is also incredibly questionable whether the measures will change any of the behaviours of the final 20 to 30 hard core, because in many situations the arrangements that are being peddled by that remaining hard core are not tax avoidance schemes; they are fraudulent. It is fraudulent misrepresentation with innocent victims at the other end. In the earlier panel, one of your Lordships asked whether it was a bad thing that HMRC was just looking at cutting off what had already gone ahead instead of stopping the next wave. I think that was a hugely fair point.

I agree with the point about communication by the Revenue. Clearly, we will come to that, but a lot more needs to be done. A lot of the proposals for sanctions on enablers or promoters do not necessarily work all that well because, even if the Revenue ostensibly has the power, a lot of those people disappear offshore. It is quite difficult to impose sanctions once people have disappeared offshore.

Yvonne Evans: We agree with everything that has been said. We strongly support any action that can be taken against promoters' aggressive tax avoidance schemes, but we think that the measures in place at the moment have had quite a beneficial effect in cracking down on problems. We are now down to 20 to 30 people, so the action taken against them has to be proportionate, as much as from the public interest perspective it is important to go after people selling those sorts of schemes.

Q13 **Lord Rowe-Beedoe:** I am interested in the 20 to 30 figure quoted by all three of you. There is considerable variance; we have either 20 people or 30 people. I think we should be much more precise in our understanding of these "villains". I think you have already suggested that there will be variance. Will the proposed measures be effective against the remaining promoters? They will not be if they run offshore, but they have been operating here for a long while, so obviously we have not been effective. Will the new measures be more effective in tackling the remaining hard core?

Fiona Fernie: They may be a little more effective. The Revenue being able to issue an SRN is helpful in one sense, inasmuch as in the past some of the very hard-core people have taken the DOTAS regime and said, "We've got a DOTAS number. That means the Revenue has approved the scheme". If the Revenue is issuing the numbers and those

people continue to make that kind of claim, they are fraudulently misrepresenting something and that can be dealt with by the sheer illegality of what they are doing.

Lord Rowe-Beedoe: I see what you are saying. Do you think there will be a change with these proposed regulations? In a couple of years from now, will there still be 20 to 30, or am I too cynical?

Fiona Fernie: Having been in dispute resolution for over 30 years, I am as cynical as you are. It might go down to 15 to 25 instead of 20 to 30. I do not think all of them will have gone.

Lord Forsyth of Drumlean: Perhaps I feel too strongly about this because I have read so many letters from people who have been victims of the loan charge and have lost their homes and businesses, and whose lives have been turned into misery by these people. Looking at what has actually happened to the people who are responsible, they get off scot free.

I wonder whether we should be looking at the criminal law in respect of that kind of activity. I am not a lawyer, so perhaps I am advantaged, or disadvantaged, in this matter, but I would be grateful for the witnesses' view. It seems to me that the Revenue has gone after the people who are easy targets—it could get the money out of them—and it has allowed the others to escape scot free.

I see nothing in these powers that will change anything. To my mind, the huge change that we achieved on health and safety regulation was when we made the directors of the company personally responsible, and then suddenly health and safety was the first item on every board agenda. I wonder whether there is a parallel.

Lydia Challen: I completely agree that where criminal proceedings are appropriate it would be entirely justified to bring them, but they are very difficult for the Revenue to mount; they are expensive, time-consuming and difficult to prove.

The shape of the tax avoidance market seems to have developed over the last 10 to 15 years, although maybe we just have a better understanding of it; what would have been seen as the preserve of high net-worth individuals, who are probably well advised and know that they are taking a risk, has become much more widely disseminated among people who do not have the opportunity to take separate advice, because they do not have the resources, and are being suckered into some of these schemes.

In those contexts, the Revenue's initial approach of trying to deal with taxpayers and that end of the advisory market was probably perfectly justified in the light of what was assumed to be the shape of that market. Now that it seems to be much more about consumer protection, and all those kinds of issues, strong action such as criminal prosecution would seem to be an avenue which the Revenue ought to consider. At the same

time, what it really wants to do is stop the schemes before they get out of hand. That is where some of these powers are coming from. I can understand why the Revenue wants to take powers to issue stop notices, SRNs and all that, because they are partly consumer protection issues.

The other matter that I think will be helpful is the extension of the promoter definition to multiple entities, when people close down their businesses and start phoenix enterprises in order to avoid the application of the current regime. All of that will be helpful. My reservation is still that, because they are based on the DOTAS regime, which from its inception was very widely drafted and has been made wider over the years, some of the measures draw in advisers who are not in that hard core and do not deserve to be dealt with in the same way.

Fiona Fernie: From what Lydia is saying, I know that her concern about personal responsibility is that the wrong people get pulled in. When I submitted my written evidence, one of the things I said was that, if it could be correctly targeted, which is always the difficulty, maybe firms should be required to have the equivalent of a senior accounting officer or an anti-money laundering officer who would be personally responsible. The rogue firms would find it much more difficult to operate if they had to have that; somebody who thinks they will be sent to jail for 14 years because they are the person responsible, and might be liable for whatever it might be, will not want to stand. But I take Lydia's point that the difficulty with it is that you could bring in lots of people and make the lives of ordinary tax advisory firms more difficult. On the other hand, we kind of managed it with anti-money laundering and SAOs, so there may be a way of doing it.

Q14 **Lord Monks:** My question is about whether the measures are targeted and proportionate. Our understanding is that, under the proposals, safeguards will be dealt with largely through internal governance procedures, with individual officers making the key decisions. Is that appropriate, given the nature of the new powers that HMRC is due to obtain? As lawyers, do you think it adequately respects the rule of law?

Yvonne Evans: We have some concerns about impartiality. We will perhaps talk later about tribunals and notices there. We have concerns; if it is to be internal, it should at least be senior officers, who have not been dealing with the taxpayer previously, who make the decisions.

Lydia Challen: We would agree with that observation. Because of the width of the drafting of the legislation and the risk of mission creep, relying on the Revenue to exercise self-restraint and apply the powers only to the 20 or 30 it is really targeting is something we are rather concerned about, particularly with some of the powers that can be exercised very early in the process—for example, the ability to name somebody who is involved in the supply chain of a scheme the Revenue issues an SRN to. It could be somebody relatively minor in the supply chain. Possibly because they are relatively minor, they are the most visible to HMRC; they have not taken steps to conceal themselves and they get named, perhaps not even realising that the thing they have been

involved in is within the scope of the rules. There is no right of appeal in advance of the Revenue naming somebody. There is a right to make a representation to the Revenue, but nothing more.

It goes back to the question of whether the rules are sufficiently tightly targeted. If they were sufficiently tightly targeted and had the kind of governance Yvonne was talking about, perhaps you would not need an appeal to a tribunal in advance of somebody being named in order to protect the public from the scheme being sold, but we have significant concerns about them as they stand.

Q15 The Chair: Yvonne Evans, on the point about DAC 6, I think I am right in saying there might be some reservations about its inclusion. Can you very briefly talk us through what those reservations are?

Yvonne Evans: I am just trying to check our notes on that. It will be in our submission.

The Chair: Maybe you would rather write to us if it is easier. It strikes me that including the new disclosure rule from the EU broadens the application quite a lot. Lydia Challen or Fiona Fernie, do you have anything to add?

Lydia Challen: I completely agree; DAC 6 is a very difficult bit of legislation. It is extremely vague and riddled with difficulties of interpretation and traps for the unwary. A lot of completely mainstream advisers will routinely fail to notify things that they should notify under DAC 6 because the rules are so difficult to apply. It does not seem to me to form a good basis for disclosure were POTAS rules to apply.

Baroness Kramer: I want to pick up an issue to which both Lydia and Fiona and the earlier panel have alerted us. One of the best ways to stop the bad guys is to make sure that the people they target are aware that they are being scammed. The targets which the surviving bad guys have within their sights tend to be people on low incomes, without a lot of skills to work out what on earth they are being sold. They certainly do not have any kind of independent accountant or financial adviser.

What do you think of the various schemes that HMRC is using to communicate with those people? Are they worth the paper they are written on? Baroness Bowles suggested you could use a template in the way the FCA tries to communicate with people over pension scams, for example, with broad television ads and alerts of a very different nature. Could we get your thoughts in that arena?

Fiona Fernie: I recently attended a conference with HMRC on targeting its communication to what it calls hard-to-reach taxpayers. I would say that at HMRC it has a very blinkered view as to how it should communicate with people and did not seem incredibly willing to come out of that. I mentioned TV adverts at that meeting. I think its view is that they are very expensive for what they achieve. It was talking about Hector the inspector and adverts that appeared many years ago. I do not think it is necessarily right, and they seemed quite blinkered.

You heard from the earlier panel very much the same comments that I would have about Spotlight. The fact is that the average taxpayer has never heard of Spotlight, would not know what it was and would not know where to look for it. One of the issues picked up at that meeting was, "Couldn't we put Spotlight on the front page of GOV.UK?" I said, "To be honest, why would people even look there?" Anyway, the HMRC part of the government website changed a few years ago and it is so unnavigable now that most of us just google everything anyway. It is ridiculous.

I take what Lydia said earlier about the worry that normal tax firms would be caught up by being named. Going back to the previous question, I think there ought to be a route for people to challenge the Revenue's view of a scheme before the matter becomes public or reputationally damaging, but there ought to be some kind of list of schemes in respect of which the Revenue says, "we haven't necessarily made a decision yet, but we will be challenging these". It should be easily found on Google, or somewhere people can find it easily, such as television or radio adverts, or whatever might reach people who do not have a professional adviser and who might be targeted by those promoters. There is a lovely bit on the Revenue website that says, "These are the trigger points that you need to worry about, and, by the way, if it looks too good to be true, it probably is". Nobody is going to find it.

Baroness Kramer: Has it learned anything from the loan charge? Like Lord Forsyth, I have read so many letters from people, and the thing that hurt them the most was the suggestion that they were trying to be deliberately dishonest because—

Fiona Fernie: The reason for that is that the Revenue applies hindsight to everything. It will look at what it and we know now and say, "but, surely, you ought to have known". In 2004, when a lot of the loan charges were starting, nobody knew. Therefore, it is unreasonable for the Revenue to apply that level of hindsight.

Baroness Bowles of Berkhamsted: Is the problem the fact that under the law things are allowed until they are disallowed? Is there a case for reversing that burden and that you cannot do it until it is explicitly allowed when it comes to tax schemes?

The Chair: Very good. Thank you very much—[*Inaudible*]

Yvonne Evans: I am sorry, Chair, we lost you there. To go back to what Fiona was discussing, we definitely agree about the importance of education for the public and about the fact that, if you search for HMRC information, it is all over the place. As for the jargon that is used, and Spotlight, the audience is very different when [*Inaudible*] tax advisers are googling for information about schemes and whether what they want to do is legitimate or not.

The Chair: I am sorry. We have had a bit of an interruption in the system. Lord Forsyth will ask the next question.

Lord Forsyth of Drumlean: Baroness Bowles's question has not yet been answered. You were cut off, Chair, and I think you have frozen again. Does anyone want to add to Baroness Bowles's question?

Lydia Challen: It is a very difficult question to answer. I do not quite know how you would frame something to say that things are not allowed unless they are specifically permitted in some sense. It would have such wide-ranging potential effects that I cannot quite visualise how you would craft such a thing so that it would be workable.

Fiona Fernie: There are certain aspects of the tax Acts where you can apply to the Revenue for clearance before you do some kind of transaction. They are few and far between, but you could do something like that. It goes back to something mentioned by the earlier panel, which is the resourcing for the Revenue. I often tell my clients that we ought to talk about something in real time, and I try to find somebody in the Revenue to talk about it in real time. It does not have the resource to have people to do it and will often say, "well, just file on the basis that you have interpreted the law". It would be quite helpful if the Revenue could help us to interpret the law.

Q16 **Lord Forsyth of Drumlean:** I think Lord Bridges wanted me to ask the next question while he sorts out his technology. It only requires a brief answer. I was quite shocked to discover that 30 per cent of tax advisers were not members of professional bodies. Although I completely agree that there is a need for the Revenue to communicate these things, why on earth should the professional bodies not advertise, "don't take advice unless somebody is a member of our body, because it could get you into trouble"? Surely, there is a responsibility on the part of the professional bodies. It might even be in their own interests, because people might then want to be members of those bodies. Do you agree?

Lydia Challen: I suspect that we might have difficulty advertising on that basis, as it is possibly anti-competitive. There may well be other reasons why people take tax advice from people who are not members of professional bodies. We would definitely encourage people to take advice from those who are appropriately regulated. The call for evidence on the regulation of the tax profession, which we may come to, is part of what that is all about.

We have not so far suggested that people should have to be regulated to be able to provide tax advice. Indeed, one of the issues about tax advice is that, frankly, it is expensive to provide well, because tax is so complicated. It would not necessarily increase access to tax advice for the low-paid. A point that should be on all our radars is the work of the charitable bodies that advise the low-paid. More resources should be put into those organisations, so that there is somewhere for people to go that does not involve them spending more than they can afford.

Lord Forsyth of Drumlean: Why would it be anti-competitive? Builders, plumbers, electricians and all sorts of people say, "Only use a builder who is accredited and a member of our organisation". Why could

the professional bodies not do the same for tax advice?

Lydia Challen: I would have to refer that question to our wider policy secretariat. It is perhaps above my pay grade.

Fiona Fernie: I certainly think that the professional bodies could do a bit more. Although 30 per cent of the individuals involved in tax advice may not be regulated, the value of the advice undertaken by those people is a much smaller amount. There is an element of making sure that those who are in the professions keep an eye on what is going on. Certainly, if we see our own members not behaving as they should, we should be proactively reporting them.

Lydia Challen: I completely agree that the professional bodies should and do take action against those they know are not upholding the standards. We have not had communications from the Revenue about schemes that it would like us to disseminate to our members—for example, if a conveyancing solicitor is likely to get drawn into documenting something that is aggressive tax planning. That is an opportunity that the Revenue could take.

Lord Forsyth of Drumlean: I have just had a message from Lord Bridges to say that his wi-fi has gone wrong and to ask me to take over the chairmanship. Lord Butler, your question is next.

Lord Forsyth of Drumlean took the Chair.

- Q17 **Lord Butler of Brockwell:** The witnesses may have heard the discussion with the earlier panel about HMRC's proposal that it should be able to require information without first being authorised by a tribunal. The Law Society of Scotland has already expressed its concerns about that and said that, although it would understand if those powers were used in respect of overseas tax authorities, it would not be happy about their being used in domestic cases. The Society has been told that it would be illegal to discriminate between overseas bodies and domestic bodies, as a matter of law.

Yvonne Evans: We have a concern about where that is coming from. It is similar to the views expressed by the previous panel about the reasoning for trying to get rid of the tribunal routes. Is it just about saving time? We think it is an important balance and a check for taxpayers that the information is reasonably required. We are not convinced that an internal process would scrutinise that so carefully.

Lord Butler of Brockwell: But you would not have the same concern in respect of seeking information from overseas tax authorities.

Yvonne Evans: I do not recall that that particular point was in our evidence. I can certainly check.

Lord Butler of Brockwell: There is no need to pursue it. Can I ask the other witnesses to comment? Do you have similar concerns? Do you see a way through the bar on discriminating between overseas tax authorities

and domestic cases?

Lydia Challen: We have similar concerns. We do not think that the safeguard of the tribunal should be dispensed with here.

Sidestepping a little the distinction between the two types of requests, I would like to talk about the tribunal processes. Over the last seven or eight months, the tribunals have changed their processes significantly to deal with the Covid situation. Some of those changes would be very interesting in the context of the Revenue's argument that it is taking too long to get approvals. 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, which encourages the Revenue to have assembled all the correct information for the tribunal to deal with. That should streamline the process considerably.

Those steps, which have been forced on the tribunals by circumstance, would probably deal with a lot of the concerns that the Revenue has raised about the tribunal process. In our view, they should be given a chance to prove themselves in practice, rather than dispensing with the tribunal altogether, which is a significant worry.

Fiona Fernie: I agree with Lydia. There is a big concern over this, partly because, from the way it is drafted, it seems to me that there could be a situation in which the taxpayer has no idea at all that a Financial Institution Notice is being issued. Actually, the Revenue can stop the bank telling the taxpayer that it has happened. If you do not have to go through a tribunal to get there, you have the problem potentially of no visibility.

I think the current circumstances are not nearly as bad as the Revenue is trying to make out. Quite often, the tribunal is not required because the Revenue says to a taxpayer, "I intend to issue this third-party notice", and the taxpayer replies, "I don't think that is appropriate. I think it's unreasonable that you're asking this, and I would appeal it to the tribunal on that basis". Then the Revenue amends its notice and the taxpayer says, "fine. Issue it", so you do not have to go to tribunal anyway.

Lord Butler of Brockwell: Is there scope for a taxpayer to delay the Revenue getting evidence simply by making objections of that sort?

Fiona Fernie: I suppose there is scope. That is where what Lydia said about the whole tribunal process being speeded up is hugely beneficial. Effectively, we are back to the resourcing situation. The fact is that the tribunal has been very delayed not because the Revenue or anybody else does not want to get on with it, but because there has not been the capacity to get through things quickly. There is a huge backlog. If it can be speeded up in the way Lydia talked about, maybe that is not a problem.

On the overseas jurisdictions, earlier Lydia and I had a brief conversation in which she said that she did not think that the reports she had seen suggested that we were any slower than anybody else.

Lydia Challen: I looked at the more recent peer reviews for France and Germany in comparison with the UK, and they did not seem to be materially different. In many respects, the UK was actually timelier.

The Chair: It would be very useful to get that information, if you could share it with us.

Lydia Challen: We certainly will.

The Chair: Please go on.

Lydia Challen: Another interesting statistic was that in the period of review the latest peer review talks about there being 5,200 exchange of information requests, and only 76 of them requiring tribunal approval. Although that was discussed in the report, it was not highlighted as a matter of significant concern in the summary at the end of the relevant part of the document. The conclusion was that “no factors or issues” were “identified that could unreasonably, disproportionately or unduly restrict effective” exchange of information “in the United Kingdom”. While it is clearly something that overseas partners have expressed slight concerns about, I question the strength of those concerns.

Lord Butler of Brockwell: We might be getting a good spin-off from the pandemic.

Lydia Challen: Indeed.

Lord Butler of Brockwell: Your view is that the tribunal processes should be given a chance to speed up, so that we can see how that works before we go ahead with these powers.

Lydia Challen: Yes.

Q18 **Viscount Chandos:** I should have declared potentially relevant interests when I asked a question in the first session. I will do it now. I am chairman of the Credit Services Association, the Theseus Agency and the Thomson Foundation, vice-chair of LAMDA, and a director of Ambie Media.

I would like to pick up an issue from the previous discussion, which we also debated a bit in session one. The Government’s response to the 2018 consultation on civil information powers ruled out alternative approaches on legal grounds—for example, having different rules for requests from other tax jurisdictions and on domestic cases. What alternatives do you see? In particular, what is your view of the claim that there is no real scope for speeding up the tribunal approval process? I know that you touched on that in answer to the previous question.

Lydia Challen: To develop what I was saying, there is scope for speeding up the tribunal process. I am not convinced that you need to

introduce the same processes for both international and domestic requests, if that were necessary. Reading between the lines of the review, I think 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 the orders, and ensuring that it is provided by those tax authorities in a timely way. There is obviously work going on in that respect. Both those avenues would be helpful.

Fiona Fernie: I agree with everything that Lydia has just said. There is scope in what we have already.

Q19 **Baroness Bowles of Berkhamsted:** I, too, must declare my interests, which I forgot to do earlier. To show how broad this inquiry is, I have bank accounts in the UK and abroad, I am a director of London Stock Exchange plc and I own some Santander shares.

Do HMRC's proposals on notifying uncertain tax treatment respect the balance of power between HMRC and taxpayers? How easy will it be to determine whether there is uncertain tax treatment? Are there sufficient safeguards for businesses?

Fiona Fernie: There is so much in the tax statute that is grey that, if everything that is uncertain has to be declared, we will overrun the Revenue with declarations. The worry is that you clog up the system with people being terrified of the penalties and, therefore, feeling that they have to disclose stuff that they do not need to disclose at all.

Lord Rowe-Beedoe: That is a very good point.

Lydia Challen: It is similar, in a way, to the promoters' rules that we talked about at the beginning. You are introducing legislation that affects everybody for the purpose of dealing with a small minority—businesses in this case. We were given to understand by the Revenue when we had discussions that this is really aimed at a handful of businesses that are not engaging in the collaborative real-time working that large businesses generally follow. The price for that seems to be that everybody is required to second-guess the Revenue's view about everything, and is subject to a regime that may penalise them without their having any way of sensibly appealing it, because there are no objective criteria on which a court could decide whether the tax treatment was something the Revenue might have disagreed with.

It goes significantly further than either of the international comparisons to which the Revenue refers in the consultation. The Australian provision, for instance, has a specific objective test. I think you have to disclose whether, as a matter of law, the position taken is as likely as not to be correct as incorrect, which gives a test that you can apply. As you can probably tell from my answer, we were very opposed to the measures. We think that they are completely at odds with the rule of law, quite honestly.

Baroness Bowles of Berkhamsted: Yvonne, you are nodding. Are you in agreement?

Yvonne Evans: Yes, absolutely. We do not think that the definition of “uncertain tax treatment” is at all clear. We think that taxpayers and advisers could legitimately disagree with HMRC’s interpretation. It is a pretty common thing. It is far too wide. We think that the majority of large businesses, which this deals with, are compliant.

Baroness Bowles of Berkhamsted: Is the problem that the complexity of the tax system, rather than tax itself, is the enemy of the taxpayer? People would pay; it is just that they fall into traps of complexity, which allows for schemes to be invented and all kinds of other things.

Fiona Fernie: At least partly.

Baroness Bowles of Berkhamsted: Is gross simplification possible?

Lydia Challen: There are always winners and losers out of gross simplification. That is the difficulty with achieving it. It would be more difficult than one would hope, I suspect, to do gross simplification.

Lord Bridges of Headley retook the Chair.

The Chair: Lord Rowe-Beddoe has a question about licence renewals. Then I will quickly wrap up with the final questions.

Q20 **Lord Rowe-Beddoe:** Do you think that there are sufficient safeguards in what is proposed for businesses whose view of uncertainty differs from that of HMRC?

The Chair: Could the witnesses hear that?

Lydia Challen: I heard it. Are there sufficient safeguards? No, we do not think that there are sufficient safeguards for businesses whose view of uncertainty differs from that of HMRC. We think it is a bad proposal.

Lord Rowe-Beddoe: Why is that? Obviously, HMRC believes that it is good to have confusion.

Lydia Challen: Ultimately, if you are going to introduce a regime that involves a penalty, you need something that a court can adjudicate. This is not something on which a court could sensibly give a view, because the test for what HMRC considers the position to be is subjective.

Q21 **The Chair:** Moving on to the concept of conditionality being introduced into the tax system, what are your views on making licences to trade conditional on compliance with tax obligations?

Fiona Fernie: It is not something that I see working very reasonably. It seems almost cart and horse to me. I am not sure which is the chicken and which is the egg.

It is interesting that it is targeted only at certain people. 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. Therefore, I worry about that a bit.

The Chair: Do either of the other witnesses want to add anything?

Lydia Challen: Yes. 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 that you are compliant. I question whether the range of things that it has suggested really falls into the bucket of government authorisations. We license taxi drivers, because otherwise anybody could get in their car and perform a taxi service. There is seen to be a public benefit in that, but it is not access to a government good as such, in the same way as running a nuclear power station might be, for example. There are very distinct differences. My concern is that you could end up with any form of regulation pulling people into a regime relating to tax.

Having said that, the informal economy is a matter of significant concern, and the Revenue does not have a lot of tools for dealing with it. A system that requires you to be registered for tax in order to get a licence may not be disproportionate. My concern about the legislation as drafted is that there is no indication that it is as limited as that. You have to get the Revenue to confirm that you have provided it with all the information it has asked you for in connection with it. The powers to do that include asking about information to do with whether or not the scheme itself is successful. You could have completely collateral pieces of information and, if you do not provide what the Revenue has asked you for, your licence could be at risk. It is a very big stick to wield on people, with rather uncertain limits on what the Revenue can require. That is our main concern.

Q22 **The Chair:** The final question is related to retrospective legislation. The draft legislation on the corporate interest restriction contains a retrospective provision allowing a "reasonable excuse" defence against penalties. The consultation document on the promoters and enablers legislation suggests that the penalty provision for enablers might be made retrospective. What do you think about the case for making those provisions retrospective?

Yvonne Evans: In principle, we generally would not support retrospective measures, because of the rule of law and because it can create a lot of uncertainty, but in these two quite narrow circumstances it fixes a problem. It fixes an unforeseen consequence in the original legislation, so I would not disagree.

Lydia Challen: From our perspective, we would be happy with the corporate interest restriction retrospectivity, because it fixes something that should have been there from the outset. We are less comfortable with the provision for enablers being retrospective, on the basis that it is introducing a penalty. Whatever the arguments for whether it should

have been there in the first place, people will have acted on the basis of the law as it stands.

Lord Rowe-Beddoe: I agree.

Fiona Fernie: I agree with that, too. I certainly think that the reasonable excuse thing ought to have been there before. My concern, as with all the Revenue's references to "reasonable excuse", is that it does not like to think that anything is a reasonable excuse unless you are on your deathbed. Indeed, there have been a few tribunal cases recently where it has had its knuckles rapped for being unreasonable about what a reasonable excuse is.

Lord Forsyth of Drumlean: If it is easy to provide, could we have evidence of tribunals where that has happened, on the precise idea of reasonable excuse?

The Chair: It would be very good if we could get that.

Fiona Fernie: I will see what I can find. There have been a couple in the last two or three years where the Revenue was told that it had been unreasonable.

The Chair: I draw the session to a close. My apologies for the problems with my wi-fi earlier. Thank you all very much. It was extremely kind of you to spare the time. We thank all our witnesses for all that you have provided in this session and before.