



Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Draft Finance Bill 2020-21

Wednesday 21 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-Beedoe.

Evidence Session No. 5

Virtual Proceeding

Questions 40 - 51

Witnesses

I: Tom Henderson, Technical Officer, Low Incomes Tax Reform Group—LITRG; Jason Piper, Head of Tax and Business Law, Association of Chartered Certified Accountants—ACCA; Will Silsby, Technical Officer, Association of Taxation Technicians—ATT.

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Examination of witnesses

Tom Henderson, Jason Piper and Will Silsby.

Q40 **The Chair:** Good afternoon and welcome to this evidence session of the Finance Bill Sub-Committee. This 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. That is the formal part of the opening.

First, may I welcome our witnesses and ask them to introduce themselves to members of the Committee?

Tom Henderson: Good afternoon. I am a technical officer for the Low Incomes Tax Reform Group, which is an initiative of the Chartered Institute of Taxation, and whose remit is to give a voice to the unrepresented taxpayer.

The Chair: Many thanks.

Jason Piper: Good afternoon. I am head of tax and business law at ACCA, which is the global body for professional accountants.

The Chair: Thank you for joining us.

Will Silsby: Good afternoon. I am a technical officer with the Association of Taxation Technicians.

Q41 **The Chair:** Thank you very much. Clearly, we have quite a number of issues that we want to run through, so I will get the ball rolling by covering the new proposals for licence renewals and conditionality. The first big question is: do you think there is a major problem here that requires this measure? If so, do you support the principle of conditionality and bringing it into the tax system?

Tom Henderson: On the first part of your question as to whether I think there is a problem here, to a certain extent that is an unknown, because it will depend on the perceived extent of the hidden economy within these sectors. As to the principle, we think it could be a valuable tool for HMRC in helping it to tackle the hidden economy.

I point out that the conditionality and tax checks part of these new provisions is one of two parts. The first part, where the licensing authority is obliged to give information to first-time licence applicants, 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. You can well imagine that, after a few years, somebody operating on a low income could easily end up with a tax debt that would make them insolvent, if they came forward, and they would be trapped in the hidden economy in that respect. So certainly the first part, giving information to licence applicants at the point at which they start their business, could be really useful.

We would acknowledge, though, that the principle will be ineffective for certain individuals. Those determined to avoid paying tax may even be encouraged by the measure to operate on an unlicensed basis. That, in turn, might have all sorts of non-tax issues relating to compliance with health and safety, employment and immigration rules.

Secondly, those operating on an unlicensed basis already will not be touched by the new provisions. Thirdly, checking registration is a very different thing from checking whether somebody is fully tax compliant, although on that final point I know that we have some questions later about the scope of the new law, which I will be happy to go into detail on.

The Chair: Mr Piper, perhaps you would like to cover that.

Jason Piper: Yes, I would agree with what Mr Henderson has said there. We are broadly supportive of the conditionality concept. There is no real problem with it in principle, provided that the compliance burden on the compliant is outweighed by the benefits to compliant taxpayers. There is quite a question mark over whether that will be the case. We are wary of the risk that, if it does not capture the fully non-compliant, it tilts the playing field back towards them and away from compliant taxpayers.

As to the sharing of information, similarly, we would welcome anything that helps to educate people a little more about what the tax system is and, hopefully, what it is for, and encourages them to pay voluntarily.

Will Silsby: There is nothing unusual in principle about the Revenue requiring information from other organisations. Indeed, the Revenue already has that power in relation to local authorities to ask about licence holders. What is novel here is that the proposal effectively seems to give the Revenue the opportunity to veto the issue of a licence. As Tom and Jason have already commented, that might seem perfectly reasonable if the test was confined to whether the business was registered with the Revenue, but it goes much further than that, and I suspect we will be looking at that.

My principal concern here is that it would appear that the renewal of a licence could be blocked where the taxpayer in question was being non-compliant only on a minor timing failure in the submission of a return or something. We may need to look at that.

Q42 **The Chair:** Absolutely. We should certainly come back to that. May I ask one more question before I ask Lord Butler to come in? One of you just mentioned this. What is your view of the effectiveness of the tax checks in tackling non-compliance? Mr Piper mentioned that people who actively want to avoid paying tax might not even want to get a licence. Do you have concerns, therefore, that this will increase the size of the hidden economy and have a totally counterproductive effect?

Tom Henderson: On the potential effectiveness of the measure, the first thing to say is that it will be very trade specific, because to a large extent it will depend on how able a business is to operate on an unlicensed basis. If the public and consumers are aware of the importance of using

licensed businesses in the first place, that would make it more difficult for the business to operate on an unlicensed basis.

As to the potential impact on the size of the hidden economy, it is important to be clear about how these measures might work. We know that somebody who is determined to avoid paying tax might be encouraged to be unlicensed, but I am not sure whether the measures will increase the size of the hidden economy from a tax perspective.

The Chair: Thank you very much.

Will Silsby: With the provision of information by the local authority to the applicant for a licence, the Revenue is effectively putting on notice people who might therefore divert into the hidden economy, whereas the use by the Revenue of its existing powers could be carried out without the knowledge of the applicant. There is a potential issue there for the Revenue to consider.

The Chair: Excellent.

Jason Piper: As Mr Henderson has pointed out, the impact of this will be very much sector specific. We might come on to that a little more later.

With regard to how businesses operate and the other broader incentives for them to be licensed, we have to put this measure in the context of a society that operates on more than just tax. Tax is not the most important thing there. Some of the private-hire representatives have expressed concerns that a lot of their drivers are licensed but simply suppress takings. The ones who are unlicensed are not unlicensed because they are worried about the taxman; they are unlicensed for other reasons, and they will stay unlicensed.

The Chair: Thank you very much.

Q43 **Lord Butler of Brockwell:** We received evidence at a previous session that the application for a licence would be an entirely straightforward process, because all the applicant would need to do is show that they had a UTR number. You have said that you suspect that the applicant would have to do rather more than that and the Inland Revenue would make further inquiries as part of this. Could you elaborate on that?

Tom Henderson: It might be helpful to clarify that under the new provisions there is what is called the tax check process, which is a process that will happen between the licensee and HMRC. There will be a second tax check, if you like, or verification by the licensing authority to check that the original tax check has been completed properly and successfully.

I think there might be some confusion around those two stages of the process. From the licensing authority's perspective, I imagine it will be a straightforward case of inputting either the taxpayer's unique taxpayer reference, or some other reference unique to the tax check that has been carried out, and verifying its legitimacy.

As for the tax check process between the licensee and HMRC, we think there is a bit of a risk of mission creep there. The consultation documents consistently refer to the fact that conditionality would just be a matter of checking whether somebody is registered for tax, but it seems to go much further than that and looks at whether you have submitted a tax return. The obligation to submit a tax return requires you to do that in accordance with the taxes Act.

That means, effectively, that your legal obligation is to submit a complete and correct tax return on time, If HMRC is going to to check compliance with that obligation on the taxpayer, we suggest that that should be subject to proper consultation. In fact, it is quite bizarre that on the same day, on 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.

Lord Butler of Brockwell: Could I be clear about that? You said it seems that it would go further than the UTR. What is your evidence for saying, "it seems"? What does it seem from?

Tom Henderson: In the draft legislation, the tax check process looks at whether an individual has complied with their reporting obligations, which are defined as someone's obligations under Section 7 of the Taxes Management Act, which relates to the obligation to register, or Section 8, which is the obligation to file a return. It does not say "and".

My question is: what exactly will HMRC be checking as part of this tax check, because the word "or" instead of "and", and the inclusion of Section 8, seem to be a little confusing?

Lord Butler of Brockwell: Can we get clear about the sequence? The licensee shows they have a UTR. Then you say there is a tax check. Would the licensing authority expect the applicant to have passed the tax check—that is, the more detailed information that you are talking about—before issuing a licence? Is that what you are supposing?

Tom Henderson: Absolutely. The licensing authority is not allowed to proceed with the licence application unless it has received confirmation from HMRC that a successful tax check has been completed.

Lord Butler of Brockwell: Thank you. That is very clear. Do the other witnesses want to add to that?

Will Silsby: Under the draft legislation, the Revenue can require the applicant to give detail about previous licences they have had, income from the activity in question, and confirmation of historical compliance with tax reporting.

There is also a very unusual provision in paragraph 5(1)(b) of the draft legislation that the check can require the applicant to provide information to enable HMRC to "assess the effectiveness of this Schedule in improving the tax compliance of persons carrying on authorised activities". That is very vague, but 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.

Lord Butler of Brockwell: Thank you. Does the other witness want to say anything about that?

Jason Piper: Simply that we would share those same concerns, in particular about the paragraph 5(1)(b) obligation to share what could be open-ended information. However, that is going a long way beyond simply confirming that you have a UTR.

Lord Butler of Brockwell: I have a further question to ask but on a slightly different subject. I think Lord Forsyth wants to come in on this.

Lord Forsyth of Drumlean: Are you seriously suggesting that HMRC is planning a sort of snoopers' charter using this legislation?

Will Silsby: It is difficult to know why paragraph 5(1)(b) exists. Clarification is required from the Revenue on the purpose.

Lord Forsyth of Drumlean: It was quite striking when we took evidence from the licensing people that they seemed to think, "It's all very straightforward. It's just a matter of us providing a tax code and that's the end of it". You are suggesting something far more sinister and far more—

Will Silsby: I do not think sinister but far more demanding.

Lord Forsyth of Drumlean: The idea that you might use legislation to get people to say, "I think my friend—or perhaps my enemy—is not actually declaring his tax income", is pretty sinister, do you not think?

Will Silsby: I find the wording of that provision very oblique, and it would be interesting to know what is intended.

Lord Butler of Brockwell: You said at the outset that you welcomed the Revenue providing information for taxpayers. Could you say a little more about this? Are you confident that it will give adequate information for the likes of people who will be seeking these licences, many of whom may be old, many of whom may not be UK ethnically born? Do you have confidence in the sort of information that the Inland Revenue will provide? Have you seen any examples of it?

Tom Henderson: We have not seen any examples of that, but you are quite right to make the point, because the equalities impact assessment published alongside the draft legislation made clear that, certainly in the taxi and private hire vehicle sector, older and ethnic minority taxpayers are disproportionately represented.

We would absolutely agree that the information provided to those groups, who may not have English as their first language and who may not be comfortable using a computer, should certainly be clear and accessible.

The information should not be, for example, just a list of hyperlinks. The information should be clearly laid out.

The non-digital means of fulfilling one's obligations should be made clear. People should be pointed to sources of further help should they need it. We have not seen any examples of the information that would be given, and we would certainly encourage HMRC to work with stakeholders such as ourselves to make sure that that information is as useful and effective as possible.

Q44 **Viscount Chandos:** The tax checks are due to take effect from April 2022. What do you think about this timetable, particularly in the light of Covid and the Covid-related impact on the economy?

Will Silsby: I do not think it will be a cliff edge, because licences, I am assuming, could have been taken out at any time of year, so a reapplication is not necessarily going to occur then. The licences may also vary in length between one and five years, so there may be an inbuilt delay there anyway. I am not sure that the timing date of April 2022 will be quite as significant as it might appear to be.

Viscount Chandos: Clearly, if it happens that your licence falls due on 15 April 2022, you will be in the first cohort of licensees who will have to meet, under this timetable, the conditionality set out. Whatever that is, some 18 months away, that does not concern you as the first people who will have to meet this test.

Will Silsby: I would have greater concern about the fact that the check has to have been carried out within 120 days of the application for the licence. That will be difficult to communicate with potential applicants. I would have hoped that it was possible for people somehow to obtain confirmation that they would satisfy a check at the time when a compliant taxpayer submitted their tax return. I would have thought there was scope for that, which would save the Revenue work and save the applicants work as well. If they effectively submit a tax return and get confirmation at the same time, that will satisfy a check, regardless of when that check actually takes place.

Viscount Chandos: On a separate front, what do you feel about the Government's stated intention to extend conditionality to other licensed trades?

Jason Piper: In principle, that would be fine. The UK economy as a whole is probably compliant enough across the board that the net effect will be to reinforce and improve compliance standards. In some other jurisdictions, where there is a far larger informal economy, we would see a greater risk of this reinforcing of pushing people completely outside. However, HMRC must ensure that the systems that it has now are bedded in, and it needs to think carefully about how to operate the process at minimal disruption to compliant business.

With that in mind, one aspect, which perhaps also plays back slightly to the timing issue that we just talked about, is the introduction of digital

tools for tax—HMRC’s Making Tax Digital programme. If there was some way to integrate that with these compliance checks and to write an API that does the tax check as set out in the current schedule, that would, hopefully, make the whole thing seamless for all parties. That may be a little way down the line, but the key thing is to ensure that the system works, and works well, in the sectors that it has already set out. We would want HMRC to provide a detailed and reasoned analysis of the outcomes of the existing regimes so that we have a clear evidence-based rationale for extending it to other sectors.

Viscount Chandos: Is there a fairness and equity issue that, having introduced it for two licensed trades, forces it to treat all licensed activities in the same way?

Will Silsby: That is a very good question. The question is: where do you draw the line? Is it only trades, for example, which require some interaction with the local authority, whether in relation to a licence or the collection of rubbish, or whatever, or some other form of regulation? What about a business that is starting up that needs a bank account and insurance? Will those also require confirmation of a tax check before they can process these things?

The Chair: Those are very good points. Thank you very much. We now move on to the promoters issue.

Q45 **Lord Forsyth of Drumlean:** I was quite struck by the written evidence that we received, which gave an example from the LITRG—from you, Mr Henderson—of an agency worker working 35 hours at a rate of, say, £10 an hour, saving around £15 a week by being in loan arrangements, whereas the engager was likely to have made savings of nearly £40 a week. When this Committee looked at the whole loan charge issue prior to the Morse committee report, I could not understand why HMRC was not more active in going after the promoters as opposed to the—I almost used the word “victims”—people often cajoled, as your evidence indicates, by their employers into entering these schemes.

What do our witnesses feel about HMRC’s efforts to go after these promoters, and to publicise the danger of these promoters to people who might be quite low paid and quite vulnerable to doing as they are told by their employers, frankly, if they want to keep their jobs?

Tom Henderson: We would absolutely agree with the thrust of your comments. We would encourage HMRC, as part of its wider strategy against tax avoidance schemes, to place a greater emphasis on other actors in the supply chain, and to recognise the fundamental point that, certainly at the lower end of the labour market, individuals get caught up in these schemes, not through any individual avoidance motive but because of a pay-as-you-earn avoidance motive on behalf of the umbrella company or employment agency. The individuals themselves are often completely unaware that they are in any kind of scheme or, if they are, they have been convinced that it is legitimate.

On the second part of your question on how to address this with warnings to taxpayers, the point has been well made that silently publishing spotlights on GOV.UK does not help anyone. You have clearly read our submission, but some of the examples there include hard-hitting posters in public sector organisations that engage agency workers that say something along the lines of, "If it looks too good to be true, it probably is".

We think that HMRC could help taxpayers recognise the signs of being in a disguised remuneration scheme by flagging language such as "non-taxable investment payment" or just "investment payment". That is a red flag that HMRC should be helping taxpayers to spot. The unions could also play a role in relaying messages to workers through their worker bulletins, and, potentially, better use of social media and TV adverts to better target the people who get caught up without realising.

Lord Forsyth of Drumlean: Do you think HMRC is doing enough to target the people who are promoting these schemes? It has powers, but it seems not to have used them very effectively.

Tom Henderson: Evidently not, because these schemes still proliferate in the lower end of the labour market.

Will Silsby: Confidence in the integrity of the tax system is always essential, but it will be particularly vital in the post-Covid recovery period. We have had legislation for the last 15 years or so to tackle promoters and enablers of tax avoidance. We understand that the numbers of those actively involved have been significantly reduced, but they have not been eliminated. It is unsurprising, of course, that those whose business is to find ways around tax legislation can also find ways around anti-promoter legislation. So we will always have promoters and enablers with us unless something fairly radical is done.

In the foreword to the consultation on tackling promoters, the Financial Secretary notes that, "This consultation, together with the call for evidence on disguised remuneration and the wider call for evidence on raising standards in the tax market, are all part of a co-ordinated strategy". 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, on the basis that, by and large, their members are not engaged in the targeted activities.

There was a programme on "File on 4" yesterday evening on the repercussions of loan schemes, and it struck me that there could, in fact, be a market-wide approach that would be more effective in tackling promoters, protecting the Exchequer and, importantly, providing some measure of consumer protection against avoidance schemes.

If I may, I will sketch it out in very brief detail. This would involve making anyone who engaged for profit in any way in the provision of any form of tax advice, very broadly defined, jointly and severally liable for any unpaid tax liabilities that resulted from their advice, unless—it is a

massively important unless—they were duly authorised. I deliberately use the term “duly authorised” rather than “regulated”, as it provides more flexibility and is less emotionally charged.

The intention would be for authorisation to be easy for the many but impossible for the few, and in that way exclude promoters from having any opportunity, unless they wanted to take the risk, of picking up the tax liability that they had saddled their victims with. The concept raises lots of practical issues and questions of definition. It may be highly simplistic, but it might be worth exploring through further public consultation whether that might provide a more holistic and enduring solution to the problems created by promoters and enablers.

Lord Forsyth of Drumlean: That is a very interesting idea. I have the sense that going after the people who have been misled by these schemes is easier for raking in the cash than dealing with the source of the problem, and perhaps the Revenue is less concerned to tackle tax avoidance and more concerned to raise as much revenue in as short a time as possible. It certainly does not seem to have given it priority. That is a very interesting idea. Thank you.

Q46 **Baroness Kramer:** Let me follow up a little on that question, if I may, to pick up some of the comments. As I read some of the evidence that we have had before from LITRG, Mr Henderson, you also attempted to shine a little light on the fact that, particularly at the low-income end, it is not the workers who made money out of, for example, disguised remuneration but both the employers and umbrella companies.

In its present campaign to go after promoters—we can argue about how vigorous we think that is—is there still a missing piece in this of employers and umbrella companies? You have given us the sense that the Government or the Treasury did not really understand how the market worked here and that there could be a better-targeted approach.

Tom Henderson: I would absolutely agree with that, Baroness Kramer. I think you have put it quite well. We think that there should be a more targeted approach at the intermediaries in this space. On how HMRC might go about tackling non-compliant umbrella companies, HMRC says that it has started to work with the Advertising Standards Authority to combat false advertising, where they make ridiculous promises about the high percentages of their pay which they can receive tax free.

The other issue here is that it is relatively easy to set up an umbrella company with very little capital outlay. Quite often, these companies will run up large pay-as-you-earn liabilities and fold with no consequence to anyone. In combatting that specific issue, we would like to see HMRC make greater use of pay-as-you-earn security deposits, for example, by demanding that up front, and otherwise—going back to Will’s earlier point about joint and several liability powers—where the debts of a limited company might transfer to the directors in certain circumstances. In its use of these powers, we would like HMRC not only to use them but to

publicise the fact that it uses them, to create a deterrent effect for other non-compliant umbrellas.

Baroness Kramer: I find that extremely helpful. I know we are under some time pressure here, so, Mr Piper, if you had any comments on that, that would be good, but I wanted to direct a slightly different question towards you.

When we look, for example, at the stop notices under POTAS, and the DOTAS measures that HMRC has essentially in its naming and shaming capacity, has the bar lowered in such a way that we have some overreaching power now granted to HMRC? I notice that, in tackling POTAS, the sole criterion of naming and shaming is that HMRC suspects that there is an inappropriate scheme.

Indeed, under DOTAS, again naming and shaming is quite open to HMRC even when a case is in the appellate process. Do we have a problem here that the bar is being lowered so that HMRC deciding that it merely suspects that there has been inappropriate behaviour has now become the standard, rather than the standards we are used to, in which, essentially, there has to be demonstration of an inappropriate scheme? Mr Piper, do you want to take that up in your role at ATT?

Jason Piper: The issue is perhaps a little broader even than that. My policy and business research interests cover business law as well as tax, and I have done a fair bit of work on economic crime, bribery and corruption.

Baroness Kramer: I must apologise. I realise you are with ACCA and I said ATT.

Jason Piper: Not at all. In looking at criminal behaviour more widely, of course prevention is always better than cure, and for that we need an effective deterrent. However, there is an awful lot of evidence, not just in the economic crime area but on criminal behaviour more broadly that most criminals assume that they will never be caught. Having a huge fine, or some other massive sanction, does not necessarily dissuade them, because instead of thinking, "Goodness, I wouldn't want that to happen to me", they just think, "That's never going to happen to me. I'm too clever".

Unfortunately, with these tax schemes a lot of it is not even what one might classify as legitimate tax advice. They are not in this to try to save people tax; they are here because they can make money out of giving the advice. The fact that it is the tax system gives them almost an extra cut-out, because it takes HMRC so long to go through all the hoops and prove that the tax treatment was incorrect and therefore there is a tax offence, and it can start to go after them for that tax offence.

They are so far beyond the pale of the professional body advisers that Will mentioned earlier that it is a completely different problem to try to deal with. In some ways, it is not even HMRC that is best placed to deal with it, because it sees everything through the tax lens. It is not the tax

treatment specifically that is the issue here; it is the fact that they can get money off people for giving advice, and take it and keep it.

People are willing to pay for the advice because they think they will save tax. Again, we need to recognise that there are two very different populations. There are the voluntary adopters of these schemes, who have been sold them because they will save money themselves, and, as Mr Henderson has highlighted, there is a second, possibly far larger, population of individuals who are forced into them.

Baroness Kramer: I find that fascinating.

Will Silsby: May I comment in relation to the lowering of the bar? As a former inspector of taxes myself, I would like to say that, if HMRC officers who are engaged in anti-avoidance work did not suspect, I would be worried they were not doing their job, so I do feel that it is perhaps not so much a question of lowering the bar as removing it completely. I wonder if there might be a role for an independent body of some kind to make those kinds of judgmental decisions, a body similar to the GAAR panel, or something like that. I think that could be explored.

Q47 **Lord Monks:** My first point has been adequately answered in that previous exchange between Baroness Kramer and the witnesses, so I will move on to my other point.

Many of the problems that we have had drawn to our attention have come from the unregulated area and the fact that something like 30% of people who are giving tax advice are not members of appropriate professional bodies.

Do you have any thoughts about how people can be brought more into the regulated world, where at least some disciplinary and ethical standards apply, and therefore better protection is given to people seeking advice in avoiding exploitative people who might otherwise benefit from them? Do you have any thoughts on those aspects?

Tom Henderson: I mentioned at the beginning that LITRG is an initiative of the Chartered Institute of Taxation, and we would certainly support its comments in response to the recent call for evidence on raising standards in the tax market, in which it broadly argued in favour of mandatory professional body membership as a solution to this problem. We would also agree with the proposal that, as an intermediate step, you might make professional indemnity insurance mandatory for those giving tax advice. That would give some level of protection to individuals who might otherwise have no means of redress.

In the context of unrepresented taxpayers and disguised remuneration schemes, however, 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 taxpayer sees that as an occasion where tax advice is being given, where somebody is being encouraged to enter into this scheme. Therein lies part of the problem with the issue of regulating the tax advice market:

tax advice is being given, but it is not recognised as such by the parties involved.

That leads me back to my earlier point about how you protect taxpayers getting caught up in these schemes. 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, so that, as far as possible, taxpayers do not end up in the position where they have been in receipt of poor advice or been exploited in some way.

Lord Monks: Thank you very much.

Will Silsby: The ATT's response to the call for evidence on raising standards in the tax advice market included a road map that was designed to bring current non-members of professional bodies within the scope of the professional bodies. I can provide a copy of that, if that would be helpful.

It is important to make sure, though, that we are not confusing the advice in relation to promoters and so on with the 30%. The 30% are people known to the Revenue. They are agents who are registered with the Revenue, so the Revenue has them on its radar. I do not think we should confuse those people with the people who are promoting and enabling, who may well be completely off any Revenue radar.

If we were going to pursue one of the ideas that the Revenue mentioned in the call for evidence of a public register, that public register would be able to encompass not simply people who were members of a professional body but all people who were registered—in other words, those who had got their head above the parapet with the Revenue and were therefore known to be advisers in the market.

The Chair: I am conscious that we are beginning to get quite short on time. Lord Rowe-Beddoe, would you like to move on to the questions on the civil information powers point so that we get into that, because I know there will be a lot of questions about that?

Q48 **Lord Rowe-Beddoe:** We have heard a rather unsettling account in many of the answers to the questions. First, what changes do you envisage could be made to ensure that all taxpayers can access reliable advice on tax affairs regardless of their personal circumstances?

Tom Henderson: I am happy to answer that question. It goes back to the comments that were made on the previous section where, on accessibility, there is a common misconception that individuals on low incomes have simple tax affairs. That is simply not true; they just have a different set of tax problems that they need to face. Tax debt and benefit interaction are the two main ones. We think that they have an equal need for high-quality tax advice.

As to how to address that, 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 be satisfied that it has the appropriate tax expertise if it purports to be giving tax advice.

HMRC has done good work with the Extra Support Team, but there are limits to that team because it cannot advise, for example, in the case of disputes or appeals. We think it needs to get better at signposting to other sources of independent advice such as the tax charities TaxAid and Tax Help for Older People.

Lord Rowe-Beedoe: Thank you.

Jason Piper: We would certainly reinforce what Mr Henderson said about individuals on lower incomes not necessarily having simple tax affairs. Ideally, of course, we should have a tax system that ensures their tax affairs are simple, and, similarly, the benefits system. That ought to be the first way of tackling the problem at its root cause.

Failing that, we should ensure that there is some sort of framework and that proper advice is handed out. HMRC has some excellent material that it can share. It also has some that really does not hit the mark. We and the other professional bodies would be delighted to help it to work better on material that can be handed out and shared. Certainly, we would stand ready to assist in educating people more generally on the tax system, how it works and what individuals' obligations are.

Will Silsby: I have nothing to add to that.

Q49 **Lord Rowe-Beedoe:** Let us move on. All three bodies that you represent and work with have unanimously agreed in the past that it is wrong that financial institutions will no longer have a right of appeal against an information notice where they feel that it is unduly onerous. Would you like to comment a little further?

Tom Henderson: We would re-emphasise that we do not think that HMRC has made the case to remove this right of appeal by a financial institution. It is being replaced by an internal assessment within HMRC as to whether the information would be onerous to provide. Anyone can see that HMRC is not best placed to make that assessment. We would argue that the original grounds for appeal by the third party should be reinstated in this case.

Will Silsby: In the policy paper that the Revenue released on 21 July, it indicated that it currently takes the UK 12 months on average to obtain the information necessary, whereas the international standard is six months. I need to declare an interest here as a retired member of the tax tribunal, but it would be unfair to assume that the extra six months or more is down to the tribunal. More importantly, it fails to take account of the fact that the tribunal service has now moved over to electronic filing, so that, in fact, files can be easily moved around the country very quickly.

Even more importantly than that, during the pandemic, the tribunal has met remotely, and it would be very easy for the Revenue to add

applications for information to tribunal hearings on a very regular basis, with virtually no delay, because nobody needs to go anywhere and it can all be done remotely. The presenting Revenue officers do not have to go anywhere, they do not have to wait for a judge to be somewhere, and the file can be transmitted automatically.

Lord Rowe-Beattie: It is horrendous that the figure is double the average of six months and is 12 months. What is the real reason?

Tom Henderson: May I interject very briefly there? I recognise your point, but part of what Will was saying is that it may have been 12 months when those statistics were taken, but times have changed now, and, to a very great extent, tribunals are more streamlined than they were before. Perhaps the real figure today is much less than six months.

Lord Forsyth of Drumlean: Mr Silsby, I understand the argument that says it takes them too long to respond to overseas inquiries. The obvious solution to that would be to restrict this power to overseas inquiries, but it is suggested that that cannot be done because it cannot discriminate. Do you think that the real prize here for HMRC is the domestic taxpayer not having to go through the process of approaching financial institutions and there being an appeal process?

Will Silsby: I do not know the answer to that question, but an element of cost may come into this somehow. If the Revenue makes applications to the tribunal, there is some interdepartmental cost relationship there, and I think there may be a cost element involved here.

Lord Forsyth of Drumlean: Thank you.

Q50 **Baroness Bowles of Berkhamsted:** I think we have already started to move into my questions, so I will try to roll them all up together.

Are there any other ways in which the overseas requests could have been speeded up? You have already suggested that there could be a lot more scope for the tribunal process to be speeded up, but could the actual getting in of the overseas information be speeded up? Does anybody have any thoughts on that?

Jason Piper: I would imagine that the issue there is the financial institutions' own communications, but that is increasingly moving to online electronic and digital transfer, which should itself become faster. That may be a question to be directed to the international financial institutions.

Baroness Bowles of Berkhamsted: You are saying that the arguments may be a little dated with old data in general and that, if you take the whole digitisation process into account, things are not as bad as the picture it paints.

Jason Piper: It is certainly worth making sure that the laws we enact tomorrow are based on at least today's statistics and not yesterday's.

Baroness Bowles of Berkhamsted: Following on from where Lord

Forsyth began to take you, do you have any concerns about how HMRC might use this power once it no longer has to make a case for its use to the tax tribunal?

Jason Piper: It is certainly possible to foresee a situation where HMRC will start to use these powers far more frequently, and on a far more widespread basis. In conjunction with the proposal to extend it to situations where there is a tax debt, there is potentially quite a significant perceived benefit for HMRC in this. Certainly, we would have concerns about that.

In the absence of any tribunal oversight, when HMRC assesses a taxpayer's ability to pay tax, interests and potential penalties, the cash position alone cannot be considered in isolation. The mere fact that they have money with a financial institution does not necessarily mean that it is available for paying tax. It could be that a large proportion of a taxpayer's bank balance is required to make mortgage payments or wages payments to employees. Simply knowing that the money is there on its own is not necessarily the whole story. The ACCA has already said in our written response that we would be opposed to extending the purpose of the information to debt collection on that basis.

Baroness Bowles of Berkhamsted: Absent there being some other legal protections—I thought there was a European directive on this that we should have transposed, but we will not go there now—and short of there being some other proposal that makes sure that they check what the money is there for and that people have enough for their basic needs.

Jason Piper: It was certainly considered previously with the direct recovery of debts powers, but that was supposed to be—

Baroness Bowles of Berkhamsted: Taxes on bank accounts. That was what I was thinking of.

Jason Piper: —but that was meant to be a very limited power and, again, there is tribunal oversight. Once that oversight is withdrawn, there has to be a concern that the power will become too much an everyday matter of recourse.

Baroness Bowles of Berkhamsted: When you lose the tribunal, you also lose the safeguards that the tribunal would have applied and HMRC will not be applying those. Is that a fair statement?

Jason Piper: We cannot necessarily say what safeguards HMRC would apply internally. It has made the point that it has only had one application rejected by a tribunal, but, equally, that is not necessarily indicative of what it might have taken to the tribunal and did not because it felt it would be rejected.

Tom Henderson: I would like to expand on some of those points. I would completely agree that, if you remove the safeguard, you also remove the incentive to take the care over the cases that you choose to pursue. The replacement for the safeguard, which is that an authorised

officer within HMRC has to be involved in issuing the notice, is, by anyone's standards, surely a weak replacement for the scrutiny of an independent judge. I think most people would agree that HMRC would be playing judge and jury in a matter of its own interest here.

Jason also raises an excellent point on the extension to tax debts. 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. HMRC has made no case for that at all, especially in a domestic context, other than saying in a consultation document that to have the ability to do so would be a useful tool.

Baroness Bowles of Berkhamsted: It is a kind of triple whammy.

Tom Henderson: Absolutely.

Baroness Bowles of Berkhamsted: The cumulative effect is quite staggering. Does anybody else want to add any more, or are you all in agreement? Mr Silsby, do you agree?

Will Silsby: One concern that I would have in relation to the extension to tax debts is whether that might—I do not say that it necessarily would—involve a breach of confidentiality if it effectively meant that the financial institution became aware that the individual who was their customer did indeed have some tax debts. That point would need to be protected.

Lord Forsyth of Drumlean: I was just listening particularly to what Mr Henderson was saying. I am trying to see how that squares with the review that HMRC is supposed to be carrying out on its use of powers and the balance to the taxpayer following our previous report. Surely you would be looking at that in advance of taking further powers.

Tom Henderson: The ongoing powers review, which I think is due to publish its report before the end of the year, will not cover this power because it is not being introduced yet. It will certainly be very interesting to see the result of that report. This also goes back to some of the earlier comments on other areas of the Finance Bill where we are actually basing the justification for these powers on out-of-date data.

Lord Butler of Brockwell: It occurs to me that one could square this circle of having a faster process, and giving proper protection to the financial institutions and the taxpayer, by having a single judicial commissioner who authorises both requests and hearing appeals. I am taking this on the analogy of the intelligence agencies, which have a judicial overseer when they want to intrude on people's privacy. Is there a possibility of doing that as an alternative to the tribunal?

Will Silsby: My personal view is that you would be able to fulfil the function of the tribunal, which largely involves one person only, so it would be one judge, without creating a new body.

Lord Butler of Brockwell: Thank you.

Jason Piper: I would agree with Mr Silsby that the tribunals now, especially with remote operation, probably have the capacity to fulfil the requests. The bottlenecks and the issues are elsewhere. While in principle it would work, we would not necessarily need it.

Lord Butler of Brockwell: Thank you very much.

The Chair: Before I pass to Lord Chandos and uncertain tax treatment, as regards the UK's performance on this compared with elsewhere, have any other countries perfected this that we should be looking at to copy? Is there best practice that we could cut and paste?

Will Silsby: I do not have international comparisons. The Revenue has given certain details of this and tends to paint its own position as being a more long-winded process than anybody else's. My response to that is that all our jurisdictions, and our societies, are different, and that the one that we currently have represents our understanding of how tax, information and the relationship between the state and its citizens should operate. I am sure others have better sources of information than I have on that one.

The Chair: We move on to the final topic with a question from Lord Chandos.

Q51 **Viscount Chandos:** This question is about notification of uncertain tax treatment and it is probably for Mr Piper.

How easy will it be to determine if there is uncertain tax treatment? Are sufficient safeguards proposed for businesses whose view of uncertainty differs from that of HMRC?

Jason Piper: This is a new power or process that HMRC wants to have in place in the UK. It has pointed to a couple of other international processes and the international accounting standard on which the process is based. The big issue we have is that what it is proposing in the UK is a little different from all those models. It is not just uncertain tax treatment that is being looked at; it is HMRC's likelihood of challenge. That is potentially problematic, because the taxpayer will need to consider not simply the objective legal test but potentially the subjective state of mind of the tax inspector.

At the extreme end, it is not unknown for HMRC to challenge things that are quite clearly allowable, simply through lack of familiarity with a given sector. I certainly had plenty of experience of that when I was in practice. With this being restricted to larger businesses that have a compliance manager, we would hope that there would be sufficient understanding not to challenge things that are industry standard or sector standard.

However, it is an extra layer of uncertainty around the uncertainty, which will be very challenging for businesses to deal with. We can see a number of potential problems with that.

Again, we are looking at a risk management exercise from HMRC. It is trying to deal with the less compliant end of the market. However, it is restricting it to the largest businesses. It already has the business risk review service, so these businesses are being rated for how risky HMRC sees them as being, and the vast majority will be low risk. They are unlikely to have any uncertain tax treatments they will not have already discussed with their HMRC contacts, or, to the extent that they do, the business will want to resolve it before it reaches the point of some kind of formal challenge. I do not think that we yet have a proper definition of challenge against which the business can judge whether it has something to disclose.

Viscount Chandos: You said that we differed from international comparators. Is there one country that you would point to as having got it right, or is it simply a matter of dropping the requirement to guess which side of the bed the tax inspector got out of that morning?

Jason Piper: That is probably the one that will be the most problematic on a case-by-case basis, because you have to make that assessment. The UK's proposals also cover more taxes than the accounting standards disclosures cover. There is a fixed floor for notification of £1 million, whereas most of the other models of international standards around the world operate on a basis of materiality, so the business can tie it in a little better to its financial risk analysis and conversations with the auditor and so on.

All three of those together take us quite a long way away from the international norms. If a business is going to do business in the UK, it will have to start thinking about some additional risk management that it would not have elsewhere.

Viscount Chandos: If we addressed those three issues, we would fall into line with what you describe as the international norm.

Jason Piper: We would. Whether that would necessarily meet HMRC's aims is another matter. We have to assume that it has a good reason for wanting to move away from those more recognised standards.

Viscount Chandos: And a quick word on penalties?

Jason Piper: The penalties are set up in such a way that, again, they are not going to be relevant for the vast majority of businesses that are affected because they are compliant, and they want to be compliant. Where they are relevant, the tax at stake will be many orders of magnitude greater than the proposed penalty, but it is not the failure to register or the failure to notify that is the issue.

The only point we would want to make on penalties is that tax policy like this is a business-wide decision, not that of a single individual, and,

similarly, the penalties ought to fall against the business rather than the individual. The quantum of the penalties is a relatively minor element of the whole policy piece.

Viscount Chandos: Thank you.

The Chair: Thank you very much indeed to all our witnesses. Unless any other member of the Committee has another question, we will draw this session to a close. Let me end by thanking you very much for sparing the time, for your evidence, and for all you have done with the written evidence you have provided. It is very gratefully received.