



Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Draft Finance Bill 2020-21

Monday 26 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-Beard.

Evidence Session No. 7

Heard in Public

Questions 72 - 90

Witnesses

I: Judge Greg Sinfield, Chamber President, First-tier Tribunal (Tax Chamber); George Turner, Executive Director, TaxWatch; Malcolm Gammie QC, Tax Law Review Committee, Institute for Fiscal Studies.

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Examination of witnesses

Upper Tribunal Judge Sinfield, George Turner and Malcolm Gammie QC.

Q72 The Chair: Good afternoon and welcome to this session of the Finance Bill Sub-Committee. I would like to welcome the three witnesses for our first session and thank them very much for joining us. This meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be taken and published on the Committee website. Our witnesses will have the opportunity to make corrections to that transcript where necessary. Can I ask our witnesses to introduce themselves?

Judge Greg Sinfield: Good afternoon. I am the president of the tax chamber of the First-tier Tribunal.

George Turner: I run TaxWatch, a think tank that researches the tax system, with a particular focus on tax avoidance.

Malcolm Gammie: Good afternoon. I am a practising barrister. I am also a fee-paid judge of the First-tier Tribunal and the Upper Tribunal. In today's capacity, I am a member and former chair of the tax law review committee of the Institute for Fiscal Studies.

Q73 The Chair: Thank you again for joining us. I will kick off with some questions to Judge Sinfield related to the Courts and Tribunals Service. Could you start by talking about how the Courts and Tribunals Service has responded to the challenges of Covid-19? I understand that you have made changes to the way hearings are organised, and have improved the flexibility and processes of the system. This is relevant to the challenges that have been posed as regards tribunals in other contexts. What have you learned over the last few months?

Judge Greg Sinfield: Thank you very much for putting that question, because it is a message that I want to get across. We have adapted at speed to deal with the difficulties imposed by social distancing and other restrictions. We initially cancelled all face-to-face hearings and moved to remote hearings. Some months on, we are now in a position to hold face-to-face hearings again, while observing social distancing rules.

During the period when we were using remote hearings, by which I mean hearings by telephone and, primarily, video, we realised what benefits of access to justice could accrue to us and to the parties by using a multiplicity of formats for our hearings. We have moved to holding applications for third-party information notices, which is the subject matter this Committee is considering, by video. We have entered into a series of discussions with HMRC and have already concluded that, when all the restrictions are lifted, we will almost certainly maintain the use of video hearings, because it leads to a great saving of cost and time for the Revenue.

Perhaps later we will talk about what these applications involve, but essentially the officers can travel to make these applications from all over the United Kingdom. That often meant they would appear for short

applications and then go away again. Now that we can do this by video hearing, such travel, sometimes with an overnight stay, is unnecessary.

The Chair: How great an impact will those changes have on the processes for civil information powers that we are looking at here and the time involved?

Judge Greg Sinfield: It will not have an impact on time at all. It is really an issue for the Revenue's saving of time in attending physical hearings. The actual process, by which I assume you mean from when they first make the application to when a decision is given by the tribunal, should be broadly the same. In fact, I am told by our registrar that the video hearings have taken slightly longer to arrange. My impression is that that is because everything was a bit new. There should be no impact, good or bad, on the total time taken by the process.

Q74 **Lord Forsyth of Drumlean:** To follow on from that, could you describe to us what the process actually involves, where an application is made by HMRC, in relation to the timings and the complexity?

Judge Greg Sinfield: We have agreed, in the last few months, a new guidance for the format of the application. These applications are now made entirely electronically in the form of a single PDF bundle that contains the application and all supporting documents. That application is made to the tribunal. The tribunal will then list the application for a hearing by video, as I have just said. The application will be listed without immediately obtaining the availability of the officers, but in practice HMRC officers know this, so they tend to be proactive about telling us when they submit the application if they are not going to be available because of a holiday or something.

It is hard to be precise about it, but the application should be listed within a couple of weeks or maybe a month of being received. Then the hearing will take place and the judge will consider all the material that has been provided in advance of the hearing. The purpose of the hearing is really to allow the judge to ask questions if there are any concerns about whether the application should be granted and permission given for the information notice to be issued.

Quite often, the Revenue will have provided a complete package with all the necessary information, so a hearing can take as little as 10 minutes because there will be almost no questions; it will be a matter of just confirming certain key points. In my experience, if the information is not quite what the judge needs, the hearing might last an hour. In all cases, the decision will be given at the end of that hearing. In total, I would expect the whole process to take about a month or maybe six weeks.

Lord Forsyth of Drumlean: Sorry to interrupt you, but what I am trying to get at is probably rather an impossible question to answer. How onerous a procedure is this for HMRC? How much additional work is required to do this? On a scale up to 10, is it onerous or relatively straightforward? You see what I am trying to find out.

Judge Greg Sinfield: I do, and you probably have to address that to HMRC. We see a fairly simple electronic bundle, which is pretty standard. A domestic information notice, one generated by an inquiry by a tax inspector, contains material they would have put together anyway as part of the inquiry. An application relating to a request by a foreign tax authority, will usually contain the information provided by the foreign tax authority and some further background information that HMRC has obtained on the target of the information notice.

Q75 **Baroness Kramer:** That is much appreciated, Judge Sinfield. Previous witnesses have suggested that, when HMRC has become exercised by the idea that it takes too long to get information via the tribunal route when responding to requests from overseas tax authorities, it has been based on outdated experiences and the whole process in recent times has sped up considerably.

I wonder if you could comment on whether that is true. You indicated that we are looking at a month rather than six, seven or eight months as the relevant timeframe. Could further things be done, such as fast-track systems or extended paper hearings? Could you look at other things that would also cut down that time?

Judge Greg Sinfield: I should make clear that we already expedite these applications. We try to deal with them as quickly as we can. To give you evidence on that, I asked our registrar in Birmingham to take some samples. We do not keep statistics on how long all of these take, but she sampled a pre-Covid month, last February, and a post-Covid month, to see the impact on the time for disposal. For an admittedly very small selection and not a representative sample, the average time she found pre Covid was 22 days from start to finish. Post Covid, it had gone up to 28 days.

I refute the idea that there is any delay. My registrar would want me to say that, because she made that point to me. I struggle to see how we could do it much more quickly than that. The delays referred to in the consultation document on this legislation, which came out in July, were delays by the targets, by promoters and by other people who were seeking to avoid having applications for information made against them. I do not think the tribunal has slowed down at all. In the past, I can accept that we may have been slower than that. I believe we are now dealing with these matters as efficiently as can reasonably be expected.

Baroness Kramer: I find that extremely helpful, particularly as these changes would extend to domestic cases, not just international cases. Thank you for that.

The Chair: Were the figures in your sample—22 days and 28 days—for domestic and international cases? Were they just international cases?

Judge Greg Sinfield: That is an extremely good question. I should have made it clear. We just did a quick sampling exercise looking at the applications that came in, so I am afraid I cannot tell you. I have no idea

how many were international requests for information, and how many were purely domestic and generated by the Revenue's inquiries.

The Chair: Would it be possible for one to differentiate the tribunal's use between international and domestic cases? If one does away with the tribunal, why is it being done away with for everything?

Judge Greg Sinfield: I am not sure I can answer that. I know no more than what is stated in the consultation document and the policy document. It is possibly a question for Mr Gammie or for HMRC later on.

The Chair: Mr Gammie, I do not know if you can answer that quickly. If you cannot, do not feel that you need to.

Malcolm Gammie: As the consultative document says in paragraph 3.21, the Revenue cannot usually obtain and supply information to a foreign revenue authority that it cannot obtain itself under its domestic powers. I assume the view is taken that if, for example, there were a hurdle to obtaining that information under domestic powers, you could not dispense with that hurdle in relation to a foreign information request. I have to say that I do not really see the distinction between the two. If you will allow a foreign information request without this check, why would you not allow it for a domestic one?

Baroness Kramer: Would it be possible to look at those samples and see if there are some international cases in there that might provide clarification? I realise it is not a representative sample.

Judge Greg Sinfield: I can certainly ask the registrar to do that. In the ones dating from February, there may be issues because our document retention policy is such that those might already have been destroyed. I do not believe that she checked the actual files. She checked our electronic records that show a number of applications made. I will ask for that and can submit that information in writing in the next couple of weeks, if that would be helpful.

The Chair: That would be great. To be clear, Judge Sinfield, a moment or two ago you disputed that the delays were because of the tribunal. You said they were more because of the time it takes to get the information that is required from others. Is that your point?

Judge Greg Sinfield: I am definitely disputing that the delays are caused by the tribunal. I imagine there may be a number of reasons why the process takes considerable time. Internal HMRC processes could be one. In certain cases where notice is given to the target of the information notice, they may take actions to try to disrupt the process. They may make challenges or enter into correspondence with the Revenue. Again, that is really a question for HMRC.

Q76 **Lord Monks:** This question is very much in the same area as the questioning you have had so far, Judge Sinfield. It is to probe why the Government—and HMRC, presumably—are saying that the changes proposed in relation to the tribunal are down to delays. You have strongly

refuted that, rather convincingly, in the evidence you have given so far. This is a serious disagreement that you have with HMRC, is it not?

Judge Greg Sinfield: I do not think so, with respect. There are delays, but what I am refuting quite strongly is that the delays are down to us. We are handling the processes as quickly as can reasonably be expected once we get the application. I have seen in the consultation document references to things taking six months or a year. We do not have those documents for six months or a year. I can accept that we may have them for six weeks, but that is not unreasonable. In the samples I referred to, it was quicker than that.

I am not disagreeing but, if I may suggest this, you must ask HMRC where delays arise apart from us. If HMRC's evidence is that we are taking longer than four or six weeks, I would like to look into that, because I do not see why we should take longer than that to deal with these sorts of applications. I would be very interested to know if there are examples that I can investigate.

Lord Monks: I am sure we will pursue that.

The Chair: We will indeed.

Q77 **Viscount Chandos:** This may be beyond your remit, Judge Sinfield. Would you say that the information gathered to come before you, which is where the delay appears to be, is information that HMRC ought to have by that stage of the process, whether or not it has to come before the tribunal?

Judge Greg Sinfield: That is very difficult for me to comment on. I can say that the quality of information I have been presented with by HMRC is almost always excellent. They do a thorough job and provide very good information, which enables me and other judges to make a decision in relation to the application for third-party information notices. I can imagine there is quite a lot of work in putting that information together, but I cannot say how much work, how difficult it is or whether that is the cause of delays. That would have to be a question for them.

Q78 **Lord Butler of Brockwell:** When you refer to the people who are the subject of the request for information causing delays and making representations, do they make them to you or simply to HMRC?

Judge Greg Sinfield: No, the first part of the process, unless there are reasons not to do it, is for the Revenue to correspond with the subject whose tax affairs are being looked into. That person is often invited to provide the information without the need for an information notice. Whether that is a cause for delay, I cannot say, because I become involved much later, but the Revenue might wish to talk about that.

There are certain cases where the Revenue makes a different sort of application to us and determines that the taxpayer should not be given any notice of the investigation. Those are cases where they are concerned that, if they were to give notice, the taxpayer or subject might take steps to frustrate the inquiry.

Lord Butler of Brockwell: What I am getting at is this: could the taxpayer use your procedures to delay HMRC getting the information?

Judge Greg Sinfield: No. That is a very good question. I apologise for not having dealt with that. These are third-party proceedings. That is to say, these proceedings take place by application by the Revenue, which is heard without giving the other parties involved a chance to make representations to the tribunal. They will be asked for representations by the Revenue. The Revenue may initially, but not in every case, approach the subject. The Revenue will also invite the financial institution, or the person who will be asked to provide information, to make representations.

Those representations are part of the pack provided to the judge, because one thing the judge must be satisfied of is that the obligation to provide information is not unduly onerous for the person being asked to produce it.

Lord Butler of Brockwell: The judge would not then contact the taxpayer to pursue those representations.

Judge Greg Sinfield: No, the judge does not get involved in doing anything with the other parties. It is simply an application *ex parte*, as we would say, by the Revenue to the tribunal. The tribunal relies on the materials provided by the Revenue, which include representations it has sought, sometimes from the taxpayer or subject of the inquiry, and always from the third party who is being asked to provide the information.

Q79 **Lord Forsyth of Drumlean:** My question is the same one I asked before, but from a different angle. I wonder why the Revenue in the consultation paper should have said that it could take up to six months. You are saying, "Actually, we only take up to six weeks". I wonder if the answer lies in the material that needs to be put together to make an application to you taking the difference between the six weeks and the six months. In the material that HMRC is required to provide for you to make a decision, is there anything that is unreasonable and that it ought not to do anyway, in fairness to the taxpayer or non-taxpayer, as the case may be?

Judge Greg Sinfield: That is a very interesting question. I mentioned at the beginning that, certainly for all domestic applications, those that arise from an HMRC internal inquiry as opposed to a foreign tax authority request, we have agreed exactly what the package will contain. I think we have also reached agreement for the foreign tax authority request, but that needs a final bit of tweaking.

The Revenue is completely content with the information that we ask it to provide. That is set out in our guidance. I have therefore not considered whether some of it could be dispensed with, thereby speeding up their process of preparing the documentation. They have never raised that with me. They may wish to comment to this Committee, but I do not

believe they have a problem assembling the documents necessary to make up and support the application.

Baroness Bowles of Berkhamsted: If the documents do not have to be prepared to go to the tribunal, how can we be certain that the same sorts of inquiries will still be made? Does anything else govern that, other than the fact that the court would need to see them?

Judge Greg Sinfield: I am not quite sure. We need to see the documents so that we can satisfy ourselves that the application should be granted and meets the conditions set out in Schedule 36 to the Finance Act 2008. If that need to seek our approval is removed, I can imagine that the Revenue would not need to make any bundle of documents, but it would still probably need to have much of the information that we get to see, because it will use that information later as part of its investigations. Does that answer your point? I am not sure.

Baroness Bowles of Berkhamsted: It sort of does, as far as you can, anyway.

The Chair: Judge Sinfield, thank you so much. Those are very useful answers. I am sure we are all very grateful. I now move to George Turner. Mr Turner, thank you very much for bearing with us.

Q80 **Lord Rowe-Beddoe:** Mr Turner, in your written evidence you described a "secret shopper" plan that you implement. It fascinated me. I thought of 007 activities in a strange way. Can you tell us how easy it was to find a scheme when you were looking for one secretively, and how it was described to you from the viewpoint of tax planning? Did you find one easily? Did you look for it? How did you find it?

George Turner: There seems to be a myth that the tax planning world has largely been dealt with and there are a few obscure or black market operators left, which might be acting from above a chip shop or something. The reality is that these are very highly professional organisations. I was looking for mass-marketed tax avoidance schemes. They need to contact consumers and drum up business somehow, so it was depressingly easy to find these companies.

I was alerted to the issue because I had read the HMRC's *Spotlight* earlier in the year, which alerted people to the fact that some disguised remuneration providers were targeting people coming back to work in the NHS in the early part of the Covid crisis. I decided to look into it and see whether I could find them. It took me about three minutes just on Google to find a provider. Basically, it is a website, and you give your details. I got a call back within an hour from somebody to explain the scheme to me. I did not market myself as wanting tax avoidance. I was trying to say that I wanted somebody to help me with my admin, because I did not want to push the tax avoidance issue, to see how they would come back.

It was simply described as a split payment, in the classic way so many of these schemes have worked in the past, which is the somewhat depressing thing about this. Basically, your employer would contract with

the agency or whichever provider it recommended. You would be paid minimum wage or thereabouts, which would attract no income tax charge or a very, very small one. Then the balance of your payment would be given as an employee advance, as they called it in this case, based on future profits. It was said to me that this was exactly how John Lewis employees were paid, which was a clear and transparent lie.

Interestingly, once I came off the phone after this small bit of research, advertisements for these companies followed me round the internet for the next two months. These companies are aggressively marketing themselves on social media, through Facebook, using Google. There is an inquiry to do on historically how much money these advertising companies have made from this kind of activity. They are aggressively seeking customers, so they need to act in public to do so.

Lord Rowe-Beedoe: Thank you. That is most interesting. Is it possible for an individual to sign up for one of these schemes without knowing it is fraud? Sorry, it is not fraud, but it is tax fraud.

George Turner: It is fraud. A plethora of legislation has been introduced to target mass-marketed tax avoidance schemes. Going back to the Primarolo statement 15 years ago, in 2005, the Government said that they would legislate retrospectively to close down such schemes. They have introduced retrospective legislation. The marketing material information that I was sent after the original phone call was very clear. It stated categorically that this was all in line with the latest HMRC rules. That is categorically not true.

There are two frauds being committed here. There is a fraud against the taxpayer, the wider public and the Revenue, but there is also a fraud against the scheme users in that they are often provided with reassurances about the legality of these schemes that are simply and transparently not true. Obviously, I set out to look for a tax avoidance scheme. The scenario I presented was that I was earning around £120,000 a year—I wish. I was told that I would be able to retain around 83% of my income. I know that the higher rate income tax in this country is 40%, so that would seem unrealistic in itself.

There is a general perception in this country that tax avoidance is lawful and that there are simple ways to radically reduce people's tax bills. Promoters often play on that misunderstanding of tax law. If you are not somebody who knows something and you just want to sign up to a scheme because your employer has told you to or because you think it is easier, I can see that you might be taken in by the reassurances that are given to you.

There is another category of people who do not gain any economic benefit from these schemes, because they may be basic rate taxpayers. The fees for these schemes are generally around 20%, so they might not see a big difference in their take-home income if they are part of these schemes, but they may have been told by their employers to sign up. In those cases, people really can be unaware.

Somebody has contacted me who says that she was approached by a loan scheme promoter. She told them to get lost and that she did not want anything to do with it. Then she went to another company, which told its clients that it was paying taxes on their behalf. It was only later that they found out that that was not true and that the provider was keeping the supposed tax bill for itself.

- Q81 **Baroness Bowles of Berkhamsted:** Following on from that, I love the fact that you do what I call mystery shopping. I am a mystery shopper on lots of things, too, so be warned, everybody out there. Once you have located these schemes and reported them to HMRC, what has happened, to your knowledge? Has there been any publicity against them? Has any effort been made to close them down?

George Turner: I submitted some evidence as part of the HMRC consultation on these schemes. I have not heard anything back. There is zero possibility that HMRC does not know who these people are and what they are doing. As I say, I came to it by looking at *Spotlight* and the scheme I was presented with was exactly as was described there. I am pretty sure it was the same one that they were alerting people to. Research done by Kantar earlier this year on behalf of HMRC found that the 20 so-called hardcore promoters had been engaged in this practice for many years and were all well known to HMRC. It is frankly an absolute scandal and an indictment of the performance of HMRC that these things have not been shut down.

Last week, there was a documentary on "File on 4". Similarly, they went undercover and phoned up some of these schemes. In the documentary, there was clear evidence of fraud, with characters that are well known. A transcript of it has been produced by the BBC and it would be brilliant if the Committee took it as part of the written evidence. There needs to be an effort to prosecute these people. That would be a way of closing these schemes down.

Baroness Bowles of Berkhamsted: If HMRC took the pain, rather than putting it on the taxpayer who is being defrauded, might it show greater alacrity in publicising the schemes and warning people off?

George Turner: That is an interesting point. I had not really considered it. It seems to me that a lot of HMRC's focus is on the taxpayer, with information for the taxpayer and a "buyer beware" approach. The idea is put out that the taxpayer is the person with the liability, because that is where the money is. But a lot of these schemes are fraudulent and, if HMRC were to bring successful prosecutions for fraud, it would be able to pursue these people under proceeds of crime legislation and recoup substantial amounts of money for the Exchequer. In that case, it is a false economy. HMRC could be doing a lot more to recoup money from these operators.

- Q82 **Lord Butler of Brockwell:** I heard the "File on 4" programme and it was extraordinary. The Committee ought to read it. Is it just for HMRC to prosecute? There is clear evidence of false and fraudulent statements

being given to taxpayers, on the basis of which people derive fees. It is mis-selling. Is it not really a matter for the police and the prosecuting authorities to pursue them? Why do they not? It appears that evidence is very easy to obtain.

George Turner: I agree. As I said earlier, there are two separate frauds going on. There is a fraud against the scheme user, who is provided with all sorts of fake reassurances about the legality of the scheme that are clearly not true. There is also a fraud against the Revenue in the way these schemes are constructed. There are two ways of approaching it. We contacted the City of London Police with the same information and suggested that they look into disguised remuneration schemes.

Looking at the consumer side, there are well-documented and large problems with the prosecution of fraud in this country on all levels, not just disguised remuneration but investment fraud and other forms of fraud. It is not a huge surprise to me that the police may not have pursued these kinds of tax frauds, which they may well perceive to be the responsibility of HMRC and not them.

Lord Butler of Brockwell: I want to ask a question that I should have asked in the first place. HMRC says that its actions have been effective in reducing the numbers of people who provide these fraudulent services, but others remain. Do you agree that its actions have been effective? If not, how could it make them more effective?

George Turner: If you start from 1% effectiveness and go to 2% effectiveness, that is a 100% increase. There is no doubt that HMRC has done a lot of work and been more effective. In my view, it is shying away from doing the one thing that would be truly effective, which is simply to apply the criminal law. This has been done in the past. There was a case in 1994 called *Regina versus Charlton*, where three accountants and quite a senior barrister called Cunningham were given prison sentences for their involvement in the design, operation and marketing of a dishonest tax avoidance scheme.

It has never been clear to me why, having set that precedent, HMRC did not continue to follow that approach when dealing with tax avoidance schemes. The tax avoidance scheme that those professionals went to jail for was far less controversial, particularly today, than many of the schemes we have seen. This goes to very senior parts of the tax establishment. There are senior barristers who advise on these schemes. They need to be held to account as well. Just because someone wears a wig, it does not make them any different from someone who wears a balaclava.

Q83 **Viscount Chandos:** If someone has been sold a scheme unknowingly or having, quite reasonably, an insufficient understanding of it, should they have any additional rights for redress? What could HMRC do to support them in that?

George Turner: There are rights of redress, which are not used enough or are more accessible to the very wealthy. People who have been sold

schemes can sue the scheme promoters for negligence or fraudulent misrepresentation. There is ongoing litigation to do with the Ingenious and Eclipse film partnership schemes, where scheme users are suing actors, including HSBC bank and others, for fraudulent misrepresentation of the schemes. Geraldine Horner, more commonly known to us as Ginger Spice, sued Deloitte for negligence after Deloitte advised her to join the Ingenious scheme. Deloitte settled with her.

Those schemes were accessed really only by the very wealthy, who can employ barristers and so on. HMRC would make it much easier to bring redress if it pursued fraud prosecutions. Once there is a successful fraud prosecution, redress through a civil claim by the scheme users would be a slam dunk. The failure by HMRC to properly pursue these schemes under the criminal law makes it more difficult for the scheme users to seek redress. That is a real problem when looking at this.

- Q84 **Lord Forsyth of Drumlean:** Many of the people who were caught up in the loan charge schemes the Committee looked at were quite innocent employees of employers, sometimes even public sector employers, which encouraged them to do so. I wonder whether a right of redress where the employer had to pay as opposed to the employees, if it encouraged people to go into the schemes, is a practical proposal.

George Turner: As far as I am aware, there are ways of dealing with people who have encouraged you to join a scheme. It is called the tort of deceit and bribery, which sounds a lot more serious than it is in practice. There are ways of doing it, but again there are issues with access to the legal system which make that difficult.

Under law, as I understand it, HMRC has complete discretion as to whether to pursue a tax liability. In particularly difficult cases where people were entirely misled, had no idea and have been left with a large tax liability, if HMRC can pursue it in other ways it might choose not to pursue the liability with that individual. It is open to it to do that.

Lord Forsyth of Drumlean: That certainly was not our experience of the evidence we received on the loan charge inquiry.

The Chair: Thank you very much, Mr Turner, for your evidence. That is extremely helpful. I will turn to Mr Gammie. Mr Gammie, thank you for sitting so patiently with us.

- Q85 **Lord Forsyth of Drumlean:** Thank you very much for your written evidence. You say that the consultation document and the discussions with the Revenue failed to articulate a clear rationale for its proposals on uncertain tax treatments. Could you explain what you meant by that?

Malcolm Gammie: The consultative document, in my view, failed to articulate precisely what compliance or administrative issues the Revenue had encountered and how this proposed new compliance obligation for large business would address the issues identified. It appears in particular that the measure was not specifically aimed at curbing avoidance, but

was designed to deal with the application of tax legislation to a large business's ordinary commercial and tax affairs.

The Revenue, I think, does not seriously suggest that we have such a clear and coherent tax system in which it is immediately obvious how the tax system should apply to particular situations or transactions. Indeed, the consultation is predicated on the basis that the tax system gives rise to uncertainty, I would say in a large number of areas. Does that mean that, every time a large business asks itself, "How do the tax laws apply to this situation or transaction?", it must notify the Revenue of the choice it has made as to how the system applies to it? Of course it does not. The question is at what level of uncertainty one must get involved with this type of provision. How do you measure what is essentially a subjective judgment? How do you deal with the business that thinks the answer is obvious when actually it is not?

The Revenue already has a very clear strategy and, indeed, a bevy of measures for securing co-operative compliance and working co-operatively with large business. If, for some reason, those measures are not working as planned, or the Revenue has identified an issue with its tax compliance risk management framework, it is for the Revenue to explain itself. It is not for it to produce a new compliance obligation like a rabbit out of a hat, on a nice-to-have basis, without adequate explanation or justification. The complete lack of background or explanation as to why this provision is needed and what it is seeking to address was the problem with the consultative document.

Lord Forsyth of Drumlean: Are you worried about the lack of safeguards for businesses whose view of uncertainty differs from HMRC's? Is it really appropriate to view differences of interpretation in tax treatments as something to be tackled as part of the tax gap?

Malcolm Gammie: Dealing with the second question, it is perfectly appropriate when you are devising a tax gap measure to see how much difference in legal interpretation might give rise to some aspect of that tax gap. That is rather fundamentally different from the question to whether companies should be subject to an obligation to notify an uncertain tax treatment.

On the first question, whether there is a lack of safeguards depends upon how you define or identify an uncertainty that has to be notified. If there is a clear statement of the Revenue's view of the law on a particular matter, it is relatively straightforward for a taxpayer to know whether they are filing or paying tax on a different basis from the clearly stated view of the Revenue. In the absence of a clearly stated view by the Revenue of what the law requires, it is very difficult for a taxpayer to know whether what they are doing departs from the Revenue's view of the law, as and when it looks at the matter.

Q86 **Baroness Kramer:** The Revenue seems to suggest that this is a very benign proposal. It means that, where there is a difference of view between the taxpayer and HMRC, it moves into the open very early in the

process and there is room to take action. Can you see any benign benefits in the system, as you describe it?

Malcolm Gammie: There are two aspects to that. Many of these uncertainties will already be identified by the system in the reporting that has to be made when filing a tax return, but also the interaction of taxpayers with the Revenue through co-operative compliance and their customer relationship manager. It is not entirely clear why placing an obligation on the taxpayer to notify under this separate provision advances the Revenue's knowledge to any positive effect.

Otherwise, the consultative document formulated the test of uncertainty effectively by requiring taxpayers to guess what the Revenue might do as and when it inquired into the matter. That may be entirely unclear to a taxpayer when they are subject to the obligation to notify. They effectively have to guess what the Revenue might or might not do.

Baroness Kramer: As you mentioned, the majority of large businesses will have an ongoing relationship with a customer compliance manager. Do you see this system as offering any additional mechanisms of significance to resolve tax issues? Is it even possible that it is exposing problems in the relationships between customer compliance managers and large businesses?

Malcolm Gammie: Across the range of large businesses, there will be a variety of relationships between the company and the customer compliance manager. Some will be good, some will be bad. It will vary. If the Revenue has identified a problem with the way that is working or a particular category of taxpayers who, despite these measures, are being non-compliant in some way, it is for the Revenue to articulate what that problem is and why this measure, targeted at all large businesses and not just those that may be problematic, is the appropriate response. All that was missing from the consultative document.

Q87 **Lord Monks:** Thanks again for your written evidence. This was pretty robust stuff that recommended that the Government rip up the consultative document and start again. We know that Governments do not make these U-turns very easily; it is very difficult. Do you have any thoughts about what a plan B might look like, if your plan A is unlikely to get anywhere?

Malcolm Gammie: I have certainly heard it suggested recently that the Revenue hopes to press on with this proposal in some form. The Tax Law Review Committee is not normally this robust in its response. I do not recall a previous occasion when we have had to speak so robustly about a consultation.

The initial proposals were so poorly formulated that it is difficult to see how the Revenue can press on without going back to square one and explaining exactly what problem it is seeking to address; how it arises; how the proposal, in whatever form it is finally put forward, meshes with other compliance obligations and the multitude of existing measures that apply to large business; and how it justifies the compliance costs and the

risk of penalties that are involved for large businesses. The compliance costs for large business, on the proposal in the consultative documents, could exceed very significantly the amount of revenue forecast to be raised by the measure.

Lord Monks: Have you found any active sources of agreement with that view? Obviously, we can put these points to HMRC a bit later. Would they accept particularly your last point?

Malcolm Gammie: They do not indicate in the document how they measure compliance costs. I suppose it depends on the total number of large businesses this would apply to. In 2024, 2025 or thereabouts, the yield was supposed to be £45 million. If you divide that by however many large business there are, that will tell you roughly how much they have to incur in compliance costs before they spend more on investigating what they have to notify and deal with as the yield which the measure produces. We are judging and making that point by reference to the initial proposals in the consultative document.

One would hope that, if they come back with a proposal, it will be better formulated. For example, it may be based far more closely on the accounting treatment, which you would expect to give rise to a far lower compliance cost, because it would reflect what companies are doing in any event to comply with their obligations under the accounting rules for uncertain tax outcomes. The compliance cost will depend on the final measure. Certainly, the compliance costs for the original proposal seem to be inordinate compared to the amount being raised. I think everybody was critical of the proposals in the consultative document. Certainly, all the submissions that I saw were.

Q88 **Lord Rowe-Beedoe:** Moving on from your rather robust views on the last question, what do you think about the removal of the requirement for HMRC to seek tribunal approval for information from a financial institution?

Malcolm Gammie: You may be aware that the tax law review committee responded to the 2018 consultation on this topic. In that response, we drew attention to the judicial comment about the balance of interest between the Revenue and taxpayers. We stand by those comments, subject to the fact that the Government have now responded to that. The committee would probably say that we should be slow to abandon part of the balance that was previously thought appropriate between the Revenue and taxpayers.

At the same time, we should not assume that the Revenue does not deal with these things in a serious manner, even if the tribunal review is dispensed with. As Judge Sinfield said, it produces material for the tribunal. The tribunal would not see that, if the tribunal's consent was no longer required. That is not to say that the Revenue would not deal with this in a serious manner.

We would question whether there really is evidence that this change is needed. What Judge Sinfield said reflects on that. Is the target of the proposed measure, the financial institution, properly identified or is it too wide? How can that financial institution, without the benefit of the tribunal's oversight, be clear that the power is being correctly used and targeted? They are some of the questions that we would pose with regard to what is now being put forward, but we should not work on the assumption that the Revenue will not take its obligation seriously in exercising these powers.

Lord Rowe-Beedoe: I am sure it will. Let us move to the stakeholders limiting the new proposal to notices prompted by requests from overseas authorities. Is this barrier irreparable or can we do something with it? I was particularly interested in Judge Sinfield saying that the process in his tribunal is not causing delays.

Malcolm Gammie: I assume that in the Revenue itself—it would be able to answer this in more detail—a rather different process has to be gone through, depending on whether it is exercising its own powers in a domestic context or complying with a request from a foreign revenue authority. I find it difficult to see why you would distinguish between the two in the information you are seeking from the financial institution. Either you have a requirement for tribunal involvement for both or you have it for neither.

Lord Rowe-Beedoe: I certainly agree with that.

Q89 **Baroness Bowles of Berkhamsted:** We now move to promoters of tax avoidance schemes. In 2017, in reviewing HMRC's powers, the IFS expressed concern that they went beyond the stated objectives. The consultation on the new proposals dealing with promoters and enablers emphasises that they are not directed at good tax advisers. How confident are you that the legislation meets that objective of only getting at the bad tax advisers?

Malcolm Gammie: Can you tell me the criteria that distinguish between good and bad? I am sure that Lady Hodge, for example, would have a rather different view of what is a good or bad tax adviser than you or I. It is very difficult to talk about good and bad. The committee's concern has been more the gradual accretion of powers for the Revenue over recent years and whether they have been properly balanced with taxpayer safeguards.

There is also the question whether the Revenue is continually adding to its powers rather than exercising its existing powers as effectively as it might. It is a question of oversight. One of the most important issues is how effective oversight of the exercise of revenue powers really is.

Baroness Bowles of Berkhamsted: They are granting themselves broad powers in legislation and then relying on how they are administered to temper their scope. The oversight is all within HMRC. How can we be certain that that is happening in the right way, given the

history on things such as the loan charge and our concerns about discretion not being exercised in cases that merit it?

Malcolm Gammie: We cannot be, save to the extent that the Revenue is required to report in one way or another about the exercise of its powers, and to the extent that committees such as yours receive evidence in relation to the loan charge and the like. The Tax Law Review Committee would be particularly engaged on the issue of whether there is adequate oversight of the exercise of powers. When the Revenue asks for new powers, is it sufficiently tested whether they are needed or whether the Revenue is not using its existing powers to their full extent?

Q90 **Lord Butler of Brockwell:** The TLRC, I gather, is engaged in HMRC's current powers evaluation forum, and we in this Committee provide reports. Do you see any evidence that the Revenue takes any notice?

Malcolm Gammie: The forum has yet to see and comment on the Revenue's report on the work it has been doing, so to that extent I should reserve my judgment as to what will come out of it. In the 1980s, we had something called the Keith committee, an independent review of revenue powers. Following the merger of the departments in 2005, there was another review, which was conducted in-house but with a consultative committee and the issue of detailed consultative documents.

The current powers evaluation forum is, by comparison to those two previous reviews, a lightweight affair. There is no independent oversight and it does not involve detailed consultative papers. It engages in what are called deep dives on particular topics, which, to my view, have been into sufficiently shallow water that if you actually dived you would hit your head on the bottom. Having said that, the Revenue has devoted a substantial amount of internal resource to the process, at a time when the pandemic has put very considerable pressure on its resources. It has offered the Revenue the opportunity to discuss with those involved the use of the Revenue's current powers and to exchange ideas on their use and effectiveness.

Going back to what the previous witness said, there has been discussion about how the Revenue can more effectively make known to taxpayers generally that these types of schemes are being marketed to employees and are to be avoided. All that may be of benefit, but it remains to be seen what emerges from the report. One has to note that in the meantime the Revenue continues to accrete or to seek to accrete additional powers.

Lord Forsyth of Drumlean: Perhaps rather naively, I was quite encouraged by the response to our previous report on the review of powers. I am a bit puzzled as to why you would bring forward legislation demanding more powers before you had reached a conclusion on the powers that already existed and the operation of them. It seems rather an odd way of going about things. Would you like to comment on that?

Malcolm Gammie: I agree with that. To an extent, we have this rather unfortunate thought that, with every Budget that comes through, there has to be something in the Finance Act dealing with Revenue powers, administration and the like. It is almost as if every year they have to come up with one or two measures to deal with something else, to which some Revenue number can be attached. I hope I am wrong about that, but that is certainly the impression one gets.

The Chair: Mr Gammie, thank you very much for your answers, for your time today and for your written evidence. All are gratefully received. Thank you very much for being so patient. Thank you also to our other two witnesses.