



Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Draft Finance Bill 2020-21

Monday 26 October 2020

5.10 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. 8

Heard in Public

Questions 91 - 103

Witnesses

I: Mary Aiston, Director, Counter-Avoidance Directorate, Customer Compliance Group, HMRC; Jamie Horton, Assistant Director, Hidden Economy, Customer Compliance Group, HMRC; Paul Riley, Director of Tax Administration, HMRC; John Shuker, Deputy Director, International Collaboration and Transparency, Customer Strategy and Tax Design, HMRC; Angela Walker, Deputy Director, Promoters and Upstream Policy, Customer Compliance Group, HMRC.

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Examination of witnesses

Mary Aiston, Jamie Horton, Paul Riley, John Shuker and Angela Walker.

Q91 **The Chair:** Many thanks to those from HMRC who have been sitting through this. I am sorry we are running slightly over time, for which no one is responsible but me. Would you like to introduce yourselves?

Mary Aiston: I am the director of HMRC's Counter-Avoidance Directorate.

Jamie Horton: I am assistant director for hidden economy policy and strategy at HMRC.

Paul Riley: Good afternoon. I am the director in HMRC responsible for the legislation and policy that underpins our administration of the tax system. I am also responsible for co-ordinating our work in response to last year's Written Ministerial Statement by the Financial Secretary on HMRC's powers and safeguards. Finally, I am the director with lead responsibility for the draft Finance Bill measure on uncertain tax treatment, which you have been discussing.

John Shuker: Good afternoon. I am the head of international collaboration and transparency in HMRC and I am here today in connection with the civil information powers measure.

Angela Walker: I am deputy director in counteravoidance, HMRC, and I lead on the promoters policy.

Q92 **The Chair:** The first question picks up where our last session just ended. I am interested in why HMRC is looking to take on all these new powers when your review is still under way. Why are you not waiting for that review to conclude? Is it, as we were just told, a very lightweight review that will not do very much at all?

Paul Riley: It is worth going back to the Statement the Financial Secretary made last summer. What he asked us to do on powers evaluation was not what he called a full-throated review of all our powers on the statute book but an evaluation of how HMRC had implemented the powers we had been granted since 2012, after the previous review that Mr Gammie referred to, which looked at the powers given to HMRC when it was formed. That review lasted for seven years between 2005 and 2012 and was, as Mr Gammie said, very thorough.

The Financial Secretary felt it was important that we review how HMRC had implemented powers since 2012, but without going so far as agreeing that a full review of powers was required. Colleagues may wish to talk about the specific powers that we are concerned with today. As part of the powers and safeguards evaluation, we have not looked at new areas of policy where powers might be required to address particular elements of the tax gap. We have looked at the way we have implemented powers since 2012, to draw conclusions and learn lessons

about the way we have implemented those powers. I hope that makes a useful distinction.

The Chair: Sorry, I am not entirely sure I am with you there. Are you saying that this review will look at the powers you have? A recurrent theme in all the evidence we have been given is that you have existing powers that could be used a lot more effectively. My question is trying to unearth whether you are doing that as part of this review. To be clear, is that a yes or a no?

Paul Riley: We are looking at all the powers that have been granted since 2012 and the way they have been implemented. We worked with the evaluation forum, which is a group of 17 stakeholder organisations, to determine which of those powers they particularly wanted to examine in detail to evaluate the way they had been implemented. As a result of that, we looked in detail at a smaller group of nine or 10 powers that the stakeholders said they wanted to focus on. We have not looked in detail at every one of the powers introduced since 2012 to evaluate whether it was required or effective. We have looked at whether we have implemented the powers in accordance with the powers review principles established during the 2005 to 2012 review that I mentioned.

The Chair: Can I ask the question in a different way? We all agree that there are problems that we need to address. Before you say, "We want new powers", surely the better thing would be to say, "Can we not use the existing powers effectively?" Are you telling me and the Committee that you are sure the existing powers are insufficient in all these areas and that you are using fully the armoury at your disposal to tackle the challenges we are facing?

Paul Riley: Colleagues will be able to comment on their evaluation of the existing powers at our disposal before deciding that there was a case to be made for the new powers that we are discussing today. You are right. It is important that HMRC takes a pretty exhaustive look at the powers currently at our disposal before asking Ministers to go to Parliament and request new powers on HMRC's behalf. We always look to do that. The powers evaluation gives us a framework against which we can do that in the future.

The Chair: You mentioned a moment ago that you have been doing a lot of consultation, which is obviously good. In 2018, you consulted on proposed reforms to civil information powers and at that point substantial concerns were raised. Why have you decided to take these forward now, two years later, and, on my understanding, without any further consultation?

John Shuker: As you mentioned, there was a full public consultation, covering 12 weeks towards the end of 2018. As part of that, we met with quite a large number of representative bodies and anybody who wished to discuss the proposals. Following the consultations, we carefully considered the responses, including the concerns that were expressed, as you mentioned. The Government have now decided to adopt the option in

the consultation that had more support. They also decided to include a further safeguard that was not in the original consultation proposal to require a report annually to Parliament on the use of the new financial institution notice.

As far as further consultation goes, no new options have been put forward that would allow the UK to meet international standards on exchange of information on request. There have been no new developments in this area that have suggested to us that a further consultation would be appropriate and helpful.

The draft legislation is being taken forward now, because the UK cannot meet the international standards with the current legislation. We have twice received recommendations for the UK to improve our performance in this area and the next peer review is approaching. If we fail to meet the standard in this area again, there is a real risk that it could drag our overall marking for the UK down to a fail. For this particular area, we have already dropped from "largely compliant", which is a pass, to "partially compliant", which is a fail. If we failed overall, that could have really serious consequences for the UK. That is why we would like to make progress now.

Lord Forsyth of Drumlean: Obviously you think it is wrong, but my understanding of the previous report done by this Committee was that we were concerned that there were no proper safeguards in the use of the existing powers for taxpayers. That was why we recommended that there be a review of powers. I took the Statement by the Financial Secretary, who is still in post and will be before the Committee shortly, as indicating that some action would be taken and that there would be a review of those powers.

In the 2018 report, we were not persuaded by the case for removal of the requirement on HMRC to obtain tax tribunal approval for information notices to financial institutions. We recommended that there be further consultation. You seem to have ignored our recommendations. Are we wasting our time having meetings like this and putting forward recommendations, if there appears to be a Statement by the Minister giving support to them, and you continue as before?

Paul Riley: No, you are not wasting your time. Your input has been incredibly valuable and has guided us as we have undertaken the powers evaluation that we have been pursuing for the last year and a bit. We have examined ourselves pretty rigorously with the stakeholder forum that we have established, which has been keen to push us really hard on the way we have gone about implementing the powers that we have been granted since 2012. Stakeholders will see, when they see the report of that evaluation, that we have asked ourselves some serious questions and learned some lessons. We will apply those lessons in the future. No, I do not think your time has been wasted. It has been really valuable.

Q93 **Baroness Kramer:** I return to the civil information powers, Mr Shuker. I think you were present and heard from the tax tribunal that its activities

with regard to civil information powers and meeting requests for information, whether domestic or international, take about four to six weeks.

The consultation you referred to seemed to lay on the tribunal the primary responsibility for a process taking six months or more. In addition, we heard from the tribunal that the information you gather and provide to the tribunal is mutually agreed and, if I understand correctly, would have to be gathered by you in any circumstances if you were to make an appropriate decision, even without the engagement of the tribunal.

I am really struggling to understand why there has been no new consultation, since it seems the premise underlying this issue was inaccurate, or is now inaccurate, when it comes to the prolonged delays in gathering information to the international standards.

John Shuker: I listened to Judge Sinfield's evidence. I would like to make it very clear that we were very grateful for the tribunal's work, both during and before the present pandemic, to expedite hearings. We have never said that delay in getting hearings was causing the problems. You are not relying on me or HMRC to say that there is a problem. We have the peer review by independent assessors judging us against objective standards, and on average it takes 12 months for us to obtain information, when the international standard is six months. To be frank, even if we could get hearings a little more quickly, we will not knock six months off the procedure with that approach.

As I am sure you would expect, before the consultation in 2018, which was a full public consultation in which we also asked people for any other ideas they had to allow us to meet the international standards, we tried everything we could to meet the standards with the current rules. From my perspective, it would be really welcome if we could meet the international standard with the current rules. I am one of the people who goes to the OECD in Paris to explain, when our report is being debated, why we have not met the standards.

We carefully analysed the timeline and the reasons for delays, including the tribunal process, which is part of that, and support and information from other jurisdictions, translations and correspondence. Under the current rules, we need to give the third party the right to make representations. That takes at least a month, so that is part of the delays. When we looked in 2018, before the consultation, the tribunal process on average took 37 days. That is a little longer than I think Judge Sinfield said it is at the current time, but that reflects the work he mentioned that has been done by us and the Courts and Tribunals Service to speed things up. It is not massively different.

As the judge also mentioned, for domestic cases we have all the background information required and we need that information for the tax inquiry later. We do not have it or need it for the inquiries that are being conducted by other tax jurisdictions. When we looked at the timeline for obtaining the information, the step of getting the additional

information required from the other tax jurisdiction was taking over eight months on average. Even on its own, that step means that it is not possible for the UK to meet the international standards.

You are quite right: we will always need the information to show that the request from the other tax authority is foreseeably relevant to the administration or collection of tax. That is part of the international standard. We will always need the information to show that the request is reasonably required to check a known person's tax position or to help to collect a tax debt, because that is the test in the Schedule 36 legislation which the judge mentioned. We do not think we will need as much background information in the future, and that is a major cause of the delay.

We think that we in the UK can learn from the experience of other countries that can meet the international standard. The UK is the only major economy and G20 country that requires taxpayer or tribunal approval before issuing a third-party notice of the type we are discussing today. Even with the new financial institution notice, the tribunal retains a very important function. If we wish to issue a notice without telling or naming the taxpayer, we would still have to get tribunal approval before that could be issued. Likewise, if we wanted information that was not in scope of the new financial institution notice, we would need to use the existing tribunal measure to obtain it.

Baroness Kramer: I wonder if you understand my puzzlement here. There are relatively few international cases. You have just said that the primary problem for the delay is not the tribunal, yet this mechanism will mean that a significant safeguard is stripped away in domestic cases as well. Can you not find a way to leave the safeguard for domestic cases, at the very least?

John Shuker: That point was raised by quite a number of respondents to the consultation that we held. It is a very reasonable point to make. People suggested that we introduce the new financial institution notice solely for international requests for information and not for domestic ones. We looked really carefully at whether that would be possible, but it would be unlawful, unfortunately.

There are a number of reasons. One is that a number of our international treaties with other countries require us to use the same process and the same methodology to obtain information for exchange as we do for domestic inquiries. One example, I think, is Article 27 of the UK-US tax treaty, which says that we will obtain the information in the same way as if it was UK-taxed. We would be breaching that treaty if we used the rule solely for international requests. There are a number of other treaties. Obviously the US is one of our major partners for international tax collaboration.

The Chair: Baroness Kramer is being very polite. I am baffled by this. It strikes me that the problem, as Baroness Kramer said and you just admitted, is not the tribunal; it is your own processes. I am reading from

the global forum recommendation in its report of 2018: “The formal process to obtain information”—that is, HMRC’s—“is complex ... This process unduly delayed effective exchange of information during the review period. It has also sometimes created an undue burden to requesting partners”. That is saying that your processes are causing a delay, not the tribunal’s. I am not at all convinced by your argument, and I utterly fail to see what removing the tribunal will do.

John Shuker: It is not getting the hearings but, with respect, I think when it mentions the formal process it means the legislation to obtain third-party information notices. It is talking about the UK’s process to obtain third-party information. That is why it says, in a recommendation, “The UK should ensure that its procedure for accessing third-party information is compatible with effective international exchange of information in tax matters”. That procedure is us issuing a third-party information notice.

Baroness Bowles of Berkhamsted: A lot of the exchanges of information that are required from one country to another have templates, and that is when you can get the information quite quickly. Because you have to have similar procedures domestically and internationally so as not to discriminate, you are saying that you have to replicate our domestic procedures. Is the problem not that our domestic procedures and the way you want information from the financial institutions do not fit the international templates, because our domestic legislation is so complicated?

John Shuker: The domestic legislation is complex. Basically, I agree. We need to obey the law and follow the legislation as it stands now, so we cannot meet the international standards.

Baroness Bowles of Berkhamsted: Our tax law is so complex domestically that we cannot fulfil international requirements. Even if you chop off the 37 days, it will still be around six months, so you will not comply because you have to deal with our complex national tax law. Do you not have to go back to basics? We are not internationally compliant because it is so stupidly complicated.

John Shuker: We believe that if we introduce the new financial institution notice in the draft legislation that went out in July, we will be able to meet the international standards. That is based partly on looking at what other countries have done. When the consultation went out in 2018, there was a schedule at the end that looked at every other G20 country. We looked carefully at what procedures every other major country follows and the ones that can meet the standard. We think there are things that we can learn from them.

Q94 **Lord Monks:** This question is for Mary Aiston. I do not know whether you heard what Mr Gammie said, but he alleged that the compliance costs for some large companies could exceed the tax take that the Revenue would get. If you heard that, I wonder what you thought of it. If you are hearing it for the first time, is it true?

Mary Aiston: I heard it, but I am sure it is not a question for me, because I think he was referring to a question about uncertain tax treatment.

Lord Monks: Who is best placed to answer it then?

Paul Riley: I would be happy to take that question. I do not think we have yet made an estimate of compliance costs. It is worth me explaining a bit more about the rationale for the measure. I also heard Mr Gammie say that he did not think we had made that case. I am sorry if stakeholders do not think we made this sufficiently clear in the consultation. The purpose of the measure is to help HMRC reduce the part of the tax gap that arises from businesses adopting and applying an interpretation of the law that is uncertain and potentially at odds with HMRC's view, and that HMRC is therefore likely to challenge.

Sometimes it can be many years before we identify that a business has applied a legal interpretation that we dispute. At times, this can mean that the statutory deadline for opening an inquiry has already passed. By requiring the notification of uncertain treatments at an earlier stage, the measure will enable potential areas of dispute to be identified and resolved more quickly. Respondents to the consultation generally accepted that HMRC needs to address this legal interpretation of the tax gap. As you have heard from witnesses previously and from Mr Gammie today, there have been considerable concerns about the proposed design of the measure, which we are looking to address as we develop the policy.

The nature of HMRC's relationship with large businesses, which are the focus of this measure, is important here. Our relationship with the majority of large businesses is extremely constructive and positive. We have open and transparent communications within the framework of an annual business risk review process. We would expect most businesses to tell us voluntarily if they are applying the law in a way that is uncertain, at odds with standard practice or at odds with what they know is our position. If they do that, they will not need to tell us again in a formal notification. That is why we think that the compliance costs for the vast majority of businesses will be very low indeed.

As Mr Gammie also said, and as you would expect, levels of transparency and co-operation vary. Our estimate is that, despite that healthy relationship overall between HMRC, our compliance managers and large businesses, over half of the element of the tax gap that relates to legal interpretation relates to large businesses, with which HMRC overall has a pretty productive and healthy relationship.

Q95 **Lord Rowe-Beddoe:** I would like to hear your views on the question of financial institutions and the removal of their right of appeal against a notice on the grounds of being excessively onerous. What is your reason for that?

Paul Riley: I am sorry; I am not sure which of the measures under discussion that applies to.

John Shuker: That is probably one for me to answer in relation to the civil information powers.

Lord Rowe-Beedoe: Yes, that is right. It is civil information.

John Shuker: It is worth very briefly reviewing the right of appeal that exists at the moment, which is pretty limited. At the moment, if the notice is approved by the tribunal, there is no right of appeal. If the notice is only requesting what are defined as statutory records, there is no right of appeal either. Currently, the only time the third party has a right of appeal is if the notice is issued without the tribunal's approval but with the agreement of the taxpayer and is not requiring statutory records. The right of appeal is fairly narrow at the moment.

As you mentioned, the only grounds for appeal are that it would be unduly onerous to comply with the notice. The new financial institution notice in the draft legislation cannot be used if it would be onerous to provide the information in the first place, so that is a new hurdle. That test is not in the existing legislation. Of course, there are rights of appeal against any penalties awarded for non-compliance.

Another factor we took into account was the general approach in other G20 countries that can meet the standard. We are following the general approach there, which is largely that there is no right of appeal. People can challenge the notices using judicial review, which they sometimes do in the UK now for tribunal-approved notices. If we also introduced a right of appeal and that led to appeals going to tribunal, it is extremely unlikely that we would ever be able to meet the international standard.

If an institution receives a notice that it thinks would be onerous to comply with, as happens now, communication with HMRC is key. People contact us now about notices. If we were convinced it was onerous, we would withdraw the notice, or sometimes it is possible to change the wording of the notice to make it easier for people to comply.

Lord Rowe-Beedoe: You, in HMRC, would be the arbiters, the referees, the final judge, on whether this is an onerous matter, therefore falling under the right of appeal.

John Shuker: Before the new notice can be issued, the officer drafting the notice would have to take the view that it would not be onerous to comply. Then an authorising officer, who is an officer specially trained in the use of these powers, would have to approve it. They have to pass a test every three years to retain their status. They are often people with decades of experience of these notices and of discussions with financial institutions about onerousness and such matters. Often, the information requested is fairly standard, like bank statements and know-your-customer information, which the institution will have on file readily available. Often, there is little room for doubt.

Lord Rowe-Beedoe: Why do we have the words “excessively onerous”, if, in the witness’s opinion, it is not necessarily the case?

John Shuker: Under the existing rule, a third party can appeal only if it would be unduly onerous to comply with the notice. Under the new rule, if that is enacted by Parliament we would not be able to issue a notice at all if we thought it would be onerous to comply with. That is the slight change.

Q96 **Baroness Bowles of Berkhamsted:** Why have financial notices been extended to tax debt? How will this extended power be used? How does it fit with the direct recovery of debt provisions? Those are new questions.

Then I go back to the statute of limitations on time for uncertain tax treatment. If somebody has given you notice, does the time run out after seven years, during which they might have been applying it, or do the seven years restart every year they are using it?

John Shuker: I can answer the question about the information power and debt, but I am afraid I am not too sure about the seven-year time limit. On the debt question, an important part of HMRC’s function is to ensure that the right amount of tax is paid, as far as possible. We sometimes need information to help with that, for example whether people actually own a bank account or whether it is their money.

This is another area where we received a recommendation from the OECD’s global forum, because unfortunately we were not meeting the international minimum standards. The recommendation was that the UK should ensure it has powers to access information to respond to requests for information in relation to enforcement of tax claims. That is the debt angle. We will not meet the international standard, I am afraid, unless we can require information for debt collection purposes as well.

On the direct recovery of debt, I can assure you that they are completely different measures. There is no change whatever to the processes that have been agreed for direct recovery of debt. The new notice cannot be used in any way to collect money. It is just about information. It makes no change to the processes for direct recovery of debt, including the procedures that have been put in place to help vulnerable people. They have to continue exactly as they are now. There is no way in which, for example, people could use the new information power to speed it up or shortcut it. That is not permissible, and that will be spelled out very clearly in the guidance to HMRC officers.

The Chair: We move on to the next topic.

Lord Butler of Brockwell: Could I make a suggestion? I think we are much more interested in the questions about uncertain tax treatment and promoters of tax avoidance schemes than we are in these questions. I do not know whether other members of the Committee agree. We could save a lot of time by cutting out this section.

The Chair: I largely agree, but I wanted to check if anyone has any

pressing question they would like to ask on this topic.

Lord Forsyth of Drumlean: If we cannot cover the ground, we could have another session. On this issue of licences, I have two points. First, what constitutes the information that needs to be provided by the licensing authority that someone is tax compliant? Is it simply providing a tax code? Secondly, why have you picked on scrap metal dealers and private hire vehicle drivers? Is this the tip of an iceberg, or have you reasons to believe that these are particularly egregious examples of people not complying with their tax obligations?

Jamie Horton: In relation to the information power, the way the check will work is that an individual will log on to a new digital system being built by HMRC and present some identifying information relevant to their tax affairs. The legislation sets out a couple of key areas that the information would apply to.

The Chair: I am very sorry; we cannot hear the answer. The technology has answered the question. We will move on and write to you with questions on those topics. Sorry, the technology has defeated us at our end.

Q97 **Lord Monks:** Can any of the witnesses explain the rationale for the uncertain tax treatment proposals? Taking account of HMRC's relationship with large business, which Mr Shuker addressed previously, why do you consider it necessary? Are the powers you have completely inadequate? What is the rationale for these particular proposals?

Paul Riley: The business risk review process is the bedrock of our relationship with large businesses and the way we understand how they operate. It is the way we understand the tax treatment that they apply in the vast majority of cases. The gap which this measure is designed to fill is where that business risk review process is less effective. As Mr Gammie has said in his evidence, and as you would expect, while relationships are generally good, levels of transparency and co-operation vary. The new notification requirement will ensure that businesses that have a good relationship with HMRC, that are open, transparent and talk to us early about any uncertain tax treatment, are not at an unfair disadvantage when compared to businesses that do not comply with that business risk review process in the way that most do.

Lord Monks: There is a lot of criticism coming in for these proposals. I am interested to probe you a little on how you are likely to respond. Do you consider the criticism well based or are you going to ignore it?

Paul Riley: No, we are certainly not going to ignore the criticism. It is worth taking some of those criticisms in turn. We certainly do not expect businesses to second-guess HMRC's view. On reflection, we accept that asking taxpayers to notify on the basis of an interpretation with which HMRC may not agree, as we proposed in the consultation document, is not the right test to apply in the legislation. If we are creating a new obligation that is backed up by a sanction, as this one would be, we need

to make sure that those who are affected have a really clear understanding of the obligation on them.

We accept that the test we proposed is probably too subjective and difficult for businesses to assess. We are looking at ways to make the definition more objective and more straightforward to comply with. We are keen to ensure that it is very clear what triggers an obligation to notify a tax treatment, while minimising the administrative impact on businesses.

We are grateful for the time and the thought that stakeholders have given to these proposals. We are listening. We are thinking about refining our approach. That perceived subjectivity and lack of clarity in the proposed definition of what should be notified was one of the points that we took away from the consultation responses.

Connected to that, there were concerns that the new requirement would create a disproportionate administrative burden, because businesses would feel duty bound to err on the side of caution when considering what to notify. We perhaps have not managed to get the point across as clearly as we would have liked that, if a business is already open and transparent with HMRC, this measure is not intended to create any new obligations. We want to make that absolutely clear in the legislation.

In response to the consultation, a number of other specific points were made on the question of materiality and any threshold for notification of tax measures, which we are seeking to address. Some stakeholders also felt that we had attempted to cover too many different taxes in the scope of the notification requirement. We are looking at that. Another issue we are looking at is whether any liability to a penalty for failure to notify measures under this requirement should attach to the business or to a named officer of the business.

Overall, I would like to assure you that we are listening to the feedback we have had in response to the consultation and trying to take on board as much of it as we can.

The Chair: Thank you for such a comprehensive answer, Mr Riley. That is really interesting. Can you clarify the process that will now go on? You are taking all these points on board in what sounds like quite an extensive rethink. Will you go back with a new set of proposals that will then be consulted on? What is the process from here on?

Paul Riley: We will consult on draft legislation. That is the next stage of the consultation process. It will be for Ministers to decide when we bring forward that draft legislation.

Q98 **Lord Rowe-Beddoe:** The consultation document refers to what the United States of America and Australia—sorry, Canada—are doing and what they have done. In addition, there is a reference to accounting standards so that we could understand what we are trying to do. There is uncertainty there. Do the UK proposals go beyond this? We understand

that they do. Why is this?

Paul Riley: We looked at the US and the Australian regimes. They show that other tax authorities are trying to achieve similar outcomes to the ones we are looking to achieve here. It is true that their regimes are not quite the same as we are proposing. The US system requires taxpayers to notify a position where they think they are more likely to lose in litigation than to win.

Our test, particularly as we are now looking to make those notification requirements and triggers objective and clear, is likely to be rather different. The Australian system adds a requirement to assess the alignment of a business's tax treatment with the published guidance. I certainly think that ought to be part of the objective criteria that we bring forward for triggering a notification.

It is true that the US regime only refers to income taxes. The part of the tax gap we are looking to address with this measure, the legal interpretation part, is rather broader than just income taxes. There are issues with VAT, for example. We would want the scope of the measure to be broader than the US version.

The international accounting standards take us so far, in that there is a requirement to notify in the accounts a treatment that triggers a provision in the accounts, so inherently there is some uncertainty. We talked about that in the consultation as something that we could take into account in framing this measure, but not something to rely on entirely.

Q99 **Baroness Bowles of Berkhamsted:** Witnesses have previously expressed concern to the Committee about the introduction of wide-ranging and sometimes unclear legislation, which is then explained through guidance. Is there a case, in the first instance, for working to improve the quality of tax law to remove the dependence on guidance? In connection with the uncertain tax treatment and all the changes that we have just heard are under way, will you be able to guarantee that that will happen in the legislation and not be left to guidance? Finally, does a check on alignment with guidance act as a full defence against accusations that there has not been compliance?

Paul Riley: I should declare an interest, because I am also responsible for HMRC's guidance strategy. I am a passionate believer in the power of great guidance, including its role in explaining tax law that is sometimes more complicated than any of us would wish. We certainly should not rely on guidance as an alternative to clear legislation, and that is not our intention here. We are seeking to establish clear and objective legislative criteria that determine what businesses need to notify and when. We will supplement that, as always, with guidance, which might include examples of issues that might meet the criteria if they have not already been discussed with HMRC as part of the business risk review process that I have referred to.

As I think you are alluding to in the final part of your question, other HMRC tax guidance will be really important as businesses consider their

responsibilities under this measure, particularly where that guidance sets out HMRC's position on a matter of legal interpretation and a business decides to apply the law in a different way. It is really important that businesses know where our guidance sets out our position clearly and which bits of that guidance they can rely on. It is incumbent on us to make sure that our guidance is as high quality as possible and keeps up to date with developments in jurisprudence, case law and so on. I accept that entirely.

Q100 Lord Butler of Brockwell: I wonder whether the witnesses heard the programme referred to in the previous evidence session, "File on 4", and have any comments to make on it.

Mary Aiston: I not only heard it but I was actually in it. It brought out clearly the challenges that we face with some very determined promoters of tax avoidance, and the very real personal cost of tax avoidance to some of the people who get into it. It also underlined, should it be needed, our determination to be as effective as possible in tackling people who still insist on promoting tax avoidance, disrupting their business and getting to them more quickly, which is what the proposals in the Finance Bill are about.

Lord Butler of Brockwell: That leads to this question. When there is clear evidence of fraud, as there was in the examples given in our last session of evidence, why is HMRC not more effective in dealing with it?

Mary Aiston: In tackling a promoter, HMRC will always consider the opportunity to go down the route of investigating with a view to a criminal prosecution for fraud. There needs to be evidence of dishonesty for us to pursue an inquiry with a view to prosecution for fraud. A promoter asserting that a tax treatment is successful that we disagree with or that later a tribunal decides does not stand up is not of itself sufficient to demonstrate fraud. We need to look for, and always do look for, things such as schemes being dependent on forged documentation. That is an indicator of the level of dishonesty that we need for a successful prosecution for fraud.

Lord Butler of Brockwell: How many instances of successful prosecution for fraud have there been in the last five years?

Mary Aiston: I cannot do five years, but since 2016 HMRC has successfully prosecuted 20 individuals for their involvement in schemes that were marketed as tax avoidance. Those are successful fraud prosecutions. The courts handed down a total of 100 years of custodial prison sentences in those cases. In the tax year 2019-20, we arrested a further nine individuals for their roles in three separate operations involving people selling schemes that purported to get round the loan charge. There is other criminal work under way. The Committee will appreciate that criminal investigation and prosecution takes time.

Q101 Viscount Chandos: Is communication not absolutely key? Many witnesses have argued that *Spotlight* is insufficient as a means of

publicising HMRC action against tax avoidance schemes. How do you intend to improve the publicising of tax avoidance schemes, their risks and their essential illegality to members of the public?

Mary Aiston: I agree that communication is key. It is an important part of our strategy. *Spotlight* for us is a basic starting point, but we recognise that they are not written for mass market communication and will not reach everybody that we need to reach. I take as an example *Spotlight 54*, which was about schemes targeting people returning to the NHS during the Covid crisis. Yes, we do a *Spotlight*, but then back that up with use of social media, press notices and a wide range of other networks to get that message through, including professional bodies and other representative organisations.

It is a challenge. We have plans later in the financial year to do much more in communicating and targeting the areas that we know promoters go after, such as the oil and gas industry, IT contractors and medical professionals. There is more to come here.

Can I mention to the Committee one of the challenges we face here? We need to get our message across, but also to manage the risk of accidentally implying that tax avoidance is more widespread than it really is. Our behavioural experts tell us that people will generally go with the crowd. If they think everybody is at it, there is a real danger here that, instead of alerting people and putting them off tax avoidance, we make them think they are missing out on something and everybody is at it.

As a matter of fact, everybody is not involved in tax avoidance. Even in the area of freelancers, our data suggests that something like 97.5% are not involved in disguised remuneration schemes. We need to be quite careful and targeted with our communication so that we do not inadvertently make a bad situation worse.

Viscount Chandos: I understand that to an extent, but is there not a message, and quite a simple one, of values? If it smells wrong, it almost certainly is wrong.

Mary Aiston: Absolutely, and our top line is not a complicated one. It is exactly that. If it sounds too good to be true, it almost certainly is. We give those simple messages in things like the self-help guide that we put on the web in, I think, February, with hints and tips for people on how to spot that they are being sold avoidance. I would always have that at the top of my list.

Q102 **Lord Forsyth of Drumlean:** I am struggling with that thought about what the behavioural analysts said: that if you advertise—"Do not get conned by people who are doing these schemes"—it will encourage people to be less honest, not pay their tax and listen to those people. I need to think about that, but I am not immediately persuaded by its efficacy.

I entirely understand how difficult it is for you. I am 100% behind you in collecting tax that is due, but I have to say I was very scarred by the

large number of letters we got from people who were victims of the loan charge scheme. Their lives were ruined and they could not really be expected to second-guess their employer or some dodgy financial adviser.

I wonder how far you have developed your ideas for dealing with the unregulated 30% of the market who are giving tax advice. I would be surprised if the problem does not reside there. Have you thought about looking at this from a consumer protection point of view, as opposed to asking, "How much money can we collect from people?" Perhaps indemnity insurance or some form of registration or regulation is needed. How far have you developed your thoughts on really protecting people, not just from themselves and perhaps greed, but from unscrupulous employers and advisers?

Mary Aiston: We have thought very widely. It is worth saying that, where an employer gets their employees into this sort of scheme, we will always seek to recover the tax from the employer wherever we can. It is not that we default to the individual. We will sometimes need to pursue the tax that is due from an individual where the employer has disappeared. In some of these schemes, it is an offshore employer and is purely a creation of the avoidance scheme. Your general point is well made, and we are thinking very widely.

One example of that is the work we are doing with the Advertising Standards Authority. We also work closely with the Insolvency Service to think right across the piece about what we can do to stop people selling this type of arrangement and to dissuade individuals from getting into it.

The consultation on raising standards in relation to tax avoidance has had had 36 round tables and something like 83 responses. It has ranged far and wide, as you might expect, reflecting the range of tax advice available in the UK—from highly professional advice, well regulated by organisations such as the Institute of Chartered Accountants in England and Wales, which adds value for clients and promotes tax compliance, to the people we are talking about here, who pop up websites seeking to make a quick buck by selling schemes that taxpayers would be well advised to steer clear of.

We are thinking very widely, including in the areas you are referencing. There will be more coming out on the Government's next steps in relation to the consultation on improving the quality of tax advice.

Lord Forsyth of Drumlean: I am regulated by the FCA and the PRA. In the area of giving financial advice, the regulations are very clear and strong. There are very severe penalties for people who break them. I am at a loss to see why this could not be extended. You have described how difficult it is to prove fraud, but you could show that people were in breach of the criminal law in telling people to embark on some scheme. You say that you always go after employers. I know you cannot talk about individual cases, but people working for local authorities were encouraged to get involved in loan charge schemes. They have ended up

losing their homes and large amounts of money as a result. There was no evidence that the local authorities had been asked to stump up.

Mary Aiston: I will not go into specifics, as you say. It depends on the nature of the scheme arrangement. Where somebody is on the payroll of an employer that has got them into this, we go after the employer. In the circumstances you describe, it is more likely that people were contractors and not employed.

Lord Forsyth of Drumlean: The whole point is that they ceased to be employed and were put into the status of being a contractor by their employer in order for their employer to save the national insurance costs et cetera.

Mary Aiston: I recognise that a lot of these contractors are in those more flexible working arrangements and that the people at the top of the supply chain who are benefiting from their work have chosen to hire workers in that way, rather than have them on the payroll. Where there is a relationship of employment still and people are in avoidance, we go after the employer, but your wider point is made.

I am very conscious of the stress that big tax bills create for people. HMRC has made a commitment that it will not make people sell their main home to pay tax bills relating to disguised remuneration and the loan charge. I want to repeat that, because it is important to have it on the record. We will give people as long as they need to settle their tax debts. My message to people is that they should come forward and talk to us if they are worrying about a tax bill, because there is a lot we can do.

Q103 **Baroness Kramer:** Like Lord Forsyth, I have met and seen the correspondence between HMRC and many of these taxpayers. To me, one of the most egregious was basically the hunting down of the heirs of an individual faced with the loan charge who had killed himself as a consequence. The letters they were hit with during the period leading up to the funeral and just beyond were astonishing. They are brutal letters. They are not straightforward. They are clearly designed to catch people and put enormous pressure on them. I found it extraordinary. The demands are never explained. I would not pay a utilities bill without some clear explanation of how the number was reached. That is never included in these letters.

Some of us are not sympathetic to the idea that a great deal of thought is expended on the individuals. You might want to take Lord Forsyth's recommendation: a consumer protection approach to this has huge potential. Whenever we speak with HMRC, we constantly hear, "The tax gap, the tax gap, the tax gap". It is all focused on revenue and then, incidentally, there might be a little statement about fairness to taxpayers. You might be much more successful in closing your tax gap if you also protected the people who were victims of this process.

I recommend that you read—perhaps you were not here—the evidence from George Turner in the previous panel on how easy and simple it was

to find yourself caught up by one of the 20 or 30 promoters who remain out there. It is beyond our comprehension that HMRC has not closed these people down. It knows who they are. It is easy to gather evidence against them. There is plenty of scope in various aspects of the law to do so. That would be the biggest and quickest mechanism to make tax clean in the way we all think it should be.

Mary Aiston: To confirm, going after them is a priority for us. I hear the Committee's point on taking the broad view and thinking about consumer protection. I am not going to suggest that we get everything right with every taxpayer in terms of tone and letters. That is not true. There is always more and better that we can do. My teams take seriously the real people at the far end of our inquiries and on the receiving end of our interventions. We have done a lot to improve the support we offer taxpayers who are, very understandably, finding getting out of these situations stressful, because these are very big bills that people are facing.

Baroness Kramer: You just said that people can have as long as they need. That is not true. The demands very often have to be met in a relatively short time. Only in extreme circumstances is there any sort of extension. It is best to be straightforward.

Mary Aiston: I am being straightforward. We will talk to people. We have some automatic extensions, but, where those are not sufficient for people, we will talk to them about what they need. Their view and ours about what they need might not be the same. I agree with that. We will explore people's income and expenditure. There is no maximum on how long we can give people if they need it.

Baroness Bowles of Berkhamsted: You are saying that you will not make people lose their homes. Does that mean that you will be paying money back to those who have already had to do that?

Mary Aiston: It is really difficult to get into specifics of individual cases. If you have a case where somebody feels that has happened, I am always happy to consider it. We have been clear that HMRC will not make somebody sell their main home to pay the tax debt in relation to disguised remuneration or the loan charge. Recognising that this has been very controversial legislation, I worry that people with legitimate views about the legislation are in danger of frightening taxpayers into not talking to us when they would be better off doing so. That bothers me.

The Chair: I want to come back to Lord Forsyth's point. In going after the hardcore promoters, would it not be better to look at the criminal law and other penalties which these promoters could receive?

Mary Aiston: We always consider whether there is scope for investigating with a view to a criminal prosecution. We have a track record to show that, where we can do that, we will. The promotion of tax avoidance by itself is not a criminal offence in the UK. Therefore, we have to match the approach we take to tackling a promoter to what we think

will be effective. These proposals are coming forward in the Finance Bill because we want to be faster. In the time it takes us to tackle a promoter, they are still selling to people who are then getting into avoidance and the problems that go with that. That is why we are looking to tighten this up.

The Chair: I am very conscious that we have gone well over time. I am very grateful to all of you for spending so long. We have covered a lot of ground. I fear that we did not have time to discuss the conditionality aspects, and I know that a number of colleagues had questions on that. We will write to Mr Horton with those questions. I apologise about the technology and thank him for bearing with us. If any colleagues on the Committee have specific questions, could they let the clerk know ASAP and we will put them in writing? I am sorry that we have gone so long over time, but we have covered a lot of ground. Thank you and good evening.