



Economic Affairs Committee

Finance Bill Sub-Committee

Corrected oral evidence: Draft Finance Bill 2023-24

Monday 23 October 2023

4.10 pm

Watch the meeting

Members present: Lord Leigh of Hurley (The Chair); Lord Altrincham; Lord Palmer of Childs Hill; Lord Roborough; Lord Rooker; Lord Stevenson of Balmacara; Baroness Valentine.

Evidence Session No. 1

Heard in Public

Questions 1 - 24

Witnesses

[I](#): Ellen Milner, Director of Public Policy, Chartered Institute of Taxation; Susan Cattell, Head of Tax Technical Policy, Institute of Chartered Accountants of Scotland; Richard Jones, Senior Technical Manager, Tax Policy, Institute of Chartered Accountants in England and Wales.

[II](#): Dr Emma Rawson, Technical Officer, Association of Taxation Technicians; Andrew Harding, Secretary-General, CIMA, and Chief Executive, Management Accounting, AICPA & CIMA.

Examination of witnesses

Ellen Milner, Susan Cattell and Richard Jones.

Q1 **The Chair:** Welcome. My name is Lord Leigh of Hurley, and I am Chair of this sub-committee. We have in front of us two witnesses who are live and one who is online to answer our questions. I will start off the questions and then other members of the committee will follow through. Either or all of you may answer, but if you feel that one of your colleagues has answered sufficiently, please just say so. There is no need to repeat unnecessarily if you feel that a question has been satisfactorily answered.

How effective do you think the criminal offence of ignoring a stop notice and the measure against directors are likely to be? We are all very aware of situations, such as unexplained wealth orders, where the legislation seems fine but nothing seems to happen in practice. Would you like to comment on that?

Richard Jones: The main thing to say is that measures are effective only if they are well known. Again, the proof will be in the publicising. One of the main areas in which we have particular concerns about effectiveness is overseas promoters. It is not clear to us to what extent these measures would be effective in tackling individuals who are based overseas.

We asked HMRC this question in our original submission to the consultation. The summary of responses mentions that the UK has various reciprocal arrangements with overseas territories, but it was not expanded on any further. It is a little unclear at this stage whether it would require extradition procedures or some other form of judicial arrangements. If a UK person could be caught but an overseas person could not be, we would be concerned as to whether that would encourage individuals to go overseas and thereby defeat the whole purpose of the measure.

Ellen Milner: I agree with all of that. Our positions are very much aligned. It is probably worth noting that these are small numbers. The last publication I saw indicated that only 12 stop notices had been issued. The measure here is a big "keep off the grass" sign. This comes back to the publicity and awareness point. It really is a deterrent. That is probably worth noting as well. We have focused on the stop notice, but we can pick up the issue of directors afterwards, if you want.

Susan Cattell: We would definitely agree with that. Our big concern is that we are now down to a very small hardcore of promoters; a great many of them have been driven out of the market already by the previous measures that have been taken. There has been a huge reduction in the sort of marketed tax avoidance schemes that stop notices are aimed at. The part of the tax gap relating to marketed schemes is down from £1.5 billion in 2006 to £0.5 billion in the latest tax gap report.

It is important to bear in mind that this small hardcore has evaded other attempts to stop it. If a significant number of that remaining hardcore are offshore and they are not clear that HMRC will be able to prosecute them and apply a criminal sanction, this will not act as a deterrent. It would be helpful if HMRC could explain in more detail how it thinks it can pursue these offshore promoters. If it cannot, the measure will not act as a deterrent and the problem will persist. As my colleague said, if it simply drives the UK promoters abroad, that is not a desirable consequence.

Q2 The Chair: I should have said I am a member of the Institute of Chartered Accountants in England and Wales, the Tax Faculty and the Chartered Institute of Taxation. Sadly, I am not a member of the senior professional body of the Institute of Chartered Accountants of Scotland.

From what you are saying, is the problem so small that it does not merit this sort of legislation? Are there other measures that you would prefer to see?

Ellen Milner: As a professional tax industry, we absolutely want to see the avoidance stuff shut down. It still exists. Although these are small numbers, that does not mean that some people are not being deterred by the measures or that we should stop doing this. We all want to see the raising of standards in the market. This would add another tool to HMRC's toolbox of things. On its own, it probably will not change the world. We have some concerns, which we will speak about later, on safeguards, stooge directors and the enforcement piece we have just talked about.

We have also suggested to HMRC that it could do things like telling promoters, when it issues them with a stop notice, about the consequences of non-compliance. That could be an additional deterrent. If promoters have not picked up on the publicity, they may not be aware that there are strict liability criminal sanctions. Preferably, HMRC would do that ahead of issuing a notice, so that, if it spots some behaviour, it lets people know that they are going into the territory where this will happen. Again, that is building on what it could do.

There is already a lot of stuff on very high penalties. You could revisit that. I do not know how much additional merit there would be. There are already quite high penalties that you can get into here. Again, it would be another tool in the toolbox.

On stooge directors—we have seen evidence of young, vulnerable and otherwise innocent people targeted on social media for a fee and then put in as directors of companies—the awareness piece will be really important to make sure that they know what they are getting themselves into. For the new criminal offence, it will be about how you badge it as part of a bigger package.

Richard Jones: On additional measures, to some extent HMRC can name and shame promoters. That could be a further route to go down. The promoter industry works only if people believe that they are going to avoid tax. If HMRC and the profession can demonstrate that the schemes

that these people go into do not succeed and do not achieve what the promoters say they will achieve, the whole industry will not survive. That is possibly one of the best routes to driving out this kind of behaviour.

Susan Cattell: We would like to see the Government and the devolved Governments perhaps tackling this from the other side. HMRC publishes a list of promoters and avoidance schemes on GOV.UK. From that list, we know that the vast majority of marketed schemes now relate to disguised remuneration, so trying to tell workers that they can pay no tax or reduced tax in ways that are not successful.

The people they are targeting are very often lower-paid and unrepresented employees rather than the very wealthy, who in the past might have been associated with these schemes. It is now very much at the other end of the spectrum, as Sir Amyas Morse highlighted in his report on the loan charge. It is very important that those people are tackled before they get into these schemes, as far as possible.

There are two aspects to that. First, HMRC has some very good communications on its website that are aimed at schemes being promoted to agency workers, contractors and people working for umbrella companies. Unfortunately, unrepresented taxpayers probably do not find that material. They do not know that HMRC is saying that these schemes do not work and that it is not a good idea to get involved with them. That is one aspect. HMRC could step up its communications, try to give this more publicity and write directly to the people it thinks are getting involved in these schemes.

Secondly, we would like to see the UK Government, and the devolved Governments where relevant, trying to stop people getting into schemes by tackling public sector procurement. If there were rules in place for public sector procurement that meant that public sector bodies could not engage with any agency or umbrella company that was using these disguised remuneration schemes, that would be really helpful in stopping people from getting drawn into them in first place, which would be very beneficial. We think that would be a very good approach to take.

Chair: Thank you.

Q3 **Lord Stevenson of Balmacara:** I declare my interest as a retired member of the ACCA.

I just want to pursue the argument that we have been talking about—that people should be prosecuted for the crimes they are committing. There is a focus in the legislation we have seen on directors, but of course lots of other people are involved. Do you have any thoughts about how that might be broadened out or made more effective in getting the message out to people that this is a bad game to be involved in?

Richard Jones: It is a really tricky one to deal with. One measure is to prevent those individuals becoming directors of companies in the future. It makes some sense to tackle existing directors, but, as you have said, sometimes the people behind the tax avoidance are not the directors. As

we have mentioned, sometimes people are recruited as stooge directors to stand in their place. Unless my colleague has any other suggestions about how to deal with that, it is quite a difficult issue.

Ellen Milner: We have had a bit of a discussion. CIOT's Low Incomes Tax Reform Group has been looking at stooge directors and umbrella companies, and has talked about the potential deterrent effect and how to use the powers against the controlling minds. There could be some way to craft this so that it catches not the job title but broadly where the power is. You might still need to pick up the directors, but you will need something really sensitive to recognise where they are not vulnerable so that the punishment or the deterrent lands in the right place.

Lord Stevenson of Balmacara: A lot of the focus has been on doubling the headline amount of time they would have to serve if found guilty. At the same time, they are also saying that that is probably not the issue. Do you agree with that? It is a yes/no answer.

Ellen Milner: I do not have a position on the doubling of the time. I do not have the evidence base for it. To pick up your previous point a bit, one idea we have been discussing is how HMRC could work better with other organisations, such as Companies House or the Department for Business and Trade, to stop people ending up in these positions. When they are looking at setting up companies or being asked to be directors, you could look at some useful points there—in answer to your point about the others who are involved.

Chair: We will move on to data collection now.

Q4 **Baroness Valentine:** First, I will be invested in companies that take advantage of R&D relief. I think that is the relevant declaration to make.

How onerous is data collection about employee hours likely to be, and how accurate the data provided?

Susan Cattell: How onerous it will be depends on exactly what employers will have to report. All the details will be included in secondary legislation, and we do not even have a draft of that yet.

At the moment, it is slightly difficult to say, but the government response to the 2022 consultation on these proposals recognised that HMRC would need to work very closely with businesses and software providers to ensure that everybody is clear on what to report and how to report it. We think that is critical, because the employers have to know what they have to report and the software providers have to be able to implement that. Some employers will already have this information. In fact, many employers will have information on employee hours worked, because they are obliged to put it on payslips, but it will not necessarily be in the reporting system used for filing RTI returns with HMRC.

It is vital that HMRC gets out there and does the work it has promised to do with businesses. In fact, we understand that HMRC has already started having those important discussions, particularly with people in the

payroll sector. In some ways, this spills over into accuracy. Until we see the draft regulations and have a public consultation, people will not really know how difficult it will be to do it.

Broadly speaking, from what we understand at the moment, it should be relatively simple for salaried workers, because it will be based on contracted hours. Where people are paid overtime or have zero-hours contracts, and so are working irregular hours, the employer will need to have some record of hours anyway in order to make the payments. Therefore, it probably should not be too onerous once everybody has the details and can set up their software systems, get them ready, prepare, do the necessary staff training and so on.

It is a question of HMRC having the conversations, clarifying what it wants, getting the draft legislation out there and then having a consultation process, preferably in fairly good time, to give people enough time to make the necessary software changes prior to it coming in in 2025, as it is currently scheduled.

Some employers outsource their payroll function to payroll providers. They will also need the time to liaise with them about changing any processes. I hope that answers the question.

Richard Jones: It depends on whether it is hours worked or contractual hours, as Susan suggested. That is the first time I have heard that that might be what HMRC means. You could be contracted to work 35 hours, but you could be on holiday, you could be sick, you might have to work overtime.

Particularly with more people working from home at least for part of the time, your working day sometimes bleeds into your home life and vice versa. It can be very difficult to determine how many of those hours in that day you spent working. If it is hours worked, that will be harder to assess than if it is the number of contractual hours. Similarly, how often would that information be required? Would it be once a year or every day? These are details that still need to be provided. It is really difficult to give an answer until we get that detail.

Why does HMRC want this information? There is only one reason I can think of from a tax perspective. When HMRC notices that an individual's taxable pay has suddenly gone down, it might question what is going on. If it can see that the number of hours that they have worked has gone down, that would allay any concerns. I cannot think of any other benefit from HMRC collecting that data, to be honest.

Ellen Milner: On the accuracy point, I absolutely agree with Susan and Richard about actual and contracted hours. That will definitely be a critical point.

An additional question that we have been asking is whether that accuracy turns into real-time information, where it is very difficult for businesses to get it right. Do they end up in a penalty situation? Does that have a

knock-on into compliance? Some already have this data at their fingertips, because it is part of what they need for their own payroll, but for others this will be an entirely new process. It is a whole bunch of data that you are just collecting for tax. That understanding of why you need it, and what you are going to do with it, will feed into how proportionate an ask it is. If it is just going to feed into a system and not be used for anything useful, that adds a different dimension.

Q5 Lord Roborough: I should declare an interest as an owner-manager of a small business.

Following on from how onerous the data collection is, my question is about the cost of accumulating this data and reporting it. In particular, might the costs be disproportionately high for smaller businesses that probably do not have the formal systems, software licences and large payroll offices to administer this kind of data?

Richard Jones: That is very likely. There is an estimate in the policy paper. I divided the total cost by the number of employers in the UK. It came out at an average of £25 per employer, which I think is grossly underestimated. As you say, the expense will be proportionately higher for a smaller business, because they do not have those processes in place already. Similarly, for companies with large payrolls, if this means having to track a large number of employees, it could add up to quite a lot of expense.

Ellen Milner: I would agree with that. We did a similar calculation and, again, the HMRC estimate of the cost in this space felt very low to us. We do not have a breakdown for small and large businesses, but it would be really helpful for HMRC to be transparent about the calculation to rebut the challenge that this seems really low. We gather that it may be revisiting the figures. It will be interesting to see whether that will lead to a different conclusion on the policy itself.

More generally, we are really interested in the standard cost model as a basic principle. How are businesses meeting these costs and burdens? We have not seen anything updated for quite a long time on that modelling. There is a wider point to your question as well¹.

Lord Palmer of Childs Hill: It is just a simple addition. It should not be the business of government to give more information to the tax system, to HMRC. It seems to me that most small and medium-sized enterprises will have to employ chartered accountants—I have to declare that I am a member of the Institute of Chartered Accountants—and other accountants to provide this system.

I just would like us to think about whether there is any real benefit to business and industry in HMRC doing this. I am not sure they are the right people to gather this information. It is economic information. It is not information for tax.

¹ Ms Milner has clarified that her intention was to query the basis on which these costs and burdens on businesses are estimated by HMRC.

Ellen Milner: It is not clear exactly why HMRC wants the information. There is the tax position, but there has also been talk about feeding into the levelling-up agenda, for example. If the policy is that that data is to be collected, that is probably not for me as a tax professional to decide, but there is a question about how we can feed into that, whether it is proportionate and whether there are the correct legal powers to collect the data for these different usages.

That probably feeds back more into your question. At the moment, we do not know on what basis there will be any legal sharing, so it is very difficult for us to comment on that.

Q6 **Lord Palmer of Childs Hill:** We examined the new R&D proposals at great length in the previous committee. The Chair and I are the only ones here who did that. Do the R&D proposals represent a simplification, or will they make things more complicated? It is as simple as that.

Richard Jones: There is quite a lot to say on this. Susan might want to say something.

Susan Cattell: We support a merged R&D tax relief scheme based on the current large business scheme. We supported that in the 2023 consultation. Unfortunately, that is not what we have in this draft legislation. What we have is a possible merged scheme to be introduced from April 2024. That significantly diverges from the existing large business scheme in several important areas.

It is also not the only thing we have. We also have draft legislation for a separate scheme providing additional relief for R&D-intensive SMEs. That is coming in from April 2023. According to the Explanatory Note, if the Government were to go ahead with the merged scheme from April 2024, there would then be a separate scheme for R&D-intensive SMEs to claim under from April 2024.

From April 2024, if these proposals go ahead as they stand, we will have in effect two separate schemes, which completely undermines any possible simplification benefit. It will also be extremely difficult if you have a company that is in the intensive scheme one year but then falls below the threshold the next year and is moving between the schemes.

We would definitely support a simplified merged scheme, but that is not what we have. It would be a good idea to put back the possible start date for a merged scheme so that there could be a proper consultation. There was no consultation at all on the R&D-intensive proposals. It would be helpful to put back the date for the merged scheme.

The R&D-intensive rate will have to come in, because the Government have already announced it from April 2023. If some extra time were taken for consultation on the details of the merged scheme, it might be possible to incorporate whatever additional relief you wanted to give for some types of R&D or some particular companies into the framework for a merged scheme. You would then have one framework but perhaps two different rates, one rate for most companies and one rate for some kind

of special R&D or some special type of company you want to favour, but the overarching rules could be the same. That would leave open the possibility of genuine simplification. As they stand, the proposals do not do that at all. We will just end up with two separate schemes, apparently, from April 2024 if the Government decide to go ahead with the merged scheme.

Lord Palmer of Childs Hill: If this happens, will there be an increasing number of specialists? Not many companies will be able to manage the complexities of the different schemes. I always get worried that large companies will have a specialised unit or a person, but smaller businesses will be employing the sort of people who we were criticising on tax avoidance, who will find a different guise in unmasking the proliferation of these schemes.

Susan Cattell: That could definitely be a problem, yes. As the committee looked at last year, in the R&D sector there are a lot of what you might call rogue advisers. They are not members of professional bodies and they are not giving good advice. There is a high level of fraud and error in the R&D scheme. That is probably another good reason for saying that the merged scheme should be delayed.

HMRC has now introduced the additional compliance measures, the pre-notification form and the additional information form. It is certainly our hope that that will allow HMRC to crack down on some of these rogue advisers and reduce the levels of fraud and abuse in the R&D scheme. If you could do that, that might influence how you designed the merged scheme. If you could get rid of some of the fraud and abuse that is coming from those very poor advisers, you would perhaps be able to take that into account. You could perhaps have a simpler merged scheme or a slightly more generous merged scheme, if it was not going to be open to exploitation.

As I say, if the merged scheme was put back and there was more consultation on the detail, that might be a helpful way to go in getting a really effective scheme that did not suffer from the levels of abuse and error that we have at the moment. As you say, a lot of firms find it very difficult to understand the scheme and so will be turning to advisers.

Lord Palmer of Childs Hill: That was very helpful. Thank you.

Q7

Lord Rooker: I am bewildered, in a sense. We are sitting here in late October 2023. The Finance Bill will not get Royal Assent until well into 2024. We are talking about a new scheme that will operate from 1 April 2024. That cannot be good public administration. Your points about the implementation date need reinforcing, I hope by this committee. The whole thing is beset by poor public administration. This is one we are walking straight into. Have I got that right, or am I sugar-coating it?

Richard Jones: I have noted down some things that it would be useful to have in place, ideally before the legislation came in, if it comes in. You are right. Susan alluded, for example, to some of the complexities in the

merged scheme. Larger companies will be used to some of this because this is based partly on the RDEC scheme, and SMEs will be used to some of it because it is based partly on their scheme.

Different types of businesses will need to get used to different elements of the merged scheme. That will need time for agreement and consultation. We need longer for consultation. It will need time for guidance to be developed, and then for the companies to get used to it and to introduce software to deal with the new systems.

I would not like to put a timescale on it, but two or three years extra would certainly not be unreasonable.

Ellen Milner: We have seen difficulties from all the things that have happened around the new measures that Susan mentioned. Some of you may be aware that at the moment there are quite difficult conversations with HMRC on the compliance approach. We are absolutely sympathetic with HMRC acting on error and fraud, but in some cases businesses feel that there is not as much engagement with R&D taxpayers as you would expect in an inquiry. There are some issues there.

Equally, the volume approach to compliance should give them more data to inform this, but we need to see genuine R&D claims as a policy objective, which relies on certainty. Having a timetable and extending it to work out clearly in what direction R&D should go in the future will allow those questions to be answered.

There are still questions about some of the terminology. HMRC does not agree with the interpretation of things like subcontractors and subsidised R&D. We need time to work those things out, but, equally, we can take away that period of uncertainty when you do not know which scheme you will be in at the end of next year.

Again, we very much sympathise with the potential for SMEs to bounce between schemes. It all adds up to a playing field that is moving around all the time. That does not feel right when you are trying to get people to commit to invest, which is what this is trying to do.

Lord Rooker: I missed the second meeting, but how much money is possibly involved here in the R&D adjustments that are being made, if I can call them that? What is the estimate of what the taxpayer is losing because of what is happening with R&D taxation? Is there an estimate?

The Chair: Do you mean in respect of fraud or of the tax credit?

Lord Rooker: I mean people manipulating the R&D tax arrangements to pay less tax.

Ellen Milner: The amount for error and fraud was £1.13 billion in either 2020-21 or 2021-22. I think it was the earlier year. I do not have to hand the amount that goes into R&D generally. I have not seen any costing that works out what the uplift is. That is not to say there is not one, but I

am not aware of a costing that shows the uplift you would expect from R&D.

Richard Jones: Yes, it is difficult to quantify. One problem with HMRC's current approach is that genuine claims are being delayed or, in some cases, taxpayers are giving up because it is too onerous to claim. I do not have the figures to hand as to how much it is costing those companies, but that is a deterrent in that it reduces the incentive for them to invest in UK R&D, which has a benefit to the UK economy.

The Chair: We have some of those answers in our report from last time, which I will refer you to. Thank you for that.

Q8 **Lord Altrincham:** Following Lord Rooker's observation that this has been disorganised, what is your view on how the Government have approached consultation on these changes since the announcement made in the Autumn Statement last year?

Richard Jones: It has been very rushed. We would have appreciated more time to consider the minutiae and the difficulties that have come out. In looking at this new legislation, we have seen some really tricky technical points that need to be ironed out. That is probably the only thing I would say. It has been rushed.

Ellen Milner: For me, this feeds back to the uncertainty point. The more uncertainty there is around what the relief will look like, the more you will be putting off people investing. It does seem that, as you say, we have gone very quickly from consultation on the idea to draft legislation to that legislation coming in. There are outstanding questions that we need to answer to make the schemes function. At the moment, it is just as likely to add more uncertainty as it is to clarify the position.

Susan Cattell: There was no real consultation at all on the intensive SME scheme. The first thing that happened was that there was a government announcement. Then, there was nothing until the publication of the draft legislation. That very much could have benefited from consultation. We certainly have concerns that this 40% cliff edge threshold for qualifying as an intensive R&D SME could cause boundary pushing and people trying to cross that threshold. You might see more abuse coming from that.

It would have been really beneficial to have proper consultation at an earlier stage on the types of R&D you want to support and how. The 40% threshold is a very blunt instrument: "Have you done that amount of R&D?" This could be any R&D; it might not be the best R&D for generating economic growth, which is what the Government want to do.

It might have been sensible to have a proper consultation on the best way of incentivising the type of R&D that would promote the most economic growth. That might be a particular sector or a particular type of R&D. There was no opportunity to do any of that. That could be picked up in the future, if there was a desire to incorporate some form of additional relief into a merged scheme. That would certainly be our suggestion.

Ellen Milner: I would add that HMRC is willing to talk to us. It has been engaging with us throughout the process. We should not give the impression that it is not having conversations with us. We are involved in the consultation process. We should be really clear on that. It is more that we do not have the detail, and it has gone very quickly from one step to the next. That is more the problem than an inability to engage.

Q9 **The Chair:** There is just one last question, if I may slightly encroach into your time, on the discussion and dispute about subcontracted R&D and subsidised expenditure in respect of SME claims. We have had quite a few written submissions from people concerned with trying to regularise that, in particular from two companies, both of which might claim. Do you have any views on whether that can be resolved and how?

Richard Jones: The problem is that some people will win and some people will miss out from a change. The current proposal for subcontracted expenditure is to go towards the current SME scheme, so that the principal, the company that engages the subcontractor, claims the R&D. That is different from the current larger company scheme.

Given that we know that not everybody will win from this, it might be a good thing to step back and ask, "What is best for the economy? What is best for UK plc?" That might give us the answer. Failing that, I have had representations from members on both sides of the fence. It is difficult for us to come down on one side or the other, because we feel like we have to represent all our members.

Ellen Milner: We have discussed with HMRC the two options for the definition of an R&D subcontractor and whether the customer should notify who is getting the R&D relief. We are in a similar position. We think both systems have pros and cons. To some extent, if they do not sort this out, it would be a missed trick. The timetable of reform at the moment does not smooth it out. It does not remove the ambiguity and the disagreement on interpretation.

On the subcontractor point, it would be preferable if you could get it, because that would be simpler. The difficulty is defining it. If you end up with a notification system, which might be similar to something they have in Ireland at the moment, you potentially start to get wrapped up in contract negotiations. When somebody is employing a subcontractor to do some work, suddenly an R&D question needs to come into those negotiations.

If you are going to go down that route, that is an even stronger argument for a longer timetable. How you get that notification procedure sorted out needs to be really clear. It should not be underestimated how difficult it will be to get the information flow back up from the subcontractor or vice versa to enable that claim to be computed and made. There is complexity in both. There is no easy answer. We are in discussions.

Richard Jones: In an ideal world, I would go for the second option. As you say, there are practical steps to get over to make that work.

Susan Cattell: I agree with my colleagues that this is a really difficult area. People have views on both sides of the argument. We are concerned that at the moment the proposals in the draft legislation do not take account of the range of contractual arrangements that can be negotiated and the different consequences in terms of economic risk, the ownership of intellectual property and the direction of the R&D activities. We think that needs to be taken rather more into account.

The draft legislation takes the view that the contractor can claim in most cases. That was not what we suggested in our response to the consultation. Again, that illustrates that this would benefit from a much longer period of consultation and not being introduced in April 2024.

We need to have more discussion about what, as both of my colleagues have said, are complex issues, which need to be ironed out and explored further so that we do not bring in some kind of merged scheme that will cause enormous problems for the people trying to make claims under it.

The Chair: The Minister is on his feet, so we are about to adjourn for another Division. That neatly draws this part of the session to a close. Thank you very much indeed, all three of you, for coming in front of us and giving us some extremely helpful answers to our questions on quite a wide range of topics.

Examination of witnesses

Dr Emma Rawson and Andrew Harding.

Q10 **The Chair:** Welcome to the second half of today's hearings. We have, as witnesses in front of us, Dr Emma Rawson from the Association of Tax Technicians, and Mr Andrew Harding from CIMA. We will start, if we may, with the area relating to R&D, which CIMA, I believe, will answer. Mr Harding, given the importance of R&D to the UK, have the Government got R&D relief correct? Is it right to make these changes?

Andrew Harding: It is a good question. As a country, we have done well on this. We have led in the OECD, and this is a great opportunity to continue that and to get it right. When we look at it, we see the need to give special consideration to SMEs.

R&D usually starts to pay back after two years. For an SME, that is a long period of investment. They face higher costs of capital than larger businesses, and R&D tax relief enables them to de-risk that process. Business needs certainty. I do not know whether going forward with changes in April 2024 is right. That is probably too soon. Business will need at least 12 months' notice to get planning in place and to get things moving. There has been too much change in tax policy over recent years, which is disruptive.

- Q11 **Lord Stevenson of Balmacara:** Carrying on with that, more time might get us more certainty and a better result, but are we on the right track? Will merging these two things work and, if not, what is the alternative?

Andrew Harding: We are on the right track having one system. In that one system, we can make provisions for SMEs to enable them to take advantage of this, so this is the right track. Parts of it concern us. SMEs have limited resources. They need to use subcontractors. If that expenditure on subcontractors is disqualified or, indeed, if we start to put thresholds in place, again it will discourage investment from the largest creator of employment in the country.

For me, the biggest concern in this country at the moment is productivity. It has looked terrible for a decade or more. R&D helps us get through that and, with the majority of employment being in SMEs, we have to focus on getting that right.

- Q12 **Baroness Valentine:** What support do you think SMEs in particular need from HMRC to get ready for the new scheme?

Andrew Harding: They need very clear guidelines. It is as simple as that. The more complex the scheme is, the less likely people are to participate in it. Avoiding complexity will be key. Do not overengineer it.

- Q13 **Lord Roborough:** I should declare an interest—I did not speak on R&D before—as an investor in R&D-intensive SMEs in the UK.

Do you think that the proposed relief for R&D-intensive SMEs is actually needed and appropriately targeted, particularly in light of the 40% cliff edge? Does there need to be a separate SME scheme, or can it be captured in one scheme?

Andrew Harding: We could capture it in one scheme. We could make provisions for SMEs in that one scheme. I would prefer it to be one scheme; that keeps things much tighter. I suspect that you have an awful lot more expertise on it than I do, given your earlier comment.

- Q14 **Lord Palmer of Childs Hill:** Can we home in on intensive R&D? Is there a need for it? One of the things that worried me from evidence that we took a few months ago was that a business will have to decide, when it makes its claim, whether it is intensive R&D. If it gets it wrong, can you tell me what happens? How soon is it told that it might not get the relief that it thought that it was going to get?

Andrew Harding: I cannot give you an answer to that, except to say that this is why we need very clear guidance: so that these things are got right the first time.

Lord Palmer of Childs Hill: Will HMRC look at the intensive R&D claims when they are received, or will they look at them sometime later, after the money has been paid?

Andrew Harding: I do not have an answer to that. I am sorry.

The Chair: Generally, do you know how this 40% cut-off works? Is it

self-certifying? You do not know whether it is in the last year's or the current year's accounts.

Dr Emma Rawson: The 40% test will be based on the deductible expenditure for corporation tax purposes, so not using the accounts figures but the amount of expenditure you can deduct for tax purposes, and 40% of that has to be R&D spend. Companies will have to look year on year at whether they fall into that category.

The problem comes back to uncertainty, which was mentioned in the previous session. If you do not know until perhaps after the year-end whether you will fall into the R&D intensive category, it makes it very hard to plan for that. In our view, for R&D relief to act as an incentive to investment and innovation, it needs to be something that you can factor in and plan for, not something that is nice to have that you end up with at the end of the year. That is our concern about the R&D intensive regime: that in many cases it might not be clear until after year-end, even, whether you have met that hurdle.

The Chair: Can you answer Lord Palmer's other question about what happens in retrospect if you have not qualified?

Dr Emma Rawson: I do not think we have seen the detail, but if it is similar to the current regime for R&D claims, I would expect that you would self-certify whether you are R&D-intensive when you make your claim, and then it would be up to HMRC to inquire into that. It is entirely possible—HMRC may be able to say more accurately—for a claim to be paid out as R&D-intensive, and then HMRC looks at it, decides that it is not, for some reason, and claims that money back from the company.

Lord Palmer of Childs Hill: It will help the business a great deal to expand it in one way or another and then have the money clawed back.

The Chair: So you have to do a tax comp as you are going through your year to know what is qualifying expenditure and whether you are at the 40%, if you think that you are at the margin.

Dr Emma Rawson: Yes, because the 40% is based on the deductible expenditure for corporation tax purposes. Some companies may be looking at this on a rolling basis, but you will have to do a lot of work in-year, and have some knowledge of your tax computation and what your deductible expenditure will be in-year, to know whether you are at the 40%.

Q15 **Lord Rooker:** On the date of implementation, if April 2024 is too soon, what would be suitable? Is an extension required? If so, one year, two years or three years is what we have heard previously.

Andrew Harding: I would say 12 months from when the scheme is finalised. If it is finalised in April 2024, implementation is in April 2025. I think a year is minimum.

Dr Emma Rawson: I would agree. You not only need time for consultation and to make sure that the scheme works and delivers what we are expecting it to, but you need a lead-in time for businesses to be able to factor that into their decision-making, for systems to get ready and for software to be in place. There are quite a lot of moving parts.

Lord Rooker: So it is a minimum of a year.

Dr Emma Rawson: I would say so.

- Q16 **Lord Altrincham:** Dr Rawson, you have mentioned consultation, as has Mr Harding. What is your view on how the Government have approached consultation on these changes since the announcement made in the Autumn Statement last year?

Dr Emma Rawson: It has been rushed. We moved to consultation. We got draft legislation very shortly after the consultation closed, and there is a danger in that rush to get to April 2024 as a potential starting date. HMRC is running dialogue and it has consulted, but more time is needed, given the importance of the changes that we are talking about.

Lord Altrincham: In your estimation, have they heard the feedback, or has it been too fast to do that?

Dr Emma Rawson: I feel it has been too fast.

Andrew Harding: I would concur with Dr Rawson.

- Q17 **The Chair:** To finish off on R&D tax credits, there is some talk of a minimum threshold. Is that a good idea to reduce administration, or is there a danger of small companies being squeezed out?

Andrew Harding: It is a bad idea for SMEs. It would squeeze them out. It would disincentivise behaviour that the country needs to see.

Dr Emma Rawson: We are in agreement. We were not in favour of a minimum threshold. We can see why HMRC might want to go that route, because the concern is that a lot of the fraud, by numbers if not by cost, is in the lower claims. Our concern is that it risks sending the message that we value the R&D being done by the smallest companies less than that done by larger ones.

The Chair: We will move on to the subject of promoters. I gather that that is not core to CIMA. You are very welcome to stay, Mr Harding, but I gather that you have a timetable, so if you need to drop out, that is totally understood.

- Q18 **Lord Stevenson of Balmacara:** The focus in the new legislation is to try to add to where the Government are at the moment. I suspect, but there is also a feeling, that the line they are taking may not be quite as appropriate as it should be. What are your thoughts? Doubling the prison sentence is a headline thing. Will it have real effect? What about the people who are not promoters? The promoters are obviously the controlling mind, but lots of other people are involved. Are they doing

enough?

Dr Emma Rawson: We fully support efforts to stamp out the people who are still promoting tax avoidance schemes. There is no place for that in our society, or there should not be. One thing is that this needs to be looked at in the context of the wider issue of raising standards in the tax advice market. We seem to be making lots of small changes that target specific behaviours or groups. It is almost like a whack-a-mole situation where we are making little changes to attack certain behaviours without looking at the wider picture. We need to look at the regulation more widely.

We also have concerns about some of the safeguards, such as the criminal offence of failure to stop promoting. There, we are building criminal sanctions on to a civil base. The promotion of tax avoidance legislation is a civil matter, and we are now looking to escalate that to a criminal offence. Wherever you have a stricter criminal sanction, you need stronger safeguards, but we are not building any more safeguards into that. That is an area where we have concerns.

Q19 **Baroness Valentine:** Continuing on that theme, what additional safeguards would you like to see in moving from civil to criminal prosecution?

Dr Emma Rawson: At the moment, the concern is that a bit too much of the power sits with HMRC. In the worst-case scenario, in effect you could have a criminal sanction based on HMRC's say-so, because the issuing of the stop notice in the first place is in its power. We think there needs to be more consultation on what could be done, and, importantly, more transparency around the process for issuing stop notices. They need to be signed off by somebody at the very senior levels of HMRC or perhaps even taken to a tribunal to be issued, if we are going to have criminal sanctions off the back of them.

Q20 **Lord Roborough:** You have suggested that regulating tax advice generally could help to counteract activity by promoters. Could you explain how and what you have in mind, and perhaps reassure us that this would not be inflationary for tax advice costs?

Dr Emma Rawson: Arguably, some of the issues around the promotion and marketing of tax avoidance schemes would not arise at the same level if we had a regulated profession and, if they did, we could counter them more swiftly and effectively.

In terms of regulation, at the ATT we would prefer to build on the work that has been done by the professional bodies such as the ATT. We would not favour an external regulator. That would be expensive, costly and timely to set up. Instead, let us build on the good work that we do.

For example, our members are held to specific standards of ethics and conduct. We have special tax planning standards that tell them what they can and cannot do. They are also required to have insurance and undertake professional development on an ongoing basis. If they do not

do that, we can sanction them. The problem at the moment is that, anecdotally, some of the people peddling these schemes or providing poor advice are not members of professional bodies, so there is nothing we can do about that. Even if they are our members, the worst we can do is disqualify them from membership. We cannot stop them being tax agents or holding themselves out as tax agents.

In our view, if more firms providing tax advice had to be members of professional bodies or supervised by professional bodies, that would give us more teeth. We could do something about it, and they would have to be held to those standards.

Q21 Lord Palmer of Childs Hill: To go back to the last question, when a stop notice is applied and the business appeals against it, what happens if it is subsequently absolved from being guilty? Presumably, that particular part of the business has come to a halt and the business is then told that it should not have come to a halt. How does that hang together?

Dr Emma Rawson: If they stop promoting and that stop notice is appealed, they may be able to go back to promoting that scheme. The worrying thing here is that, if we are talking about criminal sanctions also being introduced, there is the possibility, as it stands under the draft legislation, of a criminal sanction against them if they failed to stop promoting but then had the stop notice overturned on appeal, because the actual criminal behaviour is failure to stop promoting, regardless of whether the stop notice was valid in the first place.

We would therefore also like to see a stay of proceedings when it comes to the criminal aspect, so that people are not given criminal sanctions until either they have run out of time to appeal or the appeal is decided one way or another.

Lord Palmer of Childs Hill: Are you saying that they could have a criminal sanction and not a civil sanction, and there would be a conflict between them being found criminally guilty but having been absolved from civil fault?

Dr Emma Rawson: At the moment, the legislation does not provide for criminal sanctions to be rescinded, as far as we can see. We cannot see a clear mechanism for the criminal sanction to be overturned if the stop notice is overturned on appeal.

Chair: That is very interesting. Thank you.

Q22 Lord Rooker: I just want to understand what we have just talked about. I am not certain about this, because I do not know what information colleagues have heard this afternoon, but I had a notice earlier today that the Treasury Committee had taken some evidence, in the last 24 hours, about the idea that you can win an appeal on a stop notice and still be criminally prosecuted. It sounds preposterous and cannot be fair justice, whichever way you look at it, and that seems to be creating an absolute nightmare.

What is the purpose of data protection? I am confused, because I have read the briefings, and there was a hint somewhere that it was something to do with checking on the minimum wage, et cetera. I know that years ago we had a wages inspectorate that did random checks, but this was passed to HMRC. With this data collection, rather than taxation, which is what you would expect it to be doing, is it policing another branch of government policy that other departments might be responsible for? Do you have an answer to that, Dr Rawson?

Dr Emma Rawson: We believe that HMRC has not made a very strong business case for much of the data that it is talking about collecting. National minimum wage compliance is probably one of the areas it is looking at, especially because one area where it is asking for more information is employee hours worked. Practically, I have a concern as to how valuable that might be. If you are an employer who is purposefully and egregiously not paying minimum wage, will you reliably be reporting that, or will you perhaps massage your figures? In practice, I am not convinced how much help it will be.

There is a wider issue here. We are not sure what the benefits will be. The policy paper shows no macroeconomic or financial benefits. There is talk of greater data sharing with government departments, but it is hard to get a hang on exactly why much of this is being requested. There is some concern that some of it is data for data's sake, because it would be nice to have, rather than having a specific use for it in mind.

Q23 Lord Altrincham: It does feel, from what we just heard, that HMRC is on a frolic of its own on this data issue. Could you comment on how onerous data collection about employee hours is likely to be, and how accurate the data is that is likely to be provided?

Dr Emma Rawson: It is very difficult to say at the moment, because what we have in the Finance Bill is enabling legislation that will allow HMRC to lay regulations detailing exactly what it is expecting to see reported, and we have not had sight of those regulations yet. At the moment, it is hard to say how onerous any of these requirements will be because we are not entirely sure what it is going to do.

Some of it will be difficult. For salaried employees, for example, at the moment we know that they work over 30 hours and we just tick that box on RTI submissions. If you are a salaried employee, your employer probably does not count how many hours' work you do on the weekend, if you take a bit home and do it here and there, or if you are working the odd bit of overtime. It will be quite difficult to gather and there are question marks about how valuable some of the data might be.

There will be costs to it too. HMRC has estimated one-off costs, but it has talked about negligible ongoing costs of the employee hours worked, which we assume is because it thinks that, once you have set up a system to collect it, it just goes in every year. However, there will be some manual intervention. If you outsource your payroll, you may have additional fees. There might be additional costs. Overall, the problem

with all this data collection is that we just do not have the details yet of what is needed.

Q24 The Chair: It has been mooted that individuals have to report dividends, and I for one could not understand why. With the Economic Crime and Corporate Transparency Bill, Companies House data will be tagged and it should be very easy to work out what dividends are paid to which shareholders. Do you understand why HMRC wants this information?

Dr Emma Rawson: There are a number of reasons why it might want it. It is particularly interested in dividends from owner-managed companies. It is interested in seeing what people are drawing out of their companies. There are aspects to do with off-payroll working and IR35. No clear case has been made for exactly what the data will be used for.

The dividends will not be too difficult to report. One of the things that HMRC is talking about asking for is percentage shareholdings, which is trickier, because that could change in-year and there could be different classes of shares, so that could confuse things. It comes back to the fact that we are not sure exactly what use it will be put to.

The Chair: Can you see the benefit for either HMRC or business of this idea of data collection? Can you see what is going on here?

Dr Emma Rawson: I can see some benefits to the information on owner-managed businesses if HMRC is looking what money people are drawing from their companies, whether they are taking salaries, whether they are taking dividends and things like that. Another point made was that, when we had the Covid relief schemes and did not do anything there for owner-managed business, people were drawing dividends from their companies. Could we have done that if we had had more data reliably? We could have.

I cannot see much benefit for businesses, to be honest. I can see cost to businesses of doing a lot of this, and I am doubtful as to whether there will be additional benefit.

The Chair: Thank you. Unless anyone has any other supplementaries, that is it. Thank you, Dr Rawson, for appearing in front of us. It is very much appreciated.