

Scottish Affairs Committee

Oral evidence: [Land Reform in Scotland](#), HC 274

Wednesday 21 January 2015

Ordered by the House of Commons to be published on 21 January 2015.

[Watch the evidence session](#)

Members present: Mr Ian Davidson (Chair); Mike Crockart; Graeme Morrice; Pamela Nash; Sir James Paice; Mr Alan Reid

Questions 1023 - 1274

Witnesses: **Mike Crabtree**, Specialist Personal Tax Directorate, **Adrian Cooper**, Specialist Personal Tax Directorate, and **Wayne Strangwood**, Corporation Tax, International and Stamps Directorate, HMRC, gave evidence.

Q1023 Chair: Gentlemen, welcome to this meeting of the Scottish Affairs Select Committee. As you are probably aware, we have been looking at the issue of land reform in Scotland. We have taken a particular interest in matters relating to taxation, as you would imagine, since that plays such an important part in various aspects of land costs, pricing, motivations and the like. Can I ask you to introduce yourselves and tell us where you are in the grand order of things inside HMRC?

Mike Crabtree: My name is Mike Crabtree. I am a deputy director in the Specialist Personal Tax Directorate in HMRC. My team has responsibility for inheritance tax and capital gains tax in this respect.

Adrian Cooper: My name is Adrian Cooper from Specialist Personal Tax. I work to Mike Crabtree and I lead the policy aspects on inheritance tax, trusts and capital gains tax.

Wayne Strangwood: I am Wayne Strangwood, Corporation Tax, International and Stamps. I am a policy and technical specialist on exchange of information. I previously worked on the funds team in HMRC.

Q1024 Chair: Good. That is a range of talent and abilities that should enable us to get all of our questions answered in full. I want to start off by asking about concerns raised by the NAO, and echoed by the Public Accounts Committee, that there was lack of information about the logic, behaviour and patterns relating to various tax reliefs and, in particular, those concerned with land. How do you respond to the issues that they raised?

Mike Crabtree: Our key response would be that we have the responsibility to administer taxes, to make sure they are delivered as cheaply as possible, that we target non-compliance and that we make it easy for those who are compliant to comply. We would argue that monitoring things like effectiveness and value for money is more a matter for the Treasury and for Ministers.

One of the points that the NAO made regarding agricultural property relief was the fact that the cost of the relief has increased quite a lot in recent years, but we were able to point out, and the NAO agreed this point, that the cost of the relief broadly reflected the increase in the price of land and buildings over that period, and was not evidence that the relief was being abused, for example.

Q1025 Chair: To clarify that, if you are not collecting information that could deal with the effectiveness or value for money of existing reliefs, how does anybody know whether or not they are having the desired effect?

Mike Crabtree: Again, I would say that is more an issue for Treasury in terms of looking at value for money. What we do is take a risk-based approach in terms of checking whether there is compliance and that it has been done properly.

Q1026 Chair: If tax reliefs are designed to achieve policy objectives, how can the efficacy of the policy be identified without clear and robust information about the costs and benefits of individual reliefs?

Mike Crabtree: Again, I would say that it really is a matter for Treasury and Treasury Ministers to decide on cost and benefits. I am not trying to be evasive.

Q1027 Chair: No. But presumably Treasury Ministers are fairly busy, so clearly they cannot do that themselves. Leaving aside the question of Treasury Ministers, are you saying that this is work that should be done by the Treasury and not by you?

Mike Crabtree: Yes. Our role is to administer the tax system as it is and the legislation as it is, to ensure that it is complied with, and is easy to comply with, and to catch crooks, for want of a better phrase. In terms of whether a particular policy is offering good value for money and is effective, occasionally HMRC will undertake specific research projects in certain areas. We are currently undertaking one on entrepreneurs' relief to see whether people are aware of it and if it impacts on behaviour and so on. They would tend to be specific one-off studies. There is not a cross-HMRC ongoing process across all reliefs to ensure effectiveness and value for money.

Q1028 Mike Crockart: I want to stay on that subject for a moment. You are prepared to do a one-off study on one relief to figure out exactly the sorts of things that you say are not your responsibility but are the Treasury's responsibility. Why would you do that?

Mike Crabtree: It would typically be a joint study with Treasury in that area. We have an input because we administer the tax system and have responsibility for knowing the

legislation inside out. We provide the guidance for external people who might be interested in, for example, families' relief. In part, it is whether the policy is working by what people outside know about a particular relief, and then that reflects on HMRC's various products—its guidance, leaflets, internet and so on. We have a vested interest in making sure that we can make people aware of things, just as much as Treasury want to know in terms of the cost whether it is value for money.

Q1029 Mike Crockart: I want to go back to one of the other things that you said—your responsibilities to administer the tax system and to catch the crooks. A major part of catching the crooks would presumably be to understand the ways in which reliefs are being used.

Mike Crabtree: Yes.

Q1030 Mike Crockart: That would be a major pointer towards a relief being abused.

Mike Crabtree: Yes.

Q1031 Mike Crockart: To be able to do that, surely you would need to know how many people are using that relief. Do you keep that sort of information?

Mike Crabtree: We have details of the numbers of people who use reliefs. We then adopt a risk-based approach. Essentially, as the returns come in they will be considered. Are there specific risk factors on a tax return that lead us to believe that there may be potential abuse? They will then go on to a work list, and individuals in the organisation teams will then work through that list to investigate more closely.

Q1032 Mike Crockart: Is there a process in place to flag up whether there are substantially more people using a relief than was expected?

Mike Crabtree: Yes; we have the data.

Q1033 Mike Crockart: You talked about a risk-based approach. How does that work? Do you look at each relief and figure out what the likelihood is of its being abused?

Mike Crabtree: Yes. Each relief would have its own risk rules. I would not really want to list them in public lest people start changing what they put on returns to try to get round that. Obviously there will be certain factors that cause it to be flagged. It may be one thing or it may be various factors in combination.

Q1034 Mike Crockart: How many reliefs do you have classified by risk?

Mike Crabtree: We have a lot of tax reliefs. It was the best part of 1,000, if I remember, when the Office of Tax Simplification started. I am not sure the numbers have reduced greatly since then.

Q1035 Mike Crockart: Then you are not going to know the answer to my next question. How many have been classified as high, medium and low risk?

Mike Crabtree: I do not know that, I am afraid.

Q1036 Mike Crockart: My question was going to be, what do you think are the key issues you need to address that were raised in the NAO's report "The effective management of tax reliefs"? From your evidence you seem to be suggesting that you do not accept the criticisms and do not need to address the suggestion that you perhaps need to look a little more closely at the effectiveness and aims of reliefs. You say you do not regard it as your role.

Mike Crabtree: I would not choose to go that far. All right, I said that typically it is for the Treasury to look at the effectiveness of a relief, but there is always a role for better monitoring wherever possible. We want to know as much as we can about our tax reliefs, but we have to balance what information is needed for us to administer the tax system effectively with what would be additional data that it might be a burden on people to provide.

Adrian Cooper: Probably a good example of that would be private residence relief for the disposal of a person's main home. There are about 2 million disposals a year of houses. The vast majority of those are covered by private residence relief because the vast majority of people have a single home. If we asked each and every one of those taxpayers to submit a tax return in order to claim that relief, it adds an additional burden to the taxpayer and it is information we do not need.

Q1037 Mike Crockart: My question related more to whether you are doing enough with the information that you do have rather than your need to get more information.

Adrian Cooper: Right. Where we have information, it feeds into our risk processes for compliance activity. Typically we get information from a range of sources, not just from the tax return, and that will give us a picture of the risk of a particular taxpayer and the risk around a particular claim for relief.

Q1038 Mike Crockart: I will move on to the 2010 report "Tax policy making: a new approach". In that, the Treasury committed itself to developing a framework for new reliefs to look at exactly these types of things—basically cost-benefit analysis of whether they are effective. Do you see any evidence that that has been introduced?

Mike Crabtree: Yes. That would be a normal part of the process of policy development as it is brought—before it is announced in the Budget or autumn statement. It would form part of the advice to Ministers.

Q1039 Mike Crockart: I am not sure that is the answer to what I was asking you, to be frank.

Mike Crabtree: Are you asking whether we regularly do post-implementation reviews two or three years down the line?

Q1040 Mike Crockart: It is looking at the effectiveness. If you introduce a new relief—let's use the example of the entrepreneur relief—and it is expected to be used a certain amount but you find it is used three times as much, who sits down and looks at that to say, "Is this a good use of public money? Is this changing behaviour in the way that it was meant to, or is it changing behaviour in some other strange and wonderful way that perhaps is being used for avoidance purposes?"

Mike Crabtree: I think it would essentially be a three-way process. Obviously the Treasury would have an interest. We would have an interest in our part of HMRC as the people responsible for administering that relief, and providing guidance and technical advice and keeping tabs on avoidance. We also have our team of analysts, statisticians and so on who are able to go out and look at external sources of statistics and so on, which might give further evidence as to what behaviours mean.

Q1041 Mike Crockart: So there is a process in place in which you are involved.

Mike Crabtree: Yes.

Q1042 Mike Crockart: How can the Government satisfy itself that there is a strong and proven case for new reliefs? How do we get to the point of establishing that a relief is being used in the way that it was intended and is not causing unintended consequences?

Mike Crabtree: I would assume that a significant amount of analysis will have been done before the policy is introduced, in terms of estimates of benefits and likely cost. That will feature in the Red Book. Inevitably there will be a period of bedding down. It is really a judgment call as to when is the appropriate time to start looking at that relief again to decide whether or not the value for money points are relevant. One obvious pointer is cost either way. If you expected a particular relief to be very popular and it does not seem to be claimed, that may set alarm bells ringing, just as would the cost of a relief which seems to have been claimed significantly more than you expected.

Q1043 Mike Crockart: But it is your contention that you collect enough information to make that judgment.

Mike Crabtree: Yes.

Q1044 Mike Crockart: That is certainly not what the NAO thought, is it?

Mike Crabtree: One of the NAO's criticisms was that the cost of some reliefs had increased considerably. We did have the data. As ever, it is a question of the extent to which it is appropriate, the right time or the best use of our resources, to look at those particular reliefs.

Q1045 Mike Crockart: One of the things that NAO stated was: "HMRC told us it publishes projections using the most recent data to provide timely information. In some cases the time lag in collecting and processing tax returns means that the year in question no longer features in its published table, so final costs are never published." That does not fit with your doing the process with Treasury, looking at the cost-benefit analysis and making a joint decision.

Mike Crabtree: I would say that that process may not happen on every occasion, but on all the main reliefs we publish national statistics, which year on year show the cost to the Exchequer of those reliefs.

Q1046 Chair: I want to follow up the point that Mike was making. You mentioned that for a new relief there was a process of analysis beforehand, a bedding-down period and then you would look at it. The agricultural property relief scheme is 70 years old. I appreciate that it was analysed before it was introduced. Presumably by now it has had a fair period to bed down. I want to clarify whether or not there has been any ongoing look at the consequences thereof.

Mike Crabtree: For agricultural property relief, we start from the position that every return is looked at, because inheritance tax is still delivered on paper returns. Human beings are looking at it, inputting the data and making a first judgment call as to whether it is appropriate.

Q1047 Chair: A judgment call to check whether or not it is appropriate. You are actually continuing on an ongoing basis to evaluate agricultural property relief to see whether or not it is achieving the objectives.

Mike Crabtree: No. When I said "appropriate", it is more about whether there is any risk that it is an incorrect claim or a too significant claim—a claim that is not appropriate. Is there a risk of avoidance—

Q1048 Chair: That is for cheating and things like that; I understand that. In terms of achieving the objectives of agricultural property relief, which has been there for at least 70 years or so, at what stage was it evaluated to see if it was meeting the policy objectives?

Mike Crabtree: It is something that we return to regularly and discuss with Treasury partners.

Q1049 Chair: When was the last time you did that?

Mike Crabtree: Certainly in the last year. We are not talking about formal evaluation, but we regularly discuss—

Q1050 Chair: If you are not discussing the formal evaluation, what sort of evaluation are you discussing?

Mike Crabtree: We are discussing what data we have in terms of the size of claims, the number of claims, the cost of relief, are we seeing any avoidance activity and so on. That is not a value for money evaluation.

Q1051 Chair: I think Mike covered the point and I thought that you were responding to him in relation to new reliefs. After a period, once it had time to bed down, I thought you said you would be assessing whether or not it was changing behaviour and achieving the objectives that had been set for it. What I am asking you is, in relation to agricultural property relief, which presumably took a while to bed down, when was it last evaluated in terms of meeting its policy objectives and whether or not it had any effects upon behaviour?

Mike Crabtree: In terms of a formal evaluation, I would not know.

Q1052 Chair: You personally would not know, or you the Department? In a sense, because we cannot bring everybody from HMRC here, we always assume that whoever is here is speaking on behalf of the Department. You are saying that the Department does not know.

Mike Crabtree: No; I am saying I should be able to find the information for you.

Q1053 Chair: How long have you been with HMRC?

Mike Crabtree: I have been with HMRC for 25 years.

Q1054 Chair: Is it reasonable to assume that this has not been looked at for at least 25 years?

Mike Crabtree: That I could not say. I am happy to find you the information.

Q1055 Chair: Are either of the other two of you aware of the last time this was evaluated, if ever, for achieving its policy objectives?

Adrian Cooper: No. I am certainly not aware of a formal review. As Mike says, we regularly keep all of our reliefs under review. With our Treasury policy partners, we regularly discuss the merits of the relief and whether we think it is achieving what it is intended to do.

It is worth considering in relation to agricultural property relief that its primary function is to stop family businesses being broken up in order to pay an inheritance tax bill on death. Part of me says that we do not see lots of family businesses having to be broken up for that reason, so there is a degree to which you can draw a conclusion that the relief is effective.

Q1056 Chair: Do you have figures?

Adrian Cooper: Figures in terms of?

Q1057 Chair: Family farms not being broken up.

Adrian Cooper: We do not keep formal statistics on that, no.

Q1058 Chair: How do you know it is effective?

Adrian Cooper: Because we review all of the APR and BPR claims, we would start to see whether there were issues in terms of family businesses having to be broken up in order to pay—

Q1059 Chair: If somebody is paying their tax, how do you know whether or not it has been paid as a result of the farm being broken up or not? Presumably you just see the money coming in. Would you pick up how that money had been provided and whether or not it was by selling property, a bit of the farm or the whole farm?

Adrian Cooper: We probably would not, no—not in terms of seeing the disposal of the farm.

Q1060 Chair: You don't know whether it has resulted in the break-up of family farms, because you are not measuring that.

Adrian Cooper: We may well pick that up from the capital gains tax returns, of course, rather than the inheritance tax returns.

Q1061 Chair: Do you cross-check them?

Adrian Cooper: We do some cross-checking. Our main compliance system, Connect, brings data together from a range of different sources to give a much more complete picture of a taxpayer than we had in the past.

Q1062 Chair: If you are saying to me that to ensure that family farms are not being broken up you have a cross-checking mechanism of capital gains, you should be able to produce figures for that.

Adrian Cooper: It is not a system on which we would keep statistics.

Q1063 Chair: How do you know it is happening? I am a bit confused. If HMRC does not keep statistics on something, how do you know it is happening?

Adrian Cooper: The informal networks between teams would feed that back. Compliance teams across the Department talk to each other. We would start to see if there was an issue with those kinds of businesses being sold to fund a tax liability. In a sense, because most of those businesses will get tax relief, there is no reason why they should have to be broken up for that reason.

Mike Crabtree: If they were being broken up I suspect that you would be hearing about it, and we would be hearing about it, directly from the people involved. They would be saying to us, "This relief isn't working."

Q1064 Chair: In your understanding, the only argument in favour of agricultural tax relief is to stop family farms being broken up.

Mike Crabtree: We would also say it was to promote investment in farms.

Q1065 Chair: How many of the farms affected by agricultural property relief are family farms? Everybody who owns a farm is presumably part of a family, but that is not quite the same thing as a family farm, is it?

Adrian Cooper: No. We would not have statistics on that.

Q1066 Chair: But earlier you told me that in your view there is no evidence that family farms are being broken up as a result of agricultural property relief. What you mean is that no farms have been broken up as a result of agricultural property relief, so agricultural property relief is resulting in every unit of land being retained by the owner, which is wider than the question of retaining family farms, isn't it?

Adrian Cooper: Yes.

Q1067 Chair: So the potential for abuse by individuals is quite considerable.

Mike Crabtree: In what way do you mean abuse?

Q1068 Chair: In the sense of achieving an objective that is not, as it were, your objective, which is to retain family farms. Individuals such as Russian oligarchs for example, to name but one group, could quite easily be buying land. If they get agricultural property relief, they do not need to sell it, and therefore you would have that down as a success because a family farm had not been sold.

Mike Crabtree: That was why I said there was the rationale of straightforward investment in farms. Agricultural property relief will only be given if it is a working farm. In addition, if the farm is owned by your Russian oligarch who does no actual farming work, they have to own it for seven years prior to death. If they are working the farm themselves it is two years prior to death, but it has to be a working farm.

Sir James Paice: I want to make the point, Chair, that despite umpteen efforts over the years nobody has ever made a definition of a family farm. That is just a point of information. For years, agricultural policies and Departments have tried to define it, but it is just not possible. Effectively, it is any farm.

Q1069 Chair: Do you accept that assessment? It is a bit like the working families that everybody pays lip service to, isn't it? Basically it means anybody.

Mike Crabtree: Yes.

Chair: Okay. That's helpful.

Mike Crabtree: The property has to be owner occupied or let, but it must be a working farm.

Q1070 Pamela Nash: Is there a definition of a working farm?

Mike Crabtree: There is.

Q1071 Pamela Nash: I am growing a few pepper plants in my kitchen. I do not know if that constitutes a working farm for tax relief, or if there is a minimum amount of work.

Mike Crabtree: It has to be genuinely capable of making a profit.

Mike Crockart: I will buy your peppers.

Chair: Sales of peppers; right.

Q1072 Pamela Nash: To be honest, what I am interested in is whether a definition exists. Is it written down? Is it something that could be forwarded to the Committee?

Mike Crabtree: Yes; we have the definition.

Q1073 Pamela Nash: I was concerned about whether there was a definition rather than what it might be. Mr Cooper, I was concerned by some of your answers to the Chair earlier. You said that a measure of success by HMRC on tax relief would just be how effective it was in meeting the objective. I did not get a sense from your answer that it would also look at unintended consequences. Can you reassure me that that is the case, and that unintended consequences are looked at?

Adrian Cooper: We would certainly look at the policy in the round. When we have conversations with our Treasury policy partners we look at the relief as a whole, so yes.

Q1074 Chair: Have you identified any unintended policy consequences that flow from agricultural property relief?

Mike Crabtree: No, none that I can think of.

Chair: We will come on to that later on.

Q1075 Pamela Nash: I have a table in front of me from the National Audit Office, from research that they were doing on HMRC's work on various tax reliefs. Following on from some of the Chair's points, there seem to be huge blank spaces in terms of the work that HMRC are doing. For instance, they do not hold data for risks of abuse for many different tax reliefs, or indeed the cost of a tax relief in terms of a forecast, not past figures, and that includes what we are specifically looking at today—agricultural property relief. There is no forecast for future years. Why is that the case? I find it strange that that is not something prioritised within the Department.

Mike Crabtree: Typically, forecasts for future years are put down when you are looking at introducing a new relief. You would have the Red Book costs going forward a number of years. For existing reliefs there is less need for that. Because you have all the information coming in, you can monitor it on a year-by-year basis and then consider whether there are any specific issues that arise from that. We know the number of claimants of agricultural property relief. We know the annual cost. As I said, we are looking at all the returns as they come in. We have people looking at compliance and technical issues. Effectively, that is the monitoring.

Q1076 Pamela Nash: This information is from a table looking at the cost of it so far—I am sure you are familiar with these figures—from 1999 until financial year 2012-3. The trend in the cost is upwards; indeed, it shows that the cost of that relief was three times as much. It tripled over that period. Is that something that was forecast at the time? It is not a very definite trend. I do not understand why, going forward, what that cost will be has not been looked at.

Mike Crabtree: Is that for entrepreneurs' relief?

Q1077 Pamela Nash: No; it is for agricultural property relief.

Q1078 Chair: We are working from figure 10 on page 27 of the NAO report on tax relief. It shows that the cost of relief trebled and the level of inheritance revenue went up by 10%. I am sorry, it is the April report.

Mike Crabtree: I don't have that one.

Chair: We never travel without it.

Q1079 Pamela Nash: Is that a figure that you recognise—that the cost of that relief has gone up by a huge amount and tripled over the last 13 years? Is that normal? I am still not clear as to why that would not be forecast, going forward.

Mike Crabtree: That sounds familiar, but when we looked at the figures it appeared to us that the cost of the relief was predominantly increasing in line with property and land values. There was no great evidence that a greater number of people were claiming the relief.

Q1080 Chair: You said there that there was no evidence that a greater number of people were claiming the relief. Do you have those figures?

Mike Crabtree: Yes.

Q1081 Chair: You know how many people claimed.

Mike Crabtree: Each year, yes. For example, in 2007-08 it was 2,098. In 2011-12 it was 2,001. It fluctuates, but there is no—

Q1082 Pamela Nash: I appreciate that that is a plausible explanation, but I do not understand why inheritance tax revenue has remained largely the same. That only went up 10%, yet specifically when we look at agricultural property it went up 300%. Would not inheritance tax revenue also go up in tandem if property prices are rising, or is there another area where that has dropped significantly?

Adrian Cooper: Inheritance tax receipts go up and down, predominantly because of asset values. Successive Governments have made changes to the nil rate band—the point at which people start to pay inheritance tax—and that has a fairly major impact on a number of people and the revenues from IHT. The nil rate band has been frozen for a number of years, which has led to somewhat of an increase in inheritance tax in recent years, but at the same time, because of the economic downturn, asset values have gone down. There is no one factor at play.

Sir James Paice: Is it not the case that this chart shows the overall inheritance tax yield? It is not from farming.

Pamela Nash: I am glad you said that. That is why I asked whether there was another area within inheritance tax that had dropped so much. I understand that this incorporates a lot more than just the movement in the inheritance of property, but it seems such a huge number if agricultural property relief is costing that. The cost is up by more than 300%, so why are we not seeing an increase in revenues from inheritance tax if it is just due to property prices? Those properties that are not due this relief will also have experienced that value increase. Has any work been done on this? Is it something that has been discussed in your team? If there is a reason why I am barking up the wrong tree here, please correct me. I am happy to be corrected.

Q1083 Sir James Paice: Can we turn it round? Is the conclusion from this that effectively agricultural land is not paying any inheritance tax? Despite the massive increase in the value of agricultural land, which has happened, virtually all agricultural land is exempt from IHT through the relief and therefore—

Mike Crabtree: Provided it meets the qualifying conditions.

Q1084 Sir James Paice: But the conclusion would be that most of it is meeting those conditions, which is why the increase in the value of the land has not had any impact on total yield of inheritance tax. It is basically outside inheritance tax. Is that reasonable?

Adrian Cooper: Yes.

Q1085 Pamela Nash: Going back to where I started, would that therefore not be an unintended consequence of the original policy unless all the agricultural land that we are talking about here is working family-run farms?

Mike Crabtree: Sorry. How do you mean unintended consequence?

Q1086 Pamela Nash: Unless you are saying to me that all of the land and all of the property in the estates that are benefiting from this relief are family-run farms or working farms, why is it not having an impact? Why is the increase in value of these properties not having an impact on inheritance tax? The logical answer, as Sir Jim just said, is that they are all benefiting from this relief.

Adrian Cooper: Yes.

Q1087 Pamela Nash: All agricultural property that has been passed down.

Mike Crabtree: All I can say is all agricultural property that qualifies.

Q1088 Sir James Paice: Do you know how much agricultural property? Are we wrong to make the assumption, as I did just now, that effectively all agricultural property qualifies? Do we know what proportion of agricultural land qualifies and what does not?

Mike Crabtree: No; I do not have those numbers.

Q1089 Pamela Nash: Is it possible, therefore, that the qualification criteria are set too wide?

Mike Crabtree: That is going into a policy area really. That would be a Treasury question.

Q1090 Pamela Nash: It may be a political question, but it would also look at the specifics of—to return to what I was saying earlier—the definition of a farm or agricultural land that would benefit from this and what the aim was. If the criteria mean there is a much wider range of people benefiting from this than was the political aim in the first place, I would suggest that that is also a matter for you.

Mike Crabtree: I think that is probably the case. This relief was introduced in 1925, and I suspect that in those days most of those businesses were passed from family to family. Companies will grow and be taken over quickly or they will grow and die, as unfortunately happens with a lot of small businesses. That is what I was trying to say—

Q1091 Pamela Nash: Has there been any significant change in this regulation since 1925?

Mike Crabtree: Not significant. As I said, the original policy intent was clearly for the family farm, although it is not written anywhere in the legislation that it has to be a family farm. The policy also has to take account of people investing in farms and still being able to claim the relief. It is the balance of the two.

Q1092 Pamela Nash: On the point I was raising about the lack of forecasting, I appreciate you said that it is not seen as necessary when it has already been established for a while. Is that down to management of resources within HMRC? If there were more manpower and resources to spend time on this, would it be a useful tool and do you think that is something that should be carried out within HMRC?

Mike Crabtree: I would always be grateful for more manpower and resources.

Q1093 Pamela Nash: I am sure you would, but would they be utilised in this way?

Mike Crabtree: It is a question of what the benefit is of forecasting into the future for a long-settled policy. I can see good reasons for interrogating the information as it comes in on the returns, so that on a year-by-year basis you can look at trends. If things look out of kilter or something looks like it is costing too much or too little, you start thinking, “Is this meeting its right policy intent?” In terms of forecasting forwards, I am not sure exactly where that would take you.

Q1094 Pamela Nash: Surely the Chancellor, when forming his Budget, has to have accurate forecasts for the income from tax and the cost of tax reliefs? Is that done elsewhere?

Mike Crabtree: Yes. That is done automatically each year for the Budget and the autumn statement.

Q1095 Pamela Nash: How far in advance is that?

Mike Crabtree: That is normally three or four years.

Q1096 Chair: So you are able to tell us what you expect to be the take for inheritance tax for the next three or four years and the predicted cost of agricultural relief.

Mike Crabtree: I do not know if it would go down to so small and tight an issue—something as specific as agricultural property relief. It is more likely that an aggregate of various taxes and reliefs will be going into the forecast.

Q1097 Pamela Nash: I do not understand how it could be calculated without looking at that. It might not be published at that level, but surely there must be someone who has calculated what the forecast is for these particular tax reliefs to feed into that wider forecast.

Mike Crabtree: I am not an expert on forecasting. Would it be helpful if I came back to you with an explanation on how that is worked out?

Pamela Nash: I think so, or indeed if there was someone else you could suggest who had that area of expertise.

Chair: You are here. It would be best if you either do it yourself or get somebody to do it, rather than us hunting for somebody else. That would probably be best.

Q1098 Mike Crockart: Before we leave APR, when you were pressed on what the policy aims for agricultural property relief were, you stated that they were to support continuity of family farms but also to promote investment in farms.

Mike Crabtree: Yes.

Q1099 Mike Crockart: Is that written down somewhere? Can you give us the thing that says that was the ongoing aim of agricultural property relief?

Mike Crabtree: I imagine the 1925 *Hansard* may be of some help.

Q1100 Mike Crockart: But you said there is an ongoing review process that looks at these things.

Adrian Cooper: All you can really say is what the rationale was as understood by the Government at the time. Clearly successive Governments have come in during that time, and parties of different political persuasions will have a slightly different view.

Q1101 Mike Crockart: Is there evidence you can give us that shows that one of the aims of agricultural property relief is to promote investment in agricultural property?

Mike Crabtree: One point would be that there is no requirement that it is a family farm that is passed on to family members. Therefore the legislation itself—

Q1102 Mike Crockart: That is not what I am asking.

Mike Crabtree: But the legislation permits it to be held as an investment.

Q1103 Mike Crockart: You said one of the policy aims is to promote investment in agricultural property. Can you back that up?

Mike Crabtree: In terms of evidence that it has happened?

Q1104 Mike Crockart: That it is the policy aim that is being supported.

Adrian Cooper: I think we would have to look back through *Hansard* papers. The legislation explicitly permits—

Q1105 Mike Crockart: I am not talking about what has been said in *Hansard*. I am talking about what you have said you do as a review of reliefs. That is not going to be in *Hansard*. I take it that *Hansard* do not attend your meetings in HMRC.

Adrian Cooper: Sorry; you mean when we have those discussions, do we consider it in those terms?

Mike Crockart: Yes.

Adrian Cooper: Yes, we do.

Q1106 Mike Crockart: And you will be able to give us evidence of that. My problem is that, if that is the aim, it has been spectacularly successful and is ultimately the reason why it has trebled. If your aim is to promote investment, you have promoted investment to such a level that it has inflated the property.

Adrian Cooper: We would say there that tenancy farming arrangements have been around a long time. This is not a market that we generated; it is something that pre-exists.

Q1107 Mike Crockart: I am not talking about generating it; I am talking about distorting it.

Adrian Cooper: But in order to get agricultural property relief, it has to be a working farm. Either the person who owns the land has to be working the farm as a farm themselves or it has to be worked by another person through a tenancy arrangement.

Sir James Paice: The vast majority are working for themselves now. The proportion of tenancies has fallen dramatically since 1925. In those days, it was way over 50% and now it is 25% or 30% or something like that.

Q1108 Mike Crockart: If you can, could you give us something that would show that your understanding was that the policy aim was to promote investment and that that is what has happened?

Adrian Cooper: Yes.

Q1109 Chair: I want to clarify this point about investment. It is entirely possible, is it not, to have people investing in farms which they then let just to bring in an income, but they are really reliant upon the capital value of the land rising in order to make their money; they are looking to safeguard their family's future by putting it into an asset that will rise faster than inflation. Therefore, the encouraging of investment is simply a means of avoiding inheritance tax rather than having anything to do with keeping farming going.

Mike Crabtree: We would argue it is not avoidance because the legislation permits it. Certainly it is a relief that will reduce your inheritance tax bill.

Q1110 Chair: But it is not the intention of the legislator. It is almost aggressive tax avoidance, isn't it, because somebody is constructing their financial affairs in order to minimise their tax bill artificially. They are putting their money into land rather than, say, into gold, on the basis that capital values will rise faster and they will not be taxed on it when they die so they will be able to pass it to their families. They are working the farm but they are not dependent upon the income from the farm for their income; that is a by-product. The real objective of the investment is to safeguard their capital. That is surely a distortion of the market, and behaviour you seem to be entirely happy with.

Mike Crabtree: This relief has been around since 1925. Successive Governments have been happy with it. Ministers have been happy with it. It is clearly part of the legislation that this can happen—that an individual can invest without having to actively run the farm. It does ensure that the farming business continues, because they will only get the relief as long as a farming business is ongoing.

Q1111 Chair: You are repeating back to us what I said, in a sense.

Mike Crabtree: Yes, but I am not calling it aggressive tax planning.

Chair: “Treasury Ministers” and “happy” are not phrases that naturally go together, but I understand the point that you are making.

Q1112 Graeme Morrice: I want to touch on the land market. One of the criticisms that we have had as part of our inquiry is that a number of reliefs—for example, agricultural property relief and capital gains tax relief on principal residences—simply inflate the capital value of land and property. It is claimed that this leads to higher costs for purchasers, increased levels of private debt and a speculative element in the land market. Do you agree with that? Do tax reliefs available under the current system inflate the capital value of land? If so, does this add a speculative element to the land market?

Adrian Cooper: We would argue that we have seen no evidence within HMRC that the reliefs create speculative bubbles. You mentioned capital gains tax and private residence relief exemption. You may well be aware that the Government are bringing forward rules in the next Finance Bill which will extend capital gains tax to residential properties disposed of by non-residents. That is a way in which the Government are trying to even the market on property. Clearly if that non-resident uses the property as a main residence, they will be able to get private residence relief on that property. If they do not use it as a main residence, they will pay capital gains tax on the full value of the gain arising after 6 April 2015.

Q1113 Graeme Morrice: Does anyone else want to answer that?

Mike Crabtree: I could not give you a measure of how much tax reliefs impact on property values. I am sure there is an impact, but it is in the mix with so many other factors that will affect land and property prices that it might be difficult to isolate.

Q1114 Sir James Paice: Do you see whether that is happening as an issue for HMRC, or is it outside HMRC's concerns?

Mike Crabtree: I would say it was outside our concerns. Our concerns are to ensure that the tax administration is effectively delivered.

Q1115 Chair: As for the allegation that agricultural property relief drives up land prices, unless I am mistaken you are saying that (a) you don't know and (b) you don't care. Is that a fair assessment of the position?

Mike Crabtree: I suspect it is in some respects.

Q1116 Chair: Whose responsibility would it be to check if it is, and who should care? Is that just back to the Treasury again?

Mike Crabtree: I think that is back to Treasury because they would have to change the policy if they felt it was having those distortionary effects.

Q1117 Chair: Is it likely that if we had somebody from the Treasury they would say they were dependent on you for information about that? On this argument about land prices being forced up, it seems that apart from yourselves there is consensus that that is the case. People have varied about the evidence they have been able to provide to us.

Mike Crabtree: I am not arguing that it is not.

Q1118 Chair: If it is not you that collects that evidence, or makes that case or identifies that position, who is it? Should the Treasury do that themselves, or is there somebody else?

Mike Crabtree: Typically it would be the Treasury who would go to our HMRC statisticians and commission the work, because it is new work that may be about changing policy. They will say, “Can you give us some evidence that land prices go up x, but land prices subject to agricultural property relief are that much higher?”

Q1119 Chair: There is almost no agricultural land that is not subject to agricultural property relief though, so you do not have anything to compare it with, do you?

Mike Crabtree: There may be some that does not, but other land—

Q1120 Chair: I can see the methodological difficulties. You are not necessarily comparing like with like.

Mike Crabtree: Hobby farmers or something.

Chair: Even hobby farmers would qualify for agricultural property relief. If you have different hobbies you don’t get tax relief, but if you are a hobby farmer you do, which seems a trifle unfair. Leaving that aside, maybe you could reflect on that and tell us whether there is any possibility.

Q1121 Graeme Morrice: You seem to suggest that it may happen. You said earlier that you did not necessarily have any evidence for that, but we have evidence and we certainly take the view that that is the case. You are also saying that it is really nothing to do with you. Is it therefore a failure of policy in relation to this whole area? Is it just that the policy is wrong?

Mike Crabtree: We would like to see the evidence that you have in terms of the impact on property prices and land prices, and share that with Treasury. As I said, it is then their decision as to whether the policy needs to be reviewed.

Q1122 Graeme Morrice: It would seem to me that where public funds are being used there appears to be a direct contradiction; you are giving people money to buy property and you are also providing tax relief.

Mike Crabtree: How do you mean “giving people money to buy property”?

Q1123 Graeme Morrice: The Government are giving money to communities to buy land.

Mike Crabtree: I think that is beyond the scope of my tax knowledge.

Graeme Morrice: It is through tax breaks.

Q1124 Chair: The Scottish Government have been providing funding to various groups in Scotland to try to buy land, so that is public money. The view we have had is that your policy

is driving up the price of that land. It would appear on the face of it that those are two Government policies in contradiction with each other. It is alleged that the policy you are implementing affects the price that groups have to pay for the land. Does that not seem to be a policy failure? Should there not be somebody in the system who spots that or, if it is drawn to their attention, looks at that and says, "Look, we have here two Government policies operating in diametrically opposed directions"? It may be that you decide to go ahead with it and I can understand that. However, we would at least want to be reassured that somebody is aware of this.

Adrian Cooper: I would question, if there is a policy failing, whether it is a policy failing of the HMRC or of Treasury in relation to a policy that has existed since 1925; or whether it is a factor that the Scottish Government should have been looking at when introducing their own policy. This is just one of those things that happen as a result of devolution and having a Scottish Government which have responsibilities outside the remit of Westminster.

Chair: Fine. I understand that.

Q1125 Mr Reid: Could you please explain why the Valuation Office Agency stopped collecting and publishing land price indices?

Adrian Cooper: You would have to direct that question to the VOA. I do not think we would have an answer to that.

Q1126 Chair: It is an executive agency of yours though, isn't it?

Adrian Cooper: Yes, it is.

Q1127 Chair: Presumably you tell them what to do.

Mike Crabtree: As much as any executive agency, yes.

Q1128 Chair: Collecting statistics of what they do would seem to be a pretty major decision that would at least have to be run past you. For them to abandon that was presumably a decision taken with your authority.

Mike Crabtree: I presume that is the case, yes.

Q1129 Chair: Why did you agree it?

Mike Crabtree: I do not know.

Q1130 Chair: Fair enough, but you are here, you see, so it is reasonable to ask you. Mr Strangwood is getting away very easily. He has not put a foot wrong so far.

Wayne Strangwood: That was my plan.

Q1131 Mr Reid: Are you aware if the policy is under reconsideration?

Mike Crabtree: Again, I am not aware.

Q1132 Mr Reid: Are you aware if there have been any adverse or positive effects on the land market as a result of that decision?

Mike Crabtree: I am afraid I am not aware. It sounds like we're pleading the fifth.

Q1133 Chair: That's fair enough. I do not expect you necessarily to have read through all of our previous minutes, reports and so on, but I would have thought somebody in your Department would at least have gone back and checked what we have been looking at in the past and briefed you about what we might ask you. We spent a fair chunk of a previous session on exactly this subject. I do not know if it is Mr Strangwood who has responsibility for briefing you on these matters.

Wayne Strangwood: No.

Q1134 Chair: Somebody somewhere should have, so maybe you could come back to us about all of that, and the reasoning behind that. We had a panel, all of whom told us that they thought this was a bad move and they very much regretted it, and so on and so forth. Maybe you could clarify that for us, and also why you were not briefed on this beforehand.

Mike Crabtree: We thought the areas you were going to focus on were those referred to in your letter and the ones that we discussed at our previous informal meeting. I am not using that as an excuse. That is just where our focus was.

Chair: A fair number of people who come to see us actually check other issues we have been looking at that might impinge upon their responsibilities.

Q1135 Mr Reid: Can you explain how the conditional exemption scheme works?

Mike Crabtree: Conditional exemption is there, effectively, to preserve and protect the UK's heritage assets for the benefit of the public and to stop estates having to sell them to pay inheritance tax bills.

Q1136 Mr Reid: That is the purpose of it. How does it work in practice?

Mike Crabtree: The qualifying assets have to have some pre-eminence. They have to be works of art of national, scientific, historic or artistic interest, buildings of outstanding historical or architectural interest or land of outstanding natural beauty. What happens is that the owner will enter into a binding undertaking with HMRC to maintain and preserve the asset; to make it available for public viewing; and to keep it in the UK. Then they have to submit annual returns confirming that that is still the case.

Q1137 Mr Reid: How is the tax relief that they get calculated?

Mike Crabtree: The asset comes out of inheritance tax.

Q1138 Sir James Paice: It is exempt.

Adrian Cooper: It is conditionally exempt.

Q1139 Sir James Paice: It is a conditional relief.

Adrian Cooper: Yes.

Mike Crabtree: But if they fail to maintain the asset or make it available for public viewing to such an extent that we consider that conditional exemption should be removed, because people are not genuinely getting access or they have not kept it in a fit state of repair, inheritance tax becomes immediately payable.

Q1140 Mr Reid: Is the person making the asset available somebody who is still living, and then there is inheritance tax relief on their death; or is it the person who has inherited it?

Mike Crabtree: It is the person who has inherited it.

Q1141 Mr Reid: What annual reporting is published on the exemptions in this scheme?

Mike Crabtree: The annual reports are not published. They are confidential between HMRC and the owner of the asset. The report comes in and we risk-assess it. Historic Scotland also has a rolling programme of visiting these premises to make sure that they are still genuinely open for access and so on, and that the things have been kept in a fit state of repair.

Q1142 Mr Reid: What is the justification for not publishing it?

Mike Crabtree: Because it is taxpayer confidential information.

Q1143 Mr Reid: But the public obviously view the assets, so the asset is not a secret. Effectively, the taxpayer is paying money for that asset to be publicly available, so why should the amount not be known to the public?

Mike Crabtree: We obviously have a public register of all the conditionally exempt assets. It is viewed as taxpayer confidentiality in terms of some of the details.

Adrian Cooper: The fact that a member of the public knows what the asset is and is able to visit it does not automatically mean they know who owns that asset. It is that step of taxpayer confidentiality that we are looking to protect by not publishing the reports.

Q1144 Mr Reid: The individual beneficiary is not published. But why couldn't the amount be published even if the individual beneficiary was not published, so that the public know how much the asset is costing the taxpayer?

Mike Crabtree: Because that would currently fall within our definition of taxpayer confidentiality.

Q1145 Mr Reid: Even if the taxpayer themselves were confidential and we were just asking for the amount.

Mike Crabtree: But that would be part of someone's inheritance tax bill, and for that reason it would be considered taxpayer confidential.

Q1146 Mr Reid: Where would that decision be taken? Is it yourselves or Treasury?

Adrian Cooper: Taxpayer confidentiality is a fundamental principle of the legislation which binds HMRC in the Commissioners for Revenue and Customs Act, but it goes back a lot further than that.

Q1147 Mr Reid: You are saying that it is the law and you have no discretion.

Adrian Cooper: Absolutely. We have no discretion. There is a strict duty of confidentiality. It is backed up by criminal sanction for HMRC staff for wrongful disclosure. It is a serious matter.

Q1148 Mr Reid: Do you publish the annual amount in total of money forgone by the taxpayer because of this scheme?

Mike Crabtree: It is amalgamated in our inheritance tax statistics. It is amalgamated in other low-use reliefs because it is a relatively small amount each year.

Q1149 Mr Reid: Why do you not publish the totals for each of these schemes separately? Again, it would allow the public to be aware of how much each individual scheme was costing the taxpayer.

Mike Crabtree: That is really a question for National Statistics and the way they wish HMRC's statistics to be presented. If we published lots of sub-reliefs it would run to many pages of information.

Q1150 Mr Reid: Is it the Office for National Statistics that tells you the format?

Mike Crabtree: Yes. They work with our analysts to arrive at these each year.

Q1151 Mr Reid: Do HMRC have input in that decision, or is it just announced to you by the ONS?

Mike Crabtree: That is one for the statisticians rather than us.

Q1152 Mr Reid: So you have no input at all.

Mike Crabtree: Our statisticians and economists talk to ONS.

Q1153 Chair: I want to be clear. You have these figures.

Mike Crabtree: I think we have these figures.

Q1154 Chair: Good. Can you send them to us?

Mike Crabtree: Yes.

Chair: Fine.

Mr Reid: Neat solution.

Q1155 Chair: I am slightly confused—in fact I am considerably confused about this particular issue. There are two elements. One is the question of something like a painting. I understand the public have to get access to it and there is a publicly available list. What you do not do is give a valuation of the benefit but, effectively, anybody who makes a valuation of the painting would be able to calculate what the inheritance tax forgone was likely to be. Is that correct?

Mike Crabtree: Yes. As ever, it would depend on what other assets were in the estate.

Q1156 Chair: I have misunderstood that then. I thought it was only related to the particular assets.

Mike Crabtree: All I mean is that you cannot calculate the inheritance tax unless you know everything else that was in someone's estate.

Q1157 Chair: I see. But if somebody has an inheritance tax bill of £1 million, for the sake of argument, they have to guarantee public access to a painting worth £1 million. Is that how it is balanced out?

Mike Crabtree: No. All I meant was that they may have a painting that qualifies for this, but, if they have nothing else, some elements might be covered by the nil rate band exemption. They may own other properties which are not within conditional exemption. I was just making the point that if you know the value of something you cannot assume that 40% of that is what is being saved.

Q1158 Chair: I see; maybe I am misunderstanding this. I should perhaps understand more of it than I do. If the estate has a painting and other assets and the person dies, if they make the painting publicly available they will not have to pay death duties on that painting but they will still have to pay death duties on everything else.

Mike Crabtree: Yes. That was the only point I was making.

Q1159 Chair: I see; sorry, I had not understood that point. We would not be particularly interested in how much other inheritance tax people had paid, but we would know that the level of exemption was, effectively, 40% of the value of the painting, so if you were really interested you could work that out.

Mike Crabtree: Yes.

Q1160 Chair: I can understand that if it was my grandmother's spoons or a painting or something like that. However, turning to the question of land, we had a discussion in a previous meeting—which I presume you have not seen—about the question of access to land where access was being given as a means of avoiding or not applying inheritance tax. In Scotland there is now a right to roam, so that, effectively, public access to that land is guaranteed anyway. In those circumstances, giving somebody exemption from inheritance tax on condition that access is provided is redundant. Can you clarify for me how we would know that a grant of inheritance tax relief for a benefit in perpetuity of exemption from inheritance tax had not been overtaken by that, and therefore you were providing inheritance tax relief for something that was being provided anyway?

Adrian Cooper: The issue there is that inheritance tax is a reserved matter. Therefore the Westminster Government has to apply it equally to any taxpayer within the UK. The fact that Scotland has certain rules which allow a right to roam should not affect the ability of a Scottish taxpayer to access conditional exemption.

Q1161 Chair: I can hardly believe that. I can genuinely hardly believe that. Are you saying to me that, if the Scottish Government have guaranteed that there is a right to roam and to public access to somebody's estate, therefore guaranteeing to you that the public access is effectively worthless because it is guaranteed under legislation, you completely ignore that devolved legal decision and give them tax exemption for something that they have to provide anyway?

Adrian Cooper: We legally have to apply IHT consistently across the whole of the UK.

Q1162 Chair: But surely you have to take account of the law as it stands in whichever jurisdiction we have? I find myself speechless. I am just absolutely and utterly astonished. How long have you been aware of this anomaly?

Mike Crabtree: I have certainly been aware since we spoke about it in a previous hearing.

Q1163 Chair: Has this ever been raised with Ministers or with the Treasury as being an example of double counting of tax exemptions?

Mike Crabtree: We have raised it with our Treasury colleagues, but, as Adrian said, it is a national tax relief. It is not one for specific countries. The policy goes to all parts of the UK.

Q1164 Chair: I am trying to think of a parallel. If air passenger duty is abolished in Scotland, it will not then be a charge against airline profits. You would take corporation tax on airline profits. Do I take it that you would apply taxation to airlines that flew out of Scotland as if the abolition of air passenger duty did not exist?

Mike Crabtree: Sorry, I am not getting your point. Obviously air passenger duty has been devolved.

Q1165 Chair: That is right. I believe the Scottish Government intend to abolish it. If it is abolished, that will, all other things being equal, increase the profits of airlines.

Mike Crabtree: Yes.

Q1166 Chair: Are you saying that you will not tax that increase in the profits of airlines because you refuse to recognise that the Scottish Government has abolished air passenger duty?

Mike Crabtree: But then are we not still applying corporation tax in the same way across all—

Q1167 Chair: In the same way, but part of that profit will have been caused as a result of air passenger duty's abolition, which you decline to recognise.

Adrian Cooper: We can go away and check that, but I think the answer is that, because corporation tax remains a reserved matter, corporation tax will continue to apply as it does now. I would think that the fact that the airline flying out of Scotland did not have the air passenger duty to offset was irrelevant for corporation tax purposes.

Q1168 Chair: We have established that we can have somebody getting double exemption, or double benefit, from this. How do I know that you have exempted somebody from inheritance tax on the basis that they have given access to their land? Is that also on the public register?

Mike Crabtree: They have to make an annual return that they are giving access. As I mentioned, Historic Scotland has a rolling programme of visiting and testing to make sure that such access is available.

Q1169 Chair: The point I was making is slightly different. It is on the register, like the question of the painting or my granny's spoons and stuff like that. It is there and on the register. If anybody is not allowed access to that land, just as if they were not allowed access to a painting, would they be able to complain to you?

Mike Crabtree: It is on our website—where they need to contact people to say, “I can't see this.”

Q1170 Sir James Paice: Can we be clear about whether there is any other obligation on the landowner? I think you said that it had to be land within an area of outstanding natural beauty, which is an official designation and a known. Apart from access, is there any other obligation on the owner of that land to gain conditional exemption?

Mike Crabtree: Just the two things. They have to maintain and preserve it, so they have to keep it in a similar state, and make it available for public viewing.

Q1171 Sir James Paice: It is maintenance, basically.

Mike Crabtree: Yes.

Q1172 Pamela Nash: Another connected area that the Committee is concerned about is the impact of the perceived lack of transparency on ownership, the beneficial ownership of companies, and indeed companies' ownership of land. The Committee is aware that legislation is coming forward at the moment to establish a register of beneficial owners. Have you been looking at the impact that might have on the areas we are looking at today?

Adrian Cooper: Yes. We have certainly been involved in the development of the legislation. This is the fourth anti-money laundering directive. There are two key elements in relation to beneficial ownership. One is the beneficial ownership of companies, which is

being taken forward by the Department for Business, Innovation and Skills. The other is a registry of beneficial ownership of trusts in which HMRC has a clear interest.

My understanding is that member states have now reached agreement on the text. There are some formalities to go through, but the directive will probably be published later in April this year. For trusts, that will give us information relating to the trustees, the settlor and the beneficiary or class of beneficiaries of the trust where there is a tax consequence generated.

Q1173 Pamela Nash: My understanding is that a register of companies will be formed. It is listed in the legislation of business being taken forward in this place and the other place at the moment. In relation to trusts, you said that was something that HMRC was taking on. Will there be a formal register? How will that work?

Adrian Cooper: There will be formal data-sharing arrangements between member states in relation to trusts or trust-like structures. It will not be a public registry. It will be available to competent authorities and financial intelligence units in member states.

Q1174 Pamela Nash: A European-wide register with limited access.

Adrian Cooper: Yes.

Q1175 Pamela Nash: Do you think that is the right decision? Are there any potential problems with that process?

Adrian Cooper: I think it is the right decision. Companies and trusts are inherently different. Trusts are often private arrangements and the uses of trusts are much more varied than the uses of companies. There are things like sink funds for property for the maintenance of buildings, and trusts for vulnerable beneficiaries. There is a range of purposes, and trusts which are used for money-laundering purposes. We think that focusing on trusts that generate a tax liability is the right way forward in terms of creating the appropriate balance between—

Q1176 Pamela Nash: I am not clear. Would that be an argument why there is not such a big requirement to have a public register? It doesn't mean that there shouldn't be one.

Adrian Cooper: Trusts are essentially private arrangements. It would be a fundamental change in UK law to overturn that privacy. Companies are essentially, in the main, public entities. There is much more of a trade-off between the formation of the company, the agreement that you make in forming a company, and the relief that you get for that.

Q1177 Pamela Nash: Is there a potential for trusts to be misused in that way if the level of transparency is not there, whereas there is a register of companies and beneficial owners of companies? Is there not the temptation to use different methods?

Adrian Cooper: I do not think there is a temptation to use trusts for money laundering and other purposes because they are trusts. We would argue that all the international evidence suggests that avoidance and evasion is a much bigger problem with companies than it is with trusts. We would say that we are comfortable with where the directive has finished in relation to trusts. It will still enable member states to get the information they need, but I think the need for it to be public is different than for companies.

Q1178 Pamela Nash: Just so that I am clear, is the register for companies public?

Adrian Cooper: Elements of it will be. I am not entirely familiar with the final scope of that.

Q1179 Pamela Nash: I appreciate that is not entirely within your remit. Is there anything else that you would recommend adding to the legislation that is coming forward?

Adrian Cooper: No. As I say, we are entirely comfortable with the legislation that is coming forward, and have been involved in the development of that legislation.

Pamela Nash: Thank you.

Q1180 Chair: You are interested in this from the tax point of view. We are interested in it from the ownership and transparency point of view. Would I be wrong in assuming that, if somebody who has land ownership in a company does not want people to know who owns it, they just transfer it into a trust? By some magical legal process they create a trust and they can hide behind that. There would be no transparency and we still would not know who owned big chunks of Scotland.

Adrian Cooper: The registries of beneficial ownership of trusts should enable a connection to be made between the trust and who is the beneficial owner of that trust. When that legislation comes into force, it will be much more difficult to obscure the ownership.

Q1181 Chair: Maybe I misheard or misunderstood. I thought you said at one point that the ownership, or the people behind a trust, would be much more opaque, but you weren't concerned about that because you did not need to pursue it for tax purposes.

Adrian Cooper: It will not be publicly available. It would be available to competent authorities and to financial investigation units in member states.

Q1182 Chair: From the point of view of people living in Glen whatever, if that glen was owned by a trust they would not know who was running that trust.

Adrian Cooper: The local people?

Chair: That's right.

Adrian Cooper: No; that is correct.

Q1183 Chair: Who would know? Would the council know? Is that considered a relevant authority which would have access to the information? How would anybody living in Glen X know the people behind the trust that owned Glen X? You would obviously not tell them because you would be bound by confidentiality. Presumably financial investigators could not tell them, because they would be bound by the same sort of confidentiality. Is there anybody who could access that who could tell them?

Adrian Cooper: Who could tell the local people?

Chair: Yes.

Adrian Cooper: No. My understanding is no.

Q1184 Chair: We raised with various authorities the question of beneficial ownership and so on, and we saw the proposals on companies as the way forward. I do not think we had appreciated that hiding behind trusts would be a possibility in these circumstances. That is something we need to pick up.

In relation to this area, which is not an area with which we are familiar, is there anything else we ought to be aware of? If the intention, from our point of view, is to have ownership opened up, you have already identified one way in which it would be opened up by company beneficial ownership becoming clear. An area where it will not be opened up is that trust ownership won't be clear. Is there anything else that we should know?

Adrian Cooper: No, I do not believe so. The requirements are fairly similar between the companies registry and the trusts registry. It is not the case, we believe, that people will stop using companies and start using trusts.

Q1185 Chair: I thought you were telling us that the beneficial ownership of companies would be known, and would be publicly available, whereas that for trusts would not.

Adrian Cooper: That is a question to direct to BIS rather than HMRC. My understanding is that elements of the work that BIS and Companies House are taking forward will be public. I do not know whether the beneficial ownership will be public.

Chair: We will have to clarify that.

Q1186 Mike Crockart: Tax havens are one of the subjects we looked at in our previous interim report, particularly the use of tax havens such as Grand Cayman and Panama to obscure ownership in much the same way as we have just been talking about. Why do you think that owners of land and property choose to vest ownership in companies based in tax havens?

Adrian Cooper: There certainly has been an element of people using companies in tax havens in the past as a way to obscure and avoid obligations to pay tax in other countries.

That is changing. HMRC has established a team looking to tackle offshore tax evasion. We are really working quite hard with lots of other countries to get much better data exchange and information sharing. Wayne might be better to speak to this than I am.

Wayne Strangwood: In October 2014, the Chancellor signed agreements with 52 other countries to share information about residents' financial accounts. For example, if a resident of the Cayman Islands was living in the UK and he had a bank account or investments in the UK, that information would have to be reported to HMRC. There is no requirement to send it to Cayman in that case. It would be pointless as they do not levy tax. More interesting from the UK point of view though is that, if there was a UK resident, person or entity with reportable accounts in the Cayman Islands, the information would be sent to HMRC under the terms of the agreement. Most of them are reciprocal, because obviously most countries have a tax system. That system will ensure that people cannot hide financial assets in countries that come within the remit of the new common reporting standard.

In addition to the 52 countries that have already signed, there is now a total of 93—including the 52—who have committed to introduce that system by 2018. That includes all the major financial centres. I think there are five countries who have not committed at this stage but who were invited to. Under those systems, we will receive information that we have never had before. To take your example, if a Cayman Islands corporate entity held bank accounts in the Cayman Islands and it was a passive entity—in that most of its assets were financial assets or it received passive income, which can include rental income—the Cayman Islands would have to report not just, for example, the amount of interest earned on the account or the balance on the account; they would also need to identify the controlling persons and report that information to HMRC under the terms of the agreement. We will start to receive a lot more information. That ties into HMRC's "No Safe Havens" strategy to tackle those who still persist in hiding assets offshore.

Q1187 Mike Crockart: Just to be clear, will that take into account land holdings? A lot of what you talked about there was concerned with financial assets and reportable accounts.

Wayne Strangwood: Absolutely. The entities required to report information under the agreements are defined as financial institutions. Typically we would be talking about banks or investment funds, and some insurance companies if they write investment-type business. However, if anybody has an account and is a resident of the partner jurisdictions, details of that account will be reported to the UK. For some passive entities, additional information will also be reported to us about the beneficial owners.

Without getting too technical—

Mike Crockart: You missed your chance there.

Wayne Strangwood: That additional information depends on the type of entity that may have a bank account in the Caymans. If you are purely talking, to take your example, about a company that is holding land or property in Scotland, the UK or wherever, if it has a bank account in the Caymans and it comes within that definition of a passive entity and its beneficial owners are resident in the UK, we will find out about it.

Q1188 Mike Crockart: Is that a yes?

Wayne Strangwood: What was the original question?

Q1189 Sir James Paice: You say you will find out. Does that mean they are going to pay any taxes?

Wayne Strangwood: Clearly when we get the information, that information will be used to make sure that people are paying the correct tax. The first information we start to receive under these agreements will come in this year. The most useful information from Crown dependencies and overseas territories will start to come in 2016, and from other jurisdictions from 2017. At HMRC we are currently planning how to use that data. Again, as with everything we do, it will be a risk-based approach. Clearly, time is running out for anybody who is still hiding assets offshore in order to evade tax, because we are going to get the information.

Q1190 Mike Crockart: Can we be clear about what taxes they are trying to avoid?

Wayne Strangwood: Clearly it could be anything. They could be evading personal income tax. They could be evading corporation tax. They could be evading inheritance tax.

Q1191 Mike Crockart: My question was particularly in relation to hiding ownership of land offshore.

Wayne Strangwood: To the extent that owning land may give rise to a tax liability for a UK residence, if the purpose of holding the asset offshore is to evade paying that tax then clearly—

Q1192 Mike Crockart: You said “paying that tax”. That is what I am trying to get to. What taxes are we talking about?

Wayne Strangwood: I cannot speculate on what tax liabilities may arise from the holding of land. It would depend on what the person did with the land. They may have, for example, rental income. They may sell the asset and realise a capital gain. Typically, those may be the type of taxes that somebody would be evading, I imagine, if they are holding land in an offshore entity.

Q1193 Mike Crockart: It could be significant sums.

Wayne Strangwood: Absolutely. So far, under the Liechtenstein disclosure facility, HMRC has recovered £1 billion in evaded tax. I believe that includes penalties and interest as well. Yes, potentially these are very substantial sums.

Adrian Cooper: Hand in hand with those better flows of data, HMRC are also increasing the sanctions and penalties for non-disclosure of offshore income and gains. There are

already quite tough tax penalties of up to 200% of the tax outstanding. The autumn statement also announced draft legislation in relation to tougher civil penalties. There is a parallel process of, on the one hand, improving the data flows that we get so that we are better able to identify these people—making the penalties stronger for not coming forward—and also offering disclosure facilities, such as the Liechtenstein disclosure facility, to encourage people to come forward.

Q1194 Chair: I want to seek clarification on a couple of points. You said that there would be an information flow between those other jurisdictions and yourself. Is it push or pull? Do you have to ask about the following list of 10 people, or do they give you everything they have and you then fish through it? I do not quite understand how that works.

Wayne Strangwood: I will clarify it. Under the terms of most double-tax treaties and information-sharing agreements that the UK has made over decades, most of those agreements would already give us the right to request information for specific persons. If we are interested in Mr Smith and we know, for example, that the German tax authority has information, we can approach the German tax authority and ask for that information under the terms of existing agreements. What the new agreements do is to push. It is automatic exchange of information. This will be millions of lines of data on residents—each partner jurisdiction’s tax residents—exchanged automatically on an annual basis.

Q1195 Chair: And you would know that the Mike Crabtree in the UK is the same Mike Crabtree who has an account somewhere else. How do you know that it is the same person?

Wayne Strangwood: There is certain information that has to be reported for the subject of the report. As you would expect, it is name, address and tax identification number; it will depend on the resident’s state as to what form that takes. I take your point that there is clearly a risk with all of this kind of data that data matching will not be 100%. The rules are very detailed in setting out what financial institutions have to do in order to identify residents of other jurisdictions and the information that they are required to report. That is set out in a great deal of detail. Clearly the object is to make sure that we can match that data.

Q1196 Chair: You mentioned that there were five jurisdictions that were not participating or were declining. Who are they?

Wayne Strangwood: Off the top of my head, I can probably name three of the five: Panama, Vanuatu and the Cook Islands. I would have to revert to you on the other two. I do not have that now.

Q1197 Chair: That means that UK residents are going to be taxed on their worldwide income. Is that the same thing?

Wayne Strangwood: UK residents are taxable on their worldwide income anyway. You may be aware that there may be different treatment for non-domiciled persons; but

otherwise UK residents are taxable on their worldwide income. Clearly the reason some people hold assets offshore is to evade paying tax on their worldwide income.

Q1198 Chair: Let me put it the other way round. If somebody is a legitimate resident in Guernsey or the Cayman Islands, presumably the tax they pay in their home location depends upon where that money is earned. Is that correct? Somebody who is legitimately living in Cayman would not be taxed on their earnings in Cayman because Cayman does not have income tax, as I understand it. How would they be taxed on their earnings in the UK from, say, the ownership of property? Is that taxed by yourselves, or in Cayman where there is no tax?

Wayne Strangwood: Are you talking about a Cayman resident?

Q1199 Chair: A genuine one—a real Caymanian.

Wayne Strangwood: The UK has rules to make sure that tax is paid on UK property—the non-resident landlord scheme. I will not go into the detail of the rules unless you want more clarity. Basically the rules are intended to ensure that the UK taxes property located in the UK.

Q1200 Chair: Is the end point of this to achieve a situation where there is no financial advantage to holding land or assets which are in the UK outside the UK?

Wayne Strangwood: We are trying to make sure that, when people are not telling us about all of their income or gains, we can use information that is sent to us to catch them.

Q1201 Chair: I am trying to be clear. The net result of that will be that, if you own land or assets in Scotland, in terms of the tax you pay it will not make any difference whether or not you are a Caymanian, a Bermudian or from almost everywhere apart from the Cook Islands and the other two jurisdictions, as compared with living in the UK. You will end up paying the same amount of tax, so there will be no advantages to having them owned in companies in these other jurisdictions as distinct from owning them openly in the UK. Is that right, or will there still be a gain to having these things held offshore?

Wayne Strangwood: Number 1, if people are complying with their tax obligations that will already be the case. Number 2, tax is not necessarily the sole reason why somebody may seek to hold assets of any description in a structure, whether that be within the UK or offshore. For example, many collective investment schemes that could invest in UK land or property will be based offshore simply because they want to ensure tax efficiency within the structure, and they have an international spectrum of investors. I do not think these arrangements mean that there is no reason to hold UK or specifically Scottish property using offshore structures.

Q1202 Chair: Sorry, that is not quite what I was asking. I understand the concept of tax neutrality for trading operations, but they will not be paying less tax in the UK by having the ownership abroad as distinct from having it in the UK, will they? Does this close the loopholes where people are buying land in Scotland and dodging their taxes?

Wayne Strangwood: I am not sufficiently expert in income tax and corporation tax to give you assurance that, if you compared the different tax bills that you could present me for different types of taxpayers, they would always be the same. For example, if non-resident companies have income arising in the UK and they do not have a permanent establishment in the UK, my understanding is that they are charged income tax at the basic rate. There may well be a different answer for somebody who is a UK resident being taxed on that same income. That is a feature of the tax system that already exists and has existed for a considerable time.

Q1203 Chair: I want to be assured that the general principle of the lines you are pursuing, inasmuch as they affect what we are examining, is to make the question of location tax-neutral.

Wayne Strangwood: There will be no incentive to hide financial assets offshore if the intention is to evade tax, because those people will be caught.

Q1204 Chair: How about to minimise tax legitimately?

Wayne Strangwood: If they are minimising tax legitimately, it is irrelevant whether we receive the information under these new reporting systems, because the taxpayer will already be giving us that information in their tax return.

Q1205 Chair: I am obviously explaining myself badly. I am trying to clarify whether or not somebody who owns it in Cayman as distinct from owning it in Edinburgh, from those locations and having an estate in the highlands, will end up paying the same amount of tax.

Wayne Strangwood: As I was saying to you, I think that would depend on the circumstances of each company. A UK company will be charged corporation tax, so you would have to look at the rates of corporation tax, whereas a non-resident company would be charged through income tax and the rates may be different. You may come to a different number at the bottom of the page.

Q1206 Chair: There might still be tax advantages in owning land in Scotland from abroad. In those circumstances, unless it is a trust however, we would have access to beneficial ownership.

Wayne Strangwood: Yes. In some circumstances; for example, if a Cayman Islander has invested in Scottish land, and their only income is rental income and they have UK residents who are the beneficial owners, we should receive information about that.

Q1207 Chair: If they are not UK residents—if the beneficial owners of a company in Cayman that owns land in Scotland are living in Panama—you would not know that, would you?

Wayne Strangwood: Even if the beneficial owners were living in France, which has signed up, we would not know about it, because we have no interest in information relating to a French resident. The whole purpose of this is to inform us about income—

Q1208 Chair: You can understand why I am pursuing this. I thought that the proposals would result in people in Glen X being able to access information about beneficial ownership through this mechanism. It is pretty clear that it will not necessarily do that.

Wayne Strangwood: If you are asking me whether it helps with that problem, no, it does not. Even if HMRC receive information about beneficial ownership for a UK resident, we could not share that information unless there was a legal gateway allowing us to, for the same reasons Adrian was explaining earlier—taxpayer confidentiality.

Q1209 Chair: At the end, we always ask people whether or not they have any answers prepared to questions that we have not asked. Are there any issues that you think we should have picked up that we haven't? Are there issues you would want to draw to our attention that would help our understanding of this general area? Are there any such points?

Mike Crabtree: I do not think so. One of the challenges has been the information we need for tax purposes as opposed to the information you would like in terms of wider public knowledge of ownership. Clearly that has been a difficulty, to say the least.

Chair: Indeed. I draw this session to a close.

Examination of Witnesses

Witnesses: **Richard Murphy**, Tax Research UK, **Megan MacInnes**, Global Witness, and **James Robertson**, Chartered Accountant, Institute of Chartered Accountants Scotland, gave evidence.

Q1210 Chair: Welcome to this meeting of the Scottish Affairs Committee. As you are aware, we are looking at the question of land reform in Scotland. We have been conducting a series of hearings on that subject, and particularly in this and the previous hearing focusing on the financial aspects thereof. We would like to start by asking you to introduce yourselves. Tell us why you are here and what your involvement in this issue is and your specialist expertise.

James Robertson: I am James Robertson. I am an almost fully retired chartered accountant. I am here representing the Institute of Chartered Accountants of Scotland,

which is the oldest professional body of accountants in the world and is also a public interest body. We look at the public interest and, only to the extent that it does not conflict with it, we look after the interests of our members.

I specialised in tax. In my career, I have advised a full range of landowners, from crofters in sheep stock clubs through tenant farmers, in-hand farmers to the large landed estates with conditionals and property.

Megan MacInnes: I am Megan MacInnes. I work with the international UK-registered organisation Global Witness. We are an organisation that aims to break the links between conflict, corruption, human rights abuses and natural resources. I have been asked to speak today based on two areas of the organisation's expertise. The first relates to beneficial ownership transparency. Global Witness has been running a campaign for a number of years to try to reveal the problems associated with companies that hide their beneficial ownership—the reason they are doing it and the type of activities, such as tax avoidance and evasion. What is the reason for these companies hiding their beneficial ownership? A lot of that is work on the situation of resource-rich developing countries, where tax havens are used by corrupt national Government officials as a means to launder revenues and corruption payments from, for example, the extraction industries and forestry sectors. More recently, we have been looking in our own backyard. Global Witness has been working with a coalition of organisations in the EU and the UK about the recent introduction of new regulations on beneficial ownership. There are good changes being introduced in the regulations and, as we have already realised from the discussion today, there are still some major loopholes that need to be addressed.

I manage the organisation's work on land issues, which is a separate part of the organisation. We look at land governance issues around the world. Again, our experience is partly looking at the situation of the global land grab and what is happening in Asia, Africa and Latin America. We are also looking at the role of the UK and Europe in terms of the companies that come from these countries and are involved in land grabbing overseas, and how community land rights can be better protected. We are increasingly being asked to lend our expertise in this area to discussions about land reform in Scotland. I spoke at the Community Land Scotland annual conference last summer. We are also providing some commentary on the current consultation by the Scottish Government on the land reform proposals.

Richard Murphy: My name is Richard Murphy. I am also a chartered accountant. I am an English chartered accountant with an Irish name. I was in practice for 20 years before, in 2003, I became one of the founder members of the Tax Justice Network. Since 2005, I have been the director of Tax Research UK, which has done a lot of work with and is funded largely by the Joseph Rowntree charitable trust and trade unions—which I put on record for the sake of any conflicts of interest—and has worked heavily on issues relating to tax evasion, tax avoidance and the UK tax gap offshore. Among other things, I am co-author of the most taught book on offshore in the world.

Q1211 Chair: Do you want to hold up your book again, just to make sure?

Richard Murphy: "Tax Havens: How Globalization Really Works."

Q1212 Chair: Do either of the other two have any publications that you wish to advertise at this event?

You were here earlier and heard the witnesses from HMRC. Could I ask you initially to give us any comments you have on the evidence that they provided?

James Robertson: First of all, I have a certain feeling of sympathy with them. One of the joys of tax is its sheer complexity, which I happen to enjoy, but members of the Committee perhaps not so much. Over 30 years, legislation in tax has grown from something that was that high—two volumes—to about this high if you add it all on.

Q1213 Chair: Unfortunately *Hansard* cannot record the movements of your hands. Maybe you could tell us. Is that 6 inches?

James Robertson: From about 4 inches to well over a foot. When you ask questions like, “What was the origin of agricultural property relief?” it becomes very difficult for anybody to answer with clarity. If I was to say something right at the beginning on agricultural relief, yes, it applies to agricultural land, but for most working farmers business property relief, as for any other small business owner, is actually more important. Technically you get the agricultural relief first, and only to the extent that it does not relieve that business do you get business property relief. BPR will probably be the most important relief to working farmers. The distinction is that an agricultural landlord is the only form of landlord where you get an inheritance tax relief for letting your property. If you remove agricultural relief, one of the unintended consequences might be yet another incentive for somebody not to let agricultural land. That is not a justification of it; I am simply saying that is the feature of the way the relief probably impacts on how people look at their businesses. I should add that the in-hand farmer will care deeply about the fact that he gets agricultural relief on his farmhouse. As every farmer will tell you, you need a farmhouse on your farm.

Q1214 Pamela Nash: Why is that the case? Why would business relief be prioritised? Is there an order in which these reliefs are applied in law? I thought agricultural property relief was 100%, whereas business property relief could be variable. Is that not right?

James Robertson: At the moment, the agricultural relief, if you are an in-hand farmer, would be given at 100% of the agricultural value of your land and agricultural buildings. You then get business property relief, so you are correct that there is an order in which those reliefs are given. If you did not have agricultural relief, most farmers would still get business property relief on the farmland that they own. They would not get it on their farmhouse. The agricultural relief is important to the working farmer because he gets that on his farmhouse. Generally speaking, it will be less important to him for his farmland, because if it was not there he would still get business relief. It is given, broadly speaking, to any qualifying trading business.

Q1215 Pamela Nash: What is the percentage?

James Robertson: It is currently 100% for business property relief.

Q1216 Pamela Nash: For business property relief also.

James Robertson: If it is their own. If it is land they own that is used by their partnership or by their company, the rate would be 50%.

Q1217 Chair: Could you just repeat the last sentence? I didn't quite catch it.

James Robertson: The complication with the relief is that, if I own my farm either directly or farming in partnership, the land is an asset of that partnership and the rate for the business will be 100%. If I hold the land outside a partnership and let my sons run the farming business, my rate of business property relief would only be 50%.

Megan MacInnes: I want to pick up the discussion in the second half of the earlier panel about the issue of beneficial ownership and what the recently introduced EU and UK regulations will mean.

Q1218 Chair: Can I interrupt for a second? I am being asked by our sound man to ask you to speak up a little so that they can catch your words.

Megan MacInnes: I will start again. I want to touch on the discussion by the previous panel around beneficial ownership and the new regulations being introduced in the EU and the UK, and the extent to which these will help us in the general objective of improving transparency around ownership of land in Scotland, particularly the question of whether there are still loopholes in the new regulations and what the community should consider in terms of further recommendations for addressing those loopholes.

The EU regulation includes beneficial ownership of both trusts and companies. The companies will be publicly disclosed, but the information about beneficial ownership of trusts will only be available to Government authorities, as has already been discussed. However, the implementation of the EU regulation at the member state level is up to the decision of the member state. The UK Government could go beyond that, if they wanted to, and require that the beneficial ownership of the trusts also be made public. That is a decision given down to member state level.

In terms of the application of this within the EU, the Channel Islands—Guernsey and Jersey—are currently considering the extent to which they want to apply these regulations, and how public they want to be about beneficial ownership of companies and trusts in their jurisdictions. In terms of the UK regulations, it is beneficial ownership disclosure only for companies, not trusts. In our opinion, this creates a significant loophole of the kind, Chair, that you have already indicated; it creates a potential incentive for landowners in Scotland to change their entity registration from a company to a trust in order to be able to further keep the beneficial ownership hidden.

The other thing very pertinent to the debate about tax havens is that the Crown dependencies and overseas territories considered whether or not they wanted to apply this new regulation and have decided not to. At the moment, the new regulation in the UK in terms of beneficial ownership disclosure will not apply to any of these tax havens. I am not too familiar with the additional bilateral set of agreements that the HMRC representatives

were talking about, but in terms of the Bill currently under discussion by both Houses, the beneficial ownership of companies in the tax havens will not be disclosed under that process. From our perspective, the UK Government really needs to do more, both in terms of pushing the tax havens to push for publicly accessible beneficial ownership registries and also for the issue of trusts to be revisited. It can be revisited as the UK implements the EU directive, because they have the ability in the UK to go above and beyond what is in the EU directive.

Finally, I want to touch base on something that Pamela mentioned. From our perspective, the objective of beneficial ownership transparency is not just about tax avoidance and tax evasion. From a land reform perspective, it is much more about enabling local communities to know who owns the land and to be able to engage with the owner of the land. It is important to recognise that beneficial ownership transparency is an incredibly important part of some of the broader reform agendas that are being discussed, both by this Committee and in Scotland: for example, the proposal that the Scottish Government are currently considering around requiring landowners who are charitable trusts to engage with the local communities around changes in land management, land use and land transfers decision making. It is not going to be possible for the local communities to engage with the landowner if they do not know who the landowner is. It is important to tie the element of the extent to which these regulations will improve the actual understanding of who owns land to some of the other broader land reform objectives which have a more public good, common good and community engagement longer-term objective.

Q1219 Chair: Can I pick up on one point you made? I am not sure I understand this adequately. You mentioned charitable trusts. Are there distinctions in operational terms between charitable trusts and trusts?

Megan MacInnes: Yes, there are a number of distinctions.

Q1220 Chair: Are there significant differences, not in terms of general finance but in terms of our issues about identification of beneficial ownership and so on?

Megan MacInnes: The difference in terms of how it relates to this specific debate is that the Scottish Government's proposal is that only charitable trusts will be required to engage with local communities around changes in land management, land use and land transfers which could affect them. There is a very specific type of trust. It is important obviously to have beneficial ownership as a prerequisite for those discussions to happen. I am not too familiar about the extent to which other types of trusts are being considered, or not, within the Scottish Government's proposal. I do not know whether Richard can say more on that.

Q1221 Chair: Richard, can you respond to that point, and then generally respond to the things that we heard during HMRC's evidence?

Richard Murphy: I am happy to deal with the last one first, but there are three points I would really like to pick up more broadly. The charitable trust issue is a real one because a charitable trust of course has no owner. You cannot have a beneficial ownership interest in a charitable trust, because it is up to the trustees to give funds to whoever they think is appropriate within the terms of the trust deed.

Of course, in the case of a UK charitable trust it should be registered with the Charity Commission. I have to say that you should not place too much confidence in that registration because about 9% of all UK charitable organisations fail to file accounts each year. Therefore there is a problem of regulation with regard to the Charity Commission, who are very short of resources to undertake their work. There is also no requirement that a charitable trust should actually distribute its income. There are certainly occasions when a charitable trust will simply sit upon a growing pile of cash and say, “We will use it for charitable purposes,” but does not necessarily do so.

There is also the problem of the offshore charitable trusts, which certainly exist and are quite common in places like Jersey, which is a trust centre—that is one of its major products in the offshore world. The local regulator should know that the charitable trust exists because, again, there are no beneficiaries. Jersey supposedly knows more about trusts than HM Revenue and Customs does, although nobody knows whether that is true or not because there is no data to prove it. In the case of those trusts, we would not know who the trustees are—who in this case are obviously standing in proxy position for the owner—or how the trust is being managed. There are problems with regulation of charitable trusts here and elsewhere. We should not think that, just because it is called charitable, there is no issue with ownership and that it will be beneficent in its approach.

To go back to the three issues I saw coming out of the earlier session, one is with regard to the early questions on reliefs and the availability of data on those. The second one is automatic information exchange, and the third one is beneficial ownership. I have worked on all those areas. I did feel sorry for the three gentlemen who were put up before you. What they were really working under is the constraint of the management of HM Revenue and Customs, I am afraid to say. That constraint is an enormous one, in that it seems to be an organisation set up to not collect tax, if I can put it so kindly. They underestimate the tax gap. I have shown time and again, for example, that they fail to include almost any tax not paid by people who have failed to send in their tax return, which of course is the ultimate goal of the tax evader, yet they seem to presume that all people who do not submit tax returns have no tax liability, which is extraordinary.

We have a body which is set up to not think about the tax system we have, which can deny responsibility for it and, as you heard, persistently denied responsibility for it by passing the buck to the Treasury. It has no Minister responsible for it, because it is not a ministerial Department. David Gauke is the Minister accountable to Parliament, but there is no ministerial responsibility as such. It is also massively under-resourced. It has gone from 91,000 staff in 2005 to 55,000 scheduled for this year. That is why I declared my interests earlier on. I am funded by PCS, the union for 80% of the Revenue’s staff, so I have a potential interest to disclose. The fact is that I believe that has had an enormous impact.

What I believe we need in this country is an office for tax responsibility, not an Office for Budget Responsibility fully staffed by economists and people from the Institute for Fiscal Studies but who have not actually dedicated their lives to practical taxation in that sense. What we want is a body that is going to sit down and work out the policy implication of recommendations before they are enacted—exactly the sort of thing you were asking for: what happens to a policy initiative after implementation? Supposedly, under the 2010 recommendations for policy, there were going to be post-implementation reviews. I have given evidence in another Committee room for the House of Lords on this. There is almost no evidence that those post-implementation reviews have had any significant consequence. The collection of data is, at best, spasmodic.

We appear to have a governance system for a tax authority which is not asking relevant questions. I wonder whether that is because its board is dominated by members of the big four firms of accountants and private sector business; it is a little surprising to find that a former senior partner at KPMG is the chair of HM Revenue and Customs. I feel that a massive reorganisation is required in the Revenue. If the Scottish Government were serious about its new tax policies, it should certainly be looking at an office for tax responsibility as well.

There was some extraordinary faith placed in automatic information exchange. I will link that issue with beneficial ownership. I would like also to put this in part, because of where we are, in a Scottish context. The public register of beneficial ownership for the UK is not going to work. I will guarantee you that it is going to be absolutely useless. The reason why is that it is a system of voluntary disclosure. Everybody who is already honest will own up and say who the beneficial owners of their companies are. Those who have something to hide will not say who the beneficial owners of their companies are.

I want to put that in the context of the current regulation of Companies House in the UK. There are over 400,000 companies struck off from the register of companies in the UK as a whole each year because the registrar of companies has lost touch with them. They simply have not bothered to file a form; they have not sent an annual return; they have not complied with the law. Companies House do not pursue that. They do not bother to ask, “Why haven’t you done it?” They do not go round and say, “Are you really operating?” They just strike the company off. We have no idea what the true scale of tax loss is, but I have estimated it as £11 billion a year.

In Scotland the situation is worse than it is for the UK as a whole. Since 2008, there has not been a single prosecution under company law in Scotland for failure to comply with the requirements to file documents. In practical terms, company law is now not enforced in Scotland. The consequence is very straightforward. Frankly, if somebody wants to form a company and not disclose the ownership of that company, the best thing to do is to form a Scottish company. Nobody will ask a question. Nobody will enforce any action with regard to it. The prospect of any inquiry arising is zero. Why bother to go to the Cayman Islands when you can actually do it in Edinburgh? There is no functioning legal regulation of companies in Scotland.

The first thing to do is get the domestic act together before we worry about what happens elsewhere. If we are going to have a failed company registry, just imagine what is going to happen in Cayman, Jersey and so on. It is so easy, and in fact it is normal, to set up a company in these places which is owned by a trust. You might have a company owned by another company owned by a trust, which may in turn be owned by or have interest in another trust and on and on. The fact is that you could also subdivide the ownership to the point where the interest was less than 25%. At that point there is no reason to do automatic information exchange. You can layer trust upon trust and jurisdiction upon jurisdiction. I can well remember when I was at KPMG—it was called Peat Marwick in those days—I was simply told, “Do this.” That was a long time ago and I am sure things have changed at Peat Marwick/KPMG since then. The instruction was simply, “Form your company in Jersey, form your trust in Cayman and put your directors in the British Virgin Islands, and you will never be cracked.” To a very large degree that remains true now. Once you have three jurisdictions involved they can all manage to break the issue up. They can all put forward different information if they wish.

As Senator Carl Levin said in the US Senate on an investigation on this issue, everyone turns a blind eye; they look at their particular narrowly focused issue and answer questions on that but don't look at the rest. Therefore, the chance that true beneficial ownership information is going to come from the Cayman Islands is, I would like to suggest to you, pretty remote. I simply do not believe that we are going to get the data we expect. For the Revenue to think that that is therefore going to provide them with enormous benefit is limited. Trusts are absolutely fundamental to that, contrary to the evidence that you were given by HMRC.

Every single offshore arrangement will always involve a trust almost as a matter of course, and there is a very simple reason: the offshore operators—the offshore local financial services industry—do not wish to be seen to be the direct operators of a company. They will always hide their involvement via the trust in the first place. If you do not involve trusts, if you do not investigate trusts, if you do not demand the beneficial ownership of trusts and you do not want that information on public record, frankly we are having some nice wallpaper to make it look as though we are making progress, but whether we will actually get the data we need is open to question.

Q1222 Chair: We are all doomed then.

Richard Murphy: No, we could do a lot with this. We could start by literally putting our own house in order. We would need a lot more people working in Companies House in Cardiff. We would need a lot more people working in Companies House in Scotland. We need to make sure that people file accounts here. We need to put a simple mechanism in place. It is very simple in this country to solve this problem.

If we want to know who the beneficial owners of companies are, we do not rely on an honesty box arrangement. We actually ask the people who should know. I was in Paris yesterday so I still have my passport with me. If I want to open a bank account, whether for myself or for a company as a director, I will be required to put my passport on the table to prove who I am. The banks know who the beneficial owners of companies are in this country. I think by and large that they follow that procedure, so we need to do in this country what we are expecting banks in the Cayman Islands to do, which is to tell us who owns the beneficial interest in the company.

It was observed that, from 2016, officially the Cayman Islands should give us the information on who owns a company, if they happen to be British. If that company is going to be in Edinburgh, Inverness or Aberdeen there will be no automatic information exchange requirement from the bank to HM Revenue and Customs or Companies House, so you won't know. We need a piece of legislation to be put in place that says any bank operating in the UK which opens an account for a UK company must tell HMRC that they are opening an account, where that account is, who they think the beneficial owners of that company are—which they will have proved because they will have required documentation to be put on the table—and where that company is really trading. At that point we will know quite a lot, if we set the gold standard. It is so easy to do because that data exists. It has even got to be compiled for the purposes of informing foreign Governments, yet it is not coming to our Government. That is how daft the situation is going to be. If we used that information, we would crack open the ownership of UK companies and then we would have set the gold standard for everybody else to copy. We could then say that we demand the information from other people.

Q1223 Chair: I was under the impression from what the Prime Minister said at one point that beneficial ownership of UK companies was going to be publicly available.

Richard Murphy: Yes, but only on the basis of people making voluntary disclosure.

Q1224 Chair: To be fair, it was not qualified in that way by the PM when that was asked.

Richard Murphy: To explain to you how the system works now for information on ownership, which is legal ownership, it does have to be disclosed now on the annual return form that a company has to file with the registrar of companies; it is up to the company to disclose the information. That I know of, there has never been a prosecution for failing to disclose the right information with regard to legal ownership on an annual return form. There are almost no prosecutions ever, for the reasons I have just explained. The companies are struck off rather than actually asked for the missing return form, so there has, effectively, never been an inquiry on whether the legal ownership is properly disclosed.

When we come to deal with beneficial ownership there would simply be an additional question on the annual return form: “Are any of those persons who are the legal owners different from the beneficial owners of the shares?” In other words, are these people acting as nominees? There will, effectively, be a voluntary box arrangement to change this.

To put this in context, there is a maximum of about 5,000 prosecutions a year in the UK on company law issues, but none in Scotland—I stress that this is in England and Wales; there are very few in Northern Ireland—and 50% of those are abandoned before they ever actually go through the legal process. They are almost invariably for failing to file accounts, and the accounts are submitted so they do not even pursue the action when they start it. The legal enforcement of these laws is ridiculously weak. Anybody who does not want to disclose beneficial ownership will know that, and simply won’t file it.

Q1225 Chair: Picking up your point about the circumstances—that legal action is dropped when the accounts are filed—presumably the same thing would apply to beneficial ownership. If the information is not there, and it relates to land and somebody has an interest in pursuing it and they start to pursue it, the information might be provided in those circumstances.

Richard Murphy: But how would we know that there was a difference between legal ownership and beneficial ownership anyway? Only if the legal owner stood up in court and said, “No, it is not me, guv; it’s him.” That is the only way you would ever find out. Finding out that there is not a set of accounts is easy; it is either there or not. Finding legal ownership is another matter altogether.

Q1226 Chair: In the circumstances we are discussing, is that a distinction without a difference, in a sense? If the point is to identify who is responsible for the land and who you want to compulsorily purchase it from, take action against or something similar, to know who the legal owner is would be sufficient, would it not?

Richard Murphy: No, very definitely not. Barack Obama once said of a building in the Cayman Islands, how could that building be real, because there were 19,000 companies in it and that was not possible. Actually there are some addresses in the UK where there are more than 19,000 companies. There is one in Reading where I think the number is significantly greater. You might have some data on that, Megan; I know Global Witness have worked on this as well. The fact is that there are a very large number of addresses where nominee ownership is recorded. It will take you minutes to discover, if you go and look at it, that it is very easy to buy a package which includes nominee directors, nominee shareholders, a nominee company secretary and a nominee address, all of which will be filed on public record for a UK-based company. You will not at present be able to go behind those. Those nominees will frequently themselves not be UK-resident.

You can go and find the nominee, if you can, in Vanuatu—where I know there is one particularly prevalent one—and ask, “Who are you really acting for?” They will say, “I won’t tell you.” They probably won’t know of course; they won’t have a clue. They will just have signed a piece of paper, and they might not even have done that; it might have been rubber-stamped. The point is that it is very easy to put into place arrangements where the legal owner will have absolutely no knowledge at all about the affairs of the company for which they are supposedly responsible. Therefore, to find out who the real beneficial owners are is essential, and the only way to do that is to trace the money—literally go to the bank account.

Q1227 Chair: James, at one point you looked slightly doubting about that position.

James Robertson: Chair, I am no lawyer and I say that in advance, but my understanding is that under Scots law if you have title to it you could compulsorily purchase. Who has title for that purpose is a very different thing from understanding who has the power to direct. I am told by Scots lawyers that the concept of beneficial ownership is one that does not exist. It is an English concept, not a Scots one.

Q1228 Chair: You are a lawyer and an accountant.

James Robertson: I said I am not a lawyer; I said very clearly that I am not a lawyer. I am told that what matters is who holds title. There are a lot of issues in Scottish land ownership about not being able to identify who has title. There are areas of land where it is not clear who owns it because there is no recorded title. There is a wide range of issues which this Committee has looked at, and had evidence, on the completeness and the very clear public benefit of having a proper register of ownership. But that is about legal title, and not the beneficial owner. It is about who has a title to the land and therefore who owns it. That ownership is about the title.

Richard Murphy: But ownership carries responsibility. I know there are some aspects of Scottish law which, for example, put a person at risk for prosecution as an officer of the legal owner. Therefore, if we cannot identify who that person is, there are obviously problems in enforcing law elsewhere with regard to land rights in Scotland. I have to admit that I follow hen harriers faithfully on this particular issue and the problems of enforcing the law with regard to wild birds in Scotland.

Q1229 Chair: I want to come back to the order of questions. We do not think of these questions ourselves; we have staff to write them for us. Let me do my homework and work my way through the things that cover the issues. First of all, what are the advantages and disadvantages to people of having land and property vested in overseas tax havens? How could the advantages of those be undermined?

James Robertson: Assuming we are dealing with a legally compliant person and not somebody who is trying to hide and obscure their liabilities for tax, one feature of the UK tax system is that we do not tax to capital gains, as a first principle, people who are not ordinarily resident in the UK. Legislation is coming forward in the Finance Bill, and recently the Government have decided to tax to capital gains residential property held by non-residents. The previous witnesses referred to that. My institute asked the question in the consultation, “Why is it being restricted to residences? Why not all other property?” It is a fair question to ask. Here we are talking about estates, by and large, or farms. These will have a residential element, but they will have a non-residential element, so it makes sense perhaps for somebody to buy it in an offshore company. It may be operated in the UK by another company in a group, but they will do that and there is no capital gains liability because that is the way our tax system works.

Q1230 Chair: And that is the main gain of holding it overseas.

James Robertson: That is probably going to be the main gain if you expect to sell it. You may get an inheritance tax benefit because, again, our tax system taxes people who are domiciled in the UK, and after they have been here long enough, which is—Richard will correct me if I have this wrong—17 years out of the last 20, bearing in mind it is Parliament that decides how long that period should be, they then become deemed to domicile. Then they become taxable, like you and me, on their worldwide assets. But if they are not here for 17 years—they may only come here for two or three days a year and they may even be paying tax in their own country under their inheritance tax rules—they buy through an offshore company and then do not have to consider UK inheritance tax. For some owners there is probably, as an individual, no tax saving. There will be for others, but for some in some jurisdictions they might pay more in succession taxes than they would in the UK. If it is a farm they might pay none, because of business property relief, or there may be no equivalent relief in the jurisdiction in which they live.

For many people, that is why they do it that way. For others, perhaps a successful entrepreneurial family, it is simply that they have built up quite a lot of wealth, so they buy property around the world as investments. They buy in every country through a particular structure. There is no avoidance in it. For some, as Richard alluded to—however effective or otherwise, I am extremely glad to see that there are now these global agreements—they are seeking to avoid the tax illegally. They are trying to evade tax. They should be caught and they should pay a severe penalty when caught.

Megan MacInnes: I would like to talk a bit about the advantages or disadvantages, not from a tax perspective but just in terms of knowing who owns the land. There has been enough documentation of cases in Scotland of absentee landlords, where the landlords clearly decide that they do not want an active presence on the ground in the local community. They are essentially creating barriers in communication between themselves and their tenants and local communities, operating through factors and other types of intermediary. From that perspective this is clearly an advantage for them. It is hard to

determine what the objectives of that are, except for possibly wanting to distance themselves in terms of reducing elements of accountability to the local communities who are dependent on them. It is from that perspective that we also need to think about beneficial ownership and what that kind of transparency could bring in terms of the benefit for local communities.

I also want to pick up on something that James said. As I understand it—maybe Richard can speak more about this—the definition of beneficial ownership which is being used in both the UK regulation and in Europe is not something based on English or UK laws. It is based on the Financial Action Task Force’s global definition of beneficial ownership, based on anti-money laundering legislation, so it should be considered potentially applicable in Scotland as much as it is in England in terms of its definition. That obviously depends on the differing legal frameworks in Scotland versus England, but the definition itself is at a global level.

James Robertson: I completely agree with what Megan said; that is absolutely right. My comment about title and compulsory purchase was in relation to your specific question. That is a matter of land law as opposed to the context we are talking about here, of people who can effectively control.

Richard Murphy: It is important to say, and it was said by HMRC earlier, that there are more reasons than tax to hold assets offshore. Let us deal with some that are really quite important to some people. There are husbands who do not want to tell their wives what their wealth is. That is incredibly important to some people, because divorce settlements are very expensive if you are very wealthy.

Q1231 Chair: Or vice versa.

Richard Murphy: Or vice versa, but at the moment it appears to be wives who are bringing claims for lots of money and husbands who are trying to hide their assets. We have seen that happening in recent divorce cases in London. Likewise protection from creditors, potentially illegally, and non-disclosure of assets in the case of bankruptcy, is something that people try to do. They claim they are now apparently worthless, even though they were in *The Sunday Times* rich list not long ago. That sort of thing happens, and offshore clearly helps. We should not dismiss that.

One which is rarely thought about, but which is quite significant, is breaking enforced succession laws with regard to inheritance. In some countries there are very strict rules on how children will benefit from their parents’ estates, and there is a very significant business in breaking those rules. They happen in odd places. Jersey has very strict rules on the proportion of an estate that must go to the children of a deceased person. Apparently they are quite good at using their own trusts to try to get round this, which I find almost amusing. Clearly in some traditions that is important. It is used in French law, where the same thing happens. That is another use.

There is the breaking of responsibility—simply not wishing to be associated with the asset. That is very widespread in terms of offshore. We are not just talking about land, but about actually denying responsibility for the ownership of a company or whatever else, where there might be reputational risk or otherwise from doing it.

If we come to tax, the tax that has not been mentioned is stamp duty or its equivalent in Scotland, because it has been replaced in Scotland. That is another tax which can be avoided

through the use of ownership of land through a company. There is a much lower rate of charge with regard to the transfer of shares than there is with regard to the transfer of ownership of land. There is a significant saving.

With regard to tax, capital gains are undoubtedly significant. There could be an attempt to avoid tax on income arising in the UK. That is possible. I am afraid that the UK is extremely weak at regulating offshore landlords. It was suggested that there is an offshore landlord scheme. I am told by people who have worked in the regulation of that scheme that every single application is automatically rubber-stamped, and there is no after-the-event monitoring to make sure that it is properly appraised. It is quite possible that income is not being subject to tax which should be, because inappropriate exemption from withholding taxes on rental income had been given in the UK. That is very important.

Dealing with the issue of beneficial ownership and the FATF, Scotland will have to recognise in its legal system that there is a differentiation for the purposes of this particular piece of regulation. The FATF, which is based in Paris and writes the money-laundering rules for the world, has been quite successful in establishing a legal framework that is at least consistent, and for that they should be applauded. It may not always be applied but there is a consistent legal framework in which there is, very clearly, a differentiation between legal and beneficial ownership. This reflects that fact. Scotland could not ignore that, because it has obligations to other states with regard to provision of information which would recognise the difference. Whether it matters domestically, it certainly matters internationally to Scotland.

Q1232 Chair: There are a number of minor points. I want to check whether or not we have covered them. Which taxes in particular can be avoided by vesting ownership overseas?

Richard Murphy: You are unlikely to avoid VAT, because it is a domestic tax. If you have to charge VAT on any aspect of an estate's activities, that is going to arise here. Corporation tax can be avoided if you hold it in a company even if you declare here, because it is quite possible to load your offshore-owned company with debt, which is going to wipe out any profit. The interest paid on the debt, which you can claim was used to acquire the estate, would then be routed to an offshore entity where it would not be taxed. Frankly, the opportunity to avoid all UK tax on any income arising in your UK landholding would be very easy indeed. It is so ridiculously easy as to be absurd.

If it is owned in a personal name, or if an entity is used to avoid a personal name, clearly inheritance tax is a possibility. Again attaching inheritance tax could be an issue, but here we are talking about the ownership of the shares, and even then there are various inheritance tax reliefs, such as the business property relief and so on. Inheritance tax is another pretty much voluntary box tax; let's be totally honest. Let us give you the evidence and the facts as they are. You have a person who is not domiciled and who is going to declare that they own, through a trust in one jurisdiction and through a company in another jurisdiction, an asset in the UK. Well, no, they probably do not own that asset. They will have made sure that that is not the case. Inheritance tax avoidance is significant, but we would never see it turning up in HMRC's statistics, because there would never be an inheritance tax return. There would never be a transfer to which inheritance tax could apply. In that sense, the inheritance tax is avoided by the structure, not by putting into place any specific inheritance tax measure.

You are quite right that capital gains tax would be avoided. I think we have covered most that we are likely to be dealing with. I am sure there are some minor ones we can think about.

James Robertson: Our tax system is structured so as almost to encourage it. We are all offered choices when we buy something. You can buy your house in the company. I would advise you not to, because you will create quite a lot of tax liability. I have seen it done in practice. Where you have that choice and you say, “If I buy something in the company or I buy it personally,” and you can see that you may not pay tax, you are simply taking advantage of a feature of the tax system that this country operates. Whether or not that is something you feel is appropriate in the context of domestic residential property, which we have talked about before, there will be legislation before Parliament saying, “We will tax non-resident owners of residential properties regardless of whether it is a company or an individual,” but it is limited to that. That is a policy decision that Government and then Parliament has taken. Without wanting to say pejoratively that people avoid tax, we do that all the time when we take decisions about how we do things. In a sense, I throw it back to yourselves; if you feel it is not appropriate, the remedy is legislation.

Richard Murphy: Can I qualify how I view that? There is a difference between the choices that are available when you put all your cards face up on the table before HMRC, which would still pass scrutiny, and the choices where you might not wish to put all your cards face up on the table because that might lead to questions that you would not wish to answer. Some of the issues you are looking at are how do we find those who are not putting all their cards face up on the table; and are the resources and mechanisms available to find the owners of land in that situation? Choices are entirely appropriate, and that is one reason why the tax system has indeed grown in size. A modern, complex economy full of modern, complex people requires lots of modern, complex choices to be available to people. We will never end up with a simple tax system for that reason, but it does require transparency and full disclosure. The fact is that we are not going to get transparency and we are not getting full disclosure, and we are not investing in the mechanisms to make sure that, as far as possible, we enforce the procedures to get that transparency and full disclosure.

Q1233 Chair: But non-disclosure is evasion as distinct from avoidance. It is illegal.

Richard Murphy: Yes.

Q1234 Chair: That is a different issue. I want to raise the question of the impact of ownership abroad and similar practices that flow from that. What might the impact of that be on land values in Scotland and elsewhere?

James Robertson: I was going to make the comment that, if you are not paying tax on it in the first place, clearly the tax reliefs are irrelevant to you in the price you are likely to pay. A previous witness to this inquiry from the Institute for Fiscal Studies drew your attention to the Mirrlees report. One of the comments that Professor Mirrlees made is that land is quite a nice thing to tax because its supply is not terribly affected by taxation. It works the other way too. Reliefs to some extent do not have a similar impact. There was an article in *The Economist* last week called “Barbarians at the Farm Gate”, which reflects on the yields that people are actually getting from land over recent years. In the US and the UK, it has outperformed Treasury stock, stocks and shares and gold. I do not think it is tax relief that will be behind that particular surge in price. I suspect that is money looking for safe havens.

I have seen before that people have said that tax reliefs are driving land values. I have always been deeply sceptical, simply because there is not a huge churn in land. One of the issues in the land market is that it is not actually that active. When some does come on the market, there are a very few rich people who will pay a lot of money for it. There have been some very substantial purchases of English farmland over the last couple of years, and I very much doubt that they have been driven by tax relief. That is not to say that it does not have an impact. People will invest in land for tax relief but I would question how much, particularly in some of the more remote areas of Scotland.

Q1235 Chair: We are conscious of that. It is very difficult, if not impossible, to identify the impact of a single factor, because all sorts of other things apply. I am very conscious of that, but all the contributions we have had have asserted that the tax breaks on land ownership serve to drive up price. How you quantify the scale of that compared with everything else is difficult, but is it a proposition with which you would just disagree?

James Robertson: I am absolutely not disagreeing. It clearly must have an effect, but land prices have risen so sharply during the period of the recession that you have to wonder how much of it is driven by UK domestic tax reliefs.

Q1236 Chair: You heard us speak earlier with the people from HMRC about the extent to which there was a policy clash between the Scottish Government on the one hand wanting to buy land, and the HMRC or Treasury position about tax breaks driving up the price of that land. Are you effectively saying that we should simply ignore that because there are so many other factors involved?

James Robertson: No; it is a factor that you need to take into account. I do not think you would ignore it. The tax reliefs are there for a policy reason, which has been discussed before. People talk about the growth in wealth and the yield; the article in *The Economist* was looking at yield. That yield would include the capital growth. The average 250-acre small farm is never going to access that. In a sense it is not real to them, other than the amounts that you can get secured on it to borrow from a bank. They will not be selling it and that is one of the features of the land market. You could argue—I think previous witnesses may have done so—that that in itself is a distortion of the market. But that is a policy reason for having it—to enable traders or family companies to continue without having to be sold and broken up. It happens to be farmers in this case. There are some quite difficult decisions that have to be made about policy—these policies.

Q1237 Chair: Richard, you wanted to come in.

Richard Murphy: I think tax has a significant impact on the valuation of land. I am sure it has had an impact upon the reason why land values have gone up. I live in a different rural community but I am seeing the same consequence. I do not think that agricultural property relief is a major factor in it, if I am honest. I do not think many people would actually buy a farm to avoid UK inheritance tax. I think they would use business property relief—and there are easier assets than land to secure that, if I am completely honest. If I put myself in the position of somebody coming into my office and saying, “I want to avoid tax liability on £5 million because I definitely know I am going to die in a year for medical reasons, or

maybe in three years, so I have a life sentence on me,” would I say, “Go and buy land”? No. It would be much easier to go and buy unquoted shares to get the same equivalent relief for inheritance tax. It is unlikely that land is being used for that purpose. The problem is business property relief, not agricultural property relief.

The real issue is not the direct tax reliefs, whose merit I would question: whether they really achieve a goal now is a good question. If we go back to 1925, I suspect you will find that it was not well thought through. It certainly does not have a modern policy implication, whatever was thought through at that time. It would need rethinking again. HMRC have interpreted in a modern context something that they have never really thought about from the past.

The reality is that we see different groups competing for whatever land is available. Some of those competing groups have been able to accumulate wealth in a relatively low tax environment. Others are not able to accumulate wealth in a low tax environment; that is the working farmer—the person who wishes to make it their career to live and work the land. Whereas if you are working in the City of London or, as likely, working in the financial services industry somewhere else in the world, or you are somebody who has decided to relocate to a tax haven, you are probably suffering quite a low tax rate compared with an ordinary working person in this country who wants to make it their job to own a farm. They would then be in a much better competitive position because of their ability to accumulate tax free than the person who actually wants to work the land. They could therefore always out-compete the working farmer, which is why we end up with tenanted and managed farms. We do not end up with new working owners of land in this country.

It is very clearly distorting the land price. It is also distorting the expected return. As I have just suggested, if they can then load the farm with debt in terms of ownership and make sure they never pay tax on that, which is not a direct relief but a general relief for interest, they will then have a very low tax cost of owning an asset which will be accumulating in capital worth, which is where they see their gain arising. That puts them in the position that they are not so worried about the yield as such. The tax system is not giving rise to a yield question but an ownership question. If that has long-term implications for land management, because you are breaking the tenure and ownership and the management of farms and ownership, it has very serious implications for how we end up with farms being managed throughout the UK, not just Scotland. There is a fundamental tax reason for that, which is this differentiation of wealth. It is an accumulation of wealth in a small part of society which can exploit those tax rules to prevent those who are actually going to work the land from getting access to it.

Megan MacInnes: I want to say a bit about this, not from a tax haven perspective but from a secrecy jurisdiction perspective. We also need to think about the impacts on land market dynamics—not necessarily land value dynamics, but the dynamics driving Scotland’s land market in terms of the extent to which the kind of buyers for land are those who see an advantage from being able to register their ownership in a secrecy jurisdiction, and benefit from not having that ownership publicly known.

Richard and I have both mentioned the non-tax advantage around the breaking of responsibility and being able to distance yourself from the asset, the land. If you have a system which incentivises and provides a secrecy jurisdiction for the owners of land, it attracts a certain type of buyer and will have an impact on the market; whereas if you put in place regulations which prevent that from happening, such as the proposal from the Scottish Government that you will have to be a Europe-registered legal entity in order to buy land in Scotland, that would immediately disincentivise the kind of buyers who potentially look for a

secrecy jurisdiction in which to register. It would incentivise those who want their ownership known and who want direct responsibility and an engagement with the local community and the asset they own. We need to consider not just the tax-based impacts on land values and markets but also the other accountability-based elements.

Chair: We will come to the question of the Scottish Government's proposal in a moment.

Q1238 Mike Crockart: I have a specific question relating to the Small Business, Enterprise and Employment Bill, which is currently in Committee stage in the House of Lords. Clause 78 requires companies “to keep a register of people who have significant control over the company”—we touched on that in your general comments up to now. Will this measure be successful in achieving the commitment made by the Prime Minister in response to the EU Council ruling? I think you have already said, no, it won't, effectively.

Richard Murphy: It won't.

Q1239 Mike Crockart: If not, what further measures are required?

Richard Murphy: I would have to go and read that clause and come back to you on that, to be honest. I am quite happy to do that, but I think—

Q1240 Pamela Nash: I am sorry to interrupt, but the clause referred to is just about the set-up of the register that we discussed earlier.

Richard Murphy: It is just about the register. Then you have to drive behind that and get information. That would be the proposal to secure information to make sure that we really know who the beneficial owners are from third party sources rather than simply relying upon that arrangement.

I also question the 25% rule. I think it is too high. It is quite easy to create apparently disconnected ownership at a 25% level. If you made it 10% it would be a lot harder. I was certainly involved in lobbying BIS on that issue. It has been dismissed; 25% is the international standard, but I have a feeling that it is too high.

Q1241 Mike Crockart: Effectively a small family would be able to—

Richard Murphy: It would be relatively easy to do that. The whole thing ignores the other thing we have put into place. Yes, it is a European company but is it owned by an offshore trust? That is another potential loophole which I am not sure has been adequately dealt with in any of the legislation that I am aware of.

Megan MacInnes: I would echo what Richard has said. The exclusion of trusts from this is a major loophole that needs to be addressed. We also lobbied the Government to reduce it from a 25% threshold down to something closer to 10%, believing that was a much better

reflection, and would enable you to capture genuine beneficial ownership much more strongly.

I would like to draw the Committee's attention to schedule 3, which is the accompanying text for clause 78. The 25% threshold is only one of four conditions. The fourth condition is simply that company X or individual X has the right, first, directly or indirectly, to appoint or remove the majority of the board of directors of the company. Secondly, there is a broader clause, which is that X has the right to exercise, or actually exercises, significant influence or control over the company. We should not forget that there is this broader condition that does not depend on 25% voting rights or shareholding, but is about the actual, or in reality, control over the company. That is where there is potential for broadening the extension and the application of this.

Q1242 Mike Crockart: That is quite a subjective condition though, is it not?

Chair: That's right. What is the nature of reality? How do you define that?

Megan MacInnes: This is based again on the global definition of beneficial owner under the anti-money laundering regulations. It is deliberately subjective in order to be interpreted as it needs to be in each place. I do not know whether Richard can say more about the legal arguments behind that.

Richard Murphy: It is a quite well-known concept; it is in corporation tax law already. It is in company law already with regard to control. Both of them have a de facto provision as to control which is not exercised through shares. It is behind, in a sense, the concept of the shadow director; the person who manages a company but does not accept responsibility for it.

How do you define it? It is not very subjective. It is, "Who is issuing the instruction?" If you wished for a practical interpretation of that, at the end of the day it is the person who is at the end of the phone and who tells the trustees to tell the company to do the transaction. "Who is at the end of the phone?" is the answer to that question. Alternatively, it is mum or dad. Either way, in seriousness, obviously in some family situations you would find a dominant character who might be doing the same job. More likely, in the issues we are worried about, it is the person who actually issues the instruction. It is obviously possible to audit that trail if you can work your way through it. The problem is being able to work your way through the trail; that has always been the difficulty.

Q1243 Chair: But I could just tell Graeme to phone you. You are the link. I find it difficult to see how that operates in practice. Or I tell Graeme to tell Pamela to phone you.

Richard Murphy: Yes. That is called "layering" in money-laundering terms, by the way. It is a concept which is well known and which you try to break. You have put a layer between you and the telephone, but at some point most people leave a trail of behaviour. Normally you would find it in the e-mails on a computer system somewhere. These days, people are very good at leaving trails of instruction. People are quite paranoid about protecting their wealth, so they are quite good at issuing instructions to make sure that people have done what they said.

Q1244 Chair: So if I phone you Graeme—

Graeme Morrice: All right, I'll tell Pamela.

Pamela Nash: I am not answering the phone.

Richard Murphy: You have to put your mobile phone into that “Unknown” category as well. It must not come up.

Megan MacInnes: Chair, the other thing to remember is that this is not a single phone call. The point is that it is regular control over the company's business and operations. Again, that is much harder to hide when it is a repeated level of phone calls and repeated communication.

Q1245 Chair: I understand that, but it is possible to have things like blind trusts, or just a standing instruction to maximise profit or run the business. The person is not then involved on a day-to-day basis.

Richard Murphy: But that has to be evidenced. A blind trust has to mean that the person is not seen to be instructing their trustees. It is a concept known mainly to politicians.

Q1246 Chair: How do you prove a negative?

Richard Murphy: These days by the absence of e-mails and phone calls. You can get those logs, if you want to.

Q1247 Mike Crockart: You mentioned the difficulties around trusts and those not being included. In terms of transparency, are there any other issues that the Government have not considered fully in this legislation?

Megan MacInnes: One of the things that is being discussed was mentioned by the HMRC panel. In the UK right now, the Government are finally negotiating the text of this UK-based Bill, but there is also the implementation of the EU directive. The EU directive also covers trusts. There is the chance, in terms of the implementation of the EU directive, for the disclosure of trusts to be considered as a separate piece of legislation from that employment-based Bill which does not cover trusts.

The other issue is about public access. In the EU directive, trusts are covered but the public do not have access to that. That is another element of transparency which we would like to see. Not only should these registers cover trusts, but they should be publicly accessible.

Richard Murphy: I have two other areas of some considerable concern. One is the Scottish limited partnership, which can be used to disguise ownership. The other is the generally available UK limited liability partnership, which for some perverse reason the Government have decided to allow to continue to be operated by entirely corporate members who can be registered entirely outside the UK but can then appear to be a UK owner even though it is actually wholly non-UK managed and owned.

The Scottish limited partnership frequently does not have to file accounts, and does not in many situations. It does not, therefore, file information on who its members are, even though it has certain aspects of limited liability associated with it. Both of those require better disclosure as a consequence. The Government have certainly missed an appropriate issue—demanding that limited liability partnerships should always have at least one real, live warm-bodied human being as a member who can be nailed down to be responsible for it. But that is not the case at present.

Q1248 Chair: James, do you have any comments on that?

James Robertson: In terms of partnerships, which have not been talked about generally, there is no register of who are partners of a general partnership. Again this falls to disclosure and openness. Scottish general partnerships, in contrast to England, are legal entities. They are able to own property but they cannot take title in it in the name of the partnership. It will usually be taken in the name of one of the partners. It might be a corporate, just for convenience, that is owned by the partners. Although it is a partnership asset and it belongs to all the partners, its title will be held in the name of an individual. That is a peculiar feature of Scots law. A partnership in Scotland is a legal person and it can own property. That is very different from England, and is another factor in terms of how transparency should be considered.

Q1249 Graeme Morrice: If we take that issue of legal entities in Scotland, you will probably be aware that the Scottish Government are looking at proposals to restrict legal entities that are eligible to register a title to land and property only to those in the EU. Do you agree with that? Do you think that is helpful in ensuring transparency? Do you see any loopholes in that?

Richard Murphy: They have no choice about that in the EU. That is simply a matter of fact. Within the European Union under the Treaty of Rome and all following treaties there is a right of freedom to incorporate. Therefore you can incorporate if you are in the EU in any country you wish. But let us also be quite clear: there are some member states in the EU who are blatant tax havens and secrecy jurisdictions, where a secrecy jurisdiction is deliberately used to disguise ownership or other forms of activity from the regulator of another state. Luxembourg is a classic example.

It is quite difficult to get information from Malta and Cyprus. For these purposes, rather curiously, I am not quite sure where we will find the legal test falling with regard to places like Jersey, Guernsey and the Isle of Man, because the EU extends its own regulation on some occasions to those places, deeming them to be part of the UK. It would be an interesting idea. In practice, I think there are real problems with this. Unless you go behind the company and say, “We’ve got to know who still owns the company,” and you look through the trust and so on, this is not going to be very useful.

Q1250 Graeme Morrice: I suppose ultimately it could be owned by corporate entities that are registered in tax havens.

Richard Murphy: Yes, of course.

Q1251 Graeme Morrice: Having said that, would that not still encourage the disclosure of beneficial ownership?

Richard Murphy: In theory it should, but, in practice, if somebody is determined to hide the beneficial ownership of a piece of land they will put behind that company whatever structure is necessary to make sure it is not identifiable, including arrangements where, for example, it is quite common to find that a company in another European country may be owned by two nominee companies which in turn own each other.

I have frequently come across that arrangement, and discussed it on television in the past with regard to ownership of some situations. There is then going to be a trust behind those, but we do not know who. Dead ends are normal in this. I do not see that saying that the next layer has to be a European country is a great problem. It just adds another layer in the whole arrangement, but that is all, unfortunately.

Megan MacInnes: From our perspective and from the Government's perspective and other groups working on the more community-focused elements of Scottish land reform, this is a really important provision. Again it links with helping us to understand who owns land, and is an important step towards some of the other elements of the proposals being discussed by the Scottish Government at the moment, such as the community engagement proposal and also the proposal to remove certain exemptions on business rates for certain activities. In general, it is very much to be encouraged. There are definitely some loopholes and things which need to be considered. I would agree with Richard in terms of what this means for tax havens within the European jurisdiction and how that can be addressed.

The other question is that the extent is not clear in the current proposals, whether they cover companies and trusts, and what kinds of trusts and charitable trusts. These kinds of things need more consideration as well. Another question is whether or not it is applied going forward or retroactively, given the fact that there is relatively low turnover, especially of larger land and estates in Scotland. In addition to the provisions that will apply going forward, there is a question of whether or not there can be some encouragement to the current owners of land to undergo some process of registering legal entities in Europe—a schedule process. That is something which should be given more consideration.

Q1252 Chair: Let me clarify that last point. Presumably if you have a situation where it becomes the law that the owner has to be registered in Europe, it is almost bound to be retrospective in a sense. If you are saying, “As from now it has to be,” those who own will have to register in Europe.

Megan MacInnes: As I understand what is in the current Scottish Government's proposal, it would apply only to those who buy land in the future. It will not apply to those who currently own land.

Q1253 Chair: But it could, am I not correct?

Megan MacInnes: My understanding is that it was only going to apply to future transactions, but that may not be correct.

Q1254 Chair: There is a distinction in what they are proposing. What I am trying to clarify is whether or not they would have the power to say that it could apply to all land in Scotland: “All land in Scotland as of such-and-such a date will have to be owned by an EU entity, otherwise we will take it,” or something. There would have to be some sort of sanction, presumably.

Megan MacInnes: Our understanding is that there are no legal barriers preventing them from doing that. Obviously there are bureaucratic and administrative barriers in terms of how it is actually applied, given the slow progress that has been made in terms of the ownership being registered on a land registry. It would be about how it is applied in practice, rather than the yes or the no.

Richard Murphy: Could I make a suggestion that would make that proposal much more effective? There is at the moment a real problem that the foreign owner of UK land is not deemed to be trading in the UK because renting land is not considered to be a UK trade for the purposes of defining a foreign company resident in the UK, and therefore required to put information on public record on a UK registry of companies, even though it is a foreign company. If you were a foreign company operating a factory in Scotland, you would have to file accounts in Scotland as if you were a Scottish company. But if you simply rent out land, you do not have to file accounts because that is deemed not to be a trade. That makes no sense at all to me. As far as I can see, if you are actually renting land in a place, you have to be trading in a place and you have an income arising in a place. Therefore, you should be subject to the law with regard to the operation of limited liability entities in that place.

One of the things to do is change the law on that particular issue, and say that for company law compliance purposes any company that owns land in Scotland is deemed to be a Scottish resident for the purposes of disclosure of accounting and beneficial ownership information under Scottish law. You are not then relying upon Maltese law, Cypriot law or Luxembourg law. You can do what you like but you also have to comply with English—sorry, Scottish law with regard to this issue; the two are the same at the moment, but they could be different in the future.

You will therefore file here as well. That would also then mean that if they operated a bank account in Scotland, and you followed through my recommendation that the banks be required to put on record the beneficial ownership information that they had secured from those companies, you would get the information that way as well. In my opinion, that information would not only be supplied to HMRC but also to the relevant Companies House so that beneficial ownership records could be checked. What the company discloses and what the bank discloses should be checked to marry up with each other. That will require the engagement of staff. That is a cost, but if we are really interested in ensuring that we have a fair and level playing field in our economy, it is an essential cost to incur to protect from the abuse of limited liability which otherwise takes place.

Q1255 Chair: I want to clarify whether or not the decision to say that firms would have to file accounts in Scotland, while I recognise it could be a decision for the UK Government to apply across the whole of the UK, could be a decision that the Scottish Government take and put into law to apply only to Scotland.

Richard Murphy: To be honest, I have not read the Smith Commission on that so I am not quite sure yet.

Q1256 Chair: Would that not be a matter relating to land ownership?

Richard Murphy: I cannot see why there would not be something, because there is a separate companies registry for Scotland already. Why Scotland could not possibly pass law with regard to the application of Scottish company law because there is a separate registry in place seems to me to be a bit odd.

Q1257 Chair: I am conscious of Smith, and I cannot remember where company law comes into it. I think company law remains reserved. However, many of the matters relating to land ownership are devolved. It could be made a condition, could it not, under devolved powers, that registration with an agency which is reserved could be a condition?

Richard Murphy: Yes.

Q1258 Chair: That gets round that. The Scottish Government would be able to make that a condition, should they so wish.

Richard Murphy: I would have thought so. I am sure a clever lawyer could find a way to achieve that goal, if the political will existed.

Q1259 Chair: That is the issue. To be fair to the Scottish Government, these are complexities with which they might not have grappled.

Richard Murphy: No. They're new.

Chair: Indeed.

Q1260 Pamela Nash: In evidence from Community Land Scotland to the Committee, concern was raised that registered charities could be used as a front for ownership of land to benefit from tax advantages. Is this potential abuse of the regulatory system something you have heard of before? If so, what would you suggest as a good way of dealing with it?

James Robertson: I have to say honestly that I have no experience of it being used in an abusive way. I have advised a number of charities. There are a number of very well-respected organisations that are charities and that own land in Scotland. There are a number of land trusts—

Q1261 Pamela Nash: They would be legitimate charities. The phraseology used was “there are charities and charities”.

James Robertson: I am saying that I have no experience of it. I would have been interested to hear specifics of what the concern was. In Scotland, if you are setting up a Scottish charity, it will have to be registered with the Office of the Scottish Charity Regulator.

Q1262 Pamela Nash: I can read the evidence to you because it is quite specific. I quote Peter Peacock, who says that “it sometimes looks like some of the charities that were probably approved as charities quite some time ago before the new regulation of charities in Scotland came into effect, look like a front for the existing old family just to continue the old ownership and continue the old ownership practices, but now with charitable status which gives them tax advantages which allow them to keep the ownership of that land.” I can’t provide any more clarity than that.

James Robertson: I am trying to speculate in my head as to who Mr Peacock had in mind. I had a couple of thoughts. Those that I am aware of have been set up to preserve a particular piece of land or a particular bit of heritage property. The regulations as to how they should be regulated by OSCR, and for tax purposes by HMRC, ought to prevent abuse, providing that they are being properly regulated. One of my fellow witnesses has made comments before about the effectiveness of regulation. It should not be capable of being abused. The kind of comments that have been made about engagement with the community are a part of addressing that, it would seem to me.

Megan MacInnes: I have heard that this is a vehicle being used for tax avoidance but I cannot speak about the actual details, not knowing the facts myself. The question of regulation is critical and whether or not OSCR is in fact—

Q1263 Pamela Nash: When you say you have heard of it, have you heard of any specific instances of it, or is it just hearsay—that it might be something that is used?

Megan MacInnes: I have heard it said that this is one of the reasons why some estates are owned by charitable trusts, but I cannot speak to the detail.

Q1264 Pamela Nash: You have not seen any evidence of that.

Megan MacInnes: No. I have heard rumours. That is all I can say. Again, I would say that this is really something that OSCR needs to look into in more detail. The extent to which the current regulations are being implemented in terms of whether charitable trusts are fulfilling their genuine charitable objectives should be looked at, both in terms of current implementation of the regulations and whether or not those regulations should be strengthened to make sure that trusts which claim to have charitable objectives really do, and are meeting them.

James Robertson: If I may come back, where I have seen them operated they have been operated extremely hands-on, with separation between the owners and the charitable trustees almost to the extent of creating difficulties. The tax legislation provides a particularly draconian measure if you breach your charitable rules. If you lose your charitable status, you are immediately treated as having disposed of all your chargeable assets at open market value with tax payable, and they can go back 20 years. Losing your

charitable status, if you are a charitable trustee, is something that really concerns you. I cannot say that people do not abuse something; I am just not aware of it.

Q1265 Chair: How many times has that sanction ever been applied, to your knowledge?

James Robertson: I advised a charity that was looking at doing something which would have lost it its charitable status. They were not aware of that. They did not do what they were thinking of doing. It was not bad behaviour; it was simply something that a charity is not allowed to do and retain its charitable status. It would have breached it.

Q1266 Chair: I think you are saying to me that the answer to the question is never.

James Robertson: The only people who could answer that question are HMRC. In my experience, I have never seen it.

Q1267 Pamela Nash: You have never seen it because you have always given advice to prevent that from happening, or because it is not enforced.

James Robertson: On enforcement, if I was acting for that particular entity, I would have to file a return and declare the tax.

Q1268 Chair: That is pretty much the nuclear option. Without applying the nuclear option there is still a fair amount of scope for a considerable amount of bad behaviour.

James Robertson: I do not think it is bad behaviour, Chair. The engagement of almost any entity I can think of—I do not just include private charities but other entities, including well-known ones, common good funds and so forth—could be better with their local communities.

Richard Murphy: There have certainly been examples of abuse of charitable status in the press. I have never seen the forced break-up of a charity in that way. The Revenue are remarkably reluctant, in some quite blatant cases, to challenge charitable status, which always surprises me. I do not know why they won't do it. I think charity regulation is relatively weak. I admit I have less experience of the Scottish system than I have of the English and Welsh system. Generally, it suffers from all the same problems of too few resources being provided to achieve the goals that are set by legislation. There is opportunity for abuse. There is non-filing of accounts. There are issues about that, although, if you have gone to the point of setting up a charity to own land, it is unlikely you are going to do that sort of abuse.

My belief is that this is an area where a general anti-avoidance principle in tax law is the weapon needed to anticipate an abuse which nobody has yet seen. There is a general anti-abuse rule now passed by the Scottish Parliament with regard to Scottish taxes, which may be appropriate in this case, because it would be about land taxation. They have not yet drafted the detailed regulation on how that will work. I was involved in the drafting of the UK-wide rules on the general anti-abuse rule. That is certainly inadequate to deal with this, but I have

higher hopes of the Scottish rule than I have of that for the UK as a whole. I think it would be the way to deal with it.

Q1269 Chair: We may get Peter Peacock to contact you. You can discuss informally what you had in mind. I seem to recall a particular situation where, effectively, the family that had previously owned it passed it to a charity, but they still continued to run it in their own interests. That was my understanding of what was happening.

Richard Murphy: It is hard to see the motive, because they would already have got inheritance tax relief and so on, which the charity would enjoy as well. There must be a motive but I am not quite sure what it would have been in many cases.

James Robertson: Generally speaking, letting it tax free.

Richard Murphy: It seems unlikely.

James Robertson: It becomes difficult to talk about these things, because there are not many of them around. The one I suspect Mr Peacock is thinking about is one I have never acted for. I can speculate as to why one might. You might set something up because you genuinely want to preserve that house in a particular way with a view to its being preserved for ever. If the family want to use it, they have to pay to use it. That is something that has to be policed. You cannot use the charity's property as if it is your own. You will have to pay whatever it is valued at. On the fact that the family might be trustees, I would be surprised if they were the only ones and there were not professional trustees involved. I would also be surprised if there was not great care taken to ensure that there was not abuse.

Whether or not there are issues with the local community seems to me to be a different question. Sometimes, Chair, one has to be aware that people take a particular action or relief and say, "This is the bad thing," when actually they are talking about something else; it is a kind of weapon. I will happily talk to Mr Peacock about it.

Chair: All of us have dealt with the public, and therefore we are aware that they are not always correct, though that diminishes as we get closer to an election. Could I pick up the question—

Richard Murphy: Chair, I need to go soon.

Q1270 Chair: We had three final points, all related to the question of valuation and what your view is on the argument that the tax arrangements drive up price. We pretty well covered that earlier on. Are there any answers you had prepared to questions that we have not asked? Are there any points that you want to leave us with? Richard, do you want to come in first since you have to go?

Richard Murphy: Everything that I hoped to say I put into the opening bit rather than the closing bit. I wished to raise the issue about Scottish regulation and its failure. That was the particular issue which I think you have to take into account. If you do not get Scottish company law regulation right, all the rest of this is going to fall flat on its face. To me, that is the starting point of any recommendation. I have nothing else to add to that.

Megan MacInnes: I want to go back to what I said at the start. From our perspective, the challenge of reforming Scotland's land and land ownership is not just one of lack of transparency; therefore beneficial ownership and increasing the disclosure of who owns land in Scotland is only part of the solution. It is good to recall that improved transparency of who owns land, whether it is through beneficial ownership or some of the other mechanisms we have discussed, is essential to some of the broader and longer-term challenges in reforming Scotland's land and how it is used and managed, especially in terms of how we address the challenge of greater community ownership of land and greater community involvement in decision making on how land is used—as crofters, as tenants, as owners of land, or other ways in which they are dependent on the land—especially around the question of accountability. How are the owners of land accountable for the way in which they own the land? How are the Government in Scotland and the UK Government accountable to the public in relation to how those decisions are made? We should not get too focused on the disclosure element.

Over the last few years, the international community has focused on transparency being a really important tool, whether talking about greater public transparency through, for example, the Open Government partnership or in corporate operations in oil, gas and mining companies, or in revenue payments. There has been a big focus on transparency which is extremely important, but this focus has made us realise that getting access to the information is really just the first step. We need to think about what we do with that information and how we use it. Many elements in the proposals for reforming land and the management of land in Scotland look at how we use that information and what we do with it afterwards, to make sure that the people of Scotland can benefit from the land of Scotland. It is good to track the conversations we have had today back to that broader objective.

Q1271 Chair: To be fair to ourselves, we recognise that many of the issues that you have raised are devolved, and therefore it is not appropriate for us to try to determine policy. That is why we were particularly focusing on issues like the question of taxation, and issues relating to disclosure, beneficial ownership and so on which remain reserved.

Megan MacInnes: Absolutely, Chair. I very much agree, and we commend the Committee's choice to focus on this specific area, but it is good to recall the broader objectives. For example, there are choices around using secrecy jurisdictions, which are deliberately used to distance yourself from the assets at hand rather than just simply tax-based reasons.

Q1272 Chair: James, do you have any final words?

James Robertson: I feel I ought to say something about tax. I would say to the Committee that, if we are looking at the tax system in little bits and saying, "I want to change that because it might have that effect," I would draw you back to the question that you asked HMRC earlier on, which is about assessing whether the tax relief and the tax that is operating is achieving the policy goals that you have. In that context—thinking about how you design tax systems that produce the policy answers you want to achieve—the endless tinkering at the edges in the short term merely adds to complexity, and frequently adds to the ability of people to exploit them in ways that were not anticipated.

A previous witness, Stuart Adam, raised the Institute for Fiscal Studies report on how you might have tax by design. My own institute has statements of principle about how one should look at designing tax, particularly taking account of global ownership and a global economy. You need to assess whether anything on tax fits into a wider policy objective, rather than simply tinkers at the edge, with unexpected consequences. Think it through and make sure that HMRC or Treasury, whoever is responsible for it, is actually assessing the effectiveness of tax policy.

Q1273 Chair: Given that point and given that nobody seems to have been assessing the impact of agricultural relief, would the world be a sadder place if it was abolished?

James Robertson: You would have some very disappointed farmers because of the effect on the farmhouse. That is a micro point. If you are asking me on a broad principle if the world would be a better place, I think it is neither one nor t'other. It has less effect than people think. There is a much wider question, which is reviewing the whole method of taxing land—inheritance tax and capital gains. There is a much wider project there.

Q1274 Chair: Is it reasonable that farmers seem to be the only people who manage to avoid inheritance tax on property on death?

James Robertson: Any trading entity is in the same position. There are many urban businesses such as factories and other properties which may have very considerable value because of their site value. It has nothing to do with their productive capacity, particularly in London. They are in the same position; they get business property relief if they meet all the qualifying tests. It is there to enable family businesses, as I understand it, to continue without having to be broken up and sold. That is the policy reason for doing it. Is it an effective one? That, I would say, is another project.

In terms of why one should look at that, you may consider the fact that I get 100% relief on death and my heirs get a step up to market value for capital gains tax on my death. If they sell the next day there is no tax bill. You may find that one of the reasons why people hold things until they die is precisely that. That is a much wider thing than land. In fact, the inflated values may have much more value in terms of what is taxable outside of land. It is just less visible.

Chair: Unless there are any other questions from my colleagues, I thank you very much for staying much longer than you may have anticipated. We expected, or the staff—ever-optimistic—had expected, each session to be an hour but I think it was two hours and then an hour and a half. Thank you very much for staying to the end.