

Treasury Committee

Oral evidence: Budget Autumn 2017, HC 600

Tuesday 5 December 2017

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Members present: John Mann (Chair); Rushanara Ali; Charlie Elphicke; Stephen Hammond; Stewart Hosie; Mr Alister Jack; Kit Malthouse; Alison McGovern; Catherine McKinnell; Wes Streeting.

In the absence of the Chair, John Mann was called to the Chair.

Questions 230-294

Witnesses

I: Andrew Courts, Member, Global Forum for Taxation, Association of Chartered Certified Accountants, Frank Haskew, Head of Tax Faculty, Institute of Chartered Accountants in England and Wales, and Ray McCann, Deputy President, Chartered Institute of Taxation.

Written evidence from witnesses:

- [Association of Chartered Certified Accountants](#)
- [Institute of Chartered Accountants in England and Wales](#)
- [Chartered Institute of Taxation](#)



Examination of witnesses

Witnesses: Andrew Courts, Frank Haskew, and Ray McCann.

Q230 **Chair:** Gentlemen, good morning. Please introduce yourselves for the record, as we are broadcasting.

Frank Haskew: Thank you, Chairman. I am Frank Haskew. I am the Head of Tax at the Institute of Chartered Accountants in England and Wales.

Ray McCann: Good morning, Mr Chairman and Committee. I am Ray McCann. I am the Deputy President of the Chartered Institute of Taxation.

Andrew Courts: Hi. I am Andrew Courts. I am a member of the Association of Chartered Certified Accountants and currently head of the ACCA tax committee.

Q231 **Chair:** I welcome you here this morning. The Government have a stated ambition to consult further in advance of changes and change tax less frequently by moving to an annual Budget. Has the Autumn Budget achieved this in your view, Mr Haskew?

Frank Haskew: Thank you. The Government are very keen to adopt a more considered consultation process, so we are seeing the first fruits of that. We had quite a lot of consultation documents issued on 1 December. We have quite a few consultations in the pipeline as well. In terms of what the Government are looking to do, we are heading in the right direction. There are, though, a few points we would like to raise, one of which would be that we think the Government would do better to make sure it consults at an earlier stage in the process, before it comes up with the actual policy it wants to pursue—so when it is still looking at policy options. There is quite a bit of value there in speaking to professional bodies such as ours to explore the options.

We think there is more that can be done in that space. To be fair to the Government, they are very receptive to that. We appreciate it is a difficult balancing act. If you have things like anti-avoidance measures, that can be quite a difficult challenge. We have made some progress. We have, though, been through this before. Back in 2010, we had a very similar approach and desire for consultation. The view is that that was not always followed, but it is a welcome restatement of the position. We are very happy to support the direction of it.

Ray McCann: We agree with that. We have to recognise we have come a long way from the days when the Budget was announced and it was a surprise to everyone except the Chancellor and his team. We welcome the move to one single fiscal event each year. Obviously we have not really achieved that in 2017 but we will go forward. We welcome



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consultation obviously. Between the various professional bodies, there is a veritable army of experience in relation to both accounting and tax matters, many of whom are willing to provide services, advice and experience to the Government to help them get tax policy right, which is obviously in the interest of everyone.

We also have a trait whereby legislative measures are being announced but they do not have effect for sometimes up to two years. On one level that is fair enough, but on another it plainly provides some opportunity for those who would perhaps not want to pay their full share of tax to arrange their affairs to try to minimise the impact of anything that is coming. There is a balance to be achieved, but overall we see the current approach of the Government as very positive.

Q232 **Chair:** Mr Courts, have you been given enough time? Is the lead-in time for you to give advice in advance sufficient to allow you to give the advice you think would be relevant?

Andrew Courts: The Government have a balancing act to make here, in that they may wish to put in measures to close loopholes while giving changes to consult on. In relation to providing consultation, sometimes we have a very short window. I was involved in some consultations a while back where we had a very short window. At other times, we have longer windows. There is not a set window for different things.

Q233 **Chair:** I understand that, but the Committee needs to be clear whether you have any concerns about whether you are being given enough time for your expertise to allow us, when we decide things in Parliament, not to get it wrong—or at least to have the benefit of your wisdom before we choose to get it wrong.

Andrew Courts: Extra time is always required.

Frank Haskew: It is a difficult balancing act. We certainly support the current framework. There is more time built into it, but the sooner the consultation starts, the better. In principle, we certainly have more time in this current schedule to help Parliament make sure the tax laws are framed in accordance with the Treasury Committee's principles.

Q234 **Chair:** Is there anything that could be done better so that parliamentarians are better informed by tax experts?

Andrew Courts: Rather than announce things in the Budget that are going to be consulted on, it may be worthwhile having some consultations prior to the Budget, so that you can discuss with professional bodies or other related parties a good way to announce it in the Budget. Therefore, you have your consultation prior to a big announcement.

Q235 **Chair:** How much consultation would your profession require to be able to make some effective input?



Andrew Courts: I am going to come back to a similar answer I gave before: it depends on the particular item. If you look at something like making tax digital, there is years' worth of consultation on that, because it is such a major change to the way tax is worked. Some other items, a few of which you may have in the Budget here, such as the extension of the marriage allowance going back four years, do not need anything. Therefore, it is very hard to say on a particular item. If you are looking at major changes, we would need more time.

Q236 **Chair:** My third question is a big question and it is for each of you. The Treasury has its six principles for tax policy. How does this Budget measure up to those six principles, and which measures score particularly badly or well?

Frank Haskew: We certainly support the Treasury Committee's principles that were developed some years ago. We have framed our responses to reflect that. If you look at our submission, the overriding impression of it is that we support generally the fairness. You will see that most of our responses are orange or green. We generally in principle support what the Government are often looking to do in terms of the measures.

You will see that we scored it more difficult in terms of things like certainty, stability and practicality. You only have to look at the Finance Bill published on Friday to see quite a lot of the included measures that have been announced are very complicated to implement and administer. That has very much been a feature of the UK tax system for 20 years but particularly over the last five to ten years.

The overall assessment would be, in terms of fairness and supporting growth, the Government's measures are addressing the right sorts of questions. Our concern would be about the certainty, stability and practicality of them. It is more much complicated and probably difficult for HMRC to administer. That is where we tend to see the difficulties arising. That is a broad-brush, bird's-eye view of it.

In terms of the detail, you can see that, for instance, off-payroll working and disguised remuneration are areas where we think the measures are going to be potentially difficult to implement and are not necessarily going to be certain and stable, as with royalty withholding tax. Those are the sorts of measures where we think there will be problems in terms of the practicality and certainty. Overall, you can see from our response that we feel Government are looking at the right principles. In terms of fairness and supporting growth, it is a fairly reasonable Budget and approach.

Q237 **Chair:** Mr McCann, do you have anything particularly different you want to highlight?

Ray McCann: Whilst it does not get scored in that way, we welcome the scale. This Budget and the subsequent Finance Bill are much smaller



than has been the case in the past. That is obviously helpful. Having 1,000 pages of new legislation and guidance to get your head round each year has been a bit of a challenge. We tend to score low mainly compliance issues. The offshore trust changes in particular get a poor mark from us, simply because it is an area that is fraught with complexity and changes should not be rushed in, as seems to be the case here. It would not surprise me at all if in a few years' time this Committee is questioning as to why these changes never achieved the objectives that the Government have set out for them. I was, in the past, a tax inspector, and I have a long recollection, going back over a number of years, of changes in this area not being seen to achieve the objectives that various governments have set out to do.

There are some other changes in that area. For example, we question whether the depreciatory transactions anti-avoidance measure that has been brought in is of any value whatsoever in the corporate space. Freezing indexation on companies and the yield estimates that are put to that seem to us to be somewhat excessive. We will see how that pans out. As with the ICEAW, we welcome measures that are intended to try to improve productivity in the UK and make life easier for those at the lower end of the income scale. By and large, our assessment of the overall Budget measures is positive.

Andrew Courts: I tend to agree with my two colleagues next to me, in that if you look at the back page of our submission, you will see the majority of the responses we have given either a green or amber light to, which means we are positive. The areas we do have concern are over the practicality and certainty of some of the transactions.

Q238 **Chair:** Is there anything additional we should be doing, where you could assist us, that would allow better scrutiny of the Finance Bill?

Ray McCann: The challenge with all these things is understanding both the context within which legislative proposals are brought forward and the intrinsic difficulty in much of the legislation that is already there. Again, coming back to trying to deal with issues involved in the offshore tax market, that is notoriously challenging, both for the Government and HMRC, due to the very wide range of approaches by governments around the world in terms of how they try to attract in wealth.

We would be more than happy to help the Committee understand the challenges in those areas and, domestically, with more mundane things. If we take, for example, the change to stamp duty land tax and whether that will achieve the objectives the Government have set out for it in terms of encouraging more home ownership, plainly we have lots of members who operate in an area of frequent house purchases. We have quite a lot of experience, as does HMRC, of those who have set out in the past to try to undermine what the stamp duty land tax rules were intended to do. Again, we can assist there in terms of those types of changes.



Chair: We will come back to those issues during the hearing. Thank you for that.

Q239 **Wes Streeting:** Good morning. I wanted to ask for your advice about the possible roll-out of the off-payroll working form to the private sector that the Government will be consulting on. In your experience, what are the lessons that we need to learn from the experience of rolling out the IR35 reforms in the public sector in order to make it a success in the private sector, both in terms of the benefits and challenges we have seen?

Frank Haskew: First, this is an extremely difficult area and obviously extremely controversial. We have seen changes in the IR35 rules and their extension to the public sector. Back in 1999 when they were originally proposed, the obligation in the IR35 rules would be on the end user of the services themselves. The original IR35 rules, as the Government proposed, are now what we have in the public sector arena. That was then changed during the consultation process, which led to the IR35 rules. The obligations were switched effectively to the personal service company. It is quite interesting in a way that here we are, 17 years later, and we have effectively almost gone back to the original IR35 proposal. That is the background to some of these changes.

We now have the extension to the public sector. We can understand why the Government in policy terms would like to extend that to the private sector. The view at the moment is that this is a hugely complex area, as the Government have acknowledged. Shifting the burden to the end user will create major changes. We have obviously already seen that in the public sector. Our evidence is that a lot of contractors are certainly not looking to work in the public sector now. There is quite a lot of expertise there that is not going into the public sector. We also understand that a lot of public sector bodies are using umbrella companies, suggesting that the contractors who do work for them are using umbrella companies. That is a new dynamic that needs to be added in here.

We also have the fact that things like real-time information work and other administrative PAYE burdens create a lot of difficulty for people. Our view is that we can understand in policy terms why the Government are looking to potentially move it on to the private sector. The Government recognise that they need to proceed with great caution in this area and there is a lot that needs to be considered and thought through. That is really where we are on this as well. If the Government want to do it, we need to take stock, first, of how it has worked properly in the public sector and how that then will be applied before we look to move it on to the private sector.

It is a long process that needs proper consideration. In terms of policy, as I say, that was the aim of the IR35 rules, when the Government originally announced it, but that was not then how it was enacted.

Q240 **Wes Streeting:** Before we move on to Mr McCann's answer, could you



elaborate a little more on the point you made about the use of umbrella companies? What is happening there and why?

Frank Haskew: I am not an expert in this area, but my understanding is that a lot of the public sector bodies are not taking people on the books themselves, so they are effectively still using the structures; the contractors they are using are often then working for umbrella companies. It is a situation that will change the dynamic. We are going to have umbrella companies still existing but potentially paying PAYE on the amounts that are being paid. It is a change in the landscape. How it will work out in practice is difficult to say, but there is a concern at the moment that public sector bodies are struggling to get the input and expertise they need, particularly on things like making tax digital, where you need specialist IT skills.

Ray McCann: We have a very long history in this country of individuals trying to take advantage of the fact that there is a structural difference between how tax is levied on the fruits of self-employment as opposed to employment. The latter is notoriously more heavily taxed across a range of different areas. While that structural inequality, if I can put it that way without being pejorative about it, exists to the extent that it does, it will inevitably attract those who will seek to try to put themselves in a position where they are taxed as a self-employed person or, in the context of the IR35-type approach, taxed as a company.

The Government have taken some steps in recent years to try to reduce that. Changes to dividend taxation last year help with that. IR35, as Frank mentioned, was brought in some years ago, but that legislation just has not worked properly. HMRC ended up with very long-running investigations into whether IR35 applies. That is not good. We also have a situation where there are thousands, perhaps tens of thousands, of contractors who have found overnight almost that the law has changed underneath them. What they thought of as a stable situation is suddenly up in the air.

Having met a fair number of those individuals, though not hundreds, there does seem to be a consistency that, as far as they were concerned, they were doing what the law allowed. They have suddenly found themselves in an adverse situation. It seems to me that this is an area that cries out for a much more strategic review as regards how we tax labour. There have been some efforts made in that respect, but it seems to be the case that we have reached a point where we have to question the various differences in how the rewards from effort are taxed. Some of them will inevitably need to remain, but it is questionable whether we need the extent of the divergence we have at the moment in terms of the difference in taxation between the self-employed and the employed. That is in terms of both what is allowed against earnings and self-employed profits, and how those profits are taxed.

It is 15 years ago that I was in HMRC. I remember discussing with the Board at the time the huge shift from self-employed into corporates. In



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that particular year, 2003, something like 500,000 extra companies set up. Lots and lots of little small businesses were moving into companies, and the Revenue was getting a bit concerned about where it would find the extra resource to monitor all these new businesses, which of course would be derived from all the tax inspectors who, up to that point, had been dealing with self-employed trades and now had corporates on their hands. It is a major problem and it impacts significantly on National Insurance Contributions as well, where there is a very long history over the last 20 to 25 years of endless attempts to try to find the means of rewarding people in a way that does not attract national insurance, either at employer or employee level.

Andrew Courts: It is a bit early to bring in this consultation process because you have not had enough time to evaluate the part that came in on public service companies in April. We are only eight months afterwards. You need to get a full year round and review all those items before you move into consultation on the next stage, which is bringing in workers who are not in the public sector. You need to wait a bit longer.

In addition to that, as Mr McCann mentioned a minute ago, you have also brought in new charges on the taxation of individuals working through public service companies. That needs to be weighed up alongside what you are trying to do. Are you trying to force people into employment? There is lots of other employment legislation going through at the moment that is clarifying people as workers. Therefore, rather than just a consultation in this area again, you need to have, as Mr McCann mentioned a moment ago, a much bigger discussion on the taxation of workers full stop. That may even be the removal of National Insurance, which has been pushed around, because that is the area where people are trying to avoid tax.

Q241 **Wes Streeting:** We have heard across the panel a range of reasonable, practical concerns. Forgive me if this is too simplistic, and feel free to challenge, but if one of the major objections that is raised by petitioners is that we have had real problems with staffing major public sector projects, including major IT roll-outs, because people are simply saying, "IR35 reforms in the public sector mean we do want to work there anymore," is it not both necessary and urgent for Government to extend this to the private sector? If they are not going to work in the public sector but are going to work in the private sector because of the imbalance, surely the right thing to do is correct the imbalance, because where else are they going to work?

Andrew Courts: You may lose that labour full stop in the UK.

Q242 **Wes Streeting:** They may just go abroad.

Andrew Courts: Yes.

Ray McCann: It is also important to recognise that the public sector approach was to make the public sector body responsible for determining whether the person had complied with IR35, for example. It did not



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change the intrinsic question of whether a person is employed or self-employed, to the extent that it would result in a different analysis. It just made it the responsibility of the public sector body, which goes back to the point Frank made that, when these proposals were originally brought forward, the idea was that the end client, end user or end employer—however you term it—would be responsible for deciding whether the particular individual was employed or self-employed under the arrangements in place.

To answer that question directly, I would be surprised if someone who was, for example, within the scope of IR35 working for a government department but moved into a private sector employer could rest safe in their bed at night knowing that they were completely free of the risk of HMRC and certain that IR35 did not apply to whatever arrangement they had.

Q243 Wes Streeting: Can I take from the concerns you have expressed and the point you have made about looking at this in the round that the Government's consultation should look not just at tax arrangements but the alignment of employment and tax law? I understand the point you are making about timeliness and making sure people have time to adjust and the rest of it. However, we are currently in a situation where people are using self-employed status to access tax credits, because that is better than managing the benefit system. We know that is happening. People are taking companies like Uber to employment tribunals to test whether HMRC is using kid gloves to deal with the gig economy. Your point about the timeliness of reform is well made, but there is also an urgency. We cannot have people constantly having to test these issues in the courts. Yesterday, we had HMRC in on a separate issue. They were talking about their challenges in the ineffectiveness of the current law enabling them to do their job. There is an urgency around this. Would you agree?

Frank Haskew: I would agree there is an urgency around it. We are consistent: there needs to be a proper debate on this and it needs to take account not just of tax but the employment law position, because we now have this discrepancy between the two. For employment law, we also have a worker being potentially different from an employee but tax only recognising employment versus self-employment. We have a dichotomy between all this. We need a national debate urgently to try to resolve it, because it has been going on for years.

Ray McCann: In particular, a very high proportion of employees within umbrella companies would not be described by anyone as being excessively paid. Most of them, or certainly a very high proportion of them, are in the relatively low-paid bracket, which is why those types of arrangements tend to be attractive to them.

Q244 Mr Jack: Can I raise the taxing of gains made by non-residents on immovable property? My first question to you is: how significant is the capital gains tax treatment of property to genuine overseas investors in



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deciding whether to invest in the United Kingdom market? How much emphasis do they put on capital gains tax?

Frank Haskew: It has been long an issue in terms of UK taxation that capital gains made by non-residents were effectively not taxed, which is not the international norm. The UK Government have been moving in recent years to make sure that gains from immovable property are being taxed. In terms of the principle, if you like, that is on all fours with the international approach to taxation of immovable property. In terms of our overall assessment of what Government are trying to do, that approach is entirely logical and consistent with our international trading partners.

Q245 **Mr Jack:** It includes corporate structures as well as individuals.

Frank Haskew: Yes.

Q246 **Mr Jack:** It is all forms of commercial property and agricultural land as well. Is that the right way to go?

Frank Haskew: Ultimately it is clearly a policy question for the Government. It may deter some overseas investors from wanting to invest in the UK, but in terms of the overall principle, it is the international norm that immovable property, whether it is commercial, residential or land, is taxable for non-residents. We are effectively catching up with the standard way non-residents are taxed in a country where they own immovable property.

Q247 **Mr Jack:** Do you think the Government's prediction of raising £500 million in extra tax by 2024 seems high, low or a sensible number? Perhaps you have not analysed it. Fair enough.

Frank Haskew: The truth is we do not have access to the numbers. On the face of it, it is probably not unreasonable but we have no way of checking it. Like all these things, one wants to see post-implementation reviews of whether these measures did bring in the money that was originally predicted and whether we can learn any lessons for the way we forecast revenues in future.

Andrew Courts: It will definitely be a revenue-generating element, because up until a few years ago there was no taxation of overseas individuals. It did not even cross their radar. Many people have now been brought into the area of taxation who were overseas.

Q248 **Mr Jack:** A lot of estate agents are on record as saying they are worried about a slowdown in the market. On the basis that it is international policy and obviously Great Britain is an attractive place for overseas investors, do you think it will make little difference to decision-making?

Andrew Courts: It will make a difference to decision-making, because many of these people hold an item that has previously been tax free. Now it is taxable, so without a doubt it now factors in. However, when



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they are weighing us up against the competition, when we talk of other countries as competition, we will fall in line with other countries tax-wise.

Frank Haskew: There might be a short-term behavioural effect, but in the longer term you would think that would just be another factor in any investment decision, which would be no different from investing in most other countries.

Ray McCann: In terms of this question of yield, we will have to work on the basis that the jury is out. There is not any tax that suffers more from rate than capital gains tax, because the higher the rate, the less likely it is you will collect the tax that you want—not because people will avoid, although that may be part of it, but because people will simply retain the asset. Where we are dealing with commercial assets, which is the change announced by the Chancellor, only those assets that are earmarked for disposal will then come within the tax. It will probably only then pick up a charge from a particular point in time. All the previous gain that has built up will be washed out because of the way the rules work. We have nothing to suggest that the yield expectations are wrong, but it does not look to me that that level of tax yield will be achieved by this measure.

In terms of your broader point as to how it will impact, Frank is right that internationally assets held by residents outside the jurisdiction will often be taxed but, equally, there are many jurisdictions that do not have a capital gains tax at all. We also have a series of treaty agreements with countries that will have the effect perhaps of undermining the yield again if we are in double-taxation situations. Then there will be a lot of structures they will be able to perhaps flex in such a way that it will minimise or reduce the tax. It is one of those areas where we have to wait and see how this measure plays out.

It will not necessarily get a particularly adverse reaction from the business community, again partly because of the point that Frank makes and because it will be seen as working as part of a change. The issue that we have is that it is another piecemeal change to the tax code so far as it applies to capital assets in the UK. We would like to see a much more strategic overview as to how real property is taxed in the UK, both in capital taxes and how income tax is levied, because this is allied to the fact that offshore companies, for example, will come within the corporate tax regime for the first time.

Q249 **Mr Jack:** There is a need for some form of capital gains tax because it detracts from people taking income tax. Sometimes people try to dress income tax up as capital gains tax. In that regard, it is a sensible measure. I want to go on to the Panama Papers and Paradise Papers and all that. Touching on that, do you think the public perception is that those structures are tax avoidance or even tax evasion? Do you think taxing gains for non-residents on immovable assets in the UK would put a stop to those sorts of structures? It is a three-part question. My final



question is: has that made practitioners more cautious about the way they offer advice?

Ray McCann: It is undoubtedly the case that practitioners today are warier of falling foul of both new tax rules and HMRC, which is particularly active in this area. Allied to that, the professional bodies have, in the past two years, taken quite considerable steps in ramping up our professional standards to make it clear that advisers who freely give advice to clients that blatantly or otherwise breaches the intention of what Parliament has in mind when it brings forward a piece of legislation will fall foul of our professional standards rules.

The Chartered Institute of Taxation and the Association of Taxation Technicians have an independent body that is there to try our members who are seen to fall foul of those rules. HMRC has rights whereby it can refer our members directly to the taxation disciplinary body. In the extreme, they can be struck off. There has been a step change in recent years in terms of how these things are perceived. I would be surprised and disappointed if there were large numbers of individuals operating in the UK tax market who were still freely advising clients how to get around the rules that Parliament puts in place.

Specifically on the Paradise Papers, we have to recognise that many of those structures have been around for decades, certainly years, and they will quite often predate a lot of the upsurge in public disapproval of offshore tax planning structures. Whether they can be changed, altered or some of them are even impacted by some of the changes that Government are bringing forward remains to be seen, because many of them will no doubt say that they have put in place a compliant structure that complies with every rule in every jurisdiction that is going. It is impossible to test, but that, no doubt, is what they will say.

Frank Haskew: Amplifying what Ray said, our professional conduct in relation to taxation that Ray mentioned is signed up to by seven professional bodies. The Institute of Chartered Accountants and the ACCA are signatories to it. It is a pan-professional standard. We have done that and we are keeping it under review. In terms of the Panama Papers and non-residence affecting those sorts of structures, it probably will have an impact. Like all the things here today, it is quite difficult to see what the impact will be, but we certainly will see an impact.

The Government, in the Finance Act that was passed last month—the Finance (No.2) Act—included some provisions to have penalties on what is described as enablers of tax avoidance. We now have measures there on the statute book whereby, if advice to a client is outside the parameters of the general anti-abuse rule, the advisers can also be subject to a penalty. This pincer movement is coming in on advisers from a number of directions. There is some guidance on the enablers legislation. That states that, if you are a member of a professional body working within the spirit of professional conduct, the enablers rule would not normally be expected to bite on you. We also need to remember the



tax advice market in the UK. HMRC estimates that about 30% of tax advisers are not affiliated to a professional body. There are overseas advisers as well. The UK tax market is quite fragmented. With our PCRT and the enablers, we have stepped up to the plate, and HMRC has introduced rules that should have an impact on the way advisers go about giving their business to clients.

Q250 Stewart Hosie: Do you welcome the freezing of corporate indexation allowance as a measure that will simplify tax computations for companies? How do you think businesses are likely to respond?

Frank Haskew: Our initial reaction was that, for individuals, the indexation allowance was removed back in 1998 when we had the incoming Labour government. We have a position now whereby indexation has been removed for individuals for almost 20 years. At the time, we were fully expecting the indexation allowance would probably be removed for companies at some stage; it was probably just to see how it worked in the private sector. It has been surprising that it has taken so long for it to come into the spotlight. We expected it to probably happen some years before. That was the general expectation.

In terms of fairness, it will make it on all fours with the same tax position that is paid by individuals. It will help to simplify the system, because the CGT indexation calculations could be quite excessively complicated. Having said that, it will have an impact. It has not been withdrawn. When it was withdrawn for individuals, you could sometimes almost lose it entirely. It is going to be frozen as of December, so you will not lose what you already had.

Q251 Stewart Hosie: I will come to that. Mr McCann, could I ask a philosophical question? You talked about the indexation being withdrawn in 1998. Inflation has been relatively benign. In the 1970s, it was not. Do you think we are going to have a debate about the principle of taxing inflation or, if inflation returned, do you think we would reintroduce indexation to avoid that?

Ray McCann: There are some who would say that, if you are going to levy a capital gains tax, it is levied on inflation, because it is inflation that accounts generally for the increase in value of the assets, because assets can be generally correlated to the value of money over time. I have to be honest that, when indexation was introduced, I thought it was a very odd thing. I was at the Revenue at the time, so inevitably I would think it was very odd. Then when it was abolished, I thought it was very odd that it was abolished for individuals only and not for corporates. I do not think it has had any particular behavioural response from individuals that I am aware of.

Again, coming back the point I made earlier, capital gains tax tends to be more discretionary than income tax, for example, or inheritance tax. None of us can avoid the grim reaper forever, so eventually the inheritance tax point must come. But the behavioural impact of capital



gains tax is that people will hold on to the assets. As you say, and are right to point out, when we have a situation where inflation is low by reference to historical levels, the indexation is largely irrelevant in any event.

Q252 Stewart Hosie: You make the point that people may hold assets. Is it not more likely that companies will be encouraged to sell now to bank the indexation they have, rather than be hit with a charge subsequently?

Ray McCann: It is possible that companies will do that. I expect that some will do it. We know from past experience when changes of this type have been made there have been a number of efforts made to try to bank something. It happened when taper relief was abolished. There were a number of transactions intended to try to bank taper relief. It is whether companies at the larger level will be bothered. It also presupposes that they want to get rid of the asset, in which case they can do it now, or they are prepared to enter into some complex arrangement that will have the effect of getting rid of the asset, thus triggering the indexation at this point whilst retaining economic involvement with it.

Q253 Stewart Hosie: I will come back to that point, but can I bring in Mr Courts first? In terms of smaller companies that rent out properties as opposed to the large corporates, do you believe this will make buy-to-let less attractive? Do you think it might push up rents? Do you think there will be some unintended or even possible intended consequences—foreseeable consequences?

Andrew Courts: To a large extent, because of the change in policies over the last few years, putting a buy-to-let, unless it is like a housing association, into a corporate entity is the wrong move anyway. I do not think any adviser would advise somebody to put a buy-to-let property into a corporate structure. From that perspective, it is not coming there.

In relation to simplicity and fairness, which were the original parts of your question on this, it is fair to bring the indexation on par with income tax. In relation to simplicity, if you are abolishing indexation altogether it would make it simpler. You are bringing it in as a graduated approach, so you still have that element around.

Q254 Stewart Hosie: You say that no one would advise anyone to put a buy-to-let into a corporate structure these days, and I understand that. Given that the mortgage interest relief is going to be 75%, 50%, 25% and then disappear, it strikes me, with this on top, there are almost no incentives to go into buy-to-let at all anymore unless you inherit a property.

Andrew Courts: People will still buy properties because properties are a fixed asset and are part of the standard investment portfolio. If somebody has a group of assets they wish to invest in, property will be one of them, gold may be another and equity is another. People will still buy buy-to-let properties. Many people, and I have small clients as a client base, have a second or buy-to-let property not necessarily because



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they intended on buying the property to let but because they keep their first flat or something when they move on to the next property to buy. They will have had that and had it for a long while. But, again, that will not be inside a corporate structure.

Q255 Stewart Hosie: I understand that. Mr McCann, can I go back to the point you were making? The freezing of the corporate indexation allowance is one of the major revenue-raising elements of the Budget. On the face of it, does it look vulnerable to tax planning such that it might actually reduce the amount of revenue brought in?

Ray McCann: I do not think anyone could say that is not a risk. In 2017 and onwards, it is probably less of a risk than it would have been in the past, simply because the climate has changed. To create some sort of structure that would maintain the benefits of indexation, it would need to be quite complex. While indexation is a relatively straightforward concept, having a structure that would allow you to keep the economic benefits of indexation would be quite a complex approach. As things stand at the moment, it is not obvious to me how that could be done in the longer term.

Equally, I still work on the basis that smaller companies are probably not overly sighted on it in the first instance. It has to be remembered that, with capital gains tax, gains are completely washed out on the death of the person who owns the asset. If you are in a situation where you do not see any way you can dispose of a particular asset, indexation is largely irrelevant to you in any event. Certainly for businesses at the lower end of the scale, such as family-run businesses whose major asset is the family trading premises that has been in the family for generations, this is probably not an issue for them. Larger corporates probably will not, I expect, pay too much attention to it.

Out of interest, last week I worked out what the indexation would be on a client of mine who had a large commercial property in London. I was quite surprised at what a low proportion the indexation would be by reference to what the value of that property is at the moment. I certainly hope that a lot of businesses would see this as part of the changes that Government make from time to time and not take particularly aggressive steps to try to minimise it.

Q256 Stewart Hosie: I take it you all would agree that the change is fair and brings the personal and corporate into line. On that final example you gave, the only case I can see is a modestly priced or valued property in a corporate small business transferred to an individual and sold, because the capital gains tax allowance exists at an individual level but not at a corporate level. That would be small beer, I would have thought. It would take an awful lot of properties transferred to make that worth a lot.

Ray McCann: I agree.



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Frank Haskew: The Government's policy now for many years has been to reduce the rate of corporation tax. When CGT was first introduced, we had very high corporation tax rates. We have seen those come down consistently. From the Government's perspective, it is encouraging low rates of corporation tax. If you like, the quid pro quo here is that, with lower rates and low rates of inflation, indexation is effectively perceived as an inappropriate relief. As we saw from the Red Book, it is quite an expensive relief, which was probably a surprise to quite a few of us. They made a decision in terms of the overall balance and the way they see corporation tax policy going.

Q257 **Rushanara Ali:** Mr Haskew, can I just take you back to point you made about tax advisers and the 30% or so who are not in any professional body? Do you regard them as particularly problematic? If so, what can be done to encourage them to become part of professional bodies to improve their practice?

Frank Haskew: The UK tax market is quite a fragmented market. That 30% covers quite a range of activities. For instance, people who provide payroll services could be in that 30%, as well as trust providers and banks. That covers quite a range of activity. Within that, it probably needs to be segmented further to understand who is operating in the market. In terms of overall concerns, it is a worry that potentially 30% of people giving tax advice in the UK are not either affiliated to a professional body or operating to professional standards. From a public interest perspective, that is not well understood. People assume that anyone giving tax advice must be a professionally qualified person. I heard, for instance, a story last year that somebody who had come over from another country set themselves up as a VAT adviser having no VAT knowledge whatsoever. I am sure that is a very extreme example, but it goes to show that anybody can set themselves up in the UK as a tax adviser.

Q258 **Rushanara Ali:** What would you recommend? Are legislative changes required to address some of these really bad practices?

Frank Haskew: Clearly HMRC is concerned about poor work and bad advice being given. We have had a number of discussions with them in recent years about what can be done about the 30%, recognising that within that there is quite a range of activity. HMRC is starting to focus more on that 30%.

Q259 **Rushanara Ali:** What would you want them to do on top of what they are doing? Do you have any particular thoughts on what might have an impact?

Frank Haskew: It is a difficult one for us as professionals, because I do not want us to be saying that those 30% must become part of a professional body. There are some people within that who are doing very good work. Ultimately, the spotlight will be turning on those people and HMRC needs to look at what they are doing. We have the enablers rules



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that I mentioned earlier on, which are potentially going to apply if people are giving aggressive tax advice.

There is a wider question about the work they are doing and the quality of it. It might be in the long term that there has to be a move towards some sort of oversight of the 30%. On the whole, by and large, the 70% who are within a professional body are quite well regulated. In the longer term, the 30% has to be under threat, as to whether those people need either to be brought within the fold of a professional body or subject to some sort of greater statutory oversight. What form it takes, I do not know.

Andrew Courts: I just wanted to bring one thing in. If you are registered with HMRC as an agent and are not a member of a professional body, you do have to register with the Revenue as your designated professional supervisor. These individuals are having to register if they are submitting returns on behalf of people with the Revenue already. The Revenue already know who these people are and have some kind of oversight over them.

Q260 **Rushanara Ali:** I guess we would need to know from the Revenue what proportion of them might be of concern.

Andrew Courts: You also need to know whether the Revenue are undertaking any work to review what these individuals do.

Frank Haskew: You have to register with HMRC but it is only in respect of the anti-money-laundering rules. It is not in tax as such.

Q261 **Rushanara Ali:** I am thinking of a parallel, which is the bogus immigration advisers who used to exist and give unhelpful advice to people.

Ray McCann: To finish off that point, I will stress to the Committee that we are working with HMRC at a very high level to try to find a way of helping HMRC better manage the population of tax advisers who are not members of any professional body through the development of professional standards that HMRC would expect such individuals to comply with. It is also clear that the courts in the past have made it plain that, whether or not you are a member of a professional body, if you are advising in tax, the standards set out by the institutes here and the seven professional bodies are the standards that you will be held to account to in the event that one or more clients are unhappy with the services you provided.

Q262 **Rushanara Ali:** That is once the damage is potentially done.

Ray McCann: I accept that point, but equally we need to be careful to make it clear that we are not disparaging any of the individuals who are not members of professional bodies. Some of them have years and years of experience and probably will take offence at someone like me suggesting they were not competent.



Q263 **Rushanara Ali:** That is fine, but there will be some, as you pointed out, in a fragmented sector.

Ray McCann: There is an issue. This Committee and the Public Accounts Committee have criticised the tax profession generally. We have a responsibility to our members to ensure that we do not suffer reputational damage as a consequence of individuals who operate in the market who have no tax experience. Coming back to stamp duty land tax, it was obvious there were lots of individuals who had no tax experience at all advising on stamp duty land tax.

Q264 **Rushanara Ali:** That is really helpful. Thank you very much. The Chancellor said that the Government had collected £160 billion in additional tax revenue through the crackdown on evasion. To what extent would you assign that to government policy—and which policies in particular? I know you have touched on some of this already. To what extent is it public pressure, media pressure or the moral imperative? Could it be a bit of both?

Frank Haskew: That is a difficult question. It probably is a bit of all of that. We looked at the £160 billion figure and we were not quite sure how it had been calculated, I have to say. We have not quite got to the bottom of that. It is clearly a very substantial figure. I would mention here that HMRC published only last month its most recent tax gap figures. However much some commentators question the basis of some of the calculations, we have to accept that up to an extent this is evolving. The UK's methodology is, at the moment, as good as it gets. Clearly, more can be done and there can be further refinements. But it shows that the UK's trajectory in terms of the tax gap has been coming down. It seems to be slower than people might hope, although that does raise the question of whether you have an element there that is always going to be difficult to get. But it does show a downward trajectory.

We have had a huge amount of anti-avoidance and anti-evasion legislation over the past five years. The Government have been very active in this area. We have had that. We have had more resources invested into HMRC. We saw that in the latest Red Book, which again should increase yields. The Government is coming at it from a legislative point of view. It is giving more resources to HMRC to tackle it. We have seen public pressure and public concerns. We have seen reputation concerns. We have had our own PCRT, which we have revised. Coming to it from a lot of different directions, the climate has changed remarkably. In answer to your question, it probably is a bit of all of that. However, at the end of the day, the Government have been legislating in this area and investing resources in HMRC to improve yield.

Q265 **Rushanara Ali:** You are querying the £160 billion. Did you want to say anything else about what you think that number is? Is it lower or higher? What are your reasons for being sceptical of that number?



Frank Haskew: It is simply because we have not seen a breakdown of the figure. We were taking more store from HMRC's tax gap figures, to be honest, where it is at least showing the right trend and the right way of bearing down on tax avoidance and evasion. We have not seen a breakdown of the £160 billion. We are not sure how it has been calculated. Looking at the tax gap figures as well, we think it is heading in the right direction.

Q266 **Rushanara Ali:** Does anyone else want to add to that point? Can I add one additional point, linked to it: the new measures are projected to raise £4.8 billion by 2020 to 2023. Are you confident that that can happen?

Ray McCann: It should be obvious from what we have said this morning we would not be completely confident that that amount will be raised. So far as the £160 billion is concerned, we need to be careful as to what that figure is. Whilst we cannot sit here and articulate chapter and verse as regards its make-up, it is clear it is not £160 billion in cash into the Exchequer. At best, it is probably half that number—HMRC's yield figures. For the past 10 years or so, HMRC has done spectacularly well in tackling tax avoidance in particular. Evasion is always much more difficult for HMRC to tackle. When you look at the annual yield totals that HMRC provide, more than half of that number represents amounts that do not feature in terms of cash in the door. They are all values put on various changes that are made.

Therefore, it is incredibly difficult to ever get to a point where we could establish with certainty what the yield would be in cash terms, i.e. money available for the Chancellor to spend. It probably would be better for HMRC to put more emphasis on its cash yield. Last year, it did say it was going to do that in its annual report, in terms of making it clear what it has actually brought in in terms of money, and move away a bit from the idea of putting so many billions on this change and that change. That then assumes that the world stands still. Whatever else I have learned in the 42 years I have been working in tax, taxpayers do not stand still.

Q267 **Rushanara Ali:** Would you all agree with the OBR's judgment that the Exchequer's package of measures around avoidance and evasion and additional compliance measures in the Red Book are riddled with uncertainty, and the efforts to tackle avoidance and evasion have not always brought the expected yield? Should we then be sceptical about the amount that is projected to be brought in with the additional measures?

Andrew Courts: Yes. That is a very simple, short answer.

Q268 **Rushanara Ali:** Is that the same for everyone, or do you have buts?

Frank Haskew: We are professional accountants, so we are always sceptical about forecasts. We have a robust scepticism with it, but that should not detract from the fact that the Government are adopting an approach to bear down on tax avoidance and evasion that, in principle, we look to support.



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Andrew Courts: I believe that the Revenue, along with measures by the Government and the media, by the news stories out there, are winning on the perception of tax avoidance.

Q269 **Rushanara Ali:** Thank you. Finally, is it, in your view, a requisite to have international co-operation in order to tackle evasion and avoidance on most things, or are there any additional things on top of what the Government are doing where we can take the lead in the UK, without having to wait for our partners to work collaboratively with us?

Frank Haskew: We certainly need to work with our international colleagues on this. We have seen already things like the Common Reporting Standard and automatic exchange of information, so that is all going to continue. As for the longer term, as Ray alluded to, evasion is a difficult one to crack, so to speak, and we probably need to think about whether there are more measures there that need to have some game-changing effect.

Q270 **Charlie Elphicke:** Moving briefly on to the international arena, can I ask you about online VAT fraud? This costs over £1 billion a year to the Exchequer. What is the best way to stop it?

Frank Haskew: Those figures were, I think, in front of the Treasury Committee a month or two ago. Some of the online platform providers also gave evidence in this area. In terms of what has been proposed, it was inevitable that the platforms were going to be put under pressure in terms of things like joint and several liability on VAT. They are providing, if you like, the infrastructure and the apparatus for the sales, so on the face of it they are potentially in the position to be guardians of the VAT treatment.

As to how this is going to work in practice, it will be difficult, but on the face of it, clearly, if you have £1 billion that potentially is not being collected in VAT for whatever reason, and this is taking place on electronic platforms, the Government have to do something. On the face of it, the proposals that they have suggested were probably expected. My guess is that there will need to be further discussions about exactly how it is going to work, and we will have to see how it works in practice, but I think the view is that it had to come.

Ray McCann: I am not a VAT expert, but whenever we get into a tax issue that involves the virtual world, it becomes very difficult to ensure proper compliance with UK rules. The other thing we have to recognise is that, whilst it may be a billion pounds, it will no doubt comprise hundreds of thousands, if not millions, of transactions every year, involving relatively small amounts, and so coming up with a solution that does not create a bigger problem than the loss of tax in the first instance is quite challenging for the Government.

Q271 **Charlie Elphicke:** That is a fair point, but I would very gently point out that Amazon are quite able to collect their own commission, so they could



collect the VAT, just like an employer collects PAYE. Do you agree that there is, frankly, too much hand-wringing about these sorts of matters, and we should be more robust in securing the tax base?

Andrew Courts: If you really wanted to make sure that every transaction on the internet has VAT deducted from it, regardless of the source or the individual, you would make the marketplace pay the VAT and deduct it in the same way Amazon takes their fees. You then have to come up with some kind of credit system where the individuals would have to take the VAT credit back and recover it, or something else. That is a completely different kettle of fish, but that is the only way if you want to do it completely.

Q272 **Charlie Elphicke:** That is a really interesting idea, and I hope that the Chancellor will give this sort of thing consideration. Moving on, do you understand the public's concern that the person cleaning the office of somewhere like Facebook, Amazon or Google pays more in tax than the vast, massive, incredibly wealthy multinational that they are working for? Do you accept that that is hard to justify, and that the tax system is not working properly if that is the case?

Frank Haskew: Yes.

Ray McCann: It is a proposition. Whether, in fact, Facebook, Google and Amazon pay less tax than the person who cleans the office, proportionately one might say that is true, but the calculation of Facebook, Google and Amazon—and I stress here that I am not defending those companies, as they are more than capable of defending themselves—of what they should pay tax on is inherently complicated. I do not think it is helpful to take a simple comparison and say, "Well, the office cleaner pays more tax than the company." I do not think it advances the debate.

It is not dissimilar to the point that was made in late 2008 about the hedge fund manager who was paying less tax than his cleaner. Again, that was just widely accepted as something that was true, when in fact it probably was not true. If we base tax policy on mythology, we will not end up with a particularly good tax policy.

However, obviously we want Facebook, Google and Amazon to be fully compliant with UK tax laws, and to pay the tax that is fair and they should be paying, but inevitably, as with the VAT point we just talked about, these businesses operate in a world and in a way that was not envisaged when Parliament laid down the basic fundamentals of the UK tax system. As a consequence of that, unless we keep up with these companies, we will never tax them properly. It is an area where international co-operation is really needed, and I do not think it is coincidental that these companies are large American corporations, because the US system—certainly up until now—operates in a very different way from the UK system, in terms of how it taxes companies.



Q273 Charlie Elphicke: What would you then say is the best way to tackle this, and the best way to modernise our tax system so we get what I would say is a fairer share, and what you would say is a bigger share, of tax out of these enterprises that are making huge profits out of the UK?

Ray McCann: Traditionally the approach has always been that a company is taxed in a jurisdiction, or not, by reference to the extent of its physical presence. Now, plainly, in the context of a company that is operating in an online environment, it is going to have a very small physical presence, and there is a lot of work that has been done—sponsored by the OECD and other organisations—in recent years. The UK can hold its head up as one of the countries that has been in the vanguard, in terms of trying to drive this forward as to whether that basic principle still holds good in the 21st century.

It is inevitable that we need to look at how large companies like that, which operate online predominantly, are taxed to see whether some form of taxation in the jurisdictions in which they are generating the sales is a better approach.

Q274 Charlie Elphicke: In that case, there are two possibilities. The first is that you update the concept of permanent establishment to be not a fixed base of business from which the business is carried on in a jurisdiction but more of an economic test: a wider, broader based economic test. The second possibility is that you say, “Facebook are saying they are not here. Their rate of VAT is increased proportionately”—say, from 20% to 25%—which we can do if we leave the European Union. What do you think of those sorts of ideas, and do you have any yourselves?

Frank Haskew: Picking up on what Ray said, international tax systems are struggling to cope with the move to the digital age. We all know and accept that things need to change.

As Ray said, the OECD has been doing a lot of work in this space. The UK has been in the vanguard of this. We have had the diverted profits tax; that was a toe in the water. Australia has introduced its own. On Friday, we had a consultation paper on the proposed withholding tax on royalties, so the toe is being dipped in the water here as to approaches to taxation of digital businesses that even five years ago we would have never really contemplated.

The UK Government is at the vanguard of trying to tax globally mobile, international, digital businesses. It is clearly a difficult challenge. The OECD and the EU have been working on it for a number of years through the BEPS project. The UK Government is looking to potentially take some unilateral action in this area. We could have things like VAT on transactions through the marketplaces. Obviously, if we leave the EU, that could be a possibility. With all these things, we are going to have to have new models of taxation for digital businesses, and although, clearly, the Government made an announcement on Friday about the withholding tax on royalties, it is difficult to see at the moment how it will work.



Q275 **Charlie Elphicke:** Mr Haskew, let me just stop you there. When it comes to differential rates of VAT, withholding taxes on royalties that would conflict with the parent-subsidiary directive, and a whole host of other matters, when we leave the European Union will we be able to have greater flexibility over our tax system, and will it lead to us having a greater ability to secure our tax base?

Frank Haskew: The jury is out on that. It will give us more flexibility, but we are still going to be very much hemmed in by international rules on double taxation. Also, we are part of the OECD. The US is about to sign into law fundamental changes to its tax system, which we have not seen since 1986, and I think that will have profound implications on the way the US multinationals are working. We will have more flexibility, but we will still be bound in by international rules, and we may have transitional arrangements for leaving the EU. My guess is that, in the short term, a lot of our existing rules, even if they come via the EU, will probably be grandfathered in. This is going to be a long-term process; I do not think there is going to be a short-term fix, but ultimately we are probably going to need to look at new revenue streams to tax these new digital businesses.

Ray McCann: I think we should tell it how it is. Let us imagine a world where the Chancellor decided tomorrow that he is going to tax the profits of Facebook or Amazon much more heavily than they are taxed at the moment. The first thing that would happen is that we would undoubtedly get a complaint from the United States that we were breaching the double-tax agreement. The OECD would not be happy, because we would be breaching their rules, so we would have to do it with international co-operation and get all of the jurisdictions that have an interest in this to come to an agreement that the way these large businesses are taxed has to change to reflect both public mood and the fact that business has moved on.

It is unacceptable that a business can operate in a way where it puts itself beyond the reach of the tax authorities, or the tax systems, of the countries from which it is generating its profits, but to some extent those are the rules as they have existed. They will change; the challenge for us all is to try to find a way to get international acceptance of those changes, and I do not see that whether we leave the European Union makes any difference to the extent of that challenge. Once we are outside the European Union, we are still not in a position where we can act unilaterally, for all the reasons that I have just said in terms of changing the rules.

Q276 **Charlie Elphicke:** My final question is a short question: would you agree that our priority for the tax system should be to make sure that there is a level playing field between British enterprises that create British jobs and pay taxes, and enterprises from overseas who do not do either?

Frank Haskew: The answer has to be yes.



Andrew Courts: Yes, there should be a level playing field.

Q277 **Alison McGovern:** I thought your answers to that previous section were really important and helpful. It is an absolutely crucial discussion, and, Mr McCann, I do sympathise with your point that we ought to make policy on facts rather than things that are widely accepted as true. Welcome to our world, in terms of dealing with that problem.

Ray McCann: Thank you—you are welcome to it.

Alison McGovern: I just have one straightforward and pretty brief question on a change in the Budget that is a significant and costly measure, which is the change to stamp duty for first-time buyers. The OBR gave a pretty clear verdict in their commentary on the measure, and I would just like each of you to say briefly if you have a view on the change, and what it is.

Frank Haskew: Very briefly, the measure reflects the fact that when stamp duty land tax was introduced, the rates had been slowly going up. We are now faced with a position whereby the actual SDLT on land transactions is potentially quite high and clearly a barrier. The Government have now adopted measures to try to alleviate that. However, the jury is out on whether it will work in practice. There was a report back in 2011 when there was a stamp duty holiday then, which suggested that in fact prices just moved to accommodate it. It remains to be seen whether property pricing will remove or negate some of this benefit to people.

However, Scotland already has, and Wales is going to have, its own land transactions tax. Here we are adopting measures unilaterally within the UK in terms of trying to help people, when effectively it has been devolved to the other parts of the UK, so it will be interesting to see how that pans out as well. On the face of it, it is encouraging first-time buyers, but there is now a huge amount of complication with SDLT, which there never used to be 30 years ago when it was just stamp duty of 1%, and the measure is effectively a response to the fact that the rates have become very high and the tax has become very complicated and a significant barrier to transactions.

Q278 **Kit Malthouse:** I want to ask you about some of the changes to EIS regulations, but, before that, you were talking earlier about PCRT and all broadly extolling the virtues of PCRT. I should declare that I have been a proud member of the Institute of Chartered Accountants since 1 April 1994. Are you concerned that PCRT could fundamentally undermine the status of the professions that you represent, in that it starts to imply that your first duty is to the Revenue, rather than to your clients?

Frank Haskew: If I could reassure you there, it has not changed the fundamental premise of our professional code, in that your primary duty is to your client. However, the professional conduct has always recognised that you had a duty to wider society, and also not to bring the profession into disrepute, so that has always been in that code as a



professional body. We did very carefully consider the test; we took leading counsels' opinion on it, and we came down to a test that we thought was effectively similar to the Government's general anti-abuse law. Effectively, we were saying that you should not be doing things if what you are doing is potentially already outside the general anti-abuse law.

Q279 Kit Malthouse: Does this not let politicians off the hook on tax legislation? Part of the reason that aggressive avoidance is available is because our tax system is so byzantine and complicated now, and there are some parts of it where even the Revenue cannot work out what tax is due. The Revenue say, "Well, actually, never mind what the law says; there is a general spirit that we should all apply." It does not make it easy for professionals, does it?

Ray McCann: To be fair, the situations like that are the minority. It is like all things in tax; it is only a very small number of people who engage in really aggressive tax planning. Our rules in PCRT were an attempt to make it clear to advisers that they will be held to account if their behaviour is such that they are assisting clients in undermining or defeating the will of Parliament as expressed in the legislation.

It is not so much that there is this overarching spirit of the legislation that we have to adhere to. That is a very small element of it, and the rules do make it clear that in situations where the intention of Parliament in bringing forward a particular piece of legislation is not clear, to some extent you could let members off the hook in that respect. However, it is intending to get our members to pay more attention to the fact that Parliament intends certain things by the legislation it brings forward, and it is not our place to undermine them.

Q280 Kit Malthouse: Just on the section of the Budget that was the response to, effectively, the Patient Capital Review, it was relatively tame. It focused largely on EIS and VCT. You seemed to welcome broadly the changes, but some of the new tests that have been put in place strike me as adding complexity to what is already quite a complex process. Is that your perception as well and, if so, do you think that will create more, rather than less, difficulty for entrepreneurs trying to access money through these schemes?

Frank Haskew: The draft legislation was released on Friday, so we are still digesting that. Clearly, the rules on risk-based businesses are quite new, so we are going to have to have a close look at how they are going to work. You only have to look at the schedule to realise that, as so often with tax measures, they are incredibly complicated. We do not seem to be able to draft laws these days in a way that is simple and straightforward.

Kit Malthouse: Sorry—I am just conscious of time. Is that broadly a yes: you think the added complexity is likely to prove a deterrent?

Ray McCann: Undoubtedly, because businesses will need professional,



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legal and accounting advice, and the more complex those rules, the more such advice they need. That then increases the cost of them accessing that advice.

Q281 Kit Malthouse: I understand the delay on providing assurance on the EIS at the moment is running into 20-odd weeks—22 or 25 weeks. These added tests and judgments fundamentally that the Revenue will have to take will not do anything to shorten that delay, presumably.

Frank Haskew: I understand that the assurance service is going to be withdrawn for these schemes. HMRC are about to publish some revised guidance, and then they are going to withdraw the assurance services.

Q282 Kit Malthouse: It is a slightly odd thing. They are going to withdraw assurance, as I understand it, for schemes that do not seem to satisfy this knowledge-intensive test, so you are basically taking a flyer. That does not seem to me to be a sensible way to continue. Does it to you?

Ray McCann: As with tax yield, it is always a concern of a Chancellor that provisions that he puts into the statute book intended to give relief to businesses or individuals do not cost more than he expects them to cost, and inevitably all these complexities are put in place to ensure that the floodgates are not open. I am sure you will recall the business expansion scheme rules that were introduced many years ago, and all of a sudden farmers were starting to access them in a way that the Government did not intend and it was costing a lot more money. All the reliefs in recent years have cost more money than Chancellors have provided for, and inevitably the Revenue has learned its lessons and is trying to make sure that there are sufficient rules in there to make sure that people cannot simply take a flyer.

Q283 Kit Malthouse: I understand. My take from this is that these moves are designed to discourage, effectively, capital preservation schemes or capital preservation structures that go through EIS. However, given that these also impact on actual risk-taking, or companies that might be taking more risk, it strikes me that we might be in danger of seeing less money going in under EIS than we do currently. I think the figure at the moment is that about £1.9 billion goes through the scheme. It has been broadly flat on EIS and SEIS for the last few years, and that may well fall in the next few.

Frank Haskew: It is inevitable that some investment will no longer go into these schemes because of the potential uncertainty, and certainly, from a very quick look at the schedule, it would be difficult to identify whether you have a business here where the capital is at risk from the conditions potentially attaching to it, in terms of future plans, employees etc.

Q284 Kit Malthouse: You do not think that the new allowances will compensate, if you like, for the loss of money elsewhere.

Frank Haskew: It is swings and roundabouts. On the one hand, the Government are expanding it for particular sorts of businesses—the



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knowledge-intensive companies. On the other hand, they are clearly targeting companies where there is capital preservation going on, so I am afraid it is a bit of a mix here.

Q285 **Kit Malthouse:** Mr Courts, do you want to add anything?

Andrew Courts: When you are looking at people who are investing, they are investing for different reasons. They are investing because it is their business, and they are moving forward and they want to invest, or they are investing because they are professional investors. The people who are professional investors will invest because they get the relief and things behind them, and potentially have another source of income to offset it against. They will continue investing wherever it is going to go, and wherever they can get the investment.

Q286 **Kit Malthouse:** My perception, as well, on EIS is that these new rules have effectively injected a lot of grey into what was previously an area where you could get certainty. We now have an element of uncertainty when we had certainty before, and that is likely to discourage investment.

Andrew Courts: Yes.

Frank Haskew: Yes. As I say, from a very brief look at the schedule, the at-risk provisions are going to introduce a significant element of uncertainty.

Q287 **Kit Malthouse:** Therefore, if the Chancellor's intention was that there should be more patient capital in the system for knowledge-based businesses and all the rest of it, these measures are unlikely to achieve that.

Ray McCann: If we reduce the amount of certainty that an investor has going in, we will damage the effect of this arrangement. That is probably the point you are getting to, and I agree with that. My experience of would-be business angels and so on is that they are quite easily put off because it is their cash that they are investing, and sometimes the slightest thing seems to change their mind. Plainly, they are investing in something that is uncertain at the outset, but if they cannot get absolute certainty that the tax treatment is as they expect it to be, ultimately that must damage the scheme.

Q288 **Catherine McKinnell:** I wanted to ask a question about offshore trusts, and I will direct it to you, Ray, because the Institute have previously expressed concerns to the Committee that the changes to the offshore trust legislation—the introduction of the new anti-avoidance rules—will have unintended consequences, and the Treasury's accompanying impact note to the change shows it will not have any Exchequer impact; it will not have any significant economic impact; and it will not have any significant operational impact on HMRC. I would be grateful if you could point out what the point is of the measure and why it is you have concerns that it will have unintended consequences or will not achieve



the Government's stated aims.

Ray McCann: Offshore trusts have been subject to change after change after change over a very long period of time, and we are now in the process of transitioning to a new offshore trust regime. The most recent changes are some tidying-up of that, but the reason the Institute is concerned is that offshore trust taxation is fraught with difficulty to begin with. If we make changes that are sometimes knee-jerk reactions, we simply add to the existing layers of complexity.

The other difficulty we have is one of public perception. Often, if not always, offshore trusts are grandfathered in terms of being rendered immune from changes. Now, there is a bit of that here, and there are some areas where the grandfathering is not absolute. Transactions involving the trust will then trigger changes to that trust, and from the viewpoint of the institute it is just the speed with which these changes are brought in and the lack of clear understanding as regards the nature of the difficulty the Government are trying to deal with and whether this is the best way to go forward. However, to end up in a situation where we simply replace one complex set of rules with another complex set of rules and circumstances people do not really understand is not the best way forward.

Q289 **Catherine McKinnell:** Thank you. I do not know if anyone else has anything to comment on that, because I was going to move on to VAT thresholds. There is a recent FSB survey that shows that small businesses already spend one working week every year complying with their VAT obligations within the £85,000 threshold, and there are therefore very real implications for productivity in any VAT reforms. Where do you think the right balance is to be struck in reforming the VAT threshold in removing the distortions and disincentives to growth but keeping the law simple and limiting those administrative burdens on small businesses?

Frank Haskew: There certainly are a number of views, even within, for instance, our professional body, about the answer to this. However, in terms of policy, I would point you back to the fact that, in 1993, I think, the then-Government significantly increased the VAT threshold by about 35%. The justification was that small businesses were spending significant amounts of time and were consequently burdened in complying with VAT law, and the FSB survey, in a way, has just emphasised that it is a significant burden on small businesses.

In terms of that policy justification for the higher threshold, it is still as valid today as it was back in 1993. Clearly, it is a policy question for the Government. You do have question marks then about what happens when you go into it, and clearly the Government is going to have a consultation about the threshold and how, effectively, you go into the threshold once you breach it. There are obviously different views about what the threshold should be, but the fact was that that was the policy justification for it, and I do not think it has changed. In fact, in many



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ways VAT legislation has increased in difficulty since then, so what better simplification is there than not having small businesses within VAT in the first place? That is a great simplification for small businesses.

There needs to be a discussion on it. There needs to be a debate, but that needs to frame the discussion. The Government's decision to freeze the rate for two years, given we have things like Brexit and making tax digital, is probably a very sensible decision. We need to have a proper discussion about VAT and small businesses, as highlighted by the FSB report.

Q290 Catherine McKinnell: Presumably, some of you will be feeding into the consultation that is due to take place. I do not know if you have anything to add just now, because I had one final question. Do you have something to add?

Andrew Courts: Yes, if you do not mind. You have to identify the reasons you are going to reduce the VAT threshold, because for many individuals it could lead to a 20% reduction in their income—and we are not talking about people who are earning fortunes—depending on the level you bring it in at. You also have to look at the particular individuals and the impact that it is going to have on them.

There are a couple of examples. You may have your subcontractor build workers. They may be earning £30,000 or £40,000 a year, but if you are going to bring the level down to £35,000, they suddenly fall into VAT. Now, at the moment, they will probably deal with their accounts once a year by handing a bag of receipts into their accountant. With the introduction of making tax digital, they will not be able to do that. They are going to have to keep their books electronically, so it is not just a small amount of admin burden; it is going to be a huge amount of admin burden.

Another one is—as we are all in London today—black cabs. Many of them are self-employed; they own their own taxis; they probably do not earn more than £85,000 a year, so they are probably not VAT-registered. If you are going to drop the limit down, you are going to get to a figure where their turnover will hit VAT registration. Are you prepared to pay an extra 20% for your black cab, or does he take a reduction? It is a very hard thing for you to look at.

However, in general, the lower the VAT threshold, the more fair it is for everybody else, because large companies are performing on the same basis as individuals. However, all the individuals who are self-employed—and they are not even necessarily lower income individuals—will suddenly hit VAT, with a huge amount of admin burden and a drop in income, which could itself lead to increased inflation.

Q291 Catherine McKinnell: Do you have anything to add?

Ray McCann: Nothing other than the fact that we welcome the two-year freeze.



Q292 Catherine McKinnell: Thank you. I was just going to ask a final question, which follows on a bit from what Charlie Elphicke was asking. The Public Accounts Committee recently published a report on tackling VAT fraud and error, and their conclusion was: "Online VAT tax evasion is already a complicated issue, and we are concerned about HMRC's ability to deal with the new challenges to the problem which may be posed by the UK's exit from the EU." Do you share those concerns?

More generally, Charlie proposed that there may be opportunities in terms of the tax system and increasing the intake as a result of leaving the EU, but there are also very widespread concerns expressed about the costs to HMRC of us exiting from the EU, and some of the additional capacity and resource that HMRC is going to require in order to manage the process. Do you have any comments or thoughts on those concerns?

Frank Haskew: We all saw the evidence session where HMRC's CEO was up before the Public Accounts Committee, and indeed he has been in front of this Committee as well. The clear message there is that HMRC has the largest change-management project currently in Europe in terms of its regionalisation of its computer systems, and their CEO was clearly worried that adding Brexit on top of that is potentially going to push HMRC over the edge. That was the clear message.

Q293 Catherine McKinnell: Do you have concerns that all the issues we have touched on today require a properly resourced, functioning HMRC to give all your members the service that they need? Is that a concern?

Frank Haskew: It certainly is a concern. HMRC has seen its headcount significantly reduced in recent years. Also, it does appear that we are going to have a further regionalisation with the move to 13 offices. There is a lot of experience in HMRC of senior people who have been lost, so HMRC is going to need to gear up for this. It is quite clear that the CEO of HMRC is worried about Brexit, if you like, being the straw that broke the camel's back. If the CEO of HMRC is worried, it is fair to say that it clearly worries us as well.

HMRC's service standards have improved much in the last year, but if the CEO is concerned that things are going to deteriorate as a result of having too much to do and too much change with too few staff, that needs to be looked at. He is clearly going to be looking to re-prioritise some of the projects, and his comments were that some of the projects would have been over a longer timescale if he had been CEO at the time. We need to have an honest and realistic assessment of the capabilities of HMRC in this climate, and what is going to be needed in terms of Brexit, and an honest assessment of whether they can do it all—and, if not, how we, as a country and as a profession, can help. However, it probably will need more resources.

Q294 Catherine McKinnell: Do you have something to add?

Andrew Courts: I was just going to say that, in relation to Brexit, we are all talking about it, but nobody really knows what it is going to look



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like. I completely agree that HMRC is currently underfunded—under-resourced is probably a better description, because I see it at the coalface all the time—so with some of these items, it is hard to say what they are going to need when we do not know what the end result is going to be.

Ray McCann: Mr Thompson was fairly clear when he spoke that if need be, he would deliver digitalisation from the existing resource, and I have no doubt whatsoever that he will do that if he is forced to. However, at our peril will we ignore the funding requirements of HMRC, and that will impact on all of us: the professions, all our members, taxpayers generally, and HMRC itself. HMRC's resource requirements and funding needs do need to be taken very seriously in the context of what is ahead of us for the next two to five years.

Chair: Gentlemen, you have given us some very interesting answers. In relation to Rushanara Ali and her question on the professional body, if you have any specific suggestions whereby you want to try to entice Parliament into thinking if it could do anything, please write to the Committee. That may well prompt some discussion and consideration. If not, and anyway, thank you very much for giving your time to appear before us, and the Committee wishes you a merry Christmas and a happy new year.