



Economic Affairs Finance Bill Sub-Committee

Uncorrected oral evidence: Finance Bill 2018

Wednesday 10 October 2018

4.05 pm

Watch the meeting

Members present: Lord Forsyth of Drumlean (Chairman); Baroness Drake; Viscount Hanworth; Lord Hollick; Lord Leigh of Hurley; Baroness Kramer; Lord Lee of Trafford; Lord Turnbull.

Evidence Session No. 1

Heard in Public

Questions 1 -15

Witnesses

I: Charlotte Barbour, Director of Taxation, Institute of Chartered Accountants of Scotland; John Cullinane, Tax Policy Director, Chartered Institute of Taxation; Frank Haskew, Tax Technical Manager, Institute of Chartered Accountants in England and Wales; Chas Roy-Chowdhury, Head of Taxation, Association of Chartered Certified Accountants Global.

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Examination of witnesses

Charlotte Barbour, John Cullinane, Frank Haskew and Chas Roy-Chowdhury.

Q1 The Chairman: Welcome to the Finance Sub-Committee. We have a galaxy of talent here: Mr Haskew, Ms Barbour, Mr Roy-Chowdhury and Mr Cullinane. You know what we are about. We do not have a lot of time because of the passage of the Finance Bill and the accelerated programme for the Budget. We are going to try to get our report out in time for the Finance Bill being considered in the Commons. I will begin by asking a general question. What is your view about the general development of HMRC's powers over the last few years? Are there any particular developments which give you cause for concern?

Chas Roy-Chowdhury: In terms of background around tax avoidance and powers, we in the profession have developed PCRT (Professional Conduct in Relation to Taxation). We have developed a way of professional tax advisers and professional accountants countering egregious tax avoidance schemes. We have been doing that in collaboration with HMRC. Therefore, HMRC is working on trying to give some sort of recognition for those bodies that are involved. That is one pillar of what we have been doing. As you know, there is the General Anti-Abuse Rule, which has not been used, but is on the outskirts to try to stop egregious tax avoidance. Every year and every Finance Bill, we get a raft of anti-avoidance measures. I ponder the question whether we should be getting so many anti-avoidance measures year after year, which incrementally make it harder to operate a tax system. It makes it harder to have proper oversight of those measures. It introduces greater complexity. I wonder if those measures are really necessary.

The Chairman: What is an egregious tax-avoidance scheme? There seems to be an elision of avoidance with evasion. How do you define what is egregious?

Chas Roy-Chowdhury: It is within the law, so it is not evasion, but it is highly contrived. It is reading into the letter of the law and a highly superficial way of interpreting the law. It therefore gains you a tax advantage that Parliament otherwise certainly did not intend and was far from anything that mainstream tax practitioners would consider that the law was aiming to do.

Charlotte Barbour: When I discuss it with our members, I say that you can see tax planning on a range from one out of 10 to 10 out of 10. Egregious is probably 11 out of 10. You look at it and you think, "Why on earth would you do that?" It has no economic purpose. That is a simplistic way of putting it. It is difficult to pin it down beyond that.

The Chairman: Do you have any examples of where powers are not being exercised appropriately, or disproportionately?

Frank Haskew: Yes, we can certainly do that, going back to the general HMRC powers and the exercising of them. It is important to remember

that we had the powers review when Customs and Excise and Revenue merged in 2005. That process went on for about five years. It was a comprehensive review of all the powers that HMRC's predecessor had. We very much supported that and participated in it. That set the benchmark for a generation in terms of HMRC's powers. Since then, we have seen a lot of legislative changes coming through on powers. We are also seeing certain evidence of HMRC on the ground opening inquiries, which raises a concern to us. We supported all the powers work. We have had all these bolt-ons, if that is the right expression, over these intermediate years. Our view is we need to take stock of this and ask ourselves, "Do we now have the appropriate powers?"

The Chairman: Are there examples of the powers being abused?

Frank Haskew: We have examples in the evidence that we gave. We are seeing that HMRC is sometimes raising assessments or inquiries out of time. It is not always following the law in raising inquiries. A lack of understanding about how these powers are meant to be applied in practice is increasing in what we are seeing. It has a heavy-handed approach to investigations. HMRC's guidance says it needs to give the taxpayer examples of concerns before it raises inquiries. That is not always happening. We need to take stock of this and understand where things are going wrong. At the end of the day, we want to support HMRC in making sure it gets the right amount of tax at the right time.

John Cullinane: An area of particular concern is the powers responding to taxpayer behaviour. Basically, if people are deliberately doing the wrong thing, you have more draconian penalties than you would for people who are making innocent errors. There is a sliding scale. There are instances that members pick up where there are allegations without real support that people are at the deliberate end, which are subsequently not upheld. I have a lot of sympathy for HMRC. It is a difficult job. I do not want to make too much of that. That distinction is being eroded with some of the piecemeal legislation that we have seen. For example, with the offshore time limits, the harshest effect is at the most innocent end, because it is an across-the-board increase. In contrast to the consultative exercise over 10 years ago exercise that Frank referred to, we now have these piecemeal measures. There is consultation on the details. Sometimes improvements can be made, but there is no sitting back and taking stock of the whole piece and taking a more evidence-based approach.

Charlotte Barbour: Quite often, with each measure introduced year by year, you can understand why HMRC would want it and it is quite difficult to counter it. They often look quite sensible, but if you look across the piece, it is a creep-by-creep, bit-by-bit encroachment. It is maybe not pure abuse of powers that worries us so much as the scope for greater powers and whether they sit in the right place at the moment.

Q2 **Lord Leigh of Hurley:** I refer to my register of interests, which includes being a member of the Institute of Chartered Accountants in England and Wales, a junior institute, former chairman of Faculty of Corporate

Finance, and a Chartered Institute of Taxation member. Many of the new powers that HMRC has obtained in recent years has been because of the criticism in Parliament and in the media of tax “avoidance”—for example, Jimmy Carr and the film. How do you respond to the allegation that HMRC cuddles up to large companies that have influence and are less aggressive to them than to the regular taxpayer.

John Cullinane: One has to go back before the credit crunch when there was not so much public outrage about tax avoidance. HMRC were under pressure from a different direction to streamline, be more business-like and be as efficient as the private sector. The reality is that any private sector organisation would prioritise its biggest customers, as they like to refer to taxpayers. Inevitably, there is some truth in the fact that a large company can have access to HMRC more easily than a small business person, let alone a person on benefits who has a tax problem. It is a difficult decision for society, because it will cost more in resources than an equivalent private organisation would have to treat the smaller taxpayers with the same courtesy. I know there is a belief out there—which I do not accept as a general rule—that large companies get special deals. By and large, I do not think that is true. I do think it is almost impossible to deny they have some kind of access because they are “larger customers”.

Charlotte Barbour: We receive a huge amount of complaints about that from our members. Very few of our members in Scotland work with businesses that are large enough to have a customer-client manager. It is certainly one of the biggest calls on my time. HMRC should put in place some form of process we could access to get things resolved. It is a huge issue.

The Chairman: When you say “access”, do you mean if they do not answer the telephone?

Charlotte Barbour: It is quite difficult to know who to contact. There are agent account managers. In fairness to HMRC, they have had pulling back on their staff. They have digital processes in place, but we have a lot of large businesses in Scotland that are not big enough to have a CCN, but they are big enough to have some quite complicated issues if they are in the oil industry in Aberdeen or the food industry. If you want an answer that has quite a lot of tax at stake, you want it now and you want to be able to get through to the technical helpline straight away. It is really difficult to get straight through to getting proper answers and full support to get things resolved. Some of our members find that quite frustrating.

Lord Leigh of Hurley: There is inevitably a trade-off between tax avoidance and safeguarding taxpayers. How do you see that balance at the moment? What might be done to address it?

John Cullinane: Sometimes there is, but if you get the measure right, you can protect both. For example, there is clearly a problem in the case of tax avoidance where advisers give too glib opinions and do not warn

people about the risks. People place reliance on those opinions, which places a weight on them they should not bear. The Government legislated to say, "Well, if somebody's excuse for getting it wrong is they took advice, that will not count if the advice does not meet certain tests". The trouble with that is it removes a safeguard and is not necessarily effective on the avoidance, because the taxpayer does not know that the opinion is not up to snuff. That is why they need the technical advice.

To my mind, one should find other ways of doing it. For example, Chas mentioned our professional code. It has long been a feature of the professional code that you have to warn about the risks of any course of action that is contemplated. HMRC has the powers to refer our members to our disciplinary processes if those opinions are not conforming to those rules. That raises the question, what about advisers who are outside any professional organisation? That is another issue. There are ways of addressing the problem which do not remove the taxpayer safeguards. If there is a more consultative process where you start the consultation at an earlier blue-sky stage, it is easier to explore all the possibilities, rather than a damage limitation when a decision has already been made.

Q3 **Viscount Hanworth:** I feel there is a dichotomy between the powers of HMRC and the resources. Am I right in saying that the resources are far too few? To address the point you just made, advice seems to come from independent tax advisers, but it might also come from the HMRC if the HMRC had more personnel. That would overcome the difficulty that you have raised. Can you talk to that contention?

John Cullinane: In fairness, we are not experts in running large organisations. It is hard to be definitive. Our impression and our members' impression is that they are very strapped in terms of resources. From the time HMRC was set out they have come under continual efficiency reviews, even preceding the changing climate of public expenditure more generally. We will come to the digitalisation agenda. We are very supportive of that direction. There is a tendency to anticipate the savings that will come about when everything is fully digitalised and to cut the more manual systems prematurely, which leads to our members feeling like they cannot get access. Our impression is as you suggest.

Chas Roy-Chowdhury: At virtually every evidence session we come to, we say they are under-resourced. The 5% cut that the Inland Revenue, since it became HMRC with Customs and Excise, have been subject to year on year in terms of head count has not been very helpful. It needs to stop. They do need more resources. They need more people. It cannot be passing the burden on to the taxpayer to carry the weight of the cutbacks at HMRC. In some ways, HMRC is pretty much the only resource which brings money into the Government. You need to spend to save. I think it has been cut too far. We need to make sure we do not keep cutting.

Viscount Hanworth: Would it be fair to say that some of the prosecutions they have pursued have been essentially pour encourager

les autres, to give an exemplary case, rather than to address whatever arises. Are they being draconian in order to discourage other people?

Chas Roy-Chowdhury: We are not involved in those areas. It is not just sheer selfish vested interest. By and large, the mainstream accounting profession is not involved with egregious tax avoidance. We could not give you a scheme off the top of our heads that we would consider egregious. We have left that space—if we were involved at all—a long time ago. That is why HMRC is focused at the sharp end of the few who are still involved who are usually members of our organisation.

The Chairman: There was a report over the weekend in the newspapers that media figures employed by the BBC and others were being targeted, and it was being suggested that they were being targeted because this would attract a lot of publicity and it would mean that other people would be more reticent about the issue.

Chas Roy-Chowdhury: I do not know. You will probably have to ask HRMC that.

Q4 **Lord Hollick:** A persistent complaint against HMRC is that it requires taxpayers to adhere to a very strict timetable, whereas, they have no timetable. If you do not pay advance payment notices on time—and you may quarrel with the merit of them—then there is a very steep penalty that you have to pay, which accumulates over time. The cost of pursuing the merits of the case rests very heavily on the taxpayer. There is a tremendous disincentive to follow. It is alleged HMRC takes advantage of this and allows things to go on and on. Now, in its new powers, it is looking for 12 years to deal with some offshore things. It would seem to me they are seeking to have a never-ending ability, so far as the taxpayer is concerned, to investigate things. I am sure lack of resources is at the heart of this, but is this not the wrong approach? Is this not the wrong culture? I contrast it with the IRS, which has a much clearer timetable where things have to be replied to, otherwise they fall away.

John Cullinane: It partly comes about because they are subject to a lot of political criticism for allowing people to get away with things. We have the feeling there is a search from time to time for new measures that give the impression of doing more. For example, the extending of the time limits to 12 years. If you are involved in deliberate behaviour to not pay your tax, then you already go back 20 years.

Lord Hollick: But the law has the principle of concealment. That is not time-limited. If you take an action to conceal things, whether it is discovered 10 or 20 years later, you are still liable.

John Cullinane: This extension to 12 years would even apply to people who have made a one-off error, or there could be a low-paid person with a foreign bank account who did not realise that they might suffer a withholding tax on their interest.

Lord Hollick: Are you pushing back against the extension?

Frank Haskew: We have all been consistent in thinking a time limit extension of 12 years is disproportionate. We do not think that HMRC have made a proper case to justify it. Presumably it is all tied up with the implementation of the Common Reporting Standard and getting information in, but that does not square very well with going back 12 years. As we saw, this can apply to people making errors. Taxpayers only have four years to make claims. We now have a dichotomy between what taxpayers may be able to do by going back four years and what HMRC may be able to do by going back 12 years. It seems potentially disproportionate.

Lord Hollick: First of all, it seems asymmetrical. Secondly, it condones a sloppy administration. It is good that you are pushing back on that. Are you pushing back on the request made by HMRC in July 2018? The request was that they should be able to seek information from third parties, such as banks, without first seeking the agreement of the taxpayer or the tribunal, with no right to appeal, and that information gathered in this way could be used for the wider purposes of HMRC; in other words, they can go on a fishing expedition. Is that something you have strongly criticised?

Charlotte Barbour: We certainly had meetings with HMRC on a one-to-one basis; we had a full two-hour meeting with the team that are running that consultation. We have been heavily critical of it, including in our consultation response.

Lord Hollick: Does your lobbying on this include going to MPs and getting MPs to support this?

Charlotte Barbour: We tend to aim for HMRC in the first instance. We have not raised that with MPs at the moment.

Chas Roy-Chowdhury: We said it in our response. It does not support the removal of the requirement to seek tribunal approval before issuing third-party notices. That is a safeguard removal which goes way too far. There must be some proper recourse before HMRC goes ahead and exercises that sort of power.

Lord Hollick: Is it time to have another look at the powers? They seem to grow incrementally, as you were saying earlier on, partly in response to the scandal of the day, rather than with a thoughtful, balanced approach. We do not protect the rights of the citizen as well as the duty of HMRC to collect the cash.

John Cullinane: A more open, blue skies, consultative approach.

Lord Hollick: Another review would be timely?

Frank Haskew: The time has come to review this. When we had the powers review back in 2005 and onwards, it was very much in consultation with the profession and with quite a lot of independent input. We now seem to have a position where HMRC is making all the running in this area.

The Chairman: Lord Hollick has put his finger on the powers, but something else concerns me. In the old days, if the taxman said that you owe some money, there was a proper system of appeal. We seem to have moved to a situation where the costs that fall on the individual are very substantial. Okay, they can take out insurance. The use of penalties is also of concern to me. My understanding is that, for example, if HMRC decide that a particular scheme is not valid and requires tax to be paid and they do that for one individual, they can then go to everyone else and say, "Well, we have settled with this person", who may have settled because he does not want the publicity or for whatever reason, and then say, "Well, that has been agreed and, therefore, it applies to you. If you want to challenge it in the courts, then there will be a 60% penalty on you if you lose". Is that not a denial of justice? Why is there not more concern here about how the individual is placed, and treating the rights of the individual fairly?

Charlotte Barbour: I think it is quite a difficult balance to strike. HMRC have been under enormous pressure for such a long time about tax avoidance and letting people avoid tax.

The Chairman: That does not justify daylight robbery.

Charlotte Barbour: All the legislation has been passed to Parliament; it is a moot point, is it not? I certainly think that HMRC have completely changed the position around tax avoidance and things we are now mopping up on existing schemes; the landscape has changed completely. As far as I am aware, none of our members are promoting tax avoidance schemes at all, so it has been effective.

John Cullinane: The published tax cut figures do suggest that the avoidance is coming down, whereas evasion and the amount of money loss through errors remains stubbornly high.

The Chairman: My question was not so much as to whether HMRC have got these intense powers. My question is about whether there is an appropriate balance for the individual who is faced with this. For example, if you were asked to go back 12 years, just imagine the amount of work that is involved in that. If you are going to use professional people to help you, the cost is enormous. If they do not answer the telephone, your ability to go to some form of easy appeal is affected. If you are prepared to go to the courts, there is then a penalty of 60% if you lose. Has that not tilted the balance, in terms of people's rights as individuals and their relationship with the state? To say, "Well, we are under a great deal of pressure to collect the money", is surely not a defence.

John Cullinane: Most of these powers have been voted through by Parliament. In many cases, without opposition.

The Chairman: We are here to discern whether or not they are appropriate. We are expecting you, as practitioners, to tell us what the consequence of that is.

Chas Roy-Chowdhury: We agree with what you have said. Certainly, in discussion with HMRC we have said this. We have said these things. Quite often they are modified to some extent, but usually they go through. There is a political decision and they usually go through. I think you are absolutely right that the pendulum has swung too far towards the tax institution, HMRC, and does not balance the rights of the ordinary taxpayer. We need to readdress some of this; the pendulum has swung too far in that direction.

Q5 **Lord Leigh of Hurley:** I accept that the pendulum moves as you say and the Bradman-scripted avoidance has gone, mainly because of GAAR. Trying to be independent rather than advisers, do you think HMRC is properly using its powers, particularly in the unexplained wealth orders, which have just not happened? Rather than asking for more powers, do you think they should be using what they have more effectively?

Frank Haskew: Certainly, our view is that HMRC seem to keep asking for more powers. The latest Finance Bill clause highlights these further powers. I have to say, looking at them, most people would find them very difficult to understand; they are pretty impenetrable. That is a real problem area.

Lord Leigh of Hurley: That does not answer the question. Do you think they are using their existing powers properly?

Charlotte Barbour: We have said over a number of previous submissions that we believe the powers given to them over the years, especially in recent years, should be properly evaluated with post-implementation reviews to see if they are working. Part of the reason for penalties is to act as a disincentive. If everyone needs to know about them, do all the people concerned know about them? We do not know, because it chips away; year in, year out, you are getting another penalty. I am not sure how many are being used.

John Cullinane: We suspect not and we have a couple of bits of evidence for that. With these new powers, sometimes the amount of incremental revenue that is projected by the Government's own figures is not that great. The 12-year thing, for example, is showing very low returns to the public, but probably very considerable costs to the taxpayer. It does not suggest there is a great need for those powers; it suggests that there may be extra revenues capable of being raised with existing powers in some other way without so much cost. I do tend to accept what you say on that.

Q6 **Lord Turnbull:** Do you think there is a gradual process of the reversal of the burden of proof for increasing the revenue—finding ways of getting the money, and the taxpayer then has to argue to get it back? Do you ever see deposits, where there is access to bank accounts, where they take the money and then you still do not agree and have to fight it—putting up very large assessments, like the way some of the prosecuting authorities do, and hoping for a plea bargain? With the asymmetry of the timetable and resources, the worry is that this is no longer a fair fight. I

wonder whether you share the view that they get the money and it is your job to argue that that was too much.

Chas Roy-Chowdhury: In regard to what you said about direct recovery of debt, all of our bodies were very much against it. We had long discussions with HMRC; they gave us assurances. That was just one thing. As you say, then the assessments, prosecutions, deposits; the list goes on. As Frank said, and we all agreed, we do need to look at those powers again, because the powers discussion ended in 2012. We need to revisit how those powers currently are.

We have got penalty regimes coming in, which look at a points-based system. Let us bring it all together and look at this holistically, rather than having these totally new bolt-ons that happen every year or every six months that incrementally give HMRC more powers. I think all of you here seem to have noticed far more than, perhaps, others in power that they are getting more and more powers without proper recourse, proper balance and without justifying whether the powers they currently have are being used to their full extent before having more powers added.

John Cullinane: I think that is out of context, really, though. Before the credit crunch there was more prevalent avoidance than is the case now, I believe. The public climate did come about, rightly or wrongly, that there was a kind of war against this activity and it was completely socially unacceptable. That is the context in which a lot of these powers were voted through. To get back to an earlier question, we do provide briefings for MPs on Finance Bill clauses. We would not regard it as proper to raise points that we have not already raised in discussions with HMRC. Nevertheless, we have made all these points. These powers tend to have been voted through because of that overriding concern with avoidance.

Clearly, avoidance still exists, but it is very much more under control than it was before. Many of the high-profile cases that are causing problems, and a lot of the problems with the harsh effects of some of these powers, are to do with the fact that people did things many years ago, spent the money and now have problems. It is rather hard, when you have those initial problems, to get a balance now that is right, one way or the other. But with genuinely much more control over avoidance and many more levers, including through our professional standards and so on, this imbalance of power should not be allowed to go on in perpetuity.

Lord Turnbull: The general public and HMRC probably share the view that they are not collecting all the money to which they are entitled. You have illustrated a tendency that, when under pressure, they look for more powers. We had a case recently regarding whether the new-style global internet non-transactional goods companies were paying any amount relative to the size of their businesses in this country and whether we should be prioritising a solution to that problem ahead of a further charge through the SME sector. I am quite happy regarding the celebrity avoidance schemes; there should be no place for them. I think not taking on these difficult questions involving the international IT-type companies, preferring instead to go down the route of Making Tax Digital

and pressurising smaller firms, is the wrong priority. It is the tendency to seek more powers, rather than use the powers they have already got.

Frank Haskew: In relation to digital taxes and international companies, that is clearly a major concern. The UK Government are also potentially looking at unilateral action in that space. Obviously, it has been knocked out at, for instance, the OECD and the EU level as well. It is an area of huge concern and rightly so, for the public interest. I think that will continue. I will refer you, for instance, to HMRC's tax-gap figures that were published in June 2018. If you look at them, in the last 10 years, the avoidance, for instance, has dropped from 4.9 billion to only 1.7 billion, but things like failure to take reasonable care, evasion and hidden economy have been rising. If I was a Minister looking at these figures, I would say they are of huge concern. If we understand it correctly, a lot of that is in the SME sector.

Lord Turnbull: Is that a table that has been circulated to us?

Frank Haskew: It is HMRC's Tax Gap Report. It is publicly available, but we can send you the link.

Chas Roy-Chowdhury: Lord Turnbull, as you raised it, the UK should not take unilateral action. I raised it last week; a letter was published. The EU is looking at this and we need to make sure that the EU does not take unilateral action. The OECD is tasked with coming up with a solution by 2020. I think we need to take a global view, rather than a country-by-country view.

The Chairman: Would that include Luxembourg?

Chas Roy-Chowdhury: Yes; the OECD would. This is a highly emotive area where everyone has a view, but I think we need to make sure we have a global solution—work on the piecemeal that we are looking at here.

Q7 **Baroness Drake:** There are two tensions in this issue: the powers themselves that Parliament gives and the application of those powers, which is the governance issue within the HMRC itself. Where do you think the greater part of the problem lies? In the powers themselves or the governance and the application of those powers by the HMRC? If your argument is there are ever more bolt-ons and there needs to be a pause and a holistic look, one would have to holistically look at this against a set of principles. Would you like to volunteer maybe one or two principles for that?

Charlotte Barbour: We all listed principles that we think apply and they were all agreed to when we looked at the review of powers back in 2005. I do not think digital or avoidance or anything else makes any difference to that at all. All those principles apply. You could well start from the Taxpayers Charter, which is a good enunciation of what you would like by way of powers: assuming that people are honest, unless you demonstrate otherwise, is one of the key ones. Dealing with an agent is another one, for instance.

We would suggest that perhaps we should be looking to review the powers, because the title of the Taxes Management Act 1970 tells you where it sits. It is old, with many bolt-ons. It is difficult to find where one is in the Taxes Management Act 1970 with all the add-ons. You need a proper review of powers. Perhaps one of the things that could be taken from that is maybe there needs to be an oversight body that could report regularly on how powers are exercised.

Frank Haskew: Once that is done, we were promised a consolidated Taxes Management Act at the end of that process, which has not happened as yet. The fact is we have a huge patchwork of a very important area for taxpayers. We need to bring it together and have consistency and have it all in one place, written in words that taxpayers can actually understand, given its importance.

John Cullinane: In terms of the principles, proportionality and adapting the powers to the different behaviours of taxpayers are very important. They were there in the powers review many years ago. Going back again to an example, the 12-year relaxed limit for them to inquire after offshore errors is disproportionate. In relation to your earlier question about whether it is really the powers themselves, or the Governments and the behaviour, I think it is much more the powers themselves. Obviously, like any institution as large as HMRC, one can always find faults.

However, if you take that 12-year time limit, what it means is that prudent taxpayers have to incur the costs of keeping records for all that time, irrespective of whether HMRC ever invokes that power in their case or not. It is much more about the imbalance that is growing in the powers themselves.

Q8 **Lord Lee of Trafford:** I also declare an interest as a fellow of the Institute of Chartered Accountants in England and Wales. Just very briefly and on a slight tangent, on the question of revolving doors, are there any restrictions that you are aware of at the moment, in terms of professional accountancy firms employing former personnel from HMRC? Are there any restrictions at all or can individuals move at any stage from HMRC to professional accountancy firms?

Frank Haskew: As far as I am aware, there are no restrictions.

Charlotte Barbour: I am not aware of any.

John Cullinane: Restrictions may come from the government end, rather than from the professional firms end. I know the Permanent Secretary for Tax had restrictions placed on him from the government on his recent appointment.

Lord Lee of Trafford: Are we aware of any numbers of former HMRC personnel who joined professional firms or tax advisory firms?

Frank Haskew: We do not have statistics on that, but I have been in tax for 30 years and it has been going on for 30 years or more.

Charlotte Barbour: Much less so than, say, 20 years ago, though, is my impression.

Frank Haskew: It is probably less frequent than it was but it has also gone the other way. There are a significant number of chartered accountants, for example, working for HMRC. Some of those are certainly more on the financial records side. Nevertheless, we have a member of the board in our financial reporting faculty who is from HMRC. It does work both ways and probably more so than it did 20 or 30 years ago.

Chas Roy-Chowdhury: Yes, that is right. We have had our ACCA members going across to HMRC from the private sector. It is very much a two-way flow.

Lord Hollick: Is there any form of independent oversight that can look into the exercise of these powers? I am not making criticisms, but it seems to me this conversation is largely anecdotal and there is very little data. Is there or should there be some form of oversight that looks at how HMRC are exercising their powers, and attempts to form a more balanced view about this? Otherwise it is people on the outside peering in, with a lot of different stories, but there is no methodical, structured way of doing it.

Chas Roy-Chowdhury: No, there is not. We engage in regular meetings with HMRC but there is not a powers oversight body as there was for a few years when we were revamping and reorganising the powers. I think it would be a good idea if we did have an oversight body that looked at the powers on an ongoing basis to ensure they are required and work properly, and perhaps have sunset clauses against some of those powers.

The Chairman: Baroness Drake, could you set us off?

Q9 **Baroness Drake:** Yes, very well. I will do the opening question on Making Tax Digital. How ready, in your view, are businesses, HMRC and software developers for the Making Tax Digital VAT regime's full introduction in April 2019?

Frank Haskew: I will make a few points here. First, we undertook a survey over the summer about the awareness of business for MTD for VAT. We surveyed 500 businesses and it was done using statistically valid samples and by an independent research company. The results of that were surprising up to a point and disappointing in some ways. For instance, we found that 44% of all businesses were aware of MTD. That rose to 51% of VAT-registered businesses and 58% of businesses that will be required to compulsorily register for VAT. However, with 58% of businesses required to compulsorily register for VAT come April 2019 being aware of it, clearly 42% do not seem to be aware. It was a similar situation with accounting records. There are still significant minority of businesses, including businesses that will be required to move to MTD come April, that still keep paper records. The results of the survey from the business side would suggest that while some businesses are obviously ready, there is still a mountain to climb in relation to

communication and making sure that businesses will be on board for this when it comes in.

Secondly, the view is that HMRC is not really ready for this as yet. I believe it is in the process. I am not an expert on, if you like, the mechanics of this, but HMRC's backend systems on VAT are being moved over to a new system. The VAT pilot is in private beta and there are only a couple of hundred people in it, with six months to go. Even when the public beta is opened up to the public at the end of October, as we understand it, there are potentially 1.1 million businesses which could then go into the pilot. But we understand that at least 500,000 of those would not be able to participate in it because they do not meet the criteria. The criteria include, for instance, whether you are a partnership, and apparently if you have trading with EU countries and you tick those boxes on the VAT return, you will not be able to enter the pilot.

Even though the pilot is scaling up, significant numbers of businesses potentially will not be able to participate in that either. It seems the answer to the question is that although obviously it is making preparations, HMRC does not seem to be ready at the moment. There is also a large lack of awareness in businesses about what needs to be done. We obviously need to work with HMRC and businesses to improve that.

Chas Roy-Chowdhury: I think the software houses probably will be ready, but I understand, in terms of our engagement with HMRC and MTD, they are being rushed into preparing software. It appears that all round it is being rushed through. We need to take a serious step back and look at where we are going, when there will be so many businesses coming into HMRC and ill-prepared software houses rushing their software out and charging businesses for it. We need to look at whether it is the right thing to do, especially considering your report last year. One thing I am certainly very aware of from our professional body is that MTD seems to have become implementing MTD for the sake of implementing MTD.

It is there to tackle the tax gap; it is not there to be an exercise in implementing a system for the sake of it. Your report last year was pretty hard-hitting; for example, in paragraph 53 where you discuss the tax gap and the fact that you could not necessarily rely on the figures you were given by the Treasury and HMRC. I think that is the driver behind MTD. We need to continue to look at that as being the driver and instil that in HMRC. Therefore, do we really need to go ahead with MTD on a mandatory basis for VAT in April next year?

Baroness Drake: HMRC gives the impression that it is much more confident about the state of software development, perhaps more than on the previous initiative, and that it could be available at de minimis cost to businesses. Is that reasonable?

Chas Roy-Chowdhury: Frank has put a number against it: £250. That probably is fairly realistic. Whether or not that is a reasonable cost, as

opposed to it being free to do the work of HMRC, I think we have to take a judgment.

The Chairman: Did you say you thought the number was realistic?

Chas Roy-Chowdhury: The £250 seems reasonable if people already have software. If they do not have software, it could be considerably more.

The Chairman: Is £250 not the cost of an hour with a good accountant? It does not seem to be very much. Should it be more?

Frank Haskew: I would emphasise that the physical cost of software is a very small amount of the whole package of what you need to do to implement things.

Charlotte Barbour: Yes.

Baroness Drake: No, that is right. We realise that.

Chas Roy-Chowdhury: Exactly.

The Chairman: Yes.

Chas Roy-Chowdhury: That is right.

Charlotte Barbour: You have to change your processes completely.

Chas Roy-Chowdhury: Yes, training and getting the right people to do the work. As you say, there is a lot more involved than purely the software.

The Chairman: I thought you were suggesting that this number was realistic.

Chas Roy-Chowdhury: No. I think it is realistic just in terms of the software cost.

The Chairman: Yes.

Frank Haskew: I think there is a lack of factoring in the cost of physically understanding what software is available, what its capabilities are, how it will interact with your existing accounting systems, what is most appropriate for your business, and then you have to implement it. I think we all know from our own businesses, and I see it even in my own institute, that implementing changes to your accounting systems always takes longer than you expect. There are always problems and it always costs probably twice as much as you hoped.

Chas Roy-Chowdhury: This is coming in for VAT, where there are already regular returns going in for most businesses. Returning to your report last year, what are the numbers HMRC is trying to address in terms of the tax gap? Apparently millions will be saved by implementing MTD for VAT. I brought this up with HMRC. I question those numbers,

though, because why is that gap not being filled with the data that is going into HMRC through the VAT returns that are going in already?

Q10 Lord Turnbull: Within the papers we have from HMRC we have the transitional costs for the VAT part of it. When we looked at it for the income tax part, it said it could all be done for £280 and no one believed that. It now says: "The estimated transitional cost to the mandated population of 1.2 million businesses is £131 million". That is £110 each. It does not sound plausible, does it?

Charlotte Barbour: No. There are question marks over that, are there not? There are question marks over whether, if you already have software, you will have to upgrade. Our members are reporting back that many of the packages are moving to monthly charges rather than regular ones.

Lord Turnbull: You probably have a regressive mechanism working. If you are absolutely at the forefront and on top of it all, then probably the cost is next to nothing. If you are starting from nothing, as probably the smaller, less-sophisticated businesses are, it is probably going to cost you a lot more; in other words, the smaller you are, the more it will cost you.

Charlotte Barbour: I think it might be quite expensive for really large businesses as well, because they will have processes that do what they do and this is a complete bolt-on. To put something into existing processes, as Frank said, always seems to take far longer and cost more than you would like to think. We were given two years as a lead-in time.

Another thing is that our members have a sense of uncertainty around all this. Our members are not sure what is required or when. They are trying to speak to businesses about it. Businesses do not have a lot of information. We say to our members, "Speak to your software suppliers. They might help you". The software suppliers say, "Speak to HMRC". Everybody is going around their houses, because if you have got an "agile project", as it is called, and you are doing a bit at a time and it is not quite there, there is a feeling of, "I need to do this. What do I need to do? When do I need to do it? Who can tell me?" I think that is what is catching a lot of people out with Making Tax Digital at the moment, whether at the small business end or the large business end. Businesses always tell you they want certainty and they just want to know what to do and whether they can do it.

Chas Roy-Chowdhury: We have had meetings with HMRC in which it said if there are extra burdens for business—that is, Brexit—and we do not know what those burdens might be, it would defer or delay MTD for VAT. That seems to have been totally forgotten. We had a meeting in September last year and that was one of the things we brought up and it seems to have been forgotten. We do not know what the additional workloads might be on these businesses.

Q11 Lord Leigh of Hurley: In your experience as advisers, does MTD deter start-up businesses? Most start-up businesses will be computer-literate,

but they probably want to do an Excel spreadsheet or something simple. Will forcing MTD on to them make it less likely that an entrepreneur starts up a business?

John Cullinane: Certainly, in the generalisation with younger entrepreneurs, one would suspect maybe not. My concern would be more at the opposite end, that elderly business people or advisers might retire early or give up. It is anecdotal and speculative, but quite a significant possibility, I would think.

The Chairman: Am I out of date here? When I was running a business and filling in VAT returns you had a thing called the Gateway. You put your numbers in, you pressed a button, it went off, you printed a copy, and it was all very straightforward. My understanding is that HMRC is going to close that down so that that option will not be there for businesses which have to do all of this in six months, with all the uncertainties. Would it not make sense to keep that system running in parallel?

Chas Roy-Chowdhury: Yes, just in case.

The Chairman: What is the argument against that?

Frank Haskew: I think HMRC wants to move to Making Tax Digital for VAT. The Gateway is a legacy system and the IT will be such that it wants to move to the new platform. To give you a scale of that, our understanding is that the number of businesses which currently file through VAT software rather than the Gateway is probably about 10% to 12% of businesses, so 88% to 90% of businesses are currently using the Gateway that you have just described. At the moment we understand that the Gateway might continue. I think it will have to continue for businesses that are voluntarily registered. For other traders that are mandatory and will have to go down the route of MTD for VAT, they will have to use the new system.

The Chairman: Yes, but this is six months away.

Frank Haskew: Yes.

The Chairman: It will be a car crash.

Frank Haskew: Well, yes. They were exactly the words used by one of our members in one of our recent committee meetings.

Chas Roy-Chowdhury: In the profession, as many of you know as members of the profession, we run things in parallel until the new system is up and running. It does not seem to have been thought through that that might be the way to go.

The Chairman: Sorry. Lady Drake, we interrupted your questioning. Are you finished?

Baroness Drake: No. I was in a disciplined way working through them. Shall I carry on?

The Chairman: Yes.

Q12 **Baroness Drake:** Yes. Given the concerns you have expressed about readiness and given that Making Tax Digital for VAT comes in at the same week as business is affected by Brexit, does that pose particular problems? Is that an argument for reflecting on the timetable? Would you like to give us your view on that?

Chas Roy-Chowdhury: Do we know what the impacts of Brexit are going to be? That is why I think we do need to be cautious, because it could be quite significant.

John Cullinane: I suspect it is a problem for awareness ahead of everything else.

Chas Roy-Chowdhury: Yes.

John Cullinane: However good HMRC was at stepping up its efforts to make more people aware, it would be competing for business attention with these wider uncertainties around Brexit.

Chas Roy-Chowdhury: They are on almost exactly the same date. We need to be very cognisant. Why bring it in on virtually the same date? Why not defer or do it on a voluntary basis?

Charlotte Barbour: Our original question would have been: why make it mandatory? If it is voluntary, you are obliged to make a system that people want to use, which must surely be the best thing if you are going to get a decent tax system that helps British business and compliance.

John Cullinane: Most businesses and individuals have higher IT costs now, even if it is just a mobile phone bill, than they did many years ago. It is not something that has saved costs—it has introduced a new category of cost—but people do it because of the benefits it brings. The benefit that HMRC and Government keep on presenting in this is the reduction of errors. I struggle to see how, if you heavily mandate something and you are up against a deadline, the result of what you are going to do will cause people to make less errors, whereas if you look at the numbers of people who now do their income tax returns online compared to the paper form, they have quite successfully pushed that by making it an easier and attractive option—relatively speaking—and I still think there is a lot of mileage in that sort of approach for digitalisation.

Charlotte Barbour: To have the whole package sit together, you would want to make tax and accounts digital. It would be sensible for the vast majority of businesses to use digital processes properly. Our members are encouraging that where appropriate, but not necessarily driven by tax.

John Cullinane: One issue is that a lot of tax numbers are not really basic accounting numbers at all. When HMRC was talking about the direct tax area and the errors listed, it said that, for example, on how much a car or some asset is used for public versus private use, to a degree that

may be a matter of interpretation. In the VAT area, which we are now concerned with, some supplies made by businesses are exempt and they cannot recover a proportion of the input that they suffer. The rules around that are very complex and people have almost bespoke deals with HMRC that they are renegotiating as they go along. It is very hard to see how those numbers can be easily accommodated in a totally digitalised system.

Lord Lee of Trafford: Given all we have heard, has a concerted campaign been mounted by the professional bodies to get the implementation date substantially altered?

Chas Roy-Chowdhury: We did. That is why the income tax was due to come in first. That has now been pushed back and we are not sure when that will happen. We have had some success, but not sufficiently, because the VAT is coming in on a very auspicious date that will not help anybody if things become difficult. We have not been successful in that, but we hope that by giving evidence to your august Committee we can try to do something about because we are so close to the date and, as we have already seen, things are not properly ready to go forward. We want to make this work and for businesses to have a good experience so they actually do it, because, ultimately, it will help them, but it should be done in a voluntary way. As John said, for self-assessment, it has worked out very well, because people have been given carrots—inducements for filing digitally. They have taken that up and that would be probably the best way to implement MTD for VAT.

John Cullinane: We have wanted to be supportive of the whole direction of effort. We have engaged in a lot of dialogue, done surveys of members and produced quite a lot of evidence on this. Our main focus has been dialogue with HMRC rather than campaigning, although we will brief MPs when the relevant legislation comes before the House.

Chas Roy-Chowdhury: We all met the Minister, David Gauke, when this was first announced and explained that we had reservations about this. We have done as much as we possibly can and we hope we can still do more.

Lord Lee of Trafford: Ministers are aware, but perhaps we can help when giving our conclusions. Is the new penalty and interest regime an improvement on the old regime and how could it be improved?

John Cullinane: A points-based system, like the motoring approach, is quite attractive. By and large, there is probably quite a lot of improvement there. We have concerns about some categories of business that, because of the nature of the business, not because of anything they do, are in a situation of making repayments and the repayment supplements are going to be cut back. There are some areas we still have concerns about, but, by and large, the points system approach has merit.

Frank Haskew: The points system has a lot merit. From everything we have heard, though, if we are going to go with MTD come 1 April, there

does need to be a clear soft landing on penalties and particularly the interaction with things such as the default surcharge. "Car crash" was the phrase we heard. We want to make this a success and it has to be a success. We must have flexible implementation of this that takes account of the fact that there is probably going to be a steep learning curve for many businesses and that is probably outside the statutory regime.

Q13 **Viscount Hanworth:** I am surprised by the extent to which HMRC has outsourced the provision of software and I imagine that this has made it difficult for it to disseminate and educate people about the methodology of MTD. Has HMRC issued firm and transparent guidelines to software developers and have they been made public to the rest of us?

Charlotte Barbour: ICAS has always been firmly against all software being contracted out and believes that you should be able to do basic tax compliance free and on HMRC systems. Having it all contracted out, with lots of different software packages, means that HMRC will no longer be able to help taxpayers who cannot use software, because there will be all sorts of software and packages willy-nilly. They have had the guidelines about what is required, but, as we understand it, the software needs to meet certain criteria, but HMRC is not fully approving it or telling us what is needed. It would be quite difficult for any businessperson to work out exactly what the software offers and whether it does what they want, and will go on for ever doing what they want, and what the criteria are if it fails those tests. Will it make tax digital for business, as well as for VAT? We do not know. There are still quite a lot of loose ends around that.

Viscount Hanworth: Are we looking again at a lack of in-house resources? Does HMRC perhaps have insufficient IT resources itself?

Chas Roy-Chowdhury: As you know, HMRC came before the PAC and divested itself of some of the work and said, "With Brexit, we can't do X, Y, Z", but the business cannot stand up and say, "Well, we can't do this either". I think that is where your Lordships need to step in and say, "We need to have a level playing field on this, because there is an awful lot going on and it is not being implemented when everything is ready, so let's just look at this again. Can it be done on a voluntary basis to start with?"

John Cullinane: It was integral to the approach in the very beginning, even when it was going to be income tax at an early date. In a way, the mandation is a signal to the software providers that there will be a ready market there. Particularly in the beginning with the income tax, there was a commitment that the software companies were going to be expected to provide something for free. Obviously, they are not charities, so they will do that only because they perceive there is an entry into the market and the potential for add-ons. That element of having a debate with the software companies separate from the debate with the businesses and representative bodies was inherent in the way HMRC set it up from the beginning. As you say, it did not want to provide a basic software package itself.

Viscount Hanworth: So the outcome is dependent upon the profitability of the software houses.

Chas Roy-Chowdhury: I think HMRC has had separate meetings with the software providers; obviously, there was no point us going along to those. I imagine the software providers will be much more aware of what will be required.

The Chairman: Do colleagues have any other questions they want to raise on this topic?

Q14 **Lord Turnbull:** Looking ahead, we are in the happy position that, following pressure from tax professionals in this Committee, common sense prevailed, and Making Tax Digital quarterly accounts for taxes other than VAT would not come in until 2020 at the earliest. Then it says, "The Government will not widen the scope of making MTD beyond VAT before the system has been shown to work and not before April 2020 at the earliest". One problem is that that is less than 18 months away. Is HMRC beginning to think about it? Is it thinking that it got a bit of a beating last time but it will come back with the same old proposals? But is it not in a position that it marks its own homework and it decides? There are all these things about doing it a pace that is right for HMRC but none of the decisions on where the thresholds are, who is in the scheme, and so on, are judged by it, but, at the moment, it is working on the VAT part of this. Are there any signs that it is already beginning to plan, as it should be, and consult on what it is going to do after April 2020?

Frank Haskew: At the moment, all the focus is on getting the VAT MTD up and running on 1 April, which is the immediate pressure. HMRC has said that some of Making Tax Digital for individuals and businesses has been put on a slower track and obviously there is some evidence that that is already potentially being shunted out, but all eyes are on MTD for VAT at the moment, without much focus on what will happen beyond that.

Lord Turnbull: The VAT bit comes in April 2019. It needs a whole year to run to tell whether or not it is working, but, before the end of that year and time to appraise it, it would have made a decision about going to the next stage. Therefore, 2020 cannot make any sense if you are using the evidence of how it all ran with VAT.

Chas Roy-Chowdhury: You cannot tell when there will be another Parliament, but the way I read that was it would not happen until after the next general election. One would hope that HMRC will take longer than a year to look at the situation. It is part of the work streams that it stopped doing in terms of looking at the other areas. It would find it difficult to bring it in the following year, so hopefully we can actually discuss these things together. As professional bodies, we have all had discussions with HMRC around its spending review and the way it will be doing things in future, because MTD came out of the blue and it would want to consult much more on new policies. So hopefully this would be a

part of that--whereas before it said, "We are going to do MTD for income tax"—and it might look at this much more and may not do it.

The Chairman: But Lord Turnbull is right, it did not say after the next general election. It is 2020.

Chas Roy-Chowdhury: After 2020 at the earliest.

Charlotte Barbour: There is still some fairly minor work going on Making Tax Digital for business. There are pilots open that you could join if you want, but, more importantly, sight has been lost of the bigger picture, because it was doing all your tax in one place and that has gone, but because we are doing that, then we are doing this and that, and the bit around individuals has been completely put to the side at the moment, the overall big picture of what you are trying to gain from it is difficult to see.

Q15 **The Chairman:** On that point, Mr Cullinane, you said that you were very supportive of this project. If we have a system that works perfectly well, which is not going to impose additional costs on businesses at a time of great uncertainty and pressure, why should we be supportive? Who benefits from this?

John Cullinane: I am very supportive of the direction of digitalisation, because there are parts of the tax system where many calculations are needed or where the information comes out of the accounting system. If you could magically go into that type of world, the vision they have would be better. But I struggle with the extent of mandation and the pace in relation to evidence gathering.

The Chairman: I cannot see the benefits. If you are running a business, using Excel spreadsheets, and can put this information in, why would you want to change that? Perhaps I am missing something, but the information and evidence that we have had from people is overpowering. It is difficult to understand what the benefit is. It is suggested that it would make the information more accurate. You yourself made the point that it is hard to see how, if you trying to cope with new systems and everything else, something is not going to drop through the grating or the system is not going to create rubbish data because it has not been put in place properly. What is the point of this?

John Cullinane: I made the point that some of the sensitive tax numbers are not really accounting numbers at all, but, of course, many numbers that are needed for tax are basic accounting numbers. If the first time something was put into the system was the only time you had to read it from one source, input it to another, then it went automatically right the way through the system, you would think that would have benefits.

The Chairman: Some of the evidence we have had has pointed out, for example, that you might have a petrol receipt from a garage that would have petrol on it, and it might have a Mars bar that you have bought or something of that kind. If you are doing the manual system, you can

cope with that, but if you are copying the invoices and downloading them to the system, how do you do that? It is not clear to me that it is necessarily going to avoid errors. What is driving this?

Charlotte Barbour: Is it not partly HMRC looking to rejuvenate and modernise its IT, because a lot of its systems are desperately old-fashioned. This is just a personal view, but, as far as I understand it, what is really wanted with MTD for VAT is not for businesses to go digital but that its new kit will accept information only in this particular format, hence you need to go digital.

The Chairman: I can see how from its point of view it makes sense.

Charlotte Barbour: I completely understand that. Among our members, we would suggest probably a turnover of 250,000 upwards. Most businesses should look to be digital rather than using bits of paper and what have you. It should streamline your processes and free up your time; you should have more ready information and if, as John says, it flows straight into the tax system, there will be less work to be done on all fronts and you can concentrate on other things. It would be a good thing, but if it is a good thing, you would do it voluntarily and that is why we do not like the mandation around it.

The Chairman: You want to put your members out of business.

Charlotte Barbour: No. We will find lots of other things to do. There is lots of other work to do.

Chas Roy-Chowdhury: It is having returns five times a year rather than once a year that is the real killer. We made representations when we saw Ministers such as David Gauke. You have somebody who is fairly low-income, when you look at income tax for MTD, which is being proposed, and the turnaround in having to keep records up-to-date on a regular basis rather than running their business. One of the questions earlier was: will it put people off going into business and start-ups? It probably would if they examined some of the onus requirements for tax that MTD could bring in. We need to be very careful where this lands if it does come in in the future.

Baroness Kramer: Having come in just for the last few minutes, what I heard was a complete summary of what I would have expected to hear, and I rather have the sense that the issues that you have raised are the questions that we have all been raising, so thank you.

The Chairman: I thank you. We have given you quite a grilling. It has been really interesting. I cannot believe that we are talking about something that will happen in six months' time. Thank you very much.