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Inquiry on

TAXING CORPORATIONS IN A GLOBAL ECONOMY: IS A NEW APPROACH NEEDED?

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Witnesses: Chas Roy-Chowdhury, Elspeth Orcharton, Frank Haskew and Richard Woolhouse

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Members present

Lord MacGregor of Pulham Market (Chairman)
Lord Hollick
Lord Lawson of Blaby
Lord Lipsey
Lord McFall of Alcluith
Lord Rowe-Beddoe
Lord Shipley
Lord Skidelsky
Lord Smith of Clifton

Witnesses

Chas Roy-Chowdhury, Head of Taxation, ACCA, **Elspeth Orcharton**, Director of Taxation, ICAS, **Frank Haskew**, Head of Tax Faculty, ICAEW, and **Richard Woolhouse**, Head of Tax and Fiscal Policy CBI

Q34 The Chairman: I thank you for coming, and thank those of you who submitted written evidence for that as well. We are running a little late so I will go straight in. In his most recent Budget speech the Chancellor proposed that promoters of tax avoidance schemes should be named and shamed. Do you agree? By the way, if you agree with what someone has said before you and you have nothing else to say, do not feel that you have to contribute to each answer.

Chas Roy-Chowdhury: We are looking at tax avoidance, which is in the law. There needs to be a pretty high bar for naming and shaming, and we need to be very careful where we are going with this. There is a desire at the moment that anyone who seems to be "undeclaring tax" should be named and shamed. We need to draw back and take a long-term view—under what classification and under what conditions are these people going to be named and shamed? Where they try to promote a scheme and that fails, the law will seem to be slightly different from what their interpretation was. Is that really a case where we should be naming and shaming, something that will taint them for a long time if not for ever?

Frank Haskew: Our view on that is that we have seen evidence, particularly over the past year or two, of promoters selling what I think are regarded as very dubious schemes. In the public interest, and bearing in mind that potentially a lot of people enter into these schemes not actually realising what they have let themselves in for, there is probably merit in looking at whether there should be some sort of register or at least disclosure of these sorts of schemes. As Chas rightly says, though, we need to tread very carefully with this.

Elspeth Orcharton: At the moment we do actually have "naming". If a scheme is taken through the courts and it fails, it is generally a matter of evidence and public information who was involved in that scheme—not just the taxpayers but their promoters and advisers. If we think of some of the recent anti-avoidance cases, I think the names are in the public domain to a substantial extent anyway. It is very much after the event but we have some naming anyway. With regard to naming and shaming as a concept, we now have it for tax evaders; within the past year some names have now been issued under HMRC's new powers.

Chas Roy-Chowdhury: Fifteen today.

Elspeth Orcharton: Another 15 today, Chas tells me. That would give a basis for evaluating whether this has a deterrent effect. Finally, if you are looking at the most egregious end, and I know that HMRC has some concerns about a fairly small number of boutiques that keep reinventing themselves, I question whether they feel shamed in what they do. So we need to consider carefully whether naming and shaming is the most effective approach, but I do not think that further disclosure is a problem to most of our members.

Lord Lipsey: The other criticism made of "name and shame" is that it really should be renamed "name and advertise"—it tells everyone who is out there with ingenious schemes and who is getting away with them. Is that a strong argument in your view?

Frank Haskew: There is no doubt that it can certainly create perverse incentives. Picking up on the point that Elspeth made, there is a lot of concern that quite a few of these promoters are boutique firms that are potentially not regulated by any professional body, and that quite a lot of them are operating outside the UK. There is a serious question mark over whether, even if you named and shamed these people, they would regard it necessarily as a shaming.

Lord Hollick: Is it possible therefore to provide tax advice in the UK without any formal professional accreditation or being registered?

Frank Haskew: Yes.

Lord Hollick: So anyone can pitch up and sell any scheme?

Chas Roy-Chowdhury: Even a turf accountant can provide tax advice. You do not have to be registered. We professional bodies have been looking for a long time to have much greater recognition for professionally regulated tax advisers. We have proper ethical guidance, which is one of the questions later on. We also monitor and ensure that if there are complaints against those individuals or firms, those are looked at. There are a whole range of other issues around that, and that is something that should be considered.

Q35 Lord Lawson of Blaby: To what extent do you think that corporation tax has become something of a voluntary tax for multinationals?

Richard Woolhouse: I do not think that it is a voluntary tax at all.

Lord Lawson of Blaby: I mean the amount of tax. Obviously people will pay something. At the early part of our hearing today Lord Lipsey mentioned the Starbucks affair, which has had a lot of attention, but Starbucks is not unique. It clearly chose not to pay corporation tax.

Richard Woolhouse: There is a very good paper, written about two years ago by Professor Devereux, *Who Pays Corporation Tax in the UK?*, which says—you will correct me if I am wrong—90% of UK corporation tax is paid by the top 1% of companies, and of that 90% half is paid by foreign-owned multinationals and half by domestic multinationals. The issues that relate to some of the examples that we have seen in the Public Accounts Committee are connected to the issues that we have discussed before about the international tax system and whether the rules governing the allocation of taxing rights and permanent establishments in different countries—the selling-in issue—have kept up to date with changes in global business practice. Clearly there is plenty of scope to address some of those issues.

Lord Lawson of Blaby: So to some extent it has become a voluntary tax because of these devices? They are perfectly legal; I am not suggesting that there is anything illegal about them.

Richard Woolhouse: If you look at the share of corporate tax receipts to GDP, they have held up pretty well despite falling headline rates—which you began, obviously. Profit share in GDP has been quite high, but corporate tax receipts have not fallen as much as you would expect if you believed that there was a race to the bottom and it was a voluntary payment.

Lord Lawson of Blaby: That may be, as you have said, because profits have been high. That is one of the variables that affect the amount of corporation tax, but there are others.

Elspeth Orcharton: In the global business environment, there is probably a lot more choice as to where multinationals place their activities, on a genuine basis as well as on a more stretched and contrived basis. What follows from that is the corporate tax consequence in each jurisdiction, and it is that thought process that leads to the concerns, which are being addressed at OECD level, that the tax regime for multinationals, as guided by OECD guidelines, is the piece that needs to be brought up to date. The corporate tax is a consequence of the economic decisions. I am sure that tax rates in jurisdictions are part of the decision-making process that multinationals go through, but you have heard from the previous evidence that other factors are involved, and I have no evidence to say that that is in any way incorrect.

Q36 Lord Skidelsky: You made the point that corporate tax receipts have not fallen as much as corporate tax rates and that that suggests that there is not a race to the bottom going on. Is that statement in real terms or nominal terms? Are you saying that in real terms corporate tax revenue receipts have not fallen as much as—

Richard Woolhouse: As a share of GDP.

Lord Skidelsky: A share of nominal GDP or real GDP?

Richard Woolhouse: It does not matter, does it? Nominal receipts as a share of nominal GDP.

Lord Skidelsky: It can matter. Real GDP is important if you are considering questions like how big the state is. The share of real GDP is important.

Richard Woolhouse: The point is that corporate tax as a share of total receipts is around 8.8% in the UK, I think, slightly above the OECD average. On top of that, depending upon how you measure it, there is probably another £3 for every £1 of corporation tax paid in other business taxes. So the idea that corporates are not paying their fair share is one that we would refute, and we have laid that out in some of the work that we have done.

Chas Roy-Chowdhury: In terms of where you are coming from, some figures were published in March by the Office for National Statistics that show the volatility of corporation tax. Because of the downturn the figures for 2008-09 were about £45 billion, while in the following year, 2009-10, they seemed to drop below £20 billion. Overall, though, things then bounced back. Yes, they have potentially dipped again for 2012-13 but we are missing the big picture, which is that we are moving away from corporation tax to things like VAT. The same publication shows that the VAT numbers have held up remarkably well because, as we all know, the VAT rate has gone up. That is probably what we need to look at in terms of the basket of taxes that we have moved towards—those companies that we know are going to be tied into the UK rather than those that can look at different locations to do business that are more favourable for them, as Elspeth was saying, taking tax as one of the factors and one of the components that they look at.

Q37 Lord Shipley: Could I ask you for your views about HMRC and how successful you think it is in dealing with large international business? It has been criticised for not being sufficiently aggressive in seeking corporation tax from large business. Do you think that is justified?

Chas Roy-Chowdhury: From a personal point of view, I do not think it is justified at all. HMRC has been operating in a way that is business-friendly but, when it knows that something that is going on that is not quite right, it acts swiftly and decisively and it plays hardball. It is not a pushover, as some other committees have said, nor has it acted in a way that is detrimental to the UK Exchequer. It has moved along similar lines to the Dutch revenue authorities. When I go to Europe I find that, compared to other authorities there, HMRC attracts businesses into the UK and fights the UK tax regime's corner in the rest of the world. Given its meagre and declining resources over time, I think that it does a pretty good job.

Frank Haskew: We heard in the previous evidence session that the view is that HMRC is certainly not a soft touch and that it actually does a very good job with limited resources. It is also important to remember that, according to the latest statistics, 93% of the capped revenues in this country come in with really very little effort on the part of HMRC. It is an important part of policing the system and we play an important part as well in securing the tax base of the country. There have been questions about some of the governance around some of these deals, but the NAO report said that HMRC had done the right thing. We have seen steps taken in HMRC to improve its governance of this area and these arrangements. We need to give that time and see whether it is working properly.

Elspeth Orcharton: The feedback that I would offer from our members is that HMRC has moved to have a better relationship with large businesses. That better relationship is not necessarily softer; it just means that they have a better channel to gain knowledge of the business activities and what is actually going on, so that the settlements that HMRC is doing are not inappropriate and it spends a lot less time on things that are less relevant to the overall tax take and achieving the necessary compliance and the level of agreement. From the business perspective, that is an early point of certainty and less time wasted.

Lord Shipley: Do you think that the general anti-abuse rule is going to help HMRC in future?

Frank Haskew: Ever since Graham Aaronson did his report and had his committee, we have had a long process with the GAAR, and we have consistently helped to support that work. The new rules are going to come into force this year. There was a sea change with the guidance that was referred to earlier, which was published about three weeks ago, in terms of the way in which the UK is going to look at tax compliance and tax avoidance. There is a decisive break with the past with regard to aggressive tax avoidance schemes, and that is clearly stated in the introduction to the guidance. People need to read that because it is a watershed.

The introduction also makes clear that the GAAR is aimed at abusive tax avoidance schemes but will not catch everything. It states very clearly that in terms of the multinational activity that we heard about earlier on, the GAAR is not designed to catch those sorts of planning arrangements. The GAAR will be very good at tackling aggressive tax avoidance schemes but will not look at the whole picture. As we heard earlier, that requires separate consideration.

Chas Roy-Chowdhury: The sea change really happened under the disclosure regime that came in in 2005, the DOTAS rules that we heard about earlier. There is far less appetite, certainly in the mainstream and much more in the boutiques, to look at convoluted tax planning set-ups and schemes. I think there has been a sea change anyway over a long period, and the GAAR just cements that process.

Q38 The Chairman: Given the resources that international companies have in the tax field—the tax expertise—and the resources available to your members in their various firms, do you think that HMRC is still sufficiently resourced?

Chas Roy-Chowdhury: There should be more resources. As we have said previously to this Committee, we need to spend to save when it comes to getting tax revenues in. We seem to have gone too far in terms of cuts. What you may be referring to is something that one of the other committees also mentioned: there are far more resources—in transfer pricing, for example—in firms compared with HMRC. The reality, though, is that in tax compliance a lot of resources are required. For transfers pricing specifically, you need to have surveys, you need to show that you have an arm's-length pricing policy and you need to show that you have the data to back up what you are doing along the supply chain. A great deal of work is required, which is why you need a huge number of compliance people just churning over the data and looking at what needs to be done. It is like comparing chalk and cheese. People within HMRC in that specific area will take an overview of what has been submitted, whereas those in the professional firms and in the companies will be doing the groundwork and producing information that then decides the corporation tax computation.

Elspeth Orcharton: I agree. Our members certainly feel that HMRC could do with more of what we call the right resources, and that is the very experienced staff—those able to address some problem areas, particularly the more complex ones. We support the right resources going in there.

Lord Smith of Clifton: Is it not the case that the brightest are actually out in the firms, and any tax inspector that gets bright gets paid by the private sector?

Elspeth Orcharton: I would have no argument with saying that that used to be the position. Looking at recent job adverts that have been appearing in the marketplace to recruit into the anti-avoidance and compliance support unit of HMRC, though, I would not reckon that there is much of a market difference now at that level.

Q39 Lord Rowe-Beddoe: I think that this question has been answered indirectly. Do you think that over the past decade the use of tax avoidance schemes has increased or decreased?

Frank Haskew: Our view is that over the past 10 years the incidence of tax avoidance has reduced. We think that that is because of a number of factors. We have heard already about some of it, but I shall summarise it. We have had the disclosure of tax avoidance scheme rules, which were introduced in 2004. I agree with what Chas said; it was a major change in the way that these things happened. We have also seen a lot of specific anti-avoidance tax legislation in Finance Bills. We have also seen the advent of quite a lot of targeted anti-avoidance rules within the tax legislation—CGT losses, for example. We have had things like the banking code of conduct. We have had things like HMRC's Tax on the Boardroom agenda. HMRC has been much more aggressive in taking tax cases, and the NAO recently reported that it had won about 85% of tax avoidance cases in the courts. When you add it all up, it is a groundswell of making it more difficult to enter into tax avoidance.

Chas Roy-Chowdhury: Frank has summarised it very well. There is also just much closer working between large businesses and HMRC, with the customer relationship managers directly involved in the 2,000 largest companies. There is a much greater understanding of what business does by HMRC and much greater understanding by business of what HMRC is looking for. Most companies really do not have time to mess around with convoluted set-ups, as I mentioned earlier; they really want to just get on and try to comply with the complex tax system in the UK and around the world.

Richard Woolhouse: I agree, definitely in the large corporate sphere. I re-emphasise the point about reputation and the fact that tax is now a boardroom issue. HMRC reported in 2009 that DOTAS had cut off more than £12 billion in scheme-based abuse opportunities, so there is some evidence that that has been successful. The landscape has changed, especially in the large corporate space.

Lord Rowe-Beddoe: So DOTAS appears to be working. It has been nine years, hasn't it?

Frank Haskew: It has been. If we look at the Republic of Ireland, for instance, which has had a GAAR in its legislation since 1988, although its first cases are only just coming before the courts, it is looking now to introduce a tax disclosure scheme that is very similar to our DOTAS. Even though Ireland has had a GAAR for 20 years, it did not feel that it was good enough so it is now looking to do exactly what the UK has been doing since 2004.

Q40 Lord Rowe-Beddoe: In addition to DOTAS, of course, the Government are now proposing naming and shaming, which we have just touched on, and—an interesting one—barring users of failed schemes from competing for government tenders. Do you have a comment on that?

Elspeth Orcharton: We put in some quite detailed responses to the original proposals. The concern regarded a change in behaviour. Schemes that fail in the courts now have generally been entered into perhaps six to 10 years ago, quite happily and probably with a different board and at a different time, before DOTAS. The encouragement that HMRC would like to give is that these cases are not taken now and that they are settled. The problem with having any form of retrospection to such an arrangement is that you penalise going forward decisions that were made by an organisation 10 years ago. You also provide a disincentive to organisations to settle old cases with HMRC because they want to keep them open; when the cases are closed and they lose, they are then precluded from tendering. So long as it is done with the right timescale and impact, I do not think that there is particular concern over the principle. However, there is a big issue with the competitiveness for those from overseas regimes that do not have an equivalent. Would you handicap a UK-based business compared with an overseas competitor? More detail is needed here.

Chas Roy-Chowdhury: Does the UK want to pay more and go to an overseas supplier that does not have the same rules because, as a result of these rules, it cannot get the supply from a UK supplier? We need to be very careful where we are going with this. When some tax planning ideas are put in place, they are considered to be perfectly within the law and something that will work, but then they are found not to. These are not things that have been done illegally so, again, we need to be very careful where we are going in the name of anti-avoidance.

Richard Woolhouse: The initial proposals around this issue were very unworkable and not a great example of the tax policymaking process. Luckily, there was a very intensive period of consultation over three or four weeks, and things got in there to change the way that it was drafted. I do not think that HMRC was that involved in the original proposals; they came out of the Cabinet Office and were a great example of a knee-jerk political response to something that was not very well thought through, and indeed were not really in line with the proposals for tax policymaking that were set out in July 2011.

Lord Rowe-Beddoe: The retrospectivity and the competitiveness need to be sorted out, because clearly that is very disadvantageous.

Elspeth Orcharton: I think that there is an understanding of the policy need and the political need behind the wish to do something. It is just that whatever is done has to be done carefully.

Q41 Lord Skidelsky: Much planning avoidance activity centres on the distinction in the tax code between debt and equity. Is there any justification for maintaining the deductibility of interest but denying the deductibility of the cost of equity finance? In other words, is there any persuasive rationale for treating the two differently?

Richard Woolhouse: I think that different perspectives are taken by practitioners and economists on this issue. The deductibility of the interest is an important feature of the system that we now have, and that is part of the package that includes exemptions for foreign dividends, the CFC rules and something of the roadmap process that we have basically been through over the past three years. We are at now a point where, having achieved a very attractive package in terms of attracting mobile activity to the UK, to start unpicking that now would be very damaging. We need to bed it down and we need stability around that system.

There are a lot of other elements to this issue. There are already quite a lot of anti-avoidance rules that restrict the amount of interest that can be deducted. There is also the worldwide debt cap, which acts as a backstop to that. This was discussed at length in Mirrlees in either chapter 16 or chapter 17—I was reading it late last night. One can talk about the causes of the financial crisis and whether the tax shield around debt was the reason for that. There were probably many other reasons to do with excessive leverage in the financial system that were not necessarily a function of the tax treatment of debt, so I would be cautious about us moving away from what is a very attractive feature of the system as it stands, and something that I think we need to bed down.

Lord Skidelsky: So you would reject the treatment of debt, as opposed to equity, as a major cause of the overleveraging of the economic system?

Richard Woolhouse: There is an interesting paper that Andrew Lo did, which you have probably seen, called *Reading About the Financial Crisis: A 21-Book Review*, for the *Journal of Economic Perspectives*, showing that there are many different reasons that people within the economic profession still proffer for the crisis. The other thing is that if you put "debt equity tax" into Google you will see a very good post by Tyler Cowen that talks about the distinction of debt as an allowable expense. Modigliani-Miller is a result in finance theory. The treatment of debt and equity in the tax system from the perspective of tax practitioners is very different. It is an allowable business expense that is used in the course of natural business.

Chas Roy-Chowdhury: As Richard said, it is an economic concept in terms of the equalisation of two things that economists get very interested in. In my day, when I was doing my economics degree, that was certainly something quite interesting. We are where we are, though; we cannot start with a clean sheet of paper. There are a lot of leases and contractual set-ups that are predicated on interest deductibility, so to unpick that and still be revenue-neutral in terms of the implementation of an equity deduction will be very difficult. That is something that we need to look at, and at some time in the future perhaps we can unpick the situation that we are in, but that needs to be very carefully done in a way that I think cannot be done without money being thrown at it.

Lord Skidelsky: In more favourable times, perhaps.

Chas Roy-Chowdhury: Yes.

Q42 Lord Hollick: We heard in the previous witness session that the business structure, particularly with open borders and the digital economy, has changed dramatically over the past 100 years, and yet the principles for taxation were set in place 100 years ago or more. In the PAC report, which resulted from its discussions with the big four, there was a very strong case for reform. Do you agree with that?

Chas Roy-Chowdhury: Any reform needs to be carefully considered—

Lord Hollick: I do not think that they were recommending reckless reform.

Chas Roy-Chowdhury: —and the OECD is looking at this. As we are in a digital age and there are clearly issues about permanent establishment and profit allocation, perhaps we need to reform bit by bit rather than looking at wholesale change, because 10 years down the track, when such wholesale change might be possible and there was agreement between Governments on comprehensive change, the way that businesses operate might have moved on. We probably need to incrementally change the way that we tax profits but, as we heard in the previous session, there are going to be winners and losers. Which jurisdictions are going to be willing to be losers? We need to ensure that we do not end up with double taxation for those businesses.

Elspeth Orcharton: My sense would be that there is a need for the rules to be brought up to date rather than reinvented or started again. It is really about allowing them to evolve and be modernised to deal with the modern business world, rather than be broken as a fundamental point.

Frank Haskew: The OECD work on base erosion listed six areas where it felt that the pressure points were. They are probably the areas that people are struggling with, particularly transfer pricing and the digital age. That is certainly coming out as a major area that needs to be looked at. Related party transactions was another area, as was harmful regimes, which were mentioned previously. There were a couple of others as well. It pays to read that report because it summarises where the issues are and possibly some of the solutions.

Q43 Lord Lipsey: You give a pretty favourable impression of how the UK corporate tax system is performing and the direction of travel. Are there any glaring weaknesses left—in particular, any glaring weaknesses that would enable us to get more tax here, even if it meant that there was less tax in some other country?

Chas Roy-Chowdhury: We have heard about complexity and the plethora of different reliefs and allowances, and perhaps those kinds of things need to be looked at. There needs to be a much more co-ordinated approach. As we said at the beginning, though, are we really looking at the wrong target in looking at corporation tax as standing up in the digital age and the globalisation of businesses? Should we be looking at, as the UK has been, going further with lowering corporation tax and relying much more on VAT, stamp duty and other taxes that are grounded in the UK?

Elspeth Orcharton: We had some interesting comments from some of our members in this area who felt that that there was an opportunity for a better resourced HMRC to get some more out of, for example, transfer pricing and the existing base—not changing the rules but being better at how effectively some taxpayers were interacted with and how much compliance review was going on.

Q44 Lord Smith of Clifton: I think that we are drifting into this question. In the absence of fundamental reform, where do you think the international system for taxing profits is heading, and should we expect similar revenues from corporation tax in future as we have had in the past? I think that you were saying that as we move towards VAT and stamp duty, they will go up and corporation tax will decline.

Chas Roy-Chowdhury: That is right. The statistics published by the Government on 23 April 2013 indicate that there is a great deal of volatility in terms of corporation tax. Yes, they will go up again when taxable profitability increases, but then we are looking to reduce corporation tax to 20% by 2015, which is good. We are going that way. VAT was the number three earner, and I think it is now vying for position with national insurance as the number two earner, in terms of revenue for the Exchequer. If you look at the rest of the European Union, that is probably the direction of travel. We find it difficult to see how, with global competition, corporate tax yields are going to stay up. That is the price that you pay for the efficiency of the Government. It is the shop window where businesses and multinationals look into the UK and see what your price is to go in and buy that good. In terms of corporation tax being low, we see that Ireland, with a rate of 12.5%, has been very effective at attracting inward investment.

Richard Woolhouse: There is evidence from the OECD that taxes on profits are more damaging to economic growth than other factors of production. A simple guide to tax economics is: tax the things that do not move around as much as things that do. We have seen a purposeful attempt by this Government to reduce taxes in the corporation tax area. The total tax burden on business that we have done in our work is basically up slightly, with corporation tax down and other taxes holding up. There is a question about whether in the long term corporation tax receipts will hold up as much, given that there is increasing competition between Governments.

The question here is not only the digital economy. The other point to note is that whereas 20 years multinationals largely organised themselves on a national basis, now they do not; they source globally, finance things globally and organise their IP globally. There is a good argument that the total amount of receipts raised by CT probably will fall in the long run, but that is not necessarily a bad thing for economic growth.

Q45 The Chairman: May I ask you a couple of questions relating more to your own members than to the role that professional advisers have? There have been proposals for greater transparency by multinationals in declaring taxes paid to different countries. Should there be greater transparency in the advice given by professional firms? Linked to that, obviously your firms advise corporations on tax planning and/or avoidance. Do you have a code of conduct for providing such advice?

Frank Haskew: We have a pan-professional code of conduct. I should say that we all have as a professional body a code of ethics. That is at the root of our profession. Operating ethically and responsibly is the core of our business, because ultimately that gives business confidence and that underpins our economic activity. It is fundamental to our profession. The code of conduct is effectively written in terms particularly of the tax work that we do, and it is called the pan-professional code of conduct. We, along with some other bodies, all sign up to it. We have had it for years and it has been regularly updated. It was last updated on 4 January 2011 and is currently going through a further update as we speak, which will contain much more guidance on areas such as dealing with tax avoidance and the advent of the GAAR. It will have much more guidance to recognise that there is a lot of public concern in this area. We are hoping that will be published probably no later than the third quarter of this year.

Chas Roy-Chowdhury: We have already given Bill a copy of the current code, so he has that for the public record. What needs to be said is that in terms of transparency, yes, there is the issue of client confidentiality but, as the witnesses were saying previously, a lot can be said in terms of where the ethical tax position of business is. We very much support businesses setting out their frameworks and what their policies are when it comes to tax. That is an area that they will need to address as part of other reporting requirements that are coming in—for example, integrated reporting, which will set out those kinds of requirements and will give greater transparency and greater clarity for all to see what they do in the tax field.

Richard Woolhouse: I would like to use this opportunity—here I am not speaking from the perspective of the profession but from the perspective of business—to say that we issued a press release a week ago. It is a statement of tax principles and was launched at a round table of journalists. It sets out seven different principles, some around tax planning and some around transparency and reporting, very much along the lines that you heard in the previous session—that voluntary narrative reporting of tax is the way in which business needs to proceed, not necessarily more mandated reporting. We have already had a number of companies express support for this. I will send this to the Committee, obviously. We have also announced a report that builds on the work that we did a year ago about misunderstood concepts around the UK corporation tax system, which we hope will contribute to the public debate and allow us to move forward in what is currently a pretty sterile debate where we are hauling companies through the court of public opinion for paying small amounts of tax on high revenues for perfectly valid and legal reasons.

Elspeth Orcharton: I would like to add two things to what has been said. ICAS and the other bodies here, along with tax advisers, have a public interest obligation. In the case of ICAS, some additional guidance is about to be issued to our members, with the input of our public interest members around this whole arena, and we can send that to you in due course. To go back to your original question—should our members publish advice given? –if you could unpick from the advice given all the bits that were commercially sensitive to their clients, you would not have very much left. The vast amount of the advice given is on commercial transactions and it would be most damaging to most businesses to publish that.

Frank Haskew: One of our fundamental principles is confidentiality. If you are going to go down that route, you have to consider carefully the position of legal professional privilege. You are then under a duty not to disclose information, and you might see the perverse incentive of people looking to move towards a situation whereby the advice that was given was protected by privilege. You might actually achieve the opposite effect of what you had intended to do.

Q46 Lord Lawson of Blaby: I have a question that arises from the fact that in addition to being a member of this Committee, I am also a member of the Banking Commission. When the Banking Commission took evidence from the banks on the tax issue, it emerged—this was from the people who were engaged in it and knew what they were doing—that many of the banks had been engaged in tax avoidance on a massive scale. Barclays in particular, though it was not the only one, had a division that it called "structured finance", which did nothing else but tax avoidance. For many years, it turns out, this was the biggest single contributor to Barclays's profits. Barclays was mainly reducing its own tax bill but was also engaged in tax arbitrage with other banks overseas, which helped those other banks to some extent to reduce their tax liability. You have been telling us that in the non-bank sector corporates do not do that kind of thing at all. I would like to ask you a simple question. Incidentally, to be fair to Barclays, its new regime has decided to shut down the structured finance division completely because it considered it inappropriate for anyone to be doing that, but, it had been going on, as I say, on a massive scale. Do you think that this is because there are not the opportunities in the non-banking sector that there were in the banking sector or is it because, at least until recently, ethical standards were higher in the non-banking sector than in the banking sector?

Richard Woolhouse: Probably a bit of both. The other question that I ask myself about these examples that have been picked up by the PAC is: is it because they are intangible-heavy companies, or is it because they are new—

Lord Lawson of Blaby: I am not talking about the PAC.

Richard Woolhouse: I know. I am not answering your question. Banking is necessarily more complex. With regard to the majority of our members, you heard earlier on that the effective tax rates in many sectors are very high. When we get into the non-banking sector, there is a question that we have discussed around areas like intangibles. For intangible-heavy companies there are probably lower effective tax rates globally, but a lot of that relates also to the way in which the US system works. However, is it because they are intangible-heavy or because they are new? I suspect that there are probably norms within sectors about what effective rates of tax paid are. As you say, Barclays has closed that unit and has moved on significantly from where it was, and I think the landscape has changed significantly.

Elspeth Orcharton: I think that in the past there was activity in the non-banking sector. The main distinction is probably the capacity of the balance sheets and the capacity to undertake financial transactions. That would be the distinction.

Q47 Lord Hollick: Following on from that, many large corporations choose to allocate their funding and treasury activity in a low-tax area so that they can take advantage of their high credit rating to borrow money on the international markets that they then distribute around the businesses as needed at a significant mark-up—or, rather, a mark-up; let us not make a judgment as to whether it is significant or not—thereby inflating the profits in the low-tax area to the disadvantage of the high-tax country that is borrowing money. Would you regard that as an acceptable practice?

Chas Roy-Chowdhury: I am not sure that is entirely the way it works because of the transfer pricing rules that operate. We have not had thin cap rules in the UK for a number of years. It would be difficult for them to circulate the capital that they had borrowed at a particular percentage at a much higher rate without being caught by some of those rules. If that does go on, that is something that Governments and the OECD need to look at, but in general it is quite difficult to do, especially in the developed world.

Elspeth Orcharton: The practical situation that you are describing is one where there probably is an issue within the OECD rules because they look at the borrowing capacity or the interest rate that the UK element of the business could borrow at, which may be different from the entire group in terms of its credit rating, so there possibly could be an opportunity for that. However, to the extent that the UK might end up paying more, it might in different circumstances end up paying less. It is fact-specific.

Frank Haskew: Again, the OECD has this on its radar. It is looking at transfer pricing related party transactions. We need to see what comes out of that work and then work with that for the future.

Richard Woolhouse: The UK is an attractive location for HQ activity not only because of the existence of a very large capital market—a lot of people come to list here and raise capital—but because of the professional services activity associated with that. That is something that we have a comparative advantage in, which is why having the tax system as an asset to attract that activity is a good thing.

Q48 The Chairman: Are there any other points that you want to make? We have more or less come to the end.

Richard Woolhouse: Can I pick up one point from the previous session? I would like to clarify the distinction on mandatory reporting country by country and project by project. That is just in the extractive sector. If the European Parliament has its way, that will get expanded a little, and it is also in the banking sector through CRD4, but the majority of non-extractives do not do country-by-country reporting. Our view, as was explained, is that mandatory data without explanation will not necessarily help to explain the situation. I just want to make that point clear because there is a very distinct position between extractives and non-extractives, as I am sure you are aware.

The Chairman: Thank you all very much for coming. The session is closed.