

HOUSE OF LORDS

Economic Affairs Committee

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4th Report of Session 2017–19

# The Powers of HMRC: Treating Taxpayers Fairly

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### *Select Committee on Economic Affairs Finance Bill Sub-Committee*

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Evidence is published online at <https://www.parliament.uk/finance-bill-2018-sub-committee> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### The evolution of HMRC's powers

1. Deliberate evasion and aggressive tax avoidance are clearly unfair on other taxpayers. We fully support HMRC's efforts to recover tax owed and deter such behaviours. (Paragraph 25)
2. However, the Government's approach does not appear to discriminate effectively between the full range of behaviours and circumstances it describes as tax avoidance. There is a clear difference in culpability, for example, between deliberate and contrived tax avoidance by sophisticated, high-income individuals, and uninformed or naive decisions by unrepresented taxpayers. Clearer distinctions are needed in the Government's approach and rhetoric towards tax avoidance. (Paragraph 26)

### Proposed new power: offshore time limits

3. Under the proposal, all those with offshore elements to their tax affairs would have to wait for a lengthy period before they can achieve certainty and matters are finally settled. In the meantime, they would have to retain records to deal with any questions HMRC may ask. The longer after the event a question is raised, the more burdensome it would be for taxpayers to find the answer. (Paragraph 38)
4. This proposal places burdens on all those with offshore elements to their tax affairs to retain records for long periods of time to deal with potential HMRC questions. HMRC already has a 20-year time limit to deal with fraud. We consider the extension of time limits to 12 years for offshore matters unreasonably onerous and disproportionate to the risk. (Paragraph 41)
5. It is difficult to understand why this measure has been introduced now. We see no logic in applying an exclusion from the time limit to situations where information has been supplied by overseas tax authorities, but not where that same information has been supplied by the taxpayer. (Paragraph 42)
6. It is wrong if, rather than funding HMRC sufficiently to conduct offshore enquiries in a timely manner, the Government is placing disproportionate burdens on taxpayers and eroding important taxpayer safeguards. (Paragraph 43)
7. There was deep and consistent opposition from our witnesses to the proposed legislation to extend the offshore time limits for assessment. Witnesses felt this measure was unnecessary and undesirable. We recommend that it is withdrawn. (Paragraph 44)
8. The Government should start a fresh dialogue with representatives of tax professionals to consider how offshore tax matters can be managed more effectively. Any revised measure should be more proportionate and targeted. (Paragraph 45)

### Proposed new power: civil information powers

9. Oversight by the tax tribunal of HMRC attempts to obtain information from third parties is an important taxpayer safeguard, which should not be removed without good reason. HMRC has not offered a convincing rationale. (Paragraph 50)

10. We recommend that this proposal is withdrawn until a full consultation can take place on how new legislation could be better targeted. (Paragraph 51)

### **The 2019 loan charge**

11. HMRC has a range of powers at its disposal to deal with promoters of tax avoidance schemes, but we have seen little evidence of action taken against those who promote disguised remuneration schemes. In the absence of publicised actions, HMRC appears to be prioritising recovery of tax revenue over justice by targeting individuals, rather than promoters (who could be considered more culpable), so it can more easily recover liabilities. (Paragraph 67)
12. We encourage HMRC to do more to publicise any actions it is taking against promoters of disguised remuneration schemes. “Spotlight” publications are neither well-known nor well-read, and are therefore insufficient for this purpose. (Paragraph 68)
13. The individuals affected by the loan charge who gave evidence to this inquiry are very different from those generally perceived to be involved in tax avoidance. While they must accept some responsibility, they are not as culpable as those who are much better off, extensively advised and whose involvement in such schemes may be regarded as more egregious. In many circumstances, individuals were being directed to use these schemes by their employer, who would have been in a better position to determine the consequences for the employee of taking a loan. It is unfortunate that the loan charge does not discriminate for different intents and circumstances. (Paragraph 70)
14. Disguised remuneration schemes are an example of unacceptable tax avoidance that HMRC is right to pursue. All individuals using these schemes must accept some degree of culpability for placing an unfair burden on other taxpayers. (Paragraph 75)
15. The loan charge is, however, retrospective in its effect. Parliament has laid down time limits for tax matters of four, six and 20 years which give certainty to taxpayers about their affairs. It undermines this framework to artificially trigger a future charge. (Paragraph 76)
16. In its retrospective effect, and its failure to pursue taxpayers proportionately to their circumstances, HMRC’s approach to the loan charge diverges substantially from the principles in the Powers Review. (Paragraph 77)
17. We recommend that the loan charge legislation is amended to exclude from the charge loans made in years where taxpayers disclosed their participation in these schemes to HMRC or which would otherwise have been “closed”. (Paragraph 78)
18. We were disturbed to hear accounts of HMRC threatening individuals with arrangements that could result in bankruptcy, where individuals clearly have no assets to settle liabilities. Whether these threats were explicit or perceived, they have caused considerable anguish for a number of individuals. (Paragraph 79)
19. We recommend HMRC urgently reviews all loan charge cases where the only remaining consideration is the individual’s ability to pay. We also recommend that HMRC establishes a dedicated helpline to give those affected by the loan

charge advice and support. Such action should take place well in advance of the loan charge coming into effect in April 2019. (Paragraph 80)

20. HMRC failed to make its position on the schemes clear enough. We do not consider a notice in “Spotlight” on a website sufficient when in many cases HMRC knew which taxpayers and employers were using the schemes and could have communicated with them directly. There were unreasonable delays in legislating and in failing to progress those enquiries which were opened into individuals’ tax affairs, depriving them of certainty even in situations where they were actively seeking to engage with HMRC to finalise matters. (Paragraph 81)
21. HMRC failed to communicate effectively with some users of such schemes on a timely basis as its approach to tackling disguised remuneration schemes evolved from the first disclosure of the schemes after the disclosure regime was introduced in 2004, to legislation in 2011 and through the judicial process ending in 2017. (Paragraph 82)
22. To avoid the delay and uncertainty that has accompanied HMRC’s approach to disguised remuneration schemes, we recommend that HMRC makes a declaration, in a clear and accessible public statement, as soon as it begins investigating a potential tax avoidance scheme. Such a declaration should be targeted at those most likely to be affected by the scheme in question. Publishing online guidance, such as through “Spotlight”, will not be sufficient. (Paragraph 83)
23. HMRC should also notify a taxpayer that it is investigating an avoidance scheme as soon as possible if that individual declares the scheme on their tax return. (Paragraph 84)

### **Taxpayer safeguards and access to justice**

24. All HMRC determinations and notices should be appealable to the tax tribunal. This is central to the protection of the taxpayer and the balance between taxpayer and tax authority. (Paragraph 93)
25. We recommend the Accelerated Payment Notice/Follower Notice legislation be amended to include a right of appeal to the tax tribunal. (Paragraph 94)
26. Whenever a new power is introduced or an existing power significantly extended it should be accompanied by a right of appeal against the exercise of the power, not just against the underlying tax liability. (Paragraph 95)
27. Penalties associated with General Anti-Abuse Rule and Follower Notices are draconian and restrict access to justice. We recognise that they were introduced to inhibit taxpayers from delaying settlement by appealing, but at their present level they are disproportionate and cannot be justified. (Paragraph 103)
28. Taxpayers who challenge HMRC’s view of the law and pursue litigation after a Follower Notice or General Anti-Abuse Rule ruling should not be penalised if they are ultimately unsuccessful. We recommend that these penalties are abolished. (Paragraph 104)
29. Judicial review proceedings in respect of HMRC decisions may only be brought in the High Court, which makes them prohibitively expensive for most taxpayers. We recommend that the Government legislates to give the First-tier Tribunal (Tax) the power to conduct judicial reviews. (Paragraph 109)

30. Statutory review appears an effective mechanism for appealing HMRC decisions. We regret that it is not more widely used. Whilst it is understandable that some taxpayers may be cynical about a system by which HMRC reviews its own decisions, the evidence shows statutory review can play a useful part in overturning poor decisions. (Paragraph 111)
31. We recommend that HMRC ensures that all taxpayers are made aware of the option of statutory review, including a clear explanation of the process and the independence of the reviewer. (Paragraph 112)
32. The extension of the naming sanction to taxpayers and promoters whose behaviour is legal, but of which HMRC disapproves, blurs an important boundary between those who break the law and those who do not. (Paragraph 114)
33. We recommend that naming and shaming provisions should be restricted to those who have broken the law. (Paragraph 115)

### **The tax policy process**

34. Consulting on policy objectives before a specific solution has been identified is fundamentally important to the policy making process. This step is too frequently omitted with inadequate justification. (Paragraph 121)
35. We recommend that consultation should begin at this stage whenever the introduction or expansion of powers is under consideration. (Paragraph 122)
36. Tax legislation should be narrowly targeted at the taxpayer groups it is intended to affect. Broad, badly targeted legislation is unsatisfactory because it can adversely affect compliant taxpayers, leaves too much to the exercise of HMRC discretion or to guidance, and is more difficult to challenge by judicial review. (Paragraph 127)
37. When preparing legislation that is properly targeted and effectively drafted we recommend HMRC should listen more carefully to representations from the expert tax and business representative bodies. (Paragraph 128)
38. Evaluating changes to HMRC powers enables review of their effectiveness, addresses unintended consequences, informs future policy developments and ensures the balance between HMRC powers and taxpayers' rights is maintained. It is important to consider their cumulative impact. (Paragraph 133)
39. We recommend that all powers granted to HMRC since the conclusion of the Powers Review in 2012 should be evaluated, and those evaluations published. All future powers should be evaluated after five years. (Paragraph 134)

### **HMRC's changing culture**

40. The Adjudicator has an important role in providing an independent overview of HMRC's treatment of taxpayers. Consideration should be given to widening the role to increase taxpayer access, or increasing HMRC obligations to respond to and act on Adjudicator recommendations. (Paragraph 150)
41. The new Customer Experience Committee should have an important role in considering taxpayers' perspectives on how HMRC staff engage with them and in ensuring high standards of customer service. It should include representatives of all types of taxpayer, agents and tax professionals. (Paragraph 154)



42. The evidence suggests that, in compliance and enquiry cases, the behaviour of some HMRC staff falls well below the standard set in the Charter. HMRC needs to have better systems in place to identify and address any problem behaviours as a matter of urgency. (Paragraph 157)
43. HMRC has recently been given greater powers. It is being asked by ministers to collect more tax with fewer staff. These cultural drivers may have pressured staff to take a more aggressive approach to tax collection, and in doing so impaired the ability to be fair to taxpayers and act in accordance with Charter values. HMRC needs to consider how staff can be supported to ensure the right balance is achieved. (Paragraph 158)
44. We recommend that the Government requires that the annual report on the Charter is agreed by the representatives of the tax community (not just individuals on the Committee) and that it is drawn up with the involvement of the Adjudicator. (Paragraph 159)
45. We recommend that the Charter is amended to clarify HMRC's responsibilities towards unrepresented taxpayers including that issues are clearly set out, legislation is explained and rights to review and appeals are made accessible. (Paragraph 160)
46. We recommend HMRC undertakes a full inquiry into behavioural trends and cases of aggressive treatment, then publishes a clear statement of what leadership behaviours, training or policy clarification is required to ensure all staff are aware of what is and is not acceptable behaviour towards taxpayers. (Paragraph 161)

### **Powers Review principles revisited**

47. The Powers Review demonstrated the importance and advantages of developing a tax powers framework on an agreed set of principles. These principles are being forgotten in the push to tackle tax avoidance and evasion with fewer HMRC resources. (Paragraph 169)
48. HMRC's declining resources have rendered it unable to effectively perform its dual roles of tackling avoidance and evasion and ensuring taxpayers are treated fairly. Pressure to improve its counter-avoidance and evasion performance could understandably have resulted in neglect of its other responsibilities. This would not only explain the erosion of the Powers Review principles, but also reports of increasingly aggressive behaviour towards taxpayers. (Paragraph 170)
49. The Government has a responsibility to ensure HMRC has the funding it requires to treat taxpayers fairly. We recommend that the Treasury, as part of the next Spending Review, assesses whether HMRC is adequately resourced to fulfil its Charter obligations. (Paragraph 171)
50. Concerns that inadequate funding has caused HMRC to neglect its obligations towards taxpayers were also apparent in our Making Tax Digital for VAT Report. The Government should consider an independent review of HMRC resources more widely. (Paragraph 172)
51. As reliance grows on third party providers, any weaknesses in their systems and processes may have implications for data accuracy. Digital developments do not themselves drive a need for new principles of tax administration. However, we recommend that the rights of the digitally excluded and the

proportionality of the burdens placed on third party information providers should be adopted as important principles. (Paragraph 175)

52. Recent developments have highlighted concerns on retrospective legislation. We recommend that the Powers Review principles should be updated to ensure that powers should not be sought that inappropriately apply to income profits or gains for tax years ending before the tax year of the announced change. (Paragraph 178)
53. We recommend that the Government recommit to the principles set out in the Powers Review, with the additions we have proposed. They should be formally incorporated into the Government's policy-making process and monitored by the Tax Professionals Forum. (Paragraph 180)

### **HMRC's powers and accountability**

54. We recommend that the Government establishes a new Powers Review, both of the cumulative effect of recent developments and what is needed for the future as tax administration moves to digital systems. This should replicate the successful features of its predecessor in order to update the established principles. (Paragraph 187)
55. While a number of entities have oversight of HMRC much of their activity is focused on specific cases or subject areas rather than how HMRC treats taxpayers generally. (Paragraph 193)
56. It may be time for Parliament to rethink how it holds HMRC and the Treasury to account for the fair treatment of taxpayers. There is considerable support for new oversight of HMRC and a compelling need to address the view that HMRC is not sufficiently accountable. It has not been practical to explore this fully and effectively in the course of our inquiry, and we are mindful of the House of Commons' pre-eminence in financial matters. Further work is needed to determine what new oversight might be established and how it would fit with existing arrangements. (Paragraph 194)
57. We recommend that the Procedure Committees of both Houses review the mechanisms by which HMRC's powers are considered by Parliament, to ensure HMRC's powers are given sufficient scrutiny and the Treasury is held accountable for its role in tax administration. (Paragraph 195)
58. We recommend an independent review, commissioned by the Treasury, to consider the establishment of an independent body to scrutinise the operations of HMRC. (Paragraph 196)
59. A collaborative body with a focus on powers, within a broad remit, could monitor the balance between HMRC and the taxpayer, consider new proposals for legislation, including taxpayer safeguards, and provide oversight of the issues around HMRC culture and deteriorating customer service which have caused our witnesses concern. (Paragraph 199)
60. We recommend that a Joint Consultative Committee on Powers, modelled on the Joint Consultative Committee on VAT, be established to fulfil this function, with wide representation from tax professionals and business organisations. It should also oversee any new powers review. (Paragraph 200)

# The Powers of HMRC: Treating Taxpayers Fairly

## CHAPTER 1: INTRODUCTION

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1. This is the fourteenth report in a series which began in 2003, when the House of Lords Economic Affairs Committee first appointed a Sub-Committee to inquire into selected aspects of that year's Finance Bill. The Finance Bill Sub-Committee's inquiries address technical issues of tax administration, clarification and simplification; in recognition of the House of Commons' financial privileges, the Sub-Committee does not inquire into rates or incidence of tax.
2. This year the Sub-Committee decided its inquiry should address two areas: progress on the Making Tax Digital for VAT programme since the Committee's March 2017 report on Making Tax Digital for Business;<sup>1</sup> and developments in the balance of powers and safeguards between Her Majesty's Revenue and Customs (HMRC) and the taxpayer. This report considers the latter. Our report on Making Tax Digital for VAT was published on 22 November 2018.<sup>2</sup>
3. Following our prior consideration of draft Finance Bills, our inquiry on the 2018 draft Bill has examined the development of HMRC's powers to collect tax, acquired through successive Finance Acts. For example, this year's draft Finance Bill included clauses to extend time limits for assessment of offshore matters.<sup>3</sup> We have considered the broader principles that should underlie the design and development of the UK tax system, how those principles have translated to the powers Parliament has given HMRC and how HMRC is using those powers in practice.
4. The Economic Affairs Committee usually publishes the report prepared by the Finance Bill Sub-Committee before the Budget and publication of the Finance Bill itself. However, the parliamentary timetable and early Budget on 29 October 2018 meant that the report could not be published ahead of the Budget.
5. As in previous years, the Sub-Committee took written and oral evidence from stakeholders, including leading professional and business organisations, academia, accountants, tax advisers and the legal profession, as well as from HM Treasury and HMRC. We also received a great many written submissions and emails from individuals affected by the 2019 loan charge. We thank all those who contributed to our work. We are also grateful to our specialist advisers for their invaluable contribution to our work.
6. The Sub-Committee invited the Financial Secretary to the Treasury, the Rt Hon Mel Stride MP, to give evidence to the inquiry. The Financial Secretary

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1 Economic Affairs Committee, *Draft Finance Bill 2017: Making Tax Digital for Business* (3rd Report, Session 2016–17, HL Paper 137)

2 Economic Affairs Committee, *Making Tax Digital for VAT: Treating Small Businesses Fairly* (3rd Report, Session 2017–19, HL Paper 229)

3 It also considered the new penalty and interest regime to accompany Making Tax Digital which linked the topics; analysis of that regime is included in the first report.

refused to participate.<sup>4</sup> We have serious concerns about the Minister's failure to give evidence to our inquiry. He is not only responsible for the legislative framework we consider in this report, but also the departmental Minister for HMRC, and therefore accountable to Parliament for HMRC's performance. Given the seriousness of concerns raised, the public has an interest in ministerial accountability to Parliament on the powers of HMRC.

7. We initially invited HMRC and Treasury officials to give evidence, but we were moved by the gravity of concerns raised in written evidence to the inquiry to consider a ministerial response more appropriate. We made this clear to the Minister and offered him several dates, but he continued to decline. We consider his reluctance to appear, in light of other evidence received in this inquiry, to be part of a wider trend of insufficient parliamentary scrutiny of tax administration. We will continue to pursue constructive solutions to the issues raised by witnesses in the coming months. The Committee has invited the Minister to give evidence on the issues raised in this report and our November report on Making Tax Digital for VAT on 15 January 2018.

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<sup>4</sup> Letter from the Rt Hon Mel Stride MP to the Chairman, 25 October 2018: [https://www.parliament.uk/documents/lords-committees/economic-affairs/251018\\_FST\\_LEAC\\_Letter.pdf](https://www.parliament.uk/documents/lords-committees/economic-affairs/251018_FST_LEAC_Letter.pdf)

## CHAPTER 2: THE EVOLUTION OF HMRC'S POWERS

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### The Powers Review

8. HMRC was created by the Commissioners for Revenue and Customs Act 2005. It combined the predecessor tax collection bodies—HM Customs and Excise, and the Inland Revenue—into one. In the early days of the new Department Treasury Ministers launched a review, *Modernising Powers, Deterrents and Safeguards* (referred to as “the Powers Review”), as the first step in a programme to modernise HMRC’s administrative powers.<sup>5</sup>
9. Ministers appointed a Consultative Committee on the review, which included representatives of tax credit claimants, businesses and tax professionals. A series of public consultations on particular aspects of HMRC’s powers took place. The outcome sought from the Powers Review was broad acceptance for “HMRC to support those who seek to comply but come down hard on those who seek an unfair advantage through non-compliance”.<sup>6</sup> As consultations on discrete areas concluded they informed the drafting of new provisions, introduced in successive Finance Acts from 2007.
10. To ensure effective implementation of the updated powers, which included a substantial training programme for HMRC staff, an Implementation Oversight Forum was formed in 2009. This comprised representatives of business and tax practitioners as well as the Permanent Secretary for Tax and senior HMRC officials. It reported to the Exchequer Secretary to the Treasury for three years until the Forum’s work was considered complete after its 2012 report.<sup>7</sup>

### Design principles for the modernised tax administration

11. At an early stage, the consultations identified a set of design principles to underpin the updated powers, as well as a range of safeguards for taxpayers. These were summarised in its reports (Box 1).

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5 HMRC, *Review of HMRC’s Powers, Deterrents and Safeguards* (archived 17 February 2013): <https://webarchive.nationalarchives.gov.uk/20130217082441/http://www.hmrc.gov.uk/about/powers-appeal.htm> [accessed November 2018]

6 *Ibid.*

7 HMRC, *The Forum to Oversee the Implementation of new HMRC Powers, Deterrents and Safeguards* (February 2013): <https://www.gov.uk/government/publications/forum-to-oversee-the-implementation-of-new-hmrc-powers-deterrents-and-safeguards-annual-reports> [accessed November 2018]

### **Box 1: Design principles for HMRC powers identified in the Powers Review**

#### **Powers and the statutory obligations they impose need to be:**

- set within a clear statutory framework,
- easily understood—by taxpayers, their agents and HMRC staff,
- straightforward to comply with,
- proportionate to what HMRC needs to discharge its responsibilities or to protect the Exchequer from the risk assessed,
- used consistently,
- effective in providing the information HMRC needs to assess risk, and
- effective in discovering and dealing with non-compliance and in helping people to return to compliance.

#### **Safeguards for citizens and businesses must be:**

- clear,
- publicised,
- accessible,
- effective,
- responsive to the nature and purpose of particular powers and sanctions, and
- conformant with human rights and other relevant non-tax legislation.

#### **Sanctions for non-compliance must be:**

- set in statute,
- clear and publicised,
- proportionate to the offence,
- used consistently, and
- effective in deterring non-compliance and returning the non-compliant to compliance.

*Source: HMRC, Modernising Powers Deterrents and Safeguards: The Review's Work Programme (November 2008): <https://webarchive.nationalarchives.gov.uk/20100330150455/http://www.hmrc.gov.uk/pbr2008/review-work-prog-2401.pdf>*

12. Implicit in these principles is the duty of HMRC to provide taxpayers with the best possible information on which to make decisions and to understand their implications. If that is not done, the danger of retrospection is created, with taxpayers sanctioned on the basis of rules that were not made clear at the time. In the case of the 2019 loan charge this is what appears to have happened (see chapter 4).
13. The consultations identified the importance of the behavioural aspects of the relationships and approach that HMRC and taxpayers could expect: 'how' the powers and safeguards were used was as important as 'what' they were. Commenting on the Review's work programme in 2008 and the intended safeguards for their new powers, HMRC said:

“HMRC’s approach is also intended to create consistency not just in terms of common technical or operational guidance but also in the ways in which its staff act and react in their dealings with taxpayers. The focus of the new powers will be based much more on an understanding of behaviours.”<sup>8</sup>

The Finance Act 2009 introduced the obligation for HMRC to prepare, adhere to and report annually on its compliance with a Charter of standards and values.<sup>9</sup>

14. The first Charter was published in 2009. It was updated in 2016.<sup>10</sup> The 2016 changes increased taxpayers’ obligations and reduced HMRC’s own. For example, it increased taxpayers’ obligations from “keeping adequate records” to “keeping accurate records”, and reduced HMRC’s from “do all it can to keep the cost of dealing with HMRC as low as possible” to “providing an efficient and effective service”.
15. HMRC is required to report annually on its performance against those expectations.<sup>11</sup> This work is overseen by a Charter Committee which reports to HMRC’s Board.<sup>12</sup> HMRC recently announced it would be restructured into a Customer Experience Committee.<sup>13</sup>
16. The Powers Review, with its Consultative Committee, set new standards for consultation on tax matters. Although there were points of disagreement, witnesses generally welcomed the principles. Frank Haskew, Head of the Tax Faculty at the Institute of Chartered Accountants in England and Wales (ICAEW) said “we very much supported that (review) and participated in it. That set the benchmark for a generation in terms of HMRC’s powers.”<sup>14</sup>

### Powers added since 2012

17. HMRC’s powers have been extended since the Powers Review completed. These powers have been primarily aimed at tackling tax evasion and tax avoidance in response to the demand to increase tax revenues and reduce the tax gap.
18. The new powers included:
  - A General Anti-Abuse Rule (the GAAR) introduced to tackle the most egregious tax avoidance and aimed at being a deterrent. If taxpayers pursue an appeal and lose, they risk a heavy penalty (up to 60 per cent of the tax owed).
  - A voluntary Code of Practice on Taxation of Banks, giving HMRC a duty to publish names of those banks that adopt the Code, those that do not and those that breach it.

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8 *Ibid.*

9 Finance Act 2009, [section 92](#)

10 HMRC, *Your Charter* (12 January 2016): <https://www.gov.uk/government/publications/your-charter> [accessed November 2018]

11 HMRC, *Your Charter Annual Report April 2017–March 2018* (12 July 2018): <https://www.gov.uk/government/collections/your-charter-annual-reports> [accessed November 2018]

12 The membership of HMRC’s Board can be found here: <https://www.gov.uk/government/organisations/hm-revenue-customs/about/our-governance#hmrc-board>

13 HMRC, *Your Charter Annual Report April 2017–March 2018* (12 July 2018): <https://www.gov.uk/government/collections/your-charter-annual-reports>; HMRC, *Our Governance*: <https://www.gov.uk/government/organisations/hm-revenue-customs/about/our-governance> [accessed November 2018]

14 [Q 1](#) (Frank Haskew)

- A power allowing HMRC to publish the names of large corporate organisations whose behaviour is consistently uncooperative.
- A power allowing HMRC to recover unpaid tax directly from individual taxpayers' bank accounts (in England, Wales and Northern Ireland only) when all the normal methods of collecting the tax have failed, with a right of appeal to the County Court.
- A suite of measures aimed at participants in marketed avoidance schemes. These include requiring participants in schemes where HMRC has won a relevant case on appeal to settle with HMRC and pay any tax due, via Follower Notices and Accelerated Payment Notices.<sup>15</sup> If taxpayers pursue their own appeals and subsequently lose, they face a penalty of up to 50 per cent of the tax owed. These measures were aimed at taxpayers who deliberately delayed the settling of their affairs by continuing appeals after it became obvious that their claims were likely to fail.
- New powers to 'name and shame' promoters and participants in failed tax avoidance schemes and hamper promoters' activities.
- Doubling taxpayer penalties to 200 per cent of the tax owed for offshore evasion with further increases if taxpayers fail to comply with 'requirement to correct' provisions.<sup>16</sup>
- New civil and criminal sanctions for intermediaries who enable others to participate in offshore tax avoidance and evasion.

### **A tougher approach to tax avoidance and evasion**

19. Witnesses overwhelmingly supported the principle of the Government's increased efforts to tackle tax avoidance and evasion since the Powers Review.<sup>17</sup> Parliament has rightly pressed HMRC to reduce the tax revenue lost due to avoidance and evasion. The House of Commons Public Accounts Committee has published 15 reports on the matter since 2012,<sup>18</sup> and the Treasury Select Committee's Sub-Committee has an inquiry ongoing.<sup>19</sup> We

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15 Follower Notices are used by HMRC to ask a taxpayer to settle their tax affairs. They are issued by HMRC when a taxpayer's involvement in a tax avoidance scheme with the same or similar arrangements to one challenged successfully by HMRC has been identified. If a taxpayer does not settle their affairs, they may be liable to pay a penalty. An Accelerated Payment Notice (APN) is a requirement to pay an amount on account of tax or National Insurance Contributions (NICs). HMRC issues APNs to taxpayers involved in avoidance schemes disclosed under the Disclosure of Tax Avoidance Schemes (DOTAS) rules, or counter-acted under the General Anti-Abuse Rule (GAAR). They can also be issued to taxpayers who have received a Follower Notice in relation to the scheme.

16 The 'requirement to correct' requires those with undeclared offshore tax liabilities (relating to Income Tax, Capital Gains Tax or Inheritance Tax for the relevant periods) to disclose those to HMRC on or before 30 September 2018.

17 Written evidence from Association of Accounting Technicians ([DFC0044](#)), ICAS ([DFC0068](#)), and ICAEW ([DFC0073](#))

18 House of Commons Public Accounts Committee, 'Taxation: a key area of focus': <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/taxation/> [accessed November 2018]

19 House of Commons Treasury Sub-Committee, 'Tax Avoidance and Evasion inquiry' (April 2018): <https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/treasury-sub-committee/inquiries/parliament-2017/tax-avoidance-evasion-17-19/> [accessed November 2018]



published a report considering tax avoidance by multinational corporations in 2013.<sup>20</sup>

20. In 2016/17, HMRC estimated that tax avoidance cost the UK £1.7 billion and evasion cost £5.3 billion. The avoidance tax gap has reduced from £4.9 billion since 2005/06.<sup>21</sup>
21. The distinction between different taxpayer behaviours seems to be blurring. The Powers Review established three different categories of taxpayer behaviour: the taxpayer who was doing their best to comply but might make innocent errors; the taxpayer who made errors because they failed to take reasonable care; and the taxpayer who deliberately sought to evade tax.<sup>22</sup> This led to correspondingly different but proportionate levels of penalties and sanctions.
22. HMRC provides the following definitions of tax avoidance and evasion:
 

“Tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit, of the law.”<sup>23</sup>

“Tax evasion means fraudulently evading or cheating HMRC of tax that is lawfully owed. It does not include making a mistake about the tax that is owed: it requires dishonesty.”<sup>24</sup>
23. We heard that in practice tax evasion and avoidance are too often conflated. Keith Gordon, a barrister at Temple Tax Chambers, said “avoidance is an inherently vague term”. Malcolm Gammie QC added “tax avoidance and evasion are grouped together ... what is implicitly being suggested is the aggressive end of avoidance”.<sup>25</sup>
24. For example, users of disguised remuneration schemes were troubled when the schemes were called “illegal” by the Chancellor of the Exchequer and the Financial Secretary to the Treasury.<sup>26</sup> HMRC has not claimed that these schemes are illegal; rather that they are not effective, and have never been effective, in reducing an individual’s tax liabilities.<sup>27</sup> This position is disputed by users of such schemes.

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20 Economic Affairs Committee, *Tackling corporate tax avoidance in a global economy: is a new approach needed?* (1st Report, Session 2013–14, HL Paper 48)

21 HMRC, *Measuring Tax Gaps 2018* (June 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715742/HMRC-measuring-tax-gaps-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715742/HMRC-measuring-tax-gaps-2018.pdf) [accessed November 2018]

22 HMRC, *Review of HMRC’s Powers, Deterrents and Safeguards* (archived 17 February 2013): <https://webarchive.nationalarchives.gov.uk/20130217082441/http://www.hmrc.gov.uk/about/powers-appeal.htm> [accessed 26 November 2018]

23 HMRC, *Tax avoidance: an introduction* (6 September 2016): <https://www.gov.uk/guidance/tax-avoidance-an-introduction#what-tax-avoidance-is> [accessed 21 November 2018]

24 HMRC, *Tell HMRC about a company helping people to evade tax* (29 September 2017): <https://www.gov.uk/guidance/tell-hmrc-about-a-company-helping-people-to-evade-tax> [accessed 21 November 2018]

25 Written evidence from Keith Gordon (DFC0052) and Q 30 (Malcolm Gammie)

26 The Rt Hon Mel Stride MP, 3 July 2018, *HC Deb col 164*; The Andrew Marr Show (28 October 2018)

27 HMRC, *HMRC issue briefing: disguised remuneration charge on loans policy paper* (18 July 2018): <https://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-disguised-remuneration-charge-on-loans> [accessed November 2018]

25. **Deliberate evasion and aggressive tax avoidance are clearly unfair on other taxpayers. We fully support HMRC’s efforts to recover tax owed and deter such behaviours.**
26. **However, the Government’s approach does not appear to discriminate effectively between the full range of behaviours and circumstances it describes as tax avoidance. There is a clear difference in culpability, for example, between deliberate and contrived tax avoidance by sophisticated, high-income individuals, and uninformed or naive decisions by unrepresented taxpayers. Clearer distinctions are needed in the Government’s approach and rhetoric towards tax avoidance.**

### The new balance of powers

27. Tax professionals have raised concerns that the new powers of HMRC have disrupted the balance achieved by the Powers Review.<sup>28</sup> Several witnesses described instances of “mission creep”,<sup>29</sup> with powers which were initially limited subsequently being extended more widely (for example, the Disclosure of Tax Avoidance Schemes provisions (‘DOTAS’),<sup>30</sup> and “naming and shaming”<sup>31</sup> provisions).
28. In contrast to the principles in the Government’s Tax Consultation Framework,<sup>32</sup> these new powers have often been introduced with limited consultation. The Chartered Institute of Taxation said that the pace of expansion has hindered effective evaluation of the new powers.<sup>33</sup>
29. Many of the post-2012 powers were introduced following criticism from Parliament and the media of HMRC’s approach to tax avoidance and tax evasion. Tax professionals agreed that there was a need for action in these areas, especially against the more artificial forms of avoidance and evasion.<sup>34</sup> But there was concern about the gradual accretion of powers over the last few years without any apparent oversight. The Chartered Institute of Taxation (CIOT) said:

“Many of these new powers are being introduced in a piecemeal fashion (sometimes at odds with settled principles) and often inadequate consultation. The constant flow of new and strengthened powers has not allowed for a full evaluation of their overall efficacy.”<sup>35</sup>

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28 Institute for Fiscal Studies, *The implications of recent additions to HMRC powers and the shifting balance in the relationship with taxpayers* (November 2017): <https://www.ifs.org.uk/publications/10159> [accessed November 2018]

29 [Q 1](#) (Charlotte Barbour), [Q 26](#) (Lydia Challen and Malcolm Gammie) and [Q 28](#) (Jason Collins)

30 These provisions have since 2004 required taxpayers entering into tax planning arrangements with certain features or hallmarks to notify them promptly to HMRC, which results in HMRC issuing a ‘Scheme Reference Number’ which the taxpayer then has to notify on their next tax return. The original arrangements were extended in 2005, 2006, 2007, 2011 and 2013 and are the basis for provisions to apply such as Accelerated Payment Notices and the General Anti-Avoidance Rule.

31 These provisions have since 2009 permitted HMRC to publicise the names and business addresses of ‘deliberate defaulters’, where the tax involved exceeds £25,000, and since 2017 for some who persist in getting involved in serial tax avoidance arrangements which are defeated.

32 HM Treasury and HMRC, *Tax Consultation Framework* (March 2011): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/89261/tax-consultation-framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/89261/tax-consultation-framework.pdf) [accessed November 2018]

33 Written evidence from the Chartered Institute of Taxation ([DFC0071](#))

34 [Q 1](#) (Charlotte Barbour, John Cullinane, Frank Haskew)

35 Written evidence from the Chartered Institute of Taxation ([DFC0071](#))

30. Several witnesses thought that many of the powers were disproportionate.<sup>36</sup> Jason Collins, a partner at Pinsent Masons LLP, told us: “you do not really need such aggressive powers with people who are culturally quite compliant generally.”<sup>37</sup> The most frequently raised examples of disproportionate powers were Accelerated Payment Notices and Follower Notices,<sup>38</sup> in particular the lack of a right of appeal against these notices. While a taxpayer may make representations to HMRC against such a notice, they cannot appeal to the tax tribunal.

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36 Written evidence from LITRG ([DFC0067](#)), CBI ([DFC0079](#)), and Serocor Group ([DFC0028](#))

37 [Q 29](#) (Jason Collins)

38 Written evidence from Keith Gordon ([DFC0052](#)), Pinsent Masons LLP ([DFC0058](#)), Dow Schofield Watts ([DFC0078](#)), and [Q 26](#) (Lydia Challen)

### CHAPTER 3: PROPOSED NEW POWERS

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31. This chapter considers two proposed new additions to HMRC powers:
- clauses 79 and 80 of the Finance (No. 3) Bill 2017–19 which would extend the time limit for assessing income tax, capital gains tax and inheritance tax to 12 years where offshore matters are concerned; and
  - new powers for HMRC, published for consultation in July 2018, to seek information from third parties without first seeking the agreement of the taxpayer or the tax tribunal (as is required at present).<sup>39</sup>

#### Offshore time limits

32. The consultation on this proposal presumed the need for an extended period and did not discuss the choice of 12 years. The justification given was that it takes longer to resolve tax issues relating to offshore matters because of the time needed to acquire information from overseas and enquire into complex arrangements. HMRC said:

“This [complexity] combined with the difficulty in proving deliberate behaviour, means HMRC has a compressed period in which to establish tax due before it passes out of time for assessment ... The result is that there are often cases where HMRC considers there is more tax unpaid in respect of earlier years, but is unable to collect it as it is too late to make an assessment.”<sup>40</sup>

33. Witnesses disagreed with this assertion. Pinsent Masons LLP said, “it can take longer for HMRC to establish the facts when a complex offshore structure is involved. But these powers will also apply where a complex structure is not involved or where the tax at stake is small.”<sup>41</sup> The Low Incomes Tax Reform Group (LITRG) agreed:

“HMRC seem to assume that individuals with overseas accounts are wealthy and sophisticated people. In fact, many are elderly people on low incomes who have small amounts of either taxed interest from foreign bank accounts or foreign pensions.”<sup>42</sup>

They told us that 10 per cent of current enquiries dealt with by the charity Tax Help for Older People were on this issue.

34. The Common Reporting Standard is a global reporting requirement for financial institutions, aimed at enabling automatic exchange of information between governments to combat tax evasion. Now that the Common Reporting Standard has been adopted by over 100 countries, it should be more straightforward for HMRC to obtain any information it needs from overseas tax authorities. Keith Gordon, a barrister at Temple Tax Chambers, said, “HMRC are currently receiving an unprecedented amount

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39 HMRC, *Amending HMRC’s Civil Information Powers, Consultation Document* (10 July 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/724048/Amending\\_HMRC\\_s\\_Civil\\_Information\\_Powers\\_consultation\\_document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724048/Amending_HMRC_s_Civil_Information_Powers_consultation_document.pdf) [accessed November 2018]

40 HMRC, *Extension of Offshore Time Limits, Consultation Document* (19 February 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/682110/Extension\\_of\\_Offshore\\_Time\\_Limits\\_consultation\\_document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682110/Extension_of_Offshore_Time_Limits_consultation_document.pdf) [accessed November 2018]

41 Written evidence from Pinsent Masons (DFC0058)

42 Written evidence from LITRG (DFC0067)

of information from many overseas tax authorities. Accordingly it is hardly the time to say HMRC needs more time to investigate overseas matters.”<sup>43</sup> He speculated that, “I suspect that the Revenue is absolutely inundated with material from overseas and does not have the resources to deal with it, and the only way of escaping its resource problem is expanding the time limit to catch taxpayers”.<sup>44</sup> Similarly ICAS said, “The main driver behind this proposal (and others) to extend time limits appears to be inadequate HMRC resources.”<sup>45</sup>

35. It is also unclear how the period of 12 years was arrived at. There was no consideration in the consultation of alternative time periods. Setting a time limit is designed to give taxpayers certainty about their tax affairs within a reasonable period. The normal time limit for assessments for income tax and capital gains tax is four years. This is extended to six years where a taxpayer has failed to take reasonable care and to 20 years where there is deliberately non-compliant behaviour amounting to fraud. For inheritance tax the limit is four years.
36. The evidence we received emphasised that these time limits should be sufficient for both offshore and onshore matters. Victoria Todd, head of LITRG, said, “We feel that the current timescales—four years and six years—are reasonable.”<sup>46</sup> Keith Gordon said that “the current time limits represent a true and fair balance and should not be tampered with.”<sup>47</sup> Malcolm Gammie said, “The question is whether 12 years is proportionate, and I would say it is not.”<sup>48</sup> ICAEW and CIOT agreed with this principle.<sup>49</sup>
37. The proposals would treble the normal time limit for compliant taxpayers and double the limit for those who fail to take reasonable care. In doing so it would remove the distinction between fully compliant and careless taxpayers, which makes the existing time limits proportionate. LITRG said:
 

“This moves the balance of power even further in favour of HMRC, and seriously undermines the fundamental right of any honest taxpayer to closure after a reasonable time.”<sup>50</sup>
38. Under the proposal, all those with offshore elements to their tax affairs would have to wait for a lengthy period before they can achieve certainty and matters are finally settled. In the meantime, they would have to retain records to deal with any questions HMRC may ask. The longer after the event a question is raised, the more burdensome it would be for taxpayers to find the answer.
39. The Association for Taxation Technicians (ATT) suggested the legislation be amended to exclude from the extended time limit taxpayers who have made all the necessary information available to HMRC at the appropriate time. Subsection (7) of clause 79 of the Finance Bill contains an exclusion for situations where HMRC has received the information it needs from an overseas tax authority within the normal time limits and could make an

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43 Written evidence from Keith Gordon ([DFC0052](#))

44 [Q 38](#) (Keith Gordon)

45 Written evidence from ICAS ([DFC0068](#))

46 [Q 38](#) (Victoria Todd)

47 [Q 38](#) (Keith Gordon)

48 [Q 33](#) (Malcolm Gammie QC)

49 [Q 4](#) (Frank Haskew, John Cullinane)

50 Written evidence from LITRG ([DFC0067](#))

assessment within those time limits. There is no equivalent provision for the situation where the information has been provided by the taxpayer.

40. Other bodies suggested other ways of restricting the impact of the measure, such as a *de minimis* limit.<sup>51</sup>
41. **This proposal places burdens on all those with offshore elements to their tax affairs to retain records for long periods of time to deal with potential HMRC questions. HMRC already has a 20-year time limit to deal with fraud. We consider the extension of time limits to 12 years for offshore matters unreasonably onerous and disproportionate to the risk.**
42. **It is difficult to understand why this measure has been introduced now. We see no logic in applying an exclusion from the time limit to situations where information has been supplied by overseas tax authorities, but not where that same information has been supplied by the taxpayer.**
43. **It is wrong if, rather than funding HMRC sufficiently to conduct offshore enquiries in a timely manner, the Government is placing disproportionate burdens on taxpayers and eroding important taxpayer safeguards.**
44. **There was deep and consistent opposition from our witnesses to the proposed legislation to extend the offshore time limits for assessment. Witnesses felt this measure was unnecessary and undesirable. We recommend that it is withdrawn.**
45. **The Government should start a fresh dialogue with representatives of tax professionals to consider how offshore tax matters can be managed more effectively. Any revised measure should be more proportionate and targeted.**

#### **HMRC's civil information powers**

46. The consultation on HMRC's civil information powers (which closed on 4 October 2018) proposed that HMRC should be able to seek information from third parties without first seeking the agreement of the taxpayer or the tax tribunal (as is required at present), with no right of appeal. It also proposed that HMRC should be able to use the information acquired for its wider purposes such as the collection of debt or to trace hidden assets. The justification for this proposal was that the process of applying to the tribunal delays matters, making the investigation process longer than in other jurisdictions. HMRC said in its consultation document:

“In recent years HMRC has more than doubled the resource it employs to handle requests for information to and from its overseas partners. This has improved the timeliness of responses to some degree, but the UK's unusually formal and lengthy process for obtaining third party

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51 Written evidence from LITRG ([DFC0067](#))

information means that additional resources alone are unable to allow to meet this aspect of the globally agreed standards.”<sup>52</sup>

HMRC claim that other jurisdictions which have adopted the Common Reporting Standard complain about the length of time it takes HMRC to respond to their requests for information because of these rules. It also noted that it expects an increase in requests for information from international partners as a result of the Standard, placing “a larger burden on the resource of both HMRC and the tribunal service”.<sup>53</sup>

47. As with the offshore time limits, the consultation went straight to solutions without exploring the perceived problem or how it could be best addressed. None of the 11 questions in the consultation document asked for views on the underlying problem or alternative solutions.<sup>54</sup> Most of those who gave evidence to us on this subject felt that the justification for the proposal was weak and they were not persuaded that there was any compelling need for it.<sup>55</sup> For example, UK Finance said, “We do not consider that HMRC has adequately explained how their proposed approaches will ensure that any future information requests are not disproportionate, inappropriate and unnecessarily intrusive.”<sup>56</sup>
48. There was widespread concern about the withdrawal of what many saw as an important taxpayer safeguard.<sup>57</sup> Keith Gordon said, “this proposed relaxation of the rules would lead to HMRC riding roughshod over taxpayers’ rights”.<sup>58</sup> He, like other witnesses, told us that if there were a problem with HMRC meeting its obligations to overseas tax authorities then the new powers needed to be targeted much more narrowly on the sort of cases concerned.
49. Ruth Stanier OBE, Director General for Customer Strategy and Tax Design at HMRC, observed that this was “a very specific issue. This absolutely is not part of a wide approach or policy.”<sup>59</sup> The Government announced at the 2018 Budget that “responses to the consultation and the next steps for implementation will be announced in due course.”<sup>60</sup>
50. **Oversight by the tax tribunal of HMRC attempts to obtain information from third parties is an important taxpayer safeguard, which should not be removed without good reason. HMRC has not offered a convincing rationale.**
51. **We recommend that this proposal is withdrawn until a full consultation can take place on how new legislation could be better targeted.**

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52 HMRC, *Amending HMRC’s Civil Information Powers, Consultation Document* (10 July 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/724048/Amending\\_HMRC\\_s\\_Civil\\_Information\\_Powers\\_consultation\\_document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724048/Amending_HMRC_s_Civil_Information_Powers_consultation_document.pdf) [accessed November 2018]

53 *Ibid.*

54 *Ibid.*

55 Written evidence from Herbert Smith Freehills LLP ([DFC0090](#)), UK Finance ([DFC0066](#)) and LITRG ([DFC0067](#))

56 Written evidence from UK Finance ([DFC0066](#))

57 Written evidence from UK Finance ([DFC0066](#)), LITRG ([DFC0067](#)), ICAS ([DFC0068](#)), Herbert Smith Freehills LLP ([DFC0090](#))

58 Written evidence from Keith Gordon ([DFC0052](#))

59 [Q 57](#) (Ruth Stanier)

60 HMRC and HM Treasury, *Overview of Tax Legislation and Rates* (29 October 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/757455/Budget\\_2018\\_overview\\_of\\_tax\\_legislation\\_and\\_rates\\_ooutlar.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757455/Budget_2018_overview_of_tax_legislation_and_rates_ooutlar.pdf) [accessed November 2018]

### Common themes

52. Common themes between the two proposals have emerged, including a concerning trend in HMRC's powers. While consultation has been conducted on both proposals, each consultation went straight to presenting solutions without exploring whether there was any real need for action and, if so, how the perceived problems could be best addressed. This is contrary to the Government's Tax Consultation Framework, described in detail in chapter 7.<sup>61</sup> Even if the need for action were accepted, both measures are poorly targeted. Each undermines taxpayer safeguards: the extension of time limits by removing a compliant taxpayer's right to certainty after four years, and the civil powers proposal by removing the safeguard of tax tribunal oversight.

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61 HM Treasury and HMRC, *Tax Consultation Framework* (March 2011): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/89261/tax-consultation-framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/89261/tax-consultation-framework.pdf) [accessed November 2018]



## CHAPTER 4: THE 2019 LOAN CHARGE

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53. This chapter deals with evidence received on HMRC's use of its powers that particularly related to the 2019 loan charge. This was the most frequently raised issue in response to our call for evidence. Not only did the Committee receive a great deal of written evidence on this issue, but we also received a large volume of correspondence. We are grateful to all those who shared their experiences with us.

### The loan charge

54. The loan charge is shorthand for the measures introduced by the Finance (No. 2) Act 2017 to combat "disguised remuneration" schemes, a form of tax avoidance. These complex arrangements led to substantial amounts of pay being directed by an employer to an employee benefit trust and paid to the employee by way of a loan. This was intended to avoid tax and National Insurance Contributions (NICs) for the payee, and employers' NICs for the payer. The schemes were heavily marketed to the self-employed and those with personal service companies, working as contractors. In many cases there was never any expectation of the loan being repaid.
55. Legislation to counter these schemes was first introduced in Finance Act 2011. While the 2011 legislation looked forwards, the 2017 legislation looks backwards, bringing into charge to income tax the value of all loans made under these schemes on or after 6 April 1999 which are outstanding at 5 April 2019. Only if taxpayers agree with HMRC to voluntarily settle tax avoided for all years closed to inquiry since 1999, plus tax and interest for years since then under inquiry, can the charge be avoided.
56. Many of the responses we received were from people who were caught by the loan charge or had clients who were affected. They provided a wealth of evidence about the impact of the charge in practice and what they felt was disproportionate or unfair about the way that HMRC had acted. Further examples can be seen in Appendix 5.

**Box 2: The loan charge 2019: a case study**

“I have a client who is a social worker. She was made redundant by her local council. ... It has a farewell party on the Friday and on the Monday it said “If you join this agency and use the scheme, we will re-engage you as a contractor.”... She ... was re-engaged as a contractor for five years ... At the end of those five years, the council told her it would re-employ her as an employee, which it did. She was unaware of what was going on. She now faces a loan charge equal to probably a year and a half’s salary. She has no means of paying it. She is the only worker in that particular house; she has a young child and her spouse stays at home. If she goes bankrupt and it comes up on her next criminal records check, she cannot work. This is not a rich merchant banker who has done something wrong. This is a dedicated social worker. That encapsulates what the loan charge does; it is unfair and pernicious ... Yes, my contractor benefitted because she paid less tax. The Revenue was supine and silent and by its silence gave tacit approval to these schemes. In fact, that was used in the schemes’ marketing: no approach from the Revenue meant they were Revenue approved ... The county council did not warn her, and the people behind the agency running the scheme, as is usual in these cases, were selective about the information that was made available. You could argue that she should have investigated and should have known more about this, but she is a social worker, she is not a tax expert ... How could a social worker be expected to penetrate that type of arrangement? It is just unfair.”

Source: [Q 40](#) (Graham Webber)

57. The loan charge legislation was introduced by the Government and passed by Parliament. HMRC is obliged to implement that legislation, and should therefore not be held wholly responsible for its basic principles. Witnesses were concerned both with the legislation itself, and HMRC’s approach to disguised remuneration schemes more generally.
58. There is some evidence that Parliament did not adequately scrutinise the loan charge. In the Public Bill Committee of the Finance (No. 2) Act 2017, debate consisted of only three contributions—an introduction from the Financial Secretary to the Treasury, a response from the Opposition, and a further response from the Minister. Concerns about retrospection and the impact on individuals were briefly raised by the Opposition, but not followed up by further debate.<sup>62</sup>
59. Now the loan charge itself is fast approaching, parliamentary awareness has been growing. Stephen Lloyd MP tabled an Early Day Motion on the loan charge on 8 May 2018, which has more than 100 signatures.<sup>63</sup> Steve Baker MP secured a Westminster Hall debate on the matter on 20 November 2018, in which more than 25 MPs from different parties raised concerns about the issue.<sup>64</sup> Baroness Noakes and Baroness Kramer, both members of our Finance Bill Sub-Committee, raised this issue in the House of Lords on 13 November.<sup>65</sup>

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62 Public Bill Committee on the Finance (No 2) Bill 2017–19, 19 October 2017, [col 100](#)

63 [Early Day Motion 1239](#) [accessed 27 November 2018]

64 HC Deb, 20 November 2018, [col 270WH](#)

65 HL Deb, 13 November 2018, [col 1853–1868](#)

### Issues with the loan charge

60. Many witnesses said they had joined these schemes without being aware of HMRC’s attitude towards them.<sup>66</sup> They were assured by their employers or promoters of the schemes that they were effective (sometimes with legal opinions)<sup>67</sup> and that HMRC knew about the schemes and approved them. HMRC did not do enough to counter this misinformation. It used its “Spotlight” online guidance publications to make known its views, but this is little read, and one witness said these schemes were not mentioned there until as late as 2016.<sup>68</sup> Some interpreted the fact that no action had been taken against these schemes, despite the fact that they may have been disclosed under the Disclosure of Tax Avoidance Scheme Rules (DOTAS), as evidence of HMRC acquiescence.<sup>69</sup>
61. Many participants told us they declared their involvement in the schemes to HMRC but HMRC did not warn them that it intended to, or was, challenging the schemes.<sup>70</sup> HMRC took a test case (“the Rangers case”<sup>71</sup>) to challenge the schemes. The first appeal was heard in 2010. It was not until 2017 that the Supreme Court published its judgment in HMRC’s favour. HMRC announced the loan charge legislation in 2016.
62. Some affected witnesses told us that HMRC had raised no enquiries on their tax returns.<sup>72</sup> For others, HMRC opened enquiries but did not progress them for long periods of time,<sup>73</sup> even when the taxpayers proactively cooperated.<sup>74</sup> This has led taxpayers to feel that HMRC was deliberately delaying the conclusion of enquiries.<sup>75</sup> Some felt that HMRC is using the loan charge to cover up its own failures to act in a timely manner.<sup>76</sup>
63. The judgment in the Rangers case found that the loans advanced constituted earnings for tax purposes. Not only was the amount taxable on the employee, but the employer should have applied PAYE.<sup>77</sup> The loan charge legislation does not tax the employer, who may be liable for the PAYE under case law, but the recipient of the loan, whether an employee or a contractor. Witnesses told us that many employers had denied workers standard employment contracts but encouraged employees and contractors to use the agencies or companies that promoted such schemes, in some cases as a condition of getting work.<sup>78</sup> Individuals said it was unfair that they should bear the loan charge, rather than the organisations which hired them or promoters who had also benefitted by saving employers’ National Insurance contributions

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66 Written evidence from Anonymous ([DFC0011](#)), Gareth Parris ([DFC0020](#)), and Helen Fernandez ([DFC0047](#))

67 Written evidence from Anonymous ([DFC0032](#))

68 Written evidence from Anonymous ([DFC0092](#))

69 Written evidence from Robert Randall ([DFC0006](#)), Chris Rooks ([DFC0014](#)), Sabina Mangosi ([DFC0015](#)), Gareth Parris ([DFC0020](#)) and Dale Rayment ([DFC0049](#))

70 Written evidence from Chris Rooks ([DFC0014](#)), Loan Charge Action Group ([DFC0060](#)) and Gareth Parris ([DFC0020](#))

71 *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland)* 2017 UKSC 45

72 Written evidence from Robert Randall ([DFC0006](#))

73 Written evidence from Loan Charge Action Group ([DFC0060](#)) and Anonymous ([DFC0083](#))

74 Written evidence from Jay Kohn ([DFC0012](#))

75 Private roundtable discussion (Appendix 3), Written evidence from Anonymous ([DFC0037](#))

76 Written evidence from Chris Rooks ([DFC0013](#)), [Q 40](#) (Keith Gordon)

77 *RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland)* 2017 UKSC 45

78 Written evidence from Sabina Mangosi ([DFC0015](#)) and Loan Charge Action Group ([DFC0060](#))

or from fees.<sup>79</sup> As Keith Gordon said, “the problem is the legislation goes for the person least able to defend him or herself.”<sup>80</sup>

64. The charge was also considered to be retrospective in its effect,<sup>81</sup> because in many cases the tax years it relates to are closed. In normal circumstances HMRC would be unable to reopen these tax years if they could not prove failure to take reasonable care (to go back six years) or fraud (to go back 20 years). The loan charge triggers a charge in 2019/20 on the cumulative loan value advanced since April 1999 and not repaid by April 2019. Witnesses said that no additional income was generated to pay that tax and the whole liability falls in a single year ensuring that much of the tax is payable at higher rates.<sup>82</sup>
65. Many witnesses were not expecting that they would ever have to repay the loans so made no provision to do so. They now face, in some instances, tax bills of tens of thousands of pounds without the means to pay. For some their circumstances have changed significantly in the meantime with retirement, unemployment, illness or divorce depleting their resources.<sup>83</sup>

### Box 3: Interest and penalties

#### Interest

Late payment interest is chargeable when income tax is not paid by the due date. This is usually 31 January (after the end of the tax year when the liability arose).

The rate varies with market rates; and is calculated as simple interest from the due date until the tax liability is settled.

Where a taxpayer seeks to reach a contract settlement of disguised remuneration tax liabilities in order to avoid a loan charge arising on 6 April 2019, HMRC will require the taxpayer to make a voluntary payment in respect of ‘closed’ tax years. Interest is not chargeable on such voluntary payments

#### Penalties

Penalties can arise where a taxpayer has submitted an income tax return containing an ‘inaccuracy’ which leads to an underpayment of the tax liability for the year (unless the taxpayer took reasonable care in completing the return and the ‘inaccuracy’ occurred despite that reasonable care).

What is reasonable care depends on individual factors, such as the taxpayer’s skills and the circumstances and complexity of the issue involved. Where a taxpayer relied on a tax adviser or informed third party in completing a tax return, the fact that the adviser may have been wrong or later proven to be wrong does not generally mean that the taxpayer can be charged a penalty. From late 2017 this has changed where tax avoidance is concerned.

Higher penalties are chargeable if reasonable care was not taken, or the inaccuracy was deliberate. Depending on the particular circumstances, penalties may not be charged by HMRC on settlements for disguised remuneration schemes.

79 Written evidence from Chris Rooks ([DFC0014](#)), Sabina Mangosi ([DFC0015](#)), Helen Fernandez ([DFC0047](#)) and Anonymous ([DFC0063](#))

80 [Q 40](#) (Keith Gordon)

81 Written evidence from Gareth Parris ([DFC0020](#)), Loan Charge Action Group ([DFC0060](#)), Anonymous ([DFC0083](#)) and Bev Jackson ([DFC0056](#))

82 Written evidence from Dale Rayment ([DFC0049](#))

83 Written evidence from Chris Rooks ([DFC0014](#)), Sabina Mangosi ([DFC0015](#)), and Helen Fernandez ([DFC0047](#))

66. The Finance Act 2014 gave HMRC a range of powers to monitor promoters of tax avoidance schemes, publish information about them and ensure their clients are aware of the risks they are running.<sup>84</sup> HMRC has also referred advertising by promoters making false claims about loan schemes to the Advertising Standards Authority. HMRC has publicised its success on its “Spotlight” website to deter other promoters of avoidance schemes and to ensure users and potential users understand the consequences of participating in such schemes.
67. **HMRC has a range of powers at its disposal to deal with promoters of tax avoidance schemes, but we have seen little evidence of action taken against those who promote disguised remuneration schemes. In the absence of publicised actions, HMRC appears to be prioritising recovery of tax revenue over justice by targeting individuals, rather than promoters (who could be considered more culpable), so it can more easily recover liabilities.**
68. **We encourage HMRC to do more to publicise any actions it is taking against promoters of disguised remuneration schemes. “Spotlight” publications are neither well-known nor well-read, and are therefore insufficient for this purpose.**

#### The intended target?

69. Most of the evidence we received was from a cohort of taxpayers who could comprise up to 35 per cent of those affected by the loan charge.<sup>85</sup> They were generally individual workers, often in the National Health Service or working for local authorities,<sup>86</sup> who had been denied the opportunity to enter into a normal employment contract. In seeking work, witnesses told us that the alternative contractor arrangements exposed them to involvement with service providers and promoters of loan schemes.<sup>87</sup> If the legality of the tax arrangements was questioned, they were assured that they were legal and approved by HMRC.<sup>88</sup> The participation of the employer in payments to these entities may also have provided assurance that they were acceptable. The involvement of an offshore company and loan structure were not always understood. The promoters and administrators of the schemes took fees so the full tax effect was not necessarily visible to or received by the participant.<sup>89</sup>
70. **The individuals affected by the loan charge who gave evidence to this inquiry are very different from those generally perceived to be involved in tax avoidance. While they must accept some responsibility, they are not as culpable as those who are much better off, extensively advised and whose involvement in such schemes may be regarded as more egregious. In many circumstances, individuals were being directed to use these schemes by their employer, who would have been in a better position to determine the consequences for the**

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84 Finance Act 2014, [sections 234–283](#)

85 [Q 54](#) (Ruth Stanier)

86 Written evidence from Dale Rayment ([DFC0049](#)), Loan Charge Action Group ([DFC0060](#)), Anonymous ([DFC0065](#)), and Anonymous ([DFC0092](#))

87 Written evidence from Sabina Mangosi ([DFC0015](#)); [Q 40](#) (Graham Webber)

88 Written evidence from Anonymous ([DFC0011](#)), Jay Kohn ([DFC0012](#)), Chris Rooks ([DFC0014](#)), Sabina Mangosi ([DFC0015](#)), Anonymous ([DFC0032](#)), Dale Rayment ([DFC0049](#)), Bev Jackson ([DFC0056](#)), Anonymous ([DFC0065](#)), and Anonymous ([DFC0083](#))

89 Written evidence from Richard Hedgecock ([DFC0057](#))

**employee of taking a loan. It is unfortunate that the loan charge does not discriminate for different intents and circumstances.**

71. Many witnesses were willing to settle outstanding liabilities in so far as they could.<sup>90</sup> Some criticised HMRC's failure to pursue employing companies, who achieved savings through the arrangements, and promoters of the schemes, who some witnesses said misled them.<sup>91</sup>
72. Several witnesses who did not have means to pay tax bills or settle within a set time (a 'Time to Pay' arrangement), often five years, told us they were threatened with bankruptcy.<sup>92</sup> Ruth Stanier OBE, Director General for Customer Strategy and Tax Design at HMRC, said that "we [HMRC] have also been clear that we will look at each case on its merits. There is no maximum or minimum period within which an overall settlement period can be agreed."<sup>93</sup> She did not have information on how many had settled on longer terms.<sup>94</sup> In relation to threats of bankruptcy she said, "Making people bankrupt does not help us to collect the revenue."<sup>95</sup>
73. HMRC told us that it was assessing the evidence we received.<sup>96</sup> In relation to those settling liabilities for earlier years in order to avoid paying the loan charge, Ruth Stanier said that "we are not currently in a position to provide a detailed breakdown of income distribution across different groups."<sup>97</sup> However of the 5,000 settled cases to date (out of the 50,000 expected), 25 per cent were with employers and 75 per cent individuals. The average settlement for an employer was £525,000, compared to £23,000 for individuals. No details were given on the cases not yet settled.<sup>98</sup>
74. The consequential impact of the loan charge and HMRC's handling of it for taxpayers such as the cohort described above has been devastating. Ruth Stanier commented "we will deal with cases appropriately and sympathetically"<sup>99</sup> but this was not the experience of many witnesses. Suicidal feelings were reported. One witness called their situation "a living hell"<sup>100</sup>.
75. **Disguised remuneration schemes are an example of unacceptable tax avoidance that HMRC is right to pursue. All individuals using these schemes must accept some degree of culpability for placing an unfair burden on other taxpayers.**
76. **The loan charge is, however, retrospective in its effect. Parliament has laid down time limits for tax matters of four, six and 20 years**

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90 Written evidence from Robert Randall ([DFC0006](#)), Jay Kohn ([DFC0011](#))

91 Written evidence from Sally ([DFC0096](#))

92 Written evidence from Chris Rooks ([DFC0014](#)), Sabina Mangosi ([DFC0015](#)), Dale Rayment ([DFC0049](#)), and Loan Charge Action Group ([DFC0060](#))

93 [Q 54](#) (Ruth Stanier)

94 *Ibid.*

95 *Ibid.*

96 Letter from Ruth Stanier to the Chairman, 31 October 2018: [https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8\\_31\\_Oct\\_Staniei\\_to\\_Chairman\\_letter.pdf](https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/8_31_Oct_Staniei_to_Chairman_letter.pdf)

97 *Ibid.*

98 Letter from Ruth Stanier to the Chairman, 5 November 2018: [https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/Letter\\_from\\_Ruth\\_Staniei\\_to\\_the\\_Chairman\\_051118.PDF](https://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/draft-finance-bill-2018/Letter_from_Ruth_Staniei_to_the_Chairman_051118.PDF)

99 [Q 55](#) (Ruth Stanier)

100 Written evidence from Sally ([DFC0096](#))

which give certainty to taxpayers about their affairs. It undermines this framework to artificially trigger a future charge.

77. In its retrospective effect, and its failure to pursue taxpayers proportionately to their circumstances, HMRC's approach to the loan charge diverges substantially from the principles in the Powers Review.
78. We recommend that the loan charge legislation is amended to exclude from the charge loans made in years where taxpayers disclosed their participation in these schemes to HMRC or which would otherwise have been "closed".
79. We were disturbed to hear accounts of HMRC threatening individuals with arrangements that could result in bankruptcy, where individuals clearly have no assets to settle liabilities. Whether these threats were explicit or perceived, they have caused considerable anguish for a number of individuals.
80. We recommend HMRC urgently reviews all loan charge cases where the only remaining consideration is the individual's ability to pay. We also recommend that HMRC establishes a dedicated helpline to give those affected by the loan charge advice and support. Such action should take place well in advance of the loan charge coming into effect in April 2019.
81. HMRC failed to make its position on the schemes clear enough. We do not consider a notice in "Spotlight" on a website sufficient when in many cases HMRC knew which taxpayers and employers were using the schemes and could have communicated with them directly. There were unreasonable delays in legislating and in failing to progress those enquiries which were opened into individuals' tax affairs, depriving them of certainty even in situations where they were actively seeking to engage with HMRC to finalise matters.
82. HMRC failed to communicate effectively with some users of such schemes on a timely basis as its approach to tackling disguised remuneration schemes evolved from the first disclosure of the schemes after the disclosure regime was introduced in 2004, to legislation in 2011 and through the judicial process ending in 2017.
83. To avoid the delay and uncertainty that has accompanied HMRC's approach to disguised remuneration schemes, we recommend that HMRC makes a declaration, in a clear and accessible public statement, as soon as it begins investigating a potential tax avoidance scheme. Such a declaration should be targeted at those most likely to be affected by the scheme in question. Publishing online guidance, such as through "Spotlight", will not be sufficient.
84. HMRC should also notify a taxpayer that it is investigating an avoidance scheme as soon as possible if that individual declares the scheme on their tax return.

## CHAPTER 5: TAXPAYER SAFEGUARDS AND ACCESS TO JUSTICE

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85. This chapter discusses how safeguards for taxpayers have changed in recent years, as HMRC has gained additional powers, and proposes areas in which they need to be strengthened.
86. Witnesses felt that HMRC powers needed to be balanced by adequate safeguards for taxpayers. Victoria Todd, LITRG, said, “HMRC obviously needs powers to administer and enforce the tax system effectively, but the powers have to be proportionate and there need to be not just safeguards but accessible safeguards, particularly for unrepresented taxpayers”.<sup>101</sup> ICAS agreed: “Taxpayers need to have confidence that HMRC is exercising its powers proportionately and that appropriate safeguards are in place. A degree of external scrutiny is required, so the right of appeal to an independent Tribunal against HMRC decisions is important.”<sup>102</sup>
87. There was a perception among witnesses that as HMRC powers have grown, taxpayer safeguards have not kept pace, or have been eroded.<sup>103</sup> Some suggested that the balance between HMRC and taxpayers has shifted in HMRC’s favour.<sup>104</sup>
88. Box 4 details the routes of recourse which still exist for taxpayers.

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101 [Q 37](#) (Victoria Todd)

102 Written evidence from ICAS ([DFC0068](#))

103 Written evidence from Herbert Smith Freehills LLP ([DFC0090](#)), CIOT ([DFC0071](#))

104 Written evidence from LITRG ([DFC0067](#)); [Q 37](#) (Victoria Todd, Keith Gordon, Graham Webber)



**Box 4: Taxpayers' route of recourse**

There are a number of routes available to taxpayers when appealing decisions made by HMRC:

**Statutory Review:** Taxpayers have a right to ask HMRC to review tax decisions they disagree with. The review is carried out by a HMRC official but from a different team to the one which took the original decision. This is a very informal and accessible process. It does not prevent taxpayers going on to appeal to the tax tribunal if they remain dissatisfied.

**The Adjudicator:** Taxpayers may complain to the Adjudicator about HMRC's handling of their tax affairs. The Adjudicator is a fair and unbiased referee who looks into complaints about HMRC. She deals with issues such as mistakes, unreasonable delay, poor or misleading advice, the behaviour of HMRC staff and the use of discretion. She cannot consider issues of policy or tax law or get involved in current investigations of a taxpayer's affairs.

**The Tax Tribunal:** Taxpayers may appeal against tax decisions to the independent tax tribunal, which has a first tier and an upper tier (which hears appeals against decisions of the first tier and some more complex cases). In the First-tier tribunal the simplest cases are dealt with on paper. Where there is an oral hearing there is no requirement for legal representation and a taxpayer can conduct their own case. If they lose they do not have to meet HMRC's costs.

**Judicial review:** Where there is no right of appeal to the tax tribunal taxpayers may apply to the higher courts asking for a judicial review of the way HMRC is administering tax law, for example if it appears to be acting outside its powers or unreasonably. This is expensive and effectively inaccessible to ordinary taxpayers.

**Rights of appeal**

89. Perhaps the strongest feelings expressed in evidence were about Accelerated Payment Notices and Follower Notices. Taxpayers have no right of appeal against a notice, only against the underlying tax liability. The only protection afforded to the taxpayer, other than judicial review, is the opportunity to make representations to HMRC. The protection of oversight by the tax tribunal is missing. An HMRC determination with no right of appeal is unusual. LITRG told us the "traditional routes of appeal, which provide for independent oversight should always be in place so that ordinary taxpayers can have recourse to justice"<sup>105</sup>
90. HMRC emphasised internal governance as an alternative safeguard for Accelerated Payment Notices. It noted that taxpayers may make representations to HMRC "if they believe that HMRC has not met the statutory conditions for issuing [an Accelerated Payment Notice], or if the amount shown on the notice is not correct."<sup>106</sup>
91. Ruth Stanier OBE, Director General for Customer Strategy and Tax Design at HMRC, described the safeguards in place for Follower Notices:

"When we issue a Follower Notice, at that point the taxpayer can choose whether or not to settle. That is a safeguard that we put in following

105 Written evidence from LITRG (DFC0067)

106 Written evidence from HMRC (DFC0085)

consultation. Indeed, at the time, a number of commentators felt that the Government had gone too far in offering that position.”<sup>107</sup>

92. Neither of these safeguards offers an independent recourse for a taxpayer who believes that such a notice has been incorrectly issued. HMRC’s internal governance procedures, however robust, cannot be infallible.
93. **All HMRC determinations and notices should be appealable to the tax tribunal. This is central to the protection of the taxpayer and the balance between taxpayer and tax authority.**
94. **We recommend the Accelerated Payment Notice/Follower Notice legislation be amended to include a right of appeal to the tax tribunal.**
95. **Whenever a new power is introduced or an existing power significantly extended it should be accompanied by a right of appeal against the exercise of the power, not just against the underlying tax liability.**

### Penalties for appeal

96. Witnesses were concerned that penalties for continuing appeals against underlying tax liabilities could undermine access to justice for taxpayers. Taxpayers continuing appeals after receiving a follower notice can face penalties of up to 50 per cent of the tax if they are unsuccessful. Lydia Challen from the Law Society’s Tax Law Committee said:

“It is effectively a penalty for accessing the courts. It applies only if the taxpayer is unsuccessful, but the risk of that is inhibiting access to the courts. That is a situation in which there is no risk to the Exchequer, because it has already had the tax on account in those circumstances. It is purely saying to the taxpayer that they have to settle or else they will be liable for a penalty.”<sup>108</sup>

97. Malcolm Gammie QC told us that a similar situation exists with the General Anti-Abuse Rule:

“...if you wish to appeal beyond a certain point in the General Anti-Abuse Rule process, you are at risk of a 60 per cent penalty ... I am not quite sure that I know any taxpayer who would take that risk with that type of arrangement.”<sup>109</sup>

98. In its original consultation document on Follower Notices, HMRC stated: “Penalties are designed to act as incentives to taxpayers to comply with their tax obligations and to reassure those who do comply that they will not be disadvantaged by those who do not”. It noted that penalties for Follower Notices would be “geared to the amount of tax advantage” and “mitigated for [taxpayers’] co-operation”.<sup>110</sup> When introducing penalties for the GAAR provisions, HMRC said:

“This measure will strengthen the deterrent effect of the GAAR by ensuring that there is an effective disincentive from entering into abusive

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107 Q 53 (Ruth Stanier)

108 Q 26 (Lydia Challen)

109 Q 27 (Malcolm Gammie QC)

110 HMRC, *Strengthening Sanctions for Tax Avoidance* (30 January 2015): <https://webarchive.nationalarchives.gov.uk/20171110142701/https://www.gov.uk/government/consultations/strengthening-sanctions-for-tax-avoidance> [accessed November 2018]

tax avoidance in the first place, and that those who do engage in abusive tax avoidance are subject to an appropriate downside.”<sup>111</sup>

99. HMRC again appealed to internal governance as a remedy for Follower Notice penalties. Ruth Stanier said:

“A Follower Notice—this goes through senior level governance within HMRC—is issued only in cases where we are clearly of the view that a similar scheme has already been struck down.”<sup>112</sup>

100. In advising us on our report, Lord Judge, former Lord Chief Justice of England and Wales, said:

“If the taxpayer questions an asserted tax liability HMRC cannot be judge in its own cause. The imposition of penalties on those who wish to use the court system to establish that, contrary to the views of HMRC, there is no liability, fetters access to justice.”<sup>113</sup>

101. Lord Judge also noted that the House of Lords Constitution Committee, of which he is a member, might share the same concerns.

102. It is important to recover tax yield quickly and effectively, but this cannot be done at the expense of access to justice. No amount of internal governance can compensate.

103. **Penalties associated with General Anti-Abuse Rule and Follower Notices are draconian and restrict access to justice. We recognise that they were introduced to inhibit taxpayers from delaying settlement by appealing, but at their present level they are disproportionate and cannot be justified.**

104. **Taxpayers who challenge HMRC’s view of the law and pursue litigation after a Follower Notice or General Anti-Abuse Rule ruling should not be penalised if they are ultimately unsuccessful. We recommend that these penalties are abolished.**

### Judicial review

105. Where taxpayers wish to challenge the lawfulness of HMRC’s decisions and there is no right of appeal to the tribunal, they may do so only by judicial review. This applies only to specific areas, such as HMRC acting beyond its powers or reaching a decision that could not be regarded as reasonable. Our evidence was clear that this remedy is out of reach for most taxpayers. The CIOT said, “If HMRC exceed or abuse their powers, the time/cost of pursuing a complaint or judicial review is often uneconomical, and so the business or taxpayer simply complies/concedes. The judicial review process is expensive and inherently inappropriate for an unrepresented litigant.”<sup>114</sup> Victoria Todd agreed: “judicial review is out of scope for most unrepresented taxpayers”.<sup>115</sup>

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111 HMRC, *Penalties for the General Anti-Abuse Rule*: <https://www.gov.uk/government/publications/penalties-for-the-general-anti-abuse-rule/penalties-for-the-general-anti-abuse-rule> [accessed 28 November 2018]

112 [Q 53](#) (Ruth Stanier)

113 Extract from private written correspondence on the Report, used with the consent of Lord Judge.

114 Written evidence from CIOT ([DFC0071](#))

115 [Q 41](#) (Victoria Todd)

106. Keith Gordon, a barrister at Temple Tax Chambers, suggested the Government could make judicial review more accessible:

“One major improvement that could be made is the extension of judicial review powers to the First-tier Tribunal so as to allow all HMRC’s actions to be considered by the specialist Tribunal without fear of costs where the taxpayer has a meritorious case.”<sup>116</sup>

107. Lord Judge commented on this proposal in his advice: “The sense of bringing all issues arising in relation to tax litigation within the jurisdiction of specialist tax tribunals ... should be obvious.”<sup>117</sup>
108. The Tribunals, Courts and Enforcement Act 2007 gave the Upper Tribunal jurisdiction over some judicial review cases.<sup>118</sup> This is a departure from the principle of the High Court having jurisdiction in all judicial review cases. In general, the losing party in a case before the First-tier tribunal does not have to pay the winning party’s costs, unlike in other courts.
109. **Judicial review proceedings in respect of HMRC decisions may only be brought in the High Court, which makes them prohibitively expensive for most taxpayers. We recommend that the Government legislates to give the First-tier Tribunal (Tax) the power to conduct judicial reviews.**

#### Statutory review

110. A more informal way for taxpayers to have HMRC decisions reviewed is by statutory review. Although this review is carried out by HMRC internally, it often results in a change of decision. LITRG drew to our attention the fact that “fewer than half of the decisions considered on statutory review in 2017–18 were upheld in HMRC’s favour, the remainder being varied or cancelled.” In the same year, LITRG said, “there were only 34,000 applications for statutory review, a small proportion of all appealable decisions by HMRC.”<sup>119</sup>
111. **Statutory review appears an effective mechanism for appealing HMRC decisions. We regret that it is not more widely used. Whilst it is understandable that some taxpayers may be cynical about a system by which HMRC reviews its own decisions, the evidence shows statutory review can play a useful part in overturning poor decisions.**
112. **We recommend that HMRC ensures that all taxpayers are made aware of the option of statutory review, including a clear explanation of the process and the independence of the reviewer.**

#### Naming and shaming

113. The first “naming and shaming” provision was introduced in the Finance Act 2009. It provided for HMRC to publish the names of deliberate defaulters who, on investigation, had been found to have potentially evaded more than £25,000 of tax and whose appeal rights had been exhausted. Taxpayers could avoid being named by co-operating with HMRC in its investigations. Those being named had to be warned in advance and after a year their

116 Written evidence from Keith Gordon ([DFC0052](#))

117 Extract from private written correspondence on the Report, used with the consent of Lord Judge.

118 Tribunals, Courts and Enforcement Act 2007, [sections 15–21](#)

119 Written evidence from LITRG ([DFC0067](#))

names would be removed from the published list. This means that naming and shaming was originally conceived as a sanction, and so a deterrent, for deliberately non-compliant taxpayers. Naming and shaming provisions have subsequently been introduced to allow HMRC to publish the names of large corporations whose behaviour is consistently uncooperative and of promoters and participants in failed avoidance schemes.

114. **The extension of the naming sanction to taxpayers and promoters whose behaviour is legal, but of which HMRC disapproves, blurs an important boundary between those who break the law and those who do not.**
115. **We recommend that naming and shaming provisions should be restricted to those who have broken the law.**

## CHAPTER 6: THE TAX POLICY PROCESS

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116. This chapter considers the impact of the Government's approach to tax policy-making on the balance between HMRC powers and taxpayers' rights.

### Consultation

117. One of the complaints about HMRC's new powers was that there had been inadequate consultation.<sup>120</sup> The Government is committed to a consultative approach to tax policy making,<sup>121</sup> and has set out a model Tax Consultation Framework with five stages. The first three are:

- Stage 1—set out objectives and identify options;
- Stage 2—determine the best option and develop a framework for implementation;
- Stage 3—draft legislation to effect the proposed change.<sup>122</sup>

118. In chapter 3 we explored two new proposals (extended time limits for offshore matters and removing the need for HMRC to obtain tax tribunal agreement before approaching third parties for information) where, although there was consultation in each case, there were failings in the formulation of the policy.

119. Stage 1 was sidestepped, leaving no compelling case for the changes proposed. There will now normally be a single fiscal event annually—the Autumn Budget. There should be less pressure on legislative timescales and time for full consultation. The Government's policy document about the new fiscal cycle set out the relevant timetables.<sup>123</sup> There is no justification for the regularity with which consultation exercises skip the vital first stage.

120. When the Government goes through its full consultation cycle, as demonstrated by the penalty regime for Making Tax Digital discussed in our earlier report,<sup>124</sup> they are able to achieve broad support.

121. **Consulting on policy objectives before a specific solution has been identified is fundamentally important to the policy making process. This step is too frequently omitted with inadequate justification.**

122. **We recommend that consultation should begin at this stage whenever the introduction or expansion of powers is under consideration.**

### Targeting the legislation

123. A full consultation process can contribute to better targeting of the legislation, so that it more precisely tackles the problem it aims to solve. Our evidence contained constructive ideas about how the proposals in the draft Finance

120 Written evidence from CIOT ([DFC0071](#))

121 HM Treasury and HMRC, *Tax Policy Making: a new approach* (2010): [https://webarchive.nationalarchives.gov.uk/20130102201052/http://www.hm-treasury.gov.uk/d/junebudget\\_tax\\_policy\\_making.pdf](https://webarchive.nationalarchives.gov.uk/20130102201052/http://www.hm-treasury.gov.uk/d/junebudget_tax_policy_making.pdf) [accessed November 2018]

122 HM Treasury and HMRC, *Tax Consultation Framework* (March 2011): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/89261/tax-consultation-framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/89261/tax-consultation-framework.pdf) [accessed 28 November 2018]

123 HM Treasury, *The New Budget timetable and the tax policy making process 2017*: <https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process> [accessed 28 November]

124 Economic Affairs Committee, *Making Tax Digital for VAT: Treating Small Businesses Fairly* (3rd Report, Session 2017–19, HL Paper 229)

Bill 2018 could have been better targeted. In a more satisfactory consultative exercise there would have been an opportunity for these ideas to be raised at a much earlier stage. We welcome the publication of draft clauses, but the Government has missed opportunities by not consulting effectively in the early stages of policy development.

124. Targeting was also a concern with recent legislation on powers. Malcolm Gammie said:

“One of the criticisms, of course, of some of the recent powers is that they have been drafted extremely widely. One is effectively relying on the way they are operated by the Revenue to provide the appropriate application of powers which could be read as much wider.”<sup>125</sup>

125. The Tax Law Reform Committee’s (TLRC) 2017 report identified a number of problems with legislation which is badly targeted and broader in its effect than necessary. Such legislation may have to be supplemented by guidance or statements from HMRC about how it proposes to apply the legislation in practice. This creates uncertainty. Tax legislation should be clear and definite in its effects. The TLRC was also concerned that where the safeguard for taxpayers is judicial review this can be rendered less effective if legislation is drafted so broadly that it is difficult to challenge.<sup>126</sup>
126. Keith Gordon, a barrister at Temple Tax Chambers, wrote that HMRC has “failed to apply their existing powers effectively”.<sup>127</sup> HMRC should ensure that as part of the consultation process it considers whether its objectives could be met by using existing powers more effectively.
127. **Tax legislation should be narrowly targeted at the taxpayer groups it is intended to affect. Broad, badly targeted legislation is unsatisfactory because it can adversely affect compliant taxpayers, leaves too much to the exercise of HMRC discretion or to guidance, and is more difficult to challenge by judicial review.**
128. **When preparing legislation that is properly targeted and effectively drafted we recommend HMRC should listen more carefully to representations from the expert tax and business representative bodies.**

### Evaluation

129. The fourth and fifth stages in the Government’s consultation framework are:
- Stage 4—implementing and monitoring change;
  - Stage 5—reviewing and evaluating change.
130. One of the concerns expressed by our witnesses was that the additional powers for HMRC which have been legislated in recent years have not been properly evaluated. Charlotte Barbour, ICAS, said, “we believe that the powers given to [HMRC] over the years, especially in recent years, should

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125 Q 31 (Malcolm Gammie QC)

126 Institute for Fiscal Studies, *The implications of recent additions to HMRC powers and the shifting balance in the relationship with the taxpayers* (November 2017): [https://www.ifs.org.uk/uploads/TLRC\\_DP\\_13.pdf](https://www.ifs.org.uk/uploads/TLRC_DP_13.pdf) [accessed November 2018]

127 Written evidence from Keith Gordon (DFC0052)

be properly evaluated with post-implementation reviews to see if they are working.”<sup>128</sup>

131. Like Stage 1, Stage 5 is too often missed, or the evaluations not published. Witnesses were concerned that HMRC repeatedly sought new powers but may not always be using those it already has effectively. Keith Gordon said, “As to whether there is a problem with powers, the powers it already has are sufficient; it is just not using the powers it has, or there are not enough resources to allow the Revenue to use them.”<sup>129</sup>
132. The CIOT referred us to the “Better Budgets” report, where a central recommendation was the use of post-implementation reviews in evaluating the effectiveness of policy measures.<sup>130</sup>
133. **Evaluating changes to HMRC powers enables review of their effectiveness, addresses unintended consequences, informs future policy developments and ensures the balance between HMRC powers and taxpayers’ rights is maintained. It is important to consider their cumulative impact.**
134. **We recommend that all powers granted to HMRC since the conclusion of the Powers Review in 2012 should be evaluated, and those evaluations published. All future powers should be evaluated after five years.**

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128 [Q 5](#) (Charlotte Barbour)

129 [Q 37](#) (Keith Gordon)

130 Written evidence from CIOT ([DFC0071](#))



## CHAPTER 7: HMRC'S CHANGING CULTURE

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135. This chapter considers the evidence about a changing culture in HMRC, the possible influences on that culture, and the wider concerns over customer service. HMRC describes taxpayers as 'customers' to support its internal focus on service and include all the people it provides services to. This follows criticism by the House of Commons Public Accounts Committee and the National Audit Office.<sup>131</sup> In this report we refer to individuals as taxpayers.

### Inquiry evidence

136. This is a short inquiry into HMRC's powers and their use; it comes at a time when those affected by the loan charge, Accelerated Payment Notices and Follower Notices have particular concerns to voice. However, the evidence received from representative bodies suggest the issues are more widespread, particularly around compliance and penalties.<sup>132</sup>
137. Witnesses told us of an increasingly challenging use of penalties. To charge a penalty for failure to take reasonable care or deliberate non-compliance HMRC needs to demonstrate evidence of these behaviours. However, we heard that HMRC would often claim a failure was deliberate without apparently considering whether less culpable behaviour might have been involved, and without providing evidence.<sup>133</sup> In some cases it was suggested that HMRC might allege fraudulent behaviour to access the longer time limits for assessing tax where it had made procedural errors.<sup>134</sup>
138. Concerns were also expressed that when penalties had been applied, HMRC staff did not appear to understand the circumstances in which penalties can be suspended, and so would inappropriately block suspension without further consideration.<sup>135</sup>
139. In bringing forward penalties, HMRC did not explain the rules to taxpayers so that they understood how they work or their rights in challenging HMRC decisions. LITRG told us that unrepresented taxpayers are usually unaware of how they could challenge HMRC's assertions.<sup>136</sup>
140. There were also instances where HMRC presented a request for information as if it were a statutory requirement when in fact there was no obligation on the taxpayer to provide it.<sup>137</sup> This was most serious where unrepresented taxpayers were concerned as they would not know that such a request exceeded HMRC's powers. Similarly HMRC would ask for written declarations for matters beyond the statutory requirements, which could confuse, pressure or perhaps intimidate the recipients.<sup>138</sup>

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131 National Audit Office, 'HMRC Customer Service Performance' (December 2012): <https://www.nao.org.uk/wp-content/uploads/2012/12/1213795.pdf> [accessed November 2018]

132 Written evidence from ICAEW (DFC0073), LITRG (DFC0067), ICAS (DFC0068), CIOT (DFC0071)

133 Written evidence from LITRG (DFC0067), CIOT (DFC0071), CBI (DFC0079), Pinsent Masons LLP (DFC0058), ICAEW (DFC0073)

134 Written evidence from Pinsent Masons LLP (DFC0058)

135 Written evidence from Fiona Fernie (DFC0075)

136 Written evidence from LITRG (DFC0067)

137 Q 31 (Jason Collins)

138 Written evidence from CIOT (DFC0071)

141. We heard that HMRC issued requests for information that had to be complied with within 30 days,<sup>139</sup> and might not approve a request for an extension. We were given examples where HMRC had raised penalties despite a taxpayer trying their best to comply.<sup>140</sup>
142. HMRC was criticised for having poor response times in handling inquiry correspondence.<sup>141</sup> The taxpayer has a reasonable expectation of a timely response from HMRC, in accordance with departmental targets and the Charter commitment on efficiency. They can ask a tribunal to force HMRC to conclude an enquiry by issuing a closure notice, but this process is not well known, cumbersome and some taxpayers may prefer not to use it.
143. Witnesses cited examples of HMRC continuing to pursue compliance enquiries even after it became obvious that minimal amounts of tax were at stake “in the hope that they may find something”. Inquiries were needlessly prolonged, which was not efficient or effective for HMRC or the taxpayer.<sup>142</sup> Further, HMRC does not set the cost of an investigation against its tax yield, meaning they have little incentive to avoid costly legal proceedings.<sup>143</sup> Taxpayers could often not afford to continue proceedings to the same extent.<sup>144</sup>
144. Witnesses told us that some HMRC staff displayed increasingly aggressive and unreasonable behaviour towards taxpayers. “The pursuit of the maximum amount of tax, using a cherry-picked fact find whilst ignoring valid contrary evidence, results in the wrong amount of tax extracted from taxpayers, and HMRC failing in their duty to collect the right amount of tax.”<sup>145</sup>
145. This was not a case of HMRC targeting challenges on smaller businesses or the unrepresented rather than larger ones; more that the larger or represented businesses were better placed to rebut or respond to such issues.<sup>146</sup>
146. There was a generally held view that a more aggressive approach had emerged from HMRC since the Powers Review, particularly in enquiries and penalties.<sup>147</sup> ICAEW could not explain why these problems were occurring but suggested “One reason may be lack of training for HMRC on the legislation which underpins their work. Lack of HMRC resources and pressure to reduce the tax gap may be other factors.”<sup>148</sup> ICAS commented that a more rigid approach to compliance and penalties, and less willingness for HMRC to exercise discretion might be as a result of past criticism of it for favourable settlement arrangements with some large taxpayers.<sup>149</sup>

### The Adjudicator’s perspective

147. The Adjudicator considers taxpayers’ complaints about how HMRC has handled their tax affairs. However the Adjudicator cannot consider matters of policy or the operation of tax law, nor matters still under enquiry. Although

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139 Written evidence Fiona Fernie ([DFC0075](#))

140 Written evidence from Herbert Smith Freehills LLP ([DFC0090](#))

141 Written evidence from Fiona Fernie ([DFC0075](#))

142 Written evidence from ICAEW ([DFC0073](#))

143 Written evidence Fiona Fernie ([DFC0075](#))

144 Written evidence from ContractorCalculator ([DFC0038](#))

145 Written evidence from ContractorCalculator ([DFC0038](#))

146 [Q 41](#) (Keith Gordon), written evidence from LITRG ([DFC0067](#))

147 [Q 31](#) (Lydia Challen, Law Society, CIOT and ICAS), Written evidence from Contractor Calculator ([DFC0038](#))

148 Written evidence from ICAEW ([DFC0073](#))

149 Written evidence from ICAS ([DFC0068](#))

funded by HMRC, the Adjudicator provides independent oversight of HMRC's administration of the tax system in individual cases and makes recommendations to HMRC on improvement action where appropriate.

148. The Adjudicator's report for 2017/18 stated:

“We consistently see elements of HMRC's culture impacting on their initial interaction with customers, their complaint handling and the action taken on feedback. This manifests in attitudes to customers, communication style and decision making”<sup>150</sup>.

The Adjudicator cited examples of HMRC not processing information expeditiously, making unreasonable assumptions about taxpayers' understanding of their tax position, and poor handling of tax inquiries. In each case the taxpayer had an excessive or unexpected liability. There were 967 new complaints brought to the Adjudicator in 2017/18.

149. We heard of one case where the Adjudicator could not find in favour of a taxpayer because HMRC was acting in accordance with its own guidelines, even though those guidelines were considered unfair.<sup>151</sup> We have not examined the scope of the Adjudicator's role but it may be appropriate to consider whether it might be extended to give a fairer set of appeal rights to taxpayers.

150. **The Adjudicator has an important role in providing an independent overview of HMRC's treatment of taxpayers. Consideration should be given to widening the role to increase taxpayer access, or increasing HMRC obligations to respond to and act on Adjudicator recommendations.**

### The Charter Committee

151. HMRC is required to report annually on its performance against the Charter, and its work is overseen by a Charter Committee which has reported to HMRC's Board and included representatives of different taxpayer communities.<sup>152</sup> The Charter Committee has overseen an annual customer survey of HMRC's performance against its Charter standards, differentiated by customer type. In 2017/18, the lowest scores were at 34–36 per cent (across customer groups) agreement with the statement “HMRC apply penalties and sanctions equally”. Individuals and small businesses each registered scores of 34 per cent on this question, falling by one and three percentage points respectively on the previous year. 42–50 per cent of those surveyed agreed with the statement “HMRC ensures all customers pay/receive the correct amounts”.<sup>153</sup> The highest scores were agreement with the statement “HMRC treats customers fairly” (62–80 per cent) and “HMRC treats customers as honest” (64–83 per cent). Small businesses (78 per cent) and individuals (80 per cent) were broadly in agreement that “HMRC treats customers fairly”, but agents were less confident (62 per cent). Similarly, while small businesses (83 per cent) and individuals (81 per cent) agreed that “HMRC treats customers as honest”, agents did so to a lesser extent (64 per cent).

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150 Adjudicator's Office, *Annual Report 2018* (July 2018): <http://www.adjudicatorsoffice.gov.uk/pdf/Adjudicators-Annual-Report-2018.pdf> [accessed November 2018]

151 Q 41 (Keith Gordon)

152 HMRC, *Your Charter Annual Report: April 2017 to March 2018* (12 July 2018): <https://www.gov.uk/government/collections/your-charter-annual-reports> [accessed November 2018]

153 *Ibid.*

These were encouraging in the context of concerns over aggressiveness, but the absolute scores reflect a substantial minority who are dissatisfied.

152. This Charter report structure has been challenged as HMRC “marking its own homework”.<sup>154</sup> ICAEW commented that “The Committee ... has external members but is nonetheless a direct sub-committee of the HMRC Board.”<sup>155</sup> The Charter Committee has had limited oversight and resource compared to the scale and complexity of HMRC’s operations. It has not apparently picked up the strength of feeling about the change in HMRC’s culture and deterioration in customer service. It is unclear whether the Charter Committee has fulfilled the role Parliament intended for the Charter. It needs to focus more on the issues of greatest concern to HMRC’s customers.
153. HMRC recently announced that the Charter Committee would be restructured into a Customer Experience Committee.<sup>156</sup> Further details will follow but the intention is to strengthen oversight.<sup>157</sup> A change needs to be made in the way the Committee operates with more input from the major tax bodies and the involvement of the Adjudicator. Their perspective on how HMRC is performing against the Charter standards is more important than HMRC’s.
154. **The new Customer Experience Committee should have an important role in considering taxpayers’ perspectives on how HMRC staff engage with them and in ensuring high standards of customer service. It should include representatives of all types of taxpayer, agents and tax professionals.**

### HMRC’s perspective

155. Ruth Stanier, Director-General of Customer Strategy and Tax Design at HMRC, told us she had not read all of the inquiry evidence but expressed surprise at the issues raised. She commented that HMRC had internal assurance processes to prevent inappropriate behaviours; tax professionalism of HMRC staff is her direct responsibility.<sup>158</sup> After her oral evidence, Ruth Stanier wrote to say that she is following up on the evidence presented.<sup>159</sup>
156. Ruth Stanier provided information about HMRC’s complaints processes, saying 54 per cent of complaints about HMRC are upheld.<sup>160</sup> This may encourage others to complain, and suggests the internal complaints process can be effective. However, it also suggests that in the majority of such cases HMRC staff, even after internal reviews and despite their internal assurance processes, are getting it wrong. We heard that only a small minority of those badly treated appear to complain, yet the number last year was 77,000.<sup>161</sup>
157. **The evidence suggests that, in compliance and enquiry cases, the behaviour of some HMRC staff falls well below the standard set in**

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154 [Q 53](#) (Ruth Stanier)

155 Written evidence from ICAEW ([DFC0073](#))

156 HMRC, *Your Charter Annual Report: April 2017 to March 2018* (12 July 2018): <https://www.gov.uk/government/collections/your-charter-annual-reports> [accessed November 2018]

157 [Letter from Ruth Stanier to the Chairman](#), 31 October

158 [Q 52](#) (Ruth Stanier)

159 [Letter from Ruth Stanier to the Chairman](#), 31 October

160 [Q 52](#) (Ruth Stanier)

161 *Ibid.*

**the Charter. HMRC needs to have better systems in place to identify and address any problem behaviours as a matter of urgency.**

- 158. HMRC has recently been given greater powers. It is being asked by ministers to collect more tax with fewer staff. These cultural drivers may have pressured staff to take a more aggressive approach to tax collection, and in doing so impaired the ability to be fair to taxpayers and act in accordance with Charter values. HMRC needs to consider how staff can be supported to ensure the right balance is achieved.**
- 159. We recommend that the Government requires that the annual report on the Charter is agreed by the representatives of the tax community (not just individuals on the Committee) and that it is drawn up with the involvement of the Adjudicator.**
- 160. We recommend that the Charter is amended to clarify HMRC's responsibilities towards unrepresented taxpayers including that issues are clearly set out, legislation is explained and rights to review and appeals are made accessible.**
- 161. We recommend HMRC undertakes a full inquiry into behavioural trends and cases of aggressive treatment, then publishes a clear statement of what leadership behaviours, training or policy clarification is required to ensure all staff are aware of what is and is not acceptable behaviour towards taxpayers.**

## CHAPTER 8: POWERS REVIEW PRINCIPLES REVISITED

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162. Some 10 years on from the beginning of the last Powers Review, this chapter reconsiders the principles of tax administration in light of our conclusions.

### The continued importance of the principles

163. In chapter 2 we described the principles agreed in the Powers Review. Many of the tax representative bodies were involved in the consultations which took place as part of the Powers Review. When asked what was important now, their comments generally built on the widely accepted principles. For example, the Association of Accountancy Technicians (AAT) highlighted the importance of equality and fairness, proportionality, clarity and transparency, reasonableness, timeliness and protection of taxpayers from digital errors.<sup>162</sup> Dow Schofield Watts identified “a principle of transparency and clarity so the taxpayer is provided with a level of certainty”.<sup>163</sup> Pinsent Masons LLP noted:

“HMRC’s powers need to be a proportionate response to the risks faced. They need to include adequate protection for taxpayers to ensure that HMRC is acting within its powers and to minimise unnecessary and disproportionate disruption to a taxpayer’s life or business interests.”<sup>164</sup>

164. There were some calls for change. The Association of Taxation Technicians (ATT) agreed that HMRC’s powers should be “designed to encourage and enforce compliance” but that should be in a “manner that supports, and produces the fewest unintended consequences or inappropriate consequences for those who make a serious if imperfect attempt to comply fully with their tax obligations.”<sup>165</sup> The CBI wished to see a more collaborative approach and a “commitment to co-operative compliance” in order to maintain the UK’s international tax competitiveness.<sup>166</sup>
165. It was reassuring to note that the Director General for Customer Strategy and Tax Design at HMRC appears supportive of the principles, particularly citing even-handedness and proportionality<sup>167</sup>, and recognised that HMRC’s task was to act in the “interest of the vast majority of taxpayers”.<sup>168</sup> Ruth Stanier OBE, Director General for Customer Strategy and Tax Design at HMRC, also mentioned the Needs Enhanced support service for vulnerable taxpayers;<sup>169</sup> vulnerable and unrepresented taxpayers are not mentioned specifically in the principles. LITRG amongst others regarded them as extremely important.<sup>170</sup>

### Pressures on the principles—HMRC resources

166. The last decade has seen major changes in HMRC. It has been under pressure to raise additional revenue for the Government, and seen a reduction in staff

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162 Written evidence from ATT ([DFC0061](#))

163 Written evidence from Dow Schofield Watts ([DFC0078](#))

164 Written evidence from Pinsent Masons LLP ([DFC0058](#))

165 Written evidence from ATT ([DFC0061](#))

166 Written evidence from the CBI ([DFC0079](#))

167 [Q 52](#) (Ruth Stanier)

168 *Ibid.*

169 *Ibid.*

170 Written evidence from LITRG ([DFC0067](#))

numbers by 15 per cent between 2010/11 and 2014/15.<sup>171</sup> At the same time HMRC is reorganising into 13 regional centres, modernising administration of the tax system and preparing for Brexit and a Customs Declaration System.

167. Businesses and tax agents told us of the difficulty in accessing tax expertise in HMRC for individual taxpayers and small businesses; unlike large businesses, who often have access to a Customer Compliance Manager—a senior tax expert at HMRC assigned to the business who builds “in-depth knowledge of the business and the sectors they operate in”.<sup>172</sup> Witnesses also said HMRC’s ability to deliver an effective service was undermined by diminishing levels of expertise. Graham Webber, Director of WTT Consulting, said HMRC “has moved from being a tax expert organisation to a tax-processing organisation”.<sup>173</sup>
168. As these changes have emerged over several years, it may be timely to review how the principles and Charter are faring in light of the resource challenges facing HMRC. It is important that fewer resources do not result in fewer safeguards or poorer service for taxpayers.
169. **The Powers Review demonstrated the importance and advantages of developing a tax powers framework on an agreed set of principles. These principles are being forgotten in the push to tackle tax avoidance and evasion with fewer HMRC resources.**
170. **HMRC’s declining resources have rendered it unable to effectively perform its dual roles of tackling avoidance and evasion and ensuring taxpayers are treated fairly. Pressure to improve its counter-avoidance and evasion performance could understandably have resulted in neglect of its other responsibilities. This would not only explain the erosion of the Powers Review principles, but also reports of increasingly aggressive behaviour towards taxpayers.**
171. **The Government has a responsibility to ensure HMRC has the funding it requires to treat taxpayers fairly. We recommend that the Treasury, as part of the next Spending Review, assesses whether HMRC is adequately resourced to fulfil its Charter obligations.**
172. **Concerns that inadequate funding has caused HMRC to neglect its obligations towards taxpayers were also apparent in our Making Tax Digital for VAT Report. The Government should consider an independent review of HMRC resources more widely.**

### **New principles for a digital age?**

173. We heard that the new digital information era ought not to change the principles for most taxpayers,<sup>174</sup> although once digital, the tax system needed to be accessible and the digitally excluded had to be catered for.<sup>175</sup> ICAS said

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171 HMRC, *Annual Report and Accounts 2017–18 Historical data series* (2 August 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/724956/HMRC\\_ARA\\_2017-18\\_-\\_Historic\\_data\\_series.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724956/HMRC_ARA_2017-18_-_Historic_data_series.xlsx) [accessed November 2018]. Numbers have been rising since then, and the net change is a reduction of 11 per cent to 2017/18.

172 **Q 2** (John Cullinane and Charlotte Barbour); HMRC, *How HMRC works with large businesses* (9 April 2018): <https://www.gov.uk/guidance/hm-revenue-and-customs-large-business> [accessed November 2018]

173 **Q 39** (Graham Webber)

174 **Q 7** (Charlotte Barbour) and written evidence from LITRG (**DFC0067**)

175 Written evidence from LITRG (**DFC0067**)

that the legislation needed to be modernised to allow for computer-generated communications and decisions,<sup>176</sup> but that need not change the underlying principles. The CIOT said it was important that HMRC’s powers were updated to reflect the full scale of HMRC’s digital transformation.<sup>177</sup>

174. UK Finance, which represents a number of banking and financial services firms, said that in this digital age its members held vast amounts of data.<sup>178</sup> They are seen as third-party providers of information to HMRC to a greater extent than in 2012. They wished to ensure that the principles also applied in their third party capacity as information providers to HMRC. The burden of information, enquiries and requests they handled to support tax compliance and enforcement needed to be proportionate to the tax risk at stake. Pinsent Mason LLP agreed: simply because digital data may be more easily searched and provided does not mean it should be automatically available to HMRC “if it is not reasonably required”.<sup>179</sup>
175. **As reliance grows on third party providers, any weaknesses in their systems and processes may have implications for data accuracy. Digital developments do not themselves drive a need for new principles of tax administration. However, we recommend that the rights of the digitally excluded and the proportionality of the burdens placed on third party information providers should be adopted as important principles.**

### New principles

176. The 2019 loan charge drew attention to the principle of retrospection. The Government has a protocol which states that changes to tax legislation where the change is effective from a date earlier than the date of announcement will be wholly exceptional. The Government has not defined what is meant by “wholly exceptional”.<sup>180</sup>
177. The Tax Professionals Forum (TPF)<sup>181</sup> recommended revisions to the Government’s protocol on retroaction in its 2013 and 2015 reports, to clarify explicitly the situations in which retroactive legislation could be introduced.<sup>182</sup> It defined retroactive legislation as applying to income or gains arising in periods prior to the announcement of the change in law. The Government has not followed the recommendations.
178. **Recent developments have highlighted concerns on retrospective legislation. We recommend that the Powers Review principles should be updated to ensure that powers should not be sought that**

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176 Written evidence from ICAS ([DFC0068](#))

177 Written evidence from CIOT ([DFC0071](#))

178 Written evidence from UK Finance ([DFC0066](#))

179 Written evidence from Pinsent Masons LLP ([DFC0058](#))

180 HM Treasury and HMRC, *Tackling Tax Avoidance* (March 2011), chapter 4: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/197112/Tackling\\_tax\\_avoidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/197112/Tackling_tax_avoidance.pdf) [accessed November 2018]

181 The TPF was established to advise ministers annually on compliance with the Government’s approach to policy making as a process.

182 Tax Professionals Forum, *Second Independent Annual Report* (27 March 2013): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204924/taxprofessionalforum\\_270313.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/204924/taxprofessionalforum_270313.pdf); and *Fourth Independent Annual Report* (December 2015): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/487272/TPF\\_2015\\_official\\_final\\_16\\_12\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487272/TPF_2015_official_final_16_12_2015.pdf) [accessed November 2018]



**inappropriately apply to income profits or gains for tax years ending before the tax year of the announced change.**

**Monitoring compliance with the principles**

179. There is no independent reporting or monitoring of compliance with the principles agreed in the Powers Review; rather it is up to consultation processes to highlight concerns and for HMRC to take them forward. The Tax Professionals Forum was established to advise ministers annually on compliance with the Government's approach to policy making as a process. Given the concerns discussed above, and the differing interpretations that may be applied to the principles, we propose that the principles are incorporated into the statement of the policy-making process so that adherence with them can be monitored by the TPF.
180. **We recommend that the Government recommits to the principles set out in the Powers Review, with the additions we have proposed. They should be formally incorporated into the Government's policy-making process and monitored by the Tax Professionals Forum.**

## CHAPTER 9: REVIEWING HMRC'S POWERS AND ACCOUNTABILITY

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181. This chapter returns to how HMRC's powers have been significantly augmented over recent years; it explores whether oversight of those powers and its activities needs to be correspondingly increased. It also considers some wider issues about HMRC's accountability.

### Updating the Powers Review

182. The Powers Review was a successful model of how HMRC powers should be developed. It proceeded on a set of governing principles and was heavily consultative. It had an Implementation Oversight Forum to ensure the principles were implemented effectively.
183. In the light of the considerable increase in HMRC's "new powers" and concerns over safeguards since 2012, some witnesses felt that the time had come for a new Powers Review. ICAS said "ICAS believes that the time has come for another review of the framework within which HMRC operates. This should include the consolidation in one act (a new [Taxes Management Act]) of the legislation governing HMRC powers, deterrents and safeguards."<sup>183</sup> CIOT said "We suggest that a new review is needed—albeit one that should not be as extensive and lengthy as the last one—to establish the principles that should govern HMRC's powers in a digital age. Such a review should start at Stage 1 of the consultation process asking what broad changes might in principle be necessary to the 2005–12 framework, and why".<sup>184</sup> Frank Haskew agreed, "The time has come to review this", as did the AAT.<sup>185</sup>
184. A new Powers Review might therefore have a twofold purpose. It could take an overview of the development of HMRC powers since 2012, and their cumulative effect, making the case for change, for new principles or additional safeguards as discussed above.
185. It might also look forward to consider how HMRC's powers need to adapt to a tax system which in the future will be largely digital. Most of the powers were designed and drafted into legislation for a system where everything was done on paper—such as notices, filing, assessments, or the raising of penalties—and by HMRC officials, rather than by being computer generated. It is becoming apparent that these powers may not work so well in a digital environment and are causing a new workload for the tax tribunals and need to be updated.<sup>186</sup>
186. At the same time the experience of our inquiry into MTD for VAT suggests that consideration should also be given to the protection of taxpayers who are less able to cope with a digital tax environment. ICAS said "ICAS does not support mandatory 'online everything' in the tax system. ....there must be proper alternatives for the digitally excluded and adequate support for the digitally challenged."<sup>187</sup> The AAT noted that "powers should be amended to

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183 Written evidence from ICAS ([DFC0068](#))

184 Written evidence from CIOT ([DFC0071](#))

185 [Q 4](#) (Frank Haskew), Written evidence from AAT ([DFC0044](#))

186 Written evidence from ICAS ([DFC0068](#))

187 Written evidence from ICAS ([DFC0068](#))

avoid penalising the “digitally willing taxpayer”, whose only reason for non-compliance arose out of an in-built systemic software issue”.<sup>188</sup>

187. **We recommend that the Government establishes a new Powers Review, both of the cumulative effect of recent developments and what is needed for the future as tax administration moves to digital systems. This should replicate the successful features of its predecessor in order to update the established principles.**

#### **Broadening HMRC’s accountability**

188. The structure of HMRC’s current accountability and oversight is summarised in Box 5.

#### **Box 5: Structure of HMRC’s accountability and oversight**

- (1) HMRC operates under powers given to it by Acts of Parliament.
- (2) HMRC is required to publish a Charter of the standards of behaviours and values to which HMRC will aspire in dealing with taxpayers. HMRC is required to report on its performance against the Charter annually.
- (3) The Financial Secretary to the Treasury, Mel Stride MP, has ministerial responsibility for its work.
- (4) HMRC is headed by a body of Commissioners, including the Tax Assurance Commissioner (TAC) who has special responsibility for the settlement of disputes with taxpayers and who reports annually.
- (5) The National Audit Office has powers to enquire into the efficiency of aspects of HMRC’s administration of the tax system, its accounts and the value for money of its operations. It reports to the House of Commons Public Accounts Committee.
- (6) HMRC is also answerable to the House of Commons Treasury Committee which reviews aspects of its work.
- (7) HMRC’s interpretation of tax law is subject to oversight by the Courts. Taxpayers can appeal decisions to the tax Tribunal, then through appeals ultimately to the Supreme Court.
- (8) Challenges over HMRC’s administration of tax law may be taken to judicial review.
- (9) Taxpayers can refer complaints about HMRC’s treatment of them to HMRC, or to the Adjudicator (but not on matters of policy or of tax law) for independent oversight. The Adjudicator reports annually, with recommendations.
- (10) Taxpayers can also refer complaints of maladministration against HMRC to the Parliamentary and Health Service Ombudsman through their MP.

189. Our evidence suggested that some, though not all, were aware of existing structures designed to provide oversight of HMRC and hold it to account.

190. There was clear feeling that oversight was insufficient. ICAEW said: “We would strongly recommend that an independent body should have oversight of how HMRC deploys its powers and exercises the relevant safeguards”<sup>189</sup>

188 Written evidence from AAT ([DFC0044](#)).

189 Written evidence from ICAEW ([DFC0073](#))

and ICAS said: “there needs to be an oversight body that could report regularly on how powers are exercised.”<sup>190</sup> Witnesses noted that it was difficult for parliamentarians and others to challenge the proportionality of new powers without being perceived as apologists for tax avoiders.<sup>191</sup>

191. It appears from our evidence that current oversight arrangements do not provide the full range of protections, checks and balances that taxpayers and their representatives consider necessary. Few specific proposals were offered as to how such an independent body could be set up and function. This needs to be explored further.
192. The Financial Secretary to the Treasury’s refusal to give oral evidence on this inquiry also suggests a disrespect for parliamentary oversight on issues of tax administration from the Treasury. Parliament may need to consider how it can better hold the Treasury to account in this respect.
193. **While a number of entities have oversight of HMRC much of their activity is focused on specific cases or subject areas rather than how HMRC treats taxpayers generally.**
194. **It may be time for Parliament to rethink how it holds HMRC and the Treasury to account for the fair treatment of taxpayers. There is considerable support for new oversight of HMRC and a compelling need to address the view that HMRC is not sufficiently accountable. It has not been practical to explore this fully and effectively in the course of our inquiry, and we are mindful of the House of Commons’ pre-eminence in financial matters. Further work is needed to determine what new oversight might be established and how it would fit with existing arrangements.**
195. **We recommend that the Procedure Committees of both Houses review the mechanisms by which HMRC’s powers are considered by Parliament, to ensure HMRC’s powers are given sufficient scrutiny and the Treasury is held accountable for its role in tax administration.**
196. **We recommend an independent review, commissioned by the Treasury, to consider the establishment of an independent body to scrutinise the operations of HMRC.**

### **A permanent Consultative Committee**

197. There was support for the Consultative and Oversight Committee structures which existed during the Powers Review. They seem to have been effective in ensuring a steady focus on taxpayer safeguards and a balance between taxpayers and tax authority. There is no reason why such a body should be tied exclusively to a powers review. There is a case for this body to be made permanent, particularly given the volume and complexity of tax legislation and time pressures for parliamentary consideration.
198. We believe there is a precedent for this in the Joint Consultative Committee on VAT (JVCC) which has been operating for a number of years. The quarterly JVCC meetings bring together HMRC and representative bodies to ensure HMRC understands the taxpayer perspective on VAT issues.

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190 [Q 7](#) (Charlotte Barbour)

191 [Q 30](#) (Lydia Challen) and [Q 6](#) (John Cullinane)

199. **A collaborative body with a focus on powers, within a broad remit, could monitor the balance between HMRC and the taxpayer, consider new proposals for legislation, including taxpayer safeguards, and provide oversight of the issues around HMRC culture and deteriorating customer service which have caused our witnesses concern.**
200. **We recommend that a Joint Consultative Committee on Powers, modelled on the Joint Consultative Committee on VAT, be established to fulfil this function, with wide representation from tax professionals and business organisations. It should also oversee any new powers review.**

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Drake  
 Lord Forsyth of Drumlean (Chairman)  
 Viscount Hanworth  
 Lord Hollick  
 Baroness Kramer  
 Lord Lee of Trafford  
 Lord Leigh of Hurley  
 Baroness Noakes  
 Lord Turnbull

### Declarations of interest

Baroness Drake  
*Independent member of the Private Equity Reporting Group (PERG), occasional adviser to the Tax Incentivised Savings Association (TISA)*

Lord Forsyth of Drumlean (Chairman)  
*Non-Executive Director-Secure Trust Bank plc*

Viscount Hanworth  
*No relevant interests*

Lord Hollick  
*No relevant interests*

Baroness Kramer  
*No relevant interests*

Lord Lee of Trafford  
*Fellow of the Institute of Chartered Accountants of England and Wales  
 Interests in a wide variety of listed companies, as disclosed in the Register of Interests.*

Lord Leigh of Hurley  
*Fellow of the Institute of Chartered Accountants of England and Wales;  
 Associate of the Institute of Tax, Senior Partner of Cavendish Corporate Finance Ltd, Advisory Board of Metro Bank PLC.*

Baroness Noakes  
*Interests in a wide variety of listed companies, as disclosed in the Register of Interests, which will or may be affected by the scope of HMRC powers.*

Lord Turnbull  
*No relevant interests*

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

### Specialist Advisers

Elsbeth Orcharton  
*Member of the Institute of Chartered Accountants of Scotland  
 Member of ICAS Scottish Taxes Sub-Committee  
 Member of the ICAS Tax Committee  
 Member of Court of the University of Glasgow*

Robina Dyall  
*No relevant interests*

The Economic Affairs Committee agreed this report by correspondence:

Baroness Bowles of Berkhamsted  
Lord Burns  
Lord Darling of Roulanish  
Lord Forsyth of Drumlean (Chairman)  
Baroness Harding of Winscombe  
Lord Kerr of Kinlochard  
Baroness Kingsmill  
Lord Lamont of Lerwick  
Lord Layard  
Lord Livermore  
Lord Sharkey  
Lord Tugendhat  
Lord Turnbull

During consideration of the report the following member declared an interest:

Lord Darling of Roulanish  
*Member of the Board of Directors, Morgan Stanley New York (banking)*

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://www.parliament.uk/finance-bill-2018-sub-committee> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \* gave both oral evidence and written evidence. Those witnesses marked \*\* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

*	Institute of Chartered Accountants of Scotland	<a href="#">QQ 1–15</a>
*	Chartered Institute of Taxation	
*	Institute of Chartered Accountants in England and Wales	
**	Association of Chartered Certified Accountants Global	
*	Federation of Small Businesses	<a href="#">QQ 16–36</a>
*	IRIS Software Group	
**	Office for Tax Simplification	
**	Law Society of England and Wales	
*	Pinsent Masons LLP	
**	Malcolm Gammie QC	
*	The Low Incomes Tax Reform Group	<a href="#">QQ 37–42</a>
**	WTT Consulting	
*	Keith Gordon FCA CTA	
*	HMRC	<a href="#">QQ 43–57</a>
**	HM Treasury	



**Alphabetical list of all witnesses**

	Anonymous witnesses	<a href="#">DFC0002</a>
		<a href="#">DFC0011</a>
		<a href="#">DFC0021</a>
		<a href="#">DFC0032</a>
		<a href="#">DFC0036</a>
		<a href="#">DFC0037</a>
		<a href="#">DFC0042</a>
		<a href="#">DFC0063</a>
		<a href="#">DFC0065</a>
		<a href="#">DFC0082</a>
		<a href="#">DFC0083</a>
		<a href="#">DFC0089</a>
		<a href="#">DFC0091</a>
		<a href="#">DFC0092</a>
	Akerue Limited	<a href="#">DFC0051</a>
**	Association of Chartered Certified Accountants Global <a href="#">QQ 1–15</a>	
	Association for Convenience Stores	<a href="#">DFC0087</a>
	Association of Accounting Technicians	<a href="#">DFC0044</a>
	Association of Taxation Technicians	<a href="#">DFC0061</a>
	Jason B	<a href="#">DFC0008</a>
	Jacobus Bezuidenhout	<a href="#">DFC0053</a>
	BMB Accounting	<a href="#">DFC0018</a>
	British Property Federation	<a href="#">DFC0074</a>
	Catherine Newman Tax Services Ltd	<a href="#">DFC0035</a>
	CBI	<a href="#">DFC0079</a>
*	Chartered Institute of Taxation <a href="#">QQ 1–15</a>	<a href="#">DFC0071</a>
	Christopher Prescott	<a href="#">DFC0055</a>
	ContractorCalculator	<a href="#">DFC0038</a>
	Dr Stephen Daly	<a href="#">DFC0043</a>
	DSW Tax Resolution	<a href="#">DFC0078</a>
*	Federation of Small Businesses <a href="#">QQ 16–36</a>	<a href="#">DFC0076</a>
	Helen Fernandez	<a href="#">DFC0047</a>
	Fiona Fernie	<a href="#">DFC0075</a>
**	Malcolm Gammie QC <a href="#">QQ 16–36</a>	
	Janet Garrell	<a href="#">DFC0053</a>

	GBM Accounts Ltd	<a href="#">DFC0025</a>
	Sheena Green	<a href="#">DFC0009</a>
	Harrison Riley Accountants Ltd	<a href="#">DFC0016</a>
	Richard Hedgecock	<a href="#">DFC0057</a>
*	HMRC ( <a href="#">QQ 43–57</a> )	<a href="#">DFC0085</a>
	Herbert Smith Freehills LLP	<a href="#">DFC0090</a>
	Hodgsons Chartered Accountants and Business Advisors	<a href="#">DFC0001</a>
	Hiller Hopkins LLP	<a href="#">DFC0070</a>
**	HM Treasury ( <a href="#">QQ 43–57</a> )	
*	Institute of Chartered Accountants in England and Wales (ICAEW) ( <a href="#">QQ 1–15</a> )	<a href="#">DFC0073</a>
*	Independent Chartered Accountants of Scotland (ICAS) ( <a href="#">QQ 1–15</a> )	<a href="#">DFC0068</a>
	Independent Health Professionals' Association	<a href="#">DFC0093</a>
*	Iris Software Group ( <a href="#">QQ 16–36</a> )	<a href="#">DFC0086</a>
	Bev Jackson	<a href="#">DFC0056</a>
	James Smith (Accountant) Ltd	<a href="#">DFC0039</a>
	Javes & Co Chartered Certified Accountants	<a href="#">DFC0033</a>
	Jay Khon	<a href="#">DFC0012</a>
	David Jeffreys	<a href="#">DFC0046</a>
	Joe Quinn Tax Ltd	<a href="#">DFC0040</a>
	John Stone, Chartered Accountant	<a href="#">DFC0004</a>
*	Keith Gordon FCA CTA ( <a href="#">QQ 37–42</a> )	<a href="#">DFC0052</a>
**	Law Society of England and Wales ( <a href="#">QQ 16–36</a> )	
	Loan Charge Action Group	<a href="#">DFC0060</a>
	Sabina Mangosi	<a href="#">DFC0015</a>
	Martin Marsh	<a href="#">DFC0005</a>
	Michael C Feltham and Associates	<a href="#">DFC0077</a>
	Norman Moore	<a href="#">DFC0029</a>
	David Murphy	<a href="#">DFC0022</a>
	National Farmers' Union	<a href="#">DFC0084</a>
	Oaktree Accountancy (Cockermouth) Limited	<a href="#">DFC0026</a>
**	Office for Tax Simplification ( <a href="#">QQ 16–36</a> )	
	Gareth Parris	<a href="#">DFC0020</a>
	Richard Pepper	<a href="#">DFC0034</a>
	P. McKelvey & Co	<a href="#">DFC0003</a>

*	Pinsent Masons LLP ( <a href="#">QQ 16–36</a> )	<a href="#">DFC0058</a>
	Dale Rayment	<a href="#">DFC0049</a>
	Robert Randall	<a href="#">DFC0006</a>
	Alfred Redden	<a href="#">DFC0050</a>
	Carly Barnes and Ben Reeves	<a href="#">DFC0094</a>
	Kevin Ringer	<a href="#">DFC0064</a>
		<a href="#">DFC0095</a>
	Robert Ogle Chartered Accountant	<a href="#">DFC0041</a>
	Chris Rooks	<a href="#">DFC0014</a>
	Sage	<a href="#">DFC0080</a>
		<a href="#">DFC0088</a>
	Sally	<a href="#">DFC0096</a>
	Serocor Group	<a href="#">DFC0028</a>
	Spencer-Davis & Co	<a href="#">DFC0017</a>
	Dr Andrew Summers	<a href="#">DFC0023</a>
	Tanzania Odyssey	<a href="#">DFC0027</a>
*	The Low Incomes Tax Reform Group ( <a href="#">QQ 37–42</a> )	<a href="#">DFC0067</a>
	Today Interiors Ltd	<a href="#">DFC0024</a>
	UK Finance	<a href="#">DFC0066</a>
	Antony Wilson	<a href="#">DFC0010</a>
**	WTT Consulting ( <a href="#">QQ 37–42</a> )	

## APPENDIX 3: PRIVATE ROUNDTABLE MEETING

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The Economic Affairs Finance Bill Sub-Committee hosted a roundtable meeting to discuss the practical impact of Making Tax Digital for VAT and HMRC powers for tax practitioners on Wednesday 17 October. All nine members of the Sub-Committee were in attendance, as were Elspeth Orcharton and Robina Dyal, Specialist Advisers to the Sub-Committee. The session was attended by eight tax practitioners, including chartered accountants, tax advisers, and tax dispute resolution advisers.

The group held a general discussion about the Sub-Committee's two topics of interest for its Draft Finance Bill 2018 inquiry—Making Tax Digital for VAT, and the powers of HMRC.

This note summarises the discussion.

### Making Tax Digital for VAT

#### *Implications for clients*

One participant raised a concern about rural clients. The vast majority of their clients managed their accounts either entirely using paper records, or using very primitive spreadsheets. Another participant noted that the criteria for exemptions from the Making Tax Digital for VAT regime seemed too harsh. One client had been told, when reporting that they had no access to broadband, to go to a library. On responding that they did not know how to use the system, they were told to ring a customer service line while in the library.

Some clients used industry specialist software that would not be compliant with Making Tax Digital. When asked, the software providers had said they did not have the resources to change their software, designed for businesses' purposes, to meet tax requirements.

Participants considered the costs of Making Tax Digital difficult for many small businesses. One participant noted that in practice, the proposals would not make 'tax' digital, but 'transactions'. If it were simply tax, then accountants could digitise clients' records for them, but Making Tax Digital requires changes to businesses' record-keeping systems. This would be costly and disruptive, particularly for small businesses with low profits. Another participant said that the purpose of records in small businesses was not to pay taxes, but to run the business by recording sales, expenses, and profit.

#### *Expected benefits of Making Tax Digital*

Several participants noted that, despite the significant disruption caused by Making Tax Digital for VAT, HMRC would receive the same information from customers using the new 'bridging' software as under the current system. The original vision, and benefits, of Making Tax Digital, had assumed that HMRC would have access to the full audit trail, rather than the same "four numbers" as always. Participants also disputed HMRC's claim that Making Tax Digital would reduce errors, and one said that moving to a software model would just produce "different errors".

#### *Consultation*

The mechanisms for consultation with HMRC were criticised. One participant raised the example of an online forum for small agents, in which the HMRC

moderator would often remove threads they did not like. Another noted that in previous years, agents would have contacts in local tax offices. The Working Together scheme, now disbanded, was also acknowledged as a good idea.

## The powers of HMRC

### *Culture*

There was general agreement that HMRC has in recent years adopted a “guilty before innocent” approach in its enforcement activity. Investigations would be commenced on the assumption of guilt, with undue onus on the taxpayer to prove innocence.

There was a suggestion that reduced resources had hardened the attitude of HMRC towards taxpayers. One participant, who had previously worked for HMRC, described pressure on staff not to undertake a ‘nil’ inquiry—an inquiry concluding that no tax was due. This raised the question of what staff were to do if their investigation indeed suggested that no tax was due.

One participant said agents were “treated as the enemy”, when in practice they do their best to ensure clients pay the tax that is due. There was frustration with formal consultation documents, which participants said often ignored significant opposition to proposals.

### *HMRC delays*

The Sub-Committee was told by participants that, in their view and under some circumstances, poor customer service from HMRC amounted to an abuse of power. One participant shared an example of a client who, amidst a dispute about an employee benefit trust over a “life-changing” amount of money, did not get a response from HMRC for eight years. During this period, interest was accruing on the disputed debt. A response was only received after a Supreme Court case (*RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland (Scotland) (2017) UKSC 45*) had established liability for employee benefit trust arrangements. Another participant said that the accrual of interest during delays in disputes has been compounded by the abolishment of certificates of tax deposit, which would allow taxpayers to pause the accrual of interest while they disputed amounts of tax owed. One participant also noted the disparity between HMRC’s power to require answers within 30 days, and their tendency to take several months to respond to taxpayer enquiries.

Participants raised further delays in the use of ‘Requirement to Correct’ legislation. While this was passed in November 2017 in the Finance Act (No. 2) 2017, letters requesting information were not issued until the following August. In one case of its use, 42 pieces of information were requested, most of which had already been provided to the inquiry. This increased the costs to the client, whose insurance cap had passed, and incentivised them to settle with HMRC. While they had the resources to continue their challenge, many would not.

### *Targeting the wrong taxpayers*

Several participants thought that HMRC were targeting the wrong taxpayers. One shared an example of a nurse, who ran a cleaning products business in their spare time, who was subjected to an extensive inquiry over a £200 tax bill. The nurse was left “terrified” of HMRC. Another noted an example of a painter-decorator targeted in error for undeclared modelling income, when the correct taxpayer was simply someone with the same name whose mother lived on the same street.

Participants raised HMRC's treatment of contractors. One noted that HMRC often issued statements as if they were law, and another stated that HMRC often had a very different view of what constitutes 'employment' than contractors themselves.

### *Oversight of HMRC*

There was some support for independent oversight of HMRC to tackle these problems. One participant argued that change was only possible if HMRC were subject to some kind of external oversight. Another called for the independent arbitration of tax disputes, noting that internal review was not sufficient. One participant qualified that the number of total disputes was low in their experience. Others responded that the number of transgressions was likely far larger than the number of complaints, since the existing complaints procedure was considered convoluted.

## APPENDIX 4: CALL FOR EVIDENCE

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The House of Lords Economic Affairs Committee's Finance Bill Sub-Committee, chaired by Lord Forsyth of Drumlean, is investigating the draft Finance Bill 2018. In particular, the Sub-Committee will examine developments in the balance of powers and safeguards between Her Majesty's Revenue and Customs and the taxpayer. The Sub-Committee will also examine progress on the 'Making Tax Digital' programme since the Sub-Committee's March 2017 Report on Making Tax Digital for Business.

The Finance Bill Sub-Committee is appointed annually by the Economic Affairs Committee to consider the draft Finance Bill (though it does not always choose to conduct an inquiry). The Sub-Committee focuses on issues of tax administration, clarification and simplification rather than on rates or incidence of tax.

### Evidence sought

The Sub-Committee is seeking evidence to address the following questions:

#### *HMRC powers*

- What principles should underlie the design of HMRC powers, and where should the balance be struck between taxpayer and tax authority?
- What principles should govern the development of HMRC powers in a globalised digital information age?
- To what extent, or in what areas, is the existing balance of powers between HMRC and the taxpayer inappropriate or unfair?
- The Sub-Committee would be interested in examples of perceived unfairness, either in areas of policy or instances of enforcement.
- How should HMRC powers be differentiated to reflect the different problems being tackled e.g. careless error, sophisticated tax avoidance, and deliberate tax evasion?
- How are HMRC's powers operating in practice? Are they being used in line with their original policy intent?
- Is there sufficient oversight of HMRC powers, and safeguards against their abuse or misuse? Does the oversight and governance of the powers need to be improved? If so, how?
- What is the right balance of powers and safeguards in the security deposit regime and the assessment of offshore matters, for which amendments are proposed in clauses 33–35 of the draft Finance Bill?

#### *Making Tax Digital for VAT*

- What key improvements have occurred, or new concerns have arisen, since the Sub-Committee's report on Making Tax Digital for Business was published in March 2017?
- How prepared are HMRC, businesses (small and large) and software providers for the implementation of Making Tax Digital for VAT in April 2019, and what are the challenges of concurrent preparations for Brexit?
- The Sub-Committee would be interested in hearing about the experiences of individual businesses preparing for implementation, as well as more holistic responses.

- What are the potential costs of Making Tax Digital for VAT for businesses?
- Businesses involved in the pilot programmes are encouraged to contribute their experiences.
- How could the penalty regime and the new VAT interest regime proposed in the draft Finance Bill be improved or simplified?
- What are the implications of having different penalty regimes for different taxes?



## APPENDIX 5: EXAMPLES OF REPRESENTATIONS ON THE LOAN CHARGE

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Throughout our inquiry, we were provided with representations on the loan charge. We are grateful to those who took the time to inform our inquiry. The following are anonymised illustrative examples of those representations.

### Locum social work in health (2004–07)<sup>192</sup>

Engaged through a recruitment agency and advised to use a Contractor Employee Benefits Trust, based on “QC opinion and being IR35 compliant, and HMRC compliant and registered”.

Contacted in late 2016 by HMRC, and informed that they were in debt for an overdue Accelerated Payment Notice (APN) and penalties. When the witness told HMRC they had no idea of the new legislation, HMRC advised they would resend the letters and give the witness the opportunity to explain their situation in writing, and request to have any penalties removed. This course of action was denied as the 30-day deadline for objection had passed. It took four weeks for the letters to arrive from HMRC to Australia.

*“This whole process has caused extreme stress and anxiety, as I have felt completely powerless, marginalised and disregarding in the treatment by HMRC”*

### IT contractor (2005–10)<sup>193</sup>

Used an Employee Benefits Trust arrangement between 2005 and 2010, using the scheme as an alternative to the “confusing and poorly understood” IR35 legislation.

The witness challenged one APN (for approximately £16,000). HMRC had sent the APN in error, and withdrew the APN, apologising for the inconvenience to the witness. The witness said “this was after I had sold my then current family home to raise the funds to pay all my APNs, including the one that was withdrawn.”

*“They have threatened me with debt collection, taking of personal possessions and CCJs [country court judgments] in pursuit of tax which so far no court has determined is due to them. The employers who are liable for the tax are not being pursued. A retrospective tax grab by HMRC via the 2019 loan charge sets a very dangerous precedent.”*

### Freelance consultant (2010–14)<sup>194</sup>

Employee Benefit Trust arrangement suggested by accountant. The scheme’s tax advisers said ‘top barristers’ had confirmed its legality.

Asked by HMRC to pay £80,000 within five years.

*“I can only see this making me bankrupt and that will stop me continuing as a contractor, as companies don’t want to deal with bankrupts.”*

*“How will I find £15,000 extra a year? My income is already down 25% this year. How can an arbitrary limit be applied without understanding that individual’s situation? [HMRC] just don’t care.”*

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192 Written evidence from Anonymous (DFC0065)

193 Written evidence from Anonymous (DFC0063)

194 Written evidence from Anonymous (DFC0011)

**Contractor (2005–07)**<sup>195</sup>

Used a scheme having been told by the scheme operator that it was legitimate and approved by HMRC. This operated by being paid a salary and the remainder of their income as a loan.

HMRC opened an enquiry in 2008, after the witness had repaid the loan and stopped working through the scheme. Following correspondence from 2008–11, the witness heard nothing from HMRC until September 2018. HMRC wrote to the witness, asking for information about the scheme, and suggesting that the loans are outstanding and they will need to pay interest for the years since receiving the loans.

*“I had no way of reasonably thinking that HMRC would now, 13 years later, deem there to be tax, interest and potential penalties due.”*

*“I am not a wealthy person, I just about get by, paying my mortgage and supporting my family. I do not have any savings or any means to now pay tax, interest and potentially penalties on income earned 13 years ago. This is causing me severe stress and family anxiety. I might lose my home and job.”*

**Freelancer (2008–17)**<sup>196</sup>

Entered into a scheme as they were advised it was IR35 compliant and registered with HMRC as a DOTAS scheme. The witness also had a reputable accounting firm give them a second opinion, which advised them the scheme was not breaking any HMRC rules.

HMRC opened enquiries in 2008 and onwards, but have not concluded them. HMRC has not directly informed the witness of the loan charge, who “found out about it by accident” and “only after a lot digging into it did I start to understand the implications at which point I stopped using the scheme straight away.” The scheme remains in operation.

The witness has the option to pay the loan charge or settle for the 10 years on the scheme. The settlement route would still involve paying class 4 National Insurance contributions and interest for the 10 years of the scheme.

*“I am facing the real prospect of financial ruin. At the moment things have not become a reality yet but if it does I fear for my wellbeing and my families in particular my two children and partner who rely on my financial support. I am now 51 and if this happens I have no idea how I will support myself in old age. I face the prospect of working till at least 75 to 80.”*

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195 Written evidence from Anonymous ([DFC0032](#))

196 Written evidence from Anonymous ([DFC0083](#))

**APPENDIX 6: ABBREVIATIONS**

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AAT	Association of Accounting Technicians
APN	Accelerated Payment Notice
ATT	Association of Taxation Technicians
CBI	Confederation of British Industry
CIOT	Chartered Institute of Taxation
DOTAS	Disclosure of Tax Avoidance Schemes
FN	Follower Notice
GAAR	General Anti-Abuse Rule
HMRC	Her Majesty's Revenue and Customs
ICAEW	Institute of Chartered Accountants in England and Wales
ICAS	Institute of Chartered Accountants of Scotland
JVCC	Joint VAT Consultative Committee
LITRG	Low Income Tax Reform Group
NICs	National Insurance Contributions
PAYE	Pay As You Earn
TLRC	Tax Law Review Committee
TPF	Tax Professionals Forum
VAT	Value Added Tax