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New powers for HMRC: fair and proportionate?

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Select Committee on Economic Affairs Finance Bill Sub-Committee

The Economic Affairs Finance Bill Sub-Committee was appointed by the House of Lords in this session “to consider the draft Finance Bill 2021.”

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Declarations of interests

See Appendix 1.

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SUMMARY

In the draft Finance Bill 2021, the Government has set out legislation for new powers in a range of areas to combat tax avoidance and promote compliance. Our inquiry into the draft Bill focuses on the more notable of these proposals. We welcome some of the measures in the draft Bill, but we conclude that others need be revisited wholesale.

In relation to the specific proposals, our conclusions are as follows:

On the proposals for tackling promoters of mass-marketed tax avoidance schemes, we welcome the Government's intention to take further tough action against the known 'hard core' of promoters, but urge it to redouble its efforts in this respect, and to take further measures to combat the continued proliferation of new schemes. We also highlight the vulnerability of lower income taxpayers to these schemes, and their continued use by some employment intermediaries.

On proposals for amendments to HMRC's civil information powers, we are very concerned about the removal of important taxpayer safeguards for information requests, particularly the need to request permission from the tax tribunal. We believe the Government's reasoning behind these proposals is flawed and not supported by evidence. We call for the tribunal approval requirement to remain and for HMRC to undertake a full review of the information request process to find alternative ways in which it could be streamlined.

With regard to plans for notification of uncertain tax treatments, we note that the Government has now said that it will be undertaking a further consultation, delaying its introduction until 2022. We welcome this move: it was clear from our evidence that the plans were poorly thought out and difficult to understand and apply in practice. We are concerned that the Government only appears to have recognised that there were significant problems with the measure after committing to legislate in 2021. We also urge the Government to look again at the cost of compliance and to consider whether the measure should apply so widely.

On proposals for new tax checks for licence renewal applications, we are worried about a potential 'mission creep' in the proposals which risks them going beyond a simple check for tax registration, which was thought to be the original intention. If the introduction of the checks results in more traders becoming unlicensed so as to avoid them, this could pose risks to the public. We also note that 'conditionality' is an unproven principle: HMRC should thoroughly assess its effectiveness before extending this principle to other sectors.

We also came to a number of cross-cutting conclusions that apply to all of the proposals.

First, the Government needs to take more care to abide by basic policy principles when proposing new or extended powers for HMRC. Without following such principles, there is a risk that measures will be poorly targeted, ineffective and counterproductive.

Second, we believe that HMRC is still not making full and effective use of its existing powers, and should look to how these might be better used before considering new legislation. We are concerned that the Government has decided to initiate and extend the powers of HMRC before considering the outcome

of its evaluation of how HMRC uses its existing powers, which has yet to be published. We also call for HMRC to look more closely at how it might use non-legislative actions to deal with problems in this area before seeking further legislation.

Third, we are concerned that the Government does not always follow good practice for consultation when initiating new policy proposals, and that it should be more methodical and rigorous in consulting, so that plans are properly tested before they become draft legislation.

Fourth, some new Government proposals do not appear to have a strong or transparent evidence base, and this is particularly concerning when plans have been turned into draft legislation.

Fifth, we note that there is a pattern of new HMRC powers being disproportionate, poorly targeted and without sufficient safeguards. In some cases, expansive new powers are being granted to deal with problems that appear to be marginal and only affecting a small minority, increasing compliance costs for everyone. The Government should review its approach in this respect. Similarly, the Government appears to be too cavalier in removing safeguards over the use of HMRC's powers: internal procedures can never be a substitute for independent oversight.

Finally, there appears to be an increasing trend of HMRC outsourcing its compliance responsibilities—for example, in requiring licensing authorities to undertake tax checks. For any future outsourcing proposal, the Government must explain what the justification for it is, and why it cannot be done by HMRC.

HMRC’s radar: the Financial Secretary to the Treasury had “no doubt” that HMRC was fully aware of who many of these promoters were.⁴⁰

Box 2: Examples of disguised remuneration schemes

The following examples of disguised remuneration scheme are based on particular schemes publicised by HMRC in its *Spotlights*: HMRC’s view is that these schemes do not work, in that all payments received by the worker are taxed as salary.

Disguised remuneration scheme involving a loan to the employee

An employer pays the worker the national minimum wage. Under a separate arrangement, the employer makes a payment of £10,000 to an offshore trust set up for the benefit of the worker and their family (an employee benefit trust). The trustees, who are independent of the employer, have discretion in relation to using the payment received from the employer to benefit the worker. The worker asks to borrow money from the trust and the trustees decide to lend £7,500. The loan is repayable on demand—and if not demanded, on the death of the worker. The worker receives the national minimum wage plus the cash amount lent under the loan. The employer says that the loan by the third party trustees is not taxable as salary.

Disguised remuneration scheme involving a loan then repaid with betting winnings

A worker becomes employed by an umbrella company, through which they provide services to company A. The umbrella company receives £10,000 from company A, but only pays the worker the national minimum wage. It also makes a payment to an employee benefit trust set up for the benefit of the worker. The trustees lend the worker £7,500, repayable on demand. The worker then enters into a ‘bet’ with the trustees which the worker is very likely to win. The worker wins £7,500 under the bet, and asks the trust to use the winnings to repay the loan: the end result is that the worker receives £15,000 (through the loan and winnings) but pays out £7,500 (winnings to repay the loan), and so ends up with a net £7,500 in addition to the national minimum wage. The umbrella company says the cash winnings used to repay the loan are not taxable as salary.⁴¹

Disguised remuneration scheme involving loyalty rewards which are ‘cashed in’

A worker is employed by an umbrella company and receives the national minimum wage. The umbrella also agrees to advertise the worker’s services on a job board operated by a third party—and the third party awards ‘loyalty points’ to the worker for allowing their details to be on that board. After a certain time, the worker ‘cashes in’ their loyalty points. The worker ends up receiving the national minimum wage from the umbrella company plus the cash for the loyalty points. The umbrella company says that the ‘cashing in’ of the loyalty points by the worker is not taxable as salary.⁴²

40 [Q 105](#) (Financial Secretary to the Treasury)

41 HMRC, ‘Disguised remuneration: schemes claiming to avoid the new loan charge (Spotlight 36)’, (February 2017): <https://www.gov.uk/guidance/disguised-remuneration-schemes-claiming-to-avoid-the-new-loan-charge-spotlight-36> [accessed 15 December 2020]

42 HMRC, ‘Disguised remuneration: job board avoidance scheme (Spotlight 37)’, (March 2017): <https://www.gov.uk/guidance/disguised-remuneration-job-board-avoidance-scheme-spotlight-37> [accessed 15 December 2020]

financial institutions are fully appraised of the implications of the measures and have sufficient time to prepare for them. Any revised implementation date should be determined in light of this consultation.

separately, as it may achieve more than the ‘stick’ of tax checks and would be relatively easy to extend to other areas.

Concerns

181. In evidence, representatives of the licensing authorities and trade sectors and representative bodies such as the Low Income Tax Reform Group were under the impression that the tax check was to be confined to ensuring that the applicant was registered for tax. LITRG told us:
- “Throughout the consultation process, it has been made clear that tax conditionality would be concerned with whether or not a person had properly registered for tax—and not whether or not the person had submitted a tax return which was complete and correct.”
182. However, LITRG noted that the draft legislation “seems to extend this to include a taxpayer’s obligation to file a return. This appears to be outside the scope of the policy intent”,²⁵⁵ and added that “we think there is a bit of mission creep”.²⁵⁶
183. The Law Society of England & Wales said: “In our view the limit of this should be registration for tax. The range of information that HMRC can request in the current draft legislation appears to go well beyond that”.²⁵⁷ John Miley of NALEO said: “We are happy to support [HMRC] on drivers being registered. We would not want to go any further than that”.²⁵⁸
184. The draft legislation goes beyond registration for tax to reporting relevant income. It is not clear whether this was a misunderstanding of the policy intention, or if the policy developed after the response to the second consultation document (that consultation document discussed the tax checks in terms of registration). The policy paper published with the draft legislation refers to “applicants completing checks that confirm they are appropriately registered for tax”.²⁵⁹ LITRG said: “it is quite bizarre that on the same day, 21 July, you have the policy paper on this matter confirming that conditionality would just relate to registration, yet the draft legislation seems to say something different”.²⁶⁰
185. **New proposals must be clear and comprehensive. Once there has been a consultation, major changes to proposals should not be made without explanation. We are concerned about the possibility of ‘mission creep’ in cases such as the tax check proposals. HMRC must communicate clearly with licence holders about the new tax check policy before it is introduced in 2022, so that any misunderstandings are dispelled.**
186. **We recommend that the tax check is limited to confirming that the applicant is registered for tax and has a unique tax reference (UTR). This is the basis on which consultation has been conducted, and we are not persuaded that the case for going further has been made.**

255 Written evidence from Low Incomes Tax Reform Group (DFE0003)

256 Q 43 (Tom Henderson, Low Incomes Tax Reform Group)

257 Written evidence from Law Society of England & Wales (DFE0019)

258 Q 30 (John Miley, NALEO)

259 HMRC, *New tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewal-applications/new-tax-checks-on-licence-renewal-applications> [accessed 15 December 2020]

260 Q 43 (Tom Henderson, LITRG)

187. One concern raised by witnesses related to paragraph 5(1)(b) of the draft Schedule on tax checks.²⁶¹ The breadth and vagueness of the wording here worried ATT and ACCA, who wondered what it was supposed to cover. Will Silsby of ATT said that “it appears to suggest that the tax check for, say, a taxi driver might require them to provide opinions as opposed to factual information, or perhaps details of other persons in the industry”.²⁶²
188. HMRC explained that this provision was “to evaluate the effectiveness of the measure in bringing people out of the hidden economy. It is important to clarify that any information requested as part of the tax check would relate solely to the applicant’s own affairs”.²⁶³ The Financial Secretary to the Treasury said:
- “There was a concern about some language in the legislation about evaluation and whether it might open the door to something wider. I hope I can give you reassurance on that. All that language says is that HMRC needs to be able to run evaluations of its own on how effective the policy is. I think, therefore, that it should be taken entirely at face value”.²⁶⁴
189. **Paragraph 5(1)(b) of the draft Schedule in the legislation should be amended to define more tightly the information which can be required of applicants for licence renewals.**
190. Institute of Licensing expected to pass the costs they would incur in operating the new system to applicants in the form of increased fees: “Any additional costs of administration incurred by licensing authorities can be recovered via the licence fees”.²⁶⁵ This might appear to be unfair and a ‘double whammy’ for compliant applicants who paid their taxes and had to meet the cost of tax checks seeking to identify the non-compliant. The Financial Secretary said “HMRC has had extensive consultation on this and would expect to support licensing bodies, local authorities and Transport for London with financial assistance in the event that there are costs”.²⁶⁶
191. A third concern was that the purpose of licensing—to protect consumers in the case of private hire vehicles and taxis—might be lost in adding a tax check to the process. If, as a result of the new rules, some licenced operators became unlicensed, this would also adversely affect consumers. The Financial Secretary did not think this was a risk: “in some respects the system can be made more effective if there is a bit more linkage and joining up”.²⁶⁷ James Button of Institute of Licensing said: “I do not see this will dilute the overriding aim that public safety is paramount. Drivers have to be assessed for fitness and propriety. Operators have to be assessed for fitness and propriety”.²⁶⁸ John Miley of NALEO agreed.²⁶⁹

261 HMRC, *Tax checks on licence renewal applications* (21 July 2020): <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewals> [accessed 15 December 2020]

262 [Q 43](#) (Will Silsby, ATT)

263 Written evidence from HMRC ([DFE0035](#))

264 [Q 119](#) (Financial Secretary to the Treasury)

265 Written evidence from Institute of Licensing ([DFE0024](#))

266 [Q 120](#) (Financial Secretary to the Treasury)

267 [Q 121](#) (Financial Secretary to the Treasury)

268 [Q 26](#) (James Button, Institute of Licensing)

269 [Q 26](#) (John Miley, NALEO)

Future plans

192. The Government has ambitious plans to extend conditionality. The second consultation, published in 2017, described its proposals as “a first step in a longer-term roadmap for delivering conditionality”.²⁷⁰ The 2018 response document²⁷¹ referred to “conditionality offering an important step towards integrating the tax system with wider government regulation”. In that response document and in the policy paper published in July 2020 it said it is considering extending this measure to Scotland and Northern Ireland (the measure applies to England and Wales only at present), and intends to consult on extending the principle of conditionality to other sectors over time. We heard no objection to applying this measure to Scotland and Northern Ireland, provided that the devolved authorities are consulted and fully involved in the extension.²⁷²
193. On conditionality generally, the Law Society of England & Wales told us “conditionality is a big stick and there may be unintended consequences, so any measures introducing it should be strictly limited to prevent disproportionate effects”.²⁷³
194. **Conditionality is an unproven policy. It remains to be seen whether it will achieve the Government’s objectives for it. The Government should proceed cautiously. We recommend:**
- **Before conditionality is applied to other sectors, the effectiveness of the legislation in the private hire vehicle, taxi and scrap metal sectors should be evaluated. This evaluation should look separately at the educational and information element relating to applicants for new licences, and at the impact of the tax checks, in particular whether it has led to unintended consequences, such as an increase in unlicensed operations;**
 - **The application of conditionality to other sectors should be justified by reference to a specific problem in the relevant sector; and**
 - **Before introducing tax checks, HMRC should work with stakeholders to communicate clearly to applicants for licences what the tax check is for and what it consists of, bearing in mind the diversity of the sector and the need to cater for those who cannot be reached using digital methods and for whom English is not their first language.**

270 HMRC, *Tackling the hidden economy: public sector licensing* (8 December 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665924/Tackling_the_hidden_economy_-_public_sector_licensing.pdf [accessed 15 December 2020]

271 HMRC, *Tackling the hidden economy: public sector licensing, summary of responses* (7 November 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754225/Tackling_the_hidden_economy_public_sector_licensing.PDF [accessed 15 December 2020]

272 [Q 28](#) (Susan Cattell, ICAS)

273 Written evidence from Law Society of England & Wales ([DFE0019](#))

CHAPTER 7: CROSS-CUTTING THEMES

195. This final chapter will cover themes that emerged during our evidence gathering which go beyond the specific points of draft legislation and consultation discussed in earlier chapters. It is intended to highlight issues that recurred across the topics and discuss how they might be addressed, both through the Finance Bill and in how HMRC approaches these matters more generally in future.

Use of existing powers

196. One question often posed in the course of our inquiries is “are new or extended powers really needed?”. Another common theme is that HMRC were being given new powers when it was not making optimal use of the powers it already possessed, or pursuing other non-legislative ways of tackling issues. The alternative approaches our witnesses suggested often involved the use of powers or processes that HMRC already has. For example, HMRC could use information to which it already has access and its existing enquiry powers to deal with evasion in the sectors covered by tax checks.²⁷⁴ Similarly, it could use the Business Risk Review process to tackle uncooperative large businesses²⁷⁵ without resorting to wide-reaching new powers.
197. While witnesses were supportive of HMRC’s efforts to tackle promoters of tax avoidance schemes and to plug any gaps in existing legislation which made it less effective than Parliament intended, there was nevertheless a feeling that all the powers already available to them were not being used to the full. LITRG said: “we would like to see HMRC make greater use of pay-as-you-earn security deposits” and “debts of a limited company might transfer to directors in certain circumstances”.²⁷⁶ There was also a perception that HMRC were not making sufficient use of criminal prosecution.²⁷⁷
198. **When proposing new or extended powers for HMRC, the Government should specifically explain why existing powers are insufficient to achieve the policy objective. This was done in the case of the promoters legislation where the problems with the current legislation were explored in the consultative document, along with the impact this was having on HMRC’s ability to defeat promoters’ activities in a timely way.**
199. **We also recommend that the Government adopts a standard practice of providing detailed analysis to justify any new proposal conferring new or extended powers on HMRC.**

Non-legislative action

200. When assessing whether new powers are needed, another question that needs to be asked is whether there are alternative non-legislative approaches that will enable the policy objective to be met, obviating the need for new legislation. Although tax obligations themselves must be clearly set out in legislation, the issues considered in this inquiry all highlight the usefulness of non-legislative approaches in helping the Government achieve its objectives. This is particularly relevant to issues relating to compliance, where good

274 Q 9 (Will Silsby, ATT) and written evidence from Law Society of England & Wales (DFE0019)

275 Q 9 (Susan Cattell, ICAS)

276 Q 46 (Tom Henderson, LITRG)

277 Written evidence from Tax Watch (DFE0013)

communication and well-designed and straightforward processes play an important part in ensuring taxpayers understand their obligations.

201. The need for effective and straightforward communication with taxpayers was raised in the evidence we heard on both the tax check provisions and also the promoters measures. It is clear from the legislation in these two areas that the Government recognises the role communication can play in supporting its policy aims. For example, the tax checks measure includes a statutory obligation on licensing authorities to provide information to first time applicants, which was welcomed by witnesses.²⁷⁸ Witnesses were also encouraged, in the context of the promoters measures, by HMRC's focus on getting information early enough to allow it to issue warnings and contact scheme users. But witnesses stressed the importance of HMRC structuring its communications on tax avoidance effectively—so that they not only reach their intended audience, but also can be understood easily. One witness commented that HMRC has “a very blinkered view as to how it should communicate with people and did not seem incredibly willing to come out of that”,²⁷⁹ and, as in 2018, we heard criticism of HMRC's Spotlights as a means of warning individuals about new schemes.
202. The evidence also highlighted the use of non-legislative action as a means of addressing particular issues, particularly around compliance. We were encouraged to learn of how HMRC has used customer compliance managers to improve its engagement with the majority of large businesses: for some witnesses, these relationships, rather than a broadly drawn notification requirement, are seen as the best way of identifying areas of uncertainty.²⁸⁰
203. We welcome the steps taken by the tribunal service to deal with the impact of COVID-19; the new processes around virtual hearings offer an opportunity to improve efficiency, and to reduce some of the delays that can result when a case is referred to a tax tribunal. We have highlighted in Chapter 4 the scope for HMRC to improve processes in relation to third party information notices and international information requests to help speed up the process.
204. **We consider that non-legislative solutions, whether operating independently or in tandem with legislation, can usefully support the Government's policy aims in relation to tax, and so recommend that they should be considered as an important element in the development of policy solutions.**

Tax policy consultation framework

205. A framework for carrying out consultations on tax policy was set out by the Government in 2011.²⁸¹ It consists of a formal commitment to full and open consultation, except in exceptional circumstances, at every stage in the development and implementation of a new tax policy proposal. Five specific stages for the development and implementation of tax policy are outlined, with Stages 1 to 3 covering development of policy and legislation.²⁸²

278 For example, [Q 41](#) (Tom Henderson, Low Incomes Tax Reform Group).

279 [Q 15](#) (Fiona Fernie, Tax Investigations Practitioners Group)

280 [Q 9](#) (Susan Cattell, ICAS)

281 HM Treasury and HMRC, *Tax Policy Framework* (March 2011): <https://www.gov.uk/government/publications/tax-consultation-framework> [accessed 15 December 2020]

282 Stages 4 and 5 are implementation and review.

206. In our inquiry into the Finance Bill 2011, we welcomed the new approach to tax policy making reflected in this framework and noted the importance of the Government abiding by its own rules.²⁸³ In that, and subsequent inquiries,²⁸⁴ we have referred back to the framework to check whether the Government has, in practice, lived up to the standards it set itself. We have done the same this year.
207. In terms of the measures to be included in this year's Finance Bill, we consider the Government's performance against its own standards mixed:
- (1) Consultations on only two of the measures officially started at Stage 1 (tax checks on licence renewals and civil information powers), but, of those, one then leapfrogged to Stage 3 (civil information powers) after a hiatus of nearly two years.²⁸⁵
 - (2) The consultation on uncertain tax treatment was a Stage 2 consultation (and no explanation was offered as to why Stage 1 had been omitted).²⁸⁶ Our witnesses were clear that this proposal should have begun at Stage 1. The issues raised by stakeholders during the consultation were such that the Government has recently announced it will delay this measure in order to get both policy and legislation right. This shows the Government has listened to stakeholders—but a 'start/stop' like this should not be necessary if the consultation framework is followed.
 - (3) Although the general tenor of the promoters measures was announced (without consultation) in response to the Independent Loan Charge Review, a consultation on certain aspects of the policy was published alongside the legislation—and, as these measures are about revenue protection, this approach can be understood. The consultation document provided details on each of the measures, both in relation to context, objective and intended outcome, which was helpful and ensured that questions for stakeholders were put in context.
 - (4) The framework says that the policy objectives and broader policy content need to be set out clearly. On uncertain tax treatment, witnesses felt that consultation had not explained the nature of the problem properly—even tax professionals were struggling to understand what the problem is.
 - (5) The framework also says that the consultation needs to be clear as to what has already been decided (and where there is scope to influence design). A Stage 1 consultation generally invites broader discussion on options, yet, on civil information powers, one stakeholder said “we have not had a real discussion about the underlying policy rationale for it, and ... whether there are alternatives that could be explored”,²⁸⁷ a point also made by UK Finance (who said it would have preferred HMRC to

283 Economic Affairs Committee, *Finance Bill 2011* (4th Report, Session 2010–12, HL Paper 158)

284 For example Economic Affairs Committee, *The Draft Finance Bill 2014* (2nd Report, Session 2013–14, HL Paper 146), Chapter 6.

285 [Q 58](#) (Sarah Wulff-Cochrane, UK Finance). The consultation on HMRC's civil information powers was launched on 10 July 2018, with the Government saying it would publish its response in Autumn 2018. The summary of responses was, however, not published until 21 July 2020, alongside draft legislation implementing the Government's preferred policy response. No explanation for the delay was given.

286 In paragraph 7 of the 2011 framework, the Government said where it was necessary to deviate from the framework, it would be “as open as possible about the reasons for such deviation”.

287 [Q 7](#) (Frank Haskew, ICAEW)

spend more time exploring alternatives)²⁸⁸ and the CIOT who asked, “are there other options that we can explore? We should explore them fully, rather than just giving HMRC an opportunity to draw a few lines against them in a consultation document”.²⁸⁹

- (6) On tax checks for licences, although overall it seemed that the Government had consulted widely, both formally and informally, on both policy and design,²⁹⁰ we noted that there appeared to be a disconnect between what witnesses understood the check to involve from the consultation process, and what the draft legislation actually provided for.²⁹¹
208. Our inquiry also extended to two calls for evidence published by the Government in connection with its promoters strategy. Calls for evidence are not provided for in the tax consultation framework; they represent a preliminary step, intended to inform and assist the Government in identifying next steps in relation to specific issues. If the evidence received confirms the Government’s assessment of the need for action, we would expect that those next steps would include consultation on options in accordance with the framework. However this does not seem to be what the Government is proposing on tax advice. Instead of a consultation on possible options, it is instead planning to take four specific steps, including a consultation on a single option, that it “believes ... will significantly move the market towards the desired outcomes”.²⁹²
209. **Consultation plays an important role in getting tax policy and its implementation right. Views of stakeholders help ensure that Government objectives are met in a proportionate way; they look at proposals through a different lens to that employed by HMRC. Taking account of those views—and being seen to take account of them—assists in building confidence in the tax system.**
210. **As we said in our 2011 report, the Government should abide by its own rules: it is disappointing to have to note, once again, that in relation to certain of the measures we consider in this report, it clearly has not.**
211. **Starting a consultation at the right stage is important to ensure that ‘start/stops’ do not happen: it does not inspire confidence in the Government’s own policy making process if it publicly commits to a measure which it then has to admit was wrong.**

288 [Q 53](#) (Sarah Wulff-Cochrane, UK Finance)

289 [Q 8](#) (Richard Wild, CIOT)

290 [QQ 22, 25](#) (John Miley, NALEO) and [Q 33](#) (Steve Wright, LPHCA)

291 See [Q 25](#) (John Miley, NALEO), [QQ 32-33](#) (Steve Wright, LPHCA), [Q 41](#) (Will Silsby, ATT) and [Q 43](#) (Tom Henderson, Low Incomes Tax Reform Group). See also written evidence from Law Society of England & Wales ([DFE0019](#)).

292 HMRC, *Raising Standards in the Tax Advice Market—summary of responses and next steps* (November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934614/Raising_standards_in_the_tax_advice_market_-_summary_of_responses_and_next_steps.pdf. [accessed 15 December 2020]. These four steps are: (a) certain actions linked to HMRC’s standard for agents; (b) working with professional bodies; (c) an internal HMRC review of options for action in relation to the costs of obtaining tax refunds (which could lead to a subsequent consultation) and (d) a consultation on requiring all tax advisers to have professional indemnity insurance.

Lack of evidence

212. Another area of concern is that the Government has not presented sufficient evidence in support of the policy proposals we have looked at. We emphasised the importance of this in Chapter 2. However, as noted in Chapter 6 above, more information should have been published to support the case for applying conditionality to private hire vehicle and taxi businesses and scrap metal dealers in terms of analysis of those sectors and the impact on the hidden economy. Otherwise, there is a sense that the government has determined the policy in simply because licensing affords it the opportunity. That is an inadequate foundation on which to base a tax check for hundreds of thousands of businesses. Similarly, the notification of uncertain tax treatment was predicated on the basis of addressing the tax gap arising from interpretation of tax law, but our witnesses pointed out that the impact of this measure would be negligible.²⁹³
213. On civil information powers, the case made for changing the process and removing safeguards did initially appear to be evidence-based—on the OECD review of the UK’s performance in dealing with international information requests. However those facts and figures were not set in the context of third party notices to financial institutions or international information requests as a whole. Once that was done the evidence demonstrated that this was actually a minor problem, and the case for removing the safeguards fell away under scrutiny.
214. In the case of the promoters legislation, HMRC helpfully provided evidence about the problems it had been encountering in applying the existing provisions and the adverse effects this had had in terms of delaying or frustrating action against promoters.²⁹⁴
215. **Good tax policy needs to be evidence-based and not just with a theoretical justification or rationale but with analysis, facts and figures. We are concerned that in some cases policy and legislative proposals are being advanced without providing the evidence to back them up or with a flawed analysis that takes account of only part of the available evidence leading to the wrong solution. This should not happen even in consultation, let alone in legislative measures being brought before Parliament.**

Disproportionate and poorly targeted action

216. The three proposals for tax checks, notifying uncertain tax treatments and civil information powers also shared a further common characteristic. In each case, witnesses told us they were poorly targeted and disproportionate to the problem they were intended to tackle. The Government appeared to acknowledge that only a minority of licensed private hire vehicle, taxi and scrap metal businesses are believed to be evading tax,²⁹⁵ and only a small minority of large businesses are not already voluntarily notifying HMRC of uncertain tax treatments,²⁹⁶. In addition, we established that the number of Financial Institution Notice cases going to the tax tribunal to approve use of

293 Written evidence from CIOT ([DFE0017](#))

294 HMRC, *Tackling promoters of tax avoidance* (21 July 2020): <https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance> [accessed 15 December 2020]

295 HMRC, *Tackling the hidden economy* (8 December 2017): <https://www.gov.uk/government/consultations/tackling-the-hidden-economy-public-sector-licensing> [accessed 15 December 2020]

296 [Q 19](#) (Lydia Challen, Law Society of England & Wales)

HMRC's civil information powers which involve international requests are only a small proportion of the total.²⁹⁷

217. In the case of the promoters legislation, it was the broad scope of the legislation which caused concern that “although intended to capture only the hard core of 20 to 30 promoters, the way in which [the proposals] are drafted ... is quite broad and could cover an awful lot of advisers who are advising in the mainstream of the tax advisory market”²⁹⁸. We were also told that “you are introducing legislation that affects everybody for the purpose of dealing with a small minority.”²⁹⁹
218. We understand that it is not always possible to target tax measures precisely and that this is generally accepted but, as one of our witnesses put it in relation to tax checks, this is only justified “provided that the compliance burden on the compliant is outweighed by the benefit to compliant taxpayers”.³⁰⁰ The risk of broad, badly targeted legislation is that, as we concluded in our 2018 report, not only can it adversely affect compliant taxpayers, but it also leaves too much to the exercise of HMRC discretion;³⁰¹ this was criticism we heard about some of the measures discussed in this report.³⁰²
219. Our witnesses suggested that the perceived problems with these tax measures could have been dealt with in other ways which would have focussed action on the taxpayers the proposals were intended to impact, rather than the much larger number of taxpayers in the relevant sectors. For example, ICAS suggested that notification of uncertain tax treatment could be limited to companies receiving a high risk rating under HMRC's Business Risk Review process.³⁰³ Similarly, the Law Society of England & Wales felt that HMRC could use information already available to it to target evasion in the private hire vehicle, taxi and scrap metal trades.
220. **It seems wrong to legislate powers which operate in a scattergun way, burdening thousands with additional compliance obligations, depriving hundreds of safeguards or rendering compliant businesses vulnerable to sanctions, in order to address minority problems. Better ways should be found of targeting more directly those uncooperative taxpayers whose behaviour needs to change.**
221. **In line with the principles we set out in Chapter 2, tax legislation should be targeted on the taxpayers it is intended to affect. We recommend that consulting with stakeholders about how action can best be targeted is made a standard feature of all calls for evidence and consultations.**

297 See table in Chapter 4 above.

298 [Q 12](#) (Lydia Challen, Law Society of England & Wales)

299 [Q 19](#) (Lydia Challen, Law Society of England & Wales)

300 [Q 41](#) (Jason Piper, ACCA)

301 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242)

302 [Q 8](#) (Susan Cattell, ICAS), [Q 14](#) (Lydia Challen, Law Society of England & Wales), [Q 46](#) (Will Silsby, ATT) and [Q 50](#) (Jason Piper, ACCA and Tom Henderson, LITRG)

303 Written evidence from ICAS ([DFE0008](#))

Safeguards

222. In our 2018 report *The powers of HMRC: Treating taxpayers fairly*, we discussed the importance of adequate taxpayer safeguards.³⁰⁴ Our recommendations related to particular areas where we considered safeguards needed to be strengthened, particularly in relation to ensuring taxpayers had recourse to an independent review of HMRC’s actions. We commented:
- “HMRC’s internal governance procedures, however robust, cannot be infallible”.³⁰⁵
223. As a result, we recommended that where HMRC was given a new power, the exercise of that power should carry a right of appeal to a tax tribunal. The Government’s response said that, although a right of appeal was considered as part of the policy process for all new powers, there may be cases where it was not appropriate; for example, where it risked slowing down the process and thereby rendering the measure ineffective.³⁰⁶
224. In 2018, our concern was that, whilst HMRC continues to expand its powers, taxpayer safeguards were not keeping pace. In relation to the measures considered in this inquiry, our concern is that the safeguards taxpayers currently have are being reduced, given the shift away from independent scrutiny to self-policing. Under the promoters measures, we set out in Chapter 3 the concerns expressed by witnesses about the reliance being placed on internal HMRC governance to monitor how the new powers will be used, in particular given that action can be taken under certain of the provisions simply because HMRC ‘suspects’. The justification given for this is that safeguards delay HMRC in taking action against promoters.
225. In relation to Financial Institution Notices, the Government seems to be relying heavily on the aim of meeting a specific OECD target in relation to a relatively limited number of international requests for information. Where HMRC wishes to access taxpayer data held by a financial institution, the reassurance obtained from the independent scrutiny provided by the need to obtain tax tribunal approval (and, for the financial institution, its right of appeal where a notice has been issued) will be lost. Instead, HMRC will itself determine if the conditions are met, with internal processes the only protection against the risk of misuse.
226. **We are troubled by HMRC’s seeming increased reliance on internal processes as a means of governing the exercise of its powers . However rigorous the processes put in place, non-statutory internal processes are not, and cannot be, an adequate substitute for independent oversight.**
227. **HMRC cannot be infallible. Public confidence in the tax system, and those who administer it, requires there to be a proper balance of interest between individual and tax authority. That balance relies on independent scrutiny and oversight of HMRC.**

304 Economic Affairs Committee, *The powers of HMRC: treating taxpayers fairly* (4th Report, Session 2017–19, HL Paper 242) Chapter 5

305 *Ibid.*

306 HMRC, *The powers of HMRC: treating taxpayers fairly: Government response* (22 January 2019): <https://www.parliament.uk/globalassets/documents/lords-committees/economic-affairs/Govt-HMRC-Powers-report-22-Jan-2019-.pdf> [accessed 15 December 2020]

Outsourcing compliance

228. In our last report *Off-Payroll working: treating people fairly*³⁰⁷ we noted that HMRC had acknowledged that over a period of 20 years it had been unable to enforce compliance with the IR35 rules, and the effect of the off-payroll legislation was to shift HMRC's responsibility for compliance with those rules, first to public sector engagers, and then to private sector businesses using contractors. One of our witnesses said: "It seems quite wrong that HMRC is effectively delegating its enforcement role to business".³⁰⁸
229. We have noted two more examples in the course of this inquiry. The proposed tax checks on public sector licence renewals appear to be a response to HMRC's struggles to tackle the hidden economy effectively. Part of HMRC's role is to enforce the rules on those who try to evade them. However, tax checks will effectively outsource part of that responsibility to licensing authorities, who will have to ensure that applicants for renewal of licences demonstrate that they are registered for tax and reporting relevant income before they can be relicensed.
230. It was clear that our witnesses from the licensing authorities were not entirely comfortable with the role the tax checks proposal would thrust upon them. John Miley of NALEO told us: "I have a concern that we are being used as an HMRC resource",³⁰⁹ and added that "my honest opinion is that I would rather do without it".³¹⁰
231. Similarly, the proposals for notifying uncertain tax treatment effectively transfer to large businesses the responsibility for identifying (and drawing to HMRC's attention) applications of tax law which HMRC might want to challenge. That, again, is HMRC's responsibility as part of its compliance role.
232. We are concerned that this outsourcing of HMRC's responsibilities seems to be a developing trend. We had assumed that this might be due to resource issues within HMRC. However, when we asked the Financial Secretary about HMRC resourcing in the context of uncertain tax treatment, he told us: "The answer to the question whether this measure is driven by HMRC's resources is absolutely not... HMRC has been well-resourced for the purposes of managing its business".³¹¹ This was not, however, the perception of our witnesses.³¹²
233. If resources are not the issue, we want to understand what is. With tools provided by the internet and digital data bases it seems that HMRC has never before had so much access to information to assist in enforcing compliance. It also appears to be relatively straightforward to find promoters online.³¹³ The source of the problem is therefore not clear.
234. This issue is becoming particularly important as the Government clearly has ambitions to use conditionality more widely, not just in terms of extending it to other licensed trades but potentially to other situations where something

307 Economic Affairs Committee, *Off-Payroll working: treating people fairly* (1st Report, Session 2019–20, HL Paper 50)

308 *Ibid.*

309 [Q 25](#) (John Miley, NALEO)

310 [Q 24](#) (John Miley, NALEO)

311 [Q 116](#) (Financial Secretary to the Treasury)

312 [Q 9](#) (Susan Cattell, ICAS)

313 [Q 80](#) (George Turner, TaxWatch)

a person needs for their livelihood can be withheld until they can prove their tax status.³¹⁴ James Button of the Institute of Licensing, who is a solicitor, told us: “I have to have a practising certificate... it would no surprise me if at some stage in the future I had to tick a box and produce a note that I am registered with the taxman”.³¹⁵

235. **The trend towards outsourcing HMRC’s responsibilities seems to be happening without any public or parliamentary debate about whether this is an acceptable direction of travel. HMRC is funded to do tax compliance work, not so that it can outsource its responsibilities to licensing authorities, public sector engagers or private sector businesses who are understandably reluctant to take on that work.**
236. **We recommend that, for any future proposal involving outsourcing, the Government specifically explains why HMRC is not carrying out the function itself, and what the justification for outsourcing is.**

Principles for action

237. In Chapter 2, we set out the principles by which to judge proposals for new HMRC powers, or for the extension of existing powers, based on those set out in the Modernising Powers, Deterrents and Safeguards Review. These were a clear policy objective and justification, simplicity, targeting, proportionality, safeguards and sanctions. The evidence we have heard in our inquiry, and the themes that have emerged through it, have suggested HMRC may not always be adhering consistently to these principles.
238. **When considering the introduction or extension of powers, HMRC must have regard to core principles to guide their approach and ensure public and business confidence. We hope that, as it considers the draft Finance Bill and related legislative plans, HMRC refers back to such principles and applies them as a standard.**

314 [Q 44](#) (Will Silsby, ATT)

315 [Q 28](#) (James Button, Institute of Licensing)

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

A principled approach to powers

1. We believe the Government should have awaited the outcome of its own review into the operation of its powers and safeguards before further powers were proposed for HMRC. The outcome of its review should have been used to inform and frame the draft Finance Bill proposals. Evaluation of what has gone before must always be a useful means to determine the best way forward. (Paragraph 12)

Tackling promoters of mass-marketed tax avoidance schemes

2. We welcome the Government's continued focus on tackling promoters of tax avoidance schemes through the Finance Bill measures and the related calls for evidence. Aggressive tax avoidance is unfair on those taxpayers who follow the rules. However, it is critical that the Government takes effective action against the people who promote aggressive tax avoidance. (Paragraph 18)
3. Although the loan charge is outside the scope of this inquiry, the evidence we received in 2018 suggested that HMRC has spent considerable time and resources focusing on individuals who participated in disguised remuneration schemes, while some of those who promoted such schemes have continued to be able to profit from their activities. We question whether HMRC has struck the right balance between focusing on individuals who used these schemes and the promoters of such schemes. HMRC must prioritise taking effective action against promoters. (Paragraph 23)
4. We accept that HMRC has faced some significant challenges in applying the existing rules, given the steps taken by promoters to frustrate their efforts. We are, however, concerned that it is only now that HMRC is proposing changes we are told are needed to ensure existing rules apply effectively. Nevertheless, we welcome the action being taken by HMRC to rethink its approach to promoters in light of its experience. (Paragraph 24)
5. The evidence received in our 2018 inquiry concerning the loan charge showed how individuals can become involved in disguised remuneration schemes without being aware of their true nature—and the harm and distress, both financial and emotional, that then results where the scheme is challenged. We are troubled that these types of scheme continue to proliferate, and that many of those people unwittingly caught in these schemes are on lower incomes. The continued sale and marketing of disguised remuneration schemes, most recently to returning NHS workers earlier this year, shows the need for the Government to act more effectively, using the full range of measures at its disposal, if it is to be able to close these schemes down. (Paragraph 32)
6. As was the case with the loan charge, it seems that the involvement of some individuals in these schemes is at the instigation of their employer, and solely for their employer's benefit. The Government should prioritise action against such employers, to stop the growth in lower paid workers at risk of being targeted by scheme promoters. HMRC also needs to learn from the loan charge experience and do more to protect individual taxpayers, particularly those on lower incomes, from being unwittingly caught up in such schemes. (Paragraph 33)

7. We are disappointed that, notwithstanding the various powers HMRC has accumulated in recent years, a number of promoters—the so-called ‘hard core’—remain in business, despite HMRC knowing who these promoters are. Action against this remaining core of promoters must be a priority. (Paragraph 38)
8. We agree that HMRC needs to ensure that the new measures cannot be gamed by promoters trying to argue that they are not within scope. However, these new HMRC powers must also reflect the design principles established by the 2012 Powers Review and, in particular, need to be appropriately targeted at the few they are intended to affect. (Paragraph 45)
9. We recommend HMRC revisits the triggers for POTAS to minimise the risk of these rules affecting bona fide professional advisers. Specifically, we question whether DAC6 should be a trigger for a POTAS, particularly given the assurances HMRC appears to have given stakeholders that DAC6 would not feed into other areas of the UK tax code. (Paragraph 46)
10. Retrospective legislation should only be introduced in exceptional circumstances, and the case for doing so must be clearly made. Although we acknowledge our witnesses’ concerns about the proposed retrospective changes to the enablers rules, we consider that, in this case, retrospective action is justified; a robust response is important in demonstrating HMRC’s willingness to tackle promoters effectively. In taking any such action, HMRC must apply symmetry to taxpayers and promoters; neither should be pursued for actions before HMRC found they were illegitimate, but both should be held accountable for their actions after that point. (Paragraph 47)
11. Although the evidence we heard suggests the proposed measures to target promoters are worth pursuing, we are unconvinced that they will be sufficient to drive the hard core out of business. The Government should continue to look for new approaches to tackling promoters. (Paragraph 53)
12. The Government should keep the efficacy of measures under review, and not hesitate to respond swiftly if there is evidence that the hard core of promoters are continuing to frustrate HMRC’s ability to stop the marketing of tax avoidance schemes. (Paragraph 54)
13. In our 2018 report we recommended that new powers should be accompanied by a right of appeal against the exercise of the power and not just against the underlying tax liability. This is not the case in the draft Finance Bill clauses. Although we acknowledge that at some point a right to appeal may be available, this will generally only be available later, by which point the relevant person will have had to deal with the consequences of HMRC’s exercise of its new power, including being named as a promoter. Whilst we appreciate HMRC’s concerns about promoters abusing safeguards, we regret that the measures do not include anything more than HMRC discretion as the means of protecting mainstream advisers from being caught. (Paragraph 59)
14. ‘Naming and shaming’ is an important weapon in tackling the hard core of promoters; shining a light on their activities is key to ensuring HMRC’s warnings are effective. But it should only be used where clearly justified. The Government should revisit the safeguards in the draft Finance Bill to balance more effectively the importance of being able to name promoters against the risk of identifying the wrong people. (Paragraph 60)

15. Where possible, HMRC should pursue criminal action against promoters, including against those who have sold schemes in the past to which the loan charge applied. This could be a valuable deterrent, and we recommend that more publicity is given to these cases. (Paragraph 65)
16. Taxpayers need to have better information about schemes so that they can see through a promoter's sales pitch and recognise when they are being sold an aggressive tax avoidance scheme. A page on a website telling taxpayers how to identify a tax avoidance scheme is insufficient. HMRC must find ways to communicate directly with taxpayers; for example, there could be a single-page warning notice each year as part of its standard communications on self-assessment filing obligations. (Paragraph 73)
17. HMRC should be capable of planning a communications campaign to provide such warnings, without these warnings acting as a perverse incentive to take part in these schemes. It could look at what other agencies have done for guidance—for example, the Financial Conduct Authority's communications regarding unscrupulous pensions advisers. (Paragraph 74)
18. Although the call for evidence on tackling disguised remuneration schemes is welcome, it is disappointing that it has taken until now for the Government to seek external input on tackling disguised these schemes, given the high public profile of this issue in recent years. (Paragraph 77)
19. We recommend that the Government collaborates with relevant specialists to decide what further steps could be taken to prevent disguised remuneration schemes being used by employment intermediaries. A first step would be to ensure that no government or public sector body contracts with an intermediary operating a disguised remuneration scheme, and to publicise this requirement along with the protocols that public bodies are expected to follow. (Paragraph 78)
20. To be effective, the new measures depend on HMRC becoming aware of new schemes. We recommend that HMRC creates a dedicated tax avoidance reporting service which enables taxpayers and advisers to report schemes easily. HMRC should work with its communications team to ensure a high level of search engine optimisation for any online reporting service. Any information that helps close down a scheme or promoter should be highlighted by HMRC, with details anonymised. (Paragraph 82)
21. We welcome the Government's response to the call for evidence on raising standards in the tax advice market. However, in light of evidence we have heard, we are surprised that the Government has chosen to move straight to consultation on a single proposal (professional indemnity insurance). This seems inconsistent with the Government's declared approach to tax policy making, and it should reconsider this. (Paragraph 96)
22. We support greater protection for those currently using unregulated tax advisers, and recommend that the Government consults on options for how they might be regulated. We also recommend that HMRC works closely with the tax professional bodies on non-legislative action which can be taken in the interim to help taxpayers source reliable tax advice (such as a register of tax advisers) and to improve advisory material. HMRC should also consider what more it could do to support charities who provide tax advice. (Paragraph 98)

Civil information powers

23. The case for this removal of safeguards for taxpayers and financial institutions has not been made. It is wrong in principle and not justified by the small proportion of international information requests which require tribunal approval to obtain the information. The overwhelming majority of cases which go to the tax tribunal are domestic. It is disproportionate to deny UK taxpayers the tribunal safeguard for the sake of speeding up a small minority of cases involving international requests. (Paragraph 106)
24. The civil information powers proposals are poorly targeted, disproportionate in their effect on UK taxpayers and lacking necessary safeguards and rights of appeal. They remove safeguards for taxpayers and financial institutions which prevent arbitrary use of the information powers, and are not supported by the evidence. We regret that the Government did not take the opportunity following its 2018 consultation to consider alternatives to these measures before taking them to this stage. (Paragraph 121)
25. We recommend that:
 - The requirement for tribunal approval for a third-party information request to a financial institution should remain;
 - Financial institutions should have a right of appeal against any request they consider unduly onerous;
 - The Government should clarify the interaction between the use of Financial Information Notices for debt collection and the direct recovery of debt provisions, and ensure that the safeguards for Financial Information Notices relating to debt are no less stringent than those for direct recovery of debt;
 - HMRC should review the whole process for dealing with international information requests requiring tribunal approval, working with financial institutions, the tax tribunal and others, to find other means of streamlining the process; and
 - Given the lack of consultation, HMRC should reconsider the implementation date. In doing so, they should undertake further consultation and communication to ensure that financial institutions are fully appraised of the implications of the measures and have sufficient time to prepare for them. Any revised implementation date should be determined in light of this consultation. (Paragraph 122)

Notifying uncertain tax treatment

26. We welcome the Government's delay to the start date for the requirement to notify uncertain tax treatment and its commitment to engage with stakeholders to get the policy right. However, the Government should learn the lesson from this episode: until a measure complies with the policy principles set out above in Chapter 2, it should not be proposed. (Paragraph 127)
27. We regret that the Government chose to consult on its uncertain tax treatment proposals at Stage 2. A Stage 1 consultation would have much more appropriate. (Paragraph 135)
28. When the Government consults on new proposals, it should clearly state its case and the evidence for it. This is common sense and is what the

Government's Tax Consultation Framework requires. It is clear from our evidence that these requirements were not met by this consultation. We recommend that the Government should issue a new Stage 1 consultation, so it can work with business and representative bodies to develop a more targeted, proportionate measure than that now proposed. (Paragraph 136)

29. While it is positive that HMRC has established a constructive relationship with most large businesses, it seems unnecessary and counter-productive to make a requirement to notify uncertain treatment apply to all, regardless of their risk status. We recommend that this new measure should be targeted only at the minority of large businesses that are of concern to HMRC. (Paragraph 141)
30. We are concerned that HMRC did not recognise the likely difficulty of applying the test for uncertain tax treatments when the policy was being formulated for consultation. Tax obligations should be based on objective criteria that can be easily understood, and a business should not have to second guess HMRC to know if it is subject to a tax obligation. We therefore welcome the Government's acceptance that it got the test for uncertain tax treatments wrong. (Paragraph 148)
31. Tax is a business-wide matter and so liability for failure to notify should sit with the business alone, and not individual officers. (Paragraph 152)
32. HMRC's ability to create a failure to notify simply by challenging the position a taxpayer has taken in its tax return creates a 'Catch-22' for businesses. The Government needs to remedy this: a taxpayer should not be at risk of a penalty because of a mistaken or overzealous inspector raising an enquiry without merit. (Paragraph 153)
33. Businesses could face significant costs in seeking to comply with the proposed measure on uncertain tax treatment. We are also concerned that this could lead to an overall negative yield for the Exchequer, to the extent that those additional costs are themselves tax deductible. (Paragraph 158)
34. Any measure which risks costing taxpayers more in compliance than the revenue it generates is not good tax policy. Businesses should also not be asked to incur costs in providing information to HMRC which it accepts is already being provided in most cases. We welcome the Government's commitment to look into the costs to business of complying with this measure. (Paragraph 159)
35. The relationship between a business and its customer compliance manager appears to be key to HMRC's success in managing large business tax risk. We are concerned to hear that this may be under strain. We recommend that the Government identifies what steps can be taken to support existing customer compliance managers and to expand the number of companies benefiting from a customer compliance manager relationship. If this proposal goes ahead, the Government should commit to ensuring that every business affected has a customer compliance manager. (Paragraph 162)

New tax checks on licence renewal applications

36. Before 400,000 businesses are required to undergo a tax check, we would have expected HMRC to publish an analysis of tax compliance in the relevant sectors to support the decision to apply conditionality first to them. In line with the policy principles set out earlier in our report, more information

is needed to support the application of tax checks in these circumstances. (Paragraph 174)

37. Therefore, before the tax check legislation is introduced in Parliament, the Government should publish an analysis of compliance in the sectors affected, to demonstrate that the problem of hidden economy activity is such that the tax check proposed is a proportionate response. (Paragraph 175)
38. New proposals must be clear and comprehensive. Once there has been a consultation, major changes to proposals should not be made without explanation. We are concerned about the possibility of ‘mission creep’ in cases such as the tax check proposals. HMRC must communicate clearly with licence holders about the new tax check policy before it is introduced in 2022, so that any misunderstandings are dispelled. (Paragraph 185)
39. We recommend that the tax check is limited to confirming that the applicant is registered for tax and has a unique tax reference (UTR). This is the basis on which consultation has been conducted, and we are not persuaded that the case for going further has been made. (Paragraph 186)
40. Paragraph 5(1)(b) of the draft Schedule in the legislation should be amended to define more tightly the information which can be required of applicants for licence renewals. (Paragraph 189)
41. Conditionality is an unproven policy. It remains to be seen whether it will achieve the Government’s objectives for it. The Government should proceed cautiously. We recommend:
 - Before conditionality is applied to other sectors, the effectiveness of the legislation in the private hire vehicle, taxi and scrap metal sectors should be evaluated. This evaluation should look separately at the educational and information element relating to applicants for new licences, and at the impact of the tax checks, in particular whether it has led to unintended consequences, such as an increase in unlicensed operations;
 - The application of conditionality to other sectors should be justified by reference to a specific problem in the relevant sector; and
 - Before introducing tax checks, HMRC should work with stakeholders to communicate clearly to applicants for licences what the tax check is for and what it consists of, bearing in mind the diversity of the sector and the need to cater for those who cannot be reached using digital methods and for whom English is not their first language. (Paragraph 194)

Cross-cutting themes

42. When proposing new or extended powers for HMRC, the Government should specifically explain why existing powers are insufficient to achieve the policy objective. This was done in the case of the promoters legislation where the problems with the current legislation were explored in the consultative document, along with the impact this was having on HMRC’s ability to defeat promoters’ activities in a timely way. (Paragraph 198)
43. We also recommend that the Government adopts a standard practice of providing detailed analysis to justify any new proposal conferring new or extended powers on HMRC. (Paragraph 199)

44. We consider that non-legislative solutions, whether operating independently or in tandem with legislation, can usefully support the Government's policy aims in relation to tax, and so recommend that they should be considered as an important element in the development of policy solutions. (Paragraph 204)
45. Consultation plays an important role in getting tax policy and its implementation right. Views of stakeholders help ensure that Government objectives are met in a proportionate way; they look at proposals through a different lens to that employed by HMRC. Taking account of those views—and being seen to take account of them—assists in building confidence in the tax system. (Paragraph 209)
46. As we said in our 2011 report, the Government should abide by its own rules: it is disappointing to have to note, once again, that in relation to certain of the measures we consider in this report, it clearly has not. (Paragraph 210)
47. Starting a consultation at the right stage is important to ensure that 'start/stops' do not happen: it does not inspire confidence in the Government's own policy making process if it publicly commits to a measure which it then has to admit was wrong. (Paragraph 211)
48. Good tax policy needs to be evidence-based and not just with a theoretical justification or rationale but with analysis, facts and figures. We are concerned that in some cases policy and legislative proposals are being advanced without providing the evidence to back them up or with a flawed analysis that takes account of only part of the available evidence leading to the wrong solution. This should not happen even in consultation, let alone in legislative measures being brought before Parliament. (Paragraph 215)
49. It seems wrong to legislate powers which operate in a scattergun way, burdening thousands with additional compliance obligations, depriving hundreds of safeguards or rendering compliant businesses vulnerable to sanctions, in order to address minority problems. Better ways should be found of targeting more directly those uncooperative taxpayers whose behaviour needs to change. (Paragraph 220)
50. In line with the principles we set out in Chapter 2, tax legislation should be targeted on the taxpayers it is intended to affect. We recommend that consulting with stakeholders about how action can best be targeted is made a standard feature of all calls for evidence and consultations. (Paragraph 221)
51. We are troubled by HMRC's seeming increased reliance on internal processes as a means of governing the exercise of its powers. However rigorous the processes put in place, non-statutory internal processes are not, and cannot be, an adequate substitute for independent oversight. (Paragraph 226)
52. HMRC cannot be infallible. Public confidence in the tax system, and those who administer it, requires there to be a proper balance of interest between individual and tax authority. That balance relies on independent scrutiny and oversight of HMRC. (Paragraph 227)
53. The trend towards outsourcing HMRC's responsibilities seems to be happening without any public or parliamentary debate about whether this is an acceptable direction of travel. HMRC is funded to do tax compliance work, not so that it can outsource its responsibilities to licensing authorities, public sector engagers or private sector businesses who are understandably reluctant to take on that work. (Paragraph 235)

54. We recommend that, for any future proposal involving outsourcing, the Government specifically explains why HMRC is not carrying out the function itself, and what the justification for outsourcing is. (Paragraph 236)
55. When considering the introduction or extension of powers, HMRC must have regard to core principles to guide their approach and ensure public and business confidence. We hope that, as it considers the draft Finance Bill and related legislative plans, HMRC refers back to such principles and applies them as a standard. (Paragraph 238)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members of the Finance Bill Sub-Committee

Baroness Bowles of Berkhamsted
 Lord Bridges of Headley (Chair)
 Lord Butler of Brockwell
 Viscount Chandos
 Lord Forsyth of Drumlean
 Baroness Kramer
 Lord Monks
 Lord Rowe-Beedoe

Declarations of interests

Baroness Bowles of Berkhamsted
Director, London Stock Exchange Plc

Lord Bridges of Headley (Chair)
Paid Adviser, Banco Santander
Shareholder, Banco Santander
Paid member, KPMG's UK Advisory Council

Lord Butler of Brockwell
No relevant interests

Viscount Chandos
Director, Ambie Media Limited
Chairman, Credit Services Association
Vice Chair, London Academy of Music and Dramatic Arts (LAMADA)
Chairman, The Theseus Agency Limited
Chairman, Thomson Foundation

Lord Forsyth of Drumlean
Chairman and Non-executive Director, Secure Trust Bank plc
Director, Denholm Enterprise Ltd (investment company whose principal investments are shares in J&J Denholm and Denholm Oilfield Services)
Non-executive Director, Denholm Logistics Group Limited
Non-executive Director, J&J Denholm Ltd (parent company of Denholm Group which has four divisions: shipping, logistics, seafoods and industrial services)

Baroness Kramer
No relevant interests

Lord Monks
No relevant interests

Lord Rowe-Beedoe
Chairman, Board of Advisors-Clarke Capital Partners
Senior Advisor, Orthios Group (Holdings) Ltd

Members of the Economic Affairs Committee

The Economic Affairs Committee agreed this report by correspondence.

Baroness Bowles of Berkhamsted
Director, London Stock Exchange Plc

Lord Burns
No relevant interests

Viscount Chandos

Director, Ambie Media Limited
Chairman, Credit Services Association
Vice Chair, London Academy of Music and Dramatic Arts (LAMADA)
Chairman, The Theseus Agency Limited
Chairman, Thomson Foundation

Lord Cunningham of Felling

No relevant interests

Lord Forsyth of Drumlean (Chair)

Chairman and Non-executive Director, Secure Trust Bank plc
Director, Denholm Enterprise Ltd (investment company whose principal investments are shares in J&J Denholm and Denholm Oilfield Services)
Non-executive Director, Denholm Logistics Group Limited
Non-executive Director, J&J Denholm Ltd (parent company of Denholm Group which has four divisions: shipping, logistics, seafoods and industrial services)

Lord Fox

No relevant interests

Baroness Harding of Winscombe

No relevant interests

Baroness Kingsmill

No relevant interests

Lord Livingstone of Parkhead

No relevant interests

Lord Monks

No relevant interests

Lord Skidelsky

No relevant interests

Lord Stern of Brentford

Climate Advisor, The Royal Bank of Scotland/NatWest Group
Director and Non-executive Chair, SYSTEMIQ Ltd (company's purpose is to catalyse good disruptions in critical economic systems)

Lord Tugendhat

No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Specialist Advisers**Sarah Squires**

Member of the Tax Law Committee of the Law Society of England and Wales
Consultant on tax issues to the British Property Federation

Robina Dyal

No relevant interests

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at: <https://committees.parliament.uk/committee/230/finance-bill-subcommittee/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

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

Oral evidence in chronological order

- ** Richard Wild, Head of Tax Technical Team, Chartered Institute of Taxation (CIOT) [QQ 1–10](#)
- * Frank Haskew, Head of Tax, Institute of Chartered Accountants in England and Wales (ICAEW)
- ** Susan Cattell, Head of Tax Technical Policy, Institute of Chartered Accountants of Scotland (ICAS)
- * Fiona Fernie, Tax Investigations Practitioners Group (TIGF) [QQ 11–22](#)
- * Lydia Challen, Chair of Tax Committee, The Law Society
- ** Yvonne Evans, The Law Society of Scotland
- ** James Button, President, Institute of Licensing [QQ 23–30](#)
- * John Miley, National Chair, National Association of Licensing and Enforcement Officers (NALEO)
- * Antonia Grey, Public Affairs and Communications Manager, British Metals Recycling Association (BMRA) [QQ 31–45](#)
- * Steve Wright, Chair, Licensed Private Hire Car Association (LPCHA)
- ** Steve McNamara, General Secretary, Licensed Taxi Drivers Association (LTDA)
- * Jason Piper, Head of Tax and Business Law, Association of Chartered Certified Accountants (ACCA) [QQ 46–57](#)
- * Will Silsby, Technical Officer, Association of Taxation Technicians (ATT)
- ** Tom Henderson, Technical Officer, Low Incomes Tax Reform Group (LITRG)
- ** Joanne Green, Tax Accountant, Building Societies Association (BSA) [QQ 58–67](#)
- ** Sarah Wulff-Cochrane, Principal of Taxation Policy, UK Finance

- * Judge Greg Sinfield, Chamber President, First-tier Tribunal (Tax Chamber) [QQ 68–86](#)
- ** Malcolm Gammie QC, Tax Law Review Committee, Institute for Fiscal Studies (IFS)
- ** George Turner, Executive Director, TaxWatch
- ** Mary Aiston, Director, Counter-Avoidance Directorate, Her Majesty’s Revenue & Customs (HMRC) [QQ 87–99](#)
- ** Jamie Horton, Assistant Director, Hidden Economy, Her Majesty’s Revenue & Customs (HMRC)
- ** Paul Riley, Director of Tax Administration, Her Majesty’s Revenue & Customs (HMRC)
- ** John Shuker, Deputy Director, International Collaboration and Transparency, Her Majesty’s Revenue & Customs (HMRC)
- ** Angela Walker, Deputy Director, Promoters and Upstream Policy, Her Majesty’s Revenue & Customs (HMRC)
- * Rt Hon Jesse Norman Member of Parliament (MP), Financial Secretary to the Treasury (FST), Her Majesty’s (HM) Government [QQ 100–122](#)

Alphabetical list of witnesses

- Ed Adjei, Senior Software Developer, CV Library [DFE0025](#)
- Anonymous 1 [DFE0009](#)
- Anonymous 2 [DFE0032](#)
- Anonymous 3 [DFE0033](#)
- * Association of Chartered Certified Accountants (QQ 46–57)
- * Association of Taxation Technicians (QQ 46–57)
- * British Metals Recycling Association (QQ 31–45)
- ** Building Societies Association (QQ 58–67) [DFE0006](#)
- Mrs Caroline Clark [DFE0010](#)
- Confederation of British Industry [DFE0031](#)
- Keith Gordon, Barrister, Temple Tax Chambers [DFE0005](#)
- ** Chartered Institute of Taxation (QQ 1–10) [DFE0017](#)
- * Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, Her Majesty’s Government (QQ 100–122)
- ** Her Majesty’s Revenue & Customs (QQ 87–99) [DFE0035](#)
- ** Institute for Fiscal Studies (QQ 68–86)
- ** Institute of Chartered Accountants of Scotland (QQ 1–10) [DFE0008](#)

**	Institute of Chartered Accountants in England and Wales (QQ 1–10)	<u>DFE0022</u>
**	Institute of Licencing (QQ 23–30)	<u>DFE0024</u>
	The Investing and Saving Alliance	<u>DFE0006</u>
**	The Law Society of England and Wales (QQ 11–22)	<u>DFE0019</u>
**	The Law Society of Scotland (QQ 11–22)	<u>DFE0025</u>
*	Licenced Private Hire Car Association (QQ 31–45)	
**	Licenced Taxi Drivers Association (QQ 31–45)	<u>DFE0011</u>
	Loan Charge Action Group	<u>DFE0028</u>
	Loan Charge All-Party Parliamentary Group	<u>DFE0029</u>
**	The Low Incomes Tax Reform Group (QQ 46–57)	<u>DFE0003</u>
	Mr E. Martin	<u>DFE0012</u>
*	National Association of Licensing and Enforcement Officers (QQ 23–30)	
*	Judge Greg Sinfield, Chamber President, First-tier Tribunal (Tax Chamber) (QQ 68–86)	
**	TaxWatch (QQ 68–86)	<u>DFE0013</u>
*	Tax Investigations Practitioners Group (QQ 11–22)	
**	Tax Law Review Committee	<u>DFE0016</u>
**	UK Finance (QQ 58–67)	<u>DFE0006</u>

APPENDIX 3: CALL FOR EVIDENCE

The Finance Bill Sub-Committee, chaired by Lord Bridges of Headley, is appointed annually by the Economic Affairs Committee to consider the draft Finance Bill. The Sub-Committee focuses on issues of tax administration, clarification and simplification rather than on rates or incidence of tax.

The draft Finance Bill was published on 21 July 2020. The Sub-Committee's inquiry intends to focus on three areas of the Bill in particular:

- New proposals for tackling promoters and enablers of tax avoidance schemes;
- New tax checks on licence renewal applications; and
- Amendments to HMRC's civil information powers.

The Sub-Committee is also interested to hear views on the Government's proposals on new notification requirements for uncertain tax treatments, and on the use of retrospective provisions in other areas of the draft Bill.

The Sub-Committee invites interested individuals and organisations to submit written evidence to this inquiry.

Written submissions are requested by 7 October 2020. After it has concluded its inquiry the Sub-Committee will make recommendations in a report to the House of Lords.

Areas of interest

The Sub-Committee welcomes views on any of the following questions relating to the areas of focus. In relation to the new proposals for tackling promoters, the Sub-Committee would welcome comments on the related calls for evidence issued by HM Revenue & Customs on raising standards in the tax advice market and on tackling disguised remuneration schemes, as well as the draft legislation itself and related consultation document.

The Sub-Committee is interested to know about the real-life experiences of individuals and organisations, as well as more general responses. There is no obligation to answer every question.

New proposals for tackling promoters and enablers of tax avoidance schemes

1. How effective are the existing powers of HMRC in tackling promoters and enablers of tax avoidance schemes?
2. What has been your experience of the Promoters of Tax Avoidance Schemes (POTAS) rules and the enablers rules in practice?
3. Are HMRC's communications likely to be effective in informing potential scheme users about schemes, and so deter them from participating?
4. How effective will the proposed measures be against those who promote aggressive tax avoidance schemes, and in informing and deterring potential scheme users? What else could HMRC be doing in this area?
5. Are the safeguards being proposed sufficient to ensure an appropriate balance is struck between HMRC and taxpayer?

New tax checks on licence renewal applications

6. Are the proposals for tax checks on licence renewal applications fair and proportionate? How effective is the legislation likely to be, and is any amendment needed?
7. What is your view of the principle of conditionality and its use in the tax system?
8. How do you view the Government's stated intention to extend conditionality to Scotland and Northern Ireland, as well as to other trades?
9. Could the problems this measure is designed to address have been tackled effectively by other means? If so, what are they?

Amendments to HMRC's civil information powers

10. What is your view of the removal of the requirement to obtain tax tribunal approval before issuing a Financial Institution Notice? Are the safeguards promised instead adequate and, if not, what more should be done?
11. Is the scope of the new power in terms of the information to be reported to HMRC appropriate and sufficiently clear?
12. How can the need for adequate taxpayer safeguards and timely international exchange of information be balanced? What steps should be taken to ensure that taxpayer safeguards are not treated as dispensable when they make it more difficult to meet other obligations?

Other measures of interest

The Sub-Committee is also interested in the proposed introduction of new requirements for certain businesses to notify uncertain tax treatments, where the business considers that HMRC may have a different view of the tax treatment to its own. We welcome general views on this proposal.

In addition, the Government proposes to make certain technical amendments to the corporate interest restriction retrospective to 2017. The Sub-Committee is interested in views on the impact and appropriateness of proposed retrospective measures in the Finance Bill, in relation to uncertainty within the tax system.