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Economic Affairs Committee

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Basis Period Reform and Uncertain Tax Treatments

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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 2021–22”.

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<u>The Viscount Chandos</u>	<u>Baroness Kramer</u>
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Declaration of interests

See Appendix 1.

A full list of Members’ interests can be found in the Register of Lords’ Interests:

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Evidence is published online at <https://committees.parliament.uk/work/1491/draft-finance-bill-202122/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

This year our inquiry covered two measures provided for in the Finance (No. 2) Bill 2021–22. The first of these measures is the reform of the basis period rules as they apply to self-employed individuals and partnerships, and the second is a new requirement on large businesses to notify HMRC of an uncertain tax treatment. Although they are generally standalone in their objectives, they both concern matters of tax compliance and the overall tax administration framework.

In respect of basis period reform, our first observation is that the consultation process was flawed and the proposals were published in haste.

While we do not consider that a compelling case has been made for basis period reform either as a simplification or as an essential prerequisite for introducing Making Tax Digital (MTD) for Income Tax, we do not recommend that it should be abandoned now. We welcome the Government's recognition that further work needs to be done on how the adverse effects of basis period reform impacts on those businesses which cannot, or cannot sensibly, align their accounting periods with the tax year. When this work is completed, but before final decisions are reached about the way forward, we recommend a reassessment of the additional compliance costs which businesses in this position will bear as a result of the reform.

More broadly, we have questioned the wisdom of introducing both basis period reform and Making Tax Digital at a time when many businesses are recovering from the economic impact of Covid. We recommend that, for those businesses which do not have a 31 March–5 April year end, Making Tax Digital should be deferred until at least 2025–26.

In respect of the requirement on large businesses to notify HMRC of uncertain tax treatments, we previously considered this measure when it was first proposed as part of our inquiry into the Finance Bill 2021. We are concerned that the evidence we heard this year repeated many of the criticisms and concerns we heard in that inquiry. We believe that the case for the reform has still not been made but, given that the Government is determined to press ahead with this measure, we set out a number of ways in which the measure itself might be improved, and its implementation made as smooth as possible.

First, we believe that all businesses affected by this measure must be supported appropriately by HMRC. In particular, all such businesses should have access to a customer compliance manager within HMRC with whom they can discuss uncertainties as they arise.

Secondly, with businesses required to notify HMRC when they take a view on the law that differs from HMRC's 'known view', the Government must ensure that HMRC has sufficient resources to ensure its published guidance is updated on an ongoing basis.

Finally, although we welcome the Government's decision to include only two tests of uncertainty in the legislation, we note that it may in the future add a third test. We recommend that, before any third test is included, an evidence-based evaluation of the measure should be carried out and that, if such an evaluation shows that the requirement is not delivering the benefits that HMRC expects, then the notification requirement in its entirety should be repealed.

During the course of this inquiry, our analysis has identified common themes applicable to both proposals discussed in this report, some of which have also arisen in previous reports by the Sub-Committee.

In particular, we note that in relation to both measures, the Government has not followed the recommended process for consultation in developing tax policy. This has led to a “start—stop” approach to policy which risks alienating the people who will be impacted by the changes and diminishing the reputation of HMRC.

We therefore recommend that in future all consultations involving a significant reform of the tax system should begin at ‘Stage 1’, which requires the Government to set out its policy objectives and ask for feedback on options for achieving those objectives. We invite the Government to make a renewed commitment to that effect.

Furthermore, we are concerned that the scale of the impact of new proposals on businesses, especially small businesses, does not seem to be well understood by HMRC.

Finally, we are troubled by the evidence we heard about the current service levels within HMRC, and anticipate that the additional demands on HMRC arising from the reforms discussed in this report will only serve to exacerbate the situation. We therefore recommend that the Government commission an independent report into HMRC customer service levels and capacity to implement change.

Basis Period Reform and Uncertain Tax Treatments

CHAPTER 1: INTRODUCTION

Background

1. The Finance Bill Sub-Committee is appointed by the Economic Affairs Committee to consider technical issues of tax administration, clarification and simplification arising from the draft Finance Bill. In recognition of the House of Commons' financial privileges, the Sub-Committee does not inquire into rates or incidence of tax.
2. This year our inquiry covered two measures provided for in the draft Finance Bill 2021–2022, published on 20 July 2021.¹ The measures are:
 - Reform of the basis period rules as they apply to self-employed individuals and partnerships, and
 - A new requirement on large businesses to notify HMRC of an uncertain tax treatment.
3. Although the Government announced in July 2021 that basis period reform would take effect from 6 April 2022, it subsequently announced that the measure will be deferred until 6 April 2023.² Basis period reform is included in the Finance (No. 2) Bill 2021–22.
4. The other measure—the proposal for large businesses to notify uncertain tax treatment—was originally announced at spring Budget 2020 and intended to be enacted as part of Finance Act 2021 but was delayed for further consultation. The original proposals were considered previously by the Sub-Committee as part of its inquiry into Finance Bill 2021.³ The reform is now being taken forward in the Finance (No. 2) Bill 2021–22.
5. Although these measures are generally standalone in their objectives, they both concern matters of tax compliance and the overall tax administration framework. In particular, basis period reform is linked to the Government's plans for modernising the tax administration framework.⁴
6. The Economic Affairs Committee usually seeks to publish the report prepared by the Finance Bill Sub-Committee shortly before the Budget and publication of the Finance Bill itself. However, this year, the timing of the Budget meant that the inquiry was still ongoing when the Government published the Finance (No. 2) Bill 2021–22 on 4 November 2021. The Bill

1 HMRC & HM Treasury, 'Finance Bill 2021–22': <https://www.gov.uk/government/collections/finance-bill-2021-22> [accessed 7 December 2021]

2 HC Deb, 23 September 2021, [Col 17WS](#)

3 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198)

4 Basis period reform was referenced in: HMRC, *Call for evidence: the tax administration framework: supporting a 21st century tax system* (updated 30 November 2021): <https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system> [accessed 7 December 2021]

received its Second Reading in the House of Commons on 16 November 2021.

7. As in previous years, we took written and oral evidence from business organisations, tax professionals and individuals and heard evidence from HMRC officials. We thank all those who provided written and oral evidence. We would also like to thank our two specialist advisers, Robina Dyall and Sarah Squires, for their invaluable advice, insight, support and assistance throughout our inquiry.
8. The Sub-Committee's findings on basis period reform are in Chapter two and its findings on notification of uncertain tax treatment are in Chapter three. We discuss common themes between the two measures in Chapter four.

CHAPTER 2: BASIS PERIOD REFORM

9. In July 2021 the Government issued a consultation document “Basis Period Reform—Consultation” proposing a reform of the basis period rules.⁵ This was accompanied by draft Finance Bill legislation. The change was due to take effect with a transitional year in 2022–23 so that the new rules were in place when Making Tax Digital (MTD) for income tax was introduced in 2023–24.⁶ This timetable was subsequently delayed by one year to 2023–24 and 2024–2025 respectively.

What is a basis period and whom does it affect?

10. A basis period is the period which is used to determine the amount of income on which income tax is payable by self-employed people, including those who trade or practice in partnerships. At present that period is the accounting period ending in the tax year. For example, a sole trader who draws up their end of year accounts for the year ending 30 June 2021 is charged tax for tax year 2021–22 (which ends on 5 April 2022) on the profits of that accounting period. Special rules apply when a business begins and ends or changes its accounting period. Box 1 illustrates how the existing rules work when a business begins.

Box 1: Example to show how basis periods work in the early years of a business

A sole trader starts up in business in July 2017 and makes up accounts to 30 June 2018:

- (1) For the tax year 2017–18, tax is based on the profits arising between 1 July 2017 and 5 April 2018 (the end of the tax year);
- (2) For the tax year 2018–19, tax is based on the profits of the accounting period from 1 July 2017 to 30 June 2018 (as the sole trader’s first accounting period which ends during the 2018–19 tax year);
- (3) For the tax year 2019–2020, tax is based on the profits of the accounting period from 1 July 2018 to 30 June 2019 (the sole trader’s own accounting period which ends in the 2019–20 tax year).

This produces ‘overlap profits’ as the profits of the first nine months of trading are used to calculate tax for both 2017–18 and 2018–19. This is not necessarily disadvantageous for the business. For example, if profits are rising, tax in 2018–2019 will be based on an accounting period where they were lower, giving new businesses a potential cash-flow benefit.

11. Special rules apply at the end of a business to give ‘overlap relief’ for these overlap profits against profits of the final accounting period. However, the Basis Period Reform Consultation document said that owing to the time lag between the start-up and closure of many businesses and the complexity of the rules, most eligible businesses were not claiming the relief when they should (paragraph 2.9).⁷

5 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

6 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

7 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

The Finance Bill proposal

12. The Finance Bill proposes to change the current rules so that tax is instead based on profits arising in the tax year. There would no longer be any need for the special rules which apply at the beginning and end of a business. For businesses that already draw up their accounts to 5 April, the new rule will have no effect. Where businesses make up their accounts to any date between 31 March and 4 April the profits of that accounting period would be treated as the profits of the relevant tax year (“equivalence”). The consultation document suggests that only seven per cent of sole traders and 33 per cent of partners do not draw up their accounts to 31 March or 5 April (paragraph 1.2). The Government estimate that the number of taxpayers in this position is around 528,000.⁸

What consultation has there been?

13. The Office of Tax Simplification (OTS) recommended simplifying basis period rules in a report in 2014 in which it was attracted to changing how overlap relief worked but did not make a specific proposal.⁹
14. The Government issued a consultation on simplifying tax for unincorporated business in 2016 suggesting a number of changes to business taxation.¹⁰ This included a proposal to change the basis period rules to follow accounting periods, under which tax liability for a tax year would be reached by adding together the profits of all accounting periods ending in that tax year. The consultation considered but did not recommend the proposal for basis period reform which is now being pursued.
15. A response document was issued in 2017,¹¹ and said that the Government would give further consideration to issues raised in the consultation, such as tax avoidance risks and the treatment of partnerships. However, the issue of basis period reform was not taken forward until this year.
16. A call for evidence which was issued at the time of the Spring Budget in 2021 (“The tax administration framework: Supporting a 21st century tax system”)¹² mentioned basis period reform as an example of “a simplification opportunity” but the publication of the consultation document on Basis Period Reform¹³ in July 2021 still seems to have taken the tax professional bodies, including the OTS, by surprise. Bill Dodwell, Tax Director, OTS told us: “This is something that was sprung on everybody by HMRC, with very little notice and a very short time indeed for any form of consultation”.¹⁴

8 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

9 Office of Tax Simplification, *Review of Partnerships: interim report* (January 2014): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/274278/PU1619_OTSPartnerships_Interim_report.pdf [accessed 7 December 2021]

10 HMRC, *Consultation Outcome—Business Income Tax: Simplifying tax for unincorporated businesses* (updated 31 January 2017): <https://www.gov.uk/government/consultations/business-income-tax-simplifying-tax-for-unincorporated-businesses> [accessed 7 December 2021]

11 HMRC, *Consultation Outcome—Business Income Tax: Simplifying tax for unincorporated businesses* (updated 31 January 2017): <https://www.gov.uk/government/consultations/business-income-tax-simplifying-tax-for-unincorporated-businesses> [accessed 7 December 2021]

12 HMRC, *Call for evidence: the tax administration framework: supporting a 21st century tax system* (updated 30 November 2021): <https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system> [accessed 7 December 2021]

13 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

14 [Q 30](#) (Bill Dodwell)

Sharron West, Technical Officer, Low Incomes Tax Reform Group (LITRG) said that the short consultation “put pressure on resources” and “we could not respond in as much detail as we would have liked to have done”.¹⁵ Chartered Accountants Ireland (CAI) noted that the consultation was “poorly timed” by coinciding with the summer break. The CAI also commented that the process was “both a second and third stage consultation wrapped up together” and added that “in effect the Government’s proposals arrived almost fully formed for stakeholders to comment on”.¹⁶ The Taxation Committee of the London Society of Chartered Accountants (LSCA) said that the “consultation appeared to be not so much about whether the reforms should be implemented in the first place, but rather about how they should be implemented”. It also expressed concern that a “shortened consultation period allowed for what in reality would be a major change with significant complexities”.¹⁷ Richard Wild said that his organisation, the Chartered Institute of Taxation (CIOT), had “struggled to digest all the consequences of the proposal in that short period of time”.¹⁸

17. CAI added: “The consultation’s summary of impacts was also not fully completed. When a consultation is at draft legislation stage a fully completed summary of impacts should accompany this.”¹⁹
18. **We consider that the consultation on basis period reform was flawed. In particular, it remains unclear why after four years since the original consultation the new and different basis period reform proposals were published in haste.**

Has the case for change been made?

19. The consultation document placed basis period reform in the context of the roll-out of MTD and the Government’s ten-year strategy for the administration framework.²⁰ A call for evidence published in March 2021 mentioned basis period reform as an “example of a simplification opportunity”.²¹ Basis period reform might therefore be expected to be followed by further changes as part of the Government’s modernisation programme.
20. LSCA said that basis period reform was “by no means a necessary element” of the Government’s ten-year strategy and indeed the reform “could be considered counter-productive” insofar as the aim of the strategy was to provide a better experience for individuals and businesses.²² Susan Cattell, Head of Tax Technical Policy at the Institute of Chartered Accountants of Scotland (ICAS), said that if the Government did not proceed with full basis period reform a “partial” reform remained essential. The proposal to treat profits of accounting periods ending between 31 March and 4 April as profits of the tax year (“equivalence”) was “particularly important” for property businesses.²³

15 [Q 15](#) (Sharron West)

16 Written evidence from CAI ([DFF0006](#))

17 Written evidence from LSCA ([DFF0015](#))

18 [Q 15](#) (Richard Wild)

19 Written evidence from CAI ([DFF0006](#))

20 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

21 HMRC, *Call for evidence: the tax administration framework: supporting a 21st century tax system* (updated 30 November 2021): <https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system> [accessed 7 December 2021]

22 Written evidence from LSCA ([DFF0015](#))

23 [Q 8](#) (Susan Cattell)

21. Professional bodies that support small businesses or unrepresented taxpayers told us that they would find the new basis period rules easier to understand.²⁴ The LITRG commented that one effect of the reform would be to encourage new businesses to choose either 31 March or 5 April as their accounting date and that “this will help those who are newly self-employed to better understand their tax affairs from the outset”.²⁵ It acknowledged that the changes “may increase complexity for some larger (likely represented) businesses, or those who need an alternative accounting date for commercial reasons”.²⁶ The Association of Taxation Technicians (ATT) on the other hand noted that the current rules are “familiar to many” and that “once a business is established they are fairly straightforward and logical to apply in practice” but added that “we appreciate that applying the current rules may be more complex for the unrepresented taxpayer”.²⁷
22. Nonetheless, the Law Society of England and Wales (LSEW) said that “The practical consequences of the reforms ... imply significant added complexity rather than useful simplification.”²⁸ Richard Wild of CIOT agreed: “We do not see this as a real simplification. It seems to us to trade one set of complexities that arise on fairly one-off occasions for those that occur on an ongoing basis year in and year out.”²⁹ Bill Dodwell of OTS summarised his view that: “The disadvantages of the plan outweigh any of the possible advantages, generally.”³⁰
23. HMRC suggested that it was necessary to introduce basis period reform in advance of Making Tax Digital. Bridget Micklem, Deputy Director, Business Profits at HMRC told us that
- “the Government [has] consistently said that we need this reform before Making Tax Digital for Income Tax Self-Assessment comes in. That was the general view of stakeholders and people we were talking to before the consultation. People said to us, ‘You need to do something about basis periods before Making Tax Digital starts’. This is a sequencing point that has been fairly clear all the way along, which is that you do not want to hardwire in complexity and all the difficulties that the current rules have into the Making Tax Digital system. You need to sort the tax code out first.”³¹
24. Rebecca Benneyworth of the Administrative Burdens Advisory Board (ABAB) told us that if basis period reform did not go ahead: “I cannot honestly see that it will disrupt MTD ... but I understand that the idea is about smoothing the way.”³² On the other hand, the Institute of Chartered Accountants in England and Wales (ICAEW) said: “Introducing basis period reform would appear to be unnecessary to make MTD ITSA [Income Tax Self-Assessment] work, other than to encourage businesses to transition to tax year end accounting.”³³ Bill Dodwell of OTS went further and said: “Not

24 For example, written evidence from ATT ([DFE0004](#)), LITRG ([DFE0010](#)).

25 Written evidence from LITRG ([DFE0010](#)).

26 Written evidence from LITRG ([DFE0010](#)).

27 Written evidence from ATT ([DFE0004](#)).

28 Written evidence from LSEW ([DFE0016](#)).

29 [Q 19](#) (Richard Wild)

30 [Q 30](#) (Bill Dodwell)

31 [Q 59](#) (Bridget Micklem)

32 [Q 47](#) (Rebecca Benneyworth)

33 Written evidence from ICAEW ([DFE0003](#))

having basis period reform would make it much easier to land successfully Making Tax Digital for income tax.”³⁴

25. **We do not consider that a compelling case has been made for basis period reform, either as a simplification or as an essential prerequisite for introducing MTD for income tax.**

Estimation and apportionment

26. Basis period reform was described by Tax Journal in September 2021 as “a simplification with complications.”³⁵ Bill Dodwell of OTS explained that anyone who was using a tax year other than 31 March or 5 April would, under the proposed reform, have to apportion their profits: “That means that if you are trying to work out your profits for a tax year, you would take a slice of the profits for the accounting period that ended in the tax year and a slice of the profits for the period ending after the tax year”. This brought a “massive disadvantage, in that the tax year would come to an end and anyone with this different year-end would not know what their taxable profits are for the tax year. As a matter of principle, that is entirely wrong.”³⁶ Richard West of CIOT said: “For those businesses that are affected, the outcome of these basis period rules could actually be worse than the existing ones.”³⁷
27. The consultation document suggested that this issue “will affect businesses with accounting dates in the last quarter of the tax year, and may also affect businesses with accounting periods ending from 30 September onwards.”³⁸ HMRC told us that 278,000 taxpayers would have to use provisional figures.³⁹ However, this may be an underestimate if it rests on the assumption in the consultation document. Chartered Accountants Ireland (CAI) suggested that estimation could affect businesses with accounting periods ending as early as 31 July⁴⁰ and CIOT suggested it could possibly even affect those ending in June.⁴¹
28. The issue is chiefly with estimation, as two accounting periods will straddle the tax year and accounts for the later one may not be available at the time profits for the tax year have to be returned.⁴² The ICAEW provided the following example:

“... in calculating the profits for the tax year 2024–25, a business with an accounting year ended 31 January 2025 would take 10/12ths of the accounting year profits to 31 January 2025, and 2/12ths of the profits to 31 January 2026. The final tax liability for the tax year 2024–25 is due by 31 January 2026. As this is the last day of the second accounting period on which the taxable profits are based, there is a clear practical difficulty. The profits for the accounting year ended 31 January 2026 may not be established for several months after the year end. An estimate of those profits will be required to complete the 2024–25 tax return. That

34 [Q 32](#) (Bill Dodwell)

35 Tax Journal, ‘Basis period reform: a simplification with complications’: <https://www.taxjournal.com/articles/basis-period-reform-a-simplification-with-complications> [accessed 7 December 2021]

36 [Q 30](#) (Bill Dodwell)

37 [Q 19](#) (Richard Wild)

38 HMRC, ‘Basis period reform—consultation’, para 3.11: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

39 [Q 62](#) (Thomas Brown)

40 Written evidence from CAI ([DFE0006](#))

41 [Q 20](#) (Richard Wild)

42 Written evidence from ICAEW ([DFE0003](#)), ICAS ([DFE0005](#)) and LITRG ([DFE0010](#))

return will then need to be resubmitted if those estimated numbers are superseded by final numbers, adding to the administrative burden of calculating the tax charge.”⁴³

Although approaches to estimation were addressed in the consultation document it was unclear exactly how it would work and whether there would be any easements of the Income Tax Self Assessment (ITSA) rules to accommodate it and help taxpayers in this situation.

29. Some businesses may be able to avoid the complexity of estimation and apportionment of profits by changing their accounting period. LITRG said: “We expect some self-employed taxpayers will change their accounting date to 31 March (or 5 April) once they realise how complicated and time consuming this is unless there are commercial reasons for them not to do so. Therefore we would urge HMRC to make it as easy as possible to change.”⁴⁴ ATT, ICAEW and LITRG were keen to ensure that if businesses did make the change before the transition year they would still be able to spread the excess profits.⁴⁵ HMRC confirmed that an existing provision would allow for businesses to change their accounting period in 2022–23 (before the transition year) while still benefitting from spreading and other transitional provisions. However, it acknowledged that this involved “a very technical process” which could create “additional complexities”.⁴⁶
30. However, businesses with accounting periods which are not aligned with the tax year for commercial reasons, may not be in a position to change. Examples cited by our witnesses were:
 - Seasonal businesses, for example arable and sheep farming, tourism and hospitality, where a 31 March or 5 April accounting period does not make sense commercially.⁴⁷ Bill Dodwell of OTS told us: “It does not make sense to draw up your accounts on 31 March when your crops are still in the ground and you have no idea how to reasonably value them.”⁴⁸
 - Large partnerships with international links, for example with firms in the United States of America where the common accounting period is the calendar year.
31. These businesses will face the problem of estimating profits of accounting periods which may not have ended before the tax returns are required to be filed. The Law Society of England and Wales (LSEW) told us that: “For partners in some firms, notably those with 31 December accounting dates often adopted by international firms, even producing credible estimates to form initial tax filing positions will be hugely challenging.”⁴⁹ In addition, particular complexities arise for all partnerships because they will have to

43 Written evidence from ICAEW ([DFE0003](#))

44 Written evidence from LITRG ([DFE0010](#))

45 Written evidence from ATT ([DFE0004](#)), ICAEW ([DFE0003](#)), LITRG ([DFE0010](#))

46 [Q 66](#) (Thomas Brown) and written evidence from HMRC ([DFE0020](#)). In written evidence HMRC provided an example of how this would work.

47 [Q 31](#) (Bill Dodwell, Malcolm Gammie QC), [Q 4](#) (Richard Jones), [Q 5](#) (Emma Rawson, Justin Piper); Written evidence from NFU ([DFE0014](#))

48 [Q 31](#) (Bill Dodwell)

49 Written evidence from LSEW ([DFE0016](#))

estimate profits at both the partnership level and also at the level of individual partners.⁵⁰

32. In its response to the consultation on basis period reform the Government said that it would be consulting with interested parties such as large partnerships and seasonal traders about the difficulties which estimating and apportioning profits would pose for them.⁵¹ It mentioned alternative ways in which estimated profits might be corrected to actual profits. Susan Cattell of ICAS noted a possible mitigation in that “people could be allowed to put through the amended information in the following year, so they would not have to re-file for the current year.”⁵² CIOT also said it had made proposals to HMRC which included “allowing the estimate to ‘stand’ until the following year’s return is filed, or extending the self-assessment filing deadline” until 31 March instead of 31 January.⁵³ We understand that tackling this issue is important as HMRC told us that it estimated that 20 per cent of the taxpayers needing to estimate and apportion profits are unrepresented.⁵⁴
33. **We consider that the difficulties that estimation and apportionment of profits pose for those businesses which cannot, or cannot sensibly, align their accounting periods with the tax year were not thought through adequately in the design of the basis period reform. We welcome the Government’s recognition that further work needs to be done on how the adverse effects of basis period reform on these businesses might be mitigated. However, we are concerned that tackling this complexity may itself generate further complication to the tax system.**
34. *When this work is completed, but before final decisions are reached about the way forward, we recommend a reassessment of the additional compliance costs which businesses in this position will bear as a result of the reform.*

Transitional provisions

35. The basis period reform proposals provide for a transitional year to bring businesses onto the new rules. For some businesses this will involve bringing additional profits into charge. This means that businesses could be charged on profits of up to 23 months for that year (that is for businesses with whose accounting period currently ends on 30 April).
36. In the consultation document the Government originally proposed to provide for an election to spread the additional tax over a five-year period.⁵⁵ At the October Budget this proposal was modified to make the spreading of additional tax automatic unless the taxpayer opted out.⁵⁶

50 Written evidence from LSEW (DFE0016)

51 HMRC, ‘Basis period reform—consultation’: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

52 Q 5 (Susan Cattell)

53 Written evidence from CIOT (DFE0011)

54 Q 66 (Thomas Brown)

55 HMRC, ‘Basis period reform—consultation’, para 4.8: <https://www.gov.uk/government/consultations/basis-period-reform/basis-period-reform-consultation> [accessed 7 December 2021]

56 HMRC, *Policy Paper Overview: Basis period reform* (27 October 2021): <https://www.gov.uk/government/publications/basis-period-reform> [accessed 7 December 2021]

37. Some of our witnesses considered that the five-year period was sufficient for most businesses.⁵⁷ On the other hand, some expressed concern that it was insufficient for businesses with larger liabilities and felt more time was needed.⁵⁸ Rather than extend the period for all businesses, Susan Cattell of ICAS suggested “five years should be the default position for all businesses” but with “an option to have 10 years in exceptional circumstances”.⁵⁹ Exceptional circumstances “could then be defined by reference to a set percentage increase in the taxable profits that the five-year period”.⁶⁰

Overlap relief

38. Businesses with overlap relief will be able to set it against excess profits on transition but we were told that many businesses may not be entitled to a significant amount of overlap relief to offset the additional liability. Emma Rawson, technical director, ATT, said: “There could be people who have very successful businesses now but have very low overlap profits to set off, maybe because they were loss making in their early years or just not very profitable. There could be some quite substantial tax bills for some affected taxpayers.”⁶¹
39. In respect of overlap relief, CAI noted that some businesses or agents “may no longer have a record of the relevant overlap profits available for overlap relief as this may date from many years ago and also may not have been passed on where there has been a change of tax agent.”⁶² CIOT said that a business or its agent should be able to obtain or check overlap figures with HMRC and encouraged HMRC “to explore whether this can be done through the business’s Digital Tax Account, via APIs [Application Programming Interfaces] into third party software, or prepopulating into tax returns.”⁶³ The LITRG proposed that in cases where HMRC has no overlap information for a taxpayer, “it would be helpful if they were to proactively tell them (and their adviser if they have one) to allow them additional time to try to confirm their overlap position.”⁶⁴ Thomas Brown, Senior Policy Adviser, HMRC, told us that HMRC is “currently working on the process to get taxpayers the information that [it] currently [holds] on overlap relief.”⁶⁵ He also indicated that even where the figures were not available it may be possible for HMRC to calculate them from their records.⁶⁶
40. ***We recommend that by 5 April 2022 HMRC should commit publicly to providing details of overlap relief from their records for those businesses that need it and, where a specific record is not available, reconstruct the amount available from the information HMRC has.***

Impact on tax liabilities

41. Under the reform, excess profits of the transitional year will be treated as the “income”. However, Sharron West of LITRG explained that: “The

57 [Q 53](#) (Rebecca Benneyworth, ABAB), [Q 20](#) (Sharron West, Richard Wild); Written evidence from LSCA ([DFE0015](#))

58 Written evidence from LSEW ([DFE0016](#)) and ATT ([DFE0004](#))

59 [Q 6](#) (Susan Cattell)

60 [Q 6](#) (Susan Cattell)

61 [Q 6](#) (Emma Rawson)

62 Written evidence from CAI ([DFE0006](#))

63 Written evidence from CIOT ([DFE0011](#))

64 Written evidence from LITRG ([DFE0010](#))

65 [Q 68](#) (Thomas Brown)

66 [Q 68](#) (Thomas Brown)

additional profits that will be taxed are not extra income, so there is no extra cash around for these people. They have not made these extra profits and they do not have the income from them... People will not understand that.”⁶⁷

42. Richard Jones, tax faculty, ICAEW, was concerned that business owners who have a yearly income of around £70,000, “and in the transitional year end up getting taxed twice on part of their profits, could end up falling into the next income tax bracket.” This could mean “they could start losing their personal allowance, their pension contribution allowance could be affected, and the child benefit charge could kick in.”⁶⁸ LITRG feared this could also have an adverse effect on their entitlement to benefits such as tax credits or universal credit.⁶⁹ The impact on pension contributions and student loan repayments was also raised.⁷⁰ These could also happen in any of the five years across which the excess profits could be spread.
43. CIOT suggested that: “Consideration should be given to ring-fencing the excess profit and treating it as a one-off receipt (including when the profit is spread) and taxing it at the individual’s marginal tax rate ignoring that excess profit, rather than treating it as additional income.”⁷¹
44. In its response to the consultation the Government said that it would separate excess profits from ordinary trading profits so that entitlement to reliefs and benefits are not affected.⁷² HMRC subsequently confirmed in written evidence that excess profits will still be taxed at marginal rates and “an individual’s entitlement to the savings allowance and the personal allowance will be unchanged. However, the tax charged on the transition profit will reflect the normal rules for the reduction or removal of these allowances depending on income, as if the profit were taxed normally”.⁷³ Hence, the excess profits will still be taxed at the individual’s marginal rate and could push them into higher rates and affect their entitlement to the savings and personal allowances.
45. ***Our witnesses voiced a number of valid concerns about the additional tax liabilities some businesses could face on the transition to the new basis period rules, and made some suggestions about how these might be mitigated, which the Government should consider.***

Are taxpayers and HMRC ready for the change?

Proposed timetable for the change

46. Five of the professional bodies (CIOT, LITRG, ICAEW, ICAS, ATT) wrote to the Financial Secretary to the Treasury on 16 August 2021, expressing concern about the proposed timetable and the pressure the successive challenges of basis period reform and MTD for income tax would impose on businesses and their advisers and the impact on unrepresented taxpayers. The letter pointed to figures which indicated that at the time of the introduction of Making Tax Digital for VAT in 2019, 65 per cent of businesses consulted

67 [Q 21](#) (Sharron West)

68 [Q 5](#) (Richard Jones)

69 Written evidence from LITRG ([DFE0010](#))

70 Written evidence from CIOT ([DFE0011](#))

71 Written evidence from CIOT ([DFE0011](#))

72 HMRC, ‘Consultation Outcome: Summary of responses’: <https://www.gov.uk/government/consultations/basis-period-reform/outcome/summary-of-responses> [accessed 7 December 2021]

73 Written evidence from HMRC ([DFE0020](#))

an accountant or bookkeeper and, since its introduction, 41 per cent of the self-employed had increased their use of agents.⁷⁴

47. On 23 September 2021 the Financial Secretary to the Treasury announced that basis period reform and MTD for income tax would be deferred for one year.⁷⁵ This meant that the transitional year for basis period reform would be 2023–24 and the introduction of MTD would be 2024–25 instead of 2022–23 and 2023–24 respectively. The Office for Budget Responsibility (OBR) subsequently explained that the Government’s decision to introduce the health and social care levy as a new tax from April 2023 “requires changes to HMRC systems including those for MTD for self-assessed income tax”.⁷⁶
48. The ATT welcomed the delay in basis period reform and MTD but felt that there is still going to be “too much change in too short a period of time”.⁷⁷ Sharron West of LITRG, also welcomed the deferral but said “our feeling is that the whole system would benefit from possibly being pushed back another year”.⁷⁸ ICAEW went further and made a “firm recommendation” that basis period reform should be dropped altogether.⁷⁹

Resources

49. In their August 2021 letter to the Financial Secretary to the Treasury the professional bodies also raised concerns about the “enormous strain” that consecutive reforms would place on agents, HMRC and other bodies such as tax charities which advise small and unrepresented businesses.⁸⁰ CAI was concerned that the reform “effectively brings forward the MTD start date for many businesses by almost a full year which would put considerable strain on businesses, agents and HMRC, in particular on HMRC helplines which are already under pressure.”⁸¹ It added that all unincorporated businesses “would also be required to report under MTD ITSA for the same quarters and by the same deadlines with the final update also due to be filed by the same date” which would create a “significant bunching of workload for businesses, tax agents and HMRC”.⁸² Richard Wild of CIOT told us he was concerned about capacity in the agent market: “Agents keep telling us that they will retire before MTD is introduced... Basis periods and Making Tax Digital are fundamental changes that will need a huge amount of preparation both by the agents and on behalf of their clients.”⁸³ Rebecca Benneyworth also said the timing of these reforms would put tax advisers “under a lot of extra strain” and told us that she was aware of colleagues who are planning to retire rather than deal with the changes.⁸⁴

74 Letter from ICAS, ATT, ICAEW, LITRG, CIOT to Financial Secretary to the Treasury, 16 August 2021: <https://www.icaew.com/-/media/corporate/files/insights/tax-news/16-08-21-joint-professional-bodies-letter-re-basis-period-reform-and-mtd.ashx?la=en> [accessed 7 December 2021]

75 HC Deb, 23 September 2021, [Col 17WS](#)

76 Office for Budget Responsibility, *Economic and fiscal outlook*, CP 545 (October 2021): <https://obr.uk/download/economic-and-fiscal-outlook-october-2021> [accessed 7 December 2021]

77 Written evidence from ATT ([DFE0004](#))

78 [Q 14](#) (Sharron West)

79 Written evidence from ICAEW ([DFE0003](#))

80 Letter from ICAS, ATT, ICAEW, LITRG, CIOT to Financial Secretary to the Treasury, 16 August 2021: <https://www.icaew.com/-/media/corporate/files/insights/tax-news/16-08-21-joint-professional-bodies-letter-re-basis-period-reform-and-mtd.ashx?la=en> [accessed 7 December 2021]

81 Written evidence from CAI ([DFE0006](#))

82 Written evidence from CAI ([DFE0006](#))

83 [Q 17](#) (Richard Wild)

84 [Q 54](#) (Rebecca Benneyworth)

50. CAI told us that at recent meetings of the Representative Bodies' Steering Group members have expressed concern about HMRC customer service levels and that: "It is worrying that major reforms are pressing ahead whilst business as usual and basic processes continue to suffer from long delays".⁸⁵ The Association of Chartered Certified Accountants (ACCA) said that its members had expressed concerns about HMRC service levels, "raising doubts as to their capacity to undertake the significant taxpayer education exercise which will be needed for those businesses who are not represented by an agent or accountant".⁸⁶ Richard Wild, Head of Tax Technical, CIOT, said that previous major changes such as the introduction of MTD for VAT and dealing with EU exit had seen HMRC service levels fall: "Telephone waiting times increased. Post turnaround times all increased".⁸⁷
51. Rebecca Benneyworth of ABAB commented on the scale of the task before HMRC in particular in relation to overlap relief, noting that "HMRC is going to have to surface that data for every single business that does not have a fiscal year basis".⁸⁸ She suggested that HMRC needed to set up a special team and a process for providing information to businesses and their accountants and tax advisers, but added that the fact that HMRC had not yet started putting such a system in place "will not mean that it cannot be a success".⁸⁹
52. Bridget Micklem, Deputy Director, Business Profits, HMRC, pointed to the estimate of £13m for the resources HMRC was devoting to basis period reform, telling us that to arrive at that figure, they had done a "thorough exercise" and that service levels had improved in the first quarter of the current tax year.⁹⁰
53. ***While noting the resources that HMRC has assigned to the implementation of this policy, we recommend that the Government and HMRC review the resources required for basis period reform and Making Tax Digital for income tax, in order to maximise the chances of a smooth implementation. In particular, we recommend specific resources should be allocated to retrieving and providing information about overlap relief to relevant businesses.***

Preparation for change: raising awareness

54. In respect of raising awareness of basis period reform, the LITRG suggested that HMRC should "proactively identify and contact unincorporated businesses with accounting period ends other than 31 March or 5 April to encourage them to consider the impact of basis period change as soon as possible and let them know what overlap profit information (if any) is held on HMRC's records".⁹¹ Sharron West of LITRG, said that "most unrepresented taxpayers do not know that Making Tax Digital is happening and are blissfully ignorant of the problems they will have to come to terms with in 2024". She added that HMRC should make a "big effort to contact these people directly and not just rely on mailshots, agents and general communications".⁹²

85 Written evidence from CAI ([DFE0006](#))

86 Written evidence from ACCA ([DFE0017](#))

87 [Q 18](#) (Richard Wild)

88 [Q 48](#) (Rebecca Benneyworth)

89 [Q 51](#) (Rebecca Benneyworth)

90 [Q 70](#) (Bridget Micklem)

91 [Q 16](#) (Sharron West); Written evidence from LITRG ([DFE0010](#))

92 [Q 16](#) (Sharron West)

Richard Wild of CIOT agreed and said that “putting things on GOV.UK for people to read does not get to the right target audience. You need to send things directly”.⁹³ The LSEW proposed “a specific HMRC contact team to help smaller businesses (i.e. all those without Customer Compliance Managers) that have issues arising from these reforms”.⁹⁴

55. *We recommend that HMRC contacts directly all taxpayers with accounting periods which are not aligned with the tax year to alert them to the change and its implications for them and to inform them of what support is available.*
56. *HMRC should issue comprehensive guidance about basis period reform by 5 April 2022, including details of how unrepresented taxpayers can obtain support, and make a helpline number available.*

Preparation for change: software

57. Some witnesses were concerned that uncertainty around the introduction of basis period reform would delay the development and availability of necessary software to support Making Tax Digital (MTD) given the time needed to reflect the final rules within the software package.⁹⁵ However, written evidence from one of the major software providers, Sage, said that it supports the introduction of MTD and the principles of the basis period reform, “particularly as the changes will ensure aligning of reporting periods for different taxes. This will create a more streamlined approach and make it easier for business to navigate”.⁹⁶ The confirmation that the Government intends to proceed with basis period reform has provided greater certainty but the response to the consultation indicated that there are still details of the reform to be worked out which will in turn affect the timetable for the finalisation of software support packages.⁹⁷

How much will businesses have to pay?

58. At the October 2021 Budget the Government published an impact assessment for the basis period reform indicating that the one-off costs for business (for example, changing software, deciding whether to change accounting period, familiarisation etc) were estimated to be negligible.⁹⁸ Continuing ongoing costs were estimated at £9.1m but with offsetting savings of £10.2m resulting in an overall saving.⁹⁹ CIOT was “surprised” at HMRC’s impact assessment and considered that the estimates about one-off costs were “unrealistic”.¹⁰⁰
59. At the October 2021 Budget the Government published figures for the amount of revenue that would be raised by basis period reform: £1.8billion over a four-year period from 2023–24 to 2026–2027.¹⁰¹

93 [Q 7](#) (Richard Wild), [Q 16](#) (Sharron West)

94 Written evidence from LSEW ([DFE0016](#))

95 Written evidence from ACCA ([DFE0017](#)), ICAS ([DFE0005](#))

96 Written evidence from Sage ([DFE0018](#))

97 HMRC, ‘Consultation Outcome: Summary of responses’: <https://www.gov.uk/government/consultations/basis-period-reform/outcome/summary-of-responses> [accessed 7 December 2021]

98 HMRC, ‘Policy Paper: Basis period reform’: <https://www.gov.uk/government/publications/basis-period-reform/basis-period-reform> [accessed 7 December 2021]

99 HMRC, ‘Policy Paper: Basis period reform’: <https://www.gov.uk/government/publications/basis-period-reform/basis-period-reform> [accessed 7 December 2021]

100 Supplementary Written evidence from CIOT ([DFE0019](#))

101 HMRC, ‘Policy Paper: Basis period reform’: <https://www.gov.uk/government/publications/basis-period-reform/basis-period-reform> [accessed 7 December 2021]

60. HMRC told us that basis period reform was not about revenue raising but “a simplification measure and that it is broadly revenue neutral in the long term”.¹⁰² This is because the tax paid on the transition to the new basis period rules “is just reversing what would happen anyway in future events”, in other words bringing forward liabilities which would have been incurred under the existing rules on the closure of a business.¹⁰³
61. The Office for Budget Responsibility (OBR) explained in their “Economic and fiscal outlook—October 2021” that:
- “The measure ‘income tax: basis periods reform for the self-employed’ relates to tax rules for partners and the self-employed, and the timing of when their income is assessed by HMRC. It effectively brings forward the point at which profits are assessed for tax purposes, boosting receipts by £0.8 billion in 2024–25, and generating £1.8 billion in total during the scorecard period, and by diminishing amounts through to 2028–29 (based on the policy’s five-year ‘transition period’). It does not affect the underlying amounts of profits that will be taxed, and indeed by removing the possibility of ‘overlap relief’ going unclaimed, reduces revenue overall. This measure generates the ‘fiscal illusion’ of raising revenue when in fact it in the long term reduces it.”¹⁰⁴
62. **We note the OBR’s statement that, in the short term, basis period reform will raise revenue. Irrespective of the “fiscal illusion” that may exist in the long term, in the short term those businesses affected will pay extra tax.**

Conclusions

63. **The impact of basis period reform on those businesses which are not able to align their accounting periods with the tax year, for sound commercial reasons, has not been sufficiently addressed. We are particularly concerned about smaller businesses, especially those of a seasonal nature such as those in the agricultural sector and tourism. We have questioned the wisdom of introducing both basis period reform and MTD at a time when many businesses are recovering from the economic impact of Covid.**
64. **In the course of our inquiry we encountered a formidable body of opinion from stakeholders that the basis period reforms should be dropped, or not go ahead in their present form. The strongly held views of key stakeholders should give the Government pause for thought.**
65. **While we are not satisfied that the case has been made for basis period reform as a simplification, we do not recommend that the reform should be abandoned now. We note and welcome the Government’s recognition that further work is needed on mitigating the effect of basis period reform on those businesses affected; in particular, specific action must be taken now to reflect the administrative burden they face.**

102 Q 67 (Bridget Micklem)

103 Q 67 (Bridget Micklem)

104 Office for Budget Responsibility, *Economic and fiscal outlook*, CP 545 (October 2021): <https://obr.uk/download/economic-and-fiscal-outlook-october-2021> [accessed 7 December 2021]

66. *We therefore recommend that, for those businesses which do not have a 31 March–5 April year end, Making Tax Digital should be deferred until at least 2025–26. This is also the earliest date at which partnerships—which are disproportionately represented in this group of businesses—are due to be brought into MTD. For the largest partnerships which are particularly adversely affected by basis period reform, no date for the implementation of MTD has yet been set.*

CHAPTER 3: UNCERTAIN TAX TREATMENT

Background

67. The Government first announced plans to introduce a new requirement for large businesses to notify HMRC of uncertain tax treatment in March 2020 when it launched its first consultation on the proposal.¹⁰⁵ The new requirement was intended to help reduce that part of the tax gap attributable to differences in legal interpretation between taxpayer and HMRC, and was intended to take effect from April 2021.¹⁰⁶
68. Under this new requirement, a large business that was applying an uncertain tax treatment—broadly, in working out its taxable profits, applying a tax treatment to a particular transaction with which HRMC may not agree—would be required to notify HMRC of the uncertainty. A large business for these purposes is a company with a turnover of at least £200 million and/or a balance sheet of over £2 billion.¹⁰⁷ According to HMRC, there are currently between 2,300–2,400 companies that qualify as large businesses.¹⁰⁸
69. The proposed requirement to notify uncertain tax treatment was considered by the Sub-Committee as part of its inquiry into the Finance Bill 2021. We concluded that the proposal had been poorly thought out and was difficult both to understand and apply in practice. We expressed concern that HMRC had not itself identified these difficulties in advance of consultation.¹⁰⁹
70. In October 2020, in its evidence to the Sub-Committee, HMRC acknowledged that feedback from stakeholders on this new requirement had been critical.¹¹⁰ The then Financial Secretary to the Treasury, the Rt. Hon. Jesse Norman MP, assured the Sub-Committee a week later that the measure was not “settled”.¹¹¹ On 12 November 2020, the Government announced that the measure was to be delayed to allow “more time to get the policy and legislation right following the recent consultation, including through further engagement with stakeholders”.¹¹² The Sub-Committee welcomed the delay.¹¹³
71. Further consultation during 2021 resulted in changes to the original proposal, which we discuss below. At the Autumn Budget 2021 the Government

105 HMRC, *Notification of uncertain tax treatment by large businesses* (March 2021): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses> [accessed 7 December 2021]

106 HMRC, *Notification of uncertain tax treatment by large businesses* (March 2021): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses> [accessed December 2021]

107 HMRC, *Notification of uncertain tax treatment by large businesses* (March 2021): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses> [accessed 7 December 2021]

108 **Q 79** (Christopher Thomas). Of these, around 2000 companies are classified by HMRC as “large”; the remaining 300–400 companies are “mid-sized”.

109 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 148

110 Oral evidence taken on 26 October 2020 (Session 2019–21), **Q 97** (Paul Riley)

111 Oral evidence taken on 2 November 2020 (Session 2019–21), **Q 114** (Financial Secretary to the Treasury)

112 HC Deb, 12 November 2020, **col 44WS**

113 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 127

confirmed that the new requirement to notify uncertain tax treatment would apply to large businesses from 1 April 2022.¹¹⁴

What consultation has there been?

72. The first consultation on the requirement to notify uncertain tax treatment was at ‘Stage 2’, meaning that its focus was on the detail of a proposal to which the Government was already committed. Under the original proposal, a large business had to notify HMRC if it believed that HMRC might take a different view to its own on the tax treatment of a particular matter.¹¹⁵
73. In our report on Finance Bill 2021, we concluded that this new requirement merited a Stage 1 consultation.¹¹⁶ A Stage 1 consultation requires the Government to set out its policy objectives and ask for feedback on options for achieving those objectives.¹¹⁷ HMRC told us that it now thinks that this first consultation was “perhaps too narrow”.¹¹⁸
74. In our previous report, we recommended that the Government issue a new consultation at Stage 1 to consider more generally how to address that part of the legal interpretation gap linked to uncertain tax treatment.¹¹⁹ However, the second consultation, published at Spring Budget 2021, was also at Stage 2. This consultation again asked for feedback on a specific proposal, which was in this case a modified version of the original.¹²⁰
75. Although our witnesses were generally positive about the nature of HMRC’s engagement during this further consultation,¹²¹ the Tax Law Review Committee (TLRC) told us that the measure had “plainly needed to return to Stage 1 to be re-thought”.¹²² CIOT agreed; Richard Wild’s view was that, by starting off at Stage 2 “we had leapt a bit too far in the process than we should have done”.¹²³ For ICAS, the lack of a Stage 1 consultation meant that “other options, which would not have imposed unnecessary burdens on

114 HMRC, *Notification of uncertain tax treatment by large businesses* (March 2021): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses> [accessed 7 December 2021]

115 HMRC, *Notification of uncertain tax treatment by large businesses* (March 2021): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses> [accessed 7 December 2021]. The obligation to notify only applied if the amount of tax involved was over a specified threshold (then set at £1m).

116 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 127

117 HM Treasury & HMRC, *Tax Consultation Framework* (March 2011): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/89261/tax-consultation-framework.pdf [accessed 7 December 2021]

118 Q 79 (Helen Page)

119 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), paras 127 and 136

120 HMRC, *Notification of uncertain tax treatment by large businesses –second consultation* (updated 20 July 2021): <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

121 Q 23 (Richard Wild)

122 Written evidence from TLRC (DF0008). In its formal response to the second consultation, the TLRC said that the second consultation document suffered from many of the same flaws and defects of the first consultation: see Institute for Fiscal Studies, *Response to HMRC’s consultation document of 19 March 2020 by the Tax Law Review Committee* (20 September 2021); HMRC, *Call for evidence: the tax administration framework: supporting a 21st century tax system*: https://ifs.org.uk/uploads/TLRC_Response%20to%20HMRC%27s%20second%20consultation%20on%20notification%20of%20UTT.pdf [accessed 7 December 2021]

123 Q 26 (Richard Wild)

all large businesses, never seemed to have been properly considered, even when raised in consultation responses”.¹²⁴

76. HMRC told us that it had put a lot of time and thought into the proposal and that, for the second consultation, “effectively we did go back to the drawing board”.¹²⁵ We were told that although HMRC had “got some ideas” from the consultation as to other ways of addressing tax uncertainty, this new notification requirement was the preferred solution.¹²⁶
77. Our witnesses generally agreed that further consultation had improved the specifics of the notification requirement.¹²⁷ In particular, there was a new test of uncertain tax treatment which the Government said was intended to be “more objective”.¹²⁸ We discuss the new test later in this chapter.
78. Other changes include an increase in the threshold above which uncertainty has to be notified (from £1m to £5m) and a reduction in the number of taxes to which the requirement applies from nine to three (corporation tax, VAT and income tax, including PAYE).¹²⁹ In addition, penalties for failure to notify will now be imposed only on the company itself, rather than, as originally proposed the company and its officers. This was a change that the Sub-Committee recommended last year.¹³⁰
79. Notwithstanding these improvements, our witnesses still had reservations as to whether enough had been done to make the measure more proportionate and targeted. Malcolm Gammie QC of TLRC said that the proposals were better “in the sense that they were less bad” but that “a bad idea does not become a good idea just because you tinker with it”.¹³¹ For CIOT, the consultation outcome meant that “we are in a slightly different difficult place than we were when we started”.¹³²
80. **While it is positive that HMRC engaged constructively with business on this measure over the last year, we are disappointed that the Government did not make better use of the opportunity afforded by the delay to this measure to bring greater clarity as to why the new requirement is needed.**
81. **We remain of the view that a Stage 1 consultation should have been undertaken in relation to this measure. As a result of carrying out a second Stage 2 consultation, we consider that the Government continued to focus on one specific proposal, rather than giving proper consideration to alternative ways of addressing uncertainty within the tax system as a Stage 1 consultation would have required.**

124 Written evidence from ICAS ([DFE0005](#))

125 [Q 80](#) (Helen Page)

126 [Q 80](#) (Helen Page)

127 [Q 9](#) (Susan Cattell); written evidence from the CBI ([DFE0012](#)), ICAEW ([DFE0003](#)), ICAS ([DFE0005](#)), LSEW ([DFE0016](#))

128 In the second consultation, the Government asked respondents specifically to comment on whether these triggers were “sufficiently objective”; see HMRC, *Notification of uncertain tax treatment by large businesses—second consultation* (updated 20 July 2021) Q 5: <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

129 Concerns as to both the level of the threshold and the number of taxes subject to a notification requirement were raised by witnesses to our inquiry into Finance Bill 2021.

130 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 152

131 [Q 39](#) (Malcolm Gammie QC)

132 [Q 23](#) (Richard Wild)

82. **Although we acknowledge that the measure has improved as a result of the further consultation, we are nonetheless concerned that so many of the criticisms and concerns we heard last year have been repeated in evidence to this inquiry.**

Has the case for change been made?

83. The Government said that the objective of the new requirement is “to reduce the legal interpretation portion of the tax gap”. The consultation document said that the legal interpretation tax gap arises where, in a case that does not involve avoidance, HMRC and a taxpayer take a different view of what the law means.¹³³ For 2019–2020, HMRC estimated this at £5.8 billion of which it says £3.2 billion is attributable to large businesses.¹³⁴ The policy costings indicate that the expected additional revenue from the notification requirement is around £30 million per annum from 2022–23.¹³⁵
84. Richard Wild of CIOT told us: “... there is a bit of mystery surrounding what the legal interpretation tax gap actually represents”, and that there was “little detail about how it is calculated and what it includes”.¹³⁶
85. The TLRC said that the suggestion that this new requirement would reduce the tax gap was not one “that withstands careful scrutiny” and that “the supposed ‘tax saving’ may be no more than pure guesswork”.¹³⁷ Other witnesses noted that even if the policy costings are correct, at best the reduction in the legal interpretation tax gap in any given year would be no more than one per cent. Richard Wild of CIOT described this as “a drop in the ocean”.¹³⁸ According to Emma Rawson of ATT, there were “more fundamental things” (such as the complexity of tax legislation and the availability of HMRC support for taxpayers) that should be looked at if this part of the tax gap was to be tackled.¹³⁹
86. Our witnesses also questioned the proportionality of the new requirement taking into account the likely costs to business of compliance with this new requirement as compared to the expected yield.¹⁴⁰ Our witnesses were particularly concerned about the costs that would be incurred by those companies that HMRC acknowledged were making such disclosures already.¹⁴¹ As we discuss below, our witnesses told us that such companies were very likely to make formal notifications notwithstanding any disclosure of uncertainties as part of their normal interaction with HMRC.
87. Richard Wild of CIOT questioned whether the amount of additional compliance that would be needed—for businesses and HMRC—was

133 HMRC, *Notification of uncertain tax treatment by large businesses—second consultation* (updated 20 July 2021), para 2.2: <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

134 HMRC, ‘Policy Paper: Notification of uncertain tax treatment for large businesses’: <https://www.gov.uk/government/publications/notification-of-uncertain-tax-treatment-for-large-businesses/notification-of-uncertain-tax-treatment-for-large-businesses> [accessed 7 December 2021]

135 HMRC, ‘Policy Paper: Notification of uncertain tax treatment for large businesses’: <https://www.gov.uk/government/publications/notification-of-uncertain-tax-treatment-for-large-businesses/notification-of-uncertain-tax-treatment-for-large-businesses> [accessed 7 December 2021]

136 Q 24 (Richard Wild)

137 Written evidence from TLRC (DFE0008)

138 Q 24 (Richard Wild); See also Q 9 (Susan Cattell); written evidence from LSEW (DFE0016).

139 Q 9 (Emma Rawson)

140 QQ 24, 28 (Richard Wild), Q 39 (Malcolm Gammie QC); written evidence from CBI (DFE0012)

141 QQ 24 (Richard Wild), Q 39 (Malcolm Gammie QC); Q 75 (Christopher Thomas)

justified by such a small reduction in the legal interpretation tax gap.¹⁴² The Government’s estimate of the costs to business was published at autumn Budget 2021.¹⁴³ This put ongoing costs (across all in-scope companies) at £3 million a year. Taking account of HMRC’s estimate of its own additional costs in relation to this new requirement, total costs for the period from 2022–23 to 2026–27 appear to represent around one quarter of the expected yield.¹⁴⁴

88. Last year, the evidence we heard led us to conclude that the case for this new requirement had not been made.¹⁴⁵ A number of our witnesses told us that, even with a second consultation, the Government had yet to explain why this measure was needed: they remained unclear as to its policy rationale.¹⁴⁶ The TLRC told us that both consultation documents were “devoid of any proper ... explanation of the underlying compliance issue that HMRC had identified”. It described the proposal as “flawed” and having no “sound policy foundation”.¹⁴⁷ Bill Dodwell of the OTS told us that, when the measure was first announced, his reaction had been one of surprise and that, even now, the reason for it remained “a bit of a mystery”.¹⁴⁸
89. HMRC told us that it had made the case for reform.¹⁴⁹ We were told that dealing with the legal interpretation part of the tax gap, which was “very large, very stubborn”, required “something new” and that this measure “has to be a good place to start in reducing that legal interpretation tax gap” by providing it with more, and earlier information on areas of uncertainty.¹⁵⁰
90. HMRC acknowledged that some businesses, particularly those rated “low risk” under HMRC’s business risk review programme¹⁵¹ were generally already disclosing information about uncertainties—in part, to maintain their low-risk status. HMRC said that the new requirement provided a “bit more clarity” as it would help such businesses understand the types of issue which HMRC wanted to know about.¹⁵²
91. For businesses which were not “routinely sharing information”, HMRC said that the measure was intended to “level the playing field” as they would now be under an obligation to make appropriate disclosure to HMRC.¹⁵³
92. Our witnesses however questioned whether the measure would in fact level the playing field as HMRC suggested. There was scepticism as to whether higher risk businesses would start providing HMRC with more information.¹⁵⁴

142 [Q 24](#) (Richard Wild)

143 HMRC, ‘Policy Paper: Notification of uncertain tax treatment for large businesses’: <https://www.gov.uk/government/publications/notification-of-uncertain-tax-treatment-for-large-businesses/notification-of-uncertain-tax-treatment-for-large-businesses> [accessed 7 December 2021]

144 The expected yield (from 2022–23 to 2026–27) for the measure is £125 million. Ongoing costs over that same period for businesses are £15 million (based on HMRC’s estimate) and so represent 12 per cent of that yield and HMRC’s estimate of its own additional costs is £15 million.

145 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 136

146 [Q 9](#) (Susan Cattell); written evidence from CBI ([DFF0012](#)), TLRC ([DFF0008](#))

147 Written evidence of TLRC ([DFF0008](#))

148 [Q 39](#) (Bill Dodwell)

149 [Q 72](#) (Helen Page)

150 [Q 72](#) (Helen Page)

151 The business risk review process, part of HMRC’s large business compliance strategy, is used by HMRC to help it determine where to deploy its resources across four taxpayer risk categories.

152 [Q 72](#), [Q 76](#) (Christopher Thomas)

153 [Q 72](#) (Christopher Thomas)

154 Written evidence from ACCA ([DFF0017](#)), ICAS ([DFF0005](#))

Malcolm Gammie of TLRC suggested that it could be “all too easy” for higher risk businesses to take the view that the test for uncertainty under one of the proposed triggers was not met.¹⁵⁵ Bill Dodwell of the OTS agreed, telling us that “one of the dangers of measures of this sort is that they do not fix the very small minority who are not completely helpful and straightforward, but they impose a burden on the vast majority who are doing their best”.¹⁵⁶

93. During our previous inquiry into this measure, witnesses suggested that if a new statutory obligation was needed, it should be targeted only at those businesses that did not currently engage with HMRC (namely, businesses ranked by HMRC as higher-risk).¹⁵⁷ Similar comments were made in evidence to this inquiry.¹⁵⁸
94. A number of our witnesses questioned whether, rather than introduce new legislation, HMRC should instead invest additional resource in existing compliance activity to tackle higher-risk businesses. For example, Richard Wild of CIOT said: “Perhaps [HMRC] needs to spend more time going in and spending time with these large businesses, which have a higher risk level, and find out a bit more about what they are doing ... rather than making everyone else have to disclose...”¹⁵⁹
95. HMRC told us that its compliance strategy meant that “the higher the risk category, then the more closely we look at the business” but even so “it is very difficult to identify these issues”.¹⁶⁰ It acknowledged that responses to the consultation had suggested that HMRC should carry out more compliance activity to get the type of information on uncertainties that it wanted but said it preferred the new requirement as the information received would allow compliance activity to be prioritised, in contrast to simply increasing compliance activity.¹⁶¹ In terms of limiting the measure to some companies only, it told us that “the legal interpretation tax gap does not relate solely to a minority of large businesses” and so needed to apply to all businesses, regardless of risk status.¹⁶²
96. **We agree with our witnesses that the case for requiring large businesses to notify HMRC of uncertain tax treatment has still not been made.**
97. **Given what HMRC has told us about its strategy around large business compliance we are concerned that, rather than level the playing field in terms of compliance, this measure will have a disproportionate effect on those businesses that already strive to have a collaborative relationship with HMRC in which they discuss uncertain tax matters.**
98. **We remain of the view that it is both unnecessary and counter-productive to make a requirement to notify uncertain treatment apply to all large businesses, regardless of their risk status. We are**

155 [Q 40](#) (Malcolm Gammie QC)

156 [Q 39](#) (Bill Dodwell)

157 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), paras 137–141

158 [Q 9](#) (Susan Cattell), [Q 27](#) (Richard Wild); written evidence from CBI ([DFE0012](#)), ICAS ([DFE0005](#))

159 [Q 27](#) (Richard Wild). See also written evidence from ICAS ([DFE0005](#))

160 [Q 72](#) (Christopher Thomas)

161 [Q 80](#) (Helen Page)

162 [Q 72](#) (Christopher Thomas)

disappointed that, notwithstanding further consultation, the measure remains neither appropriately targeted nor proportionate.

99. **For low-risk businesses, we are unconvinced that providing a clearer framework around what HMRC considers a tax uncertainty supports the imposition of a new statutory obligation and the related risks and costs that brings. In our view, further clarity for businesses as to what HMRC wants to be told would be better provided through a non-legislative solution.**
100. **That said, given the Government is determined to press ahead with this measure, the rest of this report covers how we think the measure itself might be improved, and its implementation made as smooth as possible.**

Simplification of the tax system: the test of uncertainty

101. In their evidence to the Sub-Committee last year, both HMRC and the then Financial Secretary to the Treasury acknowledged that the test of uncertainty being proposed in the first consultation—a test based on whether HMRC might take a different view on how particular tax rules applied—was subjective. The then Financial Secretary assured us that Government recognised the need for the test to be “backed by specific tests that are as objective as possible.”¹⁶³
102. The test of uncertainty set out in the second consultation was based on seven specific triggers.¹⁶⁴ The draft legislation further reduced the number of triggers to three, of which only two had been the subject of consultation. The third trigger, which Susan Cattell of ICAS described as “brought in at the last minute”,¹⁶⁵ broadly required notification where a company considered that there was a “substantial possibility” that a tribunal would decide the taxpayer’s view of the law was incorrect.¹⁶⁶
103. This third trigger was criticised by our witnesses given its subjective nature.¹⁶⁷ Susan Cattell said: “It is not much use getting rid of a few triggers if instead you are going to bring in something that ... is unworkable”.¹⁶⁸ Others agreed.¹⁶⁹ A particular issue was the lack of clarity around the meaning of “substantial possibility” where, although one witness had heard (anecdotally) that HMRC saw 40 per cent as “substantial”, this was not reflected in the draft guidance. This could mean that a business would have to disclose where the even more substantial possibility of its view being correct was ultimately evidenced by a tribunal decision in its favour.¹⁷⁰

163 Oral evidence taken on 2 November 2020 (Session 2019–21), [Q 113](#) (Financial Secretary to the Treasury)

164 HMRC, *Notification of uncertain tax treatment by large businesses –second consultation* (updated 20 July 2021) Chapter 3: <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

165 [Q 9](#) (Susan Cattell)

166 HMRC, *Policy Paper: Large businesses: Notification of uncertain tax treatment* (updated 19 August 2021: <https://www.gov.uk/government/publications/large-businesses-notification-of-uncertain-tax-treatment> [accessed 7 December 2021])

167 [Q 9](#) (Susan Cattell), [Q 12](#) (Jason Piper), [Q 23](#) (Richard Wild); written evidence from CBI ([DFE0012](#))

168 [Q 9](#) (Susan Cattell)

169 Written evidence from CBI ([DFE0012](#)), CIOT ([DFE0011](#)), LSEW ([DFE0016](#))

170 Written evidence from CBI ([DFE0012](#))

104. The Government subsequently announced that this third trigger would be dropped, but it remained “committed to further consideration of [the] third trigger ... for possible inclusion later”.¹⁷¹ HMRC told us that this was because the third trigger “could strengthen the regime considerably” and help HMRC identify what it described as the “unknown unknowns” of uncertainty.¹⁷²
105. In terms of the two remaining triggers, Helen Page of HMRC told us that the first, based on whether the company’s accounts includes a provision as a result of uncertainty around the tax treatment of a particular transaction, had been broadly welcomed by stakeholders.¹⁷³ Malcom Gammie QC of TLRC told us that this trigger, linked to accounting standards, was probably the only one with some element of objective certainty.¹⁷⁴
106. The second trigger tests whether the tax treatment applied by a company differs from HMRC’s “known” position. HMRC described this trigger as being “a clearer objective and manageable test” as compared to the original proposal and said that it had been “broadly welcomed” by respondents to the second consultation.¹⁷⁵
107. Nonetheless, Malcolm Gammie QC said that the way the second trigger was drafted in the legislation meant that it was “exceptionally difficult to fix exactly the scope of the obligation”.¹⁷⁶ Susan Cattell of ICAS said:
- “The difficulty is that ... HMRC’s position is taken to be known if it is apparent from guidance, statements or other material [that is] of general application in the public domain. Unfortunately, that still leaves you with vast amounts of information that you could be required to consider in order to work out HMRC’s known position.”¹⁷⁷
108. Although HMRC had included a table of sources for identifying its “known” position in draft guidance on the new requirement, we were told this was “completely inadequate” and a more comprehensive list, restricted to “formal, well known and readily accessible material”, was needed.¹⁷⁸ HMRC confirmed to us in oral evidence that it was happy to work with stakeholders on improving this table.¹⁷⁹
109. Helen Page, HMRC, agreed that the test of a “known” position was very broad, and that there remained “some implementation detail to refine” but told us that it was not expecting businesses to need to work through vast amounts of material to identify HMRC’s view. She said that HMRC was intending to interpret the test in a “sensible and proportionate” way, and this would be made clear in its final guidance on the requirement.¹⁸⁰

171 HMRC, ‘Notification of uncertain tax treatment for large businesses’: <https://www.gov.uk/government/publications/notification-of-uncertain-tax-treatment-for-large-businesses/notification-of-uncertain-tax-treatment-for-large-businesses> [accessed 7 December 2021]. HMRC confirmed that any future inclusion of this third trigger would require primary legislation.

172 [Q 72](#) (Helen Page)

173 [Q 73](#) (Helen Page)

174 [Q 40](#) (Malcolm Gammie QC)

175 [Q 73](#) (Helen Page)

176 [Q 40](#) (Malcolm Gammie QC)

177 [Q 10](#) (Susan Cattell)

178 [Q 10](#) (Susan Cattell); written evidence from ICAS ([DFE0005](#))

179 [Q 73](#) (Helen Page)

180 [Q 73](#) (Helen Page)

110. Our witnesses' concerns were not limited the scope of the obligation. There were likely to be cases where HMRC's view was unclear (including where its guidance included two different and contradictory views of the same matter) or guidance was simply not up-to-date.¹⁸¹
111. HMRC's expectation that businesses should consult HMRC guidance to identify the most recent statement of HMRC's view was criticised as "unfair" and "unreasonable".¹⁸² ICAS suggested that, as a minimum, as HMRC would know when it was changing its view, it should mark relevant sections appropriately.¹⁸³
112. HMRC itself acknowledged that its views are not always right.¹⁸⁴ Under this trigger, taxpayers will have to notify if they take a different view to HMRC even if HMRC is wrong. The Law Society of England and Wales told us that this creates a risk of "subtly erod[ing] the central position of the law as the foundation of the tax system" given the consequences of taking a different view.¹⁸⁵
113. Noting that some of the difficulties with the proposal follow on from the complexity of the UK's tax system, Richard Wild of CIOT said: "... if the underlying tax rules are fuzzy, it is quite difficult then to overlay objective tax rules on ... notification ... We have potentially fuzzy over fuzzy".¹⁸⁶
114. HMRC told us that it was reasonable to expect companies to have regard to HMRC's position on particular law and that this measure did not cut across the role of the courts in ruling on disputed legal interpretation. It also said that it recognised the need to improve its guidance and told us it expected the new requirement to help it do this through "exposing weaknesses ... or things that we need to make more comprehensive or clearer."¹⁸⁷
115. **We acknowledge that HMRC has sought, through consultation, to make the test for uncertainty more objective. However, we remain concerned that the application of the proposed second trigger still imposes a significant burden on businesses in practice. There needs to be greater clarity for businesses seeking to identify a "known view". Any list of sources should be exhaustive, and preferably fixed in legislation.**
116. **The operation of the second trigger is dependent on HMRC's published guidance being clear, unambiguous and up- to- date. The Government must ensure that sufficient resources are made available to HMRC to ensure that its published guidance is updated on an ongoing basis.**
117. **HMRC guidance is no substitute for law. We are concerned as to the extent to which HMRC appears to be relying in its own guidance to solve issues of uncertainty created by the legislation for the new notification requirement. This adds further uncertainty and complexity to a tax system that is already complex.**

181 Written evidence from Baker Mckenzie ([DEF0007](#)), ICAS ([DEF0005](#))

182 Written evidence from ICAS ([DEF0005](#))

183 Written evidence from ICAS ([DEF0005](#))

184 [Q 73](#) (Helen Page)

185 Written evidence from LSEW ([DEF0016](#))

186 [Q 27](#) (Richard Wild). See also [Q 9](#) (Emma Rawson)

187 [Q 81](#) (Helen Page)

118. **We agree with our witnesses that the proposed third trigger was too subjective. We welcome the Government’s decision not to proceed with it at this stage.**
119. *We recommend that, before legislating for this third trigger, an evidence-based evaluation of the measure in its current form be carried out to identify whether it does indeed deliver the benefits that HMRC tells us it is expecting. We also recommend that, if such an evaluation shows that the requirement is not delivering the benefits that HMRC expects, then the notification requirement in its entirety should be repealed.*

Are taxpayers and HMRC ready for the change?

Potential compliance burden for taxpayers

120. Our report on Finance Bill 2021 expressed concern as to the potentially significant costs that businesses were likely to incur in complying with this new requirement.¹⁸⁸ We were told by the then Financial Secretary that HMRC would look at expected compliance costs in light of the evidence we had received.¹⁸⁹
121. In the second consultation, the Government said that the measure had been developed “to ensure that businesses that already had an open and compliant relationship with HMRC should have minimal additional compliance costs”.¹⁹⁰ The consultation document also stated: “Where businesses are already bringing these uncertainties to HMRC’s attention, they will not need to notify under this measure. This will therefore focus the requirement to notify on those businesses that are not already engaging with HMRC”.¹⁹¹
122. In respect of this point, our witnesses told us that they anticipated that compliant businesses would be making notifications even if they had had a prior opportunity to discuss any uncertainty with HMRC.¹⁹² There were two reasons for this. First, such businesses would be keen to maintain their “compliant” status, and so avoid any reputational risk, as well as potential penalties, if they were found to be non-compliant.
123. Secondly, although the draft legislation contains a specific exemption for uncertainties already disclosed to HMRC, our witnesses doubted whether, in practice, businesses would be able to rely on this exemption.¹⁹³
124. This was because HMRC’s draft guidance said that any such discussions must be documented. We were told businesses were doubtful that HMRC would be able to provide written confirmation of discussions in normal dealings with their customer compliance managers (CCMs) in a timely

188 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 159

189 Oral evidence taken on 2 November 2020 (Session 2019–21), [Q 115](#) (Financial Secretary to the Treasury)

190 HMRC, *Notification of uncertain tax treatment by large businesses—second consultation* (updated 20 July 2021) para 2.7: <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

191 HMRC, *Notification of uncertain tax treatment by large businesses—second consultation* (updated 20 July 2021) para 2.8: <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

192 [Q 24](#) (Richard Wild), [QQ 39, 41](#) (Malcolm Gammie QC); written evidence from CIOT ([DFE0011](#)), ICAS ([DFE0005](#))

193 [Q 9](#) (Susan Cattell), [Q 41](#) (Malcolm Gammie QC)

manner. Absent such written confirmation, businesses could find themselves disclosing the same matter twice:

“... because they will get in touch with their CCM, try to disclose, the CCM will not come back to them and confirm that they have given enough information, and then they will just disclose again through the process.”¹⁹⁴

125. At autumn Budget 2021, when providing details of its own estimate of the costs to business of this new requirement, the Government acknowledged that even those low-risk businesses that already had an open and collaborative relationship with HMRC would incur additional costs to comply with the new requirement.¹⁹⁵ Helen Page of HMRC told us that the requirement would impact “different businesses to different degrees”, depending on their existing systems and governance arrangements.¹⁹⁶
126. We agree with HMRC that those costs are unlikely to be evenly spread across affected businesses but, by way of illustration only, note that, using an approach suggested by Malcolm Gammie QC, the Government’s figures suggest an average cost per affected company of about £1300 per year. As he observed, a company would not have “to incur very much in professional time to comply with this [requirement]” before exceeding this amount.¹⁹⁷
127. **We are concerned about the extent of the disconnect between HMRC’s view as to compliance burden for businesses under this new requirement and what our witnesses told us. Whilst we did not receive evidence on the specific amount of additional costs that businesses will incur, we consider that there is a material risk that HMRC has underestimated what businesses will have to do and that the Government’s cost estimates understate the true cost to business of this measure.**
128. **Even if HMRC’s cost estimate is accurate, it puts the costs of ongoing compliance for large business at around 10 per cent of projected yield. In our view, this is disproportionate.**

HMRC compliance burden and support for businesses

129. Richard Wild of CIOT noted that compliant businesses may be likely to over-disclose uncertainties to avoid “the reputational risk of not being seen as compliant” leading to HMRC being “flooded” with notifications and not being able to see “the wood for the trees”.¹⁹⁸ Emma Rawson of ATTT described the “risk of [HMRC] getting information for information’s sake” that it was not equipped to deal with.¹⁹⁹
130. HMRC told us it did not want over-notification and so was looking at how to inform businesses of its expectations of the proposal.²⁰⁰ But we note that businesses wanting to be compliant “have to look at what the law says”

194 [Q 9](#) (Susan Cattell)

195 HMRC, ‘Policy Paper: Notification of uncertain tax treatment for large businesses’: <https://www.gov.uk/government/publications/notification-of-uncertain-tax-treatment-for-large-businesses/notification-of-uncertain-tax-treatment-for-large-businesses> [accessed 7 December 2021]

196 [Q 76](#) (Helen Page)

197 [Q 42](#) (Malcolm Gammie QC). The average assumes 2,300 in-scope companies.

198 [Q 24](#) (Richard Wild)

199 [Q 9](#) (Emma Rawson)

200 [Q 78](#) (Christopher Thomas)

(Malcom Gammie QC),²⁰¹ and the legal requirement is that a business must notify unless HMRC has already been told about the uncertainty. We were told that it will be “central to the success of the regime” and important in preventing over-notification that companies have access to HMRC to discuss uncertainties as they arise.²⁰²

131. Some of our witnesses told us that existing resource constraints mean that large businesses are already finding it challenging to get the level of engagement with HMRC (through their CCM) they would like and as a result that there is a concern that this new measure will only make the position worse.²⁰³ HMRC said that it recognised the demands on CCMs, but that CCMs were able to deal with them. Our witnesses however were clear that more CCM resource is needed if this proposal is to be workable.²⁰⁴ ICAS noted: “it is essential that increased investment in HMRC’s Customer Compliance Manager (CCM) resources takes place. Unless this happens, we do not believe that the notification regime can function effectively, in a way which keeps to a minimum the increased administrative burdens for open and transparent large businesses”.²⁰⁵
132. Mid-sized businesses within scope of the measure will not generally have a CCM. Last year, the Government told us that it was exploring what additional support these business would need in relation to this new requirement.²⁰⁶ In its response to the second consultation, the Government said that mid-sized businesses would not be put at a disadvantage compared with larger businesses and so would be provided with a route to discuss uncertainties, but no detail was given.²⁰⁷
133. Our witnesses told us that they were expecting that mid-sized businesses would have to submit an online form to HMRC requesting a discussion if they wanted to rely on the exemption from the obligation to notify. ICAS described this as “inadequate” and that, if this was the case, such businesses would be “at a considerable disadvantage” to companies that have a CCM.²⁰⁸
134. HMRC confirmed that mid-sized businesses would indeed be required to submit an online form to request a discussion, based on an existing HMRC customer support process with which mid-sized businesses were already familiar.²⁰⁹ HMRC also said that it would be spending £15m on building a new system to receive digital notifications, and recruiting a team with responsibility for triaging notifications when first received. It claimed that it had both “the right model and the right resourcing” for the new measure.²¹⁰

201 [Q 40](#) (Malcolm Gammie QC)

202 Written evidence from LSEW ([DEF0016](#))

203 [Q 9](#) (Susan Cattell); written evidence from ACCA ([DEF0017](#)), CIOT ([DEF0011](#)), ICAS ([DEF0005](#))

204 [Q 12](#) (Susan Cattell), [Q 28](#) (Richard Wild); written evidence from CIOT ([DEF0011](#)), ICAS ([DEF0005](#))

205 Written evidence from ICAS ([DEF0005](#))

206 HM Treasury, *Government Response to the House of Lords Economic Affairs Report, New powers for HMRC: fair and proportionate?* (19 February 2021) p 21: <https://committees.parliament.uk/publications/4734/documents/48082/default/> [accessed 7 December 2021]

207 HMRC, *Notification of uncertain tax treatment by large businesses—second consultation* (updated 20 July 2021) para 3.10: <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation> [accessed 7 December 2021]

208 Written evidence from ICAS ([DEF0005](#))

209 [Q 79](#) (Christopher Thomas)

210 [Q 77](#) (Helen Page), [Q 78](#) (Christopher Thomas)

135. **Whilst we acknowledge that the Covid-19 pandemic created challenges for HMRC, we are concerned to hear that large businesses still find it difficult to get a sufficient level of engagement with their customer compliance managers. We consider that the number of CCMs needs to be expanded irrespective of the introduction of the new uncertain tax treatment notification requirement.**
136. **We are concerned that HMRC has underestimated the number of notifications it is likely to receive. To ensure that notifications can be kept at a manageable level, it is critical that businesses have the opportunity to discuss uncertainties with HMRC in real time.**
137. **All businesses affected by this measure must be supported appropriately by HMRC. We have concluded previously that, should this proposal go ahead, the Government should commit to ensuring that every business affected had a customer compliance manager.²¹¹ Our view has not changed. Requiring a business to make an online request for a discussion with an HMRC officer falls short of the support required.**

Use of draft guidance

138. In August 2021, HMRC had published draft guidance on the new requirement which was intended to help businesses understand how it would apply in practice.²¹² The CBI told us of “a general concern” among its members that areas of uncertainty were being addressed through draft guidance and not through changes to the legislation itself, particularly given that, as a legal matter, guidance cannot be relied on by businesses.²¹³
139. We also received some specific comments on the draft guidance itself. We were told that not only did it lack clarity in certain areas, but that some important issues had not even been addressed.²¹⁴
140. **It is disappointing that a measure that we are told is intended to assist HMRC resolve uncertainty in the tax system is itself uncertain. If this measure is introduced, we consider that it is incumbent on HMRC to ensure that the issues identified by our witnesses are properly addressed in final guidance.**
141. **The publication of final guidance on the new requirement must be prioritised so that it is available to businesses well in advance of 1 April 2022 to help them prepare for this new obligation. It is vital that this guidance is clear and unambiguous.**

211 Economic Affairs Committee, *New powers for HMRC: fair and proportionate?* (4th Report, Session 2019–21, HL Paper 198), para 162

212 HMRC, *Policy paper overview: Large businesses: notification of uncertain tax treatment* (updated 19 August 2021): <https://www.gov.uk/government/publications/large-businesses-notification-of-uncertain-tax-treatment> [accessed 7 December 2021]

213 Written evidence from CBI ([DEF0012](#))

214 For example, written evidence from Baker McKenzie ([DEF0007](#)), CBI ([DEF0012](#)), Grant Thornton ([DEF0009](#)), ICAEW ([DEF0003](#)), ICAS ([DEF0005](#))

CHAPTER 4: COMMON THEMES

142. Our report examines the proposed reform of basis period rules and requirement on large businesses to notify HMRC of uncertain tax treatment in turn. Our analysis has, however, identified common themes applicable to both proposals, some of which have also arisen in previous reports by the Sub-Committee.

Failure to follow the Tax Policy Framework

143. In 2010, the Government set out a process for developing tax policy. Consultation, it said, should take place at “at each identifiable stage for all tax changes, where proportionate and practical to do so”. Those stages are:
- (1) Set out objectives and identify options;
 - (2) Determine the best option and develop a framework for implementation, including detailed policy design; and
 - (3) Draft legislation to effect the proposed change.²¹⁵
144. We warmly welcomed and commended the Government’s commitment to following the procedures outlined in the Tax Consultation Framework.²¹⁶
145. During this inquiry, Richard Wild of CIOT said that this process works well “when the consultation process is followed in full.”²¹⁷ However, in each of Chapters 2 and 3, we set out problems with both proposals stemming from a failure to observe the set stages of the consultation process. In the case of basis period reform, Stage 1 consultation was omitted despite a long gap between the current proposal and an earlier consultation conducted in 2016. As we discussed in Chapter 2, our witnesses told us that this has resulted in a relatively modest measure of simplification counterbalanced by complex transitional provisions and the ongoing estimation and apportionment by those businesses unable to align their accounting periods with the tax year.²¹⁸
146. In relation to uncertain tax treatment, our witnesses reported a considerable level of concern despite two Stage 2 consultations. Last year the Government said that there would be further consultation to get the “policy and legislation” right, yet the evidence we heard suggests that the further consultation was more about how to legislate for an idea that “somebody thinks ... is the way forward”.²¹⁹ Richard Wild said:

“A stage one consultation could have said, ‘There’s a legal interpretation tax gap... What could we do to reduce that gap?’ You would then get lots of suggestions in from businesses, professional bodies and what have you which the Government could reflect on and decide to look at some

215 HM Treasury, *Tax policy making: a new approach* (June 2010): https://webarchive.nationalarchives.gov.uk/ukgwa/20130102201052/http://www.hm-treasury.gov.uk/d/junebudget_tax_policy_making.pdf [accessed 7 December 2021]. The approach was reaffirmed by the Government in December 2017.

216 Economic Affairs Committee, *The Finance Bill 2011* (4th Report, Session 2010–2012, HL Paper 158) [accessed 7 December 2021]

217 Q 26 (Richard Wild)

218 See for example: Q 19 (Richard Wild), Q 21 (Sharron West), Q 30 (Bill Dodwell), Written evidence from CAI (DF0006), LSEW (DF0016) and ATT (DF0004)

219 Q 26 (Richard Wild)

a bit further, and perhaps decide that others they did not really like, and you could then start from the beginning.”²²⁰

147. While omitting Stage 1 may allow new proposals to be implemented faster, this does not appear to have been the case for the two measures discussed in this report, as both were delayed after initial announcement. After announcing that basis period reform would be introduced in 2022–23 the Government shortly thereafter announced a deferral to 2023–24.²²¹ For uncertain tax treatment, the first consultation said that the new rule would apply from April 2021, but two months after the consultation period ended, the Government delayed it for a year.²²²
148. **We heard much criticism of the way HMRC has handled these two major changes. We acknowledge that few changes to taxation are ever welcome, and that the Covid-19 pandemic has created new challenges for HMRC. But we are struck that, in both cases, the Government has had to extend the original timetables for implementation. This is due, in part, to the Government not following the recommended process for consultation. Consequently, proposals are made which the Government has had to revise, often more than once, which causes unnecessary uncertainty and confusion. This “start—stop” approach to policy risks alienating the people who will be impacted by the changes; and diminishing the reputation of, and trust in, HMRC.**
149. **We believe that some of the problems and challenges with the measures discussed in this report could have been foreseen at an earlier stage if the Government had followed the consultation processes set out in its own tax policy framework in full. In particular, the omission of Stage 1 risks a consultation process founded on the premise that the best solution to a problem has already been found.**
150. *We recommend that in future all consultations involving a significant reform of the tax system should begin at Stage 1 and invite the Government to make a renewed commitment to that effect.*

Resourcing for implementation

151. In their August 2021 letter to the Financial Secretary several tax professional bodies raised their concerns about the pressure likely to be placed on businesses and their advisers if basis period reform and MTD for income tax were to be implemented in consecutive years.²²³ Concerns about HMRC’s capacity to deal with the changes and provide the necessary support for taxpayers were voiced by a number of witnesses in the course of our inquiry.²²⁴
152. In particular, we heard concerns about current service levels which made tax professionals query whether HMRC was adequately resourced to take on the additional work required for basis period reform and MTD. Richard Wild of CIOT said: “There is always a sense that [HMRC] misjudges the level of

220 Q 26 (Richard Wild)

221 HC Deb, 23 September 2021, Col 17WS

222 HC Deb, 12 November 2020, Col 44WS

223 Letter from ICAS, ATT, ICAEW, LITRG, CIOT to Financial Secretary to the Treasury, 16 August 2021: <https://www.icaew.com/-/media/corporate/files/insights/tax-news/16-08-21-joint-professional-bodies-letter-re-basis-period-reform-and-mtd.ashx?la=en> [accessed 7 December 2021]

224 For example Q 48 (Rebecca Benneyworth); Written evidence from ACCA (DF0017), ICAS (DF0005), Sage (DF0018)

support that businesses and agents need in relation to these major changes.”²²⁵ Emma Rawson of ATT said of the period between now and April 2023: “I do not think we can overestimate the amount of work which needs to be done in that time.”²²⁶

153. In relation to uncertain tax treatment, a number of witnesses expressed concern that existing pressures on Customer Compliance Managers (CCMs) “were already making it difficult for businesses to engage with their CCMs reliably and consistently.”²²⁷ We were told that this new requirement was likely to make matters worse as compliant businesses might over-disclose uncertainties or seek to discuss issues with their CCMs to avoid the need to notify formally, leading to a large increase in workload.²²⁸ Yet the costings for this proposal do not appear to provide for an increase in the number of CCMs available to work with larger businesses.²²⁹
154. **The evidence we heard about current service levels within HMRC is troubling. We anticipate that the additional demands on HMRC arising from the proposals discussed in this report will only serve to exacerbate the situation.**
155. *We recommend that the Government commission an independent report on HMRC customer service levels and capacity. The report should separately consider HMRC’s performance in terms of its existing commitments and responsibilities to taxpayers and what will be needed in terms of additional resourcing for it to be able to deliver basis period reform and MTD for income tax without any adverse effect on overall service levels.*

Complexity and bureaucracy: impact on business

156. Evidence in relation to both proposals suggests that there is reason to expect an increase in administrative burdens for affected businesses.²³⁰ This included the work that is needed to be done to prepare for the changes as well as the work that results from complying with the new rules.
157. In this inquiry, we have heard concerns that HMRC underestimates the amount of time businesses need to prepare for change, their capacity to absorb the cumulative effect of successive changes within a short period, and the cost to businesses of complying with new requirements.
158. In relation to both basis period reform and uncertain tax treatment, businesses were presented with a proposal that they were told would come into force nine and twelve months later respectively. We note that businesses affected by the proposals would have needed to spend time and money preparing for the changes at the same time as the Covid-19 pandemic. Mike Cherry OBE of the Federation of Small Businesses told us: “On any tax changes small businesses require a longer transition period ... they do not have dedicated tax teams” and “small businesses generally just want something that ... is

225 Q 26 (Richard Wild)

226 Q 3 (Emma Rawson)

227 Written evidence from ICAS (DFE0005); ACCA gave similar evidence (see DFE0017)

228 Q 9 (Emma Rawson), Q 24 (Richard Wild)

229 HMRC, ‘Policy Paper: Notification of uncertain tax treatment for large businesses’: <https://www.gov.uk/government/publications/notification-of-uncertain-tax-treatment-for-large-businesses/notification-of-uncertain-tax-treatment-for-large-businesses> [accessed 7 December 2021]

230 For example, Q 9 (Susan Cattell), Q 39 (Bill Dodwell), Q 40 (Malcolm Gammie QC), QQ 46, 49 (Mike Cherry OBE); Written evidence from ICAS (DFE0005), ACCA (DFE0017)

easy to understand, that does not cost increased money or time, and with which they can make sure they comply first time.”²³¹

159. Even for larger businesses, with in-house tax support, a nine-month period to get ready for the changes is expected to be challenging. Despite the longer lead time now in place, the LSEW, for example, highlighted the complexity of tax compliance for international partnerships.²³² Basis period reform will add further complexity.
160. In relation to uncertain tax treatment, many of our witnesses were unconvinced that a sufficient case had been made to introduce a notification requirement applicable to all large businesses.²³³ HMRC’s assertion that there would be limited additional work needed by low-risk businesses that worked collaboratively with HMRC was disputed by our witnesses. Our witnesses therefore expressed concern about the costs that businesses would face dealing with this requirement and questioned whether HMRC’s costings were realistic.²³⁴ We discussed similar concerns about HMRC’s understanding of the costs to businesses of complying with new obligations in our 2021 report.²³⁵
161. **Significant changes to tax rules need a reasonable lead-in period so that businesses have the time they need to prepare. The scale of the impact of new proposals on businesses, especially small business, does not seem to be well understood by HMRC.**
162. **We consider that the Government should be more mindful of the need to factor in appropriate lead-in times in its policy proposals and that HMRC should provide a clear roadmap on “what has to be done” and “by when” to help businesses to prepare.**

231 [QQ 46, 49](#) (Mike Cherry OBE)

232 Written evidence from LSEW ([DEF0016](#))

233 [Q 9](#) (Susan Cattell), [Q 42](#) (Malcolm Gammie QC), [Q 39](#) (Bill Dodwell); written evidence from CBI ([DEF0012](#)), TLRC ([DEF0008](#))

234 [Q 42](#) (Malcolm Gammie QC)

235 Economic Affairs Committee, *Off-payroll working: treating people fairly* (1st Report, Session 2019–2020, HL Paper 50) [accessed 7 December 2021]

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. We consider that the consultation on basis period reform was flawed. In particular, it remains unclear why after four years since the original consultation the new and different basis period reform proposals were published in haste. (Paragraph 18)
2. We do not consider that a compelling case has been made for basis period reform, either as a simplification or as an essential prerequisite for introducing MTD for income tax. (Paragraph 25)
3. We consider that the difficulties that estimation and apportionment of profits pose for those businesses which cannot, or cannot sensibly, align their accounting periods with the tax year were not thought through adequately in the design of the basis period reform. We welcome the Government's recognition that further work needs to be done on how the adverse effects of basis period reform on these businesses might be mitigated. However, we are concerned that tackling this complexity may itself generate further complication to the tax system. (Paragraph 33)
4. *When this work is completed, but before final decisions are reached about the way forward, we recommend a reassessment of the additional compliance costs which businesses in this position will bear as a result of the reform.* (Paragraph 34)
5. *We recommend that by 5 April 2022 HMRC should commit publicly to providing details of overlap relief from their records for those businesses that need it and, where a specific record is not available, reconstruct the amount available from the information HMRC has.* (Paragraph 40)
6. *Our witnesses voiced a number of valid concerns about the additional tax liabilities some businesses could face on the transition to the new basis period rules, and made some suggestions about how these might be mitigated, which the Government should consider.* (Paragraph 45)
7. *While noting the resources that HMRC has assigned to the implementation of this policy, we recommend that the Government and HMRC review the resources required for basis period reform and Making Tax Digital for income tax, in order to maximise the chances of a smooth implementation. In particular, we recommend specific resources should be allocated to retrieving and providing information about overlap relief to relevant businesses.* (Paragraph 53)
8. *We recommend that HMRC contacts directly all taxpayers with accounting periods which are not aligned with the tax year to alert them to the change and its implications for them and to inform them of what support is available.* (Paragraph 55)
9. *HMRC should issue comprehensive guidance about basis period reform by 5 April 2022, including details of how unrepresented taxpayers can obtain support, and make a helpline number available.* (Paragraph 56)
10. We note the OBR's statement that, in the short term, basis period reform will raise revenue. Irrespective of the "fiscal illusion" that may exist in the long term, in the short term those businesses affected will pay extra tax. (Paragraph 62)
11. The impact of basis period reform on those businesses which are not able to align their accounting periods with the tax year, for sound commercial reasons, has not been sufficiently addressed. We are particularly concerned

about smaller businesses, especially those of a seasonal nature such as those in the agricultural sector and tourism. We have questioned the wisdom of introducing both basis period reform and MTD at a time when many businesses are recovering from the economic impact of Covid. (Paragraph 63)

12. In the course of our inquiry we encountered a formidable body of opinion from stakeholders that the basis period reforms should be dropped, or not go ahead in their present form. The strongly held views of key stakeholders should give the Government pause for thought. (Paragraph 64)
13. While we are not satisfied that the case has been made for basis period reform as a simplification, we do not recommend that the reform should be abandoned now. We note and welcome the Government's recognition that further work is needed on mitigating the effect of basis period reform on those businesses affected; in particular, specific action must be taken now to reflect the administrative burden they face. (Paragraph 65)
14. *We therefore recommend that, for those businesses which do not have a 31 March–5 April year end, Making Tax Digital should be deferred until at least 2025–26. This is also the earliest date at which partnerships—which are disproportionately represented in this group of businesses—are due to be brought into MTD. For the largest partnerships which are particularly adversely affected by basis period reform, no date for the implementation of MTD has yet been set.* (Paragraph 66)
15. While it is positive that HMRC engaged constructively with business on this measure over the last year, we are disappointed that the Government did not make better use of the opportunity afforded by the delay to this measure to bring greater clarity as to why the new requirement is needed. (Paragraph 80)
16. We remain of the view that a Stage 1 consultation should have been undertaken in relation to this measure. As a result of carrying out a second Stage 2 consultation, we consider that the Government continued to focus on one specific proposal, rather than giving proper consideration to alternative ways of addressing uncertainty within the tax system as a Stage 1 consultation would have required. (Paragraph 81)
17. Although we acknowledge that the measure has improved as a result of the further consultation, we are nonetheless concerned that so many of the criticisms and concerns we heard last year have been repeated in evidence to this inquiry. (Paragraph 82)
18. We agree with our witnesses that the case for requiring large businesses to notify HMRC of uncertain tax treatment has still not been made. (Paragraph 96)
19. Given what HMRC has told us about its strategy around large business compliance we are concerned that, rather than level the playing field in terms of compliance, this measure will have a disproportionate effect on those businesses that already strive to have a collaborative relationship with HMRC in which they discuss uncertain tax matters. (Paragraph 97)
20. We remain of the view that it is both unnecessary and counter-productive to make a requirement to notify uncertain treatment apply to all large businesses, regardless of their risk status. We are disappointed that, notwithstanding

further consultation, the measure remains neither appropriately targeted nor proportionate. (Paragraph 98)

21. For low-risk businesses, we are unconvinced that providing a clearer framework around what HMRC considers a tax uncertainty supports the imposition of a new statutory obligation and the related risks and costs that brings. In our view, further clarity for businesses as to what HMRC wants to be told would be better provided through a non-legislative solution. (Paragraph 99)
22. That said, given the Government is determined to press ahead with this measure, the rest of this report covers how we think the measure itself might be improved, and its implementation made as smooth as possible. (Paragraph 100)
23. We acknowledge that HMRC has sought, through consultation, to make the test for uncertainty more objective. However, we remain concerned that the application of the proposed second trigger still imposes a significant burden on businesses in practice. There needs to be greater clarity for businesses seeking to identify a “known view”. Any list of sources should be exhaustive, and preferably fixed in legislation. (Paragraph 115)
24. The operation of the second trigger is dependent on HMRC’s published guidance being clear, unambiguous and up- to- date. The Government must ensure that sufficient resources are made available to HMRC to ensure that its published guidance is updated on an ongoing basis. (Paragraph 116)
25. HMRC guidance is no substitute for law. We are concerned as to the extent to which HMRC appears to be relying in its own guidance to solve issues of uncertainty created by the legislation for the new notification requirement. This adds further uncertainty and complexity to a tax system that is already complex. (Paragraph 117)
26. We agree with our witnesses that the proposed third trigger was too subjective. We welcome the Government’s decision not to proceed with it at this stage. (Paragraph 118)
27. *We recommend that, before legislating for this third trigger, an evidence-based evaluation of the measure in its current form be carried out to identify whether it does indeed deliver the benefits that HMRC tells us it is expecting. We also recommend that, if such an evaluation shows that the requirement is not delivering the benefits that HMRC expects, then the notification requirement in its entirety should be repealed.* (Paragraph 119)
28. We are concerned about the extent of the disconnect between HMRC’s view as to compliance burden for businesses under this new requirement and what our witnesses told us. Whilst we did not receive evidence on the specific amount of additional costs that businesses will incur, we consider that there is a material risk that HMRC has underestimated what businesses will have to do and that the Government’s cost estimates understate the true cost to business of this measure. (Paragraph 127)
29. Even if HMRC’s cost estimate is accurate, it puts the costs of ongoing compliance for large business at around 10 per cent of projected yield. In our view, this is disproportionate. (Paragraph 128)

30. Whilst we acknowledge that the Covid-19 pandemic created challenges for HMRC, we are concerned to hear that large businesses still find it difficult to get a sufficient level of engagement with their customer compliance managers. We consider that the number of CCMs needs to be expanded irrespective of the introduction of the new uncertain tax treatment notification requirement. (Paragraph 135)
31. We are concerned that HMRC has underestimated the number of notifications it is likely to receive. To ensure that notifications can be kept at a manageable level, it is critical that businesses have the opportunity to discuss uncertainties with HMRC in real time. (Paragraph 136)
32. All businesses affected by this measure must be supported appropriately by HMRC. We have concluded previously that, should this proposal go ahead, the Government should commit to ensuring that every business affected had a customer compliance manager. Our view has not changed. Requiring a business to make an online request for a discussion with an HMRC officer falls short of the support required. (Paragraph 137)
33. It is disappointing that a measure that we are told is intended to assist HMRC resolve uncertainty in the tax system is itself uncertain. If this measure is introduced, we consider that it is incumbent on HMRC to ensure that the issues identified by our witnesses are properly addressed in final guidance. (Paragraph 140)
34. The publication of final guidance on the new requirement must be prioritised so that it is available to businesses well in advance of 1 April 2022 to help them prepare for this new obligation. It is vital that this guidance is clear and unambiguous. (Paragraph 141)
35. We heard much criticism of the way HMRC has handled these two major changes. We acknowledge that few changes to taxation are ever welcome, and that the Covid-19 pandemic has created new challenges for HMRC. But we are struck that, in both cases, the Government has had to extend the original timetables for implementation. This is due, in part, to the Government not following the recommended process for consultation. Consequently, proposals are made which the Government has had to revise, often more than once, which causes unnecessary uncertainty and confusion. This “start—stop” approach to policy risks alienating the people who will be impacted by the changes; and diminishing the reputation of, and trust in, HMRC. (Paragraph 148)
36. We believe that some of the problems and challenges with the measures discussed in this report could have been foreseen at an earlier stage if the Government had followed the consultation processes set out in its own tax policy framework in full. In particular, the omission of Stage 1 risks a consultation process founded on the premise that the best solution to a problem has already been found. (Paragraph 149)
37. *We recommend that in future all consultations involving a significant reform of the tax system should begin at Stage 1 and invite the Government to make a renewed commitment to that effect.* (Paragraph 150)
38. The evidence we heard about current service levels within HMRC is troubling. We anticipate that the additional demands on HMRC arising

from the proposals discussed in this report will only serve to exacerbate the situation. (Paragraph 153)

39. *We recommend that the Government commission an independent report on HMRC customer service levels and capacity. The report should separately consider HMRC's performance in terms of its existing commitments and responsibilities to taxpayers and what will be needed in terms of additional resourcing for it to be able to deliver basis period reform and MTD for income tax without any adverse effect on overall service levels.* (Paragraph 155)
40. Significant changes to tax rules need a reasonable lead-in period so that businesses have the time they need to prepare. The scale of the impact of new proposals on businesses, especially small business, does not seem to be well understood by HMRC. (Paragraph 161)
41. We consider that the Government should be more mindful of the need to factor in appropriate lead-in times in its policy proposals and that HMRC should provide a clear roadmap on “what has to be done” and “by when” to help businesses to prepare. (Paragraph 162)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTERESTS

Members of the Finance Bill Sub-Committee

Lord Butler of Brockwell
 Lord Bridges of Headley (Chair)
 Viscount Chandos
 Baroness Harding of Winscombe
 Baroness Kramer
 Lord Monks
 Lord Haskel
 Baroness Noakes

Declarations of interests

Lord Butler of Brockwell
Adviser to TT International Investment Management LLP

Lord Bridges of Headley (Chair)
Adviser to and shareholder in Banco Santander, Madrid, Spain
Editorial Consultant, London Evening Standard

Viscount Chandos
No relevant interests

Baroness Harding of Winscombe
Occasional speaking engagements via Chartwell Speakers and Literary Agency

Baroness Kramer
No relevant interests

Lord Monks
No relevant interests

Lord Haskel
No relevant interests

Baroness Noakes
No relevant interests

Members of the Economic Affairs Committee

Lord Bridges of Headley
Adviser to and shareholder in Banco Santander, Madrid, Spain
Editorial Consultant, London Evening Standard

Viscount Chandos
No relevant interests

Rt Hon. Lord Forsyth of Drumlean (Chair)
No relevant interests

Lord Fox
No relevant interests

Baroness Harding of Winscombe
Occasional speaking engagements via Chartwell Speakers and Literary Agency

Lord Haskel
No relevant interests

Lord King of Lothbury
Self-employed writer, lecturer and consultant

Baroness Kingsmill
No relevant interests

Rt Hon. Baroness Kramer

No relevant interests

Lord Livingston of Parkhead

No relevant interests

Lord Monks

No relevant interests

Lord Skidelsky

No relevant interests

Lord Stern of Brentford

Climate Advisor to NatWest Group and to Citigroup

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 Dyll

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

**	Susan Cattell, Head of Tax Technical Policy, Institute of Chartered Accountants of Scotland (ICAS)	QQ 1-12
**	Richard Jones, Business Tax Manager, Institute of Chartered Accountants in England and Wales (ICAEW)	QQ 1-12
**	Jason Piper, Head of Tax and Business Law, Association of Chartered Certified Accountants (ACCA)	QQ 1-12
**	Emma Rawson, Technical Officer, Association of Taxation Technicians (ATT)	QQ 1-12
**	Sharron West, Technical Officer, Low Incomes Tax Reform Group (LITRG)	QQ 13-28
**	Richard Wild, Head of Tax Technical, Chartered Institute of Taxation (CIOT)	QQ 13-28
*	Bill Dodwell, Tax Director, Office of Tax Simplification	QQ 29-44
**	Malcolm Gammie QC, Member, Tax Law Review Committee	QQ 29-44
*	Rebecca Benneyworth, Member, Administrative Burdens Advisory Board (ABAB)	QQ 45-57
*	Andrew Chamberlain, Director of Policy, Association of Independent Professionals and the Self-Employed	QQ 45-57
*	Mike Cherry OBE, National Chair, Federation of Small Businesses	QQ 45-57
*	Thomas Brown, Senior Policy Adviser, HMRC	QQ 58-81
*	Bridget Micklem, Deputy Director, Business Profits, HMRC	QQ 58-81
*	Helen Page, Deputy Director, Tax Administration Law and Policy, HMRC	QQ 58-81
*	Christopher Thomas, Deputy Director, Large Business, HMRC	QQ 58-81

Alphabetical list of witnesses

Baker McKenzie	DFE0007
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- * Rebecca Benneyworth, Member, Administrative Burdens Advisory Board (ABAB) (QQ 45–57)
Building Societies Association [DFE0002](#)
- ** Thomas Brown, Senior Policy Advisor, HMRC (QQ 58–81) [DFE0020](#)
- ** Susan Cattell, Head of Tax Technical Policy, Institute of Chartered Accountants of Scotland (ICAS) (QQ 1–12) [DFE0005](#)
- * Andrew Chamberlain, Director of Policy, Association of Independent Professionals and the Self-Employed (QQ 45–57)
Chartered Accountants Ireland [DFE0006](#)
- * Mike Cherry OBE, National Chair, Federation of Small Businesses (QQ 45–57)
Confederation of British Industry [DFE0012](#)
- * Bill Dodwell, Tax Director, Office of Tax Simplification (QQ 29–44)
- ** Malcolm Gammie QC, Member, Tax Law Review Committee (QQ 29–44) [DFE0008](#)
Grant Thornton UK LLP [DFE0009](#)
- ** Richard Jones, Business Tax Manager, Institute of Chartered Accountants in England and Wales (ICAEW) (QQ 1–12) [DFE0003](#)
Law Society of England and Wales [DFE0016](#)
Law Society of Scotland [DFE0013](#)
London Society of Chartered Accountants [DFE0015](#)
- ** Bridget Micklem, Deputy Director, Business Profits, HMRC (QQ 58–81) [DFE0020](#)
- ** Helen Page, Deputy Director, Tax Administration Law and Policy, HMRC (QQ 58–81) [DFE0020](#)
Kim Parry [DFE0001](#)
- ** Jason Piper, Head of Tax and Business Law, Association of Chartered Certified Accountants (ACCA) (QQ 1–12) [DFE0017](#)
National Farmers Union [DFE0014](#)
- ** Emma Rawson, Technical Officer, Association of Taxation Technicians (ATT) (QQ 1–12) [DFE0004](#)
Sage Group [DFE0018](#)
- ** Christopher Thomas, Deputy Director, Large Business, HMRC (QQ 58–81) [DFE0020](#)
- ** Sharron West, Technical Officer, Low Incomes Tax Reform Group (LITRG) (QQ 13–28) [DFE0010](#)

** Richard Wild, Head of Tax Technical, Chartered [DFE0011](#)
Institute of Taxation (CIOT) (QQ 13–28) [DFE0019](#)

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.

Draft Finance Bill clauses were published on 20 July 2021. The Sub-Committee's inquiry will focus on two areas of the draft legislation:

- proposals for income tax basis period reform
- notification by large businesses of uncertain tax treatment.

Details of the proposals are at the links above.

The Sub-Committee invites interested individuals and organisations to submit written evidence to this inquiry. It would be particularly interested to hear from small businesses directly affected by basis period reform and their agents.

Written submissions are requested by Wednesday 13 October 2021

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 two areas of focus.

The Sub-Committee is interested to know about the experiences of individuals and organisations, as well as more general responses. There is no obligation to answer every question and the Sub-Committee recognises that respondents will not necessarily be interested in all the areas of focus.

Income tax basis period reform

- (1) How far does the reform represent a useful simplification?
- (2) To what extent would the reform deliver a fairer result than the current rules?
- (3) Would either of the alternative options mentioned in the consultation document be a better solution? If so, why?
- (4) Are the transitional provisions sufficiently robust? If not, how do they need to change?
- (5) How onerous is apportionment of profits between tax years likely to be for businesses which do not have an accounting period aligned with the financial/tax year?
- (6) How manageable is the timetable, especially vis-à-vis the introduction of Making Tax Digital for income tax?
- (7) What is Her Majesty's Revenue and Customs doing to support businesses in making the change?
- (8) How important is reform of the basis period rules in the context of the Government's 10-year strategy for the tax administration framework?

- (9) How much of a problem are the existing basis period rules in practice?
- (10) How does the proposal fit with the work the Office of Tax Simplification is doing on the date of the end of the tax year?

Notification by large businesses of uncertain tax treatment

- (11) To what extent do the current proposals for notification by large businesses of uncertain tax treatment take account of concerns raised in the two consultations there have been on the measure?
- (12) Is sufficient support being given to businesses to help them comply with the measure?