HMRC abuse of power under the spotlight in Lords Inquiry

HMRC's perceived abuse of its tax collecting powers was placed under the spotlight at a series of recent Lords Select Committee hearings. Contributing to the Finance Bill Sub-Committee's Inquiry into the 2018 draft Finance Bill, a panel of tax experts scrutinised the taxman's approach to tax collection, many of whom presented damning evidence to suggest that HMRC has abused its powers.

Experts were asked to share their views on whether HMRC has overstepped the mark with its application of several controversial recent legislative measures, including the 2019 Loan Charge, Accelerated Payment Notices (APNs) and Follower Notices.

The Committee also invited submissions on the topic, which attracted over 70 responses from tax institutions, accountants and stakeholders. Among these, many respondents took the opportunity to express grave concerns about the Loan Charge and the destructive impact that it will have on livelihoods.

Draconian tax regimes place 'penalty on access to justice'

The Committee's interest in HMRC's powers comes off the back of a spate of controversial measures which many argue have removed taxpayer safeguards. One such measure is the introduction of APNs, which requires individuals believed to be involved in tax avoidance schemes to pay the disputed tax up front or risk steep late payment penalties.

Arguably more contentious are the more recent retrospective powers that HMRC has been granted to investigate non-deliberate offshore non-compliance as far back as 12 years.

However, the fiercest backlash has been against the 2019 Loan Charge, which enables HMRC to impose retrospective tax charges on sums received by individuals through loan scheme arrangements since 1999 – schemes which were dubious, though within the letter of the law.

Draconian penalty regimes were also scrutinised, with the APN and follower notice arrangement; whereby a penalty must be paid before a legal challenge can be made against the deducted sum, which was compared by Lord Forsyth of Drumlean to "a penalty on access to justice".

Experts were almost unanimous in their belief that these factors have tipped the balance too far in HMRC's favour. Chas Roy-Chowdhury, head of taxation at Association of Chartered Certified Accountants (ACCA), noted that each new anti-avoidance measure adds another layer of complexity for taxpayers, who find it increasingly difficult to maintain an oversight of these measures.

"We need a more holistic perspective on tax avoidance, rather than legislation granting HMRC further 'bolt-on' powers each year without proper recourse. This has resulted in a great imbalance," said Roy-Chowdhury.

‘Bullying’ approach places HMRC under Lords scrutiny

It is not only the legislative measures but HMRC’s application of its new powers which came in for criticism. Frank Haskew, head of tax faculty at the Institute of Chartered Accountants in England and Wales (ICAEW), presented evidence to show that HMRC has often failed to follow the letter of the law by raising enquiries out of time and without just reasoning.

In doing so, Haskew added that the “heavy-handed” approach HMRC often adopts demonstrates a lack of understanding about how its powers are to be applied in practice.

Yet, one of the most damning accounts was provided by Lydia Challen, chair of the Tax Law Committee, Law Society, who noted many concerns the Law Society members, who engage often with HMRC, had expressed about the taxman’s approach, including:

> - That improved powers have resulted in a more aggressive approach from HMRC
> - That these powers grant HMRC the ability to pressurise taxpayers into settling for tax sums which they may not believe to be just
> - That HMRC displays a general reluctance to believe that the taxpayer is acting in good faith
> - That there is a difficulty in getting reasons for HMRC’s challenges to taxpayers until late in proceedings.

These concerns were reflected in comments made by Graham Webber of WTT Consulting, who noted: “HMRC often makes the assumption that something has gone wrong and proceeds to throw the kitchen sink at taxpayers.”

“Bullying approach”, was the term used by Temple Tax Chambers barrister, Keith Gordon, who noted that the current tax regime often places the impetus on the taxpayer to assert their rights through the tax tribunals to protect their position.

Taxpayers victimised by 2019 Loan Charge

A case in point is the introduction of the 2019 Loan Charge, a subject which dominated much of the discussion during the final session, and which was described by Webber as a “panacea for poor Revenue performance”.

“It’s a last gasp attempt to draw a line in the sand, and bully people into settling on indefensible terms,’ he continued. “It will destroy lives. It will cause family breakup and divorce.”

Gordon described the Loan Charge as an attempt by HMRC to cover up its failings, in reference to the taxman’s failure to address many of the schemes in question over the past two decades, despite being fully aware of them.

Webber added that, by staying silent over such schemes, HMRC had added considerably to the problem, citing a client of his as an example of an unwitting victim of the Loan Charge:

“A social worker client of mine was made redundant by the council, before being re-engaged for five years as a contractor, upon the council’s insistence that she used a certain agency and a specific scheme. Eventually, she was re-employed. She was unaware of what was going on, and now faces a loan charge which is equal to roughly a year and a half’s worth of her salary.”

Experts also drew issue with the fact that employers and agencies who have benefited from such arrangements have not been targeted by the Loan Charge, which only seeks to retrieve payment from those at the bottom of the supply chain, who Gordon noted are “worst placed to defend themselves”.

“What is particularly galling is that a number of other parties benefited from these arrangements and have essentially gotten away with it”, commented Webber, who proposed measures whereby any charge is shared between all of the parties involved.

Are increased powers compensating for diminishing HMRC expertise?

Throughout the hearings, several panellists implied that heightened tax collecting powers might be compensating for diminishing expertise within HMRC, with some arguing that the inherent danger of combining the two has been realised in the form of abusive regimes.

“HMRC needs more resources. It needs more people, and it can’t just be passing the burden onto the taxpayer to be carrying the weight of the cutbacks,” noted Roy-Chowdhury.

“If I were being kind, I would say that HMRC has moved from being a tax expert organisation to a tax processing organisation,” commented

Webber, who described the taxman's current processes as being akin to those of a call centre.

Lack of expertise may be a key factor behind the taxman's tendency to go after the 'low hanging fruit', and specifically individual taxpayers, who several experts suggested may be treated less favourably by HMRC than larger entities. Gordon noted that, according to HMRC statistics, tax avoidance makes up one-third of the tax shortfall caused by evasion, yet it seemingly commands greater attention.

Those who commented on the matter agreed that HMRC needed both greater resources and close monitoring of its application of tax legislation. While giving evidence, the Institute of Chartered Accountants of Scotland (ICAS) director of taxation, Charlotte Barbour, called for a review of HMRC's powers, as well as the formation of an oversight body to report occasionally on how these powers are being exercised.

This view is shared by ContractorCalculator CEO, Dave Chaplin: "For too long, taxpayers have been victimised by HMRC, which has taken advantage of the imbalance of power and lack of safeguards. We urgently need a review of HMRC's powers and an independent body set up to oversee appeals and complaints by taxpayers, to ensure that HMRC acts lawfully and ethically."

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