

## Lords call for HMRC Powers Review as Loan Charge is slammed



HOUSE OF LORDS  
Economic Affairs Committee

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4th Report of Session 2017–19

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# The Powers of HMRC: Treating Taxpayers Fairly

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A House of Lords report has condemned HMRC's efforts in tackling tax avoidance and evasion, while calling for Government to establish a review of the taxman's powers to ensure future fair treatment of taxpayers.

Launched by the Economic Affairs Committee, the report, titled [The Powers of HMRC: Treating Taxpayers Fairly](#), urges Parliament to rethink how it holds HMRC and the Treasury to account for the fair treatment of taxpayers. This, it argues, is warranted by "a compelling need to address the view that HMRC is not sufficiently accountable", which was shared by many who [provided evidence during the inquiry](#).

"HMRC is right to tackle tax evasion and aggressive tax avoidance," noted Lord Forsyth of Drumlean, chairman of the Select Committee on Economic Affairs. "However, careful balance must be struck between clamping down and treating taxpayers fairly.

"Our evidence has convinced us that this balance has tipped too far in favour of HMRC and against the fundamental protections every taxpayer should expect. Since 2012, perhaps due to reduced resources, HMRC has been granted some broad, disproportionate powers without effective taxpayer safeguards."

### HMRC Powers Review: the Lords recommendation

As a next step, the report calls on the Treasury to commission an independent review, to consider the establishment of an independent body to scrutinise HMRC's operations. Focusing on the taxman's power, this, it argues, could effectively:

- Monitor the balance between HMRC and the taxpayer
- Consider new proposals for legislation, including taxpayer safeguards
- Oversee the issues around HMRC culture and deteriorating customer service.

"This recommendation is very much welcomed," comments ContractorCalculator CEO, Dave Chaplin. "We desperately need oversight of HMRC to deliver accountability and fairness for taxpayers.

"HMRC is guilty of behaving in a manner that has caused a breakdown in the principles of access to justice, resulting in taxpayers being treated unfairly. Power without sufficient oversight is a breeding ground for abuse."

### Is HMRC's abuse of power surprising?

Throughout the inquiry, the Select Committee heard multiple accounts detailing HMRC's abuse of its powers, which the report notes have contributed towards "increasingly aggressive behaviour towards taxpayers".

While the Select Committee acknowledges that declining resources, coupled with the pressure to improve counter-avoidance and evasion performance, will have played their part, Chaplin believes HMRC's abuse was inevitable, given the structure of Government:

"In a 'rule of law' democracy, the protection of the people from bureaucratic abuse relies on independent Government bodies cross-checking each other's actions to limit abuse of powers.

"It's expected that, where a Government body such as HMRC has all of the relevant concentrated power, abuse will occur. This is why the Lords' findings are of no surprise. We are in desperate need of an independent oversight body, which in my view needs to extend to an independent Small Business Tax Tribunal."

### **Taxman's approach to 2019 loan charge "disturbing"**

Among the powers discussed during the inquiry was the contentious [April 2019 loan charge](#), of which Lord Forsyth described HMRC's approach as "disturbing".

The criticisms levied at the loan charge included its retrospective nature and its failure to pursue taxpayers proportionately to their circumstances, with the report adding: "HMRC appears to be prioritising recovery of tax revenue over justice by targeting individuals, rather than promoters, so it can more easily recover liabilities."

Contractors will welcome the Select Committee's recommendation to amend the legislation to exclude loans made in years where taxpayers disclosed their participation in these schemes to HMRC, or which would otherwise have been 'closed'.

### **How will Government respond to Lords findings?**

Whether Government will act on the recommendation to establish an independent body to oversee the operation of HMRC remains to be seen. However, director of [WTT Consulting](#), Graham Webber, who presented evidence during the inquiry, has his doubts:

"Unfortunately, I think it will be very unlikely. A new Powers review might lead to a curbing of HMRC's presently unaccountable actions. However, HMRC likes to work in the dark, according to its own rules, and hates being exposed or having its work examined. Given the enormous power the taxman wields in the Civil Service, with the Treasury providing air cover, I cannot see an oversight body being agreed."

Considering the preventative impact of the report on HMRC's plans to extend the Off-Payroll rules to the private sector, Webber is more optimistic: "HMRC may be forced to reconsider Off-Payroll, but only if a lot of work is done to expose the link between the original IR35 iteration and HMRC's reaction to the use of schemes to avoid the uncertainty.

"Clearly, HMRC has overstepped the mark. We need to show that extending the flawed IR35 rules will create a similar situation in a few years as private sector clients are just not interested in having employees on the payroll."

### **Government must act on recommendations to avoid future avoidance**

As the report acknowledges, engagement in loan schemes has often been triggered by factors outside of the control of the individual taxpayer, including aggressive tax legislation.

Many of those affected don't reflect HMRC's portrayal of the extensively-advised tax avoider whose involvement in schemes is egregious and deliberate. For Chaplin, it is imperative that Government act on the Select Committee's recommendations, or else risk inciting further aggressive tax avoidance:

"Nobody wants aggressive tax avoidance, but the catalyst that results in these schemes is aggressive tax legislation enacted by HMRC, including IR35 in April 2000 and its ghastlier sequel, the April 2017 Off-Payroll reforms. The response by taxpayers is hardly surprising.

"As we approach April 2020, with the planned extension of the Off-Payroll rules in the private sector, we're already seeing new schemes emerging. History is likely to repeat itself, resulting in damage to the flexible workforce, more taxpayers unwittingly becoming tax cheats and a travesty far worse than the loan charge surfacing in ten years' time."

Chaplin concludes: "MPs need to get involved in the nitty gritty of tax legislation forced through Parliament by HMRC, rather than blindly waving it through. Introducing an independent body to monitor HMRC is a much needed step in the right direction."

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