



**Comments from Conservative and Liberal Democrat front-bench spokesmen  
against Section 58 of the Finance Act 2008**

**The Rt. Hon George Osborne MP, Chancellor of the Exchequer, at the time of the debate  
Shadow Chancellor of the Exchequer, letter to victim of Section 58, 20<sup>th</sup> March 2009**

*"It was the opinion of my party that this legislation ought to apply prospectively and the question of whether earlier Acts prohibited these practices was an issue for the courts.*

*"The key problem seems to be that the Government has been aware of this loophole for some years, yet had made no move to close the loophole. This served to create a legitimate expectation amongst taxpayers that the practice would be tolerated by the Government, and so people have been arranging their tax affairs accordingly."*

*"We share the Government's concern about the issue it is trying to address, but believe it should have sent a clear and unambiguous signal to taxpayers at a much earlier stage, rather than standing back and creating the impression that it would tolerate the arrangement - and then acting retrospectively."*

**The Rt. Hon David Cameron MP, Prime Minister, at the time of the debate Leader of the  
Opposition, letter to victim of Section 58, 12<sup>th</sup> May 2008**

*"Retrospective legislation should only be used in exceptional circumstances but the Government appears to be increasingly willing to use retrospective legislation in tax matters. Therefore, I hope you will be pleased to know that we intend to table amendments to the Bill to remove the retrospective nature of these provisions."*

**The Rt. Hon Vince Cable MP, Secretary of State for Business, Innovation and Skills, at the  
time of the debate Liberal Democrat Shadow Chancellor of the Exchequer, in July 2008**

*"Rewriting of legislation in such a way does not meet the legitimate expectation test. It sends out a damaging signal about the stability of the UK tax system, whereby business transactions made under one set of laws can then become subject to a different tax outcome at a later date due to the retrospective change in the rules.*

*Taxpayers are entitled to understand the implications of a transaction that they enter into. Treating the provision as 'always having had effect' runs contrary to Parliament's intent over the past 30 years, which is to lay down rules whereby the tax effect of particular transactions can be changed or advance warning can be given of a change in the tax treatment in clearly identified circumstances. It was for this reason that the Liberal Democrats sought to move an amendment to the clause, however this was defeated."*

**David Gauke MP, Exchequer Secretary to the Treasury, at the time of the debate Shadow  
Exchequer Secretary, 22<sup>nd</sup> May 2008 (Public Bill Committee of the Finance Bill)**

*"Whereas on the previous clause we made our points in a probing manner, we do so here with much greater force... If [HMRC] become aware of a scheme that they do not like but they sit on their hands and do nothing about it, and then some years later say, 'Okay, we will introduce retrospective legislation,' that raises real concerns, because again there is a continued period of uncertainty.*



It is not acceptable that the Government permit something that they consider unacceptable to exist for some years, and then seek to introduce retrospective legislation to address it. That is what we see here.

The Minister says that in the opinion of HMRC, the clause merely clarifies the existing law, and that there has been no litigation. That is presumably because HMRC has not pursued litigation. If HMRC is so confident that the measure merely clarifies the law—I am not making a case one way or the other—why is it not bringing litigation against the users of the scheme?

[The Minister] said that HMRC is confident that the clause merely reasserts existing law, that it is not a change in law and that the schemes are in clear breach of the law, yet she suggests that some £200 million in back tax is at risk. If the law is as she says—I have no reason to doubt it—that sum is not at risk, because all that is required is for HMRC to litigate. It prompts the question why HMRC will not litigate.

For those reasons I am more convinced than ever that the retrospective nature of the clause is unacceptable.”

**The Rt. Hon Philip Hammond MP, Secretary of State for Defence, at the time of the debate Shadow Chief Secretary to the Treasury, 22<sup>nd</sup> May 2008 (Public Bill Committee of the Finance Bill)**

“I listened with great interest to my hon. Friend (David Gauke). He seems to imply that there is a concept of reasonable expectation. Where the Government are known to be aware of a practice and do not move to close it down, is it not the case that taxpayers have a reasonable expectation that the Government have chosen to tolerate that course of action, and plan accordingly?”

**Colin Breed MP, Liberal Democrat Shadow Treasury Minister at the time of the debate an sponsor of the amendment to remove the retrospective elements of Section 58, 22<sup>nd</sup> May 2008 (Public Bill Committee of the Finance Bill)**

“We still believe that, in principle, tax changes should apply prospectively and not retrospectively as set out under the measure. We are worried particularly by the effect of subsection (4), which will treat the new provisions as “always having had effect”. As a result of the change, established tax law that has been on the statute book since 1970 has instantaneously been rewritten. Rewriting of legislation in such a way does not meet the legitimate expectation test.

If the underlying policy is to be changed, then any change should have effect only in relation to future transactions.”

**For more information or background to our campaign, please visit the No to Retro Tax website at [www.notoretrotax.org.uk](http://www.notoretrotax.org.uk), contact us on 020 7138 3228 or by email at [info@notoretrotax.org.uk](mailto:info@notoretrotax.org.uk).**

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**No To Retro Tax  
May 2012**



GEORGE OSBORNE MP

SHADOW CHANCELLOR OF THE EXCHEQUER

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20 March 2009

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Thank you for your recent letter regarding the retrospective nature of Section 58 of the Finance Act 2008.

As you know, in the Finance Act 2008, the Government introduced legislation aimed at clarifying a provision of the Finance Act 1987 prohibiting the use of the UK-Jersey double taxation treaty to exempt from taxation a UK member's share of a foreign partnership's income. It was the opinion of my Party that this legislation ought to apply prospectively and the question of whether earlier Acts prohibited these practices was an issue for the courts. We tabled such an amendment in the House of Commons but were defeated.

The key problem seems to be that the Government has been aware of this scheme for some years, yet made no move to close the loophole. This served to create a legitimate expectation amongst taxpayers that the practice would be tolerated by the Government, and so people have been arranging their tax affairs accordingly.

I should stress that Conservatives do not condone any form of tax avoidance. We share the Government's concern about the issue it is trying to address, but believe it should have sent a clear and unambiguous signal to taxpayers at a much earlier stage, rather than standing back and creating the impression that it would tolerate the arrangement – and then acting retrospectively.

I am afraid that, with the public finances in the state they are, we are unable to make any firm promises to reverse this legislation once in office, but we have put forward a number of proposals to ensure that the making of tax law is improved significantly in future, so that such situations do not arise again.

Once again, thank you for taking the time to write to me.

George Osborne MP

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HOUSE OF COMMONS  
LONDON SW1A 0AA

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Dr. [REDACTED]

Thank you for your email of 2 May about the Finance Bill 2008 and the proposed amendments to "Double Taxation Arrangements".

I appreciate and share your concerns about this issue. Retrospective legislation should only be used in exceptional circumstances but the Government appears to be increasingly willing to use retrospective legislation in tax matters. Therefore, I hope that you will be pleased to know that we intend to table amendments to the Bill to remove the retrospective nature of these provisions.

Thank you, once again, for writing to me.

David Cameron