**Transcript of New Clause 1**

**Abolition of retrospective application of section 58(4) of the Finance Act 2008**

**Held in Parliament on Thursday 20st June 2013**

‘(1) Section 58 of the Finance Act 2008 (UK residents and foreign partnerships) is amended as follows.

(2) In subsection (4), delete “always having had effect” and insert“having effect from 12 March 2008.”.’.—*(Steve Baker.)*

*Brought up, and read the First time.*

**Steve Baker:**I beg to move, That the clause be read a Second time.

I am grateful to the Government for allowing so much time for us to discuss the new clause. My hon. Friend the Member for Amber Valley did not have so much time last year, and other hon. Members’speeches were cut short, so I am grateful that we have time to debate it properly. I am also grateful to the Minister for entering into considerable detail in all his correspondence with me and for the time he allocated to our meeting.

Having done the research and having considered the current state of the debate on tax avoidance in particular, I am struck by how dreadful a business politics can be when high principle runs on to the rocks of low reality. In this mother of Parliaments, it ought not to be necessary to have to move an amendment to defend that most fundamental of our institutions, the rule of law, but that is the essence of the new clause.

New clause 1 amends section 58(4) of the Finance Act 2008 to remove retrospection by replacing the words “always having had effect”with

“having effect from 12 March 2008”,

which is the date of the relevant announcement. Its practical effect would be to leave in place measures to close down what was clearly an abusive scheme and, by repealing retrospection, to leave HMRC to test that scheme in the courts under the law as it stood at the

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time. If the new clause is not agreed, the effect will be to expose people to financial ruin at the hands of the state for conduct that they genuinely thought was lawful at the time. I will come back to that point.

I do not want to detain the Committee with the history in detail, not least because it is contested—the best place to contest that detail would be in a court of law after this clause is accepted—but the story begins with something that contemporary Governments of all parties do not well understand. That is the drive for people to be independent and not to enter into what, in effect, is a master-servant relationship of employment, but instead to be paid for what they produce—not to be directed in how or when they produce it, but to produce what others value and be paid for doing so as an independent freelance contractor.

I say that with some feeling, because I spent several years doing so in my career before coming here. I, too, was worried about IR35, because it created ambiguity. Without wishing to be self-righteous, my answer was to ensure that I always had an additional client and had sufficient freedom to make it clear that I was independent. Nevertheless, when I worked at Lehman Brothers—I will say, for the benefit of the Committee, that it was not my fault—I observed that many people there did not have an option to become an employee. Interestingly, other people were in a very different position from me, but I was an IT contractor, and I never engaged in the scheme. I have a vague recollection of seeing it marketed and realising that it was not for me: it had a certain whiff about it.

This is about that drive to be independent. I know that Governments of all parties want people to be pay-as-you-earn taxpayers, but some of us would rather be independent—I am sure the Whips Office would attest to that.

**Stephen Williams:**I have listened carefully to my hon. Friend. I was in practice when IR35 was introduced, some time ago, specifically to block people from avoiding national insurance by trading in such a way. I have some sympathy when he says that people should be free to structure their economic activity in a way that suits them, but I think this scheme diverted money via the Isle of Man—he has omitted to say that so far—which most people would not consider normal.

**Steve Baker:**I am grateful to my hon. Friend, but I was just coming to that point.

Section 58(4) of the 2008 Act closed loopholes that were predominantly marketed to freelance, consultant and contractor communities, following the introduction of IR35, and it supposedly offered certainty about whether IR35 applied and therefore about future tax liabilities. Tax liabilities were minimised through the use of offshore trusts and double-taxation treaties. The scheme was based around an Isle of Man partnership, and it resulted in subscribers paying an effective rate of approximately 5% on their earned income. The obvious absurdity of that figure should have told subscribers that something was up, because a lesson that we should have all learnt in life is that when something seems too good to be true, it certainly is. In a fully developed 21st-century welfare state, one would think that people realised that they would not be allowed to get away with 5% tax.

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The scheme makes a mockery of the tax system and of pay-as-you-earn taxpayers, and it especially makes a mockery of the poor souls who are pursued by HMRC without mercy, it seems, for the repayment of tax credits. I have, therefore, little sympathy with the scheme, but about 1,900 individuals are affected and about £230 million of tax is at stake. I am told, particularly in correspondence with subscribers, that until 2008 they were under the impression that the scheme was registered with HMRC and that it was entirely legal and transparent. By introducing section 58(4) of the 2008 Act, the then Government changed the law so that not only were the arrangements shut down but legislation was implemented retrospectively—the clauses are treated as having always had effect.

I want to say something further about the subscribers and promoters, and I suspect that the people who asked me to table the new clause would rather I did not say this. I accept that many subscribers to the scheme will have relied on professional advice, and will have done so in a great deal of good faith. I have in mind a man who has not yet told his wife that they stand to lose their home, should HMRC collect aggressively. People have been placed under enormous stress, and for those who entered into the schemes in good faith, thinking them to be lawful, the essence of the problem is that the rule of law is supposed to avoid tyranny. Tyranny is when the sand shifts under someone’s feet and conduct they thought lawful is suddenly punished. That is a point I will come back to.

**Mike Thornton** (Eastleigh) (LD): The hon. Gentleman keeps referring to people “thinking” that the scheme was lawful. My understanding is that it was lawful until the retrospective legislation was put in place. If they were doing something lawful rather than just thinking they were doing something lawful, that puts them in a different position.

**Steve Baker:**I am grateful to the hon. Gentleman. He has anticipated some of my further remarks. One of the key points is that the situation needs to be tested in the courts, without the benefit of retrospective legislation.

**Mr Newmark:**I want to build on the point that my hon. Friend just made, about the difference between thinking something is lawful and its not being lawful. Those of us who have worked by ourselves know that if someone is a good technical engineer they are not necessarily a financial expert, and they rely on those with such expertise to give them the best advice. When retrospectively the law is changed, surely the responsibility lies as much with the financial adviser as with the individual who received the advice.

**Steve Baker:**It does, and I will adjust my remarks slightly to deal with that point straight away. The promoters of such schemes are left distinctly culpable. What angers me most is that promoters have relied on the Governments sticking to the principle of the rule of law and not acting retrospectively, to get away with selling one scheme after another. They have drawn people in, and allowed them to over-optimistically believe that they can continue to avoid tax and opt out of the tax system. When schemes are prospectively shut down, the promoters

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move on. That is wrong, and it has led both Labour and Conservative Governments into doing things that undermine the rule of law.

**Sheryll Murray:**May I highlight the case of a constituent who has asked me to raise his personal circumstances here today? Mr Jonathan Woolgar refers to a “legitimate tax planning arrangement”, and goes on to say:

“I do hope you will raise my personal circumstances during the Finance Bill Committee debate so the Minister can understand the devastating consequences of this unannounced and punitive retrospective change to tax law”.

That clearly demonstrates what my hon. Friend the Member for Wycombe was trying to say.

4.15 pm

**The Chair:**Order. I think that was an intervention.

**Steve Baker:**A gentleman who is also facing devastating consequences wrote to me. He is of an age at which he is unlikely to go back to work. A point he made gave the game away somewhat. He said that he entered into the scheme thinking it was registered and transparent and that he was behaving within the rules. He thought that HMRC would shut it down prospectively, and that retrospective action was therefore a kind of entrapment. I imagine that there was a conversation in HMRC, when it was watching all those games going on with promoters of aggressive and abusive tax avoidance schemes, in which somebody said,“Retrospection is going to be the only language they understand.”

There is a great cycle here. The Government, through the welfare state, have a voracious appetite for income, so tax rates go up to a high level that a lot of people are not prepared to pay. Tax complexity is introduced to ensure that tax is paid, which often creates opportunities for further avoidance. That, as we have seen during the passage of the Bill, engenders greater complexity. Finally, we end up where we are today. Some will see HMRC’s and the previous Government’s actions in setting this law retrospectively as somewhat vengeful.

I speak as a Cornishman, and there is a long tradition of smuggling in Cornwall—you will appreciate, Mr Amess, that I have never engaged in it—so there is an atmosphere in which people fear the customs man. I have always thought that the customs man was more aggressive in the use of power than the Revenue. I wonder whether, post merger, there is a different atmosphere in HMRC.

How do we escape the cycle? I suggest that it would be better if people who believe sincerely that lower taxes are in the general interest, instead of trying to opt out of taxation—thereby chopping people such as me off at the knees by undermining the kind of coalition I want to build for lower taxes in the general interest—pay their taxes and participate in the political process. We could all try to create a better political economy. I do not wish to develop that point too much further, because I have been accused of being idealistic at least once already in this Committee.

The questions before the Committee are important and worth considering. On the clause, the question is not whether subscribers were right to use the scheme.

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Virtually anyone would say that they were not. The question is not whether the promoters were right to promote the scheme. In doing so, they undermined a fundamental principle of our society: the rule of law. To me, that is close to unforgivable.

The only question that matters is, what price are we prepared to pay to preserve and extend the rule of law? In the past—in particular, the past 100 years—the price we have been prepared to pay to do that has been very high indeed. Indeed, I could get quite teary-eyed when I think not just of the treasure that has been paid, but the blood that has been spilled, to preserve the rule of law. I would have the clause enacted and I would let the Government test the law in the courts as it stood at the time that the schemes were engaged in.

**Nigel Mills:**Does my hon. Friend agree that although this noxious scheme should have been closed down many years before it was—and it was a terrible error of judgment that that was not done—it is not right to use the power of the state in a draconian way to turn back time and pretend the scheme had been closed down at the start? That is the mistake here. We should admit it should have been closed down earlier, and close it down prospectively but not retrospectively.

**Steve Baker:**I am grateful to my hon. Friend. I do agree. I hope the Minister will address the question of why it was not shut down sooner. I have looked into this issue, and clearly it is a bone of contention. I have not yet found out the extent to which the scheme was successfully concealed from HMRC so it could not be shut down. Quite clearly, people believed it was a legitimate scheme that was tolerated by HMRC, and that is partly why so many people engaged in it.

The Government’s response, in the context of both the desperate need for revenue and the behaviour of promoters, is fairly easy to understand. I believe we cannot afford to undermine the fundamental principle that people in this country do not suffer at the hands of the authorities for conduct which was lawful at the time. On Tuesday I asked the Minister about this point of lawfulness. He said:

“The word ‘lawful’ can lead to a degree of ambiguity. When people say it is not lawful, is it criminal? There is no criminal offence that one can see here.”*––*[*Official Report, Finance Public Bill Committee,*18 June 2013; c. 587.]

I do not want to get too deep into a semantic argument. But this is the point. We have people now today who, even if the tax collection regime is relatively gentle, will fear losing their home and being bankrupted. It is a realistic fear. It is a consequence of having engaged in schemes which, at the time, they had a realistic expectation would be accepted by HMRC. So the ground has shifted under their feet. As a result, the plans they made have been swept away from them. Without getting too carried away, it is a hallmark of despotism to have these things happen to people. They ought not to happen.

I have some questions for the Minister. He is well aware of what he said about this measure and what my right hon. Friends the Chancellor, the Prime Minister and, indeed, the Business Secretary said about it when in opposition. It seemed that we were prepared to repeal the retrospective nature of the legislation. Could he explain what has changed? Could he also deal with the point about lawfulness? That is the crucial test. People’s

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behaviour should be tested in the courts: was it lawful? If it was lawful, people should be left alone. If it was unlawful, clearly they face consequences.

**Catherine McKinnell:**The hon. Gentleman is making a reasonable argument. My ears pricked up at the word “despotism”. Has he considered the judicial review that was heard in the High Court relating to the retrospective action that the Government took in relation to enacting section 58? The argument that it was contrary to human rights was dismissed on the grounds that although it was retrospective the legislation was in the relevant circumstances proportionate and compatible with that right. I appreciate that the European Court of Human Rights is not the most comfortable of concepts for the hon. Gentleman and his Conservative colleagues but it would seem to go some way towards alleviating some of those concerns about a despotic state.

**Steve Baker:**The hon. Lady’s point is well made. I am a big supporter of the substance of the European convention on human rights. The problem is the case law that has emerged from it and the way it has been applied. The substance of what she said is quite right. We have some fundamental questions to ask ourselves about the effect of having a massive need for revenue on the way we live our lives. When I used the word “despotic”, I qualified it by saying I would not wish to get too carried away. Over the course of a couple of hundred years, our willingness to stick to absolute principle has changed substantially. On the way into the Commons I often pause at the statue of John Hampden who was a resident of the region I represent. Members should look at his plaque. It says that

“he was a militant Puritan committed to the Rule of Law”.

John Hampden might have looked at a measure like this and disapproved very strongly.

Without going too far into history, I need to know where the Government stand on this crucial principle of lawfulness and the way that our behaviour is judged in a free society. Where do they stand on retrospectivity? How do they intend to treat subscribers if the amendment is not accepted? Will they be given sufficient time to pay so that there is a degree of compassion and people are not put out of their homes unnecessarily? Will the Government ensure a proper clampdown on these promoters? They have used the phrase “cowboy promoters”. Will they ensure that cowboy promoters have no more opportunities to drag people, who often will have been innocent, into these schemes, which end up making a mockery of the tax system and dragging people into these disasters?

In conclusion, I can do not better than quote what my hon. Friend the Member for North East Somerset (Jacob Rees-Mogg) said last year when extremely short of time. He encapsulated all that needs to be understood about this situation and this clause. He said:

“Retrospection is wrong. It undermines the rule of law and if this House does not stand for the rule of law it stands for nothing.”*––*[*Official Report, Finance Public Bill Committee,*26 June 2012; c. 684.]

Much has been said about developing countries today. The best example we could give them is to demonstrate that parliamentary democracy and the rule of law are upheld in this, their birth place.

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**Mark Menzies** (Fylde) (Con): I want to speak briefly; I promise to talk for no more than half an hour on the subject—*[Laughter.]*

I thank my hon. Friend the Member for Wycombe for tabling new clause 1, because the issue it deals with has been raised with me by several constituents. I am in no way defending tax evasion. I would also like to put on record my sincere thanks for the detailed replies that I have always received from my hon. Friend the Exchequer Secretary whenever I have corresponded with him on the matter.

I want to focus on the actions of the people who sought to promote tax evasion vehicles. It is important to note that if something looks too good to be true, it probably is, as my hon. Friend the Member for Wycombe identified.

People are faced with demands for money—in some cases crippling demands—causing them deep and personal distress. If possible, will HMRC approach the scheduling of payments with an element of sympathy?

We have to take a ruthless approach to tackle tax avoidance vehicles. On that, I disagree with my hon. Friend the Member for Wycombe. Retrospection may well be the only mechanism at HMRC’s disposal to ensure that tax avoidance cowboys—people who perpetrate such tax avoidance vehicles—are forced out of business and cannot seek to short-change the taxpayer.

My hon. Friend also said that such people were overwhelmingly top rate taxpayers. They should have been paying their taxes; that was money not going to support things that are important to all our constituents, whether that is health, defence or education. That money must be repaid. However, I urge the Minister to see whether that can be done in a way that minimises the personal distress to families.

**Mr Newmark:**I will be even briefer. I am raising the issue on behalf of a constituent of mine who has been affected by the measure. I wholeheartedly agree with pretty much everything that my hon. Friend the Member for Wycombe said.

I will focus on the basic principle that retrospective taxation is wrong by definition. I appreciate that there is no such thing as a free lunch in life, but my constituent, who does not wish to be named here, had held an honest belief. He is not a financial services person at all. He took what he viewed was the best advice on the scheme and was under the impression that the scheme had been, in his words,“registered” with HMRC and was entirely legal. That is why he entered into it.

We cannot make retrospective laws. If something is legal and people do something that they believe is perfectly legitimate, and a loophole is then discovered, we should ensure that people do not take advantage of it. Retrospective taxation would end up hurting people who believe that they had done something perfectly legal.

My constituent asked me to quote him to the Minister. He said:

“I would like to take the opportunity to remind you that in my case this will result in a retrospective tax bill and accrued interest in excess of £200,000. For me, this will no doubt mean losing our family home and being made bankrupt, effectively ruining my livelihood.”

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Those people may well have been top rate taxpayers, but the measure is hurting people who believed they were doing something perfectly legitimate.

I end by reminding the Exchequer Secretary of his own words:

“I am more convinced than ever that the retrospective nature of the clause is unacceptable.”*––*[*Official Report, Finance Public Bill Committee,*22 May 2008; c. 382.]

If he believed that in 2008, I hope he still believes it in 2013.

4.30 pm

**Catherine McKinnell:**As the hon. Member for Wycombe has outlined, new clause 1 seeks to abolish the retrospective application of section 58(4) of the Finance Act 2008. The matter has been discussed at length by more than one Finance Bill Committee, and I know how strongly those affected feel. I have at least one constituent who has been affected by the measure, and I met the No to Retro Tax campaign yesterday to listen to its concerns in full.

I know that the retrospective nature of the measure was strongly criticised when it was enacted, not just by those affected but by representative bodies such as the Chartered Institute of Taxation and the Institute of Chartered Accountants, because it appears to go against the long-standing practice—often referred to as the Rees rules—that any taxation change usually takes effect only from the date of announcement or thereafter.

The then Financial Secretary to the Treasury, in her response to the Chartered Institute of Taxation, outlined:

“The users of this scheme have embarked on a highly aggressive piece of tax avoidance. It has no commercial purpose and is deliberately designed as an attempt to frustrate the clear intention both of the UK’s double tax treaties and Parliament’s 1987 legislation. The Government takes the view that retrospective clarification of the 1987 legislation to deal with such schemes is both proportionate and justified in the public interest as these schemes are unfair to the vast majority of taxpayers who pay their fair share of tax.”

She goes on, but I will not keep the Committee any longer than necessary.

As members of the Committee know—I mentioned this in my intervention on the hon. Member for Wycombe— a claim for judicial review was heard in the High Court in January 2010 on the grounds that the retrospective nature of section 58 is contrary to the European convention on human rights, specifically the right to peaceful enjoyment of possessions. However, the case was dismissed on the grounds that, although retrospective, the legislation is

“in the relevant circumstances proportionate and compatible”

with that right. The judgment was upheld at the Court of Appeal in 2011, and an application for the case to be heard by the Supreme Court was refused in February 2012.

During last year’s Finance Bill Committee, the Exchequer Secretary suggested that the scheme affected by section 58 was“egregious” and would have resulted in individuals paying income tax at less than 5%, as the hon. Member for Wycombe outlined in his speech. The Exchequer Secretary went on to clarify, as I am sure he will clarify again today, that most of the people affected are in the top 5% of earners, with a substantial proportion receiving

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an annual income of more than £100,000. He stated that people advised by professional tax consultants were aware that HMRC was challenging the scheme and, as such,

“its users should have taken reasonable precautions…to meet their liabilities. HMRC is not free to distinguish in principle between an individual who spent the money that should have been paid in tax and one who has not.”*––*[*Official Report, Finance Public Bill Committee,*26 June 2012; c. 684.]

Of course, the balance of not introducing retrospective legislation must always be weighed against the tax revenue that may have been deliberately circumvented by the avoidance scheme in question. I understand that HMRC’s estimate put the figure at some£200 million, which is a significant sum, particularly in these straitened times. I would be grateful if the Minister could update the Committee on the amount currently thought to be at stake.

Given that section 58 was introduced as clarification of

“indefinitely retrospective legislation introduced in 1987 to counter double taxation treaty avoidance schemes”,

will the Minister confirm the practical impact of the deletion of the troublesome phrase

“always having had that effect”

from section 58? New clause 1 seeks to replace that phrase with

“having effect from 12 March 2008”,

but would those currently affected by section 58 still be caught by the legislation introduced in 1987? I ask that question, because I am sure that the Minister is aware of the strong concerns expressed by those involved in the No to Retro Tax campaign that the 1987 legislation was not as clear as suggested both in 2008 and since. In July 1987, the then Financial Secretary to the Treasury, now Lord Lamont, referred to the Padmore case, in which the man in question was unsuccessfully litigated against in 1986 by the Inland Revenue, which ultimately alerted people to a series of three tax exemptions that could be exploited, and therefore resulted in the 1987 legislation.

The then Financial Secretary stated:

“As the professional press has pointed out, leaving the clause unamended would lead to loopholes that would be much exploited. However, I appreciate that that is not the Committee’s main concern.”*––*[*Official Report, Finance Public Bill Committee,*15 July 1987; c. 1180.]

The No to Retro Tax campaign contends that that clause was not amended and therefore only dealt with the one loophole that Mr Padmore had been challenged on, leaving two loopholes still open. With the Minister pointing out the loopholes at the time, but no action being taken to close them, the campaign’s position is that Parliament tacitly gave a signal that it was unconcerned about their use.

I will therefore be grateful if the Minister addresses my concerns in his remarks. Introducing retrospective legislation is clearly a very serious step and one that Parliament must seek to do only in the most necessary of circumstances. We need it to be clear that the reasons given for the introduction of the retrospective legislation in 2008 were the right ones, particularly in light of the several thousand people affected by the change.

**Mr Gauke:**In speaking to new clause 1, my hon. Friend the Member for Wycombe raises concerns about the use of retrospective legislation. We have also heard

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concerns expressed on behalf of constituents who used the avoidance scheme. I will respond to both points, but I would first like to provide some context for the Committee against which the new clause can be considered.

Section 58 was introduced in response to a highly aggressive tax avoidance scheme. To be clear, it was not tax planning, but a wholly artificial scheme sold to users for a fee by promoters and advisers. The scheme had no commercial purpose and was deliberately designed to frustrate the clear intention both of the UK’s double tax treaties and Parliament’s 1987 legislation. The Committee may be aware that the scheme is included in the general anti-abuse rule guidance as an example of the sort of abusive scheme at which the GAAR is aimed.

Shortly after the legislation was introduced, users of the scheme initiated a challenge to the retrospective aspect of section 58 by judicial review. I will say more about the review, but I will simply say now that, in one of the cases considered, the scheme purported to produce an effective tax rate of 3.5%. The way that the scheme was intended to work, however, was that the higher the income, the lower the effective rate. In at least one case, the alleged effective rate was around 0.1%. Those being offered the scheme by promoters and advisers should perhaps have seen it as too good to be true—a phrase used by a couple of hon. Members this afternoon—because that is exactly what it was.

The legislation was introduced in 1987 to restore the generally accepted and fundamentally important tax principle that the UK must be able to tax the UK income of its own residents. The Government have made it clear that legislation would be introduced in order to restore that important principle. More significantly still, while recognising that retrospective legislation is always controversial, the Government considered it reasonable for the legislation to be fully retrospective. As with section 58, it was also the subject of a full and challenging debate in 1987. That legislation was clarified by section 58. I will come to the courts’ case in a moment, but it is fair to say that their view was that the use of retrospective legislation on the earlier occasion sent a clear signal to taxpayers. Parliament saw such tax avoidance as having serious public policy implications, and so would give serious consideration to taking similar retrospective action should similar schemes be used in future. That is of course exactly what happened with section 58.

By tabling his new clause, my hon. Friend the Member for Wycombe seeks to remind me of my interest in the use of retrospective legislation, as indeed does my hon. Friend the Member for Braintree. It is the case that I challenged the introduction of section 58 on the same terms as provided by the wording of the new clause. The challenge I made in 2008 reflected several concerns about the introduction of section 58: first, whether the actions of HMRC had led to the users of the scheme gaining a legitimate expectation that the scheme worked; and, secondly, whether the measure was compatible with EU law. Both those concerns were considered in depth as part of the judicial reviews. I was reassured by the courts’ finding that the users of the scheme had no legitimate expectation in relation to the use of the retrospective legislation, and that the legislation was

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compatible with the EU freedom of movement of capital. My final concern was about the effect of retrospection on the certainty and stability of the UK tax system.

Since taking office, the Government have introduced a new approach to policy making founded on open consultation and more measured policy development. The contribution that this makes to greater predictability and stability in the Government’s development of tax policy has been widely welcomed. Action is sometimes necessary, however, to protect the UK tax base. The priorities of reducing the deficit and ensuring a level playing field for all require firm action in tackling avoidance. Our approach was set out in the protocol on unscheduled announcements of changes in tax law, in Budget 2011, in the document entitled “Tackling tax avoidance”.

The protocol makes it clear that fully retrospective legislation will be“wholly exceptional”. The announcements on retrospection made since then, on 27 February 2012, and in respect of SDLT this year, set out some of the criteria that in the appropriate circumstances the Government believe are “wholly exceptional” and therefore appropriate for retrospective action. The criteria include a significant amount of tax is at stake; there is a history of abuse of this area of the legislation, with both criteria being met in the avoidance scheme closed in the financial sector in 2012; there has been a clear statement of policy in the area; and a clear warning has been given that retrospective action would be taken if abuse of specific legislation continued, such as the Chancellor gave at Budget 2012 in respect of stamp duty land tax.

The criteria will give taxpayers and their advisers some sense of when we believe retrospection is appropriate. We will keep the criteria under review, as it is right that we must also be flexible enough to ensure that we can act when circumstances demand. The previous Government reached the conclusion that retrospective clarification was warranted in respect of the wholly artificial scheme targeted by section 58. For the reasons I have explained, there is no reason to disturb that decision. Indeed, to do so would be unfair on the vast majority who comply with the UK’s tax rules and quite reasonably expect others to do the same.

We have heard that some users of this avoidance scheme are concerned about their ability to pay the tax that they owe, and their views of the consequences should they not be able to do so. It is important to be clear that that is a separate issue from that of retrospection. HMRC’s clear view is that the change introduced by section 58 was a clarification and that, although potentially more protracted and costly, litigation on the basis of the pre-section 58 legislation would ultimately show that the scheme failed. Whichever legislative route is involved, the tax avoided and the amount outstanding would be the same. An individual who expresses concerns about their ability to pay will be no more able to pay if the scheme fails under the pre-section 58 law than as a result of the clarification.

4.45 pm

There is a wider issue here, about the consequences of assuming that a tax avoidance scheme will always work. HMRC is successful in defeating avoidance schemes in the courts. Scheme users need to understand and accept the consequences of relying on a scheme that turns out to be too good to be true.

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It is also important to keep the matter in context. I remind the Committee that, as I explained in a debate during the passage of the Finance Act 2012, most of the people affected by section 58 were in the top 5% of earners, with a substantial proportion receiving an annual income of over £100,000. The scheme users were professionally advised, and in challenging their use of the scheme HMRC recommended that users make payments on account.

HMRC has identified around 2,200 individuals who used the arrangements on which section 58 is focused. I am aware that the campaign group seeking repeal of the retrospective aspect of section 58 invited campaign members to complete a questionnaire detailing the effect on them of their use of the scheme; it was explained to members that the information would be used in discussions with the Treasury, the Public Accounts Committee and the Treasury Committee. Around 150 members responded, which represents about 7% of the people identified by HMRC as scheme users. There is no evidence to suggest that the views expressed by that small proportion of scheme users represent anything other than those of the individuals concerned.

The issue of bankruptcy for individual scheme users has been raised. I can understand such concerns, and have previously explained that HMRC will always have regard to cases of genuine hardship in seeking payment of outstanding tax liabilities. HMRC’s time-to-pay arrangements are considered on a case-by-case basis. Until scheme users who have such concerns have agreed their outstanding liabilities with HMRC and entered into discussions with it, any attempt to predict the outcome is speculative.

The role of promoters has also been touched upon, not least by my hon. Friend the Member for Wycombe. We are greatly concerned about the behaviour of certain promoters of avoidance schemes. It is not only the Government who are concerned; senior figures in the industry—for example, Michael Izza of the Institute of Chartered Accountants in England and Wales—have confirmed that there is no place in the profession for those involved in egregious schemes. The Solicitors Regulation Authority has warned specifically about stamp duty land tax avoidance.

Last summer, we consulted on proposals for specific legislation to require promoters whose behaviour was unacceptable to disclose their schemes to HMRC. The idea received substantial support from mainstream tax advisers and representative bodies. We announced in the autumn statement and the Budget our intention to continue to work and consult on the issue. I am pleased to say that we will be publishing, in the near future, a consultation document aimed at tackling high-risk promoters.

The new clause has provided an opportunity to debate the role of retrospective legislation. I understand and appreciate the concerns expressed. I believe that Government should use retrospection only after very careful consideration, even where the change does no more than clarify law or put its meaning beyond doubt. However, we must reserve the right to use retrospection in wholly exceptional circumstances, in line with the protocol we have introduced.

In this specific case, it is worth pointing out that HMRC never accepted that the scheme worked, and the scheme promoters told users that HMRC was likely to

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challenge it and that the scheme was not guaranteed to work. The previous Government took action to put it beyond doubt that the rules worked as Parliament intended. Since then the courts have looked at this matter on issues relating to legitimate expectation, and found that the action was reasonable.

The Government are having to make some very difficult decisions in order to restore public finances. I cannot believe that the vast majority who pay tax in accordance with the law would understand if we repealed legislation that responded in a targeted and proportionate way to an aggressive and artificial tax avoidance scheme. My hon. Friend the Member for Wycombe has raised an important matter, but I hope that on reflection he will agree to withdraw the new clause.

**Steve Baker:**I have listened extremely carefully to my hon. Friend, and I know how seriously he takes this question. I am particularly grateful to him for dealing with the issues that have changed since the question previously came up. Everybody engaged in tax avoidance should listen very carefully to what the Minister has said. Those on both Front Benches have given a stark warning to everybody involved about the intentions of all parties. I do not want to force my colleagues to challenge the Minister on this question. He has explained in very good faith where he is coming from, and I respect his decision. I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*