PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

FINANCE (NO. 2) BILL

(Except clause 8; clause 33 and schedule 9; clauses 40 and 41 and schedule 11; new clauses or new schedules relating to the income tax treatment of armed forces' accommodation allowances, the bank levy, stamp duty land tax, the effect of the Bill on equality, or the effect of the Bill on tax avoidance or evasion)

Fifth Sitting

Tuesday 16 January 2018

(Morning)

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Clauses 30 to 32 agreed to.
Clauses 34 and 35 agreed to.
Schedule 10 agreed to, with amendments.
Clauses 36 and 37 agreed to.
Clause 38 under consideration when the Committee adjourned till this day at Two o'clock.

PBC (Bill 134) 2017 - 2019

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not later than

Saturday 20 January 2018

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The Committee consisted of the following Members:

Chairs: † Sir Roger Gale, Albert Owen

† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Burghart, Alex *(Brentwood and Ongar)* (Con)
† Carden, Dan *(Liverpool, Walton)* (Lab)
† Chalk, Alex *(Cheltenham)* (Con)
† Clarke, Mr Simon *(Middlesbrough South and East Cleveland)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Dowd, Peter *(Bootle)* (Lab)
† George, Ruth *(High Peak)* (Lab)
† Graham, Luke *(Ochil and South Perthshire)* (Con)
† Kerr, Stephen *(Stirling)* (Con)
† Lee, Ms Karen *(Lincoln)* (Lab)
† Maclean, Rachel *(Redditch)* (Con)
† Philp, Chris *(Croydon South)* (Con)
† Pidcock, Laura *(North West Durham)* (Lab)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Stride, Mel *(Financial Secretary to the Treasury)*
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Whately, Helen *(Faversham and Mid Kent)* (Con)

Colin Lee, Jyoti Chandola, Gail Bartlett, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 16 January 2018

(Morning)

[Sir Roger Gale *in the Chair*]

Finance (No. 2) Bill

(Except clause 8; clause 33 and schedule 9; clauses 40 and 41 and schedule 11; new clauses or new schedules relating to the income tax treatment of armed forces' accommodation allowances, the bank levy, stamp duty land tax, the effect of the Bill on equality, or the effect of the Bill on tax avoidance or evasion)

Clause 30

Reduction of relief in cases where losses relieved sideways etc

9.25 am

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clause 31 stand part.

New clause 13—*Review of effectiveness of limit to double taxation relief*—

"(1) No later than 31 March 2019, the Chancellor of the Exchequer must review the effects of the limit to double taxation relief made by section 30.

(2) The review under this section must consider—

(a) the effects of the change on annual revenue, and—

(b) the size and type of companies benefiting from the relief and the impact of the changes on them.

(3) The Chancellor of the Exchequer must lay before the House of Commons the report of the review under this section as soon as practicable after its completion."

This new clause provides for a review of the new limit for double taxation relief available to companies for foreign tax paid on income of a foreign permanent establishment.

The Financial Secretary to the Treasury (Mel Stride): Good morning, Sir Roger. As ever, it is a great pleasure to serve under your chairmanship.

Clauses 30 and 31 will ensure that companies operating overseas cannot benefit from tax relief twice for the same loss. Many UK companies operate overseas through branches. To prevent double taxation on the profits of those branches—tax payable both in the UK and overseas—rules exist that provide relief in the UK for foreign tax paid. However, we are aware that some companies with foreign branches set losses incurred by those branches against the profits of other overseas group companies, rather than against the future profits of the branch. As a result, foreign tax is paid on future branch profits without taking into account past losses. That foreign tax is then used to claim double tax relief against UK tax on the branch profits.

Relieving foreign losses in that way creates an unfair outcome for the UK Exchequer. UK companies effectively get tax relief twice in the UK—once as a deduction from their taxable UK profits for the loss, and again by way of double tax relief. Clause 30 will address that by restricting double tax relief when the losses of an overseas branch have been used to relieve foreign tax paid by other overseas group companies. The clause will stop companies exploiting the UK's double tax relief system to disadvantage unfairly the UK Exchequer. The measure will apply only to future claims for double tax relief. However, to be effective and protect significant revenues, it will apply where losses have already been relieved against the profits of other group companies.

The Opposition's new clause 13 calls for a statutory review of the impact of that restriction of double tax relief. I think it would be useful, in response, to review the processes and track record of Her Majesty's Revenue and Customs in this area. First, the costings of the measure were prepared by HMRC's central analytical team, which specialises in quantifying the impact of changes to tax legislation. Secondly, HMRC has significant experience in amending tax legislation to restrict opportunities for companies unfairly to reduce the tax they pay. For example, an amendment to the double taxation relief for loan relationships income in the 2014 Finance Act successfully protected tax revenue. Thirdly, HMRC regularly carries out reviews of tax legislation to ensure that it continues to meet its objectives, and the assessment of tax receipts is an important part of those reviews. The Opposition's proposed review would not add to that analysis, and it is therefore unnecessary.

Clause 31 will amend the targeted anti-avoidance rule, which protects against certain ways of artificially creating or increasing a double tax relief claim. At present, the obligation to apply the TAAR lies with HMRC, not with the taxpayer. That puts HMRC at a disadvantage. In some cases, HMRC does not have sufficient information to identify, within the relevant statutory time limit, whether the TAAR is applicable. To address that, we are updating the double taxation relief TAAR to align it with more recent TAARs. The clause will remove the requirement for HMRC to give notice that the TAAR is being applied. Instead, the onus will be on the taxpayer to consider, during their self-assessment, whether the TAAR is applicable. We are also slightly extending the scope of the TAAR to ensure that it applies to double taxation relief schemes that involve transactions across a group.

Clauses 30 and 31 will ensure that companies pay a fair amount of tax in the UK and will protect significant tax revenue. I therefore urge the Committee to support them.

Anneliese Dodds (Oxford East) (Lab/Co-op): It is good to be here under your chairmanship, Sir Roger. I appreciate the Minister's explanation of clauses 30 and 31, but the Opposition request a review of their effectiveness in deterring the inappropriate use of double taxation relief, particularly as they relate both to funds received by the Exchequer and to the companies potentially affected by them.

Colleagues will be aware that, as the Minister said, double taxation arrangements have been under discussion for an extremely long time—effectively since the beginning of globalisation, if we take that term as referring to the

proliferation of multinational companies. The international finance conference in Brussels in 1920 raised the need to consider the impact of double taxation on firms, and from 1923 to 1927 some of the first agreements to avoid double taxation came into force. Such agreements have been under continual discussion in more recent years within the OECD, as have been provisions to prevent the contrary: double non-taxation, which we are discussing today.

The extent of double non-taxation is believed by many commentators to be extremely significant, which is part of the reason why the Opposition are not convinced by claims that the tax gap has recently reduced; that tax gap does not include international profit shifting, such as that obtained by manipulating double taxation rules. That is why Labour's tax transparency and enforcement programme offers a series of measures to deal with profit shifting.

The measures under discussion follow on from attempts made in the 2009 Finance Bill to clarify measures in the Finance Act 2005 that examine double taxation relief specifically for banks. That Act limited credit for foreign tax paid on trade receipts of a bank to no more than the corporation tax arising on the relevant part of the trade profits. Changes were made after the Act to prevent income being artificially diverted to non-banking companies in bank groups. That loophole, which was being exploited, was shut down by ensuring that the restriction applied to all relevant receipts going across a group. Such profit shifting was therefore prevented. The clauses under discussion will offer a similar tightening for non-bank companies, as well as other alterations and restrictions on the use of double taxation relief.

The Opposition are asking for a review for a variety of reasons. First, it would be helpful to understand from the banking sector's experience whether the new rules are likely to have a positive effect, and what the magnitude of that effect is anticipated to be. Secondly, alternative approaches are available, and it would be helpful to assess the Government's approach against those. In particular, I understand that the US has adopted a different approach to limiting the benefits of relief from double taxation. The UK's approach, which I accept is in common with the OECD's, is to focus the dissuasion from using an appropriate double taxation relief on the transaction and its nature. By contrast, the US approach relates to those entities that can benefit from favourable tax treatment; it focuses on the entity, rather than the transaction. As I discovered when looking at the debates on the 2003 agreement between the UK and the US on double taxation and non-taxation, the two approaches have to come together when we have a treaty with the US on tax matters. It would be helpful to know whether the Government have considered the apparently more restrictive approach adopted by the US.

It would also be helpful to know more about the removal of the counteraction notice specified in the clauses. Colleagues may remember—though they probably have more important things to think about—that in the discussion on hybrid mismatches, I asked whether a counteraction notice was still required. I do not recall receiving a totally clear answer, although the Minister offered many other helpful clarifications. Clause 31 removes the requirement to give a notice to trigger the double taxation relief targeted anti-avoidance rule, as the Minister mentioned. That seems to follow an approach of amending provisions to remove such notices when the measures concerned are otherwise under review, as part of a wholesale approach to reviewing the measures. The explanatory notes state that the approach follows that adopted under new TAARs, but it is not clear that there has been a more holistic investigation by the Government of this issue. It would be interesting for us to know whether the Government plan to review the existing use of any remaining requirements for counteraction notices in the area of international profit shifting.

The Minister can correct me if I am wrong, but the principle seems to have been accepted that such counteraction notices are no longer necessary before HMRC is able to act, at least in relation to this kind of international artificial profit shifting. He gave us quite a strong rationale for that when he indicated the problems with having to issue a notice when time limits can be relatively tight: it could impact on HMRC's ability to take appropriate action against those engaging in international profit shifting.

It would be useful to know whether there is a broader review of the use of counteraction notices in this regard, but as I said, we are also calling for a review of the effectiveness or otherwise of the measures in deterring the manipulation of double taxation relief, and of whether the measures will deal with the international profit shifting that existing practices seem to be promoting.

Mel Stride: I thank the hon. Lady for her characteristically thorough dissection of the clause. She gave us something of a history lesson about double taxation agreements going back to the 1920s, before we came into the era of the OECD and more recent activities.

This is not directly relevant to the clause, but the hon. Lady mentioned the tax gap and the veracity or otherwise of the figure for it. The figure is produced by HMRC on an annual basis and audited by the National Audit Office. It is a statistic described by the International Monetary Fund as one of the most robust of its kind in the world. We are very proud of the fact that we have, at 6%, one of the lowest tax gaps in our history.

Interestingly, the hon. Lady introduced the subject of the movement of losses out of branches overseas by way of a discussion of the profits under the banking arrangements, and the shifting from banking to non-banking entities as an approach to avoiding tax. That approach, which certain corporations have taken to avoid tax, is long-established and lies at the heart of the measures that we, the OECD and others have been pursuing to clamp down on avoidance.

This measure is very important. As I described, overseas entities with branches are able to move losses into other overseas entities and claim a tax benefit there, but equally gain a double tax benefit with the UK authorities by way of double tax relief and the impact of the losses on profits that would otherwise fall to corporation tax. We do not believe that the review that new clause 13 calls for is necessary, largely for the reasons I gave in my opening remarks, and in particular because we keep all these measures under review. Indeed, the measures are a product of a review of earlier approaches to clamping down on avoidance, evasion and non-compliance.

The hon. Lady raised several questions that I will attempt to address. The first was whether we had considered the US model and focusing more on entities, which is an interesting point. I would be interested to take any

[Mel Stride]

representation from her, and to look at that in more detail with my officials. I do not have a comprehensive answer to her point at the moment, but my door is open for us to look at that in greater detail.

The hon. Lady also mentioned the operation of counteraction notices. As she recognised, the main thrust of the changes to the TAAR is to ensure we do not end up in a situation in which one might reasonably expect HMRC not to understand that something untoward was going on, and in which, by the time it came to the activity, it was out of time. That is the critical point. Once again, if there are further issues of a more detailed or granular nature that the hon. Lady would like to raise with me, I would be very happy indeed to have a look at those. On that basis, I hope we can accept the clause.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31 ordered to stand part of the Bill.

Clause 32

Double taxation arrangements specified by Order in Council

Anneliese Dodds: I beg to move amendment 54, in clause 32, page 23, line 37, at end insert—

"(2A) After section 6 of TIOPA 2010 (the effect given by section 2 to double taxation arrangements), insert—

"6A Review of changes made by section 32 of Finance Act 2018

(1) Within twelve months of the passing of the Finance Act 2018, the Chancellor of the Exchequer must review the effects of the changes made by section 32 of that Act on the operation of double taxation arrangements.

(2) The review under this section must consider in particular—

(a) the extent to which those changes facilitate UK law giving effect to the Multilateral Instrument in a way which coheres with the principles of Policy Coherence for Development;

(b) the extent to which those changes facilitate UK law giving effect to the Multilateral Instrument in a way which coheres with the UN Model Tax Treaty;

(c) the effect of those changes on the number of disputes decided by arbitration;

(d) the counterparties in each such case;

(e) the outcome in each such case; and

(f) the effects of those changes on the public revenue of the United Kingdom.

(3) The Chancellor of the Exchequer must lay before the House of Commons the report of the review under this section as soon as practicable after its completion.

(4) In this section—

"the Multilateral Instrument" means the Multilateral Treaty to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting;

"the principles of Policy Coherence and Development" are to be interpreted in the light of relevant publications of the Organisation of Economic and Development Cooperation and of the 2011 Busan Partnership for Effective Development Cooperation, the UN Millennium Declaration and the 2010 UN Millennium Development Goals Summit; and

"the UN Model Tax Treaty" means the United Nations Model Double Taxation Convention between Developed and Developing Countries published in 2011.""

The Chair: With this it will be convenient to discuss the following:

Amendment 55, in clause 32, page 24, line 3, leave out subsection (4).

This amendment removes the retrospective effect of the foregoing provisions of Clause 32.

Clause 32 stand part.

Anneliese Dodds: This is about the arrangements for the incorporation of the multilateral instrument, if I am correct.

Mel Stride: Correct.

Anneliese Dodds: I am looking forward to more detailed explanations on this part of the Bill, because they are enormously important. Our amendment 54 requests a review of the operation of the provisions enabling the MLI's implementation in the UK, and especially of the extent to which it promotes the principles of policy coherence for development, and the outcomes that would have been produced had the UN's model tax treaty been used instead.

The MLI is, in many ways, a milestone for international tax law. Rather than being an amending protocol of the type we might have seen before in wholesale changes to international treaties, the MLI provides an instrument to swiftly and consistently implement a range of standards in taxation in existing treaties. It also provides the means, through the OECD, of monitoring its implementation—and, potentially, mechanisms for the future adaptations of treaties; it is important that we consider those, and I will come back to them.

Given that those bodies looking to engage in "treaty shopping" and their advisers are often highly sophisticated international actors that will readily search out new loopholes, the design of the MLI, which makes possible future alterations and provisions to deal with new tax challenges, is surely to be welcomed. I understand that the UK was one of the first 26 signatories to the MLI. There are now 69—more have probably signed since I looked that up. I understand that a UK Treasury official chaired the OECD working group that determined many of its provisions.

The MLI includes six articles to address treaty abuse. Many of them are already in accordance with the UK's approach to international tax matters. One element of the MLI that seems particularly propitious is the principal purposes test,

"a subjective test based on an assessment of the intentions behind a transaction or arrangement",

intended to rule out the obtaining of any benefits from a treaty if those benefits are not in accordance with the object and purpose of that treaty. That amounts to a general power, which could be useful for many countries encountering abuse.

In that connection, however, it is surely necessary for tax authorities to be sufficiently staffed, both overall and in terms of expertise, to make any accusation under these powers stick in court, not least if that court is a private international one, which the UK appears to have committed itself to by accepting multilateral binding arbitration. It would be helpful to hear from the Minister whether he feels that Her Majesty's Revenue and Customs

and the Treasury possess sufficient staff with sufficient knowledge of and expertise on international arbitration for our country to be able to defend its interests adequately, should the need arise. As well as measures concerning treaty abuse, the MLI also introduces uniform approaches —or rather, approaches that should be uniform in their outcomes, if not in specific details—to dispute resolution, permanent establishment and hybrid mismatches.

While in many respects there are very positive elements of the MLI, other elements might raise concerns. I will focus the rest of my remarks on those, and will be interested to hear the Minister's response. First, the UK appears, in its adoption of the MLI, to have ruled in using mandatory binding arbitration where mutual agreement procedures have failed to produce an acceptable outcome within two to three years. Following the discussion last week of the use of mandatory binding arbitration in the UK's new tax treaty with Lesotho, it was interesting to find, when I was reading the UK's MLI position paper last night, that we already have mandatory binding arbitration in 18 of our tax treaties, including those concluded with Algeria, Armenia, Albania, Kosovo and Tajikistan, as well as a number concluded with higher-income countries. The UK appears to apply the principle already in relation to developing countries, but it strikes me that we have not had much discussion of that in the House.

9.45 am

Mandatory binding arbitration involves both parties to a dispute agreeing to have it dealt with not through normal judicial mechanisms, but through arbiters who possess some kind of expertise—in this case, expertise in international tax matters. There are considerable problems with that approach for developing countries. I think that that is one reason why developing countries in the UN have rejected the approach. Many of those countries lack the resources necessary for adequate representations to be made to an expert arbiter.

There are also, of course, significant issues in relation to transparency. Concerns about the use of investor-state dispute resolution—a form of binding arbitration—were raised repeatedly during discussions about the Transatlantic Trade and Investment Partnership, the EU-US trade treaty, much of the time because of worries that that would enable disputes to be resolved privately, without appropriate democratic oversight. Is another version of that potentially being hard-wired into our processes because of the incorporation of the MLI?

The second worry about the UK's incorporation of the MLI relates to the fact that, overall, the OECD approach to tax treaties has traditionally been less favourable than the UN approach, most would argue, when it comes to developing countries. I would underline the points that I attempted to make in the discussion last week about the tax treaty with Lesotho. As a nation, we are, rightly, providing development aid to many countries. If we then facilitate a situation in which British businesses, which may or may not be very well run—this is independent of the character of those businesses—are able to accrue profits back to the UK without those profits being adequately taxed, surely we are just giving via Peter what we are taking away via Paul.

There are, therefore, concerns about whether, in our approach to tax treaties, we have been following the right trajectory when it comes to developing countries. In some respects, we have followed the UN model, but with the new incorporation of the MLI, we will be hard-wiring in the OECD approach, so I wanted to ask a few questions, just comparing the UN model with the OECD one. That is exactly what we ask for in our request for a review: we ask for the OECD approach to be contrasted with the UN one.

The UN model convention generally favours greater retention of so-called source country taxing rights under a tax treaty—the taxation rights of the host country of investment—as compared with those of the residence country of the investor. In that connection, we need to know whether, from the Government's point of view, the OECD's MLI incorporates or, on the contrary, avoids the problems that seem to beset the OECD model tax treaty when compared with the UN model treaty.

For example, when it comes to permanent establishment, the UN approach seems more favourable to those nations where an international actor has a temporary activity, which would of course tend to be the case for the developing country when it comes to treaties concluded between a developing and an industrialised country. We could talk about building sites, for example. The OECD model treaty requires building sites to have been present for more than a year, whereas the UN permits that for just over six months, so obviously the UN approach is more restrictive, in the interests of developing countries. The UN model also covers the provision of services and stocks of goods or merchandise and is less permissive when it comes to contracted agents—brokers and so on—who might be coming from a developed country and working in a developing country.

The UN model treaty is also much more restrictive against profit shifting, from what I can see. It states that the deduction of expenses is allowed for tax purposes, but continues:

> "However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment."

When it comes to mandatory binding arbitration—this is an issue that I will focus on—the UN model treaty offers alternatives based on different approaches to implementing the OECD approach to mandatory binding arbitration, or retaining just the mutual agreement procedure, which was of course first set out by the UN treaty itself.

A number of additional questions require answers, if possible. First, will the Minister inform the Committee about any discussions that the Treasury, or other Government bodies, have had with our Crown dependencies and overseas territories about signing up to the MLI? I note that Guernsey and the Isle of Man were signatories as of December 2017, but other CDs and OTs were not. I know that there is a regular dialogue about tax issues with those jurisdictions, so it would be helpful to know whether they are likely to sign up to the MLI.

I was a bit confused about why Saudi Arabia seems to be mentioned in the UK's position paper for the MLI. The UK had to submit a position paper detailing the extent to which it is resisting tax treaties with MLI-signing

countries, and the extent to which those would have to be changed. Saudi Arabia cropped up, but I do not know whether it is a signatory, so perhaps that could be clarified. That is obviously very significant, given the amount of two-way economic interaction between our countries.

I have some final questions about the relationship between the incorporation of the MLI, and our general debates and discussions on concluding double taxation treaties. As I said, the MLI could be amended in future to take into account new, potentially devious attempts to get around international tax loopholes, which is surely one of its strengths. This is my fault, but I have not been able to find out whether there was an appropriate parliamentary discussion when the UK first signed up to this agreement. However, if there are to be future changes to the MLI, I wonder whether a proper discussion on that will be held in the House. The almost automaticity of the instrument is one of its strengths, but that must be accompanied by appropriate parliamentary scrutiny. Can we have a commitment to ensure a proper discussion on that?

I am also interested in the interaction between this MLI and the tax treaty that we were due to discuss on relations between the UK and Kyrgyzstan. We did not have that debate on Monday as initially scheduled, but the treaty does not include the anti-abuse provisions that are promoted by the MLI if both parties list it as a covered agreement—I assume we will have done that because we seem to have listed all our double taxation treaties as covered agreements within the position paper submitted to the MLI process. We also seem to have differences on the use of mandatory binding arbitration, and it would be helpful to understand the Government's view on that, particularly with developing countries. How does the incorporation of the MLI relate to those issues?

Mel Stride: Clause 32 makes changes to ensure that full effect can be given to the multilateral convention to implement tax treaty-related measures to prevent base erosion and profit shifting, and the UK signed the MLI on 7 June 2017. Double taxation agreements are bilateral agreements between the UK and other countries that aim to ensure that profits income and gains are taxed only once. They help to develop the UK's economic relationships with other countries, and other countries' economic relationship with the United Kingdom. DTAs provide certainty for businesses operating across borders, and enhance co-operation in tax matters, supporting the growth of a more global economy.

The OECD/G20 base erosion and profit shifting project—BEPS—recommended a number of changes to DTAs. Those included minimum standards on preventing tax avoidance through the abuse of tax treaties, and improving the resolution of tax disputes. To enable those important improvements to DTAs to be made as soon as possible, more than 100 jurisdictions, in a group chaired by the United Kingdom, drew up the multilateral instrument. The group adopted the text of the MLI in November 2016. It has now been signed—to update the hon. Member for Oxford East—by more than 70 countries, which is the latest information I have.

To implement improvements to the UK DTAs, the MLI must be given effect in our domestic law. This measure ensures that the existing powers for giving effect to DTAs in UK law, which have previously been used only to give effect to bilateral arrangements, can also be used to give full effect to the MLI.

The hon. Lady made a very sensible point about parliamentary scrutiny of the MLI. The measure simply ensures that we have the appropriate powers to bring the MLI into force in UK law. However, that would be by a draft affirmative statutory instrument. After the Bill has become an Act, Parliament will have time to scrutinise the MLI.

The existing powers give effect to arrangements made with foreign territories with a view to affording relief from double taxation. Concerns have been raised in some quarters that an agreement that operates primarily to restrict relief is not made with a view to affording relief from double taxation. Doubts have also been expressed about whether the existing power is sufficiently clear that agreements can delegate functions to the public authorities of the territories.

The Government are not persuaded by these concerns but wish to put the matter beyond doubt. The clause ensures that the improvements made by the MLI can, subject to the views of Parliament, be implemented quickly and with certainty. The changes made by clause 32 will clarify that the existing power for giving effect to international tax agreements covers any arrangements modifying the effect of existing arrangements. It also clarifies that the provisions of arrangements can delegate functions to public authorities and signatories—HMRC in the case of the United Kingdom.

Turning to the two Opposition amendments, I reiterate that the changes made by clause 32 merely clarify the existing power for giving effect to international tax agreements, thereby ensuring that Parliament can, if it chooses, give full effect to the MLI—an objective that I hope Opposition Members will join me in supporting. The Government's intention is to lay the draft Order in Council to which the MLI will be scheduled as soon as possible, but clearly after the passage of the Bill, at which point Members will have the opportunity to debate the MLI in full, as I have said.

None the less, I will take this opportunity to respond to some of the specific points raised by the hon. Member for Oxford East. First, on the suggestion that the multilateral instrument should be given effect in a way that complies with the principles of policy coherence and the UN model treaty, the text of the MLI has already been negotiated and agreed with more than 100 countries, including a significant number of developing countries, which were able to input into its development. It is therefore not possible for the Government to make changes unilaterally—an approach that some might have been suggesting.

However, it is true that the text contains certain options and permits states to make reservations against certain provisions. Following consultation with business and NGOs, the Government propose to use this flexibility to adopt all the provisions contained in the MLI that were deemed by those negotiating the text to be particularly important for preventing base erosion and profit shifting—the minimum standards. This includes provisions combating the abuse of tax treaties. We believe that this approach of bearing down on international tax avoidance will help global economic development for both the United Kingdom and developing countries, in line with the principles of policy coherence.

Secondly, to respond to the hon. Lady's concern about the Government's proposal to adopt the mandatory binding arbitration provision for resolving double tax disputes contained in the MLI, the Government believe that arbitration is important for ensuring that double tax disputes are resolved. Mandatory arbitration benefits tax authorities and taxpayers alike by creating greater tax certainty and preventing double taxation. This is beneficial for all cross-border transactions. However, it should be noted that the MLI will amend the UK's bilateral DTAs to include arbitration only where our treaty partners have also chosen to adopt the arbitration provision—an important point in the context of the hon. Lady's remarks. There can be no suggestion that any country has been forced into its adoption.

Thirdly, in response to the request for a costing, given a process by which the multilateral instrument will come into effect at different times in different states, it would be very difficult to quantify the effects of changes in public revenue that arise from the implementation of the MLI more generally. It is very difficult to provide sensible estimates of the revenue effects of our tax treaties. Concluding a tax treaty is not a zero-sum game, and possible short-term revenue effects are augmented and balanced in the longer term by increased activities, as companies and others respond to the more favourable business climate that tax treaties provide. However, those effects are hard to quantify and successive Governments have never attempted that. Finally, retrospective effect is necessary to ensure that the provision does not create uncertainty in relation to pre-existing international agreements.

10 am

With regard to whether HMRC is sufficiently resourced and has appropriate staff to be on top of international arbitration issues, let me make two points. One is the exemplary record that HMRC generally has in this area. We often talk about the £160 billion that has been brought in or protected by clamping down on avoidance, evasion and non-compliance since 2010, and the additional resources provided to HMRC, including £170 million in the most recent Budget, to ensure that it is on top of such issues. My second point is on international arbitration. What we are looking at with the MLI is an extension of that approach rather than a fresh introduction. HMRC would not have to gear up for something completely new; it would be a matter of extending the occasions on which international arbitration was entered into.

The hon. Lady also asked whether HMRC or the Treasury had had discussions with the Crown dependencies and overseas territories. I will be happy to look into that and let her know what I discover. I imagine that such discussions would have been held. We have very close relationships with the Crown dependencies and overseas territories. The hon. Lady mentioned the case of Saudi Arabia, which had appeared in the position paper. She asked whether they had finally become a signatory to the MLI. I do not immediately know the answer but I will again revert to her, not only with an answer to her specific question but with some of the background, explaining, if they do not appear, why they have not done so.

I think most other points were covered in my earlier remarks. On that basis, I hope that we can agree to the clause standing part of the Bill.

Anneliese Dodds: I am grateful to the Minister for those enormously helpful clarifications. I was particularly pleased to hear his commitment to ensuring that the draft affirmative statutory instrument will be tabled in the House and that we will have a proper chance to debate it. As part of that discussion, I would urge him to ensure that additional information is provided on the Government's reasoning around adopting a number of the provisions that are within the OECD but not the UN approach.

I fully accept that the OECD approach is supported by a large number of countries; that is absolutely right. None the less, as the Minister himself stated, there are then choices to be made by signatories to the MLI about how to interpret different elements. Those choices can make that approach either more like the UN's or more like traditionally the OECD's.

As the Minister said, mandatory binding arbitration is an approach that countries can decide to adopt or otherwise. It was positive to hear that that will be adopted only when both countries, as signatories to a double tax treaty, wish to adopt it. I am interested to know, first, on what basis we have already chosen to adopt mandatory binding arbitration or otherwise. I would again point to the inconsistency between the tax treaty agreed last week on Lesotho, and that which was proposed, albeit not yet discussed, around Kyrgyzstan, which seem to have very different approaches to mandatory binding arbitration. Why is there that difference?

Secondly, it would be helpful for us to assess the claim that mandatory binding arbitration promotes certainty and the ability to tax appropriately for all countries if we saw what some of the outcomes from existing cases subject to mandatory binding arbitration have been, particularly for our country's ability to retain the revenue that is its due. I have not yet seen that kind of consolidated examination of outcomes from mandatory binding arbitration, and it would be very useful for us to have that in relation to our country and the impacts on our ability to collect revenue, and for developing countries as well. We need that before we can assess whether we want to adopt this in a more wholesale manner. The Minister is absolutely correct to say that we already have it in operation—I mentioned that before—but we need to have more detail.

One final point—I am sorry, but I managed to miss this in my previous remarks—is that it would be helpful for us to understand what transatlantic discussions the UK has been having with the US around the adoption of the MLI. It has not yet adopted the MLI and, sadly, some elements within the US have resisted the OECD's action in this area—a lot of the time for totally unnecessary, politicised reasons—but it would be useful to know whether the US is likely to adopt this approach. That is because when we talk about double taxation, much of the time we will be talking about multinational companies that have the US as their host country or source country, and when those companies then conduct operations in the UK we need to be able to know that we can protect revenue from them.

Mel Stride: On the hon. Lady's point around the different models—the OECD and the UN models—a number of countries have signed up to the MLI, and implicit in those discussions will be the kinds of issues that she has touched on, but it might be of interest to

[Mel Stride]

her that the Government do expect the UN to update them on the treaty in the light of what has been agreed within the MLI, which clearly we will be keeping a close eye on.

I said earlier that I did not have an answer to the hon. Lady's specific question, but I now do—through a form of divine inspiration known as the officials of Her Majesty's Treasury. Saudi Arabia is indeed not a signatory to the MLI initiative, but we hope that it will be signing in future, at which point we would intend that our treaty be amended accordingly to accommodate that.

On the hon. Lady's point about mandatory binding arbitration, one of the points that I should have made earlier is in the context of how fair or otherwise this is on the countries with which we enter into those particular arrangements. Once arbitration is entered into, two arbitrators are appointed—one by each country—so this is not a stacked jury in any sense, and it will be for them, impartially and properly, through the normal processes, to come to their conclusions.

The issue of transparency and the disclosure of the outcomes of arbitrations really falls within the area of tax confidentiality. Inevitably, within those arrangements where companies, and indeed eventually individuals, are involved, it is important that we maintain the rigorous tradition that we have in our country of complete impartiality when it comes to HMRC, our tax affairs, investigations, arbitrations and so on.

The hon. Lady asked specific questions about US policy, which is probably a stretch too far for me to reach on this occasion, but if she has specific questions that relate to UK Treasury interaction with the US as an overseas tax authority, I would be happy to consider any representations that she would like to make.

Anneliese Dodds: I am grateful to the Minister for those clarifications. He rightly said that it is very important that HMRC conducts its affairs in a manner that is impartial between taxpayers and that is fair. That is absolutely right. However, we are surely not talking about anything that would threaten that impartiality when we talk about more transparency; we are not talking about the decisions themselves being altered, but rather the transparency around decisions that are taken. That would not affect the process leading up to those decisions being taken.

If there were concerns about this somehow negatively affecting taxpayers, I am sure that there could be some way of anonymising the results from different arbitration situations. However, I genuinely think it would be helpful for us, whatever side of the House we are on, to see more information about the use of that mechanism, because it can make a significant difference for taxpayers and, indeed, for our revenue.

Finally, on the difference between OECD and UN processes, it is absolutely right that some developing countries were involved in the OECD's development of its approach. However, they were only observers—as we know, the OECD is a club of generally rich countries. Those developing country members were consultees, not full members. I look forward to seeing exactly that development of the UN model in the light of the OECD's approach. Developing countries have full status in UN discussions, which they lack within the OECD process.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 6]

AYES

Blackman, Kirsty
Carden, Dan
Dodds, Anneliese
Dowd, Peter
George, Ruth
Lee, Ms Karen
Pidcock, Laura
Smith, Jeff
Thewliss, Alison

NOES

Burghart, Alex
Chalk, Alex
Clarke, Mr Simon
Graham, Luke
Kerr, Stephen
Maclean, Rachel
Philp, Chris
Rutley, David
Stride, rh Mel
Whately, Helen

Question accordingly negatived.

Clause 32 ordered to stand part of the Bill.

Clause 34 ordered to stand part of the Bill.

Clause 35

SETTLEMENTS: ANTI-AVOIDANCE ETC

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 62, in schedule 10, page 142, line 40, at end insert

"87Q Review of taxation of capital payments received from a settlement

(1) Within six months of the passing of the Finance Act 2018, the Chancellor of the Exchequer must review the effects of the changes to this Chapter made by Schedule 10 to that Act.

(2) The review under this section must consider the effects of those changes on—

(a) the taxation regime for settlements, and

(b) anti-avoidance measures for settlements.

(3) The Chancellor of the Exchequer must lay before the House of Commons the report of the review under this section as soon as practicable after its completion."

This amendment requires the Chancellor of the Exchequer to review the effects of changes to TCGA 1992 made by the Bill in relation to the taxation of capital payments received from a settlement.

Amendment 63, in schedule 10, page 142, line 40, at end insert

"87Q Public register of capital payments received from settlements

(1) The Chancellor of the Exchequer must by regulations establish a register of capital payments received from settlements to which this Chapter applies within 12 months of the passing of the Finance Act 2018.

(2) A register established under subsection (1) shall record in relation to capital payments—

(a) the recipient beneficiary;

(b) the settlor; and

(c) the trustees of the settlement from which the capital payment is received.

(3) That part of the register containing information in paragraph (c) shall be made available to the public."

(1A) In section 98(1), after "87", insert ", 87Q"."

This amendment creates an obligation for the Chancellor of the Exchequer to create a public register of trust beneficiaries, settlors, and trustees. It also amends section 98(1) of TCGA 1992 to expand, to include new section 87Q, the existing power for HMRC to require any person to provide information as they think necessary to fulfil certain sections of that Act.

Government amendments 2, 51 and 52, 5 to 27, 53, and 28 to 32.

That schedule 10 be the Tenth schedule to the Bill.

Mel Stride: Would it be appropriate for Opposition Members to speak to their amendment?

The Chair: The short answer is no, because the clause stand part debate is the lead item on the agenda.

Mel Stride: I should have known that you were several steps ahead of me, Sir Roger. I totally understand and will therefore speak to the clause.

Clause 35 seeks to safeguard the integrity of our tax system by ensuring that it is not possible for an individual with an offshore trust to avoid paying UK tax on payments from that trust. The UK already has extensive anti-avoidance legislation in place to prevent individuals who hold offshore trusts from being able to avoid paying income tax or capital gains tax on the gains from those settlements. The UK's far-reaching anti-avoidance rules mean that a UK-domiciled individual who sets up an offshore trust will pay tax on income and gains in that trust as they arise if they have any entitlement to the trust income or the underlying assets. That means that using an offshore trust does not deliver any tax advantage for most people living in the United Kingdom.

However, there are a small number of people who set up or benefit from an offshore trust, where tax is not due on income and gains as they arise in the trust; instead, tax is charged when moneys or benefits are taken from the trust. Typically these people are foreign domiciliaries—often referred to as non-doms—although there will be certain circumstances in which UK domiciles pay tax only when moneys or benefits are withdrawn, such as when the individual who set up the trust has died.

10.15 am

Where tax is charged on money or benefits taken from the trust, it is important that the legislation is effective in imposing a tax charge on the money or the benefit that is taken. However, a number of loopholes in these rules allow trustees to plan their arrangements carefully so that the beneficiary can obtain money or benefits without paying UK tax. I do not think that our tax system should allow people to live in the UK and not pay their fair share, and the Government, through this clause, are taking significant action against this contrived tax planning.

The first loophole removed by clause 35 concerns the way capital gains that accrue to offshore trusts are attributed to trust beneficiaries. Currently, UK resident beneficiaries are taxed when they receive a capital payment that results from the capital gain in the trust. However, UK beneficiaries can avoid tax on sums received from the trust if there are other beneficiaries of the trust and the trustees carefully plan how payments are made. This is because the current rules allow payments made to a beneficiary who is not UK-resident to be set against the gain that is taxed when later payments are made to UK residents. In some cases, this can mean that payments to UK beneficiaries are not taxed at all. Clause 35 stops this by no longer allowing payments made to non-residents to be treated as having been made from the trust's capital gains. A similar rule already exists for trust income.

The second change deals with a capital gains tax loophole where an offshore trust makes capital payments to a close family member of the UK resident who set up the trust. Under the current rules, the fact that the payment is not directly given to the individual would mean they avoid any UK tax due on the payment or benefit from the trust. The new rules close this opportunity by treating such payments as if they were made directly to the UK resident who set up the trust, who will pay tax on the payment or benefit as if they had received it directly.

The third loophole that this clause closes is when a capital payment is made as part of an arrangement that routes the payment through a third party. Under the arrangement, the third party who receives the payment or benefit from the trust makes an onward gift of the sum received to the intended beneficiary. As things stand, this can enable the ultimate beneficiary to avoid paying tax on the payment or benefit as they should have done if made to them directly. The changes to the rules will prevent such arrangements from being effective for tax purposes by taxing the recipient of the gift as if the capital payment was made directly from the trust to them in the first instance. These rules apply if the recipient is resident in the United Kingdom, but it means that they are not able to avoid paying UK tax on income and gains made by the trust simply by routing payments through a third party.

Minor Government amendments to schedule 10—Government amendments 2, 5 to 32, and 51 to 53—amend new provisions in the Income Tax (Trading and Other Income) Act 2005 to ensure that they work as intended. The amendments clarify that the provisions apply to both capital and income benefits and ensure that they will not result in income tax charges on non-UK resident beneficiaries. These amendments also ensure that no double tax charges arise and clarify how items will be deducted in respect of earlier charges under either the settlements benefits code or the transfer of assets code.

I will now turn to the Opposition amendments. Amendment 63 proposes the creation of a register of trust beneficiaries, settlors and trustees, with the register of trustees being public. I do not think there is any need to create a new register. From 26 June last year, any trust that generates a UK tax liability, regardless of where it is established, is required to register with HMRC. Trustees are required to provide detailed information about the trustees, settlors, beneficiaries and trust assets. This information is accessible to HMRC and law enforcement authorities, enabling them to draw connections between parties associated with relevant trusts. For compliance purposes, HMRC has the information it requires. The Government also believe strongly in taxpayer confidentiality. Making this register public would jeopardise that principle and it is something to which the Government cannot agree. In addition, HMRC already publishes data on a number of trusts with an income tax and/or capital gains tax liability during the year.

Amendment 62 seeks to introduce a review within six months of the date of this Bill being passed to consider the effects of the changes to the schedule, particularly the effects on tax avoidance in trusts. This clause is explicitly directed at reducing tax avoidance through trusts. It is legislation that has been consulted upon, having been published in draft in September, and the Government are confident that it will close the loopholes it targets. I therefore ask the Opposition not to press the amendment. I commend the clause and the Government's amendments to the Committee.

Anneliese Dodds: I will speak to both of our amendments, if that is acceptable to the Committee. I am grateful to the Minister for his introduction. As colleagues will know, these measures attempt to close loopholes within the Government's new non-dom regime. From an Opposition point of view, this is rather frustrating, because we were concerned about many of these issues, particularly the exemption of offshore trusts from the non-dom regime. We are pleased that there has been some tightening, but of course we would like to see more.

We see in these measures new anti-avoidance provisions so that, as was mentioned, it will no longer be possible to wash out trust gains by payments to non-residents. On capital payments made to a close family member of a UK resident, there will capital gains tax and income tax. Where a non-resident beneficiary receives a distribution from a trust and then makes an onward gift of all or part of it, directly or indirectly, to a UK resident, the original payment will be taxed as if received by that UK recipient. Surely that is right and correct.

Although these measures, in and of themselves, do provide some sticking plaster, they do not fundamentally reform the non-dom regime in the manner we would wish to see. I should qualify that by stating that the submission to the Committee by the Institute of Chartered Accountants maintains that the Government's promises are essentially greater than what they are delivering, even within their own terms. It maintains that the Government's indication that the inadvertent remittance trap has been closed is not, in practice, fulfilled by these measures, and that such a trap could be continued. It would be helpful to hear the Minister's assessment of whether the institute is correct in that regard.

We debated the overall provisions on non-doms at length when considering the previous Finance Bill, so I will not rehearse all the arguments now. We are talking about the 121,000 individuals who claimed non-dom status in 2014-15. Non-domiciled UK resident taxpayers account for about 85,000 of those people; the remaining 35,000 or so are non-UK residents. Obviously, those non-doms are still subject to different taxation arrangements from UK residents. That is a fundamental principle of difference, even though, yes, the Government have made changes. Again, I will not rehearse all the previous arguments.

Even the Government's changes enable people, if they so wish, to have a 15-year wait before triggering the new arrangements, because they have to have been resident in the UK for 15 of the past 20 years in order to be considered UK domiciled and for their status to be changed. We do not feel that those arrangements are strict enough.

We are focusing on the use by some non-doms—obviously, for many people it is a legitimate status—of offshore tax arrangements, particularly trusts. It would be helpful to hear from the Minister about the extent of existing abuse that these measures attempt to deal with. Have the measures arisen because of experience with disclosure of tax-avoidance schemes, for example? If so, can he provide us with some evidence on that? Or have they arisen from cases that HMRC has settled out of court? It would be helpful to understand the magnitude of the problem before considering mechanisms to try to deal with it.

More generally, taxing trusts is a difficult challenge. In public policy terms, there are obviously no simple solutions. Trusts often raise issues relating to capital gains tax, inheritance tax and many other matters. I understand that in November the Government committed themselves to a large programme of activity—or at least a programme of activity—on trust simplification. It would be helpful to hear from the Minister what exactly has moved in that regard.

The Institute of Chartered Accountants has said that it would be willing to participate in that programme of activity, as I know would many other stakeholders. It would be useful to know how far that activity has progressed, because there are many calls for a fundamental overhaul in our approach to trusts, and we also need to change how we deal with offshore trusts. That is particularly the case with evidence of abuse, but not sufficiently systematic evidence; as I mentioned before, we need more of it. We have already discussed in the House Deutsche Bank's use of trusts to enable bankers to dodge income tax on bonuses. HMRC managed to defeat that scheme, but there are other schemes in use today. Again, concerns about HMRC's capacity might arise when we are talking about very complex tax matters.

To be clear, Labour opposed the exclusion of offshore trusts from non-doms rules in the first place, and we have made that point consistently. We made it in the debate on the ways and means resolutions for the previous Finance Bill, and then again on Second Reading and in the Public Bill Committee. We still think that exclusion is inappropriate, particularly given the generalised lack of transparency on trusts. We have already referred to the discussions that the Government are having with our Crown dependencies and overseas territories. I know that part of those discussions have been about the creation of registers of beneficial ownership—so far just for companies. That has not yet been fully fulfilled for some of those jurisdictions, but in any case it does not extend to trusts, and we believe that it should. It would be interesting to hear about any progress on that.

Labour is also calling for a public register of UK trusts. Our amendment seeks more transparency on the use of offshore trusts, at least as a start. I am sure that the Minister will mention concerns about the confidentiality of those using trusts, which always seems to be the response when we raise the issue. I have huge faith in the British civil service and think that it is very good at creating appropriately targeted regimes. If we look at how Companies House has developed its system for registration and transparency on company ownership and operation, we see that there is already a mechanism within the regime to prevent inappropriate disclosure that could damage those involved with a company. For example, if we were talking about a firm that breeds beagles for animal experimentation, which could be targeted by animal rights activists or extremists, providing

its address could be inappropriate, so it is possible for Companies House to have a different disclosure regime for that company. We could create a similar arrangement for trusts. Surely that would be possible and appropriate.

The British Government will have to come to a position on this because of a matter that I have raised previously: the EU now has an agreement to have transparency for business-like trusts. The devil is in the detail, of course, because we could see gaming around what is then deemed to be business-like, as opposed to other types of trusts. I think that a regime that just excludes those trusts from full transparency where there could be harm to the beneficiaries would be more appropriate. None the less, that is what the EU is moving towards. It would therefore be helpful to know exactly what the Government's position is on the matter. That would offer a halfway house to much fuller transparency.

We are trying to get at the matter through a side door in our amendment, but we are going to keep pushing this argument for more transparency on trusts, which we think is absolutely essential. In the debate in the House on some of these matters and on the Paradise papers, I remember certain Government Members using an analogy for offshore trusts, stating that they were very similar to ISAs—surely they are exactly similar. I always use the "neighbour test." I think, "What would my neighbour think?" If I asked her, "Is it okay for you to have an ISA?", she would say, "If I had enough money, yes I would like to, if I could." The exact intentions of an ISA are clear within its provisions: they are meant to promote savings. That is the whole point of them.

However, as far as I can see there is no legislation that promotes individuals undertaking trusts specifically as a means of tax avoidance—that is not the stated intention of any piece of legislation, as distinct from the stated intention of ISAs. Therefore, the analogy is inappropriate. We will continue to push for the need for greater transparency in this area.

10.30 am

Kirsty Blackman (Aberdeen North) (SNP): It is a pleasure to be here. I am continually impressed by the breadth and depth of knowledge displayed by the hon. Member for Oxford East, who has been a brilliant addition to the shadow Front-Bench team; I am pleased to be taking part in so many meetings at which she speaks.

The Minister has written a letter to the Chair, stating:

"I have tabled three minor amendments to clause 35. They replace amendments 3 and 4 already tabled which are withdrawn and make sure the schedule works as intended. They are in response to expert stakeholder feedback. The concern about amendment 3 was that it had unintentionally switched off the onward payment rule"—

which does not sound like a good thing—

"and also that amendment 4 had contained an incorrect cross-reference."

These have been changed because of expert stakeholder feedback. Given the discussion we had last week, if we had taken evidence from expert stakeholders, the Government might not have had to make those changes at this late stage. The next time we have a Finance Bill, I would appreciate it if the Government considered having that evidence session in advance of the Public Bill Committee stage, not in advance of consideration by Committee of the whole House, as generally we are discussing the less technical matters at that stage. These are incredibly technical matters, and the Government have clearly made a couple of mistakes in their amendments. They might not have done so had we heard the expert evidence and been able to ask questions at that stage. I support the Opposition amendments and urge the Minister to respond to my concerns.

The Chair: I will allow the hon. Lady to make that point, although it is strictly out of order. I am sure that it has been taken.

Mel Stride: May I echo the generous observations made by the hon. Member for Aberdeen North about the hon. Member for Oxford East, who is extremely thorough, well-read and well-versed in the matters we discuss in Committee, adding a great deal to the quality of the debate and the scrutiny of the Bill.

I was pleased that the hon. Member for Oxford East welcomed the tightening that we are introducing on this aspect of anti-avoidance. She stated that she would like to see more of it, if that is necessary, and referred to the ICAEW's comments in that respect. We must always bear in mind that there is inevitably a certain capacity within Government to set out legislation wherever we come across further improvements that could be made or loopholes that could be tightened up, but there is an army of creative, knowledgeable and determined individuals who set out to undo what we put in place, so all Governments will probably always be in the business of tracking down and closing loopholes as they become evident. I can assure her that the Treasury and I intend to be vigorous in stamping out tax avoidance and evasion. It is entirely unfair on those who rightly pay their fair share of tax, it is damaging to our public services, and we will not tolerate it.

The hon. Member for Oxford East raised various concerns about the non-doms regime, some of which reprised our debates on the previous Finance Bill. She might not be satisfied with the current arrangements pertaining to the taxation of non-domiciled individuals, but they are tighter than was the case under previous Labour Governments, when the remittance basis came in. She referred to the different bases on which different people are taxed—that was certainly a feature under the Labour Government. As we have argued many times, we have to make a balance between having a robust regime that is fair to the taxpayer and making sure that the investment that certain individuals bring to this country is not unduly jeopardised.

The hon. Member for Oxford East asked specifically what discussions we may have been having with the Crown dependencies and overseas territories—recognising, as she does, the advances we have made on access to information about companies and their affairs, which is real-time access for HMRC. We have of course been at the forefront of the common reporting standards regime. She asked specifically about trusts. From the UK's tax perspective, the trusts that are relevant are those that have a UK tax interest associated with them. We have already brought into law provisions that set up exactly that register, which is accessible by HMRC. There is a duty on those trusts where such an interest is a part of the operation of the trusts for them to be disclosed in

[Mel Stride]

that manner. She asked what actions might be taken to simplify the taxation of trusts and referred to the ICAEW's points on that. She might be aware that there is an ongoing consultation, the results of which will be published later this year. I am certainly happy to keep her informed as that progresses.

The hon. Member for Aberdeen North did indeed go slightly beyond the scope of the Bill, so perhaps I might be allowed similar latitude in responding to the important points she raised. She is right that amendment 3, as originally drafted, would have switched off the elements of the Bill that clamped down on the onward gifting of moneys and capital from trusts, and I fully accept that that was an unfortunate error. She contends that it is just the kind of error that might have been spotted earlier had we had an evidence session as part of the Finance Bill process. However, that error shows how these highly granular, technical, line-by-line issues, by their very nature, are probably best handled not in a broad Committee evidence session, but through consultation on the draft legislation. Particularly as we move to a single fiscal event, where we will have a more measured build-up to Finance Bills, the Treasury's aim will be to ensure that we get as much of the Bill in draft out there, so that organisations, accountants and others can pore over these clauses line by line. On the general point about evidence sessions, as we have discussed before, it would be for the usual channels to agree those. I am sure that she will be making those representations to her Whips' offices.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

Amendment proposed: 62, in schedule 10, page 142, line 40, at end insert—

"87Q Review of taxation of capital payments received from a settlement

(1) Within six months of the passing of the Finance Act 2018, the Chancellor of the Exchequer must review the effects of the changes to this Chapter made by Schedule 10 to that Act.

(2) The review under this section must consider the effects of those changes on—

(a) the taxation regime for settlements, and

(b) anti-avoidance measures for settlements.

(3) The Chancellor of the Exchequer must lay before the House of Commons the report of the review under this section as soon as practicable after its completion."—*(Anneliese Dodds.)*

This amendment requires the Chancellor of the Exchequer to review the effects of changes to TCGA 1992 made by the Bill in relation to the taxation of capital payments received from a settlement.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 7]

AYES

Blackman, Kirsty
Carden, Dan
Dodds, Anneliese
Dowd, Peter
George, Ruth
Lee, Ms Karen
Pidcock, Laura
Smith, Jeff
Thewliss, Alison

NOES

Burghart, Alex
Chalk, Alex
Clarke, Mr Simon
Graham, Luke
Kerr, Stephen
Maclean, Rachel
Philp, Chris
Rutley, David
Stride, rh Mel
Whately, Helen

Question accordingly negatived.

Amendment proposed: 63, in schedule 10, page 142, line 40, at end insert—

"87Q Public register of capital payments received from settlements

(1) The Chancellor of the Exchequer must by regulations establish a register of capital payments received from settlements to which this Chapter applies within 12 months of the passing of the Finance Act 2018.

(2) A register established under subsection (1) shall record in relation to capital payments—

(a) the recipient beneficiary;

(b) the settlor; and

(c) the trustees of the settlement from which the capital payment is received.

(3) That part of the register containing information in paragraph (c) shall be made available to the public."

(1A) In section 98(1), after "87", insert ", 87Q"."—*(Anneliese Dodds.)*

This amendment creates an obligation for the Chancellor of the Exchequer to create a public register of trust beneficiaries, settlors, and trustees. It also amends section 98(1) of TCGA 1992 to expand, to include new section 87Q, the existing power for HMRC to require any person to provide information as they think necessary to fulfil certain sections of that Act.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 8]

AYES

Blackman, Kirsty
Carden, Dan
Dodds, Anneliese
Dowd, Peter
George, Ruth
Lee, Ms Karen
Pidcock, Laura
Smith, Jeff
Thewliss, Alison

NOES

Burghart, Alex
Chalk, Alex
Clarke, Mr Simon
Graham, Luke
Kerr, Stephen
Maclean, Rachel
Philp, Chris
Rutley, David
Stride, rh Mel
Whately, Helen

Question accordingly negatived.

Amendments made: 2, in schedule 10, page 146, line 7, after "is" insert

"—

(a) where the individual is UK resident for the year,"

Amendment 51, in schedule 10, page 146, line 9, at end insert

", and

(b) where the individual is non-UK resident for the year, treated for the purposes of subsection (2) and sections 643I to 643L (but no other purpose) as income of the individual for the year, subject to subsection (5)."

Amendment 52, in schedule 10, page 146, line 33, leave out from "purposes" to second "for" in line 34 and insert

"as income of the settlor for the year and, in a case within paragraph (b), not as income of the individual".

Amendment 5, schedule 10, page 147, line 4, at end insert—

"(7) If—

(a) an enactment other than this section contains a reference (however expressed) to—

(i) income treated as arising by this section, or

(ii) an amount treated as income by this section, and

(b) the reference mentions this section without mentioning any particular provision of this section,

the reference is (in accordance with subsection (1)(b)) to be read as not including amounts treated as income by subsection (1)(b) except so far as they are treated as income of the settlor of a settlement by subsection (3) or (4)."

Amendment 6, in schedule 10, page 148, line 4, at end insert—

"(4) In this section and sections 643C to 643M, a reference to a benefit provided by trustees of a settlement is to—

(a) a benefit treated by subsection (6) as provided by the trustees, or

(b) any other benefit if it is provided by the trustees directly, or indirectly, out of—

(i) property comprised in the settlement, or

(ii) income arising under the settlement.

(5) In this section and sections 643C to 643M, a reference to a benefit provided by trustees of a settlement to an individual is to—

(a) a benefit treated by subsection (6) as provided by the trustees to the individual, or

(b) any other benefit if it is provided by the trustees to the individual directly, or indirectly, out of—

(i) property comprised in the settlement, or

(ii) income arising under the settlement.

(6) Where—

(a) income arises under a settlement, and

(b) the income, before being distributed, is the income of a person other than the trustees,

a benefit is for the purposes of subsection (4)(a) treated as provided by the trustees and is for the purposes of subsection (5)(a) treated as provided by the trustees to the person.

(7) A benefit treated as provided by subsection (6) is treated—

(a) as consisting of the income mentioned in that subsection, but after any reduction in accordance with Chapter 8 of Part 9 of ITA 2007 for trustees' expenses, and

(b) as provided at the time that income arises."

Amendment 7, in schedule 10, page 148, leave out lines 14 to 18 and insert—

"PFSI is the total of—

(a) any protected foreign-source income—

(i) arising under the settlement in the year or in any earlier tax year,

(ii) that would be treated under section 624 as income of the settlor but for section 628A,

(iii) that can be used directly or indirectly to provide benefits for the individual, and

(iv) on which the individual is not liable to income tax (ignoring for this purpose any liability under section 643A), and

(b) any protected foreign-source income—

(i) arising under the settlement in the year or in any earlier tax year,

(ii) that would be treated under section 629 as income of the settlor but for section 630A, and

(iii) on which the relevant child concerned (see section 629) is not liable to income tax (ignoring for this purpose any liability under section 643A),".

Amendment 8, in schedule 10, page 148, line 25, leave out "all amounts which" and insert

"so much of PFSI as is".

Amendment 9, in schedule 10, page 148, line 26, leave out "are".

Amendment 10, in schedule 10, page 148, line 29, leave out "all amounts which" and insert

"so much of PFSI as is".

Amendment 11, in schedule 10, page 148, line 30, leave out "are".

Amendment 12, in schedule 10, page 149, line 33, leave out "available".

Amendment 13, in schedule 10, page 149, leave out lines 37 to 40.

Amendment 14, in schedule 10, page 149, line 41, at end insert—

'(6) In this section and section 643G—

"protected income" means the income that forms PFSI in the calculation of the settlement's available protected income in the case of the relevant individual for the year, and

"the relevant individual"—

(a) where the deemed income is treated as income of an individual by section 643A(1)(a) both before and after the application of section 643A(3) and (4), means that individual, and

(b) where the deemed income is treated as income of the settlor by section 643A(3) or (4) after having been treated as income of another individual by section 643A(1), means that other individual.'

Amendment 15, in schedule 10, page 149, line 43, leave out "subsection (2)" and insert "this section".

Amendment 16, in schedule 10, page 150, line 2, leave out from "settlement," to end of line 7 and insert

'the year and the relevant individual,

(b) "protected income" and "the relevant individual" have the meaning given by section 643F(6), and

(c) "the settlement" and "the year" mean, respectively, the settlement and tax year mentioned in section 643F.'

Amendment 17, in schedule 10, page 150, line 10, after first "the" insert "relevant".

Amendment 18, in schedule 10, page 150, line 16, leave out "available".

Amendment 19, in schedule 10, page 150, line 17, at end insert—

"(ca) where the whole or part of an item of the protected income is, in respect of benefits provided by the trustees in the year or in any earlier tax year, taken into account in charging income tax under Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) for the year or any earlier tax year, reduce the item by so much of itself as is so taken into account,

(cb) where the whole or part of an item of the protected income is, by reference to benefits provided by the trustees to individuals other than the relevant individual, treated by section 643A or 643J or 643L as income for the year or any earlier tax year, reduce the item by so much of itself as is so treated,".

Amendment 20, in schedule 10, page 150, line 18, leave out

"643A as arising to the"

[Mel Stride]

and insert

"643A(1) (before the application of section 643A(3) and (4)) as arising to the relevant".

Amendment 21, in schedule 10, page 150, line 19, after "benefits" insert

"referred to in paragraph (a)".

Amendment 22, in schedule 10, page 150, line 23, after "benefits" insert

"referred to in paragraph (a)".

Amendment 23, in schedule 10, page 150, line 24, leave out "available".

Amendment 24, in schedule 10, page 150, line 25, leave out second "the" and insert "those".

Amendment 25, in schedule 10, page 150, line 26, leave out "available".

Amendment 26, in schedule 10, page 150, line 27, at end insert—

"(3) For the purposes of subsection (2)(ca), the whole or part of an item of the protected income is to be treated as taken into account in respect of a benefit so far as the item or part—

(a) is matched under section 735A of ITA 2007 with notional income with which the benefit is matched under that section, or

(b) would be matched under that section (if it applied also for this purpose) with notional income with which the benefit would be matched under that section (if it applied also for this purpose),

and here "notional income" means income which is treated as arising under section 732 of ITA 2007."

Amendment 27, in schedule 10, page 150, line 47, leave out "643A(1)," and insert "643A(1)(a),".

Amendment 53, in schedule 10, page 151, line 7, at end insert

"or

(iii) is treated by section 643A(1)(b), before the application of section 643A(3) and (4), as income of an individual ("the original beneficiary") for a tax year ("the matching year") but is not treated by section 643A(3), and is not treated by section 643A(4), as income of the settlor for the matching year,".

Amendment 28, in schedule 10, page 152, leave out lines 10 to 19 and insert—

"(2) Where, in a case within subsection (1)(a)(i) and by reference to the amount mentioned in subsection (1)(a), income is treated by section 643J or 643L as arising to a person for a tax year, the original beneficiary is not liable to tax for any later tax year on so much of the amount mentioned in subsection (1)(a) as is equal to that income; and where, in a case within subsection (1)(a)(ii) and by reference to the amount mentioned in subsection (1)(a), income is treated by section 643J as arising to a person for a tax year, the settlor is not liable to tax for any later tax year on so much of the amount mentioned in subsection (1)(a) as is equal to that income."

Amendment 29, in schedule 10, page 154, line 38, leave out "643A(1)" and insert—

"643A(1)(a), both before and after the application of section 643A(3) and (4),".

Amendment 30, in schedule 10, page 156, line 40, at end insert—

"(ca) the original recipient is not taxed on the original benefit (see subsection (6A)),".

Amendment 31, in schedule 10, page 158, line 15, at end insert—

"(6A) For the purposes of subsection (1)(ca), the original recipient is taxed on the original benefit if the original recipient is liable to income tax, or capital gains tax, by reference to the amount or value of the original benefit; and where the original recipient is so liable by reference to the amount or value of part only of the original benefit, this section applies as if the two parts of the original benefit were separate benefits."

Amendment 32, in schedule 10, page 158, line 21, at end insert—

"and see also section 643B(4) to (7) (interpretation of references to provision of benefits by trustees)."—*(Mel Stride.)*

Schedule 10, as amended, agreed to.

Clause 36

Fixed rate deduction for expenditure on vehicles etc

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to take new clause 14—*Fixed rate deduction for expenditure on vehicles: review of change to eligibility*—

"(1) Within twelve months after the passing of this Act, the Chancellor of the Exchequer must review the effects of the amendments made by section 36 allowing unincorporated property businesses to use flat rates for mileage when calculating allowable deductions for vehicle expenditure for income tax.

(2) The review under this section must consider—

(a) the revenue effects of the change made, and

(b) the effect of the change on rates of car usage in unincorporated property businesses.

(3) The Chancellor of the Exchequer must lay before the House of Commons the report of the review under this section as soon as practicable after its completion." —*(Peter Dowd.)*

This new clause provides for a review into the effects on revenue and on car use of allowing unincorporated property businesses to use flat rates, commonly referred to as mileage rates, when calculating allowed deductions for income tax.

Mel Stride: Clause 36 makes changes to ensure that unincorporated property businesses have the option to use mileage rates to calculate their allowable deductions for motoring expenses. Trading businesses have been able to use mileage rates since 2013. That gives individuals the choice to use fixed rates per business mile to calculate their allowable deductions for motoring expenses, instead of deducting actual running costs and claiming capital allowances. However, that simpler option has not been available to landlords.

The changes made by clause 36 address that, giving more than 2.3 million property businesses the option to use mileage rates to calculate their allowable deductions for motoring expenses, and providing administrative savings to approximately 1.8 million property businesses. Mileage rates are also available to landlords using the cash basis, bringing further simplicity to that group's tax affairs.

Extending mileage rates to property businesses is one of the most effective steps that we can take to simplify the tax system for landlords, and it is a change that stakeholders asked for during a recent consultation.

The clause, legislating for the measure announced in the autumn Budget 2017, applies from April 2017, so landlords can benefit immediately.

The new clause tabled by Opposition Members asks for the Government to review the effects of the change on tax revenue and on rates of car usage by property businesses. I appreciate the Opposition's desire to test and examine the impacts of policy changes, but in this instance there would be little for a review to study. The policy cost, certified by the Office for Budget Responsibility, is negligible for every year of the forecast. Mileage rates are designed to reflect average costs for those who use a vehicle, so the measure is a tax simplification, not a tax reduction. We would not expect any significant difference in how many property businesses use a car, either.

Landlords will take decisions based on the practicalities of running their business. The tax difference would not be significant enough for us to expect any increase or decrease in the number using a car. As identified in the tax information impact note, because the same flat mileage rate is applied for all cars, that may provide some incentive for businesses to use smaller, more efficient cars with lower operating costs. This measure will simplify the tax system further for many landlords, and I commend the clause to the Committee.

10.45 am

The Chair: Before we proceed, I remind all hon. Members, both new and longer in the tooth, that all new clauses are debated with other items now but voted on at the end of the Bill. We will not miss it, do not worry; we will come to it in due course.

Anneliese Dodds: Thank you, Sir Roger, and I will aim to keep my remarks brief. This measure was requested by stakeholders during consultations in autumn 2016, particularly on the use of the cash basis in general. As the Minister said, it appears to offer more consistency for different groups of taxpayers, particularly self-employed traders and employees, and unincorporated property businesses. None the less, Labour Members are requesting a review of the measure because we think it important to have more information about its potential revenue effects. The Minister has said that the change is largely to the basis of calculation, but if we are talking about a shift to mileage rates rather than the value of the business technology used in the first place—the car—that could be significant for the amount of tax levied, and it would be helpful to have more information on that.

We know that public services and revenues are under a huge amount of pressure, but we do not have a clear view of the overall impact of reliefs on Government revenue. That point came up in our discussions last week, and a number of my colleagues rightly intervened on it. It would be helpful to have more information about that, and about whether there could be unintended consequences. Such consequences would affect self-employed traders and employees who use mileage rates—it is not just a matter for landlords who might be covered by the new provisions—and it would be helpful to know whether, for example, there has been any consideration of trying to reduce car use in general. Some of the small one-man, one-woman bands who might be covered by the measure could be landlords of a small number of properties in a small geographical area. The Government should consider how to enable people not to use a car in the first place, and it would be helpful to hear their thinking on that.

I fondly remember how, when I was a student, my landlord used to cycle around with his dog—sadly now deceased—in the basket of his bike, and that was how he got around his properties. *[Interruption.]* The landlord is still going, as I understand it; only the dog is deceased.

Mel Stride: What about the bike?

Anneliese Dodds: The bike, I think, is still going as well. I still see my previous landlord cycling between his properties, and perhaps we should aim to promote that model, particularly when we are talking about small concerns. I am not belittling the transport requirements of larger landlords or those with properties that are geographically spread out, but it would be helpful to consider such measures. It would also be useful to know whether a thorough analysis has been made of the administrative burdens that the measure might create. The Minister alluded to that, but more information would be helpful.

May we have an indication of the extent to which the Government will try to prevent abuse in this area? I am aware that that already applies to the use of this basis by self-employed traders and employees, but during the Minister's remarks I was reminded of debates about the business use of private jets, which came up in discussions on the Paradise papers. I have talked to the Isle of Man's representatives about this. They maintain that activities have generally been above board, and that they are sorting out activities that have not been. We all remember the video of Lewis Hamilton enjoying his new private jet, which, in theory, was just for business use. It appears that appropriate safeguards had not been put in place to make sure that the jet was just for private use.

How are we ensuring that, in these kind of cases and more generally, cars are used overwhelmingly for business use? I believe it is a question of whether they are predominantly for business use. We are talking about small landlords, so it could be quite difficult to make that distinction. It is about how we prevent abuse while protecting the interests of small business.

Mel Stride: I thank the hon. Member for Oxford East for her observations, particularly the curious incident of the dead dog and the bike, which I think might end up being one of the most memorable statements in the passage of the Bill.

The hon. Lady eloquently alluded to the impact of such measures on the size or type of vehicles used to carry out the business activities that we are discussing. I point to my earlier remark that, if a fixed rate per mile can be claimed, there is an incentive to use a less expensive means of transport, be it a bicycle or a less polluting vehicle, while claiming the mileage. A useful dynamic, in terms of her interest in this area, is built into the system.

As I have pointed out, the measure is a simplification, not a tax reduction. That is a pertinent point when it comes to a review of behavioural change, because it does not change the overall weight of the tax burden on this group. As I have set out, the Office for Budget

[Mel Stride]

Responsibility has stated that the fiscal impact of the measure will be negligible—meaning that the impact will not exceed £5 million in any year—in every year of the scorecard period, albeit that 1.8 million businesses are affected by it.

The hon. Lady asked how we will know if people are abusing the system by claiming mileage allowances for a use other than business use, or for travel that has not occurred. That problem is implicit in any arrangement of this nature, in which expenses are claimed as a tax deduction. HMRC has become more and more sophisticated in how it looks at tax returns—that is clearly how such information would be provided—and it uses technology to look for patterns and abnormalities. It sometimes looks at whole subsets of taxpayers that have a greater propensity to do certain things, and it therefore investigates members of those groups more rigorously. That would be part of the approach.

Overall, I do not think it is necessary to have a review, particularly given the negligible impact of the change. On the grounds of proportionality, I ask the hon. Lady to consider withdrawing the new clause.

The Chair: The new clause cannot be withdrawn at this stage, because it has not been moved. It will be moved later, as I have indicated.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Clause 37

CARRIED INTEREST

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 2—*Review of the impact of the removal of the transitional taxation arrangements for carried interest*—

‘(1) Within two months of Royal Assent to this Act, the Commissioners for Her Majesty’s Revenue and Customs shall complete a review of the impact of the removal of transitional taxation arrangements for sums to which sections 43 and 45 of the Finance (No. 2) Act 2015 apply.

(2) The Chancellor of the Exchequer shall lay the report of this review before the House of Commons.”

This new clause would require HMRC to carry out a review of the impact of removing transitional tax arrangements for sums to which sections 43 and 45 of the Finance (No. 2) Act 2015 apply.

Mel Stride: The clause removes certain transitional rules that are no longer required for the effective taxation of carried interest charged to capital gains tax. It amends the legislation that introduced the carried interest rules in the Finance (No. 2) Act 2015. The purpose of the rules is to ensure that where carried interest is subject to CGT treatment, CGT is paid on the full economic award.

Investment fund managers are rewarded in a range of ways for their work. One element of reward is straightforward income in the form of a fee, while another involves what is known as carried interest, which is the portion of the fund’s value allocated to the manager in return for their long-term services to the fund. The manager’s reward is therefore dependent on the performance of the fund. If the carried interest relates to short-term investments, it is rightly charged to income tax and national insurance.

The changes made by clause 37 make the tax system fairer by removing a limited exemption from the carried interest rules. That carve-out applied only to transactions before 8 July 2015 where there was a delay in the carried interest being paid out. By removing this exemption, we clarify and strengthen the policy intention. Furthermore, we prevent attempts to reduce unfairly the tax payable in circumstances not intended by the original legislation. To prevent forestalling, this clause, if passed, will have taken effect from 22 November 2017. It will ensure that carried interest is always subject to the higher rates of CGT on the full economic award.

The clause removes a transitional rule that is no longer required and puts the taxation of carried interest beyond doubt. Asset managers should pay the full rate of capital gains tax on their full economic award if it relates to long-term investments, and I therefore ask that this clause stands part of the Bill.

Kirsty Blackman *rose—*

The Chair: Ms Blackman, you may wish to speak to new clause 2, but you understand that you will not, at this stage, move it.

Kirsty Blackman: Thank you, Sir Roger. New clause 2 is designed to enable us to find out more about the previous effects of this transitional arrangement. The changes that the Government are making to ensure that all carried interest is subject to capital gains tax at the higher rate are reasonable, but I am concerned about the transitional arrangement and its effect on the income of the Exchequer. Would it not have been better for the Government to make the initial change in the first place, rather than having a transition period in which they have received less tax and the disparity between the haves and have-nots—those who are receiving carried interest and those who are not receiving carried interest—has continued because of the transitional relief on carried interest from the higher rate of CGT?

It would be good if the Government told us the impact of the transitional relief on the income of the Exchequer, and therefore on the overall tax take. It would be good if they told us the differential between people who received transitional relief, and normal people who do not receive transitional relief and have probably never even heard of carried interest. It would be good if the Government came back with a bit more information.

We are clearly not opposed to these changes, but we are trying to find out more information and make sure that previous decisions on the matter were sensible. If we have an assessment, we can make better tax law. If we are looking at making changes, we can assess whether transitional relief is really necessary or whether we should move to a fairer system straight away, without the two-year period that has been instituted.

Mel Stride: I thank the hon. Member for Aberdeen North for her observations. She says that the principal rationale for a review is to consider whether certain

measures might have been brought in earlier and, indeed, whether the original transitional measures should not have been introduced, or should have been done differently. I am not sure that that, in itself, is a strong justification for a review. What matters is that we look closely at how these measures will operate, and I am grateful for her recognition of the fact that our proposed changes are positive in that respect. I assure her that we will closely monitor the operation of the measures and whether any further changes are needed.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clause 38

ONLINE MARKETPLACES

11 am

Peter Dowd (Bootle) (Lab): I beg to move amendment 56, in clause 38, page 27, line 6, leave out "69" and insert "69(1)".

This amendment specifies the subsection of section 69 of the Value Added Tax Act 1994 that is being amended by Clause 38(2).

The Chair: With this it will be convenient to discuss the following:

Amendment 57, in clause 38, page 27, line 9, at end insert—

"(2A) In subsection (3) of section 69, for 'subsection (4)' substitute 'subsections (3A) and (4)'.

(2B) After subsection (3) of section 69, insert—

'(3A) In relation to a failure to comply with any regulatory requirement under section 77E (display of VAT registration numbers on online marketplaces), the prescribed rate shall be determined by reference to the number of occasions in the period of 2 years preceding the beginning of the failure in question on which the person concerned has previously failed to comply with that requirement and, subject to the following provisions of this section, the prescribed rate shall be—

(a) if there has been no such previous occasion in that period, £5,000;

(b) if there has been only one such occasion in that period, £10,000; and

(c) in any other case, £15,000.'"

This amendment increases the prescribed rate of a penalty for failure to comply with a regulatory requirement under section 77E of the Value Added Tax Act 1994 (as proposed to be inserted by Clause 38(8)).

Amendment 58, in clause 38, page 27, line 15, at end insert—

"(ba) after subsection (3), insert—

'(3A) The period specified in a notice in accordance with subsection (3)(a) may not be longer than 10 days.

(3B) It shall be the duty of the Commissioners to give notice under subsection (2) in any case where they are satisfied that to do so would protect or enhance VAT revenue.'"

This amendment specifies the period for compliance with a notice under section 77B as no more than 10 days and requires HMRC to issue a notice in any case where VAT revenue would be protected or enhanced by doing so.

Amendment 59, in clause 38, page 27, line 32, leave out "60" and insert "10".

This amendment reduces the period at the end of which a person must cease to offer goods in breach of the registration requirement from 60 days to 10 days.

Clause 38 stand part.

Peter Dowd: It is a pleasure, as ever, to see you in the Chair, Sir Roger. My hon. Friend the Member for Oxford East reminded me of the Sherlock Holmes case, "The Adventure of the Solitary Cyclist". I am not sure whether someone who has a dog with them still counts as a solitary cyclist, but given that there is one cyclist, I expect they do.

If hon. Members look at our explanatory note on amendment 57, they will see that our proposals and the penalties we believe should be enacted certainly do not go as far as the penalties that the hon. Member for Brentwood and Ongar will be aware of, since I understand he did his PhD on the Mercian polity. That is reminiscent of another document, "Theft, Homicide and Crime in Late Anglo-Saxon Law", which stated:

"It is a startling but infrequently remarked upon fact that for five centuries English law, which prescribed the sternest penalties for theft, contained…a relatively minor royal fine for homicide."

We are not going to the sternest of fines for what is perhaps de facto theft here, but we are sending a clear message in relation to online marketplace avoidance, or effectively evasion, of VAT: "You don't try to rip off the Government."

Our proposals seek to address the growing levels of online VAT fraud and the responsibility of online retailers to play a much-needed part in tackling it. We now all spend a large proportion of our lives online, so it is unsurprising that more UK consumers than ever are buying a larger proportion of their goods through online marketplaces such as Amazon, eBay and others. In 2016, 14.5% of all UK retail sales were online, up from 2% in 2006. Just over 50% of those sales were through online marketplaces rather than directly by the seller.

The VAT rules clearly require that

"all traders based outside the European Union (EU), selling goods online to customers in the UK, should charge VAT if their goods are already in the UK at the point of sale",

but, as hon. Members will be aware, some are not doing so. According to the National Audit Office:

"HM Revenue & Customs (HMRC) estimates that online VAT fraud and error cost between £1 billion and £1.5 billion in lost tax revenue in 2015-16 but this estimate is subject to a high level of uncertainty… The estimate is calculated from an assessment of the extent of under-valuation in a sample of medium and high-risk imports from high-risk non-EU countries, underpinned by assumptions informed by operational data and intelligence. This method uses an estimate of import VAT fraud as a proxy for the scale of online VAT fraud and error, and HMRC considers it to be the best estimate from data available,"

which is perfectly reasonable.

The Campaign Against VAT Fraud on eBay & Amazon in the UK estimates that online VAT fraud

"equates to £27 billion in lost sales revenue & additional taxes to UK businesses and the public purse in the last 3 years"

alone. What is more, HMRC has stated that it does not have data on online fraud and other losses before 2015-16, and as far as I am aware it does not plan to repeat the review of lost tax for future years. Similarly,

"HMRC estimates do not account for the wider impacts of online VAT fraud and error such as distortion of the competitive market landscape."

Ruth George (High Peak) (Lab): I have worked with major UK retailers for almost 20 years, and there has been growing distortion in the market, as between brick-and-mortar retailers and online retailers, on business rates in particular. Does my hon. Friend agree that if we

[Ruth George]

do not tackle VAT fraud more proactively, it simply adds insult to injury for those honourable retailers that are investing in considerable job and employment opportunities in the UK?

Peter Dowd: My hon. Friend makes a valid point that goes to the heart of much of today's discussion: those who seek to avoid should pay appropriate penalties.

The slowness of HMRC to respond to growing fraud online has been criticised by the Public Accounts Committee, which raised concerns first in April 2013 and more recently in October 2017. It is not alone; the National Audit Office reported in 2013 that

"HMRC had not…produced a comprehensive plan to react to the emerging threat to the VAT system posed by online trading."

The report found that HMRC had developed tools to identify internet-based traders and launched campaigns to encourage compliance, but had shown less urgency in developing an operational response to it.

Trader groups, such as the Chartered Trading Standards Institute, have been raising concerns for many years, and claim that online VAT fraud has been a problem from as early as 2009, yet the Government did not recognise the problem until 2015. Nearly three years later, the Government are finally introducing measures that will force the Amazons and eBays of this world to be held jointly accountable for the VAT of online vendors that use their sites.

My understanding is that HMRC has instead pursued civil operations against suspected evaders, as HMRC claims that difficulties in prosecuting suspected online fraud make that route lengthy, costly and uncertain of outcome; I suppose that is justice. Barriers include sellers being based outside the EU, and the need to show intent to commit fraud. I would like to ask the Financial Secretary to the Treasury how many operations HMRC has pursued since 2015, and what their outcomes were.

The Public Accounts Committee report on online VAT fraud found that HMRC had only recently begun to take the problem seriously, despite the fact this fraud leads to significant loss of revenue to the Exchequer, in effect depriving our public services of the funds they so desperately need. The Committee found that HMRC, rather than trying to use its pre-existing powers, waited until the introduction of new measures under the Finance Act 2016 before it attempted to hold online marketplaces responsible for VAT that had been fraudulently evaded by traders. HMRC has been too cautious in using those powers, and the Government have refused to name and shame non-complaint traders; so far, to my knowledge, they have not prosecuted a single one for committing online VAT fraud.

Professor de la Feria, an expert in tax law at the University of Leeds, pointed out that HMRC has not been doing enough to tackle the problem, despite the required legislation being in place. She argued that laws existing before the introduction of the 2016 measures provided scope.

Luke Graham (Ochil and South Perthshire) (Con): As a member of the Public Accounts Committee, I was at the hearing on VAT fraud. Does the hon. Gentleman not recognise that VAT is incredibly difficult to police, especially on e-commerce platforms, given the international nature of a lot of the trade, including by small traders in China? Does he not accept that changes put forward in the Budget address some of the concerns that the Public Accounts Committee raises, and mark a positive step on the Government's part?

Peter Dowd: Yes and yes, but that does not alter the fact that we need to push on as much as we can with tackling this issue. The amendments go some way towards helping and, importantly, towards sending a message to those who choose to evade VAT. In online marketplaces and fulfilment houses, fraudulent activity continues fairly unabated, and we must do something about it.

Professor de la Feria also believes that part of the reason that HMRC has been slow to tackle online fraud is that it is most likely considered not cost-effective to pursue it. Online marketplaces and HMRC are not doing enough together to tackle the problem, notwithstanding the action that has been taken. Online marketplaces continue to earn their commissions, and so their profit, from people who are defrauding the British taxpayer. Amazon, for example, organises regular presentations at Chinese fairs—a point referred to by the hon. Member for Ochil and South Perthshire—to recruit overseas sellers, I suspect; has plans to buy a shipping company; and fulfils orders and handles payments. That all suggests a very embedded relationship with the seller. Those connections and networks are there; people must know each other to set them up. HMRC should use those relationships and networks to do something about the problem.

Until we can incentivise online marketplaces to act, they will continue to offer a lacklustre approach to tackling online VAT fraud. In September 2016, HMRC introduced new legal powers to tackle online VAT fraud and error. They allow HMRC to issue a warning to online marketplaces about potential sellers who are not paying VAT. Since their introduction, how many times has HMRC used the new powers? How many sellers has HMRC issued a warning about, and what was the result of the use of the powers? Since they were introduced, HMRC has seen an increase in the number of new VAT registrations from non-EU sellers, but HMRC confirms that it is not aware of the proportion of those sellers that have in the past been trading and not charging VAT, or whether those sellers will be compliant in future. Last year, HMRC told the Public Accounts Committee that it expected to collect £50 million more VAT in 2017 from the traders that had recently registered for VAT, so can the Minister confirm that HMRC has collected that money, or is on course to do so?

According to HMRC, some online VAT fraud is due to a lack of awareness, some overseas sellers being unaware that they need to pay VAT. Both Amazon and eBay, when testifying to the Public Accounts Committee, agreed with that view and described the lack of awareness of VAT rules as a major element of the problem. What efforts has HMRC made to educate sellers in the UK about potential VAT fraud? More importantly, what efforts have been made to ensure that overseas sellers are aware of the need to pay VAT?

The other part of the problem stems not from error, but from clear criminality. HMRC's strategic threat assessment, carried out in 2014, concluded that it was highly likely that organised criminal groups based in the UK and overseas sellers in China were using fulfilment houses to facilitate the transit of undervalued or

misclassified goods, or both, from China to the UK for sale online. It is particularly concerning that HMRC is uncertain of the exact number of fulfilment houses in the UK. Surely one of the first parts of cracking down on this criminality is establishing the exact number of fulfilment houses in operation. That goes some way to dealing with the point made by the hon. Member for Ochil and South Perthshire. Perhaps the Minister can take a minute to explain what steps HMRC is taking to address the issue and crack down on organised criminal groups in the UK and other countries, and what efforts Border Force is making to tackle online VAT fraud by targeting fulfilment houses, where the goods are stored.

Once again, it seems that HMRC is hampered by the Government's cuts to staffing and resources, and that this is having an impact on the Government's ability to crack down on online VAT fraud. According to the Public and Commercial Services Union—HMRC's trade union—in real terms, after the cost of inflation is taken into account, the resources available to HMRC are about 40% less today than they were in 2000. Since 2010, under this Government, HMRC's staffing has fallen by 17%, and it is set to fall further under the "Building our Future" programme. These are important factors in relation to tackling evasion. That programme will close practically the entire departmental estate of 170 offices. How will that help with tackling the mass of VAT crime?

The elephant in the room is the added uncertainty about Brexit and its impact on the effectiveness of the measures. There is considerable uncertainty about the exact terms on which the UK will leave the EU, so it is vital to get to grips with this. Sellers based in the EU may end up operating under the same VAT terms as apply to non-EU sellers and therefore may also be tempted not to charge VAT. Perhaps the Minister can offer insight into what steps HMRC is taking to ensure that these measures will be robust, irrespective of the outcome of the Brexit negotiations.

There are already considerable control weaknesses at the border. The most recent European Anti-Fraud Office report on customs duties was scathing about the state of UK customs, arguing that "continuous negligence" has deprived the EU of almost £2 billion in revenues on lost Chinese merchandise. According to the report, British customs played a central role by repeatedly ignoring warnings to take action over Chinese textiles and footwear pouring into the EU. Since then, HMRC has failed to open any criminal investigations into specific fraud schemes. The European Anti-Fraud Office is so aggrieved with the UK Government that it has recommended to the European Commission's directorate-general for budget that the UK should be forced to pay £2 billion directly into the EU budget.

11.15 am

A number of UK trader groups believe that HMRC could do more, particularly when it comes to seller data that would identify potentially non-compliant sellers. HMRC has begun to collaborate with the online marketplace to gather this data, but the data exchange is in its early stages.

Amazon and eBay have both made huge assertions about the level of action they have taken to deal with sellers on their websites not paying VAT, and about the efforts they have made to collaborate with HMRC. However, Amazon started collecting VAT numbers from non-EU sellers only six months ago and, perhaps most worrying of all, told the Public Accounts Committee last year that knowing whether a non-EU seller has a valid VAT number is not a crucial data point. HMRC has reported resistance from online marketplaces when it comes to sharing data that is not held in the UK's jurisdiction, so it is clear that there is a lot more work to do.

We welcome moves to make online marketplaces jointly liable for the VAT of the sellers on their websites. However, we have concerns, which are laid out in our amendments. The first concern is about the wording of the measures, which seems to imply that joint liability will not be presumed in law; instead, it will happen after HMRC has undertaken an investigation. This creates the opportunity for online marketplaces to continue tacitly to allow their sellers a level of freedom unless HMRC specifically catches them out.

Secondly, the Government have not stated the value of the penalty that an online marketplace would incur if it refused to co-operate with HMRC. Amendment 57 would set the penalty at £5,000 for the first offence, £10,000 for the second, and £15,000 for every offence thereafter.

Thirdly, the Government have failed to specify a time framework for an online marketplace to comply with HMRC and remove a seller's goods if it fails to pay VAT. Amendments 58 and 59 would give the online marketplace 10 days to comply, and would reduce the time after which it must cease to offer goods that are in breach of the registration requirement from 60 days to 10 days. This would ensure that an online market that failed to comply would automatically cease offering goods in breach of the law.

The measures are a step in the right direction, but as I have shown, there is an array of outstanding questions that the Financial Secretary to the Treasury and HMRC have failed to answer. They may well be able to answer them, but until they do, we will continue to think that the Government are not as serious as they should be about tackling the growing industry of online VAT fraud, and about the billions potentially being lost to the UK taxpayer.

Ordered, That the debate be now adjourned.—*(David Rutley.)*

11.18 am

Adjourned till this day at Two o'clock.