Finance Bill Committee 2013

Remarks in Committee by Steve Baker MP

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Ian Mearns: There is no doubt about it. Recovery will take a damn sight longer the way we are going at the moment, which is having a massive differential impact in different parts of the country. The amendment is apposite, because we need a differential approach for the differential impact in different parts of the country; the whole of the country is not the south-east of England.

Catherine McKinnell: I thank my hon. Friend for that impassioned contribution to a wide-ranging discussion. May I be so bold, however, as to bring us back to pensioners?

Steve Baker (Wycombe) (Con): Before the hon. Lady brings us back to pensioners, it seems pretty clear from what she said that the Opposition do not welcome the increase in the personal allowance, so will they be voting against clause stand part? If so, will a future Labour Government reduce the personal allowance? With all that in mind, where are the amendments to bring back the 10p tax rate?

23 April, 2nd Sitting

Steve Baker (Wycombe) (Con): I rise to support clause 2 and to oppose amendments 7 and 8. Clause 2 represents practical action to lower taxes on low-paid working people. Lifting low-paid working people out of tax is a far more practical, far simpler and far more effective idea than introducing a 10p rate, as the other lot did, at a lower income level. I regret that amendment 9 was not been selected for debate, although that would not represent practical action, because it would simply ask the Conservative Chancellor of the Exchequer to do the Opposition's thinking for them.

Ian Mearns: The hon. Gentleman's point that raising the tax threshold is a real boon to people in low-paid jobs is correct as long as they are earning enough to reach the threshold in the first place. Part of the problem we have with the differential in how the economy works in different parts of the country is that far too many people in far too many areas who are working in part-time employment, but would rather be in full-time employment, do not earn enough to reach the threshold to pay tax.

Steve Baker: The hon. Gentleman makes a reasonable point. I will not be drawn into an argument that I have previously advanced about the harmful redistributive effects of monetary policy, although if he wants to discuss that, I will gladly do so on another occasion. I do not doubt that there are other measures that ought to be taken, but clause 2 represents a good provision that I will gladly support it. Do the Opposition welcome the measure, because I do not think that any of their Members has said so? Will they vote against clause 2 stand part? I doubt it. Would they reduce the personal allowance? Where do they stand on this matter? I hope that Opposition Members will support clause 2.

I am conscious that the Budget included a good, comprehensive and informative distributional analysis. To burden primary legislation with calls for particular reviews and documents is a diversion. Anybody who goes to the Vote Office can see for themselves that we are already festooned with documents. There is undoubtedly other work to be done on how Government policy affects various people and groups on various incomes, but the amendments are not the way to do it. The way to do that work is to hold the Government to account through Select Committees and through other mechanisms to ensure that they are aware of the impact of their policies. I do not doubt for a minute that the Government know very well what they are doing: they are seeking to lower taxes on the low-paid, which is an admirable and honourable thing to do.

Ben Gummer (Ipswich) (Con): Some Opposition Members including, I am sure, the shadow Minister, know the failings and complications that came about with initiation of tax credits: the massive waste, the extraordinary confusion and the fact that many of our constituents still have to grapple with the significant problems. If only the Opposition in their time had been as bold as the coalition Government and raised the personal allowance instead of introducing tax credits. It would not have been a complete supplement, but it might have done much that they had wanted to achieve. I admire what they wanted to achieve.

Steve Baker: If only they had only introduced universal credit, because the combination of that and the personal tax allowance going up is marvellous.

Nigel Mills: We should try to get to a simpler system that is easier to comply with, and one that makes it easier for HMRC to check that taxpayers are complying with it. My simple amendment is for the Government to ask the Office of Tax Simplification to do some work on whether there is scope for a new corporation tax code to tackle over-complexity, and also help reduce tax avoidance.

Steve Baker (Wycombe) (Con): Bearing in mind what he has said, will he join me in encouraging the Office of Tax Simplification and the Government to look at the report of the 2020 Tax Commission?

Nigel Mills: Yes, I agree that we should look at that. It is not the most simple document to read, being almost as thick as the tax code. But yes, the commission came up with some very sensible ways to improve our tax system. Our tax system and our tax code have grown up over many decades, and were not designed for the current way that businesses and individuals work.

25 April, 4th Sitting

Steve Baker (Wycombe) (Con): Further to that point of order, Mr Amess. I am most grateful for your candour. I am pretty sure that if any of my constituents were listening to our proceedings this morning they would be absolutely clear that we had all voted on leave to withdraw the amendment. They would also wonder why we are indulging in quite so much conversation on this matter, given the state of the country and the seriousness of the Bill before us. I think we should proceed as you suggested, Mr Amess, vote again and get on with the debate.

16 May, 5th Sitting

Steve Baker (Wycombe) (Con): When I look at clause 7, schedule 1 and the explanatory notes, I am extremely grateful to the Government, because they make me feel 12 years younger. You may ask why such a lengthy piece of rule making would make me feel 12 years younger—it is because 12 years ago I was leading a team of people encoding HMRC tax rules so that submissions could be checked electronically as they came into the Revenue. One of the things we found was that in at least one case regarding expenses and benefits it was not possible to submit a valid tax return. The rules were incompatible with one another, so when I look at these rules, I worry that by the time everything has been encoded and checked, we may find that it is vastly too complicated.

Could the Government have done more to raise the allowance to this level while making it all much simpler? I realise that they inherited a hugely lengthy tax code that ballooned under the previous Government, but it is time for tax simplification, much as my former colleagues would curse me for saying so because it would take away some of their work. This is a great time—*[Interruption.]* I think that flat taxes are perhaps for another day, although I am grateful to hon. Friends for their suggestion. However, I wish that the Government would take a good look at the issue and see whether it is possible to do something simpler, although I appreciate that that may be something for the next Bill.

16 May, 6th Sitting

Steve Baker (Wycombe) (Con): My hon. Friend the Member for Amber Valley made a thoroughly honourable speech. I wish the tax code did embody equality before the law for all, and the idea of equal treatment was at the heart of what he said. I am absolutely astonished, because I did not know anything about this particular area of tax. I am astonished to discover that if someone makes money through some popular means, they get tax cuts, but if they make their money through some means that is not so popular or does not have widespread celebrity status, they are not merely taxed at the same rate as everyone else but often positively discouraged from creating wealth in this country. It is a most astonishing area of tax law.

Ben Gummer (Ipswich) (Con): Just as an interesting aside, there is the question of what is deemed popular by some groups of people. Why would the exemption not exist for people playing in symphony orchestras, for instance, who are paid a great deal less than Mr Bolt?

Steve Baker: I agree with my hon. Friend. I would not want to make a moral judgment one way or the other. If somebody's conduct is lawful and they create value for other people and thereby make a profit, whether it is in sport or orchestras, or indeed entrepreneurship, they should be treated equally by the law. I congratulate my hon. Friend the Member for Amber Valley on his deeply honourable speech and I look forward to his further deeply principled contributions. I find that every time he makes such a speech, I agree with him.

21 May, 7th Sitting

None

21 May, 8th Sitting

None

4 June, 9th Sitting

Steve Baker (Wycombe) (Con): I wish to make two points. Without wanting to be unhelpful, I observe that paragraph 37 of the explanatory notes states:

"The ATL credit will be a taxable receipt and will be paid net of tax to companies with no corporation tax liability."

I ask the Minister, in this era of deficit spending, where will the money come from? I am sure that, with the Government closing loopholes elsewhere, there must be a good idea of that. The other point is, in relation to the clause, a lot was said by Opposition Members about holdings of cash, and also about certainty. My hon. Friend spoke about projects that run for 15 to 20 years and one of the reasons why large companies hold on to cash, the most liquid asset, is to deal with uncertainty. I ask the Government to make sure that long-term certainty is assured in this measure.

Steve Baker: This clause (35) will stand for ever as a magnificent rebuff to all those in Opposition who have said that this is a laissez-faire, liberal Government. *[Laughter.]* At the beginning of this Parliament, a number of Opposition Members described the Government as Hooverite. I might say that this clause is Hooverite, but only in so far as Opposition Members have misunderstood Hoover's legacy; he was an interventionist to whom—of course—FDR attributed many of his own policies.

The reason why I bring that up is that this clause seems to be a product of industrial policy, whereby we pick sectors to subsidise, in particular those sectors that seem to have a comparative advantage, and we then give them a tax break to help them along. However, we have to ask who pays? It seems that if we subsidise all those industries with a comparative advantage, those who pay will be those firms that are struggling. It is important to remember that the art of economics is not just to see the short-run consequences of any particular policy on one group but to see the long-run consequences on any group. I find myself wondering if, in due course, we will return to the video games industry and— (adjourned).

Steve Baker (Wycombe) (Con): As I was saying before we went for lunch, there is a danger that we could return in future to the television production and video games development industries and discover that they are larger than they might otherwise have been because of the special privileges they have been granted.

My hon. Friend the Exchequer Secretary will remember that long before I got to this place I worked in a specialist company developing XBRL solutions. A firm such as that, working on electronic financial reporting, with a worldwide reputation, might well wonder why it was suffering a tax disadvantage in order to promote TV production or, more relevantly, video games development.

The clause is very timely because we are in the middle of a lobbying crisis. It is just this kind of special privilege that leads to lobbying, because not only has a privilege been obtained, it is bound to inspire other groups to lobby to obtain similar privileges. It has also created some special interest groups that will lobby in order to retain privileges.

My hon. Friend mentioned the definition of video games. Under paragraph 1 of schedule 15, proposed new subsection 1216AA includes a definition of television programmes. It is thought necessary to say that a television programme

"means any programme (with or without sounds) which…is produced to be seen on television, and…consists of moving or still images or of legible text or of a combination of those things,"

and that television includes the internet.

However, moving forward to paragraph 1 of schedule 16, proposed new subsection 1217AA does not tell us what a video game is. It says that a video game

"does not include…anything produced for advertising or promotional purposes, or…anything produced for the purposes of gambling."

When I look at that lack of definition on the one hand and the excruciatingly detailed definition on the other, I am inclined to think that it can have been constructed only to meet state aid rules. That leads me to wonder what we are doing.

The hon. Member for Kilmarnock and Loudoun talked earlier about reasonableness. In the 48 pages of these schedules there is a vast amount of detail, a lot of which we have not scrutinised. For example, the excluded programmes under schedule 15 paragraph 1, proposed new subsection 1216AD, are advertisements, current affairs, entertainment shows, competitions, live performances and training programmes.

People in the production industry might well ask why they are to suffer a disadvantage under tax compared with people producing drama and comedy. I have observed that a number of advertisements have been strung together into a number of comedy programmes over time. Have the Government considered whether that might be done again?

With regard to video games, proposed new subsection 1217AD on core expenditure says that

"the following descriptions of expenditure are not to be regarded as core expenditure for the purposes of this Part…any expenditure incurred in debugging a completed video game or carrying out any maintenance in connection with such a video game."

As a software engineer, I would observe that software is never bug-free. It is also necessary to ask when it is completed. There is an enormous amount of subjectivity in the provision, which could lead to a great degree of fruitless discussion.

The clause seeks honourably enough to support industries in which we have a comparative advantage, but I worry that we are creating special privileges that will have unintended consequences that will be paid for by industries that are doing less well. It will promote lobbying, not just by the affected firms but by others, for example those producing advertising, until everybody has a special tax privilege.

Some would argue that it would make us terribly unpopular to say that these privileges should be taken away, but if we lowered tax rates for everybody and took away the special privileges, I think they would all be rather happier.

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): I am listening with great interest to the hon. Gentleman, who speaks with the benefit of considerable knowledge of the industry. Given the questions he is raising, does he intend to vote for the provisions to stand part of the Bill?

Steve Baker: I get the feeling that Opposition Members do not intend to press the matter to a Division, so I suppose we will have to see what they do. My hon. Friends on the Front Bench know that I never shy away from sticking to my principles on such matters, but I do not intend to force a Division. I am happy to tell the hon. Lady that I foresaw her question during lunch, so I am delighted that she asked. In conclusion—

Ian Mearns (Gateshead) (Lab): Will the hon. Gentleman reflect on the fact that all the other sectors he has talked about that might like such a tax break would not automatically have competition in the international context, but would have such tax breaks locally?

Steve Baker: I am grateful to the hon. Gentleman for reminding me of a point that I wanted to discuss at some length, so as I conclude my opening remarks, I should say that when I hear the argument that international competition justifies some state-imposed benefit, it reminds me of all the old debates about protectionism and free trade. I co-founded the Cobden Centre to argue in various ways for free trade.

We should not say, "Actually, everybody else will have to pay with a tax disadvantage to prop up a couple of industries that we favour." People should compete freely with one another, wherever they are. I should like, at this point, to insert all the arguments in favour of free trade.

With that, I apologise to the Minister for possibly making his life a little bit more complicated than he was anticipating. I look forward to the day when we have lowered taxes and ceased to grant such special privileges.

Steve Baker: Notwithstanding my hon. Friend's remarks—I of course understand the pragmatic point about the world that we live in—I wanted to observe that the dominant ideology around the world during this country's greatest period of industrialisation was once known as liberalism. It was at that time that the Liberal party actually defended liberalism like it meant it.

Chris Leslie: We now turn to issues that may be slightly more illuminating for the Committee: in a nutshell, the tax breaks that banks are able to receive. Although the way that is described may seem opaque, we are looking at a clause that relates to tax relief for the capital instruments that the banks are able to gain as part of the changes in the structure of their balance sheets, prompted by regulatory shifts.

We have heard about the subsidies for particular sectors and picking winners, and the favourable tax treatment and the deductibilities for the banking sector are clearly of interest to our constituents. Some hon. Members shake their heads and say that it is not of interest to our constituents, but it is an important matter.

Steve Baker: I am sure that the hon. Gentleman has followed my speeches for long enough—he has at least been the victim of them—to know that I think that banks should be stripped of all privilege and operate in a capitalist system like every other firm.

6 June, 11th Sitting

Steve Baker (Wycombe) (Con): On looking at clause 45, I was lulled into a false sense of security. Committee members might ask, what could be better on a 42nd birthday than to enjoy a clause of such brevity?

Chris Leslie: Happy birthday!

Steve Baker: Thank you. However, turning to schedule 20, I was astonished to discover that it took a page to describe the meaning of

"open to the whole community",

a page and a half to describe the meaning of

"organised on an amateur basis"

and so on. I am delighted that the hon. Member for Cardiff South and Penarth and I agree that there is a great deal of complexity here and, no doubt, in statutory instruments in due course. If I am annoying the Whip, perhaps he might ensure that I am on the Committee considering the statutory instruments. I would quite like to see this regulation through from one end to the other.

If the clause and schedule stand for anything, it is for a clarion call for tax simplification. It is clear that, contrary to what the hon. Gentleman said, we cannot afford to set up offices to support sports clubs' compliance with regulations that are supposed to help them by lowering taxes. The cycle of complexity has gone far enough. The schedule shows that, next time round, the Government might have to consider how to simplify the whole business.

The Chair: I join everyone else in wishing Mr Baker a happy birthday, but we must refrain from singing "Happy Birthday".

6 June, 12th Sitting

Steve Baker (Wycombe) (Con): On a point of order, Mr Amess. I have learnt this afternoon that one member of the Committee will tonight be celebrating 30 years as a Member of Parliament. Would it be in order for the Committee to give you, Mr Amess, our very best wishes for your celebration tonight?

The Chair: Although that is not a point of order, it is an extremely nice thing to say and I thank the Committee.

11 June, 13th Sitting

None

11 June, 14th Sitting

None

Catherine McKinnell: You will be reassured that the point I actually made was about the geographical impact of the measure, Mr Amess. I simply asked the Minister to reassure us that the impact of the measure on every part of the country and on the different types of economies has been considered.

We have urbanised aspects and we have rural and coastal. Different areas are suffering in different ways in the current economic climate, and some parts of the country are not suffering at all as a result of the economic climate. That must be borne in mind when introducing charges and levies of this nature, although we welcome the Government's clamping down on avoidance.

Steve Baker (Wycombe) (Con): I would be most grateful if the hon. Lady named the areas of the country that she says are not suffering.

The Chair: Order. I hope the hon. Lady will not. Let us return to amendment 15, please.

Steve Baker: I was going to let this issue go, but after listening to the hon. Member for Edinburgh East I cannot help myself. The clause is a tax on expensive dwellings within a tax wrapper, so we can ask ourselves two questions: why are they expensive, and why have people gone to the trouble of wrapping them in these companies?

The hon. Lady mentioned the cost of these dwellings and how people have benefited from them, and I remind the Committee that over the 13 years of new Labour the broad measure of the money supply tripled. M4 went from £700 billion in 1997 to £2.2 trillion in 2010. The reason why house prices have shot away so substantially is because too much money was loaned into existence and into property. That happened in particular because flawed regulations, such as Basel, directed the money there. This is the problem: we have ended up bringing forward a measure to scoop off some of that gain from the rise in property prices. Those properties were expensive because so much money had been loaned.

Fiona O'Donnell: The hon. Gentleman's analysis is absolutely right: too much money was lent to people in an unsustainable way. Will he give me some examples of when his party in opposition called for action to change that situation?

Steve Baker: Of course, I would have been delighted to have been elected to Parliament sooner and I assure the hon. Lady that I would have taken this stance then, too. If she looks at my record, she will see that I take these points of view irrespective of the party's position. I will leave that matter there, if I may, for a moment.

Why are expensive properties wrapped in various devices to avoid tax? It is because taxes are too high. The hon. Member for Edinburgh East mentioned the ingenious schemes that people come up with. When looking at this matter, it can be seen that some of the old adages are true. If we end up with Government intervention upon Government intervention, tax upon tax and complexity everywhere, outcomes will be produced that were not intended. If we had sound money that held its value, low simple taxes and allowed people to get on with their lives in a free society, we would not need clauses 91 to 172, because houses would not be so expensive and it would not be necessary to hide their value from the tax man.

13 June, 16th Sitting

Steve Baker (Wycombe) (Con): Despair is the conclusion of fools. If Disraeli, who is associated with my constituency, had not come up with that aphorism, I might well despair at the course of this debate and the previous one for a number of reasons.

First, when I look at the explanatory notes, I tend towards despair—of course, I do not wish to despair—when I see the level of interventionism we have in relation to taxes on different kinds of drinks. Really, to be setting out different rates for high-strength beer, low-strength beer and sparkling cider versus still cider makes me ask what right do politicians have to intervene to that extent in people's lives?

Secondly, it seems as though we are trying to pick up pennies in front of a steamroller. For the public, we are talking plus or minus a few pence on a pint. Overall, the total duties on alcohol in 2013-14 are due to raise £10 billion, with £2.9 billion from spirits, £3.6 billion from wine and £3.5 billion from beer and cider.

However, total managed expenditure is expected to be £720 billion. To put that in context, the defence budget is £40 billion, so it turns out that drinkers are paying for about a quarter of the defence budget. I regret that I did not catch your eye in the previous debate, Mr Amess, because on a related note I might have pointed out that fuel duty was raising £5 billion a year more than the transport budget.

That brings me on to the third reason why I am grateful to Disraeli for my avoiding despair: the absurdity of all this is that we have the public paying for health, welfare, education and debt interest, which is 74% of Government spending, by going to the pumps and going to the pub. We have ended up with the poor paying for the services that they receive. There is an old lie that the rich will pay, but it turns out that it is the poor who will pay.

When I look at this debate on alcohol duty and I hear Members from both sides, but particularly Opposition Members, talk about the damage that tax does, it makes me think that it is time that we revisited some of our assumptions. If we know that tax is damaging, and we know that the poor are paying these taxes, it is time to start thinking seriously about the harm that the state is doing to ordinary people.

18 June, 17th Sitting

Steve Baker (Wycombe) (Con): I am astonished that anyone still smokes. Anyone who, like me, has seen a loved one destroyed by a smoking-related illness knows what it can do, and anyone who can read can see the warnings on the packet. It must represent a profound challenge to those who believe in nudge that people still smoke at all. With all that in mind, will the Minister explain how the figures in the table in clause 179 were reached? We see figures such as "£176.22 per thousand cigarettes", cigars at "£219.82 per kilogram", and so on—why not a round number? Why not £175 per thousand cigarettes? Or £180, or £200? How do we get to these odd numbers if we are believers in nudge and want to take the issue seriously?

Steve Baker: May I invite the Government to extend indefinitely the grace period for not exhibiting a licence? In other words, will they abolish it altogether? The motorist already pays for the roads many times over through fuel duty, and the country is so festooned with automatic number plate recognition cameras automatically checking whether our vehicles are insured and MOT-ed that there can be no reason whatever for continuing with the licence. Why not just abolish it altogether and make some considerable administration savings?

Sajid Javid: The excellent Secretary of State for Transport has published a consultation on a number of issues, including the potential abolition of the paper road tax disc. The Government are considering a response and will publish our decision on whether we are ready to abolish the disc.

Steve Baker: I listened extremely carefully to what the Minister has just said, and I think that he intimated that he might abolish the paper disc, but not the tax itself. Will he just explain whether he means to consult on abolishing the tax as well as the disc?

Sajid Javid: I think my hon. Friend knows the answer to that question, but it is incumbent on me to be clear that I am talking about the paper disc and not the tax. I do not think that that will surprise him.

18 June, 18th Sitting

Steve Baker (Wycombe) (Con): My hon. Friend knows that on Thursday I will be dealing with some retrospection issues in my proposed new clause 1. Will he explain his thinking on why retrospection specifically is applicable and necessary in this circumstance?

Steve Baker: I did not wish to interrupt my hon. Friend in mid-flow, but I would like to take him back to where he said the schemes do not work. Will he be clear? Does he mean that they are unlawful, or that they are lawful but HMRC does not approve of them because they are clearly not in line with Parliament's intent? Are they lawful or not?

Mr Gauke: The word "lawful" can lead to a degree of ambiguity. When people say it is not lawful, is it criminal? There is no criminal offence that one can see here. Is it effective under the law that currently stands for the taxpayer not to over-tax? Does it do what the promoter claims? Does it work in so far as the individual does not have to pay stamp duty land tax? The view of HMRC is that it is not effective; it does not do that. But clearly, if we can pass this legislation it avoids all questions of doubt and clarifies the position

20 June, 19th Sitting

Steve Baker (Wycombe) (Con): On a point of order, Mr Amess. I cannot help observing that in the selection of new clauses, Government new clause 4 has been selected before new clause 1. I have not been in the House long. Can you advise me whether it is in order for the fourth new clause to be selected before the first and what I might do to ensure that new clause 1 is not talked out later today?

The Chair: This is entirely in order. Government new clauses come first, and it was the Government's decision to put new clause 4 before new clauses 1 and 2. That is the advice that I have been given, but thank you, Mr Baker, for raising the issue.

20 June, 20th Sitting

Steve Baker (Wycombe) (Con): The longer I follow the matters of tax compliance and transparency, the more I have come to applaud the Government's prospective direction of travel; I will come to retrospection later.

It seems perfectly clear that until everyone feels the burden of taxation imposed by the state and the sheer weight imposed on the poor and the employed middle classes, we will not find sufficient numbers of people coming forward who are prepared both to advocate and to fund the advocacy of the policies that would lead to the lower taxes that they wish to pay. I believe that lower taxes would be in the general interest, so I welcome what the Government are doing to improve tax compliance, particularly under clause 220, which is about the disclosure of tax avoidance schemes. I hope that the result is that more people get involved in an open and honest debate about the level of tax and spend in this country.

Nigel Mills (Amber Valley) (Con): I am happy to follow my hon. Friend the Member for Wycombe; I agree with what he said.

I ask the Opposition to reconsider their suggestion and perhaps support a proposal that I raised only a few months ago—that we require large corporations in the UK to publish all their corporation tax returns and supporting computations. We could require them to be filed with their annual accounts at Companies House, so there would be no need to create a new way of publishing. That way, we would be able to see all the cash tax that they pay and understand how they got from their account profit to that amount.

Steve Baker: Reflecting on my prior experience, with filings in extensible business reporting language going into Her Majesty's Revenue and Customs, there is an opportunity for people to automate that analysis. That might be quite useful.

20 June, 20th Sitting - New Clause 1

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

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

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

Brought up, and read the First time.

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

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

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

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

"having effect from 12 March 2008",

which is the date of the relevant announcement. Its practical effect would be to leave in place measures to close down what was clearly an abusive scheme and, by repealing retrospection, to leave HMRC to test that scheme in the courts under the law as it stood at the time. If the new clause is not agreed, the effect will be to expose people to financial ruin at the hands of the state for conduct that they genuinely thought was lawful at the time. I will come back to that point.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Steve Baker: A gentleman who is also facing devastating consequences wrote to me. He is of an age at which he is unlikely to go back to work. A point he made gave the game away somewhat. He said that he entered into the scheme thinking it was registered and transparent and that he was behaving within the rules. He thought that HMRC would shut it down prospectively, and that retrospective action was therefore a kind of entrapment. I imagine that there was a

conversation in HMRC, when it was watching all those games going on with promoters of aggressive and abusive tax avoidance schemes, in which somebody said, "Retrospection is going to be the only language they understand."

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

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

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

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

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

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

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

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

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

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

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

I have some questions for the Minister. He is well aware of what he said about this measure and what my right hon. Friends the Chancellor, the Prime Minister and, indeed, the Business Secretary said about it when in opposition. It seemed that we were prepared to repeal the retrospective nature of the legislation. Could he explain what has changed? Could he also deal with the point about lawfulness? That is the crucial test. People's behaviour should be tested in the courts: was it lawful? If it was lawful, people should be left alone. If it was unlawful, clearly they face consequences.

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

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

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

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

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

In conclusion, I can do no better than quote what my hon. Friend the Member for North East Somerset (Jacob Rees-Mogg) said last year when extremely short of time. He encapsulated all that needs to be understood about this situation and this clause. He said:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"in the relevant circumstances proportionate and compatible"

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

During last year's Finance Bill Committee, the Exchequer Secretary suggested that the scheme affected by section 58 was "egregious" and would have resulted in individuals paying income tax at less than 5%, as the hon. Member for Wycombe outlined in his speech. The Exchequer Secretary went on to clarify, as I am sure he will clarify again today, that most of the people affected are in the top 5% of earners, with a substantial proportion receiving an annual income of more than £100,000. He stated that people advised by professional tax consultants were aware that HMRC was challenging the scheme and, as such,

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

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

Given that section 58 was introduced as clarification of

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

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

"always having had that effect"

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

"having effect from 12 March 2008",

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

The then Financial Secretary stated:

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

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

I will therefore be grateful if the Minister addresses my concerns in his remarks. Introducing retrospective legislation is clearly a very serious step and one that Parliament must seek to do only in the most necessary of circumstances. We

need it to be clear that the reasons given for the introduction of the retrospective legislation in 2008 were the right ones, particularly in light of the several thousand people affected by the change.

Mr Gauke: In speaking to new clause 1, my hon. Friend the Member for Wycombe raises concerns about the use of retrospective legislation. We have also heard concerns expressed on behalf of constituents who used the avoidance scheme. I will respond to both points, but I would first like to provide some context for the Committee against which the new clause can be considered.

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

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

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

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

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

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

The criteria will give taxpayers and their advisers some sense of when we believe retrospection is appropriate. We will keep the criteria under review, as it is right that we must also be flexible enough to ensure that we can act when circumstances demand. The previous Government reached the conclusion that retrospective clarification was

warranted in respect of the wholly artificial scheme targeted by section 58. For the reasons I have explained, there is no reason to disturb that decision. Indeed, to do so would be unfair on the vast majority who comply with the UK's tax rules and quite reasonably expect others to do the same.

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

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

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

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

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

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

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

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

In this specific case, it is worth pointing out that HMRC never accepted that the scheme worked, and the scheme promoters told users that HMRC was likely to challenge it and that the scheme was not guaranteed to work. The previous Government took action to put it beyond doubt that the rules worked as Parliament intended. Since then the courts have looked at this matter on issues relating to legitimate expectation, and found that the action was reasonable.

The Government are having to make some very difficult decisions in order to restore public finances. I cannot believe that the vast majority who pay tax in accordance with the law would understand if we repealed legislation that responded in a targeted and proportionate way to an aggressive and artificial tax avoidance scheme. My hon. Friend

the Member for Wycombe has raised an important matter, but I hope that on reflection he will agree to withdraw the new clause.

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

Clause, by leave, withdrawn.