

Tax policy making: beyond simplification

Judith Freedman

Pinsent Masons Professor of Taxation,
University of Oxford

Email: judith.freedman@law.ox.ac.uk



The government should create two new institutions – a new Office of Tax Policy and a Joint Parliamentary Select Committee on Taxation – to inform its policy making.

The beginning of the five-year term of this new government offers great opportunities for improving tax policy making. We have an Office of Tax Simplification (OTS), which the Conservatives pledged in their manifesto to make permanent and expand in terms of role and capacity. We have an experienced minister, David Gauke, in place so we have a running start. And there seems to be a consensus that something more needs to be done about the way we formulate tax policy and subject tax policy and its administration to parliamentary scrutiny.

Even so, the political pressures of the next general election will come around again all too soon and there is much to be done in the time available. The structural decisions being made now are vital. Though speed is important, so is deliberation. The opportunities available at the moment may not be repeated and a wrong turn could set us back.

Paul Johnson has given some sage advice on tax to the new government (see 'Tax advice for the new government: the view from the IFS' (Paul Johnson), *Tax Journal*, 8 May 2015). His proposals deal largely with issues of content but, to achieve these sensible objectives, institutional reform is also needed. The organisations tasked with formulating tax policy and scrutinising the results need to be reviewed as a whole and not piecemeal.

As we saw in the 2015 general election, tax is an essential part of the political debate. No attempt to curtail the essentially political nature of taxation would, or should be, successful, but improved expertise, data and analysis are necessary to raise the level of the debate. A better parliamentary process for scrutiny of policy, legislation and implementation is necessary. The organisations that feed into what ultimately must be a parliamentary process need to be bolstered so that they can play a full part in this new approach. The OTS, the National Audit Office (NAO), parliamentary committees and HM Treasury and HMRC themselves need to be strengthened and configured so that expertise is available where needed and can also be absorbed in such a way that it can be rationalised and properly understood. The relationships of all these bodies need clarification. Failure to make the resources available to do this will be a false economy.

The OTS is already in the frame for reform. The first thing to do is to change its name. This is not a frivolous suggestion. A change of name to the Office of Tax Policy (OTP) (as suggested by the author in *British Tax Review* [2013] BTR 373) would underline the reason for other necessary changes. In particular, this body needs to be independent, able to initiate its own reviews and to be tasked with reviewing current proposals, and how they fit into overall tax objectives, as well as look at future changes.

Simplification, attractive though it may sound, cannot be the only, or even the main, driver for reform. It is clear that a fundamental cause of tax complexity lies in flawed underlying policy. Any institution looking to reform taxation must be permitted to look

at the big picture if it is to be successful. As the OTS has shown, there are smaller things that may be done too – 'quick wins' may be possible – but these more detailed actions need to be conceived of within a larger framework so that they do not take policy in the wrong direction. Pressure to move fast, as well as lack of authority to follow through implementation, can lead to some confused reforms, such as the cash accounting provisions in FA 2013.

Simplification cannot be the only, or even the main, driver for reform ... Any institution looking to reform taxation must be permitted to look at the big picture if it is to be successful

The OTS has done more than could reasonably have been expected of it, given its under-funding and limited terms of reference. John Whiting is right to say it has delivered value – in fact, it has gone beyond that – but his frustrations with the previous set-up are clear (see 'Tax simplification: what has the OTS ever done for us?' (John Whiting), *Tax Journal*, 22 May 2015). It is true that the OTS has raised big issues, but these need to be more squarely within the remit of its successor body. Whiting's own prescription is for an independent body like the Office of Budget Responsibility with a clear reporting line to parliament. This follows the recommendations of the Lord Howe Working Party, *Making taxes simpler* (July 2008), which proposed a new Joint Parliamentary Select Committee on Taxation (JPST).

Some have suggested that the Office of Budget Responsibility could take on a tax role, particularly in costing proposals of government and opposition in the run-up to an election. This is potentially valuable, though fraught with practical difficulties as described in a letter from Robert Chote, chairman of the OBR, to Andrew Tyrie MP (dated 15 January 2014; see www.bit.ly/1LEWYWN) – but in any event, costing alone is not enough. Full policy assessment requires consideration of design and examination in a wider context.

Creating an OTP and a JPST, the latter with membership drawn from both Houses of Parliament and both properly staffed, would not remove any political decisions from the government or parliament; it would simply inform these decisions. The original role of the Public Accounts Committee, to examine the accounts and the efficiency of HMRC, could be restored, since wider issues relating to policy formation and scrutiny of legislation would be dealt with by the JPST. The NAO could focus on its own area of expertise and call upon the independent OTP where greater tax expertise was needed. The JPST could work with or subsume the House of Lords Economic Affairs Finance Bill Sub-Committee, which does interesting work but generally completes it too late to have major impact, and it also takes on some of the tax work of the Treasury Committee.

These changes would require expenditure and effort, but this rare moment of political opportunity to improve our tax policy process should be seized. This will prove a good investment. ■

All views expressed are personal. This article is based on a more detailed paper available at www.bit.ly/1FOjE7V.