

Office of Tax Simplification Complexity project

Definitions in tax legislation and their contribution to complexity

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This paper was first published by the OTS in October 2013; we published a summary of responses we had received to the paper in April 2014. We think the paper remains entirely valid so we have slightly updated it, taking the opportunity to incorporate those responses into the body of the paper.

Executive Summary

The Office of Tax Simplification has an ongoing project to identify and measure the factors responsible for tax complexity. As part of this project, definitions in tax legislation have been considered and this paper outlines our findings, identifies common themes and considers some suggestions and guidelines for a ‘good’ definition. This revised edition incorporates responses received following the original publication.

- Chapter 1 outlines our approach to this paper and the reasons why definitions have been considered.
- Chapter 2 looks in more detail at how and why definitions are formed as well as considering what a definition actually is, and it gives a number of examples of how definitions are used in tax legislation. There is also some discussion regarding the possibility of an amended Interpretation Act and consideration of whether the number of definitions is a contributor to complexity. Our conclusion is that, as in our paper on the length of legislation¹, a high number of definitions might be a contributor to complexity but does not necessarily denote complexity.
- Chapter 3 is the main body of the paper with discussion of what constitutes a good and a bad definition. Drawing on the Office of Parliamentary Counsel’s published drafting guidance, we develop categories of definitions that are helpful to the user. We discuss styles of definitions which are prevalent in tax legislation which include ‘comprehensive’, ‘inclusive and exclusive’, and a ‘list’ format. We also give our initial thoughts as to what should be avoided when framing a useful definition, for example circularity and archaic terminology as well as negative definitions.

Our remit

The terms of reference for this paper (see Annex 1) proposed that it would be an opportunity to examine the number of definitions in tax legislation: identifying the size of the problem is a useful exercise. Although the Tax Law Rewrite project addressed some inconsistencies, there are still different definitions of many terms (e.g. “control”, “connected”, “family” etc.) within tax legislation. We wanted to investigate why this was the case, and whether a simpler approach is possible.

A valid criticism was made that the scope of the review was limited with only three Acts (see Annex 3) being considered in detail, and a comparison could have been made between old, new and EU-driven legislation. Whilst ideally we would have considered more legislation, the availability of resources and the time available prevented this at this stage. However, the sample of definitions in Annex 2 considered a number of definitions over all current taxes Acts, as well as tracing definitions back to earlier, superseded Acts. We think, therefore that our conclusions are valid.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193496/ots_length_legislation_paper.pdf

Summary of conclusions

Our overall conclusion is that there is scope for policy makers, and draftsmen, to focus more on definitions, especially to ensure that definitions are consistent where possible, are not over used nor the same label being used for different definitions. We appreciate that both policy makers and draftsmen operate under time pressure, but that should not be an excuse for a proliferation of definitions that may make things more difficult for the user. We are also well aware that a definition has to meet a policy objective, which may differ from similar usages of the term – though from a simplification point of view that should lead to a challenge as to why there has to be a difference.

One obvious suggestion which would assist would be the creation of a database of all definitions in tax legislation. That would be a readily accessible reference point, not only for policy makers and draftsmen, but also for users of legislation. We do not underestimate the difficulty of creating such a reference tool – and that very difficulty shows how the tax system has become less manageable.

Throughout the paper there are a number of questions. Following its initial publication we received some very useful feedback from a range of stakeholders, to whom we are very grateful. We published a summary of their comments in April 2014 and incorporate them below. On the central idea of an index of definitions and the general points that (in effect) there are too many definitions, feedback was:

(1) Index of definitions

Respondents were generally of the opinion that the definitions schedules in the Tax Law Rewrite Acts were useful, but were not comprehensive and needed to be kept up to date. There was no overall agreement as to whether definitions should be included at the beginning or end of legislation, but it was agreed that whatever was done, should be done consistently.

The idea of an index of definitions was well received, although it was generally agreed that a “Tax Interpretation Act”, whilst providing a good opportunity to review all existing definitions across taxes, would be costly and impractical. A database would be useful, but for maximum benefit there would also have to be consolidated legislation. Both Tolleys and CCH include an index in their annual publications and so a digital database might be an extension of this and a useful addition to publishers’ digital offerings.

(2) Number of definitions

The number of definitions and the number of different definitions for different terms is generally unhelpful and it would be better for definitions to be consistent wherever possible across tax (and benefits) legislation, with any deviations being clearly signposted (although at this stage how this might be done has not been considered). Streamlining definitions in existing tax legislation would be a resource intensive project, but efforts could be made with new legislation to draw on existing definitions wherever possible. Where there is a clear policy need for a departure from an existing, common definition, this should be clearly stated.

The quality of a definition should not be sacrificed in the interests of saving space by over concise legislation.

Definitions should be made as accessible as possible to all potential users of legislation. There was some support for definitions, or defined terms, to be highlighted in legislation in a consistent manner, perhaps by using bold or underlined text.

Next Steps

It is tempting to make the creation of a definitions register or database a formal recommendation as it is clear that since we first published this paper the position has only got worse. But given the pressure on resources in HMRC, OPC and indeed Parliament, we cannot say this should be a priority. Instead, we reiterate that we hope that the principles we outline for simpler definitions will be helpful to HMRC and HMT policy makers and to drafters of tax legislation.

We will continue to explore the factors behind tax complexity, and are publishing further versions of our complexity index. The findings of this project have also fed into the paper we published on the general principles for avoiding unnecessary tax complexity (published June 2015 and reissued at the same time as this paper).

Throughout the paper there are a number of questions. Following its initial publication we received some very useful feedback from a range of stakeholders, to whom we are very grateful. We published a summary of their comments in April 2014 which are now incorporated below. We would welcome any further feedback or comment on these, on the paper as a whole or on our complexity project generally. You can email us at ots@ots.gsi.gov.uk.

Questions posed and feedback received (edited)

Overall comments

- It is extremely unhelpful for the lay person to have a word or phrase defined in different ways in the legislation.
- As far as possible words and phrases that apply to both tax and benefits legislation should be given the same definition, and where there are deviations, these should be clearly signposted.
- There are some terms that may be difficult for some low income taxpayers to understand but which are becoming more widely used (e.g. step child).
- It may be helpful to have an additional category of definition where a generic concept is given a particular attribute, e.g. service by post.
- Any amendments to the formatting of the legislation should be considered by experts in visual impairment to ensure that the visually impaired are not prejudiced.
- An index of definitions is a very good idea, and one distributor of tax legislation still publishes such an index with their publications.
- Welcome efforts to ensure that definitions are as consistent as possible.
- Where there is a choice to be made between using a definition to save space, or using a full description each time a matter is referred to, the latter approach is preferable.

1) Do you find definitions easy to find in tax legislation? (2.4.3)

- No – there is inconsistency between the locations of definitions in different legislation
- The index of definitions in, e.g. Corporation Tax Act 2010, is helpful but it is not comprehensive and sub-definitions may be contained within the operative provisions. This is why the definitions in published legislation are so useful.

2) Where would be the best location for definitions? (2.4.3)

- A common policy for location of definitions would be desirable.
- Consistency is key.
- More logical to have a definitions section at the front of the legislation, which aligns with the view that the reader needs to know the definitions in order to read the legislation properly. However consistency is more important than logic.
- An approach similar to that adopted by the Tax Law Rewrite Project (an index of defined expressions) would be useful in all legislation, perhaps located at the front rather than at the back of the legislation.
- Current definitions schedules to be updated and introduced into Acts which currently do not have them.
- It can be very convenient to insert a definition in a section but if it is subsequently applied more widely this may be a problem.
- A database of standard common definitions would be useful for both practitioners and parliamentary draftsmen, with exceptions that had to be justified and cross referenced to legislation.
- Has the Definer database in New Zealand helped to reduce complexity?
- The drafting of a “Taxes Interpretation Act” would take time and resources and might be impractical, but would give policy specialists and draftsmen an opportunity to review standard definitions across taxes.
- Whatever approach is adopted, definitions must be kept up to date, relevant and consistent.
- Ideally at the end of the legislation concerned, either in the body of the Act or in a schedule, rather than in a Taxes Acts Definitions Act.
- Whilst in theory this would be a useful resource, there are issues of who would be responsible for maintaining it how would the costs be met and where would it be housed.

3) Would an online database of definitions in tax legislation be a useful resource in the UK?

- It would be useful as it would be available to Parliamentary draftsmen, thus making future legislation more comprehensible.
- An online database without consolidated legislation would be of limited use, so the first step should be the creation of an online database of consolidated tax legislation. Such databases are maintained by private providers, but unconsolidated legislation is of minimal use.
- Could this be provided by commercial publishers as part of their digital offerings?

4) Would it be possible or practical to have a system of common definitions (with limited exceptions) in tax? (3.1.4)

- It is certainly possible and practical to have some, perhaps many, common definitions but some definitions are specific to an area of tax, so this may not be possible in every case.
- The successful implementation of common definitions would depend, inter alia, on the availability of adequate resources.
- Common definitions should reduce inconsistencies and make tax legislation easier to understand. Where there is a departure from a common definition, this should be for a stated policy reason.
- Clear policy intent normally helps with interpretation of legislation, including definitions, but is not always known. It may help, and would be in the spirit of transparency, if instructions to Parliamentary counsel were made public, and if this were not possible, a summary of the purpose and intention of the proposed legislation.
- Common definitions should include both tax and welfare legislation, as unrepresented individuals on low incomes frequently have to deal with both systems. It is probably not practical to have such a system from the current starting point, but we recommend that new legislation be drafted with this as a goal.

5) Which style of definition do you prefer? (3.2.10)

- Clear and concise.
- Positive rather than negative.
- Capable of being read independently i.e not cross referential definitions
- Written in everyday language.
- A minimum of words
- Capable of being used in more than one situation.
- As descriptive as possible
- Spelled out in full, rather than in short form.
- The use of a dictionary definition, with specific additional qualifications, might be more concise than a lengthy definition provided by draftsmen.
- The ejusdem generis rule is helpful in interpreting inclusive definitions.

6) Would it be useful to have definitions stand out more within the body of the text? (3.2.13)

- Possibly, depending on the style and format used and as long as a consistent approach is adopted across legislation and between paper and online formats.
- Useful.

7) If so, which formatting method would be most helpful? (3.2.13)

- A consistent approach; we understand that there is a long-standing legal drafting convention where definitions are commonly capitalised.
- Suggest that the OTS approaches specialist charities that deal with the visually impaired to establish the best format.

- This could make the text appear “patchwork” in areas where there are several definitions.
- Bold text or underling would be preferable

8) Have the right principles underlying a good, or helpful, definition been identified? (3.2.19)

- Yes

9) Do you have any other suggestions in relation to definitions?

- Simpler legislation would normally need fewer difficult to understand definitions. However, it is not always practical or desirable for legislation to be simple, but improving definitions could make a real difference. Simpler definitions could make otherwise complex legislation easier to understand.
- Is there scope for introducing more consistency of drafting style between different draftsmen through education, training or the review process?
- The OTS severely limited its horizons by considering three acts, all relating to direct taxes. Some substantial differences could have been illustrated by comparing rewritten old law, EU driven law (e.g. VAT) and modern tax law (e.g. environmental taxes).
- Harmonisation could be difficult as different taxes have developed their own concepts e.g. EU law has a significant impact on VAT. VAT definitions are relatively clear, as VAT legislation follows the Principal European VAT Directive.
- As a result of the principle of “conforming interpretation” a VAT definition may not be the same as the definition for, e.g. corporation tax, when the purpose of EU legislation is taken into account.
- Instead of definitions standing out in the text, have words that are defined stand out.
- Where definitions include lists, these may be more difficult to update. Additionally definitions that give a list that is not comprehensive (i.e. x includes) gives the perception that HMRC are unclear as to what they want to cover, and this gives HMRC “wriggle room”.
- Qualitative terms, e.g. “material”, can cause problems.
- There are inappropriate definitions in tax legislation as follows.The close company legislation was enacted primarily to apportion undistributed income of the companies to individuals so that they could be taxed as if they had received a dividend at the then prevailing high income tax rates, rather than “family companies” keeping the cash in lower taxed corporate vehicles, and if necessary their accessing the cash via loans. For this reason it was important to have a very wide definition of “control”. Unfortunately, in other circumstances, recourse has again been had to that definition where a narrower and more targeted definition would have been more appropriate. For example, in certain circumstances, individual decisions made by investors into companies where those individuals happen to be members of a large professional partnership may mean that the “connection” between those partners has an unexpected (and possibly unknown, unless HMRC are lucky enough to pick it up) impact on the tax consequences of the investments made by the individuals concerned

1. Introduction and Background

1.1 Introduction

1.1.1 This is a paper of the Office of Tax Simplification (“OTS”) on the review of definitions within tax legislation. The aim of the project was to assess the number of different definitions in tax legislation as well as discussing the ways in which definitions are used to good or sometimes poor effect. Our terms of reference are set out in Annex 1.

1.1.2 The initial objective of the project was to compile a list of all definitions used in tax with statutory references and to review this to see whether a single “interpretation act for tax” could be produced. Another idea was to determine whether there was scope for the numerous definitions (estimated to be several thousand) in the various tax Acts to be reduced to a number of “common definitions” applicable more widely across tax, taking into consideration that some are used in other legislation (e.g. benefits and social security legislation).

1.1.3 Following discussions with relevant stakeholders, the scope of the work was refined as the evidence indicated that it would not be possible to produce a single definition for each term. The focus of the work was directed to determining what makes a good definition. The evidence suggests that the development of definitions is less prescriptive than we had initially appreciated as policy determines whether an existing or new definition is to be used, rather than there being a hard and fast rule on what definition to use.

1.2 Background

1.2.1 In addition to the reviews of specific aspects of the tax system (e.g. reliefs, pensioners, expenses and benefits) the OTS has been looking at more fundamental issues which may give rise to complexity. These include the contribution that the length of legislation makes to complexity, as well as developing “a complexity index” designed to indicate the relative complexity of different parts of tax legislation. If a successful index can be established it is hoped that this may be extended beyond tax and applied to other areas of legislation.

1.2.2 The project, looking at the number and form of definitions used in tax legislation is one element of the overall complexity project. During the course of discussions for other reviews carried out by the OTS, a number of stakeholders cited the number of definitions in tax legislation as well as the number of different definitions used for the same concept as a source of complexity.

1.3 Stages of the project:

- Stage 1 – to consider in detail a sample of definitions, identifying instances of the term and definitions in primary tax legislation, reviewing the history of the definition and comparing and contrasting different drafting styles (see Annex 2);
- Stage 2 - a list of definitions used in specific tax statutes was compiled. The acts considered were the Corporation Tax Act 2010 (CTA 2010), the Inheritance Tax Act 1984 (IHTA 1984) and the Taxation of Chargeable Gains Act 1992 (TCGA 1992 (see Annex 2). The original intention was to compile a list of definitions in all of the taxes Acts, but the size of this task

coupled with the limited resource available meant that this aspect was scaled back to focus on one Rewrite Act and two pre-Rewrite Acts. The pre-Rewrite acts chosen were IHTA 1984 and TCGA 1992 as they both deal with capital taxation and represent some of the oldest extant tax legislation in common use. IHTA 1984 is itself a consolidation of earlier legislation for the precursor to inheritance tax, the capital transfer tax; and

- Stage 3 – following discussions with the Office of the Parliamentary Counsel (OPC), the Cabinet Office and HMRC Solicitor’s Office the project has developed and the focus has moved to considering what makes a useful or “good” definition with a view to producing suggestions for the principles underlying a “good” definition as a framework for policy makers when considering future definitions.

This paper consists of our initial findings and it is hoped that it will form the basis for a wider discussion of what is a helpful definition and, leading on from this, to a further report and recommendations.

1.4 Issues to be considered

- Is there a need for an Interpretation Act specifically for tax – are definitions often too closely aligned to specific areas for this to be practical?
- Do we need so many definitions? Can they be rationalised into a number of “common definitions”?
- Why are there many different definitions?
- What are the features of a good and bad definition?

2. Definitions

2.1 What is a definition?

2.1.1 “Definition” is defined by The Shorter Oxford English Dictionary² as “the action of determining a question at issue” or “the declaration of the signification of a word or a phrase”.

2.1.2 A definition is a statement that explains the meaning of a word or a phrase. When constructing a definition it is essential to use terms that are readily understood, or which themselves are clearly defined. It falls into two parts; the term being defined and the part which defines the term and the writer’s intention.

2.1.3 There are logicians³ who have set out rules for definitions as well as describing different forms of definitions (e.g. intension, extension and definition by genus and differentia). However, it is generally agreed that the key features of a useful definition are as follows⁴:

- **clearly** identifies the attributes of what is to be defined;
- should **not be obscure**;
- should **not be circular**;
- must be **scoped appropriately**; and
- ideally should be **positive rather than negative**.

2.1.4 Further examination of these principles will be discussed in the section 3.1 ‘What constitutes a good and a bad definition’.

2.2 Definitions in tax

2.2.1 Definitions are usually found in a specific statute; either in a definitions schedule that applies to a whole Act, or within a specific part, chapter, section or, occasionally, subsection. There are some definitions that apply across different Acts, for example some defined terms which apply to the Corporation Tax Acts⁵ as a whole are found in Corporation Tax Act 2010 Part 24 Chapter 1.

2.2.2 There are a large number of terms that are defined in tax statutes, but there are also many terms that have been defined by the Courts (e.g. *Yarmouth v France 19 QBD 647* for the definition of “plant” in connection with capital allowances). We have not looked at case law definitions in this paper, which would be a lengthy exercise.

2.2.3 Other terms are defined by reference to intrinsic or extrinsic sources (for example the Interpretation Act 1978⁶, or Stroud’s Judicial Dictionary of Words and Phrases) or simply in accordance with normal usage.

² 1986 edition

³ For example Irving Copi

⁴ See for example Irving Copi “Introduction to Logic” 1982

⁵ Interpretation Act 1978 Sch 1 “the enactments relating to the taxation of the income and chargeable gains of companies and companies distributions”

⁶ Previously Interpretation Act 1889

2.2.8 It is interesting to note that there is a marked difference in the words appearing in this word cloud to the previous two. This difference is that ‘labels’ seem to not be such a prominent feature. A reason for this may be that in the Office of the Parliamentary Counsel drafting guidance⁹ it states at 3.3.11:

“Using the same label to denote different things in the same Bill may confuse (and contravenes the drafting principle of consistency)”

2.2.9 The CTA 2010 word cloud is a good visual indicator that drafters have made an effort to follow this guidance as there is a clear reduction in the use of labels.

2.3 Drafting definitions in legislation

2.3.1 The starting point for parliamentary draftsmen when approaching new tax provisions is to ensure that the definition meets the policy intention of the Government, as expressed in detailed “instructions to counsel” from HMRC officials or solicitors. If possible a definition will be used that is already in existence; otherwise a new definition will have to be constructed. A factor that must be taken into consideration when looking at tax legislation is that there is usually enormous time pressure on policy makers and parliamentary draftsmen and it is often quicker to start with a new definition that meets the policy objective rather than to review existing legislation for an existing definition that is fit for purpose.

2.3.2 Each parliamentary draftsman has their own individual style; however one approach is to start with a dictionary definition, which should be what the man in the street would understand a specific word to mean. If there is no ambiguity as to what a word means, then there is no need for the term to be defined in legislation. However there may be departures or exclusions from a widely understood broad definition in which case a special gloss will have to be put on a word and either a specific definition included in legislation, or a limitation placed on a widely understood definition. An example of this is “**caravan**” where CTA 2009 has extended the scope of the dictionary definition.

Dictionary – ‘a large enclosed vehicle capable of being pulled by a car or lorry and equipped to be lived in’¹⁰

Caravan, CTA 2009, s1314:

(1) In this Act “caravan” means—

(a) a structure designed or adapted for human habitation which is capable of being moved by being towed or being transported on a motor vehicle or trailer, or

(b) a motor vehicle designed or adapted for human habitation,

But does not include railway rolling stock which is on rails forming part of a railway system or any tent.

(2) A structure composed of two sections—

⁹ 16 December 2011

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61010/Office_of_the_Parliamentary_Counsel_revised_guidance_16_12_11.pdf

¹⁰ Collins English Dictionary

(a) separately constructed, and

(b) designed to be assembled on a site by means of bolts, clamps or other devices,

is not prevented from being a caravan just because it cannot, when assembled, be lawfully moved on a highway (or, in Scotland or Northern Ireland, road) by being towed or being transported on a motor vehicle or trailer.

2.3.3 It could be argued that it would have been simpler to have used the dictionary definition which is well understood. However, using the dictionary definition may have disadvantaged some taxpayers as the dictionary definition does not extend to cover a static caravan (i.e. a mobile home which cannot be towed by a vehicle), which the CTA 2009 definition allows for.

2.4 The Tax Law Rewrite project

2.4.1 The Tax Law Rewrite project (TLRP) was established in 1997 to rewrite the tax legislation to make it clearer and easier to understand by using plain English and, inter alia, rationalising definitions¹¹ in clearer and more user-friendly language. The first rewritten Act was the Capital Allowances Act 2001 and the seventh and the last was the Taxation (International and Other Provisions) Act 2010.

2.4.2 Detailed explanatory notes were produced for each of the Rewrite Acts as well as underlying guidelines for the Rewrite¹². The guidelines cover sentence structure, including the paragraphing of a sentence to make it easier for the reader to understand. The project recognised that definitions and their position in the legislation influence the understanding of legislation. In the rewritten legislation the labels used for definitions are designed to encapsulate the idea contained in the definition, with the intention of informing readers more easily when a defined term is being considered. Words and phrases which are common in everyday language are used wherever possible.

2.4.3 An additional aim of the Rewrite project was to ensure that the reader of legislation can find a statutory definition of a term easily. The initial intention was to provide a supplementary index at the end of each part or chapter which listed all of the defined terms in the particular part of the legislation, together with a statutory reference for the definition. For terms that apply generally across an Act, the intention was to include a general interpretation provision to which the supplementary index would cross refer. The advantage of this approach was to give the draftsman scope to include definitions in the legislation at the most appropriate point, whilst providing the reader with a ready reference to the location of definitions. However, this approach was dropped in favour of a dedicated schedule of definitions. This schedule of defined expressions was included as Schedule 1 in Capital Allowances Act 2001 and Income Tax (Earnings and Pensions) Act 2003¹³, and was later included as the final schedule in the following five Rewrite Acts¹⁴.

1) Do you find definitions easy to find in tax legislation?

¹¹ Tax Law Rewrite: The Way Forward” Chapter 1; Introduction

¹² Tax Law Rewrite “The Way Forward” Annex 1: Guidelines for the rewrite
<http://www.hmrc.gov.uk/rewrite/wayforward/tlra1.htm>

¹³ The first two Rewrite Acts

¹⁴ See, for example, Corporation Tax Act 2010 Sch 4

2) Where do you feel would be the best location for definitions?

2.4.4 This index of defined expressions (e.g. CTA 2010 s 1182 and Sch 4) “lists the places where some of the expressions used in this Act are defined or otherwise explained”¹⁵. However, as the words of the statute make clear, the definitions apply only to a specific Act, and the schedule is not a complete list of definitions. Some of the “Schedule 4” definitions are not true definitions as some of them are “shorthand” i.e. they are used to refer to a specific concept in legislation, rather than giving the meaning of a term:

*“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal*¹⁶

2.4.5 There are also occasions where definitions are included that may be unnecessary but which have been included to ensure that the legislation is clear and robust; for example the definition of “market garden” in s1125 CTA 2010.

2.4.6 It might have been reasonable to expect that one of the outcomes from the Tax Law Rewrite project would have been fewer definitions, taking the opportunity to consolidate definitions as part of the rewrite. However, different draftsmen were responsible for redrafting different parts of specific Acts and we understand that this, together with the timetable for the publication of the rewritten legislation, meant that there was insufficient time for an overall review of each rewritten Act to ensure that there was no unnecessary repetition of definitions.

2.4.7 Over time the schedule of defined terms in each rewritten Act has become slightly outdated as time pressure has resulted in some new definitions not being included, for example “*community amateur sports club*¹⁷” which was inserted in section 658 CTA 2010 by Finance Act 2012¹⁸, has not been added to Schedule 4 CTA 2010.

2.4.8 As a result of this piecemeal approach to drafting it is not always possible to ascertain a rationale for the proliferation of definitions – there may have been a reason for a definition to have been repeated, differences in definitions may have been to meet policy needs or “it may just have happened that way”. An example of this would be the definition of “arrangements” in TCGA 1992. The definition occurs eight times in TCGA 1992 and has two slightly different definitions within the Act; however there is no one overarching definition in the legislation.

2.5 Interpretation Act 1978

2.5.1 The Interpretation Act 1978 (IA 1978), which consolidated the Interpretation Act 1889, provides for the construction and interpretation of certain words and phrases in Acts of Parliament and certain other measures (e.g. measures of the General Synod of the Church of England) and subordinate legislation.

¹⁵ Corporation Tax Act 2010 s1182(2)

¹⁶ CTA 2010, s1119 (schedule 4)

¹⁷ CTA 2010, s658

¹⁸ FA 2012 s 52

2.5.2 The basic premise is that certain words and phrases are to be interpreted in accordance with IA 1978 “unless the contrary intention appears”¹⁹.

2.5.3 There are instances where different legislation sets out and redefines a term which has already been defined in another piece of legislation, for example “company” (see Annex 2). The time pressure under which draft legislation is produced does not always allow time to cross reference into other legislation for a suitable existing definition. Having an Interpretation Act specifically for tax legislation could assist both the draftsmen as well as the user as it would be a reference point for definitions and would make finding definitions easier. This would involve a significant investment of time and resource and may not be practical; however, a more practical solution might be to compile a list of definitions as an online resource. An example of such a database exists in New Zealand (see ‘Definitions in other countries’). Any resource, whether online or on paper, is only useful if it is properly maintained and updated which has resource implications. However, if an electronic tag system for definitions was introduced in online legislation²⁰ then this task should be more manageable.

2.5.4 If neither an Interpretation Act nor an online resource is considered to be a feasible solution, a compromise might be to ensure the current definition schedules at the end of each Rewrite Act are fully updated, and possibly to introduce index schedules for the (non-rewrite) Acts that do not have them. This would at least give a comprehensive list of definitions for specific Acts.

2.5.5 We understand that The National Archives has user tested a new facility for the legislation.gov.uk website which would reveal a definition via a so-called infotip text box when a defined term is hovered over. This feature worked well. Although there is as yet no firm date for infotips for definitions to be implemented on the website, the OTS thinks it would be welcomed by the many users of online legislation, although of course would not be available to those who prefer to use legislation in hard copy.

2.6 Categories of definitions

2.6.1 The Office of the Parliamentary Counsel Drafting Guidance²¹ on definitions recognises four categories of definitions:

(1) *Definitions of **major concepts** without which the reader cannot understand what follows.* An example of this would be “close company”²². This definition is for the purposes of the Corporation Taxes Acts and is integral to the user’s understanding of the legislation;

(2) *Definitions adopted for the sake of **drafting convenience**.* For example “the 2002 Act means the Enterprise Act 2002”. As these are likely to be of less help to the user of the legislation it is recommended that these are kept to a minimum;

¹⁹ IA 1978 s5

²⁰ For example in www.legislation.gov.uk

²¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61010/Office_of_the_Parliamentary_Counsel_revised_guidance_16_12_11.pdf

²² CTA 2010, s439

(3) Definitions of words or expressions which will be understood in **general terms**, but where a degree of certainty or **clarification** is needed. For example ‘child’– ‘includes a stepchild²³’.

(4) Definitions making, for convenience, a **minor adjustment** of what a word or phrase would otherwise mean. For example, “employment includes self-employment.”

2.6.2 These four categories are useful to understand the approach drafters take when faced with new legislation to draft. As they are guidance only, they allow definitions to be constructed that meet specific policy objectives.

2.6.3 It is also helpful to recognise the use of ‘labels’ in tax legislation. A label is a shorthand drafting technique, used when there is an overarching principle to be conveyed to prevent the need for the same form of words to be repeated a number of times. A label usually applies to a specific part of the legislation (e.g. a chapter, part or a section) and it is not considered sensible or practical to have a list of these.

2.6.4 An example of a ‘label’ would be “*qualifying company*” in TCGA 1992:

‘Label’	Statutory reference
<i>qualifying company</i> (for the purposes of schedule 5, para 8(4))	Schedule 5, para 8(5)
<i>qualifying company</i> (for the purposes of schedule 5B)	Schedule 5B, para 19(1)
<i>qualifying company</i> (for the purposes of schedule 7AC, para 19)	Schedule 7AC, para 19(2)
<i>qualifying company</i> (for the purposes of section 96(1))	section 96(6)

2.7 Number of definitions

2.7.1 An exercise was carried out to identify all of the definitions in the inheritance tax Act 1984, the Taxation of Chargeable Gains Act 1992 and the Corporation Tax Act 2010. The resulting list indicated that there are 1,989 definitions in the three acts, with 305 in IHTA 1984, 994 in TCGA 1992 and 690 in CTA 2010 (see Annex 3). These include specific labels, as well as definitions that have been repeated. If this exercise were to be extended to identify and list definitions in all of the existing primary tax legislation, it can be assumed that the list would run to many thousand definitions.

2.7.2 There is a view that the number of definitions adds to complexity, and this was an issue raised by stakeholders who have commented on other projects undertaken by the OTS. However, as many of these definitions are section, chapter or part specific it means there is less need for constant

²³ TCGA, s169F(4A)(b)

reference to other parts of the Act to find the definition as the specific parts (in the general sense) of the legislation are self-contained to a degree. Therefore the number of definitions may increase the length of the legislation but the occurrence of definitions does not necessarily add to complexity.

2.7.3 It can be argued that the number of different definitions used for a specific term, or varying wording for the same definition may contribute to complexity. For example definitions of “group” (see Annex 2) includes:

- “ means a company and all companies which are its 51% subsidiaries”²⁴ ; and
- “ means a company which has one or more 51% subsidiaries together with those subsidiaries”²⁵

These two alternative wordings seem to mean the same thing, so it would have been simpler to use the same form of words for both.

2.8 The Office of Parliamentary Counsel’s approach to definitions

2.8.1 The UK does not have a set of detailed drafting rules; there are guidelines²⁶ but these are high level, and are neither a comprehensive guide to drafting UK legislation nor a strict framework for draftsmen. Whilst draftsmen should have regard to the guidance, it is recognised that there will be cases where practice will depart from guidance and an individual’s experience and expertise will be required to ensure that drafting is effective and meets the policy objective.

2.8.2 The guidance provides that a definition that is only used once should be included in the relevant provision (e.g. section)²⁷. However if a definition is to be used more than once it should usually be defined “up front” in the legislation if it is key to understanding the provision or if it is shorthand to reduce the need to repeat a clumsy or lengthy term. Definitions that are repeated but which provide either clarification or qualification of generally understood terms are usually included at the end of the particular part of the legislation.

2.8.3 Where definitions are given up front, they should be indexed, which has been done successfully in the rewritten Taxes Acts²⁸.

2.8.4 The definitions themselves should not be misleading and should not define terms in a way which the user would not expect.

2.8.5 It must be clear from the legislation what the definition applies to, i.e. whether it is to the Act as a whole, or to a particular part, chapter, section or indeed subsection.

²⁴ ITA 2007 s277(4)

²⁵ CTA 2010 s1081(7)

²⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61010/Office_of_the_Parliamentary_Counsel_revised_guidance_16_12_11.pdf

²⁷ Office of Parliamentary Counsel Drafting Guidance (16 December 2011) section 3.3.2

²⁸ See, for example, Corporation Tax Act 2010 Sch 4

2.8.6 The guidance states²⁹ that using the same label to denote different things in the same bill may be confusing to the reader and is contrary to the drafting principle of consistency. However, in tax there are numerous instances of the same label being applied to different things e.g. “group”³⁰.

2.8.9 There is also guidance given on what should be avoided, for example, prospective definitions where a definition is given in one section and also applies to the following section; a user referring to the second section may not immediately look to a previous section for a definition. Additionally generic phrases such as “unless the context otherwise requires” are not recommended and if there are situations where the context might require otherwise, these should be set out.

2.8.10 This broad guidance for definitions is useful as it provides guidance to the draftsmen as to how to frame a definition whilst allowing a degree of flexibility. Looking at the Rewrite Acts and subsequent legislation, the guidance appears to have been followed and the four categories of definitions referred to in 2.6.1 used. We have noted that other categories of definitions are also used; these are not as helpful to the user, and these occur in Acts that have not been rewritten.

2.9 Definitions in other countries

2.9.1 It is interesting to look to other countries and their use of definitions. There are a number of different approaches, some of which could be considered for the UK.

2.9.2 **Europe** - It is common in European countries for the main legal concepts to be defined either in a written constitution or in a specific code, for example a criminal code. For EU legislation the definitions are included at the start of the provisions, rather than the approach adopted by the Tax Law Rewrite project in the UK where the definition schedule is generally at the end of the statute.

Australia

2.9.3 The drafting manual from the Australian Office of Parliamentary Counsel³¹, which appears to be more prescriptive than the UK drafting guidance (see 2.8) refers to the principle of “one expression, one meaning” to avoid confusion. Consequently there should not be different definitions of a word or phrase in the same legislation, or a definition of a term which elsewhere in the legislation takes its usual meaning. This is not a strict prohibition, but any departure must be discussed with the “head drafter” and appears not to be up to the discretion of the individual. Consequently there is generally no need to indicate the scope of a definition e.g. as applying to a part, section etc, as a definition applies to the whole of a particular Act.

2.9.4 It is recognised in the drafting guidance that there may be occasions where a “just in time” definition might be used i.e. where a definition appears in the provision where it is most relevant, but this definition should also be the one that applies across the specific piece of legislation as a whole.

2.9.5 Inevitably there are exceptions to these general rules and an expression may be given a specific definition for a provision, notwithstanding that the expression may be used elsewhere in the same

²⁹ 3.3.11

³⁰ See Annex 2

³¹ Parliamentary Counsel Drafting Direction No 1.5 (October 2012)

legislation, either as a differently defined term or taking its ordinary meaning. This is usually the case when an expression must have the same meaning as in other legislation or in the Constitution.

2.9.6 There is a clear statement in the guidance that qualifying definitions, such as “unless the contrary intention appears ...”, should not be used when drafting new legislation, as these are considered to be unnecessary and unhelpful. In addition the qualification is implied³² and the context in which a word or term is used will dictate its meaning.

2.9.7 A limited review of Australian tax legislation³³ would appear to indicate that there is a definitions section³⁴ or a dictionary³⁵ of defined terms.

New Zealand

2.9.8 In New Zealand the Income Tax Act 2007, section AA3 refers to Part Y for definitions. Part Y, and specifically part YA1 contains definitions for the Act, and is in the form of a glossary rather than a list of cross references to the main body of the Act.

2.9.9 New Zealand holds an annual competition called Mix & Mash designed to encourage creativity around New Zealand content and data³⁶. In 2011 the winner of the open government category which was sponsored by the Parliamentary Counsel’s Office was ‘Definer’³⁷. Definer is a dictionary of all terms defined in New Zealand’s Acts of Parliament available online and provides three services:

“ ... 1. Term Index: All terms defined in the Acts are presented using an alphabetical index. The terms have been extracted from the Acts and only their definitions are shown. 2. Smart Search: Some terms are defined across multiple Acts and therefore have multiple definitions. Definer allows searching through the terms and presents all definitions of the term along with the act name, part and section in which the term was defined to show the context of the definition. 3. Cloud Timeline The timeline presents a tag cloud of the most frequent terms in their Acts by decade starting from the year 1900.”³⁸

2.9.10 Definer is a useful resource as it allows for any defined term in legislation to be entered and gives a list of references where the term is defined, as well as the full definition. This innovative approach to definitions could be considered for UK tax legislation (or indeed more widely in the UK). However the task in New Zealand may well be slightly simpler as the online files of the legislation have tags around definitions defined in the acts which enabled the developer of this software to decide upon which definitions to include easily. In the UK, however, there is no prescribed format of definitions or any particular ‘tag’. Definitions can start with ‘this means’, ‘includes’, ‘references to’ etc. Using the method employed in the development of ‘Definer’ may enable a complete list of tax definitions to be compiled in the UK; an exercise for which the OTS have insufficient resource. This

³² Hall v Jones (1942) 42 SR (NSW) 203

³³ See <http://law.atolaw.gov.au/>

³⁴ E.g. Income Tax Act 1986 section 3

³⁵ E.g. A New Tax System (Goods and Services Tax) Act 1999 Chap 6 Part 6.3 Division 195-1

³⁶ <http://www.mixandmash.org.nz/about-mix-and-mash>

³⁷ <http://www.mixandmash.org.nz/2011-winners/open-government/>

³⁸ *ibid*

could then be incorporated into the National Archives legislation website³⁹ which would make the legislation, and in particular the meaning of specific defined terms, more accessible.

Would an online database of definitions in tax legislation be a useful resource in the UK?

Developing Countries

2.9.11 The International Monetary Fund and World Bank are often instrumental in introducing new legislation in developing countries. These organisations may make funds available and commission a tax law academic to draft a specific part of the tax code as required. These individuals generally have a proven track record of drafting similar legislation at the request of the global body for other similar territories, For example, the same person commissioned to draft a specific part of the code for Tonga might have previously drafted similar legislation for Samoa or Fiji. As a result there may be consistency of approach and wording between similar territories, but there is no concept of starting afresh and designing something specific - rather a previous example adapted as appropriate. The quality of this legislation also depends on other factors, for example the briefing or the (lack of) policy making expertise of the Government.

³⁹ www.legislation.gov.uk

3. Findings and conclusions

3.1 General themes arising from our review

3.1.1 There can be a number of definitions that are used for the same term in tax and on the basis of the sample considered (see Annex 2) there is sometimes no obvious reason for the use of different definitions. Different definitions may have been used as a result of not identifying an existing definition that was fit for purpose or lack of time to check other legislation to ensure that there is no duplication. There is also the overriding requirement that the definition has to meet the policy objective; a definition from elsewhere in the legislation that would be simple and consistent may not fulfil the policy objective.

3.1.2 Using our sample, definitions were traced back to when they were first used (or Income Tax Act 1952 if later), in an attempt to discover the rationale behind the definitions. The Hansard record of the debates on the legislation which contains these definitions did not reveal any rationale. As the project has developed it has become apparent that definitions develop in accordance with what is needed at the time, and whilst the rationale for a specific definition may be included in HMRC's "instructions to counsel", these are not in the public domain.

3.1.3 Whilst the Tax Law Rewrite Project has made a considerable contribution to modifying definitions, there is still more that can be done. The schedules in the rewrite Acts are not a definitive reference point for all the definitions within an Act, and there are still some less than adequate definitions, for example "*coupons*⁴⁰" (see Annex 2).

3.1.4 An ideal position might have been to reduce the numerous definitions to a smaller number of streamlined or common definitions. However, due to the policy rationale underlying the choice of specific definitions, as well as the use of some definitions elsewhere in legislation and the resource required to undertake this exercise, we have come to the conclusion this would not be practical and may well result in unintended consequences. Consequently we believe that the most appropriate way forward is to focus on future definitions and try to identify features of a "good" or helpful definition, as well as framing recommendations for a more consistent approach to definitions for policy specialists and draftsmen, to try to ensure that future definitions are more consistent and user friendly.

3.2 What constitutes a good and a bad definition?

3.2.1 A good definition allows legislation to be accessible to the user even where complex areas are being outlined. However, a poor definition can make something already complicated even more so, or even render the legislation unintelligible. Consequently a clear approach to formulating definitions is key to ensure that they fulfil their role of "determining a question at issue" (see para 2.1.1).

3.2.2 Below is a sample of definitions which we feel display unhelpful characteristics:

1. Lack of punctuation:

⁴⁰ CTA 2009, s975(3)

*'Where on the death of any person inheritance tax is chargeable on the value of his estate immediately before his death and the value of an asset forming part of that estate has been ascertained (whether in any proceedings or otherwise) for the purposes of [the application of that tax to the estate], the value so ascertained shall be taken for the purposes of this Act to be the market value of that asset at the date of the death.'*⁴¹

3.2.3 The Tax Law Rewrite focussed on and improved the layout and format of definitions. Definitions are now easier to understand as there is a better use of punctuation and formatting, as well as greater use of signposts.

2. Unnecessary definitions:

*"non-UK resident" means a person who is not resident in the United Kingdom.*¹

3.2.4 If a definition does not expand upon the term being defined then this does not add anything to the overall understanding of the legislation.

3. Circular definitions:

*"trade" includes every trade, manufacture, adventure, or concern in the nature of a trade.*⁴²

3.2.5 The purpose of a definition is to further inform the user's understanding of a term. Using the defined term within the definition does not achieve this objective, as it merely expands the term.

4. Obscure definitions:

*"Land" - includes **messuages**, tenements and hereditaments, houses and buildings of any tenure.*⁴³

3.2.6 In addition when reading a definition, there should be no need to consult other sources such as a dictionary for any of the words used. A definition should be capable of being read independently and understood without the need for additional research; the use of archaic words does not allow for this.

5. Negative definitions:

*"plain vanilla contract" a relevant contract other than one to which a company is treated as being a party under*⁴⁴

3.2.7 *'The positive is often easier to understand than the negative version of the same thing'*⁴⁵ and thus a positive definition is preferable. The comment from OPC Drafting Guidance would indicate that negative definitions should appear rarely if at all in legislation. The definition itself is not a standalone definition; it refers to "relevant contract" itself a defined term which requires reference to CTA 2009 s577. Additionally it can be argued that the use of the term '*plain vanilla contract*' is

⁴¹ TCGA 1992, s274

⁴² ICTA 1988, s832(1)

⁴³ IHTA, s288(1)

⁴⁴ CTA 2009, s708

⁴⁵ Office of the Parliamentary Counsel Drafting Guidance, para 1.3.13

undesirable as it is a colloquial term, which may mean different things to different users. There may be a policy reason why a negative definition is used for example it may allow for a degree of flexibility.

3.2.8 In general the definitions above do not expand upon the original word that is being defined. If anything they may make the user more confused rather than less, which is not a mark of a helpful definition.

3.2.9 Reference has been made to definitions being accessible to the user (see 3.2.1 above) but users of tax legislation can be drawn from many quarters with different tax ability, for example, the general tax practitioner, the deep technical specialist, and the non- tax specialist. Consequently a “one size fits all” definition may not be the right approach and consideration might be given to constructing definitions that are tailored to the likely user population. Thus definitions that are likely to be used by someone with no tax experience (for example in relation to income tax or employee benefits) could be simpler than those in areas of the legislation more likely to be used by tax specialists, which could be more involved (for example bank levy or repos). However it will not always be clear when a simpler definition will be appropriate for the user, it may not be possible to formulate simple definitions that also meet the policy objective and there is, of course, the overarching time constraint in which policy is developed and legislation drafted which must be taken into account.

3.2.10 Below is a list of other styles frequently used to define terms within tax legislation:

1. **‘Includes’** – *“shares” includes stock*⁴⁶
2. **Inclusive and exclusive** – *“capital distribution” means any distribution from a company, **including** a distribution in the course of dissolving or winding up the company, in money or money’s worth **except** a distribution which in the hands of the recipient constitutes income for the purposes of income tax*⁴⁷.
3. **Lists** – *“oil asset” gives a list of 7 things which are oil assets*⁴⁸.
4. **Comprehensive** – *“undervalue amount” means the amount by which the amount or value of the consideration for the transfer is less than the market value of the asset transferred*⁴⁹.
5. **Ejusdem generis rule** *“herd” includes a flock and any other collection of animals (however named)*⁵⁰.

Of the above styles which are the most helpful to assist understanding of the legislation?

⁴⁶ TCGA, s288(1)

⁴⁷ TCGA, s122(5)(b)

⁴⁸ TCGA, s198E(5)

⁴⁹ TCGA, s125(6)

⁵⁰ CTA 2009, s110(1)(b)

3.2.11 There are certain ‘tools’ that can be used to make the reading of definitions easier. Drawing on a brief review of legislation both in the UK and overseas, these include the position within the Act, the punctuation, cross referencing, the use of bold, underlining or asterisks (used e.g. in Australia⁵¹).

3.2.12 With the ever increasing use of online legislation a tool enabling a definition to appear when a defined term is hovered over would be a most helpful tool to help users of legislation. This would be a resource intensive exercise; however, the National Archives are currently developing a similar tool. Whilst this will aid the users of legislation online of which there are many (www.legislation.gov.uk receives approximately 2 million hits per month) it will not aid those who prefer to use legislation only in hard copy.

3.2.13 From discussions with those involved in the Tax Law Rewrite it appears that at the time definitions were not formatted in this way due to technical restrictions in the software used, and it is hoped that the National Archives project will make a significant contribution to the understanding of legislation (including tax legislation).

- 1) Would it be useful to have definitions stand out more within the body of the text?
- 2) If so, which formatting method would be most helpful?

3.2.14 A good definition will try to encompass these points:

1. Clarity,
2. Focus on essential features,
3. The use of an existing definition where possible,
4. Avoid circularity,
5. Avoid figurative or obscure language,
6. Be affirmative rather than negative.

3.2.15 These features have already been addressed above. It goes without saying that clarity is essential in a definition. The user may not be able to comprehend fully where ambiguous words such as ‘reasonable’ and ‘substantive’ are used and reference will often be made to the Courts or existing case law to clarify the position. We understand that in some instances this will be desirable so that there is room for interpretation and flexibility. However, it is felt where possible clarity is preferable; before ambiguous terms are used consideration should be given to whether a degree of flexibility is necessary in the specific circumstances.

3.2.16 ‘The Good Law Initiative’⁵² has also come up with a number of factors that make good law, they state the law should be:

- necessary
- clear

⁵¹ See for example A New Tax System (Goods and Services Tax) Act 1999 Chapter 2 part 2-1 Division 7-1

⁵² <https://www.gov.uk/good-law>

- coherent
- effective
- accessible

3.2.17 There is a degree of overlap with the OTS features of a good definition, which is unsurprising as both projects are addressing a similar problem, although the OTS focus is narrower.

3.2.18 An example of a good definition may be from section 1119 of Corporation Tax Act 2010. This definition covers all the Corporation Tax Acts:

“Ordinary share capital”, in relation to a company, means all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits.

3.2.19 This definition starts with a positive ‘means all’ and then inserts an exception. It is focused and self-contained so that from reading this it is clear what is being defined.

Have the right principles underling a good or helpful definition been identified?

3.3 Suggestions for improving definitions

3.3.1 The OTS review of definitions has indicated a number of questions and suggestions that may contribute to clearer and easier to use definitions.

3.3.2 **Signposting definitions** – indicating defined terms either in bold text in legislation or with an asterisk may assist the users of hard copy legislation, and may also contribute to the development of tagged legislation online with the possibility of compiling an online database of tax definitions.

3.3.3 **The location of definitions** – consideration could be given to a glossary of part or chapter specific definitions at either the start or the end of the relevant part of the legislation. However, as has been noted with the schedule of definitions in the rewritten Acts this would have to be regularly updated to retain its usefulness.

3.3.4 **Updating definitions schedules** – as has been noted in this paper the schedules of definitions in the rewrite Acts have not been updated for amendments to and insertions in the legislation. These schedules were not intended to include all definitions in a specific Act⁵³ but due to the speed of both the policy making and drafting process have not been updated.

3.3.5 **Standalone definitions** – a definition should be self-contained and should not refer to any other defined terms.

3.3.6 **User specific definitions** – definitions that take into account the likely users of the legislations and their abilities. Whilst there will clearly be some areas that will clearly be of interest to specialists only, there will be a number of areas that will apply to a range of individuals with very different skills

⁵³ See for example CTA 2009 s1327(2) “... where some of the expressions used in the Act are defined ...”

and experience (for example legislation relating to leasing may apply to a small business as well as to a structured finance team in a financial institution) which would render this a difficult exercise.

3.3.7 A tax Interpretation Act – the concept of a traditional style Interpretation Act for tax may be less relevant in an age where more and more legislation is being accessed online, and would require resource to compile it but also to ensure that it was updated regularly. A more practical and modern solution would be to use a tagging system for definitions in online data to create an online resource.

3.3.8 Development of guidance for policy makers and draftsmen – this guidance would summarise what makes a good and a poor definition and could supplement or amend the Office of Parliamentary Counsel Drafting Guidance. Topics might include allowing more time for deliberation of definitions and research into existing definitions that are fit for purpose, recognising the pressures on the policy making and drafting process as well as the contribution to complexity of numerous different definitions. Perhaps the default should be to look to existing definitions first and only if there is not an appropriate should a new one be drafted. The creation of an online database of definitions would help to ensure that this would be both practical and effective.

Annex 1

Tax Definitions Review: terms of reference

As part of a wider project of work looking at the causes of complexity in the tax system the OTS is focusing on tax definitions.

A conservative estimate of the number of definitions would be around the 8,000 mark. However, the true figure is unknown and getting a grip on the size of the problem is a worthwhile exercise.

Although the Tax Law Rewrite project addressed some inconsistencies, there are still different definitions of many terms (e.g. “control”, “connected”, “family” etc.) within tax legislation. In many cases there is a choice between using a new definition or an existing one and careful consideration should be given to this decision. More common definitions would make tax easier and consistent for the user.

The aims of the project are to:

- compile a list of all tax terms and definitions within primary legislation including different definitions of the same term;
- analyse a small number of these definitions to determine why there are several definitions of the same term; and
- propose some principles for ‘good’ definitions and the process for deciding on a definition.

Sources of information

The project will draw on the experience, information and input from a wide range of sources. These include, but are not limited to:

- The Office of Parliamentary Counsel
- HMRC Solicitors Office
- The National Archives (specifically the legislation.gov.uk team)
- Previous attempts to collate tax definitions

Timescale

The project will begin in April 2013 and is expected to take at least 6 months. However, given the number of definitions is unknown it may well take longer.

Annex 2

Analysis of a sample of definitions

Age profile of Corporation Tax Act 2009 sample definitions

A sample of defined terms was selected at random as follows:

- Associate
- Caravan
- Company
- Connected persons
- Coupons
- Exchange gain
- Farmers
- Group
- Know how
- Limited interest
- Major interest
- Market value
- Option
- Small or medium sized enterprise
- Staffing costs
- Woodlands

Words	Number of definitions in CTA 2009	Origination (back to ITA 1952)
Associate	1	Finance Act 1965
Caravan	1	Caravan Sites and Control Development Act 1960
Company	8	Finance Act 1965
Connected persons	2	Finance Act 1965
Coupons	1	Income Tax Act 1952
Exchange gain	1	Finance Act 1996
Farmers	1	Income Tax Act 1952
Group	6	Finance Act 1967

Know-how	1	Finance Act 1968
Limited interest	1	Income Tax Act 1952
Major interest	2	Finance Act 1996
Market value	1	Finance Act 1962
Option	2	Finance Act 2002
Small or medium-sized enterprise	1	Finance Act 2000
Staffing costs	2	Finance Act 2000
Woodlands	1	Income Tax Act 1952

Of the sample three of the definitions originate after 2000, four date back to at least 1952 or before, 7 are from the 1960s and two are from 1996.

The CTA 2009 definition of ‘*limited interest*’ was compared with its definition in Income Tax Act 1952, to see how the form of words used had changed.

Income Tax Act 1952 s423(3):

“A person shall be deemed to have a “limited interest” in the residue of the estate of a deceased person, or in a part thereof, during any period, being a period during which he has not an absolute interest in the residue or in that part thereof, as the case may be, where the income of the residue or of that part thereof, as the case may be, for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to him, or to another in his right, for his benefit, whether directly or indirectly as aforesaid.”

Corporation Tax Act 2009 s935(2):

“(2) A person has a limited interest in the whole or part of the residue of an estate during any period for the purposes of this Chapter if—

(a) the person does not have an absolute interest in it, and

(b) the income from it would be properly payable to the person if the residue had been ascertained at the beginning of that period.”

Whilst the substantive meaning of the definition has not changed, the two formations of the definition are very different, showing clearly the influence of the Tax Law Rewrite project. The structure of the definition has been broken down into paragraphs making it easier to read, it has been reduced to the essential components and it has been written in plain English with no outdated legal language (e.g. aforesaid). Thus the definition is clear, concise and accessible whilst still retained its original meaning.

Company

Primary tax legislation as a whole was reviewed for definitions of “company”. 37 definitions were found in seven acts as follows:

Act	Number
Taxation of Chargeable Gains Act 1992	2

Income Tax (Earning and Pensions) Act 2003	1
Income Tax (Trading and Other Income) Act 2005	3
Income Tax Act 2007	6
Corporation Tax Act 2009	8
Corporation Tax Act 2010	13
Taxation (International and Other Provisions) Act 2010	4

Of these definitions the simplest and most commonly used was “a body corporate” which was used nine times. Six definitions were by reference to EU legislation (for example in accordance with the Mergers Directive⁵⁴), and five by reference to the Companies Act 2006.

Companies Act 2006 s 1173(1) defines a body corporate thus:

(1) In the Companies Acts—

“body corporate” and “corporation” include a body incorporated outside the United Kingdom, but do not include—

(a) a corporation sole, or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

There is no indication why, for consistency, the nine definitions referring to a “body corporate” and the six definitions referring to the Companies Act 2006 could not be recast as a common form of words, used as the basic definition in the relevant acts.

Coupons

Coupons are defined in CTA 2009 s975(3) as follows:

In this Chapter “coupons” includes—

(a) warrants, and

(b) bills of exchange that purport to be drawn or made in payment of dividends payable in respect of foreign holdings.

This is an example of definition that does not stand alone. It is comprehensive as although it uses “includes” there are no general words to indicate that items similar to warrants and bills of exchange are intended to be included. However there is no definition of ‘warrants’ in this CTA 2009 Part 10 Chapter 6, and reference must be made to CTA 2009 s710 (via CTA 2009 Sch 4).

Dependent relative

Dependent relative appears in both TCGA 1992 and IHTA 1984, and different definitions are used in each act as follows:

TCGA 1992 s226(6)

⁵⁴ 90/434/EEU

(6) In this section “dependent relative” means, in relation to an individual—

(a) any relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or

(b) his or his wife’s mother who, whether or not incapacitated, is either widowed, or living apart from her husband, or a single woman in consequence of dissolution or annulment of marriage.

IHTA 1984 s11(6)

“dependent relative” means in relation to any person—

(a) a relative of his, or of his spouse or civil partner, who is incapacitated by old age or infirmity from maintaining himself, or

(b) his mother or father or his spouse’s or civil partner’s mother or father;

It can be seen that these two definitions are quite different. IHTA has been updated by the Tax and Civil Partnership Regulations 2005 whereas TCGA s226(6) has not (although s226(4) has been). The TCGA definition also has a focus on a woman who is ‘...widowed, or living apart from her husband’; this seems outdated in these days of gender equality, and there is no discernible reason why this is not extended to a man in similar circumstances. The definition of “dependent relative” in IHTA seems to be more relevant for today’s society.

Group

45 definitions of group were found across the Corporation Tax and Income Tax⁵⁵ Acts, as well as in TCGA 1992 and primary legislation relating to VAT, stamp duty and aggregates levy. There is no definition of group in inheritance tax legislation.

The definitions were found in the following Acts:

Act	Number
Taxation of Chargeable Gains Act 1992	1
Value Added Tax Act 1994	1
Finance Act 2001	1
Finance Act 2003	1
Capital Allowances Act 2001	1
Income Tax (Earnings and Pensions) Act 2003	8
Income Tax Act 2007	11
Corporation Tax Act 2009	6
Corporation Tax Act 2010	14
Taxation (International and Other Provisions) Act 2010	1

Within these definitions a number are similar; 17 of the above definitions refer to a parent company and its 51% subsidiaries (with some minor differences in the precise wording) and 6 refer to a parent

⁵⁵ As defined by Interpretation Act 1978 Sch 1

company and its qualifying subsidiaries, where “qualifying subsidiaries” is defined as being 51% subsidiaries⁵⁶. There is no rationale that could be determined for the different formulations and there is also no apparent reason why these definitions could not be streamlined into the same formulation. Other definitions include those based around a 75% relationship, or make reference to, for example the definition of a capital gains tax group in TCGA 1992 s170.

There is no definition of group from case law nor is it defined in the Interpretation Act 1978. The definition in Stroud’s Judicial Dictionary of Words and Phrases refers to the statutory definitions. There is a Companies Act 2006 definition at s474(1) as follows:

“group” means a parent undertaking and its subsidiary undertakings;”

However none of the definitions of group in the tax legislation refer to the CA 2006 definition.

Know-how

A definition of Know-how" appears twice in CTA 2009, in s176(1) and s908(4), and the definitions are identical as follows:

In this Chapter “know-how” means any industrial information or techniques likely to assist in—

(a) manufacturing or processing goods or materials,

(b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or

(c) carrying out any agricultural, forestry or fishing operations.

The same definition also appears in ITTOIA 2005 s192 and CAA 2001 s452(2) and this would be an example where a centralised definition in a single database or Interpretation Act for tax would be possible.

Comparing old and new provisions of TCGA 1992

TCGA 1992 has been amended numerous times and the wording of an original provision and an inserted provision were considered as follows.

Transfers into settlement TCGA 1992 s70

“A transfer into settlement, whether revocable or irrevocable, is a disposal of the entire property thereby becoming settled property notwithstanding that the transferor has some interest as a beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.”

This definition is almost identical to the definition of “gift into settlement” in FA 1965 s25(2), the act which introduced capital gains tax, with “transfer” replacing “gift” and “transferor” replacing “donor”. This definition could be improved by amending the layout and using plain English words to replace, for example “thereby”.

⁵⁶ ITA 2007 s 191

Substantial shareholding TCGA 1992 Sch 7AC para 8 (inserted by FA 2002, Schedule 8)

(1) For the purposes of this Schedule a company holds a “substantial shareholding” in another company if it holds shares or interests in shares in that company by virtue of which—

(a) it holds not less than 10% of the company’s ordinary share capital,

(b) it is beneficially entitled to not less than 10% of the profits available for distribution to equity holders of the company, and

(c) it would be beneficially entitled on a winding up to not less than 10% of the assets of the company available for distribution to equity holders.

This is without prejudice to what is meant by “substantial” where the word appears in other contexts.

This second definition was introduced after the initial work of the Tax Law Rewrite project and the influence of the rewritten style of legislation can be seen in both the layout and the drafting style. Two definitions above are very different in their format. If section 70 amended its layout and use of words such as ‘thereby’ and ‘notwithstanding’ perhaps replacing with words such as ‘so that’ and ‘despite’ the overall accessibility of the definition may be improved.

Annex 3

List of definitions in IHTA 1984, TCGA 1992 and CTA 2010

See accompanying spreadsheet.