

Dear Sirs,

Having read your paper on this topic, may I suggest an alternative approach which might complement your method of ascribing weightings to different elements of perceived complexity?

In my experience, the most effective tax legislative changes have been those which result in bringing to an end a disparity of behaviours on the part of different groups of taxpayers according to whether they are advised by 'top-flight', and usually high-cost, specialist advisers, or 'on the High Street'. Insofar as a change puts an end to such disparity – and the unfairness that results – I would suggest that this should be treated as a "simplification", and ascribed a relatively substantial 'weighting', regardless of whether or not it produces extra pages of legislation or additional complexities as measured by your other criteria.

A fine example of such a 'disparity' of outcomes is that described in the recent decision of the Upper Tier Tribunal in the UBS/Deutsche Bank cases relating to the payment of bonuses to employees in 2003/4 in a manner which, at least in the case of UBS staff (the Deutsche Bank scheme was held to fail on a technicality), resulted in over £100m of 'bonuses' being ultimately received in a manner which avoided liability to PAYE tax using an arrangement devised for UBS by Ernst & Young.

Assuming, for the moment, that the decision of the Upper Tier Tribunal is upheld on appeal, the outcome is (at its very best!) unfair. No small employer could reasonably have been expected to adopt such a tax-avoidance scheme.

The legislation was changed in 2004 to put a stop to such a scheme. The change itself was not long or complex.

An example of a *complex* change, which nevertheless resulted in bringing to an end such a disparity of outcomes, was the enactment of the rules providing for corporation tax relief for employee share acquisitions (now Part 12, CTA 2009 [Corporation Tax Act]). Prior to this, a similar relief was attainable in relation to employee share option gains through the artificial use of an employees' trust, but in practice the cost and complexity put it beyond the means of all but the larger companies who benefitted disproportionately from being able to secure such relief which was effectively denied to other taxpayers.

A further topical example might be the much-publicised use by international companies of the ability to reduce exposure to UK corporation tax by the use of intra-group charges being levied for goods and services by overseas members of the group – although I accept that the factors at work here are more complex than simply the complexity of the rules.

It seems to me that if, at the end of the OTS's various projects, one outcome is that all taxpayers, big and small, are treated similarly, regardless of their ability to access the advice of the finest minds amongst the lawyers and accountants, then this should be counted as a successful 'simplification', notwithstanding that it might not necessarily result in a lighter-weight set of Tax Statutes.

This idea may have been what Frank Pedersen was getting at but, if so, it was lost in the complexity of the 'academic jargon' .....

Yours faithfully,

David Pett

Pett, Franklin & Co. LLP