

Office of Tax Simplification

Summary of responses to the report “Definitions in tax legislation and their contribution to complexity”

On 3 October 2013, the OTS published its initial report on definitions in tax legislation¹, which included recommendations on what makes a good definition, as well as suggestions for improving accessibility to tax legislation in the future.

We are grateful to all of those who have sent us comments on our paper, which we have summarised, on an anonymised basis, below.

A valid criticism was made that the scope of the review was limited with only three Acts² (see Annex 3 to the October report) 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Annex 2 considered a number of definitions over all current taxes Acts, as well as tracing definitions back to earlier, superseded Acts.

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 Butterworths and CCH include an index in their annual publications (although anecdotally

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246081/ots_review_of_definitions_in_tax_legislation.pdf

² Inheritance Tax Act 2984, Taxation of Chargeable Gains Act 1992 and Corporation Tax Act 2010

this is generally not a well-known feature), and so a digital database might be an extension of this and a useful addition to publishers' digital offerings.

Number of definitions

The number of definitions and the number of different definitions for different terms is generally unhelpful and it would be helpful 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.

The next steps in this project will be to produce some examples of streamlined definitions, and discuss the responses to the initial report with the Office of Parliamentary Counsel.

Caroline Turnbull-Hall

Office of Tax Simplification

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A summary of the specific comments, on an unattributed basis, is as follows.

Overall

- 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 location 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 (i.e. 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.