

IfG/CIOT/IFS project on ‘Improving tax policy making’

Office of Tax Simplification response to the IfG/CIOT/IFS discussion paper

Introduction

The Office of Tax Simplification (OTS) is pleased to provide comments in response to the paper by the IfG/CIOT/IFS study group on Improving tax policy making entitled ‘Emerging findings – an invitation to comment’ (‘the paper’). The subject of the project is very much an area of interest for the OTS and we have been pleased to contribute to the discussions that have led to this paper. We think the project is important and timely and we look forward to continuing to contribute to its development and to the final report.

In general we agree with the points made in the current paper. We do have comments on some of the emerging findings and points on some of the ‘Areas for future focus’ and we will deal with each of the seven headings in the paper in turn.

The Office of Tax Simplification (OTS)

The OTS is an independent office of HM Treasury, established in 2010 to provide independent advice to Ministers on ways of simplifying the UK tax system. In developing our recommendations we carry out extensive evidence gathering from all those involved with the tax system – businesses large and small, individuals, representative bodies, academics, advisers and HMRC. Our recommendations cover both technical and administrative aspects of the tax system.

The OTS is being placed on a statutory basis in FB16 with an expanded remit. As well as projects on areas of the tax system agreed with Ministers, we can now carry out work on our own initiative. In that context we will on occasion be commenting on consultative documents, where they raise issues of complexity/simplification and we think they would benefit from considerations of some of the principles for avoiding complexity that we have developed.

Comments on ‘Emerging findings and areas for future focus’

1. Strategy

The focus of the OTS is on simplification and so we have a considerable interest in the causes of complexity. In one of our early reports¹ we noted that the greatest cause of complexity as far as business was concerned is ‘change’. Some change is inevitable and indeed desirable as the tax system needs to adapt and evolve in response to the changing business and social environment. But

¹ On Small Business Taxation – see <https://www.gov.uk/government/publications/small-business-tax-review>

constraining change, or at least testing it, will contribute to a simpler system by putting something of a brake on the volume of change.

As the paper notes, the 2010 Business Tax Roadmap was widely seen as beneficial: we have regularly heard positive comments about it during our evidence gathering. The key point for many was increased certainty: business knew better the direction of the tax system and could plan accordingly.

We think that although it may not be possible to develop a complete strategy for the whole tax system², further 'Roadmaps' that set directions and/or principles for areas of the tax system, and made clearer where the key pressure points/trade-offs were considered to be and the basis on which they were being considered, would be beneficial.³ The aim would be to give greater certainty, particularly to business, and increase confidence and trust in the system as it develops, with fewer surprises – something that is important both for business and individual taxpayers.

Brexit is an issue that we will be examining: it clearly brings both opportunity for change but also threat of change. It brings uncertainty. As the direction of travel in the negotiations emerges it will be important for the Government to indicate its view of the likely consequences for the structure of the tax system.

2. External engagement

The OTS has always practised full consultation and open evidence gathering to inform our work. We see it as axiomatic that our conclusions and recommendations are firmly evidence-based and practical in all senses. That has led us to target whom we see: to make sure we see and hear from a wide, representative group of stakeholders. We cover businesses large and small, agents, representative bodies, individuals, charities, academics, think tanks and, importantly, front-line HMRC staff. We cover the whole of the UK and also gather evidence from a wide range of other countries. The practical lesson is that it is not enough just to publish traditional consultation documents: we see it as part of our work to go and seek out views and ensure we have gathered a representative selection of comments. We also try and make it easy for people to comment: for example with on-line surveys, widely publicised, and working with trade bodies.

It is tempting to allow longer periods for consultation but we think it is more important to actively seek comments rather than simply allow more time. The risk with longer periods is that stakeholders still respond just before the deadline and those managing the process have a compressed period to evaluate and take forward the ideas (or are forced into doing so before the end of the period to meet other pressures). But allowing more time for bodies to poll members, for example, can be well worth while.

One important principle is that consultation must be meaningful. Respondents must be able to influence the conclusion. With OTS evidence gathering our stakeholders know they have a direct line (in effect) into what we will say; accordingly we get very good participation. In other words, people must believe that their contributions will be valued and so their efforts are worthwhile. Showing that

² Partly because of the time it would take to develop it: doing so for a Parliament could take a substantial proportion of the Parliament's five-year term!

³ It is worth noting that the Scottish Government has enshrined Adam Smith's four principles as their overarching guidance for all their taxes. Any changes have to be measured against the principles.

to be the case will do more for engagement than anything else; by contrast, a consultation that takes extensive views and then carries on despite expressed views will discourage future contributions.^{4 5}

3. Internal Budget process

Many of our stakeholders have said that the OTS should be more involved in the whole Budget process and we have looked at this, but see it as difficult given our resources and the general pressures of the Budget process. Our preference is for the OTS – or more correctly simplification – to be embedded in the policy-making process. We are currently developing our thinking to that end and plan to publish a short paper later this year (see section 4 below in relation to Tax Information and Impact Notes – TIINs).

One point noted in this section of the paper is the way that spending measures tend to be subject to ex-ante challenge and evaluation but the same process does not apply to tax measures. This is an issue we noted in an early report (on Reliefs); we return to the issue in section 5 below.

The annual Budget/Finance Bill cycle has positives (for example the ability to change) and negatives (for example the ability to change). With our focus on simplification, we see these two sides of the process and think that in many years the need is to manage the downside risks: to ensure that, as far as possible, there is a proper policy making process which includes consideration of complexity/simplification.

4. Legislation and legislative scrutiny

The OTS has suggested in the past that the way that UK tax law is drafted – in full detail, so we are taxed by the precise letter of the law – does risk leading to further complexity. We have mooted the idea of using a more purposive approach; we have also suggested a ‘tiered’ approach to legislation, whereby the core aims and principles are set out in a preamble with more detail (possibly in two stages) set out in the full document. This could mean that general taxpayers only need to use the preamble to get the aim and purpose of the provision.

We think there would be merit in testing this approach, or other alternatives⁶.

With our focus on simplification, we would like to see that subject receive formal prominence in the legislative process. We have in mind introducing a simplification measure/test into the TIINs.

⁴ We would also note the risk of consultation overload, putting pressure on key stakeholders/respondents. The remedy is as we have indicated: ensure consultation is meaningful with consultation where input is needed and change possible.

⁵ A subset of overload is ‘retread’ – going over the same ground as a previous exercise or ignoring previous evidence. It has been frustrating for the OTS to see consultations go over ground that the OTS has trod and by implication ignore the evidence we have gathered. We are aware that has led some potential respondents to assume that as they have already given their views to the OTS, they do not need to respond to the new consultation.

⁶ Such as making sure the legislation specifically covers the main situations that arise (even if the general words probably cover them) but being more sanguine about leaving the effect of the general words in relation to less common situations to be spelt out in guidance. This sort of route does risk the legislation operating on a basis of ‘taxed by guidance rather than the plain words of the law’ which would be a concern – but the current position leaves many things effectively in that sort of position.

Turning to Parliamentary scrutiny, under our new constitution our reports will be laid before Parliament and will require a formal response from the Chancellor. That may be an ideal opportunity for the Treasury Committee to focus on the OTS report and recommendations, and HMRC/HMT responses, and add to Parliamentary scrutiny of the tax system.⁷

The paper suggests that scrutiny of Finance Bills 'is constrained by a lack of resource and interest among MPs'. The two factors may be interconnected. It would be possible to establish an equivalent to the US Congressional Budget Office with expert tax resources available to MPs. Another route may be to allow expert evidence to be called by Finance Bill committees: the OTS was among those giving evidence to the Committee considering a NIC Bill last year and that process seemed to be helpful to the MPs on the Committee.

5. Post-legislative review

We have noted in the past that there is no general process of post-implementation review for tax legislation. In our Reliefs report, we pointed out that this meant there was:

- No systematic process to assess whether the measure delivered value for money
- No systematic checking to see that the measure was still appropriate and/or needed
- No systematic assessment whether it was operating properly
- No system for keeping measure up to date

The most obvious consequence is that monetary limits can easily become out of date. We recommended that consideration be given to establishing a review mechanism, potentially involving HMRC, HMT and Parliament. It may well be that the OTS could be involved. Subsequently our work has been taken forward by the NAO in a report and this has led to scrutiny by the Public Accounts Committee.

We have also pointed to the merits of sunset clauses as a means of forcing evaluation of a measure in the light of experience. We put this into practice with our recommendation for a Disincorporation relief and that was followed when the relief was established – it has a five year timespan. Sunset clauses bring risks of additional work and possible uncertainty, as demonstrated in the USA. But they could have a part to play in ensuring the tax system is kept up to date – which in turn helps deliver simplification (as measures will be checked for effectiveness).

We note the paper's suggestion the OTS could do more in this area. We would naturally be pleased to discuss this. One thought is that there may be scope for us to develop our complexity index further. Although the original aim of the index was to help us assess the most fruitful areas for our work, it has already been suggested that the methodology could be adapted to 'score' new legislation or indeed draft legislation.

⁷ It is worth noting that the original recommendation that led to the establishment of the OTS envisaged our reporting to a Joint Committee of both Houses.

6. Capability

We see good involvement of officials in policy making. However, we do note problems in turnover of those officials and the way that expertise/experience is not always husbanded and developed. Knowledge management could be improved: we do see examples of poor 'institutional memory'. There is clearly a need to ensure that policymaking is properly resourced and regarded.

It is worth mentioning that the OTS is exploring different routes to obtain resources, including taking on an HMRC trainee.

7. Public debate

We note the paper refers to the poor level of public debate about tax policy options. We have found a worryingly low level of understanding of the tax system and indeed little interest in it. To give one example, our recent report on closer alignment of income tax and NICs noted that although the contributory principle of NICs was seen as important, there was little real understanding of what it meant in practice. We recommended that there needed to be a significant effort to increase public understanding of the contributory principle – and then to have an informed debate about its future.

In many ways the challenge is to improve the interest in and understanding of tax in the media. We will be trying to raise our own profile and how we are trying to simplify the tax system in the coming year.

We are not sure that greater academic involvement in this and other areas is necessarily right. What is needed is a move to establish the relevance of tax in peoples' minds before they encounter it. That suggests to us that there needs to be some basic teaching of tax at schools, as part of a 'life skills' programme. Surely part of preparing students for work should include some explanation of tax and, in simple terms, what happens to the tax that they pay?

Conclusion

We reiterate that we think the debate that the IfG/CIOT/IFS project has started is important and we very much support it. The OTS looks forward to further involvement in the work.

The Office of Tax Simplification

25 August 2016