Tax Policy Making in the United Kingdom

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KEYWORDS: TAX POLICY ■ POLICY MAKING ■ TAX LEGISLATION ■ PROCESS ■ UNITED KINGDOM

CONTENTS

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INTRODUCTION

On December 3, 1798, the British prime minister and chancellor of the exchequer, William Pitt, rose in the House of Commons to deliver a budget speech that lasted only an hour but contained a key proposal for "a general tax [to be] imposed on all leading branches of income."[1] Pitt said he was a "late convert" to the idea of an income tax, but now he argued for it vigorously. Ultimately the proposal was adopted, but the debate in Parliament was fierce, as it was over the coming years as this new fiscal burden was refined and eventually (though temporarily) repealed.[2]

Two policy-making threads can be discerned from Pitt's epoch-making move, which have affected all the countries represented at this conference. First, behind Pitt there were clearly some nameless officials who did a good deal of preparatory work. Second, genuine political debate ensued in Parliament that analyzed and tested this tax idea, and continued to do so over the years. No doubt the latter at least was influenced, to a degree, by what we would now call the media.

The point is that a huge shift in tax policy was effected within Parliament and officialdom. Over the succeeding 200 years or so, arguably not a lot changed. But in the last 20 years or so, that picture of tax policy being brewed and hatched centrally, usually behind closed doors, has changed a good deal in the United Kingdom. We now have a generally more open, consultative approach to tax policy making—though that is never guaranteed, and (as if to remind us that Parliament, and more particularly the government, is in charge of tax policy making) at times policies emerge through a process that Pitt might recognize.

THE UNITED KINGDOM'S PARLIAMENTARY PROCESS

Before examining the United Kingdom's tax policy-making process, it is necessary to consider the parliamentary procedures that apply to tax changes. The reason is that these procedures have a huge influence (as they must in other parliamentary democracies) on how tax policies are developed. The path of tax legislation through Parliament in the United Kingdom is swift (in legislative terms) and relatively painless (for the tax authority).[3]

The normal procedure is that the budget speech is delivered in mid-March.[4] That speech may announce changes to take effect almost immediately, at the start

1 Hansard, quoted in B.E.V. Sabine, *A Short History of Taxation* (Butterworths: London, 1980), at 115-16.

2 The income tax was repealed in 1816 but reintroduced, in substantially the same form, by Robert Peel in 1842.

3 The United Kingdom has an almost entirely centralized tax system, with Westminster controlling almost everything. Some devolution of taxing powers to Scotland and the Scottish Parliament in Holyrood is taking place, and calls have been made for Wales and Northern Ireland to have similar limited fiscal autonomy.

4 There was a relatively brief experiment in the 1990s with the budget speech taking place in November/December. That swept in the "autumn statement"—the mid-year economic

of the coming tax year,[5] or at a later date. The speech is followed by some days of political debate and a formal order for the finance bill to be printed.[6] A few clauses in the finance bill are considered by a Committee of the Whole House (the full House of Commons). But the bulk of the bill is sent off to a standing committee of around 25 to 30 members of Parliament (MPs) who, in principle, work through it line by line.[7] That process takes place in May and June; around the end of June or early July, there is the report stage and third reading of the finance bill in the House of Commons. By this time the bill is substantively enacted.

But what, you may ask, is the House of Lords doing? The answer is, virtually nothing.[8] The Lords have a single day to debate the bill (under two hours in 2013!) and are not able to either alter it or delay it.[9] Their part in the process normally takes place in July, and royal assent will be given before the end of the month.[10]

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report. When Labour came to power in 1997, the budget reverted to March (normally), and a "pre-budget report" (PBR) was delivered toward the end of the calendar year. Under the current coalition government, the PBR has reverted to an autumn statement, though still with overtones of a mini-budget with tax content.

5 Bear in mind that the United Kingdom continues to use the eccentric April 6 as the start of the tax year.

6 The "budget resolutions" proposed by the chancellor of the exchequer provide the necessary authority for certain tax changes to take effect on budget day (usually changes in excise or stamp duties) and are voted on at the end of the debate on the budget speech. The resolutions also provide the authority needed for measures to be included in the finance bill.

7 There is no provision for the committee to take evidence or input in any form from outside experts, though some professional and trade bodies do try to influence the debate by sending in briefing papers to committee members.

8 The House of Lords Economic Affairs Committee has, on its own initiative, established a finance bill subcommittee. In recent years, the subcommittee has selected a small number of finance bill measures (usually politically uncontroversial ones) for examination and report following the budget. The subcommittee employs two former senior policy officials (retired from HM Revenue & Customs [HMRC]) as part of its secretariat and has taken evidence from outside individuals (including both authors of this paper) and interested bodies. In 2013, the timing of the subcommittee's work moved to January, following the government's publication of draft finance bill legislation with the autumn statement in the previous December. It is too early to say whether the subcommittee's work will have any influence on the eventual content of the bill, although in 2013 an important change was made to the draft general anti-abuse rule after an issue was raised in evidence to the subcommittee and the subcommittee subsequently raised the issue with HMRC.

9 Legislative authority to determine the content of a "money bill"—essentially, a tax revenue-raising bill—is reserved to the House of Commons, with the Lords having no power to alter or delay it.

10 The pace of the bill's passage through Parliament has been dictated by the Provisional Collection of Taxes Act, which preserves the right to levy the main direct taxes for the current tax year provided that a bill renewing those taxes is enacted within a specified period (originally one expiring in early August but now extended to October).

The result is that the government of the day can all but guarantee that a tax change is on the statute book within four months from the first announcement.[11] Amendments to the government's draft will be few and normally only what the government wants; the built-in majority on the committee ensures this. More subtly, since there is a guaranteed finance bill every year, an almost limitless number of tax changes can be pushed through in short order.[12]

Some observers may also reflect that, through acceptance of this procedure, the United Kingdom's parliamentary system becomes unicameral in what is arguably its most important function, namely, raising tax revenues. The remainder of this paper will examine how the policy-making approach puts some better mechanisms—checks and balances perhaps—around the powerful legislative process that the government of the day has at its command.

GENERAL DESCRIPTION OF THE TAX POLICY PROCESS

Developing Ideas

Where do ideas for changes to the tax system come from? The trite answer might be, "Everywhere." Certainly, in the United Kingdom many people have an interest in changing the tax system, and views are widely expressed. But that means of influencing public policy is essentially informal; there is no formal process for those outside government to contribute ideas to generate changes in the tax system.[13]

Most ideas for change are generated by HM Treasury (HMT), HM Revenue & Customs (HMRC—the UK tax authority), and, of course, Treasury ministers. The creation of HMRC in 2005 (merging the previous Inland Revenue and Customs & Excise) also introduced "the tax policy partnership." This links HMT and HMRC: both are supposed to have a role in policy making. In broad terms, HMT is concerned with overall policy (for example, "Should we have corporation tax?") while HMRC is concerned with operational aspects (for example, "How should the controlled foreign company [CFC] rules operate from day to day?"). Inevitably there are a lot of overlaps: basically, both sides will be involved to a degree in everything and will certainly be involved in broader operations (such as "Should we have CFC rules?"), or minor policy concerns. We will return to the issue of the overlap between HMT and HMRC later in this paper.

11 There is one major exception to this speedy process: national insurance contributions (NICs—the United Kingdom's social security tax and the second biggest revenue raiser for the government). NICs are not officially a tax, and changes have to go through the normal parliamentary bill process, usually as part of a social security bill. Perhaps that is why much of NICs is governed by secondary legislation.

12 Suggestions for tax changes are sometimes met with the excuse that "there is no space in the finance bill for such things." Since the bill currently before Parliament is some 615 pages—a length beaten only by 2012's 680 pages—that excuse appears a little hollow at times.

13 Though the Treasury did recently experiment with inviting comments via its website prior to the autumn statement. As yet, there has been no report back on the results.

The two departments have the focus that might be imagined, and that does accord with the tax policy partnership. It is HMT's job to consider major tax changes—perhaps driven by the simple need to raise money. HMT will also be the department that considers how to use the tax system to address shortcomings in business behaviour.

HMRC will see the need for changes because of shortcomings in the existing rules. That perception by HMRC can in turn come from a number of sources, including

- front-line staff—difficulties with running the system;
- avoidance—seeing avoidance take place; and
- representations—submissions from taxpayers, agents, business and professional bodies, etc.

Those representations may also go to HMT; indeed, many will be initially addressed to the chancellor of the exchequer. But most will end up with HMRC at some stage.

One major factor that currently affects UK policy development is the existence of a coalition government with a formal coalition agreement. That agreement has some major policy shifts (for example, "[w]e will increase the proportion of tax revenue accounted for by environmental taxes")[14] but also includes some quite detailed provisions (such as reforming the taxation of holiday rentals in line with EU requirements). This has given the United Kingdom some long-term planning frameworks in some areas—an approach that is relatively unusual in tax terms. A development has been a commitment by the chancellor to a competitive business tax system (indeed, to make it the most competitive in the Group of Twenty), leading to a clear direction of development for the corporation tax system, at least as far as rates are concerned. This framework has had useful benefits and has led to calls for more use of similar overrides.

We must also not ignore the European Union. Overriding rules emanating from Brussels may force some changes to the UK tax system, but in the direct tax field,[15] the main impact comes from cases before the Court of Justice of the European Union that show that the United Kingdom's tax rules are in breach of EU treaty principles in some way. The changes to holiday rentals referred to above are one example; another is the changes being made in the Finance Act 2013 (FA 2013) to the system of exit charges.[16] Typically, the UK rule is found to discriminate in favour of the United Kingdom in some way (for example, the tax privileges for furnished

14 See United Kingdom, HM Government, *The Coalition: Our Programme for Government* (London: Cabinet Office, May 2010) (www.gov.uk/government/publications/the-coalition-documentation), at 31. A subsidiary agreement led to the creation of the Office of Tax Simplification (OTS)—a significant decision for at least one of the authors of this paper.

15 The European Union has greater competence in the field of indirect taxes, in particular customs duties and value-added tax (VAT).

16 United Kingdom, Finance Act 2013 section 229 and schedule 49.

holiday rentals were for UK properties only) or to breach freedom of establishment rules (for example, the exit charges for companies moving businesses to other states within the European Union or the European Economic Area).

Research, Information Gathering, and Study

Much tax research, information gathering, and study is carried out through consultation (discussed below). Apart from consultation, this type of work tends to be internal. The policy teams in HMRC and HMT will do their own research and study, and gather information from their own systems. The amount of information contained within those systems must not be underestimated—and, naturally, that information is not available to those working on policy outside HMRC and HMT.

One key contributor to this process is the Knowledge Analysis and Information (KAI) team in HMRC. This is a significant unit of economists and analysts who essentially "do the numbers"—work out estimates for tax yield/cost on proposals. They will have input at various stages of the policy process: again, with their access to HMRC data, they are able to do far more than external groups.[17]

HMT and HMRC will occasionally carry out research projects to gather further information, but this seems to be unusual at the early policy-making stage. One recent example is a joint project carried out with the Office of Tax Simplification (OTS) when the OTS was working on a simpler system for the smallest businesses. That led to proposals for a cash basis for the smallest businesses, a revised form of which is in the FA 2013. Research seems to be more frequent in terms of gathering data to input into operational matters, and therefore tends to be carried out by HMRC rather than HMT.

Identification and Evaluation of Solutions

HMT and HMRC share responsibility for identifying and evaluating solutions. Recommendations are made to ministers, who make the final decision as to which route to follow. If the consultation process has worked properly, by now there should be a good deal of input to draw on.

Drafting Legislation

Legislative drafting is carried out by the Office of Parliamentary Counsel (OPC). This is a separate unit of legal draftsmen (now based in the same building as HMRC/HMT) who work on all government legislation. There is a certain amount of specialization, but tax law is not drafted by a tax lawyer as a matter of course.

17 An interesting sidelight on this is the debate in the United Kingdom about the "tax gap"—the difference between the projected and the actual yield of taxes. The KAI estimate is currently about £35 billion—approximately 6 percent—with avoidance costing around £5 billion. Some campaigners have suggested that the figure should be many times greater, but one cannot help feeling that with its access to all the HMRC data, KAI is likely to be closer to the real figure.

The OPC works from instructions provided by HMRC.[18] Those instructions (which are not published) are intended to set out the purpose of the new provision and how it is to be effected, providing as full a picture as possible. That is turned into legal language by the OPC team.[19] It is often said that any problems with the eventual result are down to shortcomings in the instructions, which do have to be totally clear and comprehensive. However, a bigger problem is often time pressure. As described above, the legislative process is tight as far as time is concerned; often decisions to proceed are taken at the last minute. If problems are identified during the actual passage of the bill, there is considerable pressure on the draftsman to come up with the answer in almost real time.

There have been some experiments with using private-sector assistance to draft material. Broadly speaking, we believe that HMRC has not regarded these experiments as offering significant improvement or, indeed, as being especially successful.

The Legislative Stage

The legislative process has been described above.

Post-Enactment Review Stage

Post-enactment review of tax policy is largely lacking in the UK process. It is rare that a provision is passed with any formal commitment to a post-implementation review. Sunset clauses are almost unheard of.[20] The OTS identified the lack of proper review of tax law after implementation as a contributor to complexity in its report on tax reliefs; specifically, too many relief provisions seemed to have just been left on the statute book without any attempt to see if they still served a useful purpose or had a continuing application. As a result, relief provisions remained that had drifted away from their original policy aim, and in some cases were simply not doing the job that they were supposed to be doing.[21]

Professional and trade bodies have often made the point that in the business world, new projects are invariably reviewed for effectiveness after implementation.

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18 HMRC is unique in that policy officials (and not HMRC's lawyers) brief parliamentary counsel. In all other government departments, the departmental lawyers brief parliamentary counsel.

19 From the late 1990s until 2010, the United Kingdom pursued a "tax-law rewrite" under which all income tax and corporation tax legislation was rewritten in a new, "simpler" style. The rewrite team was organized and run from within HMRC and included draftsmen seconded from the OPC. Generally speaking, the change in drafting style established by the rewrite has been maintained in subsequent finance acts.

20 There have been examples of changes made by secondary legislation that have been required to be enacted in primary legislation within a specified time.

21 Sticking to its principles, the OTS recommended that its proposed disincorporation relief should be time-limited. That is being carried through in the FA 2013, with the relief having a five-year life.

Apart from making sure that projects are working as intended, there is an interest in learning lessons from the process. Why should a similar process not be used, as a matter of routine, for tax changes of significance? Partly this may be a result of the way that policy is staffed: typically, a team is built up in HMT/HMRC to develop a new policy and carry it through to legislation. Once the legislation is on the statute book—or even before then—the policy team is usually disbanded, and the ownership of the new matter is handed over to the operational side. Operational staff may have had limited involvement in the development of the policy; their job is to make it work. It may be that making the legislation work reveals issues that need to be attended to through legislative change, but there is nobody with an interest in standing back, taking stock of the new provision, and asking the question: Is it working as intended? And, more pertinently, is it raising/costing the money envisaged?

It would be wrong to say that such reviews do not happen. Some do: but they seem to be haphazard and may be driven by political considerations as much as anything. Two recent examples can be cited:

1. The introduction of the 50 percent top rate of income tax in 2010 was inevitably a source of much debate and political argument. The yield of the measure was always going to be studied, and figures have been produced to show that it had a negligible (or even negative) yield. That paved the way for a cut in the rate to 45 percent from April 2013.
2. At the smaller end of the market, the new government introduced relief from national insurance contributions (NICs, the social security tax) for a small business taking on extra staff. This was targeted at areas outside London and the South East. However, data came in to suggest that the relief was ineffective and little used. The government took the sensible decision to scrap it and introduce a much simpler cut in pay-as-you-earn (PAYE)/NIC bills.

GOVERNMENT DEPARTMENTS AND OTHERS WITH A ROLE IN OR RESPONSIBILITY FOR TAX POLICY FORMULATION

Government Departments

HMT and HMRC are the main departments involved in tax policy formulation. As noted earlier, they have a joint responsibility, with HMRC having responsibility for administration of the tax system.

At least two other government departments have an interest in tax matters and may promote changes:

1. The Department for Work & Pensions (DWP) is responsible for many benefits, some of which are taxable (such as the state pension). A major reorganization of the UK benefits system is under way, which will see the emergence of universal credits (under the DWP) and the demise of child and working tax credits (under the control of HMRC).

2. The Department for Business, Innovation & Skills is involved in projects around general business promotion, and particularly the promotion of employee share ownership.

HMT continues to have overall responsibility for tax policy formulation and will make sure that it is involved in projects of other departments that affect tax.

Independent Advisory Bodies

Royal commissions seem to be a thing of the past. Review committees likewise seem rarely to be used.[22] One recent example of the use of an independent body to review an aspect of the tax system has been the working group set up under Graham Aaronson, QC, to consider the case for a general anti-avoidance rule (GAAR) in the United Kingdom. That approach seems to have been successful in many ways, and it is clearly possible that it will be emulated for some future projects where there is a probable need for a solution but a genuine uncertainty about whether and how to proceed.

Another interesting case study in the use of differing mechanisms has been the evolution of a statutory residence test (SRT). The SRT has its origins in submissions to the government from a number of professional and trade bodies arguing that there was a need for such a test. The minister concerned effectively challenged the bodies to work together (and with other groups) to make the case for an SRT and formulate a basic outline for one. Over five years later, the SRT has now been enacted in the FA 2103.

Politics and the Role of Politicians

As in every country, politics is a factor in tax policy making in the United Kingdom. The coalition agreement has already been noted. Ministers have the ultimate role in tax policy making: any initiative will have to be signed off by a Treasury minister.[23]

Individual politicians take varying amounts of interest in the tax system. Some will pursue issues raised by constituents, often business-linked. Realistically, their chances of achieving change are limited, but there will be occasions when ideas are taken up by ministers and the Treasury.

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22 The Keith committee was a group that considered the powers of the taxman in the 1980s and produced seminal reports that were largely implemented. When it was decided, sensibly, to carry out a thorough review of the taxman's powers following the creation of HMRC (not least to try and harmonize them across the newly merged department) many called for "Keith Mk 2," that is, a full review by an independent group. This was not heeded: instead HMRC set up their own project team to carry out the work. This was carried through well, but lacked the objective independence of the original.

23 Note that HMRC is a "non-ministerial" department—that is, it is not under direct ministerial control, in order to avoid any suggestion of political interference in the administration of the tax system.

Politicians have the most impact on the tax system through parliamentary committees. There are two key House of Commons committees:

1. The Treasury Select Committee (TSC) has formal responsibility for oversight of the Treasury's functions and the tax system generally. Committee reports are influential, but the TSC cannot initiate change as such.
2. The Public Accounts Committee (PAC) has the role of overseeing the government's spending but of late has increasingly concerned itself with the running of the tax system. A particular interest is corporate tax avoidance. The PAC cannot directly affect tax policy, but its findings and reports have influence (particularly, at the moment, through media coverage).

There are all-party parliamentary groups that focus on specific issues and will promote changes to help their particular interest area.[24] There is an all-party tax group, but it is (perhaps surprisingly) small and focuses on operational issues rather than tax policy. (This may demonstrate how political an issue tax is, in that it is difficult to get a mixed group of politicians together to develop common ideas.) Occasionally an MP will secure a debate on a particular tax issue, to which a Treasury minister will respond. Backbench MPs on the Finance Bill Committee will raise points and propose amendments, but hardly any of the latter are taken up by the government. The (subliminal?) message is that the finance bill is going through as HMT/HMRC/the government intended.[25]

One important point to make in the context of politicians is the lack of tax expertise for them to draw on. While Treasury ministers draw on HMT and HMRC, the average MP of any party has no such access. MPs can develop information through the use of parliamentary questions, and they can do their own research. But there is a distinct lack of technical support on tax matters—there is no equivalent of the US Congressional Budget Office for MPs to draw on. Firms and professional bodies will contribute some resources to help, particularly to the Opposition party/parties and particularly around the finance bill process. That enables more challenges to legislation to be mounted than might otherwise be the case. But the lack of available

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24 For example, one on "micro businesses," which has been active in arguing for simpler tax systems for such businesses.

25 Backbench successes against government opposition are memorable because they are so rare. In the 1970s the "Rooker-Wise" amendment required annual indexation of personal allowances (the annual exempt band of income and gains), and in 1995 a backbench amendment required HMRC to produce a report on tax simplification, which eventually led to the tax-law rewrite program. More general political pressure in Parliament may well lead a government to change tack on particular legislation before any risk of defeat on a backbench amendment materializes. As a general matter, however, the government always commands a majority, and its backbench MPs will not want to be seen to inflict a parliamentary defeat on the government with such an important bill as the finance bill.

technical (and practical) tax expertise for politicians is something of a handicap—though it does result in policy being developed solely through HMT/HMRC.

RESOURCES DEVOTED TO THE FORMULATION OF TAX POLICY

HMT's tax policy-making group is around 120 strong. Some have a tax background (mainly from HMRC), but most do not. They tend to be relatively young; few will have worked outside Whitehall. There is a developed tradition in the UK civil service of the generalist, often moving from post to post in different departments to gain experience. Tenure can be short—two years is a long period. Those formulating policy may be experts in policy development and the workings of the "government system"; they will usually lack the in-depth tax knowledge that might be expected.

This, of course, is where HMRC comes in. That organization has some 67,000 staff (around 17,000 tax professionals). It can contribute knowledge of the tax system; it should also be able to contribute relevant tax technical expertise. But even with the combination of HMT and HMRC there can be a lack of understanding of the real potential impact on taxpayers, both individual and (especially) business—which is where consultation enters the picture (or should do).

Private-sector consultants are used occasionally, though these are likely to be specialists in areas such as systems or environmental matters rather than tax experts. Both HMT and HMRC are readier to hire people who have private-sector experience[26] than they used to be, though these would be staff hirings rather than contracting a consultant for a project. The advice of outside specialist tax counsel, on both existing and proposed tax legislation, may on occasion be sought as part of the policy development process.

The issue of temporary secondees is a very live matter. Both HMT and HMRC have for some years taken in a small number of secondees from the private sector, mostly unpaid. This is sensible: HMT and HMRC gain practical insights from secondees, who in turn develop an understanding of the policy-making process. Secondees will no doubt return to the private sector with a good knowledge of the area they have been working on. What has made this a political hot potato is the claim by the PAC that (in effect) secondees are able to ensure that there are loopholes in the legislation that they have been involved with, and they are then able to return to their firms and exploit the loopholes for the benefit of their clients. It remains to be seen how this issue will be resolved, but it would surely be to the detriment of all if the secondment into tax policy making of a few people from the side of the taxpayers were no longer possible.

26 As an example, the recently appointed head of the HMT tax group is from a civil service background but spent a good portion of her recent career with Accenture.

CONSULTATION[27]

Consultation is a major feature of the UK tax system. Over the last 20 years or so, the amount of consultation has increased markedly, to the point that it is the norm. Given the speed of the finance bill process, it will be observed that good prior consultation is a very necessary balance. The fact that measures have been subject to consultation is having an influence on that process, though this does not—yet?—extend to a certification that the legislation has been reviewed through consultation,[28] or to any requirement for government to respond to issues raised by consultee bodies.[29]

The United Kingdom has no formal private-sector body involved in tax policy development or consultation in the manner of the Australian Tax Practitioners Board or (for economic policy) the UK Office for Budgetary Responsibility. Various bodies do get involved—professional bodies such as the Chartered Institute of Taxation (CIOT), trade bodies such as the Confederation of British Industry (CBI), specialist groups such as the Low Incomes Tax Reform Group, and think tanks such as the Institute for Fiscal Studies (IFS)—and they do liaise and at times coordinate efforts. But most are essentially volunteer-led.

Though consultation is neither compulsory nor formalized, it is now enshrined as normal practice thanks to the current government's new approach to tax policy making (TPM) introduced in 2010.[30]

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27 Most of the comments in this paper are made with reference to the processes for primary legislation. The United Kingdom makes significant use of secondary legislation (statutory instruments or SIs), normally for the mechanical or administrative aspects of rules that have been laid down in primary tax law. There is no hard-and-fast rule as to when law is laid down wholly in primary legislation or when secondary legislation is used. Sometimes it seems to simply come down to expediency, though all sides prefer all the real rules to be in primary tax law. The policy issues discussed in this paper do not really apply to SIs. Some will be consulted on through drafts being exposed, normally informally to professional bodies and often on a short time scale. HMRC also produces a large amount of guidance material that will be non-statutory but naturally persuasive. In recent years, HMRC has started to send drafts of such material to professional bodies for comment—a change in practice that is surely constructive.

28 But see infra note 30 regarding the role of the Tax Professionals Forum established by the coalition government.

29 HMRC does now publish, in certain cases, consultation response documents that record the main points made in consultation and include some explanation of why the government has or has not chosen to accept particular points.

30 See the initial document, United Kingdom, HM Treasury and HM Revenue & Customs, *Tax Policy Making: A New Approach* (London: HM Treasury, June 2010) and the response document, United Kingdom, HM Treasury and HM Revenue and Customs, *The New Approach to Tax Policy Making: A Response to the Consultation* (London: HM Treasury, December 2010). The government has appointed a Tax Professionals Forum (of which one of the authors of this paper is a member) to monitor TPM and to report annually on its success or otherwise. For further information, see www.gov.uk/government/policy-advisory-groups/tax-professionals-forum.

Issues Considered Suitable for Public Consultation

TPM commits to consulting on everything but naturally makes some exceptions:

- *Tax rates*. This is basically (and understandably) a decision for politicians.[31]
- *Avoidance*. Consultation on whether to block an apparent loophole seems unlikely, but consultation on the actual blocking changes is sensible and increasingly done unless revenue is put at risk.[32]

Stages of the Policy Process for Consultation

Consultation is something that needs to take place in proper stages and over a sensible time scale. TPM recognizes this and sets out three main stages in the development of tax policy:

- *Stage 1*: set out objectives and clarify options.
- *Stage 2*: determine the best option and develop a framework for implementation.
- *Stage 3*: draft legislation to effect the proposed change.

The expectation is that there would be consultation at each stage. The norm for the consultation process is set at 12 weeks, though inevitably this is not always met.

The TPM document identified the need for the following improvements in the process:

- Consultation should be provided for at each identifiable stage, where it is proportionate and practical to do so, and where revenue is not at risk.
- Where there is no consultation at a particular stage, explain why.
- Set out the stages of the policy cycle.

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31 Though some might argue that there is plenty of scope for consulting about the impact of rate changes. Examples might be the recent UK experiment with a 50 percent top rate of income tax and a previous sudden increase in oil taxation rates.

32 The point being that consultation can help to ensure that the measure is properly targeted. However, such consultation can be frustrating: a current UK example is capping of income tax relief. In the 2012 budget, a plan to cap the amount of relief for individuals was announced in the wake of some publicity about "nil bills" for some very high net worth individuals. Consultation produced some changes, including dropping charitable donations from the ambit of the provision. But the result, in the FA 2013, risks affecting valid diversification of enterprises, and has led to a feeling that consultation should have taken place on how best to tackle the mischief, instead of simply focusing on the details of a chosen method. The failure to consult on this measure is unclear, given that we believe that it was preceded by detailed work within HMRC and was not a last-minute policy announcement. Possibly it was judged that prior consultation might offer too great an opportunity for the measure to be frustrated by opposition to it (as the exclusion of charitable relief illustrated).

- Set out the clear policy objectives, assumptions, and impact analysis.
- State who is leading on each consultation and set out a strategy for stakeholder engagement.

This translates to the following ideal cycle:

- March, year 1: budget speech announcing that the government plans to change the tax treatment of something and setting out the reasons
- May-August: consultation on how the change might be effected
- September-November: response document and announcement of the route to be followed; consultation on mechanics
- December: publication of draft legislation, with explanation of proposed route and method; comments invited, normally until late February
- March, year 2: budget speech confirming that the change will take place and how it is to be effected
- End of March: Finance bill published
- May/June: Finance bill debated; possibility of final amendments following submissions to HMT/HMRC and politicians
- End of July: royal assent

The new provisions may be effective from a variety of dates—sometimes April of year 2 (often quite reasonable, since the draft legislation will have been available for some months); sometimes from royal assent; sometimes from a later date (possibly even April of year 3).

One important feature of consultation is feedback—an explanation of why a particular route has or has not been chosen. In a sense, those who contribute to the process deserve evidence that their input has been received and considered. The stages and timetable set out above encourage such feedback, and it is increasingly a feature of the consultation process, often in the form of a "response document" that summarizes the responses to the questions posed and the government's decisions on the way forward.

The Process for Public Consultation

The main method of initiating the process is the publication of a consultation document that invites responses (paper or electronic) by a set date. As noted above, the target is to allow 12 weeks for the consultation period; this is not always kept to, but the record in recent years is generally good. Bodies such as the CIOT will often make the point that a proper consultation period will allow better information gathering from members (for example, via a member survey on an important issue, or at least proper time to have technical committee meetings to consider the matter), and thus produce a better-founded response.

HMT/HMRC will, on occasion, set up special meetings to publicize the issue under consideration and to solicit views from a wider group, or at least target a particular group or sector from which input is clearly needed. These meetings may take place during the consultation period—emphasizing that the policy development process is continuous.

Private Consultation

HMRC will also on occasion, arrange for private consultations ("soundings" may be a better term) regarding an idea that is under development. This seems a sensible use of trusted contacts, provided that it is only a "sense check" before the open consultation process.

Politics and the Role of Politicians

Consultations have to be signed off by ministers. The current government is seen to be supportive of proper consultation and keen to ensure that open consultation is properly carried out. At the same time, political considerations can force decisions in advance of proper consideration of alternatives[33] or simply truncate the time available for consultation. At times, consultees are told that "ministers have decided" on a particular route. While that is a demonstration of what ministers are there to do, it can be very frustrating when evidence seems to be mounting that there may be a better route. Officials will only very rarely go back to the minister to ask for reconsideration.

Effectiveness of the Consultation Process

Consultation is effective—if it is allowed to be. Consultation is now well established as part of the process of tax policy making in the United Kingdom. Tax professional bodies and business groups are well geared to consider and respond to consultations.[34] HMT and HMRC in turn are used to develop new ideas through consultation, against a proper time scale.

The acid test is really whether proposals are modified in the light of well-informed and sensible input during consultation. One of the most frustrating features of consultation is feeling that participants on the government side are only going through the motions in what might be termed a "tick-the-box" exercise. That complaint has been made strongly in the past, and seems to have been absorbed; today it is less of an issue, but there are still frustrations when consultation only starts partway

33 A decision in 2011 to withdraw the child benefit—a universal payment, historically tax-free—from the "higher-paid" was clearly, and probably understandably, made on a political need basis. The problem was that there was no opportunity to discuss how best to achieve the broad objective; the resulting mechanism is complex, to say the least.

34 There is, though, arguably a distinct danger of "consultation fatigue" setting in. The full process now being followed requires three stages of input, whereas in the past only one response would be required. That does not necessarily mean three times as much effort, but it does mean much more work for representative bodies. The payback for the increased number of stages is more chance to influence, but the burden on volunteers and the limited number of paid staff is beginning to be a problem. Of course it is all worthwhile if consultation input is listened to.

through the process, so that there is no chance to influence the actual design of the change. Perhaps that is always going to be the case—though if consultation were a requirement rather than "best practice," it might help.

Consultation also requires good engagement from consultees. UK policy makers seem to have that available.[35] But the opportunity must not be abused. Consultees do not, of course, expect to be paid for their trouble, and some are undoubtedly lobbying for an advantage to their sector. But most are participating in a genuine attempt to make the system operate better and, in particular, to make it less burdensome on those who will have to comply with the new rules. The need for proper response documents to give feedback has already been noted. Fundamentally, consultation should result in sensible points being taken into account, especially on practical aspects. The United Kingdom's process scores reasonably well in all of this, though occasions when the wheels come off serve to show that a satisfactory outcome is not guaranteed (and perhaps also serve as a useful reminder for the authorities).[36]

OTHER ISSUES

Data Collection and Analysis

The work of the HMRC KAI unit has already been mentioned, and the KAI team does provide high-quality data on proposals. The problem is that KAI's expertise is not available to taxpayers and their representatives, nor is there a comparable organization in the private sector that is able to help develop responses to proposals. Thus, private-sector responses to proposals usually lack costing data; or what seem like sensible contributions can turn out to be based on a misunderstanding of a proposal's effect. It would undoubtedly be useful to have a KAI-style organization available outside HMRC/HMT to improve the quality of responses.

35 For example, the GAAR consultation document of June 2012 (United Kingdom, HM Revenue & Customs, *A General Anti-Abuse Rule: Consultation Document* (London: HM Revenue & Customs, June 2012)) attracted over 14,000 responses, with 169 substantive ones that replied to the questions posed.

36 The 2012 budget launched a number of changes, including some seemingly minor technical amendments to VAT (goods and services tax) that were to take effect in October. Some of the changes set out in the budget were clearly planned to reverse losses by HMRC in tax cases. However, several were widely attacked as having a much bigger impact than had been anticipated. An example was the changes around the taxation of hot takeaway food, which led to "pastygate" (when the tax treatment of meat pasties became a particular cause célèbre). A better route would surely have been to announce a plan to consult on certain areas of difficulty that were clearly giving rise to contentious boundary issues in practice, and go into things with an open mind. The process would have taken six months longer but would have got to a better—and probably smoother—result.

Transparency

Inevitably the process of tax policy making is not fully transparent. The consultations that take place are a major contribution to transparency, and parliamentary debates are, of course, public. But many decisions are taken on the basis of "advice to ministers," which is not published. External groups that have contributed to the policy development process through consultation have to trust that the advice is given fairly. But such advice has the potential to override a lot of preceding work and expert input.

International Organizations

As noted earlier, the European Union has an influence on UK tax policy making, given the need to consider EU rules around such matters as competition and non-discrimination, and prohibitions on support for particular sectors.

Independent Tax Reform Bodies

Professional bodies such as the CIOT have a certain influence, as do business bodies such as the CBI and the Federation of Small Business. There are a good number of think tanks, such as Reform, with the IFS at the top of that sector. The Oxford Centre for Business Taxation has built a good reputation and is increasing its influence.

The IFS has an outstanding reputation for input to debates on overall policy matters, backed by their analysts. Exeter University and the IFS are responsible for the operation of the Tax Administration Research Centre, which was launched on January 1, 2013 with the benefit of substantial funding from the Economic and Social Research Council, HMRC, and HMT. The centre has been set up to undertake research on tax administration, with a view to strengthening the theoretical and empirical understanding of tax operations and policies. Its research is multidisciplinary, and the research team involves economists, accountants, experimentalists, and psychologists. An important role of the centre is to build capacity for future tax research.

We must also mention the Mirrlees report,[37] which was produced by a group coordinated by the IFS, and which set out a major analysis of the UK tax system and how it might be reformed.

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37 James Mirrlees, Stuart Adam, Timothy Besley, Richard Blundell, Stephen Bond, Robert Chote, Malcolm Gammie, Paul Johnson, Gareth Myles, and James Poterba, *Tax by Design: The Mirrlees Review* (Oxford: Oxford University Press, 2011).