



The Office of Tax Simplification

*What do 12 years of the OTS tell us
about the role for an independent
body in tax policy making?*

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IfG foreword

This guest paper sets out the views of a leading expert in tax policy making. The Institute for Government commissioned this paper to complement our own in-depth research in this area. This paper reflects the views and proposals of the author and is not necessarily endorsed in its entirety by the Institute for Government. But we can commend the rigour with which the arguments have been constructed and sincerely thank the author for his thoughtful contribution.

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Summary

"I have decided to wind down the Office of Tax Simplification, and mandated every one of my tax officials to focus on simplifying our tax code."

– Kwasi Kwarteng, 23 September 2022

With these words the then chancellor, Kwasi Kwarteng, brought to an end a 12-year experiment in simplifying the tax system. Did the experiment work? Was the tax system of 2022 simpler than when another Conservative chancellor, George Osborne, created the Office of Tax Simplification (OTS) in July 2010?

The OTS was established within the Treasury by the coalition government to deliver on a Conservative manifesto commitment:

"We will restore the tax system's reputation for simplicity, stability and predictability... We will create an independent Office of Tax Simplification to suggest reforms to the tax system."¹

This short guest paper sets out the background to that commitment, examines the work of the OTS over the 12 years of its life, and discusses the problem of 'simplification' itself, as a concept and organisational remit. It finds that while there is value in an independent body able to canvass opinion on changes to administration of the tax system, attempts to achieve deeper reform to tax policy through an independent body are misguided.

The paper argues that the concept and title of 'simplification' itself was poorly conceived. Conceptually, it is simply a poor rephrasing of Adam Smith's principles of good taxation – fairness, certainty, convenience and efficiency. Rephrasing and compressing those principles into a single word loses sight of the complexities, and necessary trade-offs, involved in designing a good tax system. The conflation of many different issues into a single word resulted in an organisation with no clear remit.

Over the course of its existence the OTS developed the ill-defined goal of simplification to encompass both the details of tax administration and broader policy reform. Few of its major policy recommendations have been adopted and its substantive value has been primarily in improving tax administration. It also developed a role – somewhat distant from any definition of simplification – as a safe avenue for consultations, outside the formality and constraints of consultation by HMRC or the Treasury, and sufficiently apart from ministers for any recommendations to be politically deniable.

Reflecting on the experience of the OTS, this paper argues that meaningful tax reform will always require the backing of ministers and so questions about tax policy cannot be outsourced to an independent body. But an independent body can play a valuable role in improving tax administration and – in some instances – tax law. And there are important gaps in scrutiny of tax legislation.

Following the abolition of the OTS, there is a case for:

- A new independent body to bring external focus on improvements in tax administration, which could also be asked, on an ad hoc basis, to review specific areas of tax legislation, where improvement to legislative provisions is possible without making substantive changes to policy.
- The same (or possibly separate) external body, visibly independent from HMRC and the Treasury, to undertake consultation on specific pressure points in the tax system, primarily focusing on administration, but with the potential to engage on more specialised policy areas.
- A greater degree of post-legislative scrutiny of tax legislation, including evaluation of the wider costs and burdens of tax policies.
- A body with an advisory role to scrutinise and comment publicly on legislation during its passage through parliament – identifying and addressing issues of drafting and administration and consistency with the principles of good tax policy.

The creation of the OTS

Calls for simplification of the tax system have a long history

There had been calls for tax simplification long before the creation of the OTS. Simplification would, it was repeatedly claimed, reduce the length and complexity of tax legislation and make the tax system more straightforward and easier to understand, with fewer opportunities for avoidance.

In 1977, Sir Geoffrey Howe denounced the “drift towards a tax system that is incomprehensible, unrespected [and] unenforceable”.² That theme was developed over the next two decades and led to the creation of the Tax Law Review Committee (TLRC) by the Institute for Fiscal Studies in 1994, initially chaired by Howe. The principal recommendation of the TLRC’S 1996 report³ was for the rewriting of tax law in what it described as “comprehensible English”.

Through a parliamentary aberration during the passage of the Finance Bill 1995, that recommendation was in turn the progenitor of the Tax Law Rewrite project, initiated by Ken Clarke as chancellor in 1996 (described by him as being “as ambitious as translating the whole of *War and Peace* into lucid Swahili”). The Rewrite can be seen as the first serious attempt to tackle the problem of complexity in the tax system.

The Rewrite project ran from 1996 to 2010 and involved rewriting the greater part of existing tax legislation in language that was clearer and more comprehensible, used common definitions and terms wherever possible and adopted a structure for legislation intended to eliminate (or at least reduce) the extent to which one piece of tax law could only be understood by reference to previous or subsequent finance acts.

Although rewritten legislation was typically longer than the original, it was more clearly written and comprehensible. But as the Rewrite did not – and could not – make any changes to *policy*, any complexity inherent in the underlying policy and any complexity created by HMRC’s administration were unaffected. The Rewrite was seen as a mixed success on its own terms but did not address structural and policy complexity. Calls for simplification continued.

In 2005, partly in response to several Gordon Brown budgets filled with numerous minor (and some major) changes to the tax system, the shadow chancellor, George Osborne, established a Tax Reform Commission chaired by Lord (Michael) Forsyth, a former Conservative secretary of state for Scotland with a long-standing interest in tax issues. The commission’s terms of reference were broad and included setting out policy options to make direct taxes “flatter and simpler” and, as a separate objective, to recommend options to improve “the economic efficiency, transparency, simplicity and fairness of the tax system”.

Simplification thus became entwined with politics – both in the nature of the creation of the commission and in the explicit linking of simplification with flat(ter) taxes. The Forsyth commission’s terms of reference also recognised that simplification is inseparable from other principles of good taxation – such as economic efficiency and minimised administrative burdens. It thus exposed two core difficulties: simplification cannot ever be entirely separate from the highly political act of tax raising nor should the problems of simplification be isolated from the broader principles of good taxation. Even though the OTS would recognise and seek to grapple with these challenges, they remained fundamental impediments to its operation.

It was the Forsyth commission’s conclusions⁴ in 2006 that put forward the recommendation for an independent Office of Tax Simplification, modelled on the National Audit Office. The new body would, it said, both review existing tax law and propose simplifications (although the status of such proposals was not clear) and would ‘audit’ proposed legislation for consistency with the ‘principles of tax law’.

The OTS was the brainchild of George Osborne and Geoffrey Howe

The recommendations on simplification from the Forsyth commission were fleshed out by a working party established by Osborne and chaired by Howe (an enduring presence in the simplification debate). Its 2008 report, *Making Taxes Simpler*,⁵ recommended that the proposed Office of Tax Simplification’s broad “NAO-type” remit be overseen by a new Joint Parliamentary Select Committee on Taxation, whose own remit would be to review tax legislation as part of its passage through parliament. The report acknowledged the tension between the work of such a committee and the primacy of the House of Commons on tax matters, without explaining how these would be addressed. Nevertheless the report formed the basis of the 2010 Conservative manifesto commitment to establish the OTS, which Osborne duly met in July after taking office.

From the start there was a lack of agreement about the meaning of 'simplification'

Even at this early stage – and with one Conservative chancellor implementing the recommendations of a predecessor – the lack of agreement about what tax simplification was and why it was needed were apparent.

The target of Howe's proposals was complexity, which "adds to compliance costs and uncertainty, [and] undermines public trust in the tax system". The target was thus broader than the motivation behind the 1996 Tax Law Rewrite (namely, simplification of language) but narrower than the remit of the Forsyth commission ('flatter tax' and UK tax system competitiveness).

In creating the OTS⁶ Osborne took political aim squarely at Gordon Brown's perceived fondness for 'tinkering' with the tax system to fill gaps in his budget speeches:

"A decade of meddling and intervening has made the tax affairs of millions of families and businesses across the UK extremely complicated. We need to sort out this mess... Simpler, more competitive taxes will help us show the world that Britain is open for business."

He also sought greater control over the new body than had been envisaged. He established the OTS as an office of the Treasury, with no external oversight or accountability. There was to be no "NAO-type" remit and no joint parliamentary select committee. The new body was to have no input into the legislative process – it could effectively focus only on the stock and not the flow of complexity.

From the outset the OTS's status therefore fell short of that envisaged by Howe and Forsyth. It was also hampered by the fact that none of the reports that led to its creation defined 'simplification' nor agreed on what they thought simplification could achieve. Tax simplification had become a loosely defined term to address a range of grievances:

- Tax legislation was too long
- Tax law was difficult to understand
- Structural complexities (e.g. the existence of both income tax and National Insurance contributions as separate systems) should be removed
- An excessive number of tax reliefs, exemptions etc. created confusion and incoherent policy outcomes
- Ministers 'meddled' excessively with the tax system.

The claimed benefits of simplification included:

- Reducing compliance costs
- Minimising uncertainty
- Making the tax system more competitive
- Maintaining public trust in the tax system.

Although Osborne had cited a broad range of targets, none was translated into the OTS's initial remit to "identify areas in the tax system where complexities... can be reduced" (a sentence in which the word 'can' is doing some heavy lifting).

The OTS therefore began life with high – but mixed – expectations of what it could deliver against a background of uncertainty about the meaning of simplification and thus the scope of its work.

The life and work of the OTS

The creation of the OTS was qualitatively different from the superficially similar moves made by Gordon Brown in giving independent rate-setting powers to the Bank of England in 1997, or in Osborne's 2010 creation of the Office for Budget Responsibility. In both cases the bodies' independence was expressly intended to move decisions and judgment away from ministers and to create some distance from political responsibility and interference. Both were put on a statutory basis whereas the OTS was, at least initially, simply an advisory unit of the Treasury. The creation of the OTS was intended primarily as a political signal. Osborne had no intention of weakening or removing power from ministers to make tax law.

The OTS was thus hamstrung from the outset. It is a credit to those who have led its work over its 12-year life that they made any sense out of the multiplicity of possible directions and the political constraints within which they have worked.

Between 2010 and 2022, the OTS published more than 60 reports covering around three dozen areas, ranging widely from process issues such as penalties and digitisation to policy issues on inheritance tax, savings income and other taxes.⁷ The choice of topics was largely agreed with – and sometimes explicitly commissioned by – the Treasury, but the content of reports was wholly independent.

The OTS's recommendations for policy change rarely succeeded, but those to improve tax administration bore more fruit

Looking back it is striking, if not altogether surprising, how few OTS recommendations were implemented. Despite the remit to identify areas of the tax system where complexity "can be reduced", reductions were achieved mainly through administrative and not policy changes – updating processes, forms and communications and the like.

The OTS's early work on simplifying tax reliefs⁸ highlighted the problems it was to encounter when addressing policy throughout its existence. Any policy simplification ran into the 'winners and losers' problems of all tax reform (the difficulties of which are examined in a 2020 Institute for Government paper, *Overcoming the barriers to tax reform*).⁹ Either the change proved meaningless, affecting no taxpayers, or it created losers who needed to be faced down or compensated.

Of the 1,042 tax reliefs identified by the OTS, it recommended only 47 for repeal. Most were either already obsolete or practically redundant (such as the tax exemption for 15p per day of luncheon vouchers). But even where a minor and complex relief was recommended for abolition (such as the relief from employee benefit charge on late-night taxis or the exemption from duty on black beer), lobbying by business ensured that it was retained. The net effective reduction in complexity from the exercise was close to zero.

A similar fate met the review of pensioner taxation¹⁰ where, although recommendations to improve HMRC's administration and communications were accepted, policy recommendations (such as the abolition of the blind person's allowance) foundered on political concerns.

A different obstacle was encountered with the taxation of small businesses.¹¹ The OTS proposed a separate and simpler tax regime for the smallest businesses but such a special regime required additional rules to deal with cases overlapping or transitioning between the new regime and the rest of the tax system. The additional complexity created quite rightly proved unpalatable both to ministers and business.

The OTS had more success with its recommendations to harmonise definitions and rules across different employee share schemes' tax rules. But again these changes were limited to the administrative rules, in this case of a small subset of the tax system whose complexity was largely only an issue for the specialised user.

Throughout the OTS's life these problems persisted: any recommendations not focused on a self-contained and relatively uncontentious part of the system (such as share schemes) or confined to administrative improvements were likely to fail.¹²

A new approach after 2017

In a self-review of its work in 2017¹³ the OTS set out the extent of the low 'hit rate' for its recommendations and attempted to identify lessons learned. Those lessons are an implicit recognition of the OTS's lack of ability to do more than draw attention to weaknesses in the tax system. A body that had been created for largely political reasons was beginning to understand the inherent limitations on its ability to effect real change.

The years after 2017 brought a shift in approach. While the OTS still undertook work proposing detailed technical and administrative changes, it also tackled some 'big' policy areas well trodden over by earlier would-be reformers: the taxation of savings, capital gains tax reform and the simplification of inheritance tax. In the case of inheritance tax, it approached the problem from both ends – an initial report¹⁴ proposed administrative changes to improve taxpayer experience of the current system (some of which were accepted) and a second report¹⁵ recommended larger scale policy reforms (which was rejected in its entirety).

Where the OTS did look at major policy areas, it is not clear whether it was responding to a genuine political desire for reform or simply acting as a convenient conduit to allow ministers to demonstrate substance to the statement that a particular issue was "under

review". Either way, the OTS's ability to consult outside the formality of government consultation did allow kites to be flown on sensitive topics and for consultation to take place without risk of any commitment to action.

There is little evidence that the OTS expected that its policy recommendations on inheritance tax or capital gains tax (well researched and well reasoned as they were) would be accepted. Indeed, on inheritance tax it explicitly did not make firm recommendations but offered ministers choices that included both revenue-raising and revenue-reducing options. The proposals on the alignment of income tax and capital gains tax rates (the simplification benefits of which are questionable) in particular received a very boilerplate brush-off. The substantive recommendations of both reports were duly rejected.¹⁶

Support for the OTS from the Treasury was at best lukewarm

The OTS had been put on a statutory basis by the Finance Act 2016, primarily to try to safeguard its existence against future abolition. The Act required the Treasury to undertake five-yearly reviews of the OTS's effectiveness and the ministerial response to both the inheritance and capital gains tax reports (published in July 2019 and November 2020, respectively) was delayed while the Treasury undertook the first such review, which was published in November 2021.¹⁷ But even before then doubts may well have already been circulating in the Treasury about the value of the OTS.

The November 2021 review reads as little more than a lukewarm endorsement of the OTS. Its recommendations have something of a schoolmasterly tone: "The OTS should revisit the volume of its output to allow more time for preliminary research," and "An increase in the analytical and policy skills mix of the Secretariat would add even greater rigour to OTS work." Most fundamentally, the review recommended:

"[that the OTS] clarifies its aims and objectives in light of its articulation of how it interprets 'tax simplification', using this to inform which areas it will prioritise over the next five-year period to maximise its impact."

Effectively the OTS was told to prioritise, to clarify its aims and impacts and to slow down. Although the review did not quite go so far as saying that the OTS was contributing to the problem of complexity, a flavour of that emerges.

The bold proposals on inheritance tax and capital gains turned out to have been the high water mark of the OTS's work. Whether or not the Treasury's 2021 review was intended as a warm-up for abolition (the statutory basis for the OTS meant that abolition was not straightforward), it proved to be such.

The final year of the OTS's life saw the publication of a report on tax simplification,¹⁸ which articulated the principles, objectives and success measures to inform future work. It was published in July 2022, some 12 years after the OTS was established, during the uneasy weeks following the resignation of Boris Johnson as prime minister. Two months later, as part of Kwasi Kwarteng's controversial 23 September 'mini-budget', the abolition of the OTS was announced.

What can be learned from the life and times of the OTS? The following sections provide an analysis of the meaning of tax simplification and, in the light of the experience of the OTS, put forward suggestions as to how the aims of tax simplification might be achieved.

Simplification and complexity

Simplification – the removal of complexity – is desirable, but some forms of complexity will be easier to remove than others. As the OTS itself noted in its 2022 report:

“Tax simplification is not a policy object in itself, and the need for simplicity may find itself in contest with the broader objectives of government...”

The creation of the OTS was thus a category error by ministers. Tax simplification was regarded as a self-contained process – the mechanical identification and elimination of complexity. But that ignored the relationship of specific complexity to wider objectives, fiscal or political.

As the OTS found, acceptable simplification needs to leave other objectives untouched or find ways of delivering the same objectives in a way that reduces the cost of complexity. This was, and is, not easy.

Some complexity is unavoidable and its elimination is almost impossible

All taxes have an irreducible core of unavoidable (or structural) complexity that makes them work. Such complexity flows from the structure: it reflects the rules for computing tax due and the certainty to ensure that tax is paid. Parliament has choices about how much detail to include in primary legislation, but complexity is not reduced by relegating detail to regulations or to published practice (although this may offer some additional responsiveness to external change). Structural complexity is unavoidable but is often the complexity that most irritates the taxpayer – the details of computation rules, the need to record expenses, the classification of private or business use and so on.

The OTS grappled with structural complexity in its work on income tax and National Insurance contributions, and with small businesses. Despite some early (and bold) recommendations amounting to a structural reform of personal and business taxes – centred on merging elements of income tax and NICs – the OTS was faced with the reality that income tax and NICs are separate and are unlikely to be merged, not least because of the number of individuals with multiple jobs below the NICs threshold who would be losers.

Some complexity reflects optional political choices and its elimination requires political will

Optional complexity – that is, tweaks and additions beyond the basic revenue-raising functions – reflects political choices, which make the tax system more complex. This seems to have been the complexity George Osborne had in mind when he referred to ‘meddling’. The tax system is littered with measures (usually by way of tax relief for some favoured activity) that reflect the political priorities of the day and that have

become entrenched – schemes promoting venture capital and enterprise investment, special capital allowance regimes, lower VAT rates on favoured products, employee cycle schemes and many others.

The political preferences that underpin such complexity provide high barriers to simplification even though the fiscal cost or numbers of taxpayers involved may be small. Thus, the OTS's 2018 paper on savings income¹⁹ (which shone a light on the incoherent reliefs and schemes) and its papers on inheritance tax and capital gains tax (with their recommendations to abolish various reliefs whose merits were seen as doubtful) all received short shrift from the government.

But some complexity is unintentional or accidental

Unintentional or accidental complexity largely reflects legislative inattention and the degradation of the tax system through the passage of time. Legislation may be drafted without sufficient attention to its consistency with existing rules, administrative processes can remain bedded in a pre-digital world or fail to adapt to business developments.

For taxpayers, better administration is as good as simplification

Eliminating unintentional or accidental complexity can be an easier task, and certainly proved a richer ground for the OTS. Where definitions and drafting can be made consistent, administration or guidance improved or adapted to the digital age, simplification – as reflected in improved administration and a better experience for the taxpayer – could be uncontentious.

Through steady work across a range of topics, both through legislative cleansing and through administrative modernisation, the OTS initiated some real improvements on employee share schemes and on the administration of capital gains tax. Its convening power and ability to offer a space for consultation that was both focused on a particular topic and distanced from HMRC and the Treasury enabled it to collect and synthesise external views to an extent that neither the external professional trade bodies nor HMRC itself could do.

The OTS was excluded from a role in constraining future complexity

Howe and Forsyth proposed a role for the OTS both by participation directly in the budget and finance bill process and in making substantive recommendations for tax policy reform to achieve simplification. In practice the OTS was able to achieve neither.

Osborne's decision to limit the OTS's remit to reviewing existing law excluded it from the budget and finance bill process and left it with no ability to stem the flow of new complexity generated by successive budgets.

On tax policy reform, OTS papers could – and did – make recommendations for the future, both for broad reform and by setting out principles on clarity of purpose, comprehensibility of design and quality of administration, but its substantive policy

proposals never achieved ministerial support. It did on occasions perform a limited role as a stalking horse for more difficult reforms, for instance on its recommendations on income tax/NICs integration.

Lessons from the OTS

Tax simplification is a noble but nebulous aim

Tax simplification has proved an unhelpfully ill-defined aim. It is a term so capable of different meanings that it carries little value without much explanation and additional detail. Simplification is a goal difficult to argue with, but difficult to apply to the living tax system.

The tasks that the OTS took on – simplifying existing law, proposing future policy changes and improving tax administration – had value in themselves but were not part of a systematic approach to improving the tax system and were insufficiently integrated with existing mechanisms.

The goal of tax simplification is based on the argument that a simpler tax system will be easier to understand and make compliance easier and cheaper. This is merely a restatement of Adam Smith's good taxation principles of certainty and efficiency. Those principles are part of the framework within which the balance of policy making judgment should be made and cannot be considered in isolation. A good tax system depends on much more than being 'simple'.

If not simplification, what?

The case for an independent body dedicated to tax simplification remains unproven but the experience of the OTS has exposed weaknesses in three broad areas of the tax system that should be addressed:

- **Evaluating and improving existing tax law.** The standing body of tax law is not regularly evaluated against its objectives. It is rarely, if ever, reviewed with the aim of removing complexity, inconsistency or redundant provisions.
- **Improving tax administration.** HMRC's processes continue to lag developments in commercial structures and digital usage. Resource and other constraints limit the effective use of external consultation by HMRC or the Treasury.
- **Managing the parliamentary process.** Parliamentary scrutiny of new legislation gives insufficient weight to administrative burdens or the creation of additional complexity.

The rest of this paper examines some of the options for addressing these weaknesses and, in each case, whether an independent body is the answer.

Evaluating and improving existing tax law

Existing tax policy will not be made simpler by an independent body...

Basing a case for reform on complexity will not succeed. Strong political support and ownership is needed to achieve all substantive policy change. Tax experts and economists broadly agree on many areas of the tax system – the self-employed, income tax and NICs, various specific tax reliefs – where policy change could achieve significant simplification. Even with that agreement, there has been no substantive reform in these areas.

The repeal of ineffective policy measures requires far stronger arguments than concerns about complexity to overcome political and taxpayer objections. The OTS spent much fruitless effort in making good but wasted arguments for the abolition of reliefs in the name of simplification, for instance in pensioner taxation and inheritance tax. There is little merit in any independent body continuing to attempt such simplification.

...but ad hoc reviews can achieve simplification of existing tax law

The case for a standing body (independent or not) to review all existing legislation is not strong. The potential to improve the understanding and usability of tax legislation was tested (probably to its limits) by the Tax Law Rewrite. The length and cost of that project means that any repeat would be unlikely to yield significant benefits. The OTS's work on share schemes showed how – where existing legislation does need improving – an external focus can add real value. But the OTS struggled to find other areas of the tax system where improvement to the legislation (as opposed to policy change or improved administration) might yield benefits.

The Rewrite also highlighted the fact that, while well written, well structured tax legislation is highly desirable, for the majority of users it is the process of tax administration and the quality of HMRC guidance that determines the 'simplicity' of the tax system.

Regular evaluation of all tax policy against its wider objectives is desirable

Others have argued for a greater degree of post-legislative scrutiny of tax legislation²⁰ to ensure, among other things, that tax expenditures are subjected to equivalent value for money reviews as those applying to public spending. It is beyond the scope of this paper to examine those arguments, but such reviews are desirable and, if adopted, could be extended to include evaluation of the wider costs and burdens of tax policies beyond the simple question of their effectiveness against stated objectives.

Without such a wider evaluation process (potentially involving accounting officers and the NAO) to provide the broader context of the benefits and costs of specific measures, subjecting tax policy to reviews of their complexity alone would be of limited value.

Improving tax administration

An external body can drive improvements in tax administration

What successes the OTS did have were in tax administration, where it achieved real improvements. It did this through its access to dedicated resource, including external expertise, and its ability to focus on specific areas of the tax system. Its remit was broad enough to look across legislation, guidance, HMRC processes and forms and the role of digitisation.

In its 12 years the OTS demonstrated that:

- The existence of a body independent from any business, interest group or political dependency can achieve better focus on HMRC's administration of the tax system (particularly on those elements that have degraded over time).
- It could achieve improvements in tax administration that reduce burdens without encroaching on policy.
- The quality of consultative input into decision making could be improved by the existence of a focal point for external engagement on specific aspects of the tax system, independent of government but with a degree of privileged access.

This is not simplification as envisaged by Forsyth and Osborne but as an improvement in taxpayers' ability to comply with, and HMRC's ability to administer, the tax system. There is a strong case for the creation of a replacement body to bring external focus on improvements in tax administration.

For any new body to be used efficiently its work should be focused on areas where external engagement can add value over internal resource and where there is sufficient internal (HMRC and Treasury) resource and ministerial support to make changes. This implies that the body's agenda would need to be set primarily by the Treasury and HMRC.

If such a standing body is established it could also be asked, on an ad hoc basis, to review specific areas of tax legislation, where improvement to legislative provisions is possible without making substantive changes to policy (as the OTS was able to do with share schemes).

Any external input on tax administration would overlap with the existing role of the Administrative Burdens Advisory Board (ABAB), a group of external consultees who undertake periodic work on the tax system's burdens on small businesses.²¹ ABAB was established as part of the Labour government's drive on regulatory burdens in 2006 and a review of its future should be part of any decision on any replacement for the OTS.

The quality of external consultation can be enhanced by the involvement of an independent body

The OTS's effectiveness as a focus for external consultation depended to a significant extent on its independent status and its position as a 'favoured adviser' to the Treasury. External consultees – both taxpayers and professionals – proved more open in engaging with an organisation separated from HMRC's tax collection responsibilities than when in consultation with HMRC directly.

There is therefore a good case for an external body, visibly independent from HMRC and the Treasury, to undertake consultation on specific pressure points in the tax system, primarily focusing on administration, but with the potential to engage on more specialised policy areas.

Managing the parliamentary process

Oversight on the creation of new complexity in annual finance bills is inadequate

Ministers can, and will, decide. Constraining their decisions is not constitutionally possible. But the lack of scrutiny of tax policy decisions equivalent to that applied to public spending announcements, and the devaluation of impact assessments, have contributed to the ease and willingness with which successive chancellors continue to add to the complexity and costs of the tax system.

These issues were discussed in the Institute for Government's 2017 paper *Better Budgets*,²² which argued for "routine post-legislative review of whether measures are achieving their objectives at an acceptable cost, and parliament should hold government to account for this" to limit the willingness of ministers to legislate without regard to wider costs.

A new body with an 'NAO-type' rule could scrutinise the complexity of new tax legislation

The House of Commons' ability to make tax law also gives it the ability to make bad tax law. A better tax system depends on the willingness of the government of the day to abide by the principles of a good tax system.

A check on the complexity of new legislation would contribute to a better tax system. Geoffrey Howe proposed such an "NAO-type" role for the OTS to review the parliamentary progress of tax legislation, judging finance bills for consistency with tax principles and their contribution (or not) to simplification. George Osborne was unwilling to give the OTS such a role. Like previous chancellors of the exchequer, he was not willing to subject his policy decisions to such constraints – whether or not binding.

If such a body was established there are, as Howe and Forsyth recognised, constitutional issues with giving it any substantive powers. Howe's proposals giving oversight of the OTS to a joint parliamentary committee simply raises further questions about the role of the House of Lords in tax matters.

If the supremacy of the Commons on tax matters is to be maintained, the effectiveness of such a body would lie not in its formal status but in the quality of its work in scrutinising legislation. The constitutionally sound and more straightforward route would be simply to give such a body an advisory role to scrutinise and comment publicly on legislation during its passage through parliament – identifying and addressing issues of drafting and administration and consistency with the principles of good tax policy. This sort of scrutiny would improve the quality of tax law passed. A strong chancellor, with the ability to ignore any recommendations, should welcome the transparency and critical examination that such a body could provide.

Conclusion: complexity and future tax policy

Kwasi Kwarteng's abolition of the OTS was arguably a symbolic act. But so too was George Osborne's creation of it in 2010.

Osborne saw the creation of the OTS as a political gesture to fulfil a manifesto commitment and to distance himself from Gordon Brown (although, ironically, Osborne turned out to be almost as adept at meddling with the tax system as his predecessor). Osborne may have believed that some policy simplification could be achieved without undue political cost, but the OTS never had any substantive role in tax policy making.

The OTS was hamstrung from the outset by a lack of clarity around the term 'simplification' and the fact that Osborne – like chancellors before him – had no intention of weakening or removing power from ministers to make tax law. It is a credit to those who led the OTS over its 12-year life that they made sense out of the multiplicity of possible directions and the political constraints within which they have worked. But the OTS was ultimately unable to bring about substantive changes in tax law. Instead, its success was in improving tax administration in the areas it targeted.

The overriding lesson from the OTS is that an independent body can do little more than shine a light on policy complexity. Achieving actual change will depend, at the very least, on demonstrating that the benefits of removing complexity will outweigh the costs in the form of worse-off taxpayers, lost revenue or changed political outcomes. Only very rarely is that likely to be the case.

Expectations of the OTS were set too high and were brought down by the inevitable clash with the politics of taxation. It was, therefore, arguably doomed to failure. A body established with lower – but more realistic – expectations of improving tax administration and ensuring that measures introduced achieve their objectives would make for a better functioning tax system. Taxpayers, HMRC – and future chancellors – would all benefit.

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References

- 1 Conservative Party, *Invitation to Join the Government of Britain: The Conservative Manifesto 2010*, <https://general-election-2010.co.uk/2010-general-election-manifestos/Conservative-Party-Manifesto-2010.pdf>
- 2 Howe G, 'Reform of Taxation Machinery', in Lawton P and Jones JA eds, *British Tax Review*, Sweet and Maxwell Limited, 1977, pp. 95–104, retrieved 16 March 2023, https://heinonline.org/HOL/Page?handle=hein.journals/britaxrv1977&div=2&g_sent=1&casa_token=&collection=journals
- 3 Tax Law Review Committee, *Final Report on Tax Legislation*, Institute for Fiscal Studies, 1 November 1996, <https://ifs.org.uk/publications/final-report-tax-legislation>
- 4 Tax Reform Commission, *Tax Matters: Reforming the Tax System*, 1 October 2006, <https://conservativehome.blogs.com/torydiary/files/taxreformcommissionreport.pdf>
- 5 *Making Taxes Simpler*, the final report of a Working Party chaired by Lord Howe of Aberavon, July 2008, https://conservativehome.blogs.com/torydiary/files/making_taxes_simpler.pdf
- 6 HM Treasury, 'Office of Tax Simplification', press release, 20 July 2010, www.gov.uk/government/news/office-of-tax-simplification
- 7 Office of Tax Simplification, 'Index of reports published by the Office of Tax Simplification', 8 December 2020, retrieved 16 March 2023, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126310/Index_of_OTs_reports_-_December_2022.pdf
- 8 Office of Tax Simplification and HM Treasury, 'Tax reliefs review', GOV.UK, 3 March 2011, retrieved 16 March 2023, www.gov.uk/government/publications/tax-reliefs-review
- 9 Rutter J, Tetlow G, Marshall J, Pope T and Sodhi S, *Overcoming the barriers to tax reform*, Institute for Government, 2020, www.instituteforgovernment.org.uk/publication/overcoming-barriers-tax-reform
- 10 Office of Tax Simplification and HM Treasury, 'Taxation of pensioners review', GOV.UK, 7 July 2014, www.gov.uk/government/publications/taxation-of-pensioners-review
- 11 Office of Tax Simplification and HM Treasury, 'Small business tax review', GOV.UK, 28 February 2012, www.gov.uk/government/publications/small-business-tax-review
- 12 Bowler T, *The Office of Tax Simplification: Looking Back and Looking Forward* (TLRC Discussion Paper No. 11), Institute for Fiscal Studies, 2014, <https://ifs.org.uk/publications/office-tax-simplification-looking-back-and-looking-forward>
- 13 Office of Tax Simplification, *OTS Recommendations: Evaluation and Forward Look*, 27 June 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/622154/OTS_Recommendations_-_evaluation_and_forward_look_June_17.pdf
- 14 Office of Tax Simplification, *Inheritance Tax Review – first report: Overview of the tax and dealing with administration*, 23 November 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/758367/Final_Inheritance_Tax_Report_-_web_copy.pdf
- 15 Office of Tax Simplification, *Inheritance Tax Review – second report: Simplifying the design of Inheritance Tax*, 5 July 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816520/Final_Inheritance_Tax_2_report_-_web_copy.pdf
- 16 Financial secretary to the Treasury, Letter to Kathryn Cearns and Bill Dodwell, Office of Tax Simplification, 30 November 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037446/FINAL_FST_response_to_OTs.pdf
- 17 HM Treasury, *2021 Review of the Office of Tax Simplification: Final Report*, 30 November 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039595/HMT_Review_of_OTs_Report_FINAL.pdf
- 18 Office of Tax Simplification, *Review of simplification: Approach and interpretation*, GOV.UK, 18 July 2022, www.gov.uk/government/publications/ots-review-of-tax-simplification/review-of-simplification-approach-and-interpretation
- 19 Office of Tax Simplification, *Savings Income: Routes to simplification*, 25 May 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711110/OTS_savings_paper_May_18.pdf
- 20 Rutter J, Dodwell B, Crozier G and others, *Better Budgets: Making tax policy better*, Institute for Government, 2017, www.instituteforgovernment.org.uk/publication/report/better-budgets-making-tax-policy-better
- 21 'Administrative Burdens Advisory Board (ABAB)', GOV.UK, (no date), www.gov.uk/government/groups/administrative-burden-advisory-board
- 22 Rutter J, Dodwell B, Crozier G and others, *Better Budgets: Making tax policy better*, Institute for Government, 2017, www.instituteforgovernment.org.uk/publication/report/better-budgets-making-tax-policy-better

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