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Better Budgets

Making tax policy better

Jill Rutter, Bill Dodwell,
Paul Johnson, George Crozier,
John Cullinane, Alice Lilly and
Euan McCarthy

About this report

In April 2016, the Chartered Institute of Taxation (CIOT) (the professional body for tax practitioners), the Institute for Fiscal Studies (IFS) and the Institute for Government launched a project to look at whether we could make tax policy better and produce better Budgets. In this report we look at the process of tax policy making and Budgets, and set out some recommendations on how it can be improved.

In undertaking the research for this report, the authors carried out around 50 interviews with stakeholders from across the tax system, received written submissions from more than 20 additional individuals and organisations, and held three private roundtable meetings with tax and policy specialists. They also had conversations with officials working on Budgets in other countries.

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About the authors

Jill Rutter is Programme Director for better policy making at the Institute for Government and a former Treasury civil servant.

Bill Dodwell is President of the Chartered Institute of Taxation and Head of Tax Policy for Deloitte.

Paul Johnson is Director of the Institute for Fiscal Studies and a visiting professor in the Department of Economics at University College London.

George Crozier is Head of External Relations for the Chartered Institute of Taxation.

John Cullinane is Tax Policy Director for the Chartered Institute of Taxation.

Alice Lilly is a Researcher at the Institute for Government.

Euan McCarthy is a Research Intern at the Institute for Government.

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Summary

Tax policy making is at the centre of political debate and dispute – but at the same time is highly technical. During conversations with people across the tax system, from officials and experts through to practitioners and representative groups, we have heard that the exceptional processes around tax policy making – in particular, secrecy, more limited scrutiny and challenge, and the power of the Treasury – have led to an ever-lengthening tax code, beset by a series of problems: confusion for taxpayers, poor implementation, political reversals and constrained options.

The context for tax policy making is also changing, with limited devolution of tax powers and Brexit absorbing policy makers' time and attention, while creating new opportunities – but also risks and uncertainties.

Successive chancellors have introduced changes to the tax policy making process, committing to more consultation, or creating new institutions, but these have not been strong enough to withstand the political dynamic of the Budget process.

In this report we set out 10 steps towards making tax policy better and giving us better Budgets. These steps build on progress to date and experience elsewhere. Although many of the recommendations we make are aimed at HM Treasury, HM Revenue & Customs (HMRC) and Treasury ministers, we are conscious that the responsibility for a vibrant and productive discussion of the tax system goes much wider, with tax professionals, economists, academics and the wider community all having an important role to play, alongside politicians and the media.

The end point is a quite simple vision: A Budget process that contains fewer measures, which are better thought out – and can be implemented efficiently by HMRC without imposing unreasonable burdens on taxpayers. A better public debate on the big tax choices – with politicians making informed decisions and the public understanding the kinds of long-term choices that must be faced. Greater stability in the areas of the tax system where taxpayers – individuals and business – need to make long-run decisions. A tax system that commands public support – and is robust enough to raise the money we need to finance the state we want.

Since we started this project, the Chancellor announced in the 2016 Autumn Statement his acceptance of a recommendation that our three organisations made in September 2016 – to revert to a single principal fiscal event per year.[1] This move is an important enabler of the other changes we set out below, allowing more time for better consultation and scrutiny and reducing the strain that two big fiscal events a year puts on government and external tax policy resources. But the commitment needs to hold.

Step 1: Stick to the commitment to a single principal annual fiscal event and cut down Budget measure proliferation

Budgets have become engines for proliferation of measures, generating instability and confusion. The Chancellor has said that he will resist making change for change's sake in his new Spring Statement. If he is to realise the benefits of the single fiscal event, he needs to stick to that commitment. Below we set out the further steps needed.

Step 2: Establish clear guiding principles and priorities for tax policy

Chancellors should make an early statement in a new Parliament to spell out their priorities for, and approach to, the tax system (while retaining some flexibility to respond to events). This should deter them from falling into ad hoc approaches.

Step 3: Extend the road-map approach

The Corporate Tax Road Map, produced in 2010,[2] was a useful innovation. It could be applied much more widely to set out the direction of travel and future reform for areas or themes of the tax system – and form the basis for better consultation and scrutiny. Good road maps should follow a set of key principles to make them useful, which we outline in detail in this report.

Step 4: Start consultation at an earlier stage

Too many consultations begin when key decisions have already been made, shutting off potential better options to achieve the same goal. The Government should consistently stick to its commitments in *The New Approach to Tax Policy Making*.[3] It should also start consultations by setting out and obtaining views on different options, or by putting out calls for evidence to allow it to gain the widest possible understanding of an issue.

Step 5: Develop more active approaches to consultation

The Government needs to ensure that responses come from a wide range of sources. It should develop and use mechanisms to seek out consultees proactively, ensuring that a wide view is taken of how tax changes affect all concerned, and give respondents feedback to raise the quality of future responses.

Step 6: Prepare the ground for future reform – and engage the public

Departments other than the Treasury and HMRC, along with other countries, have used independent external reviews to open up the discussion of options and prepare the ground for reform. These also provide an opportunity for more active public engagement with the policy making process. There are many areas of the UK tax system that need reform, and which could benefit from this approach.

Step 7: Address the perceived capability gap around tax policy making

The Treasury and HMRC need to address the perceived gaps in tax policy making capability that have arisen from a combination of Treasury churn and a reluctance among HMRC operational experts to work in the Treasury. That means supporting and building on initiatives aimed at allowing insiders to develop deeper tax expertise in the Treasury and policy expertise in HMRC. The Treasury and HMRC also need to manage parliamentary concerns about external secondees to enable them to tap into that source of external expertise. The increasing importance of digital delivery makes it even more important to keep the split of responsibilities for policy and implementation under review.

Step 8: Overhaul internal processes

The exceptional processes that mean there is insufficient challenge to tax and Budget policy making are a major reason for many of the examples of poor policy making. That needs to change – by making decisions more collectively, with the establishment of a small Budget Cabinet Committee; and by introducing more powerful early expert challenge. The Treasury Permanent Secretary should be willing to exercise his 'accounting officer' function for Budget spending measures and spending-like tax reliefs, which should be subject to scrutiny by the National Audit Office (NAO). There should be independent challenge at an early stage to the Treasury/HMRC assessments of business impacts, as there is now for new regulation.

Step 9: Enhance Parliament's (and the public's) ability to scrutinise tax proposals

Parliament needs to do a better job at scrutinising Finance Bills and tax policy. More transparency from government, with better and clearer documentation, would help. So would introducing oral evidence sessions at the start of Finance Bill committee stages – and better liaison between the standing Treasury and House of Lords Economic Affairs Committees and the Finance Bill Committee. Finally, Parliament as a whole needs more standing expert support on tax.

Step 10: Institutionalise and enable evaluations of tax measures

The political (and technical) nature of much of tax policy can inhibit effective upfront scrutiny. That places more weight on the importance of effective evaluation, but at the moment this is poorly done. There needs to be effective and routine post-legislative review of whether measures are achieving their objectives at an acceptable cost, and Parliament should hold government to account for this. Data need to be more accessible to allow outside researchers to evaluate policy.

1. Introduction

There is one set of norms and rules for the way in which most policy is made in government – and a different set of norms and rules for Budgets and tax policy.

Significant non-tax policy decisions are normally subject to protracted negotiation and then collective agreement. They face external scrutiny through consultation and then through detailed consideration in both the House of Commons and the House of Lords. They are subject to rigorous internal challenge from the Treasury over their value for money; if they impact business they also have to pass challenge from the Regulatory Policy Committee. If a policy looks infeasible or poor value for money, the most senior departmental official, the accounting officer, may demand a direction[4] from the relevant minister. Most spending is subject to cash limits. After implementation, the way in which the policy was implemented may be scrutinised by the NAO, and the relevant permanent secretary held to account for departmental performance. This does not prevent mistargeted or unworkable policy emerging, but it does reduce some of the risks.

The process of making Budgets and tax policy is different. Much of the process remains shrouded in secrecy. Tax policy is the prerogative of the Chancellor, with the Cabinet only let in on the Budget details a couple of hours before the public and no provision made for collective discussion. The Treasury leads on tax policy, with no other department in a position to perform its challenge role. There is no need to bid for a legislative slot – the Treasury is guaranteed an annual Finance Bill. The House of Lords is excluded from scrutiny without the compensation of more powerful scrutiny in the Commons.

At the heart of this exceptionalism is the old-fashioned view that the Chancellor – making difficult decisions on how to raise the money that his colleagues want to spend – needs protection from them, and then confronts the public with some harsh truths. Secrecy is justified partly on the basis of the need to prevent market-sensitive information from leaking out and the need to prevent forestalling in advance of a tax change – but it also applies to many decisions that are neither market sensitive nor where there is a real forestalling risk. There is also a political justification – it allows the Chancellor to retain an element of surprise.

This all culminates in the drama of Budget (and Autumn Statement) Day itself. In his memoirs, former Chancellor Nigel Lawson reflected that 'quite apart from the fact that it can be fun, it seems to me no bad thing that for one day in the year the attention of the entire nation should be focused on the national economy and on the issues involved'.[5] But the temptation to eclipse that dose of economic realism with an eye-catching rabbit pulled from a hat has proved irresistible to many chancellors.

Former Chancellor Alistair Darling described the role:

> The first thing you need to remember is it's a very political job. That doesn't mean you're spending lots of time on manoeuvres or anything like that, but I mean the Budget Statement, for example, isn't just like a company annual report or announcing your housekeeping measures for the next year, it is a political statement of what the government is about.[6]

This means that Budgets are a mix of politics – battles over levels of income tax, how to distribute any benefits of tax reductions, and who to make bear the burden of paying – and highly technical measures to refine the operational detail of the tax system that are understood by few outside HMRC, the Treasury and the tax profession. This balancing act undoubtedly exacerbates many of the problems of tax policy making.

In a recent speech, former Treasury Second Permanent Secretary, Sir John Kingman, described how the Budget process itself created a dynamic for action: "[T]here have been some gimmicks over the years, including some that have been expensive and wasteful. It is also true that the nature of the Budget and the Autumn Statement/ Pre-Budget Report processes creates pressure for these."[7] He then went on to take the blame for officials failing to come up with "better, more substantive ideas" for the Chancellor to announce in place of such 'gimmicks' – without considering the option of simply doing less. Chancellors abhor a Budget policy vacuum.

In this report we look at the process of tax policy making and Budgets, to ask whether it can be done better. We build on the critique in the Institute for Fiscal Studies' 2011 Mirrlees Review, which set out a similar appraisal of the context for, and process of, tax policy making in the UK:

> Good tax policy requires an open, transparent, and well-informed public debate based on credible data. Good tax policy also requires effective processes within government. At present in the UK, there is arguably a more limited level of discussion and debate about tax policy within government, and as part of the legislative process, than in other areas of policy.[8]

While making a number of recommendations for reform of the tax system, the Mirrlees Review focused less on the policy making process itself. That is the gap we hope this report will fill. In April 2016, the Chartered Institute of Taxation (CIOT) (the professional body for tax practitioners), the Institute for Fiscal Studies (IFS) and the Institute for Government launched a project to look at whether we could make tax policy better and produce better Budgets.

Since then we have undertaken around 50 interviews with stakeholders from across the tax system, received written submissions from more than 20 additional individuals and organisations, held three private roundtables with specialists, and reviewed the existing literature in this area, as well as identifying lessons from our own organisations' experience and prior work. We have also benefited from conversations with officials working on Budgets in other countries.

Some of our recommendations echo those made in earlier reports.[9] Some are new. They aim to build on the reforms that the last Chancellor, George Osborne, initiated in 2010.

Since we embarked on this project in Spring 2016, a new chancellor has been appointed. In his first Autumn Statement, Philip Hammond adopted one of the key early findings from this project:[10] that there should be a return to having just one principal fiscal event per year – a recommendation that had also been made by the International Monetary Fund (IMF).[11] In making the announcement of the 'abolition' of the Autumn Statement, the Chancellor said:

> No other major economy makes hundreds of tax changes twice a year, and neither should we.
>
> So the Spring Budget in a few months will be the final Spring Budget.
>
> Starting in Autumn 2017, Britain will have an Autumn Budget, announcing tax changes well in advance of the start of the tax year.
>
> From 2018 there will be a Spring Statement, responding to the forecast from the OBR [Office for Budget Responsibility], but no major fiscal event.
>
> If unexpected changes in the economy require it, then I will, of course, announce actions at the Spring Statement, but I won't make significant changes twice a year just for the sake of it.
>
> This change will also allow for greater Parliamentary scrutiny of Budget measures ahead of their implementation.[12]

The proposals we make in this report are designed to make a success of this change and to ensure that it opens the way to better Budgets – and helps government to make tax policy better.

2. Why change?

Longstanding and more recent problems with tax policy making suggest that there is a compelling case for change. In this section we outline some of the most visible symptoms of those problems, as well as the context in which future tax policy will be made.

Much of what we discuss is not new. These problems have been around for a long time. Recent chancellors of both of the main parties have taken office with good intentions – to open up tax policy making, consult more and 'reduce the volume and frequency of changes to the tax code'.[13] There have been some significant institutional innovations: the OBR was a radical change in the way Budgets are made, and the Office of Tax Simplification (OTS), recently put on a statutory footing, has introduced a new element of challenge into the system. But, nonetheless, we still do not have the balance right between the political and technical aspects to ensure better Budgets and tax policy making. There are several symptoms of this in the current system, as we now explore.

2.1 Symptoms of problems in the current process

Budget 'rabbits' ...

The desire to capture the headlines on Budget Day leads all chancellors into the temptation to unveil so-called Budget 'rabbits'. These can range from surprise cuts in income tax rates, to changes in allowances (for example the new slices of allowance for savings or dividend income introduced in 2015), to the sugar levy, to major and far-reaching reforms to the pension system. The Treasury may subsequently embark on consultation on the detail, but the direction is already set.

... and reversals

However, a consequence of surprise is that the ground has rarely been adequately prepared in advance, meaning that aspects of the proposal can emerge that have not really been thought through and opposition can mobilise rapidly. Chancellors are forced into high-profile U-turns at a fiscal and political price. A striking example of an announcement and then reversal was the decision by Gordon Brown in 2002 to introduce a new 0% rate of corporation tax, which was reversed in 2005. Other examples include the following:

- the 10p lower rate of income tax had appeared in Labour's manifesto published in advance of the 1997 general election,[14] but its abolition was a Budget 'rabbit' to pay for a standard rate cut when it was announced in 2007 – uproar over the decision led to a £2.7 billion 'emergency Budget' the following year
- after the 2012 'omnishambles' Budget, the Treasury was forced to back down on minor changes to Value Added Tax (VAT) (including the 'pasty tax') and a proposed cap on tax reliefs for charitable donations.

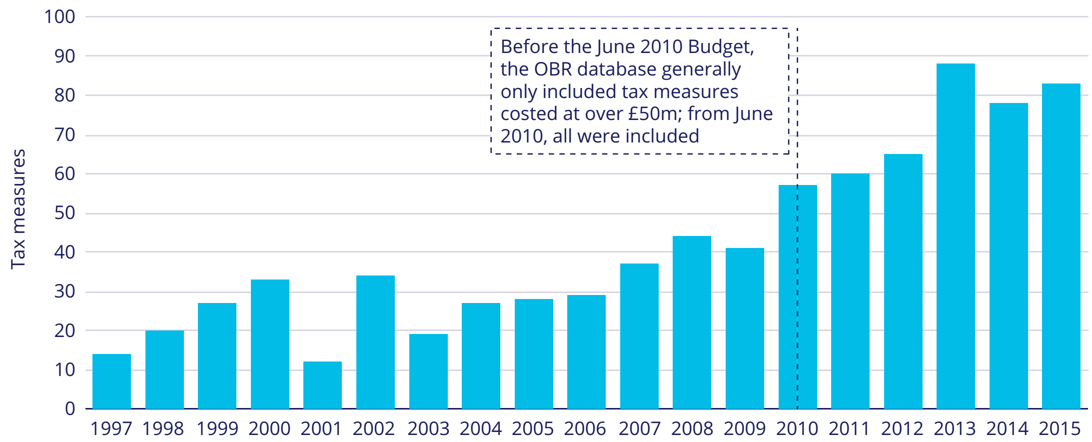
Non-tax measures in Budgets have also failed under political scrutiny. For example, changes to Personal Independence Payments were (comparatively) uncontroversial when unveiled before the 2016 Budget, but their juxtaposition in the Budget the following week with tax reductions for better-off taxpayers made them politically unsustainable – and they were abandoned within 48 hours of the Chancellor's speech.

One can surely ask whether the political price of these reversals outweighs the temporary benefit of the initial announcements.

Proliferation of measures ...

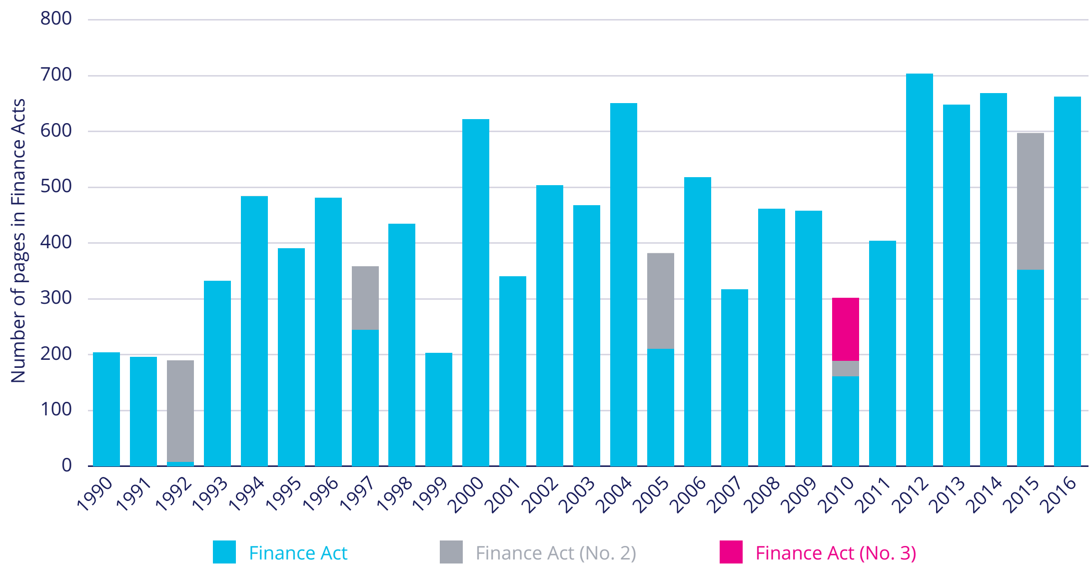
Politicians pay the price for high-profile reversals, but taxpayers more generally bear the burden of a proliferation of changes. There has been a steady increase in the number of measures introduced each year and in the length of Finance Bills, as illustrated in Figures 1 and 2. This puts a big strain on both those trying to respond to consultations and – a far larger group – those taxpayers and their advisers trying to keep on top of the constant treadmill of changes to tax law.

Figure 1: Number of tax measures by year, 1997–2015



Source: Institute for Government analysis of the OBR's policy measures database[15]

Figure 2: Number of pages in Finance Acts, 1990–2016

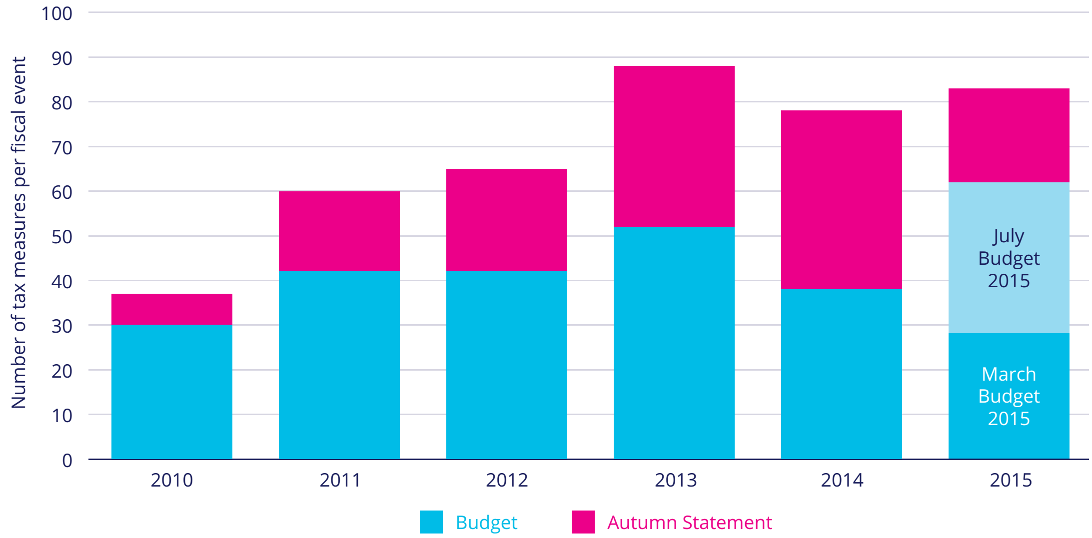


Source: Institute for Government analysis of legislation.gov.uk

... and fiscal events

Also notable has been, until the recent Autumn Statement, the effective move towards two full-scale fiscal events a year. In 1997, the introduction of the autumn Pre-Budget Report (PBR) was designed to 'report the Government's assessment of the economy, to outline our Budget aims and to encourage an informed debate of the choices before us'.[16] This, along with the biennial Comprehensive Spending Review, returned the Government to a cycle of Spring Budgets and Autumn Statements, as was usual before the unified November Budgets delivered between 1993 and 1997. However, PBRs and their successor Autumn Statements (since 2010) have contained increasing quantities of tax measures, representing a greater proportion of yearly tax measures, as shown in Figure 3. Alistair Darling described how events during the financial crisis meant he effectively gave six Budgets in his three-year tenure as Chancellor.[17] But even when times are less fraught, each event generates new pressure for officials to fill a 'Red Book' with attractive measures, tax and otherwise.[18] Between March 2015 and March 2016, Treasury and HMRC officials had to cope with four separate fiscal events.

Figure 3: Number of tax measures per fiscal event, Summer Budget 2010 to Autumn Statement 2015



Source: Institute for Government analysis of the OBR's policy measures database

Taxpayer confusion and uncertainty

A consequence of this Budget hyperactivity is that it is hard for individual taxpayers to make the long-term decisions they need to. In its assessment of the 2014 Budget submitted to the Treasury Select Committee, the CIOT noted that 'since the fundamental reforms in the Finance Act 2004, almost every subsequent Finance Act has made changes to the tax system around pensions' and that it was 'regrettable that some taxpayers, having made decisions based on the rules in place at that time, may now regret those decisions in light of the rules which are to apply in the future'.[19] For example, the decision to introduce a new form of pension saving through Lifetime ISAs (so-called LISAs) at the same time as the roll-out of automatic enrolment risks confusing taxpayers on their best option. The Financial Conduct Authority has warned of complexity: 'Investors may not sufficiently understand the differences between the features of a pension and a Lifetime ISA in order to make informed decisions about the benefits and risks of each for their own circumstances … and may lose out on an employer's pension contribution if they opt out of a workplace pension.'[20] A more co-ordinated approach and presentation would reduce the scope for confusion. Similar considerations apply to business taxes: businesses making long-term decisions on where to allocate their capital prize certainty, as the Confederation of British Industry has noted.[21]

Troubled implementation

Doing too much too quickly can lead to significant implementation problems, particularly if key decisions are nailed down before there has been adequate consultation. At the moment there is considerable concern about the implications for taxpayers of HMRC's major transformation project, Making Tax Digital, with the chair of the Treasury Select Committee joining tax and business bodies in calling for the Chancellor to consider a delay in order to get implementation right.[22] The contrast with the successful way self-assessment was introduced in the 1990s is stark. After initial consultation, the change was announced in the 1992 Budget with a target date of the 1996–97 tax year, but this was then put back by a year as the ongoing consultations showed the size of the problems faced. The need to get it right rather than just get it done was consistently recognised; unlike the implementation of Labour's flagship tax credit scheme, which was a case study government blunder.[23] Less far-reaching (but still politically damaging) examples of poor implementation include problems with the way in which the Treasury has specified the rules around Help to Buy ISAs.[24] Similarly, there are claims from some savings providers that they will not be able or willing to launch Lifetime ISAs on time because the Treasury has not provided enough details.[25]

Unclear value for money ...

In 2014, the NAO drew attention to the lack of proper control or management of tax reliefs, writing that:

> HM Treasury and HMRC do not keep track of tax reliefs intended to change behaviour, or adequately report to Parliament or the public on whether tax reliefs are expensive or work as expected. We found some examples where HMRC and HM Treasury proactively monitored and evaluated tax reliefs, but in general the Departments do not test whether their aims for the reliefs are being achieved. Until they monitor the use and impact of tax reliefs, and act promptly to analyse increases in their costs, HMRC and the Treasury's administration of tax reliefs cannot be value for money.[26]

This point has been repeated, with a Public Accounts Committee report on HMRC's 2015–16 performance stating that 'despite our repeated recommendations, HMRC still does not make tax reliefs sufficiently visible to support parliamentary scrutiny and public debate about areas where the UK chooses not to collect tax.'[27]

... and a weak evidence base

Although the OBR will challenge the assumptions behind costings, its role does not extend to the evidence base behind tax policy measures. A recent assessment of the transparency of the evidence base behind policies identified Budget measures as being particularly opaque in this respect.[28] The chair of the Social Security Advisory Committee, discussing Budget welfare measures, has also drawn attention to the impact of the Budget process on policy making:

> The Committee has observed that legislation required to deliver policies announced by the Chancellor during his Budget or Autumn Statements is often developed at pace to meet challenging deadlines set by HM Treasury. This has regularly resulted in secondary legislation being presented to us without meaningful analysis of impact or interactions with other parts of the benefit system. The absence of evidence underpinning some of the Government's policy choices has been a significant concern to us over the past year.[29]

2.2 Changing context

These are all symptoms of a system with a bias towards constant and time-pressured actions and too little scope for challenge. But there are further reasons to think that reform may be needed as the context in which tax policy is made becomes more constrained and complex.

Continued pressure on public finances …

Despite some loosening of the fiscal rules in the 2016 Autumn Statement, the UK continues to face considerable pressure on the public finances. The OBR has noted that 'demographic change is a key long-term pressure on the public finances' as an ageing population drives higher spending on health and social care, and pensions.[30] Alongside this, the drive for further deficit-reduction measures goes on even as pressures for more public spending in some areas grow following six years of restraint.[31]

… and the tax base

Meanwhile, the IFS has drawn attention to the risks to the tax base, where there is an increasing dependence on relatively volatile taxes (such as stamp duty) and on a narrow tranche of taxpayers for a significant proportion of revenue. In 2015–16, the top 1% of income tax payers (some 0.56% of the UK population) paid 27.5% of income tax.[32]

The need to be 'alert to new threats to our tax base' – and act to counter them – was a repeated theme of the 2016 Autumn Statement.[33] Shortly afterwards, the *Financial Times* used OBR numbers to warn that 'a UK tax shortfall terror looms for Philip Hammond'.[34]

… compounded by political constraints

The Conservative manifesto for the 2015 general election pledged not to put up any of the major taxes and made a commitment to move further on increasing both the personal allowance and the starting point for higher-rate income tax.[35] In a recent interview, David Cameron's former director of strategy commented that the five-year tax lock 'was probably the dumbest economic policy that anyone could make, but we kind of cooked it up on the hoof a couple of days before, because we had a hole in the grid and we needed to fill it'.[36] Meanwhile, increasing fuel duties has come to be seen as politically unacceptable – and perhaps even undeliverable. Fuel duties have been frozen since a cut in 2011. That decision alone means that in 2016–17 we are forgoing around £4.5 billion a year in lost revenue annually compared with raising the duty in line with inflation.[37]

Devolution of taxation powers

The UK Government is no longer the sole tax policy making authority in the UK. We are now seeing some devolution of tax powers to the devolved administrations. In Scotland, taxes on property transactions and landfill have already been devolved, as has the power to set a single Scottish rate of income tax. From 2017–18, all income tax rates and bands above the personal allowance will be devolved. Wales will create the Welsh Revenue Authority to administer its property transaction and landfill taxes from 2018, and legislation to devolve partial income tax powers is currently before Parliament. By 2018, corporation tax will be devolved to the Northern Ireland Assembly.

This opens the way for more policy divergence. It also has potential implications for Budget timetables. The size of devolved budgets is partly determined by block grant adjustment calculations, and these in turn depend on decisions announced in the UK Government's Autumn Statement (and in the future Autumn Budget). Budget planning by devolved governments is therefore subject to significant uncertainty until relatively late in the financial year.[38] In response, the Scottish Government has delayed publication of its draft Budget, leaving less time for parliamentary scrutiny and for HMRC to prepare tax codes ahead of the next financial year.

Even though the current powers are relatively limited, tax devolution opens up the possibility of different approaches to policy and policy making, from which the UK Government may learn.[39] With fewer powers, and less internal capacity, the devolved administrations so far have seemed keener on drawing on outside views across a range of issues. With none of the UK historical baggage, they also have the scope to rethink what good tax policy making looks like.

Brexit

The final change in context is the UK's decision to leave the European Union, which is expected to take place by 2019. The fallout from Brexit adds to the risk around revenues, particularly those dependent on the City. Depending on the form of Brexit, the UK is likely to gain more discretion – and thus more pressure if the current system for policy making is unreformed – to tinker with parts of the tax system, notably VAT and excise duties. The uncertainty induced by Brexit, which risks deterring investment, will put a premium on the UK's ability to offer itself as a good place to come to or stay and do business. It will also absorb significant time and attention from policy makers within government – and also from those outside who have to deal with the consequences.

In the next section, we set out the weaknesses in the system that drive the symptoms that we have described here, and explore possible solutions to them.

3. How to make tax policy and Budgets better

Many areas of policy making suffer from being caught between highly charged politics and the technical details of implementation. But the constant treadmill of fiscal events and Finance Bills means that tax policy is particularly at risk of falling between politics and technicalities.

Both high politics and technical detail are unavoidable in tax policy. In order for tax policy to be legitimate, it needs to be derived from a clear political process. Yet to be implemented effectively, it also requires (often highly) technical provisions. Meanwhile, few chancellors have been able to resist using tax for 'low' political purposes: to generate a favourable headline, to curry favour with a specific interest group or to set a political trap for the Opposition. Tax policy making has suffered from being caught between these pressures, in a system with inadequate challenge.

Our research identified seven areas of weakness that are derived from these political and technical imperatives, and which are responsible for driving the symptoms outlined in the previous section. These are:

- **strategic direction** – government fails to set out and follow a direction of travel for specific areas of tax policy, or the tax system as a whole
- **external engagement** – despite recent improvements, weaknesses remain in the way that external stakeholders are consulted and engaged in tax policy changes
- **capacity in the Treasury and HMRC** – questions remain over whether there is the right capability in the Treasury and HMRC to develop tax policy that works well, and over the operation of the policy partnership between the two departments
- **internal Budget processes** – the exceptional processes applied to tax policy making and Budget decisions mean that many of the safeguards against poor policy making within government are absent, with consequences for the quality of policy making
- **legislation and parliamentary scrutiny** – there are concerns about the quality of tax legislation and the means by which Parliament scrutinises Finance Bills and other proposed tax changes
- **post-legislative review and evaluation** – once tax changes have been implemented, there is little scrutiny to hold government to account for the impacts of the policy
- **public debate** – the quality of public understanding and engagement with the tax system is low, which militates against effective policy making.

These challenges are all interlinked. For example, a clearer statement of what government is trying to achieve could improve consultation and public debate. Setting clear objectives for parts of the tax system would enable better legislative scrutiny and also more effective post-legislative review.

Challenges within these areas are not unique to the UK. As Wales and Wales' study of tax policy making across multiple jurisdictions showed, many parliamentary democracies suffer from similar issues to the UK, including poor public engagement.[40] Yet our research also suggested that there are clear ways to improve the quality of UK tax policy making. This section explores each of the seven weaknesses of tax policy making in detail, drawing on evidence from our interviews and the existing literature. For each challenge, possible solutions are outlined, drawing on examples of good practice from other areas of policy making and from around the world. Building on this, in the final section we set out 10 possible steps to create better Budgets and tax policy.

3.1 Strategic direction

There is little sense of a clear strategic direction for tax policy that emerges from Budgets. This is the result of a tendency towards 'ad hocery', and the lack of a clear statement of government's vision for the development of the tax system, or any sense of principles or priorities. Future options and the prospects for long-term reform are constrained by decision making taking place behind closed doors and a reluctance to prepare the ground for major future changes, for example by commissioning external reviews of elements of the tax system.

Avoiding an ad hoc approach

Chancellors perceive some benefits from failing to commit themselves to forward plans for tax policy: it allows them to retain the necessary flexibility to respond to economic circumstances, but it also leaves them able to spring surprises. However, while some degree of flexibility is necessary, the current approach of ad hoc changes runs the risk of poor policies creeping into Budgets, which unnecessarily complicate or contradict other moves. The political benefits are mixed, at best, as we showed in section 2. Many of our interviewees expressed concern about constant 'tinkering' in the tax system, which they related to both the constant cycle of fiscal events and the lack of a sense of strategic direction for parts of the tax system. In an otherwise very positive assessment of the UK's fiscal transparency, the IMF noted: '[T]he frequency with which fiscal policy objectives appear to change, combined with the Autumn Statement effectively evolving, in recent years, into a mini budget makes it difficult to fully grasp how fiscal policy is being implemented through the budget.'[41]

The lack of a strategic approach leaves vital areas, which often involve long-term decisions by taxpayers, prone to serial policy change:

- Savings and pensions policy has experienced considerable change in almost every Finance Act since 2004.[42] In the latest instalment, in October 2016, the Treasury announced that plans to let pensioners sell their annuities, originally unveiled in 2015, will be scrapped.[43] The cumulative effect of all these changes has produced a system that is now confusing for individual taxpayers, and created problems for those who provide savings products.[44]

- Many of these tax changes have been undertaken at the same time as the roll-out of automatic enrolment by the Department for Work and Pensions, whereby every employer in the UK has to enrol staff into a pension scheme and contribute towards it. This is designed to address the problem of chronic undersaving for retirement. Yet policy does not seem to make the necessary links between Budget changes and progress on automatic enrolment, possibly because of split departmental responsibilities.

- Another area where the Government has announced a series of policy changes without notice of intention or discussion of the problem it is trying to deal with is in the series of changes to the tax treatment of buy-to-let properties and landlords. This has left people unable to plan.
- In other areas, tax changes do not cohere with wider government policy. For example, although the problem of housing affordability can be seen as one principally of a lack of supply, Budget changes have been focused on subsidising demand, such as through Help to Buy ISAs. There is no attempt to look at property taxation as part of a wider review of how to address the UK's (or England's) housing crisis.

Measures can also become divorced from their wider strategic context. For example, the announcement of a levy on sugary drinks (at the 2016 Budget) came out months before the Government finally published its childhood obesity strategy in August 2016.[45] The Government's 2011 Carbon Plan mentions Vehicle Excise Duty (VED) incentives for switching to ultra-low-emission vehicles, but although it refers to the need to incentivise the switch to more efficient combustion engines, it makes no mention of fuel duties. Despite the Government's commitments to reduce carbon emissions (and improve air quality), fuel duties were reduced in 2011, and have remained frozen since then.[46]

These problems relate to other weaknesses in the policy making process that we discuss later in this report. The lack of a strategy for parts or the whole of the tax system reduces the quality of external engagement and makes it harder for Parliament to hold government to account for the consistency of measures with its declared strategy.

Could it be different?

One useful innovation that has demonstrated the possibilities and benefits of a more strategic approach is the *Corporate Tax Road Map*, produced in 2010, setting out the proposed path of corporate tax changes for the 2010–15 Parliament and aiming 'to ensure greater stability and certainty in the tax system, and also a more consultative approach to policymaking'.[47] Both businesses and tax professionals told us that they found this useful in enabling them to plan ahead and organise their involvement in consultations. While the 2010 road map was viewed as a positive development, many people told us that its successor, *Business Tax Road Map*,[48] published in 2016, is less useful because it appears simply to set out the measures that have been already announced, presents less reasoning around plans and is less forward-looking.

The House of Lords Economic Affairs Committee has previously highlighted the road-map approach as a positive innovation, writing that:

> We continue to believe that tax policy would be developed more coherently if, at the beginning of every government, clear statements were to be published, similar to the 2010 company [sic] tax road map. These would give details of the government's overall strategic aims for different parts of the tax system. We recommend this for the future.[49]

Preparing the ground for future reform

One consequence of the Chancellor's grip on all things to do with tax is that there is no attempt to widen the debate on the major choices the Government needs to make. That cuts off a potential route to develop wider policy options, build consensus and provide the basis for longer-term, more secure reform.

Although the Treasury opens up the Budget process each year to representations, most of these are relatively self-interested. Think tanks and non-governmental organisations often produce recommendations about tax as part of more general policy strategies, but these can suffer from a lack of understanding of the feasibility of achieving objectives through tax. Fully independent reviews, such as the IFS's Mirrlees Review,[50] which offered a prospectus for a complete overhaul of the tax system, failed to gain immediate traction with policy makers.[51]

Could it be different?

The UK Government has made notably little use of external reviews on tax policy (although there have been influential reviews for parties in opposition). This contrasts with other countries, as shown in Box 1.

Box 1: External reviews in other countries

- New Zealand attributes much of its consensus on tax policy to its development through independent reviews commissioned by the Government. The country's Generic Tax Policy Process (GTPP)[52] was developed following an independent review carried out in 1993–94. The Tax Working Group, which reported in 2010,[53] was funded jointly by the Treasury, Inland Revenue and Victoria University of Wellington. This laid the foundations for its low rates/few reliefs model.
- In Australia, the Asprey Review helped to generate support for the introduction of the Goods and Services Tax, allowing Australia to follow a reform that was already spreading in other countries; and the Ralph Review examined reform of business taxation. The more recent Henry Review, conducted by the-then top Treasury civil servant, was thought to produce useful information and analysis but its main policy impact – the introduction of a Resources Profits Super Tax – fell early victim to 'a mixture of expensive, well-targeted and aggressive campaigning by the mining industry and (arguably) political ineptitude and cowardice'.[54]
- Sweden has a tradition of using small, independent expert committees to look at specific aspects of the tax system. The Ministry of Finance appoints members to the committee and dictates its terms of reference, but the work and conclusions of the committees are independent.[55]

Looking at a number of external policy reviews, including the Asprey Review, Gary Banks, former chair of Australia's Productivity Commission, noted their potential benefits:

> The arms length nature of these reviews … meant that the reviews were generally seen as being not only 'expert', but above politics – in what were often politically sensitive, as well as complex, areas of public policy. This ensured that their recommendations carried more weight with the community.

> At the same time, because the reviews were removed from executive government … the governments of the day had the advantage of 'deniability'. They also had an opportunity, at a distance, to read the public's reaction and to consider the implications of different courses of action.[56]

These are very similar results to the ones that UK Government ministers found from the Turner inquiry into pensions, which opened the door to the raising of the state pension age, something that was previously deemed unthinkable.[57] James Purnell, Pensions Minister from May 2006 to June 2007, noted how the debate had been transformed:

> Raising the state pension age is one of [those] things which you kind of think 'Oh my god, if you say this everybody is going to go crazy.' But you said it lots and lots of times in a series of controlled explosions and it went from page one of the paper, to page three to page five. And by the end it was 'Oh yeah, everybody knows they're raising the retirement age.'[58]

On tax, the OTS review of the potential for the alignment of income tax and National Insurance Contributions (NICs)[59] – economically rational but with potential for a large number of hard-to-compensate losers – may presage a bigger role for the OTS in promoting debate on future tax options. The OTS has recently published a report calling for a proper public debate on the options it has identified for reform.[60] However, the press coverage – which suggested that this is a firm government proposal rather than an option being floated by an independent adviser to the Treasury, and which focused disproportionately on the 'losers' from such a change (rather than the more numerous 'winners') – indicates the scale of the challenge that ministers and officials face if they want to generate a more constructive public conversation about tax.[61] If the OTS were to become a vehicle for independent review of a broader range of issues, it would need a wider remit than simplification.

Further benefits of external reviews are that they involve outsiders in helping think through tax options – broadening the tax policy making community – and typically encompass a much more systematic programme of public engagement. They can therefore improve the quality of debate about the tax system, a subject explored in more detail later in this report.

3.2 External engagement

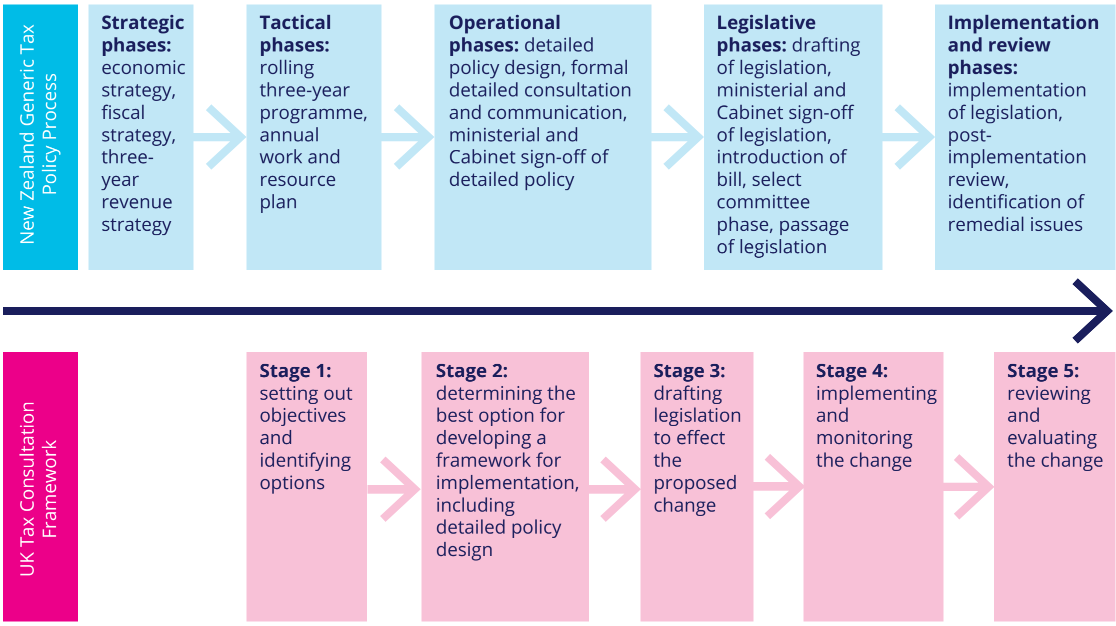
Improvements in setting a clear strategic direction for tax would help to tackle another challenge in the current system – that despite recent improvements, there remain weaknesses around engaging external actors in the development of tax policy.

Tax professionals we interviewed said that they had observed a significant increase in the willingness of governments to consult on tax policy, and a greater willingness to publish data.[62] The most recent changes came in 2010 when the incoming Chancellor launched *Tax Policy Making: A new approach*,[63] though Stephen Timms' time as minister responsible for tax[64] was also identified as a period when there had been a 'step change' in the Government's willingness to consult.[65] One – albeit crude – indication of that increased propensity to consult was that the number of submissions being made to government by the CIOT increased from around 20 a year in the late 1980s to around 200 a year in the 2010s.[66]

The final *Tax Consultation Framework* that the Treasury and HMRC produced in 2011, which followed on from the New Approach, identified five stages to the tax policy making process. In it the Government committed itself to 'engage interested parties on changes to tax policy and legislation at each key stage of developing and implementing the policy', where possible (for some measures, such as anti-avoidance where there is a risk of forestalling, consultation will not be possible), and to 'carry out at least one formal, written, public consultation in areas of significant reform'.[67] It also contained a commitment to extend the tax policy cycle by publishing draft legislation in most cases, resulting in the majority of the draft Finance Bill being published three months in advance, and tax measures at the Budget being announced for inclusion in the following year's Finance Bill. That was a contrast to the past practice of announcement in March for most of the measures and instant translation into a Finance Bill. Tax practitioners see this process leading, at times, to changes in the final clauses presented to Parliament.

On paper, the New Approach looks very like New Zealand's much-lauded Generic Tax Policy Process (GTPP), which was developed by the Organisational Review Committee led by former judge Sir Ivor Richardson in 1993–94.[68] The New Zealand and UK processes are described in Figure 4.

Figure 4: New Zealand's Generic Tax Policy Process versus the UK's Tax Consultation Framework



Source: Institute for Government

But it is also clear that despite the similarities, the practice between the two countries differs considerably – partly because in New Zealand a consensus on a tax structure with low rates and few reliefs has prevailed since the 1980s, and tax changes are not the centrepiece of the annual Budget. However, what is also notable is that the New Zealand process starts more 'upstream' – with a strategic phase and a commitment to a rolling three-year work programme – whereas the UK framework leaps immediately to the individual policy measure. As a result, while legislation is the third stage of the UK process, it is the fourth stage in New Zealand.

Sticking to the new approach

Many people we spoke to thought that the New Approach was working well, and was an improvement – when it was applied. Practitioners thought that the consultation on the statutory residence test had been handled well, in part due to a delay designed to enable a longer period of consultation. Others pointed towards the 2015 pensions consultation as an example of good practice, as it started from laying out options for change, but it occurred within the wider context of continued ad hoc pension 'rabbits'. The Tax Professionals Forum, a body of tax practitioners set up by the Government to monitor their compliance with the New Approach, has regularly acknowledged government progress on consultation. Yet it has also identified consultations that have 'fallen short of the aspirational target that the Government has set itself'.[69] Examining the 2014 draft Finance Bill, the House of Lords Economic Affairs Committee similarly noted that many areas of tax had seen the New Approach 'applied comprehensively' since 2011, but warned that:

> [E]ach year there seem to be a minority of cases where that high standard fails to be achieved because the new approach has not been observed, or it has only been nominally adhered to, or time pressures around the third stage … have curtailed consultation and prevented the resulting legislation from being as considered as it might otherwise have been.[70]

There was a widespread view among people we talked to that too many consultations start too late in the policy making process, and focus on the technical detail of how to make changes, not on the rationale for the changes or the different potential ways of delivering a particular objective. In short, there was a view that the New Approach needs following more consistently.

One very current example of starting consultations at too late a stage is the major Making Tax Digital programme. In this case, two major decisions had already been taken before consultation started – to require all businesses to maintain accounts online and to make quarterly online returns to HMRC. Those pre-emptive decisions were felt to have big implications for many small businesses – but were made without consultation and without them being able to challenge the assessment of compliance costs. Concerns about this consultation were raised with ministers by the Tax Professionals Forum in December 2015.[71]

A further example of a failure to consult is change to Entrepreneurs' Relief in 2015. The CIOT explained, in a submission to a House of Lords committee, that:

> [T]he 2015 changes to entrepreneurs' relief … were announced at Budget 2015 to take effect from the same day, 18 March 2015, and rushed through Parliament the following week in a pre-election Finance Act, with no prior consultation on the changes. These changes had to be revisited and numerous changes made in Finance Act 2016. That the Government were willing to reopen the issue was welcome but a proper consultation process would have enabled the flaws in the legislation to be identified and acted upon before passing into law.[72]

On other measures, consultation has taken place only after the main features of the policy have been announced. The CIOT has noted that changes to the structure of Stamp Duty Land Tax (SDLT), and to the taxation of buy-to-let landlords, have been announced in Budgets and Autumn Statements following the 2015 general election with no initial stage of consultation.[73] In other cases, key decisions have been made before consultation, as discussed above in relation to Making Tax Digital.[74]

Could it be different?

A key message from interviewees was that consultation needs to more consistently follow examples of good practice. Improvements in recent years demonstrate that there is scope to consult well.

Departments other than the Treasury and HMRC often issue calls for evidence on topics where they are thinking of taking action to help define the problem. The OTS has taken this approach in some of its consultations, for example on the closer alignment of income tax and NICs. A 2015 consultation included two short surveys, aimed at different groups – including individuals and employers – to gather 'evidence of where the complexities lie in the current differences between income tax and NICs'.[75] However, there are only a handful of examples in our consultation sample of the Treasury/HMRC issuing calls for evidence.[76] Some interviewees suggested to us that 'pre-consulting' in this way was useful in ensuring that later consultations were asking the right questions. The announcement in the 2016 Autumn Statement that the Treasury would be reviewing the tax treatment of employment could be another sign that it is contemplating earlier option consultation.[77]

Consultation by the Treasury on non-tax measures also shows the scope for more consistent consultation. For example, the CIOT notes the big contrast between the way the buy-to-let tax changes in 2015 mentioned above were handled and the way in which the Treasury then consulted on proposed regulatory changes to the Bank of England's powers to deal with overheating in the housing market.

The New Zealand example shows that it is possible to stick more rigorously to a commitment to early consultation and engagement in some of the strategic choices on tax policy. Officials we spoke to there told us that it really is only in exceptional cases that the GTPP is not followed for tax policy making.

Broadening consultation and providing feedback

Within the existing consultation processes, large professional firms and representative bodies are generally well prepared to respond to consultations, and have the resources to do so. However, even they can sometimes feel overwhelmed by the volume of consultation and the time and resources it can take to stay on top of it.

We heard widespread acknowledgement that while the commitment to consultation is welcome, the sheer volume of changes being consulted on[78] strains resources on both sides of the relationship. This is particularly the case given that consultations are often released in batches, so that consultees may be working on multiple responses at one time. The constraints within government mean that consultees often do not receive feedback on their inputs. In turn, that makes it hard for them to improve the quality of their engagement with government – and makes it harder for those that are charities to justify the time and resources devoted to responding to consultations.

The resources that responding to consultations requires also means that there is much less input from those who are not as well organised, and who are not primed to respond to multiple government consultations. This, combined with the challenges of identifying and communicating with some non-core consultee groups, can mean that whole issues are missed in conventional consultations. For example, in 2015 a change to European Union (EU) VAT rules around the selling of digital goods and services means that UK businesses are now required to pay VAT in EU countries where they make sales. Yet complying with this involves either registering for VAT with the country in question or registering with HMRC's VAT Mini One Stop Shop (VAT MOSS) scheme. This has caught out a number of micro-businesses, as HMRC was not aware that many sole traders were not registered for VAT (as their sales were below the UK VAT threshold of £81,000), but sold digital goods and services online in other EU countries.[79]

Could it be different?

There are some very clear problems in consultation that emerge from the above: too many changes being looked at, at any given point, putting a burden even on the well organised; combined with problems in reaching groups who are not well organised. Doing less would create the space and resources to do things better.

This puts the onus on government to seek out consultees who may be affected – and make it easy for them to feed in. A number of our interviewees drew attention to the more proactive approach to seeking consultation inputs taken by the OTS. Another approach that interviewees welcomed was the use of open days by HMRC. At these events, held around the country, HMRC officials gave a presentation outlining a newly announced measure, and business stakeholders provided feedback. But these sorts of active consultation need to be standard practice on measures likely to have significant impacts. There are other mechanisms that could play a more active role: in 2006, HMRC established an Administrative Burdens Advisory Board with a remit to 'bring a real business perspective to HMRC' and act as a critical friend in order to reduce the burdens on small business taxpayers.[80] It acts mainly as a channel into HMRC for small business concerns about the existing system, and focuses primarily on the practical aspects of the system, such as customer service targets. It produces annual reports, collating the comments it receives from small business stakeholders, and shares this with HMRC's Executive Committee. But a reconstituted and better-resourced Administrative Burdens Advisory Board could be given an expanded mission – to be the experts on how to reach those who are poorly organised or lack the time to respond to tax consultations, before it is too late.

There are some areas where stakeholders and officials may benefit from a more formal continuing relationship around specific aspects of the tax system. The Department for Work and Pensions set up the Shared Intelligence Forum with affected employers to manage the roll-out of automatic enrolment, an approach that may work for the roll-out of major reforms such as Making Tax Digital.[81] The Department for Business, Innovation & Skills set up successful sector councils to promote 'strategic dialogue' with businesses with strategic importance to the UK economy.[82] Such councils for tax could be used to broaden engagement, and might be a way of encouraging co-production of road maps for areas of tax discussed earlier in this report.

Giving feedback on consultation responses is a time-consuming process. But a number of our interviewees regretted the absence of feedback and felt that if the Treasury and HMRC took more time to provide structured feedback on the reasons they have rejected consultation responses, it could lead to an improvement in the quality of representation they receive. An example of good practice in providing useful feedback – on a non-tax matter – is the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice's response to a consultation on applying advertising standards to e-cigarettes, which detailed the reasons why the committees accepted or rejected responses.[83]

3.3 Capacity in the Treasury and HMRC

A concern frequently expressed by our interviewees was over the capacity of the Treasury and HMRC. This includes questions over the internal capability of, and the division of responsibilities between, the two departments. A second set of concerns focuses on the ability of the departments to access external tax expertise.

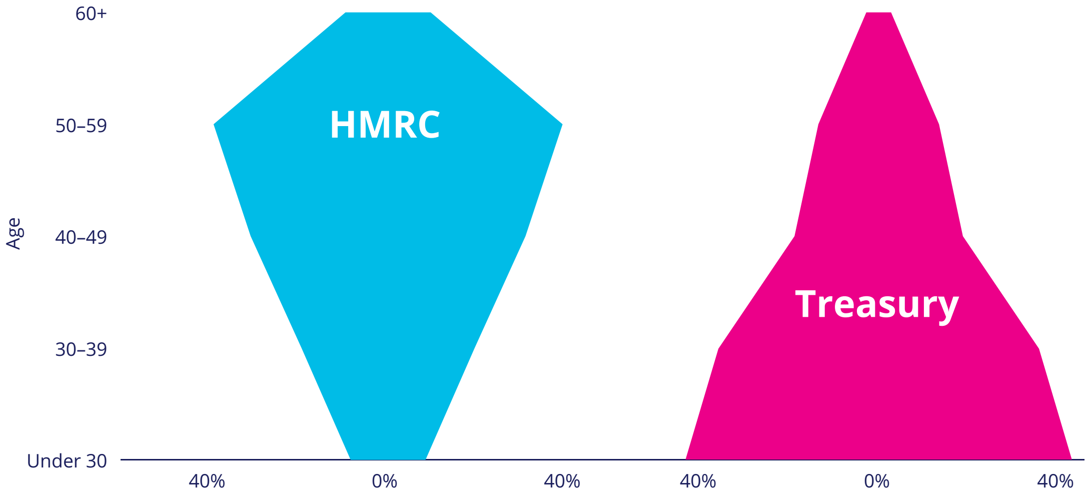
Recent years have seen major changes to structures and processes of policy making in the Treasury and HMRC. The 2004 O'Donnell Review[84] placed responsibility for tax policy in the Treasury, and 'policy maintenance' in HMRC, the latter being created from the merger of the previous Inland Revenue and HM Customs and Excise departments. Yet many of those we spoke to suggested that the balance of responsibilities between the two departments has created a distance between policy and the operational front line, which is exacerbated by problems engaging external expertise. Below we examine some of the challenges these issues pose for the tax policy making process.

Developing internal capability

The O'Donnell Review called for 'frequent interchange between the new department and the Treasury'.[85] When the Treasury first took over responsibility for tax policy, its senior ranks drew heavily on HMRC expertise – with two out of four directors from HMRC and the third director a private sector tax specialist. However, some of the people we interviewed felt that the initial impetus behind interchange had proved harder to maintain. As Sir Nicholas Macpherson, former Treasury Permanent Secretary, wrote when reviewing the first 10 years of the new arrangements: 'I would still like to see greater interchange between our two departments and I would like us to give more recognition of the special relationship – with the Treasury acting as a better-informed and more effective shareholder.'[86]

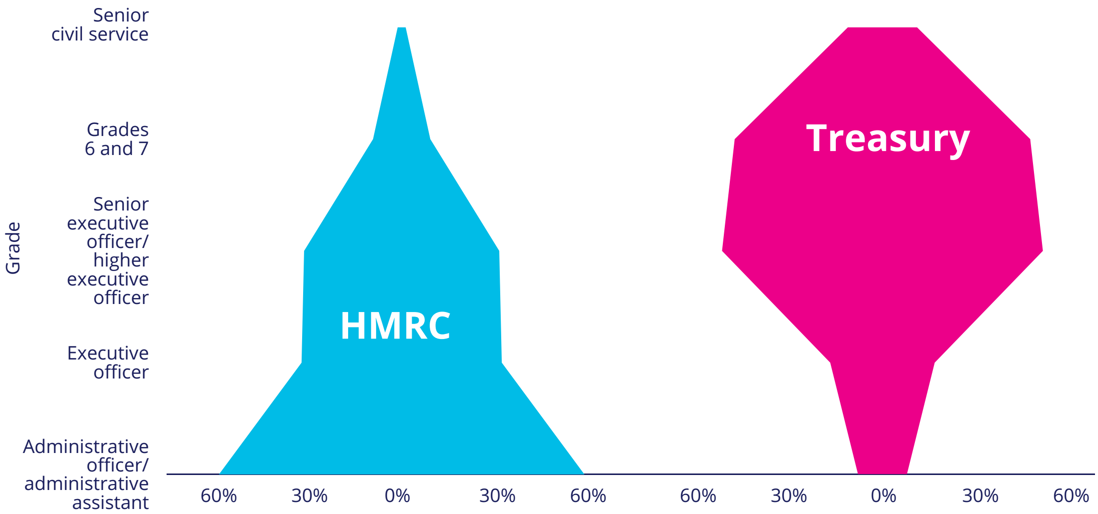
We heard from multiple interviewees that, with a few exceptions, HMRC people have been reluctant to move to the Treasury, citing cultural differences, the length of Treasury hours and unfavourable pay differentials. HMRC staff, who need to be able to demonstrate experience in managing large operations, have not seen Treasury policy experience as a route to advancement. The differences between the departments are illustrated starkly by the differences in age profile and structure of the two departments, as shown in Figures 5 and 6.

Figure 5: Age composition of HMRC and the Treasury, 2015 (percentage of staff in each age group – headcount)



Source: Institute for Government analysis of the Office for National Statistics' Annual Civil Service Employment Survey, 2015

Figure 6: Grade composition of HMRC and the Treasury, 2015 (percentage of staff at each grade – headcount)



Source: Institute for Government analysis of the Office for National Statistics' Annual Civil Service Employment Survey, 2015

The Treasury also suffers from high levels of staff turnover and internal churn, meaning that outsiders often have to deal with people at more junior levels who have been in post for only a short time. As the 2012 White Review of the Treasury's response to the financial crisis highlighted: 'The Treasury has the highest turnover of any Whitehall department – three times higher than the UK civil service average. Since 2005–06, annual turnover has fluctuated around 25%. It peaked at 38% in 2008 and fell back to an annualised figure of 28% in 2011.'[87]

These, as the White Review noted, were levels of turnover comparable to those seen in call centres or the hospitality industry. The NAO expressed concern in a 2014 report about 'the risk of losing expertise and experience, which may adversely affect service quality and efficiency'.[88]

Many of those we spoke to felt that high turnover and lack of HMRC experience led to a lack of tax expertise and knowledge among their interlocutors in the Treasury tax policy teams.

The two departments recognise the issues raised and there are initiatives under way to try to tackle them. The appointment of Edward Troup, a former director general in the Treasury, as Permanent Secretary of HMRC, was a signal of the importance of tax policy expertise within HMRC. He has initiated a series of moves to boost the policy profession in HMRC and to increase the pool of policy people to overcome some of these barriers. In 2016, a civil service-wide recruitment campaign sought to recruit people to work specifically in policy vacancies. An internal reorganisation has created a new Customer Strategy and Tax Design Group to 'bring together our customer strategy, tax policy, process design and tax assurance teams'.[89] The CIOT has welcomed this as a potential step to increase HMRC's input into policy development.[90]

Within the Treasury there is a cross-departmental attempt to reduce turnover to below 20%. There are also moves to deepen its specialist tax policy capability. The Treasury recently launched a new 'tax policy career offer' to staff, encouraging them to take professional qualifications alongside a wider training offer to develop tax policy skills, more structured interchange with HMRC and the prospect of a specialist career path into the senior civil service in tax to reduce the pressure to move to gain experience in other Treasury teams in order to progress.

Could it be different?

The two sets of moves outlined above have the potential to create a stronger cadre of policy professionals within HMRC and boost tax expertise within the Treasury. But there are clear human resources issues to be addressed if there is to be more movement between the departments within a single profession. If this is a genuine new 'profession', there is a case for considering whether it needs to be part of the new pay arrangements that the *Civil Service Workforce Plan* envisages for specialisms.[91] That could also help to attract permanent hires from the private sector.

Accessing external expertise

As noted above, many interviewees felt that high turnover in the Treasury has led to a lack of tax expertise. While this might be compensated for by greater use of external knowledge and experience, there are questions about the ability of the Treasury and HMRC to effectively tap into this external expertise. There is also a difference between the external tax profession – focused on providing services to individuals and companies – and the Treasury/HMRC focus on developing policy for the tax system to work across populations of taxpayers.

Secondments have been one route to compensate for expertise gaps. The Government has used secondments from professional firms to bring in practitioner expertise. These tend to be at relatively junior level – people with perhaps five years' post-qualification experience. A senior HMRC official told us that these people were the most useful to HMRC – their up-to-date knowledge of the detail of current tax law can be combined with the civil service's own experience of making policy and dealing with ministers. Another model used by the Treasury has been to hire in external expertise on a short-term basis to work on a specific set of proposals.

Inward secondments have been the focus of considerable controversy as they have given rise to the impression that the people who help to develop tax provisions inside government then go outside and advise their clients on how to exploit them. Allegations of firms profiting in some way from internal knowledge gained from secondments have had a deterrent effect on firms and the Government, regardless of the extent to which the allegations are based on fact.[92] Absolute numbers of secondments remain low.

The client focus of the external tax profession reduces the opportunities for secondments in the other direction – client-focused advisers are not keen to bring in government officials. But where they are possible, secondments from government can increase internal understanding of how the system looks from the other end. The 2012 *Civil Service Reform Plan* contained commitments to offer more civil servants external secondment opportunities.[93] Nonetheless, despite this high-level encouragement, some staff who had taken advantage of the opportunities told us that they felt there was no planned re-entry strategy back into their home department and no attempt to draw on their experience and newly gained external perspectives.

Could it be different?

One way of immediately compensating for the perceived lack of tax expertise within government is to hire it in from outside. In the UK, people move from government into the private sector, but permanent moves in the other direction are exceptional — the stand-out example being the current chair of HMRC, Edward Troup. HMRC also managed to recruit Jennie Granger from the Australian Tax Office to be director general enforcement and compliance. Such flows are more developed elsewhere. The US Treasury has a model that combines economists, who generally join after completing a PhD and spend much of their career in the Treasury, with experienced commercial lawyers, who tend to stay for much shorter periods before returning to private practice.[94] This more fluid model (as exemplified by the career of the HMRC executive chair himself) may offer the best long-term way forward.

Secondments into HMRC and the Treasury continue to offer a valuable source of practical expertise, allowing both tax professionals and government to better understand each other's work. Rather than react to parliamentary criticism by reducing the number of secondments, it is important to take more active steps to articulate the ways in which potential conflicts of interest can be managed. In the private sector, the potential for conflicts of interest between private parties is common, and there are well-established ways in which these can be managed – for example, by undertaking secondments on issues where private sector expertise is most relevant, and less conflicted.

Reviewing policy making structures

The O'Donnell Review was designed to examine 'the most appropriate structure for providing policy advice to Ministers', noting that 'more co-ordinated tax policy advice was desirable'.[95] However, as has been noted by external reviews, co-ordination between the Treasury and HMRC is not working as well as it might.[96] Others have suggested looking again at the balance of policy development and maintenance responsibilities between the two departments.[97] The House of Lords Economic Affairs Committee noted in its 2011 report on the draft Finance Bill that 'there appears to be a severe, and worrying, disconnect between the perceptions of the Treasury and HMRC and those of their customers about how well the policy partnership between the two departments is working'.[98] It called for the findings of an interim review of the partnership to be published.[99] In 2014, the committee noted that 'there was some evidence that it was working more effectively' but expressed disappointment that no formal review into the partnership had, in fact, been undertaken.[100] Given the major changes to the tax system posed by Making Tax Digital, and the challenges HMRC may face in responding to Brexit, there is a case for regularly reviewing whether the current division of responsibilities is best fitted to meet ministers' and taxpayers' current needs.

3.4 Internal Budget processes

Internal capability matters because so many decisions are taken within the confines of the Treasury building, with minimal engagement of, or challenge by, those likely to be affected. The politics of maintaining secrecy and control too often win out over the competing demands of collaboration and discussion.

The roots of the Budget hiccups we outlined earlier in this report lie in the exceptional processes that surround Budgets. The Treasury asserts dominance over the process of tax policy making, and wider Budget decisions, in a way that exempts it from most of the safeguards – both official and political – that governments have developed to assure better policy. The differences between the 'normal' policy making process and the Budget process are set out in Table 1 (page 29).

Encouraging collective political discussion

Particularly notable about the Budget process is the lack of need for collective agreement, with the Cabinet only let in on the Chancellor's plans on the morning of Budget Day when the documentation is already printed. Individual departments are involved when they need to lead on implementation, but often feel that they are presented with a *fait accomplis* by the Treasury, with little opportunity to suggest alternative ways of achieving the same objectives. That lack of internal consultation can reach an extreme form. Former Pensions Minister Steve Webb recollected that when pensions tax relief was altered in 2012, "I heard it the same time everybody else did. And that's ridiculous, you know, my vanity aside, that's just a stupid way to run government. But it's the Treasury, you know. It's tax."[101] But it is not just a case of ministerial *amour propre* being damaged – there are real risks of policy incoherence when tax policy is developed in a silo away from other policy initiatives to which it relates.

Could it be different?

The UK seems to be particularly averse to collective discussion of tax. In countries with frequent coalition governments, tax reform may often feature in coalition agreements, whereas under the recent UK Coalition Government, collective discussion of Budget proposals was restricted to the 'Quad' of two senior ministers from each coalition party, with no attempt to ensure representation of wider departmental interests. In New Zealand (another Westminster-style system), the finance minister puts a paper to Cabinet months before the Budget, outlining the key spending and tax choices (and this paper is then published two months after the Budget).[102] The full Cabinet may be a step too far for the UK, but a small, tight Cabinet committee with secretaries of state

Table 1: The differences between the 'normal' policy making process and the Budget process

	'Normal' policy making process	Budget process
Collective discussion?	• Yes • Agreement through relevant Cabinet committee	• No • Budget is shared with Number 10 • Other departments may be involved on a limited, ad hoc, bilateral basis • Budget is presented to Cabinet on the morning of delivery
Treasury challenge?	• Yes • The Treasury routinely scrutinises proposals from other departments	• No • OBR does challenge the evidence base/ costing but the Treasury does not perform 'spending' challenge on tax
Regulatory policy committee?	• Yes • Regulatory policy committee clearance needs to be sought for regulatory measures that impose costs on business or the voluntary sector	• No • Not applied to tax or Budget measures • OTS only looks at measures retrospectively
Cash limits?	• Yes • Departments have to live within their Departmental Expenditure Limits and find savings • Welfare spending is now subject to a cap	• No • Budget process requires 'numbers to add up' but, for example, costs of individual measures over time are not managed
Accounting officer powers/ NAO?	• Yes • Permanent secretaries use powers (sparingly) to object to poor value-for-money proposals • NAO investigates poor value for money *ex post*	• No • To date, Treasury permanent secretaries have regarded Budget measures as 'policy' and therefore not subject to accounting officer scrutiny • They have also rejected the idea of NAO scrutiny of tax expenditures
Guaranteed legislation?	• No • Departments have to bid for places in the legislative programme	• Yes • The Treasury guarantees an annual slot – for both key tax rate changes and structural reforms

whose departments and policies are most likely to be affected by Budget measures would ensure some more policy and political challenge.

However, there is also a need to explore the level of internal challenge on tax measures, which is lower for Budget and tax measures than for spending measures.

Increasing challenge

Any significant proposal from any other government department faces potential challenge from Treasury officials in the relevant spending team – and from the Chief Secretary and ultimately the Chancellor. But in the case of Budget decisions, the Treasury moves to the other side of the table – as policy promoter, not policy sceptic. This means that many ideas make it into Budgets that appear to offer very poor value for money compared with departmental spending programmes. This is most acutely exposed in the area of so-called 'tax expenditures' – where the NAO and Public Accounts Committee have drawn attention to the lack of control, poor monitoring and weak value-for-money justification.[103] But it also applies to many of the non-tax measures in Budgets – whether they are spending proposals or the poorly evidenced welfare changes cited by the Social Security Advisory Committee chair.[104]

Any government regulation that affects business or the voluntary and community sector has to be put to the Regulatory Policy Committee, which examines the impact assessment. Tax measures are exempt from that discipline although a 2010 study by the Organisation for Economic Co-operation and Development suggested that tax compliance accounted for 25% of the total administrative burden that the UK places on business – and one that can fall disproportionately on micro-businesses with one to nine employees.[105] The OTS has no formal role on new measures as opposed to the back catalogue of existing legislation and is not currently resourced to provide that challenge. The OBR does provide a new source of challenge to the costings (and therefore the behavioural assumptions) behind measures proposed before it puts them into the scorecard, but its role is not to challenge the choice of measures or their value for money as the Treasury would do with normal spending proposals.

There has been an attempt to create some internal challenge with the establishment of a panel of senior Treasury and HMRC officials to look at policy proposals. But those officials also ultimately serve the Chancellor.

Could it be different?

The Treasury cannot effectively play the role of both policy promoter and policy challenger, so it would be hard ever to replicate the role the Treasury performs in terms of departmental spending for tax or Budget measures. There have been internal changes that do mean more formalised challenge than hitherto. The OBR now challenges on the costings of fiscal measures, and thus also on the underlying behavioural assumptions. But its challenge does not extend to the policy justification of a measure or its relationship to the Government's wider policy agenda.

There is a model for more independent confidential challenge from the Federal Reserve in the US, which has an independent advisory committee called the Federal Advisory Council to give it highly confidential advice on market conditions. The people on the council are named (and it is considered highly prestigious to serve on the council) and are bound, under pain of serious penalties, to keep what they learn confidential. One option would be to replicate this for the UK on tax – to create a body that would look at whether measures were necessary, based on robust evidence, and whether the impact on taxpayers had been properly assessed, and give early warning to the Chancellor before measures got into the Budget arithmetic.

There is also scope for more challenge on compliance costs. At the moment such assessments are only published in the 'tax information and impact notes' (TIINs) alongside legislation, whereas the Regulatory Policy Committee's role involves:

- 'reviewing evidence and analysis supporting new regulatory proposals, and checking them before proposals are agreed by ministers
- ensuring the government's estimates of costs and benefits to business as a result of regulation are accurate
- looking at small and micro business assessments within impact assessments'.[106]

There is no reason why tax compliance burdens should not be subject to a similar system of scrutiny. One option would be to bring tax within the remit of the Regulatory Policy Committee. Another would be to extend the role of the OTS to scrutinise new measures. The final option would be to give more teeth to HMRC's own Administrative

Burdens Advisory Board. This board was established in 2006 to 'bring a real business perspective to HMRC' and ensure that the concerns of small businesses are communicated to HMRC and are taken into account when changes to the tax system are considered.[107] However, the board has previously expressed concern about its lack of impact.[108]

Boosting civil service accountability

The lack of challenge is compounded by the lack of an accounting officer role at the Treasury for tax – and the fact that Treasury permanent secretaries have been reluctant to exercise their accounting officer powers on Budget spending decisions. The Treasury has rejected any role for the NAO on tax, arguing that:

> The Treasury's position is that all tax reliefs reflect policy decisions about the incidence of taxation and distribution of the tax burden, taken by ministers and agreed by Parliament. As such the Treasury's view is that the design and impact of a relief are questions of policy and therefore outside of the NAO's remit.[109]

This view is not accepted by the NAO, and its head confirmed in July 2016 that legal advice had made clear that its remit does extend to this sort of investigation.[110] But it also means that no one in either the Treasury or HMRC is accountable for either the value for money or the cost of tax measures.

This represents a major difference between the treatment of tax and spending measures in other departments. The contrast comes through very starkly for the most spending-like tax reliefs. For example, spending on film tax relief in 2015–16 was forecast to be £330 million.[111] This is magnitudes higher than the £18.67 million spent on film-related grants-in-aid in 2014–15.[112] This means that no one is accountable for the value for money of that much bigger spend.

The fact that permanent secretaries are independently accountable to the Public Accounts Committee for the propriety, regularity, value for money and feasibility of government decisions gives them a locus to challenge ministers. *In extremis*, they can seek a formal ministerial direction before proceeding with a measure. Although this is done rarely it can, in itself, act as a valuable discipline.

Could it be different?

While it would not make sense for civil servants to challenge the value for money of distributional measures, there is a clear case for applying the normal accounting officer processes to tax incentives and other Budget measures designed to achieve a policy goal, where there might have been a public spending alternative, and to be readier to exercise those powers on Budget spending decisions. Although directions are rarely sought, examples since the last general election include the permanent secretary at the-then Department for Business, Innovation & Skills seeking a direction when his secretary of state wanted to give an extra 1% of shares in Royal Mail to staff, on top of the 10% they received in 2013, at a total cost of £50 million.[113] If it is accepted that this sort of decision can be subject to accounting officer objections in the business department, it is hard to make a case that the very similar decisions that chancellors make in Budgets should be exempt from such challenge.

Another way to reduce the asymmetry between tax and spend would be to bring 'tax expenditures' into a more rigorous control framework, for example by bringing them into an envelope with spending, adding them to departmental budgets or introducing 'sunset' provisions, which cause measures to lapse or require review after a set period of time. In Germany, for example, tax expenditures are added to departmental budgets and the spending department is expected to account for them in the same way as they do for direct spending programmes.[114] So in the example of films, the cost of film tax credits would score in the Department for Culture, Media & Sport budget; meanwhile, research & development (R&D) tax credits would fall to the Department of Business, Energy & Industrial Strategy.[115]

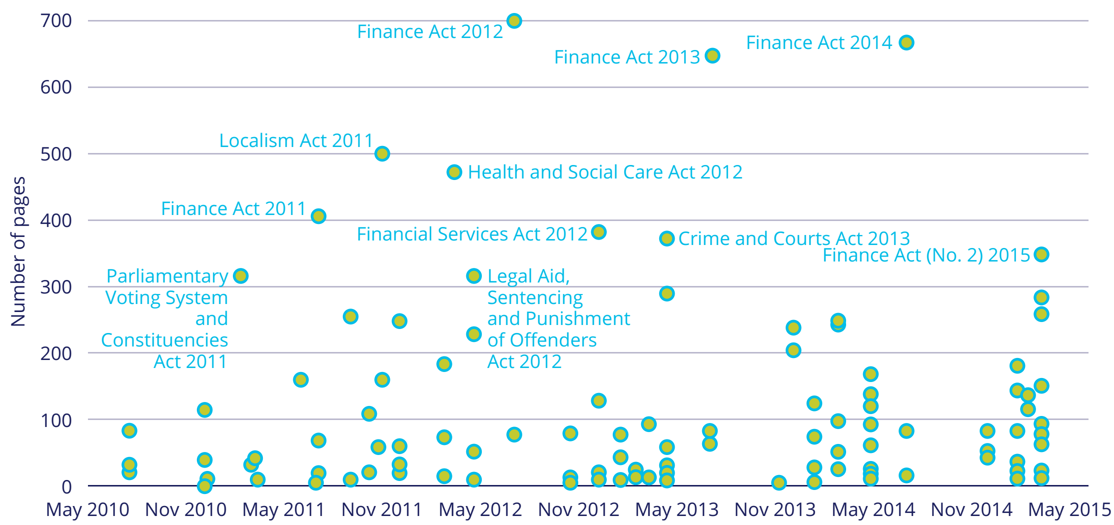
3.5 Legislation and parliamentary scrutiny

Nowhere is the problem of tax policy making veering between high politics and deep technicalities more debilitating than for parliamentary engagement and scrutiny. There are usually some in-principle debates, especially on the clauses selected for discussion on the floor of the House, but most Finance Bill business is focused on highly technical clauses. The impetus for change in this area needs to come from parliamentarians themselves – and the recommendations in this report have benefited from discussions with the chair of the Treasury Select Committee, the Rt Hon Andrew Tyrie MP, who summarised his personal ideas for reform in a letter of 12 December 2016.[116]

Improving legislation and documentation

The Treasury does not have to bid for Finance Bills in the legislative programme. In addition, Finance Bill legislation is much longer than that for most other bills. As Figure 7 shows, Finance Bills in the 2010–15 Parliament were routinely the longest to become law.[117]

Figure 7: Government bills passed, 2010–15, date and number of pages (bills with more than 300 pages labelled)



Source: Institute for Government analysis of legislation data from www.parliament.uk

This is not a uniquely British problem. Other countries, such as France and Ireland, also have long legislation, in part because 'most countries choose to legislate annually on all tax matters at the same time'.[118] Australian officials told us that, although they spread their Finance Bills over the year, together, these bills can often contain as much legislation as the UK's annual Finance Bill.

Outsiders have concerns about both the quantity of tax legislation and its quality. Concerns about quality focus on problems in working out the purpose of the legislation, the consistency of terms and definitions used, the huge numbers of exceptions and exceptions to exceptions, and the extent to which the legislation accurately translates intent into law. The Tax Law Rewrite Project's rewrite of direct tax legislation in 'plain English' style[119] made legislation clearer but the style of drafting cannot by itself solve the problems inherently involved when provisions are introduced with numerous exemptions or qualifications.

In contrast to some other countries, in the UK there is a clear split between the officials in charge of policy development and those who give legal effect to it – taking instructions from policy teams and producing law is the responsibility of the Office of the Parliamentary Counsel (OPC). While most of the people we spoke to thought that the OPC did a good job, some suggested that the policy intentions of the Treasury/HMRC are not always accurately translated into legislation; and more fundamentally, that this was because OPC officials do not see their relationship with the instructing departments as one of adviser to a client.

Tax law itself is hard to understand and interpret, so the accompanying documentation plays an important role in helping Parliament, professionals and the public to understand both the intent and the expected impact of measures. As part of the New Approach, the Government introduced TIINs, to be produced 'at the point at which detailed policy design is settled', usually when draft legislation is published. TIINs are designed to 'set out in a single place, for each measure, what the tax change is, why the Government has decided to make the change and what are the likely impacts of the change'.[120] They contain information on those likely to be affected by the measure, a description of the measure and its objectives, and an outline of the expected impacts on certain groups. TIINs are felt to offer more information on the purpose and objectives of specific tax measures, and are regarded as a positive innovation. An example we were given of a good TIIN was that for the introduction of the Bank Levy in 2011, because it contained a clearly stated policy objective, a detailed description of the proposal, and impact figures that could be checked.[121] However, TIINs are also felt to have deteriorated in quality, particularly in the ways that they judge compliance and implementation costs. It was also suggested to us that they could be used to set out criteria by which post-implementation reviews would be judged.

The New Approach also confirmed that the Government would publish policy costings alongside the Budget, and this was first done in 2011. The IFS thought this was a marked improvement, as costings documents detail the evidence and behavioural assumptions behind projected costs of a new measure. This Budget documentation is better than in many nations. However, the quality of costings has faded away, according to several of those we spoke to. One example offered of this deterioration concerned Capital Gains Tax (CGT). A 2010 increase in the CGT rate was accompanied by static and post-behavioural costings of the measure, with explanations of the assumptions underlying these. This contrasts with a 2016 reduction in the rates of CGT, which was accompanied only by a post-behavioural costing, with scant detail on the assumptions behind it.

Could it be different?

A number of suggestions have been offered over the years for improvements in the quality of tax legislation, including splitting the Finance Bill, adopting a 'purposive' approach and an idea the OTS, along with the former Tax Law Rewrite Project, has floated – 'tiered legislation'.[122] However, even with the current approach to legislation, there seems to be scope for improvement, which would enhance transparency and enable better scrutiny within Parliament and beyond.

One proposal is that publishing instructions to counsel would help Parliament and the public to understand the intent behind measures, as well as force the Treasury/HMRC to clarify those instructions.

TIINs have represented improved clarity on tax measures, but it is important to ensure that their quality remains. This may involve requiring the responsible official to add their name to the TIIN, and ensuring that all TIINs give clear statements of policy objectives.

Alongside *The New Approach to Tax Policy Making*,[123] the Government introduced a Tax Consultation Tracker, which 'drew attention to all the consultations on a particular area of tax. But unfortunately its benefits have been greatly diluted because, in changing its format, HMT [the Treasury] has limited its functionality'.[124] This may be an unintended consequence of the move of all departmental websites to GOV.UK. There would be clear transparency benefits from restoring the tracker in its original form to provide 'a single repository of all the tax measures that have been announced, stating their current status and the next steps'.[125]

Improving legislative scrutiny

The political imperative of passing the Finance Bill to ensure that the Government can raise the necessary revenue means that the bill receives less parliamentary scrutiny than any other piece of primary legislation. Whereas all other legislation goes through both House of Commons and House of Lords stages, the House of Lords only debates the Finance Bill very briefly and, because of the Commons' 'financial privilege', it has no powers to reject or amend. This ought to imply more rigorous scrutiny in the House of Commons.

The Finance Bill previously needed to complete its passage before the House rose for its Summer recess, but changes in the Finance Act 2011 have lengthened the potential timetable. This flexibility was used in 2016 to allow Royal Assent in September. Detailed legislative scrutiny is in two stages. The Opposition can select which issues are discussed in two days' debate in the Committee of the Whole House and the remaining clauses (the majority) are considered in standing committee, although this is generally rather desultory, with a few contributions from backbenchers. Given the timing of Finance Bills, and the timetable for fixed-term Parliaments, one Finance Bill every five years is caught in the pre-election wash-up process. In 2015, 125 clauses passed all stages in the afternoon before dissolution, including 36 pages of complex provisions on the Diverted Profits Tax.

The New Approach has meant that draft Finance Bill clauses are now systematically published in draft, giving people the opportunity to comment. This has improved pre-legislative scrutiny, and the CIOT and other professional bodies report a number of occasions when draft legislation has been improved for the final Bill in response to representations, albeit usually changes of the technical or clarificatory sort rather than anything more fundamental.[126] Additionally, a subcommittee of the House of Lords

Economic Affairs Committee (its Finance Bill Sub-Committee) now uses the period between January and March to scrutinise several – typically three – areas of draft legislation. The Lords committee can draw on considerable in-house expertise (it currently has two former chancellors, two former treasury permanent secretaries, the chair of an influential review of tax policy making and distinguished economists among its members),[127] but even though it can call on expert evidence, as the Treasury Committee in the House of Commons can do, it is quite under-resourced for this work and much of the burden falls on its two expert advisers. There is also little evidence that the House of Commons Finance Bill Committee makes any use of its findings.

The Treasury Select Committee holds hearings after each fiscal event, taking evidence from officials, the Chancellor and outside experts, and asks three professional bodies to provide their own assessment of the Budget against the principles the committee developed for assessing tax policy in its 2011 report.[128] But in the compressed time for hearings, it concentrates mainly on the big fiscal judgements and less on the policy detail. The hearings are held before the Finance Bill is published. In most cases the bulk of the Finance Bill measures were announced in the previous year.

Scrutiny of the Finance Bill is also not helped by the fact that the committee scrutinising the bill rotates its membership each time as – like other bills – the committee is only established after the bill is published. This is standard practice in the Westminster Parliament, which has a very different approach to legislative scrutiny from other countries where the norm is for specialist committees to look at legislation.[129] Expertise or interest is not seen as a particular qualification – indeed some perceive it as a hindrance. Sarah Wollaston MP has detailed her experience of not being able to join the Health and Social Care Bill Committee due to her desire to table amendments, noting that 'the intention appears to be to get the bill through committee unscathed with no amendments, unless suggested by the government'.[130] We have also heard anecdotally of an MP with an interest in, and knowledge of, tax matters seeking to be appointed to the Finance Bill Committee but not being nominated. A total of 97 different members served on Finance Bill committees between the 2010 general election and Parliament's dissolution in 2015.[131] This combination of not picking experts, frequent rotation of members and lack of support resources means that Parliament is hard pressed to add much value to the scrutiny of technical tax legislation. Those who have tried to offer training on the tax system to MPs report a lack of interest. Although legislation is heavily amended in committee, this is usually the result of government amending its own rather hastily drafted clauses.

What is notable is that, even though the Finance Bill now usually completes its committee stages ahead of schedule, it does not take any oral evidence before line-by-line scrutiny, despite this being the 'default position' for other public bills introduced in the House of Commons. This would be an opportunity to allow members to hear directly different external views on the most contentious issues.

Could it be different?

There are opportunities to think about the best way of ensuring effective scrutiny of the Finance Bill. A 2015 report by Reform proposed an overhaul of the way committees approach legislation generally at Westminster, to move to the more specialised model seen elsewhere, including Scotland, where standing committees also do legislative scrutiny. This would be a major change and would have implications for the capacity of those committees to also engage in policy scrutiny.[132] However, even within the current system it should be possible to improve the quality of legislative scrutiny. The fact that there is an annual Finance Bill, on a fairly predictable timetable, should make planning easier than for most other legislation.

For this to happen there needs to be effective liaison between the three committees involved: the Treasury Select Committee, the House of Lords Economic Affairs Committee – both of which are constituted on a standing basis – and the Finance Bill Committee, which only comes into existence once the Bill is introduced. This would mean ensuring that there is proper liaison between the committees and their experts to ensure that the Finance Bill Committee takes proper account of the Treasury Select Committee's Budget hearings on relevant provisions and the consideration of the Lords committee. The new timetable for fiscal events proposed by the Chancellor in the 2016 Autumn Statement offers the opportunity to rethink the way Parliament looks at proposed legislation. Tyrie's letter sets out a new possible timetable, which would see the Treasury Select Committee publishing an autumn report on potentially controversial measures to be included in the forthcoming Finance Bill.[133] That report, alongside the outputs from the House of Lords Economic Affairs Committee, could then inform the themes that the Finance Bill committee might seek to examine in more depth through oral evidence hearings at the start of the Finance Bill Committee stages (and potentially before the Committee of the Whole House meets). How many sessions were needed could be a matter for discussion and evolution once the principle was established. The norm in Parliament is two to four oral evidence sessions – Tyrie has suggested that the complexity and length of Finance Bill legislation could justify up to 10 sessions of oral evidence.[134] To do so would require provision to be made in the Government's programme motion. This would remove the anomaly that there are evidence sessions on Budget measures that are not in the Finance Bill, while measures contained in the Finance Bill do not receive public hearings. For example, the OTS gave evidence to Parliament in 2015 on the National Insurance Contributions Bill, not the Finance Bill.

Resourcing scrutiny

Scrutiny of legislation is only one part of Parliament's role in holding government to account over tax policy. The task of continuing scrutiny lies with the Treasury Select Committee. But while there are individual select committees for each of the Government's spending departments, the entire tax system falls within the remit of one committee, which also needs to look at the many other big issues in the Treasury portfolio. As select committees were set up to shadow ministerial departments, there is no dedicated select committee to cover HMRC, which falls under the remit of the Treasury Select Committee.

The Treasury Select Committee holds regular sessions on the Budget and Autumn Statement, but has also conducted some more general inquiries into the tax system. It is currently conducting an inquiry into UK tax policy and the tax base, which includes an investigation into the making of tax policy.[135]

But having one committee to cover the whole of economic policy, with support from a staff of eight – with an additional five secondees from HMRC, the NAO, the Bank of England and the Financial Conduct Authority – still looks small in relation to the task of holding the Treasury and HMRC properly to account for their stewardship of the tax system and, in particular, being able to engage in systematic post-legislative review.[136]

Could it be different?

Other legislatures provide better support to members for tax work. The outlier is the US Congress, which is remarkable for the resources dedicated to supporting members of the legislature. The Congressional Budget Office has a staff of 235, with around 20 in its tax analysis division. It provides non-partisan analysis of tax and spending measures for members of Congress, and long-term economic projections and revenue estimates, distributional analysis and impact assessments of tax measures.

The Congressional Joint Committee on Taxation, which has been suggested as a model for the UK, supports members of both parties in both houses of Congress on tax legislation and is chaired on a rotating basis by the chair of the Senate Finance Committee and the chair of the House Ways and Means Committee. It is supported by a staff of around 40, half of whom are PhD-educated economists, with the remainder mostly lawyers and accountants.

Congress, however, has very different law-making powers from Parliament. A more comparable example to the UK is Australia, where a Parliamentary Budget Office has been established. This has a role in costing opposition policy pre-election but also can provide confidential advice on tax options to members of the Australian Parliament at any time.[137] Tyrie has suggested that it might be worth considering expanding the availability of drafting expertise in the House Services to assist members with technical amendments to the Finance Bill to prevent them being rejected by the Government as defective.[138] The Treasury Select Committee could also draw on the Committee Office research budget to commission external research on issues raised in proposed Finance Bill clauses, in addition to seeking comments from outside bodies.

Another way of expanding the resources available for scrutiny would be to establish a new committee with a specific tax remit. One possibility would be to alter the remit of the existing (but inactive) subcommittee of the Treasury Select Committee to lead on scrutiny of tax and HMRC. But relegating tax to a subcommittee may not work, given its politically contentious nature. Another option would be to constitute a separate select committee, but this would risk unproductive conflicts over scrutinising major fiscal events with the Treasury Select Committee. Another suggestion that has been made, including by the CIOT and by the Howe Working Group, is the creation of a Joint Committee on Taxation.[139] A final option would be to make more use of the expertise in the House of Lords, though MPs might balk at an extension of their role that impinged on the House of Commons' primacy on tax issues.

3.6 Post-legislative review and evaluation

There are two fundamental purposes for more rigorous post-legislative review and evaluation:

- to work out where policy is working well – and where it isn't – in order to inform future policy changes
- to hold ministers and officials properly to account for the quality of their decisions and implementation of policies.

At the moment, neither is done on any systematic basis for tax measures. Tyrie agrees: 'The House of Commons does not do enough in the way of post-legislative scrutiny, not least because of the exclusion of Finance Acts from the Constitution Committee's 2004 recommendation that most Acts should normally be subject to review within three years of their commencement, or six years of their enactment.'[140] The House of Lords Constitution Committee stated that 'we recommend that most Acts, other than Finance Acts, should normally be subject to review within three years of their commencement, or six years following their enactment, whichever is the sooner.'[141] The Government followed this recommendation when it introduced its own proposals in 2008.[142] This is another example of unjustified tax exceptionalism.

Some tax measures are pure revenue raisers. Others are simply statements of values about the balance of the system – whether, for example, it is fair to tax married couples jointly or separately. But most measures are enacted on the basis of a hypothesis about how much they will cost or raise and what they will achieve. In those cases it is important to understand whether the basis on which Parliament was asked to enact them has been borne out.

When Parliament does engage on tax issues, most scrutiny focuses on new proposals; there is very little capacity or appetite to look at the effectiveness of past measures, or the coherence of the system as a whole. The NAO has expressed concern that 'HMRC's monitoring of tax reliefs is not yet systematic or proportionate to their value or the risks they carry'.[143] However, the Treasury and HMRC have challenged the NAO's right to scrutinise even the most 'spending-like' tax reliefs as outside the remit of the National Audit Act 1983, which established the NAO.[144]

None of the conventional controls that apply to spending exist in the tax system – and measures can massively exceed their initial cost forecast without triggering any action – although officials at the Treasury have pointed out that the OBR does represent a new discipline here. One of the OBR's roles is to draw attention to measures where initial cost or yield assumptions have been confounded – for example, the yield from the crackdown on Swiss bank accounts was much less than the Treasury/HMRC had initially predicted (although practitioners noted that they had been sceptical from the start).

The extent of change in the tax system is itself a barrier to proper evaluation. Evaluation can only happen if there is an initial baseline and then the change takes place and can be measured. If there is a constant diet of interacting new measures, it is difficult to estimate the impact of any one. Another barrier is the lack of clarity about what measures are intended to achieve – if there are no success markers then it is difficult to work out whether a measure achieved them.

Another barrier is around data. HMRC has a huge amount of administrative data, which it supplements through surveys, and it is understandably highly sensitive about any risks of data breaches. Approved external researchers are able to access the HMRC Datalab, launched in 2011, but must conduct their research in the Datalab's secure facility, to ensure that the data of individual taxpayers remain secure and anonymous. Researchers at academic institutions or governments may apply to use the Datalab, and are required to submit a proposal and complete a short training course.[145] But this limits the scope for external evaluation.

One trigger for post-legislative review would be 'sunset' clauses or mandatory re-authorisation. That would require Parliament to make a positive decision to renew a measure. Government committed in March 2008 to a new system to promote post-legislative scrutiny across all legislation. Three to five years after Royal Assent, government departments must submit a memorandum to their House of Commons committee, which includes a preliminary assessment of the Act's effects. The relevant select committee is then able to choose to conduct a further inquiry.[146] In making this proposal, it was suggested that memoranda would not be expected to be submitted for routine Acts, including Finance Acts.[147] This followed on from a report, commissioned by the Government and written by the Law Commission, which followed the Constitution Committee's 2004 report discussed above.[148] The Cabinet Office's *Better Regulation Framework Manual* and *Guide to Making Legislation* both contain sections on post-legislative scrutiny.[149]

Internal evaluation is carried out by HMRC's Knowledge, Analysis & Intelligence Directorate (KAI) and this can provide useful information for internal policy makers. Ensuring that this information is published is key to enabling policies to be reviewed.[150]

Could it be different?

The degree of churn in the tax system and the political nature of many tax decisions are always going to pose a challenge to proper evaluation.

In other areas of policy, government has established arm's-length bodies to monitor whether it is achieving its policy objectives. The independent Committee on Climate Change monitors government progress towards meeting its climate change targets. As part of its work, the committee annually publishes statutory 'progress reports' to Parliament on certain issues, such as carbon budgets. These reports examine progress on targets so far, and set out steps needed to ensure that the Government remains on track to achieve its objectives.[151] The non-statutory Independent Commission for Aid Impact (ICAI) looks at the effectiveness of UK aid spend, and its reports are then considered by a dedicated subcommittee of the International Development Select Committee, which takes evidence on them. The Government is required to respond to any recommendations made by the ICAI.[152]

Although the post-implementation reviews introduced in 2008 have not been widely used, where they have, they have led to changes. One example we heard cited as a useful post-implementation review was that conducted by the Department for Culture, Media & Sport into the Licensing Act 2003, which explored how smoothly the transitional period between old and new licensing arrangements operated.[153] These reviews could provide the basis for Parliament to return to the issue of whether tax policy changes were meeting their objectives (although measures churn might reduce the impact). This is an area where the House of Commons might be more willing to accept a role for the House of Lords – where there is already a better-established tradition of post-legislative scrutiny than in the House of Commons – though that should not preclude greater activity in this area by the Treasury Select Committee. Such scrutiny could proceed without reviews if the Government was reluctant to produce them. Another route would be through NAO scrutiny of reliefs, which would bring them within the ambit of the Public Accounts Committee.

3.7 Public debate

The UK is not alone in having a low level of public debate about tax choices – but that does not mean there is not scope for improvement. The Mirrlees Review[154] drew attention to the limited engagement of the public and civil society in discussion of taxation options and, while it is undoubtedly unrealistic to expect the public to engage on detailed technical tax choices, poor public understanding of even higher-level facts, trade-offs and options has two consequences, as described below. Taxation does not feature anywhere in the school curriculum and HMRC's schools communications focus on the duties of taxpayers as individuals, not on the system as a whole.[155]

First, it makes it difficult to have a sensible debate about tax policy options. In their response to our *Emerging Findings* paper,[156] the OTS drew attention to the consequences of the public's failure to understand NICs, stating that:

> We have found a worryingly low level of understanding of the tax system and indeed little interest in it. To give one example, our recent report on closer alignment of income tax and NICs noted that although the contributory principle of NICs was seen as important, there was little real understanding of what it meant in practice.[157]

Indeed, one of our interviewees traced the political commitment to raising income tax thresholds in recent years – a less efficient way of helping the lowest paid than cutting National Insurance rates but still a centrepiece of government policy – as due partly to the fact that income tax cuts have political resonance with the public while cuts in National Insurance sound like something to be afraid of. Similar considerations drove the Labour Government in 2002 to choose to pay for increased NHS spending through NICs. As Ed Balls recounts:

> The preference of Number Ten and Treasury officials was to raise VAT, but the idea appalled Ed Miliband, Gordon and me, and – based on our polling the public felt the same. An increase in income tax was slightly less unpopular, but an increase in National Insurance Contributions to fund the NHS actually commanded a substantial majority in favour.[158]

It is not particularly in any politician's interest to educate the public about the fact that National Insurance is to all intents and purposes simply a clunky earned income tax. But the media rarely attempt to disabuse their readers of the notion either.

At the last general election the Government committed itself not to raise the main rates of any of the big three taxes – income tax, VAT or NICs. This boxing in, which is always a risk in election campaigns, effectively commits it to raise any revenue it needs from less broad-based, less reliable taxes, further weakening the tax base. In the longer run, a better-informed and more tax-literate electorate may be the answer – and the Government should see it as a core task to educate the public about how the tax system works (not just on how much tax they should pay). This could help to create a more informed backdrop to tax policy making.

Could it be different?

One reason why the public are disengaged is that very little attempt has been made to involve them in tax choices – a notable exception being the personal tax and spending statements that over 20 million people received in 2014 and 2015.[159] The experiments that have been carried out to increase engagement offer useful insights into how better to frame tax issues and expose choices to a wider public. There are some areas where policy makers face an impasse – they know that the systems they run are increasingly untenable but do not see a route to reform – and where more structured techniques to engage the public could help to open up new options.

PwC has used a citizens' jury approach to engage and consult with the public around tax. This revealed that they felt they faced a system that was not transparent, was hugely complex and which did not treat members of society fairly. When faced with the kinds of choices that chancellors have to make, '[j]urors developed an appreciation of the trade-offs that are involved in almost any change to the tax system … A further, and connected realisation, involved the political barriers to change, and the fact that making significant change is inherently risky for politicians.'[160]

Deliberation has been used on other issues and in places other than tax. The Pension Commission engaged in a sustained programme of public engagement around its pension reforms, which enabled it to create consensus around a package of changes between employers and employees (although even its process encountered problems engaging with the smallest businesses).[161] This is also a feature of the way in which the Henry Review worked in Australia[162] and is standard practice for the Productivity Commission there.[163] There are other examples: from the way in which the Dutch Government resolved issues around the expansion of Schiphol Airport through a collaborative arrangement called the Alders Table, to more local examples of engaging the public in budgeting choices.[164]

3.8 Conclusion

In this section we have explored some of the persistent areas of weakness in tax policy and Budgets. We have also identified potential ways in which they might be addressed to create a better system for making tax policy. In the final section we look at the building blocks for change, and offer 10 steps towards better Budgets and tax policy.

4. 10 steps towards better Budgets

In this section we set out some ideas for overhauling and improving the ways we make tax policy in the UK. We are keen for these to be part of a discussion about how to make the Budget process fitter for purpose. The measures we propose attempt to address some of the weaknesses in current processes that we have discussed earlier. Although many of the recommendations that we make in this section are aimed at the Treasury and HMRC, we are conscious that the responsibility for a vibrant and productive discussion of the tax system goes much wider, with tax professionals, economists, academics and the wider community all having an important role to play, alongside politicians and the media.

The end point is a quite simple vision: A Budget process that contains fewer measures that are better thought out – and can be implemented efficiently by HMRC without imposing unreasonable burdens on taxpayers. A better public debate on the big tax choices – with politicians making informed decisions. Greater stability in the areas of the tax system where taxpayers – individuals and business – need to make long-run decisions. A tax system that commands public support – and is robust enough to raise the money we need to finance the state we want.

Over the past decade, others have explored a range of ideas for improving the Budget and tax policy making process. Politics is, of course, an overarching constraint on many solutions. The ideas presented here acknowledge this, and are intended to spark debate.

The Chancellor has already announced a major reform in his Autumn Statement – a move we called for in our letter to him in September 2016.[165] This is an important enabler of other changes.

Step 1: Stick to the commitment to a single principal annual fiscal event and cut down Budget measure proliferation

The move to reassert the principle that there should be one major event a year at which tax changes are announced does not sound like a significant change. But we believe that it is an important move that opens the way to a more professional approach to tax policy making. By taking Treasury and HMRC officials and ministers off the treadmill of twice-yearly tax policy making with only around 12 working weeks between the Autumn Statement and the Budget, it should give scope for the further steps we suggest below on consultation and external engagement – and open the way for enhanced parliamentary scrutiny. Simply doing less should enable change to be done better. But previous chancellors have made similar commitments – only to be tempted back by a mix of opportunity and external expectation. So if this change is to endure, it needs to be buttressed by changes to entrench it.

Fewer fiscal events mean fewer opportunities – or less need – for ad hoc change. The Chancellor has committed not to make changes for change's sake. But there is scope for going further – to address the perception that Budgets are ad hoc; or that chancellors have no clear sense of direction for individual areas of tax policy, or for the tax system as a whole. We suggest two changes to provide greater strategic clarity over the lifetime of a Parliament.

Step 2: Establish clear guiding principles and priorities for tax policy

Chancellors should consider making a statement early on in a new Parliament or in their chancellorship about their priorities for, and approach to, the tax system. While the uncertainties about revenue probably rule out a full-blown, long-term tax strategy, and some flexibility to respond to events should be retained, this would help to guide external contributions to the tax policy debate. This could be complemented by the next step.

Step 3: Extend the road-map approach

The Corporate Tax Road Map, produced in 2010,[166] was felt by many in business to be helpful both in planning and in enabling them to engage with government. Its 2016 successor, the *Business Tax Road Map*,[167] was deemed to be less useful because it set out less of the reasoning behind plans, and looked less far into the future. There are other areas that would benefit from the road-map approach, because it would both help to explain the Government's course of reform and give early warning of changes to come. It could either be based around individual groups of taxes or take a more thematic approach, for example around housing.

In Box 2 we suggest some principles for better road maps.

Box 2: Principles for better road maps

DO:

- Start from a clear statement of purpose and principles that will underpin decisions – and a sense of the destination (ideally based on *a priori* consultation).
- Adopt a comprehensive systems approach that recognises interdependencies (tax and non-tax) and makes sense from a user/provider perspective.
- Be clear on proposed changes and their timing (subject to caveats where revenue considerations may affect timings) and on what is already decided and what is still up for discussion.
- Set out a process for user/provider engagement in the development and implementation of measures – and other government departments/devolved administrations where appropriate.
- Give early warning of proposed consultations, processes for input and timelines.
- Actively engage those likely to be affected but who are not plugged into existing processes.
- Consider establishing a standing user/provider forum to share intelligence on progress against the road map and iron out hitches.

- Be prepared to adapt when necessary, but have a presumption against discretionary changes.
- Make sure that timetables take proper account of the need for technology to deliver.

DO NOT:

- Simply repeat and re-label existing measures.
- Consider individual taxes in isolation, if that is not how individual taxpayers experience them.
- Ignore the wider policy/external context.
- Assume that ambitious timetables can be met.
- Over-promise.

Road maps should ideally extend over a Parliament, they should make clear where no action was proposed and they should not become a vehicle for generating more action. Done well, they will help the Government to have a more constructive dialogue with external consultees, including those who have to respond to tax changes. Our third set of recommendations is about improving the way in which the Treasury and HMRC consult external stakeholders.

Step 4: Start consultation at an earlier stage

The 2010 *The New Approach to Tax Policy Making*[168] and the 2011 *Tax Consultation Framework*[169] were significant steps forward. The Framework, with its five-stage approach to tax policy making, committed the Government to, where possible, 'engage interested parties on changes to tax policy and legislation at each key stage of developing and implementing the policy' and to consult earlier on changes.[170] This may lengthen timescales, but would have the benefit of allowing stakeholders to engage on a range of possible options. The devolved administrations appear to have adopted a significantly more open and consultative approach to exercising their embryonic powers over taxation than the UK Government.

Part of opening up the process should involve more regular calls for evidence on a particular policy problem, clearly stated by the Government, preceding the option formation stage. This would start the process earlier than envisaged in the *Tax Consultation Framework* by exploring the problem, rather than starting from the Government's purpose. The Treasury and HMRC may be sceptical about whether they would get anything more than self-interested inputs – but this could be a more focused way than the scattergun approach of simply inviting Budget representations through the Budget portal. Consultation on the options that emerge would then be the second stage of the process, with draft legislation to follow.

But the Government should also make other moves to improve external engagement, as set out below.

Step 5: Develop more active approaches to consultation

The standard method of consultation is to issue a document and invite responses. But HMRC and the Treasury should follow the more proactive approach taken by the OTS and develop new ways of engaging stakeholders to ensure that they hear from people who do not usually contribute to tax policy making. This may involve conducting focus groups outside London, and engaging representatives of difficult-to-reach groups. It could also involve a more active role for a repurposed Administrative Burdens Advisory Board. Where the OTS has already undertaken a consultation, there should be no need for HMRC to go back and reconsult.

The lack of feedback on consultation responses frustrates those who try to contribute. At the same time, people inside government often complain about the quality of consultation responses. More active face-to-face consultation could allow for immediate feedback – but proper, more structured feedback on consultation responses would also be useful.

There is a risk that consultation could drive complexity, as it surfaces a range of detailed technical issues that are subsequently translated into legislation. The OTS is already involved in consultations to act as a voice against complexity, but as its status and authority grow, it would be worth exploring whether it should have a more formal role in the process, being able to formally record objections to measures it thinks are unnecessarily complex.

However, better consultation will only take us so far. There is a need to broaden the conversation about tax options. The Treasury could learn from other countries and other departments on how opening up issues can help to improve the quality of public debate and prepare the ground for future policy change.

Step 6: Prepare the ground for future reform – and engage the public

There are areas of the UK tax system that are crying out for strategic review – for example, the best ways of encouraging people to save, or the tax treatment of property.

Independent reviews, commissioned by government, can prepare and expose the analysis behind tax choices in such areas, open up options that are currently too sensitive for discussion without ministerial commitment, and actively engage the public on some of the major issues facing the tax system in the future.

The OTS consultation on income tax and National Insurance is an early foray into opening up a discussion of some of the most guarded areas of tax policy. Arguably in this case the OTS was used for policy development more broadly than simplification alone, which is welcome, albeit that the Government decided not to take the area forward at this stage. Tax should be included in reviews of other areas of policy. So while it is welcome that the Chancellor has promised to consult on the Treasury/HMRC review of the tax treatment of alternative forms of employment, it might have been preferable for the Treasury to have conducted a joint review with the Department for

Business, Energy & Industrial Strategy on all the issues of the 'gig economy'.[171] The Turner review of pensions shows the scope for properly established independent reviews to both open up new options and build long-term consensus by actively engaging interested parties and the public.[172] One benefit of external reviews is the scope for more active public consultation and deliberation. This could form part of a more general effort to increase public understanding of the key choices that governments face in making tax policy, which should be a core task of government. They also have the potential to widen the tax policy community, engaging researchers, business and civil society representatives.

Step 7: Address the perceived capability gap around tax policy making

We need to build on existing moves to address the capability gaps in terms of tax policy making.

Support moves to encourage deepening tax expertise in the Treasury and policy professionalism in HMRC.

Moves by the Treasury and HMRC to create a distinct public sector tax policy offer and career path are a good start in addressing some of the perceived capability gaps. So too is HMRC's appointment of a director general for general customer strategy and tax design. But it may need to go further, with the creation of a joint Treasury/HMRC cadre of tax policy professionals who are recruited in the expectation that they will move between both departments, and who are on their own pay scale. Those recruited into it would be Treasury staff wishing to specialise in tax, HMRC staff who had been identified as having an aptitude for policy, and external recruits who want to move permanently into tax policy roles in government. There may also be a need to apply the enhanced pay scales being developed for other specialisms in government.

Find ways of better tapping into external expertise.

The second source of potential tax expertise is from external experts. Inward secondments to the Treasury or HMRC offer an opportunity to tap into external expertise, but the perception of conflicts of interest has been damaging. Both the Treasury and HMRC need to be much more robust in making clear how they benefit from secondments, and present a clear plan for managing the potential risks of secondments. Secondments out should be encouraged as a way of enabling HMRC and Treasury staff to understand the tax system from the perspective of taxpayers. But they need to be managed well and there must be a plan for re-entry that makes clear that secondments are regarded as a valuable way of gaining much-needed experience.

Keep the split of responsibilities between the Treasury and HMRC under review.

The O'Donnell Review contained a commitment to review the split of responsibilities between the Treasury and HMRC after five years.[173] Although the policy partnership has been looked at internally, 11 years after implementation there has not been a formal review of whether the new system is working. This would be a good time for such a review to be carried out. One trigger for this is the centrality of digital delivery to tax policy making with the Making Tax Digital project, which means that both digital and operational expertise has to be fully engaged in initial policy decisions.

Step 8: Overhaul internal processes

Enhancing internal capacity needs to be combined with an overhaul of internal processes – to make tax (and Budget) policy making less exceptional. Below we set out some ideas designed to reduce the asymmetry between tax and spending, to increase the amount of challenge in the system and ensure that measures are implementable.

Make the Budget process more collective.

Budgets and thus tax policy making suffer from undue secrecy – and that includes secrecy not just from the rest of the Cabinet but also from other Cabinet ministers whose portfolios may be directly affected. This is not an iron rule: the New Zealanders present their tax options to the Cabinet in advance of the Budget. A small Budget Cabinet committee could oversee the Budget process, including, for example, the Secretary of State for Business, Energy & Industrial Strategy and the Secretary of State for Work and Pensions, whose departments are most likely to be affected by many of the tax and non-tax changes.

Introduce expert early challenge.

Challenge from ministerial colleagues to justify some of the political choices, and to ensure coherence with wider policies, should be supplemented by high-quality internal expert challenge. At the moment, officials have to present their ideas to their official superiors, but not to expert outsiders.

One option would be to ensure that the OTS has a chance to comment on all new proposals, but this would require substantial extra resources. Another would be to replicate the Federal Reserve model and create a specialist committee of named external experts to provide confidential challenge to look at whether measures were necessary, based on robust evidence and whether the impact on taxpayers had been properly assessed, and give early warning to the Chancellor before measures get into the Budget arithmetic.

Make the Treasury permanent secretary accounting officer for Budget measures.

The usual challenge from spending teams in the Treasury is absent on tax and Budget measures more generally. Budgets contain many measures that would appear to fail the value-for-money tests applied to normal spending. The Treasury permanent secretary should lead by example in challenging spending measures that offer poor value for money. But the accounting officer responsibility should extend to tax reliefs, particularly those where there would have been a clear public spending route to deliver the same objective. Formal acknowledgement of that responsibility would make the Treasury permanent secretary answerable for them to the Public Accounts Committee. But there may be other ways of achieving a similar result.

Introduce more challenge to Treasury/HMRC assessments of the impact of tax measures.

There is no reason why estimates of the impact of tax measures on business should be subject to less scrutiny than regulation. HMRC should be required to produce TIINs with draft impact assessments alongside initial proposals – not wait until legislation. These should be subject to external challenge, for example from the Regulatory Policy Committee with an expanded remit or a beefed-up OTS.

The knowledge that there will be rigorous external scrutiny sharpens the incentives for internal challenge. But although Budget Day is a big event in the parliamentary calendar and approving tax-raising measures is a core parliamentary task, Parliament today too often fails to rise to the challenge of providing effective scrutiny. Below we set out some ideas for change.

Step 9: Enhance Parliament's (and the public's) ability to scrutinise tax proposals

The problem of Parliament and tax is quite simple: on the one hand, the big tax choices are at the heart of party-political dividing lines, and to expect Parliament to treat them in a non-partisan way is unrealistic; but on the other hand, much of the detail of tax legislation is highly technical, so what passes for parliamentary debate on the Finance Bill is sometimes a conversation between HMRC and specialist external advisers through parliamentary surrogates.

Many of the improvements suggested above – in particular a commitment to earlier consultation and adherence to *The New Approach to Tax Policy Making*[174] in all but very exceptional cases, as well as wider use of road maps – would also help to improve scrutiny. But there is more that can be done.

The ideas presented below are designed to improve the quality of Finance Bills and tax legislation, but also to equip Parliament better to hold government to account for the way in which the tax system as a whole is functioning.

Create more transparency around Finance Bills and supporting documentation.

Being more open about the basis for the measures in Finance Bills would help both scrutiny and accountability. This could start with publishing the instructions that HMRC lawyers send to the Office of the Parliamentary Counsel, which should contain the clearest possible statement of what the measures are intended to achieve. That would allow people to look at whether the legislation gives proper effect to ministerial intent.

Second, the Treasury and HMRC should publish the evidence base behind measures and the assumptions on which costings are based, and ensure that these are appropriately detailed.

Third, TIINs should contain a clear statement of the purpose of measures and their expected effect, with an indication of the assumptions used to calculate this. That can then form the basis of post-legislative scrutiny. Just as impact assessments have to be signed by departmental chief analysts, and individual statisticians are named as contact points for releases from the Office for National Statistics, the responsible official should sign off TIINs. The external scrutiny of those assessments suggested above would flag issues of potential concern to MPs.

It would also be helpful to both Parliament and external consultees if the Government could present measures destined for Finance Bills in a much more coherent way on GOV.UK, in effect reinstating the Tax Consultation Tracker, originally introduced in

2010. This would allow people to follow the audit trail of all the measures destined for a particular Finance Bill through their consultation and draft clause stages. Consultation responses could also be made available in the same place.

Improve Finance Bill scrutiny.

The lack of stages in the House of Lords should mean that the Finance Bill is subject to particularly intense scrutiny in the House of Commons. But the reverse tends to be true, as a consequence of both the political centrality of tax and the extreme technicality of the bulk of the measures.

The idea of separating changes to rates and allowances from structural reforms to the tax system has long been suggested, with the former in the main Finance Bill and the latter in a technical tax bill. The OTS has suggested experimenting with a 'tiered' approach,[175] which would mean separating legislation on individual measures into three layers aimed at the three audiences for tax legislation: the 'lay person', the 'educated user' and the 'tax expert'. That could open up the way to improved scrutiny, with a technical scrutiny by experts of whether the technical clauses delivered the purposes and a political debate about those purposes.

Even without that change, debate on the Finance Bill could be improved by using some of the committee sessions to take oral evidence on key themes in the bill before starting debates on clauses. This is normal practice in other public bill committees, including on changes to NICs. This need not prejudice the timetable. This could be enhanced by ensuring effective liaison between the experts working to support the three committees that have a role in tax scrutiny – the Treasury Select Committee, which has hearings on the Budget and Autumn Statement, the House of Lords Economic Affairs Committee and the Finance Bill Committee – to make sure that the results of pre-legislative work inform legislative scrutiny.

Increase support to Parliament on tax issues.

Although taxes constitute almost 40% of national income, Parliament has little standing support to help look at tax legislation, support general inquiries on tax issues or help with post-implementation reviews. The Treasury Select Committee has been able to call on expert support when it needs it, and has benefited from having secondees from HMRC, but there is no standing capacity to support members and other committees that may be interested in tax issues beyond the resources in the Library.

As an NAO report on tax reliefs and the work of the OTS have shown,[176] there is an asymmetry between the huge amount of effort in government and in Parliament that goes into new tax measures and the relative lack of attention to how effective those measures have been. There is a strong case for increasing the specialist capacity to scrutinise the effectiveness of tax measures and making them available to support committee work – both the Finance Bill Committee and select committees. This could be part of the Scrutiny Unit, or be based in the NAO or, as in Australia, established as a separate Parliamentary Budget Office reporting to Parliament.

Step 10: Institutionalise and enable evaluations of tax measures

A key part of HMRC's policy maintenance responsibility should be making sure that tax measures are achieving their objectives at reasonable cost. In March 2008 the Government committed to a new system of post-legislative scrutiny but exempted Finance Acts from that discipline.[177] Three to five years after Royal Assent of a bill, government departments must submit a memorandum to their House of Commons committee with a preliminary assessment of the Act's effects, from which the committee can choose to conduct a further inquiry.[178] However, the NAO has drawn attention to the lack of systematic effort put into evaluating the impact of tax measures.[179] More systematic post-implementation reviews, ideally conducted independently of government, could then form the basis of scrutiny in Parliament.

This is an area where the expertise on the House of Lords Economic Affairs subcommittee could be usefully deployed, without impinging on the primacy of the House of Commons on fiscal matters. Another option may be for the OTS to conduct more systematic reviews of the operation of measures after a certain number of years – although to do this may require additional resources.

Key to evaluating tax measures is the availability of data. HMRC's Datalab is accessible to approved researchers, and takes care to ensure that data confidentiality rules are observed in order to protect taxpayers. Improving the accessibility of this information to researchers, however, would allow for greater external evaluation of tax measures.

Conclusion

The current Chancellor has shown himself willing to reform. He has taken a vital first step, which should enable further change. Now he, his departments and Parliament need to take the further steps to give the UK the tax policy making process it deserves.

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Institute for Government
2 Carlton Gardens, London SW1Y 5AA
United Kingdom

+44 (0) 20 7747 0400
+44 (0) 20 7766 0700

enquiries@instituteforgovernment.org.uk

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