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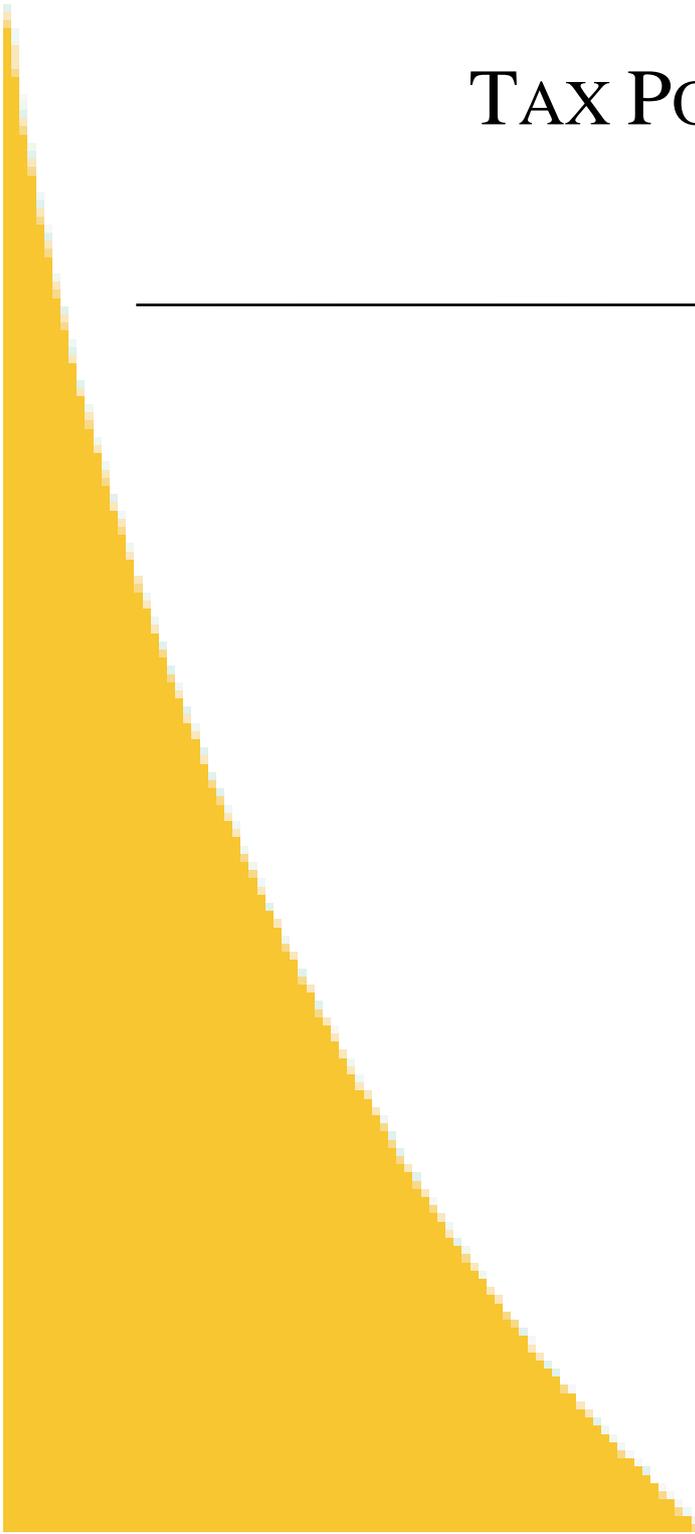
# TAX POLICYMAKING IN THE UK

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*Tracey Bowler*

*Tax Law Review Committee*

THE INSTITUTE FOR FISCAL STUDIES  
TLRC Discussion Paper No. 8



# **Tax Policymaking in the UK**

*Tracey Bowler*

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## 1 Introduction

1.1 The UK legislative system has been heavily criticised for many years for the inadequacies of the system for making tax law.<sup>1</sup> Although there has been a change in attitude in recent years and the willingness of HMRC and HM Treasury to consult on many issues is warmly welcomed, Parliament still lacks the information to analyse and debate tax proposals, and pre-legislative scrutiny by Parliament can be very limited. These problems were considered by the ‘Making Taxes Simpler’ Working Party chaired by Lord Howe of Aberavon in July 2008 and it is with interest that the forthcoming Budget is awaited to see to what extent the Working Party’s proposals are implemented. Most recently, the Chartered Institute of Taxation (CIOT) has published its own paper, ‘The Making of Tax Law’, which focuses on the limitations of the current Parliamentary system and advocates a Joint Parliamentary Committee on Taxation.<sup>2</sup>

1.2 However, there is another element in the process of making tax law which also needs to be addressed: the tax policymaking function, currently exercised by HM Treasury and HMRC. Following the reorganisation recommended by Gus O’Donnell in 2004,<sup>3</sup> tax policymaking has been split between HM Treasury and HMRC on the basis that HMT should have lead responsibility and accountability for tax policy, with HMRC being responsible for policy maintenance. Considerable problems with the organisation and operation of the tax policymaking function are being experienced and are identified in this paper. If steps are to be taken to improve the system for making tax law and to make the UK tax system simpler and more effective, then the way in which the tax policymaking function is operated should also be addressed.

## 2 Executive Summary

2.1 The experience of the past five years has shown that the current organisation of tax policymaking is not working as effectively as it should to produce clear, effective tax policies and a coherent, competitive tax system. In particular, the current tax policymaking arrangements are not addressing the concerns raised regarding the pre-2005 arrangements and are not satisfying the O’Donnell criteria.

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<sup>1</sup>See, for example: Lord Howe, ‘Reform of Taxation Machinery’, *British Tax Review*, no. 2, pp. 97–104, 1977; Report of the Special Committee of Tax Law Consultative Bodies, *Recommendations on the Development of Tax Legislation*, 1993; M. Gammie, ‘Legislation for Business: Is It Fit for Public Consumption?’, *Fiscal Studies*, vol. 15, no. 3, pp. 129–39, 1994; Sir Alan Budd, ‘Making Tax Law’, TLRC Discussion Paper no. 3, 2003; F. Chittenden and H. Foster, ‘Is There a Way Out of the Tax Labyrinth?’, ACCA Discussion Paper, 2009.

<sup>2</sup>[http://www.tax.org.uk/attach.pl/9328/10960/CIOT\\_tax\\_law\\_Jun10.pdf](http://www.tax.org.uk/attach.pl/9328/10960/CIOT_tax_law_Jun10.pdf).

<sup>3</sup>G. O’Donnell, *Financing Britain’s Future: Review of the Revenue Departments*, Cm 6163, HM Treasury, London, 2004.

- 2.2 HMRC specialists are primarily tax experts, often with great depth of technical knowledge; HM Treasury people lead on overall economic perspective but usually lack this tax knowledge. Both can suffer from a lack of practical appreciation of policy matters, and, in addition, Treasury people in particular lack continuity. At times, it can appear that those involved are solely focused on the immediate tax problem they are tackling and the wider implications of a measure are not considered.
- 2.3 In theory, the combination should work well, but, in practice, the fact that the policymaking is essentially based in HM Treasury, where there can be a lack of knowledge and continuity, has led to numerous problems:
- 2.3.1 There is a disconnect between those responsible for tax policy and those operating in the field, meaning that policies can suffer in terms of being inappropriately targeted. Too often, this means a need for stakeholders internally and externally to work to address the resulting problems before the legislation gives effect to the policy properly – or that the legislation is left as defective and/or burdensome.
  - 2.3.2 There is a less unified approach to the tax system, which means that tax policy has become increasingly disjointed and is contributing to the complexity and inaccessibility of the tax system. In addition, there is insufficient linking with related areas in other fields – benefits being the main example.
  - 2.3.3 There is a lack of clarity of responsibility for policy, which affects stakeholders.
  - 2.3.4 Technical tax knowledge is being undervalued and this is causing problems with the effective development of tax policy.
- 2.4 As a minimum, the current organisational arrangements for tax policymaking by HM Treasury and HMRC should be reviewed (as recommended by the Select Committee on Economic Affairs in 2008<sup>4</sup>).
- 2.5 However, the underlying problems are ones intrinsically bound up with the current structure of HM Treasury and HMRC. It is difficult to see how working within those structures but, say, changing management systems for policymaking would tackle those problems effectively.
- 2.6 One possibility would be to look to a separate tax policy office to use the best resources from HMRC, HM Treasury, and outside the civil service and government to provide a tax policy centre (although in so doing there could be resource implications for the civil servants involved, who may already be

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<sup>4</sup>At paragraph 48 of Select Committee on Economic Affairs, *2nd Report of Session 2007–08: The Finance Bill 2008*, vol. I, Report.

overstretched and who will be facing increasing pressures to do more for less). This could be a role taken on by the Office of Tax Simplification. The details of such an office are awaited, but it is hard to see how the OTS could be fully effective if, at the same time as it is trying to simplify the tax system, policies are being developed separate from it by HM Treasury and HMRC that run counter to the simplification.

### **3 Background**

3.1 In 2004, Gus O'Donnell published a review of tax policymaking. This concluded that the existing position whereby the Inland Revenue and Customs & Excise would lead on policy development for individual taxes alongside HM Treasury, who were responsible for co-ordination and presentation of overall tax policy and the development of new taxes (for example, environmental taxes), lacked clarity on policy roles both internally and externally. It was particularly noted that under those arrangements, 'The relationships are not formalised, and the work pattern in a particular area tends to be adapted in practice according to the particular circumstances of the policy and of the different teams involved'.<sup>5</sup>

3.2 Four criteria were used to assess the policymaking arrangements.<sup>6</sup>

3.2.1 clarity of responsibility and corresponding accountability for policy functions;

3.2.2 a coherent and 'joined up' policy process;

3.2.3 achieving an effective combination of both technical expertise and awareness of and sensitivity to wider issues; and

3.2.4 a better overall service giving advice to Ministers and a better service to operational staff and taxpayers in the shape of guidance and advice.

3.3 The review led to the current division of policy between HM Treasury and HMRC.<sup>7</sup> 'The review therefore proposes that there should be a new division of work between the Treasury and the new department [the soon to be merged Inland Revenue and Customs & Excise], designed to build upon their comparative advantages. The Treasury would lead on strategic work and policy development, and the new department would lead on policy maintenance and delivery. To ensure continued joining up and partnership working, both departments would assist the other in the discharge of its duties. As part of this, the Treasury's capacity to advise on tax policy should be enhanced. For the

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<sup>5</sup>O'Donnell, paragraph 5.26.

<sup>6</sup>See O'Donnell, paragraph 5.27.

<sup>7</sup>See more fully at Appendix 1.

operational policy that remains in the revenue department, the creation of the new department will help to ensure coherence across the tax system.’<sup>8</sup>

- 3.4 More specifically, O’Donnell recommended that a ‘Framework Document’ be put in place to set out how this relationship would work.<sup>9</sup> However, it appears that no such document has been put in place.
- 3.5 Each year, the Chancellor of the Exchequer publishes an Annual Remit to HMRC setting out their role. In the Remit for 2009–10, the Chancellor stated that ‘I would like to reiterate the need for HMRC to continue to strengthen and fully commit to its support of policy development with HM Treasury, both through its Knowledge, Analysis and Intelligence resources and through the Policy Partnership with HM Treasury to ensure that Ministers are provided both with good quality analysis of existing and future tax policies and with the technical and operational expertise needed to design and deliver good tax policy. It is important that you continue to build your tax professionalism and support the policy partnership through sharing professional expertise with HM Treasury’.<sup>10</sup>
- 3.6 However, experience shows that the current tax policymaking arrangements are not addressing the concerns raised regarding the pre-2005 arrangements, are not satisfying the O’Donnell criteria and are impacting upon the delivery of an effective and efficient tax system in the UK. As currently structured, it is questionable whether HM Treasury have the necessary tax expert resources to discharge their side of the partnership.

#### **4 The Problems**

##### A disconnect between those responsible for tax policy and those operating in the field

- 4.1 As part of the Mirrlees Report for the Institute for Fiscal Studies, Alt, Preston and Sibietta report that an interviewee commented: ‘... the reallocation weakened the link between HMT and assessment of what happened in the field. Now the process has a clear divide with policy in HMT, but real-world experience is at HMRC and they don’t communicate as well as if they were all in one organization. It also affects career structures: now, if you are interested in tax policy, you go to HMT. If you start there the chance you will understand

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<sup>8</sup>O’Donnell, paragraph 1.28.

<sup>9</sup>See O’Donnell, Summary and Recommendations in chapter 6.

<sup>10</sup><http://www.hmrc.gov.uk/about/alistair-darling-letter.pdf>.

what happens in the field or on the ground is low. Policy becomes divorced from an understanding of how it is affecting behaviour in the field.’<sup>11</sup>

- 4.2 The problems arising from this disconnect have been experienced in the context of the proposals dealing with the changes to non-domicile rules, the changes to the capital gains tax regime and the handling of the 10% income tax rate.
- 4.3 Chris Wales, a former special advisor at HM Treasury, has commented that removing senior policy roles from HMRC was not a wise strategy: ‘the transfer of the policy-making function to the Treasury disconnected it from the underlying relationships with taxpayers and taxpayer issues and seems likely, in the longer term, to lead to a weakening in the policy-making process’.<sup>12</sup>
- 4.4 At the same time, a very clear impression has been obtained that policy work is not always as highly valued in HMRC as previously. There appears to be a clear feeling that if a person is keen to pursue policy work, they should go to HM Treasury. This is partly because HMRC no longer have such free access to Ministers as they had in the past. The fact that policy is now seen as more of a ‘Treasury thing’ can mean that those in HMRC become more and more disconnected from policy. After O’Donnell, a lot of people went from HMRC to HM Treasury to kick-start the policy group. The anecdotal picture was that, on return to HMRC, the work undertaken in HM Treasury was not valued and did not advance careers. This also seems to have discouraged people from going into policy work.

#### A less unified approach to the tax system

- 4.5 Tax policymaking is subdivided within the Budget, Tax and Welfare Directorate in HM Treasury. There are three sub-directorates which are further split into teams: two for strategy, one for Budget delivery and the remainder organised by either tax or labour market or sector. By contrast, before the O’Donnell changes, policymaking was focused in the Revenue Departments with typically one person in charge of all aspects of policy on a particular subject and all policy work concentrated in a single senior person. Experience indicates that this previous structure in fact brought greater control over the interaction of changes and a more unified approach to management of the tax system.

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<sup>11</sup>At page 1214 of J. Alt, I. Preston and L. Sibieta, ‘The Political Economy of Tax Policy’, chapter 13 in J. Mirrlees, S. Adam, T. Besley, R. Blundell, S. Bond, R. Chote, M. Gammie, P. Johnson, G. Myles and J. Poterba (eds), *Dimensions of Tax Design: The Mirrlees Review*, Oxford University Press for the Institute for Fiscal Studies, Oxford, 2010, <http://www.ifs.org.uk/mirrleesreview/dimensions/ch13.pdf>.

<sup>12</sup>At page 1306 of C. Wales, Commentary on Chapter 13, The Political Economy of Tax Policy, in J. Mirrlees, S. Adam, T. Besley, R. Blundell, S. Bond, R. Chote, M. Gammie, P. Johnson, G. Myles and J. Poterba (eds), *Dimensions of Tax Design: The Mirrlees Review*, Oxford University Press for the Institute for Fiscal Studies, Oxford, 2010, <http://www.ifs.org.uk/mirrleesreview/dimensions/ch13.pdf>.

- 4.6 Chris Wales has commented that now, ‘despite the importance of the overall design of the system, the structure of the tax policy-making departments clearly demonstrates that the lowest priority is given to system-wide coherence’.<sup>13</sup> However, the way in which measures are considered does seek to recognise the importance of system-wide coherence. Measures are routinely checked to ensure that there are no unexpected results. Experts from other areas may be brought in to consider a draft measure and problems are referred to an HMRC Director. Budget measures are reviewed regularly by HM Treasury and HMRC Directors and, if necessary, the most senior technicians are convened to debate the issues. The problem is that externally it has appeared that the approach has been less unified than before and that system-wide coherence has not been given a sufficiently high priority. Examples of where this has been seen include the handling of the 10% rate, the changes to the capital gains tax regime and the taxation of small businesses. Of course, this lack of unified approach may have been driven by political pressures rather than management structures.
- 4.7 Those in HMRC who do assist with policy matters now seem more concerned with revenue protection and avoidance than with how to make the system work more effectively. This has been witnessed in the context of the consultations about, and changes made to, the tax code to seek to simplify tax law by introducing principles-based drafting. HMRC have appeared to be limited to seeing themselves solely as gatekeepers, protecting revenue from avoidance, and there is no one involved who is prepared to take an approach looking at the whole system in order to tackle the problems of tax simplification. It is recognised, though, that this may have been because of political pressures to be seen to be simplifying the tax code with absolutely no revenue cost.
- 4.8 The subdivision of policy within HM Treasury has also resulted in an apparent loss of the previous benefit of HM Treasury standing outside the tax policy process and reviewing issues from a wider economic perspective. At times, they appear now to be trying to manage the detail, as, for example, in the context of the consultation on the taxation of foreign profits.

#### A lack of clarity of responsibility

- 4.9 It is understood that each policy measure is managed by a lead ‘partner’ from either HM Treasury or HMRC and a policy partner from the other department. The policy lead is a person who is responsible for day-to-day management of the measure. The partner will project manage their group. The lead partner and policy partner are supposed to work together, but the remainder of the teams

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<sup>13</sup>Ibid, at pages 1305–6.

seem basically to work within their own departments. There is not the sense of one combined team all working together.

- 4.10 This system of management of the tax policy process is not understood by external stakeholders. There is frequently a problem in meetings of understanding who is leading the process. A common problem encountered is that HMRC staff may attend meetings, but when points are made by stakeholders that are considered to be ‘policy’ matters, the response is that such comments need to be dealt with by HM Treasury (who are not present).
- 4.11 In evidence to the Treasury Select Committee in 2007, the Tax Faculty said: ‘We are not convinced that this distinction is working in practice. There appears to be a lack of clarity about which department is responsible for policy formulation and what involvement HMRC actually has in the development of tax policy. We suspect these concerns stem from the fact that HM Treasury cannot formulate tax policy in a vacuum and that it needs the considerable practical input and expertise of HMRC to design tax policies that work on the ground. We think that there is a need for a clear assessment from HMRC, and ideally from HM Treasury as well, as to how in practice policy is being dealt with under the current system and a programme of improvements to address the issues mentioned above. We think the lack of clarity has extended into a need for the newly merged body to be “seen to be doing things” and thus the proliferation of initiatives, sometimes without any apparent cross-communication.’<sup>14</sup>
- 4.12 A practical example of the problem of the split roles arose in the context of the foreign profits consultations. HM Treasury had seemed very interested in the issues and would ask questions that to a tax expert would often seem naive, whilst HMRC were clearly concentrating on stopping revenue loss, and there was little communication between the two. This served to increase the feeling that HMRC and HM Treasury are drifting apart.
- 4.13 More recently, in June 2008, the Select Committee on Economic Affairs reviewed the consultation on capital gains tax and residence and domicile. It was noted that some witnesses highlighted what they saw as a ‘difficulty in lack of coherent communication and understanding between HMT and HMRC’ and that there was a ‘climate of uncertainty around policymaking’.<sup>15</sup> Mark Neale from HM Treasury strongly resisted any such suggestions. The conclusion of the Committee was: ‘We cannot tell whether there is any substance in the point put to us by our private sector witnesses that the policy

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<sup>14</sup>At paragraphs 32–34 of Memorandum submitted by the Tax Faculty of the Institute of Chartered Accountants in England and Wales, 17 January 2007, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtreasy/192/7012413.htm>.

<sup>15</sup>At paragraphs 16 and 18 of Select Committee on Economic Affairs, *2nd Report of Session 2007–08: The Finance Bill 2008*, vol. I, Report.

partnership between HMT and HMRC is not working well. We note the forceful rebuttal by officials. We recommend that the review of the consultative processes (which we recommended previously) should include consideration of how well HMT and HMRC are working together.’<sup>16</sup>

- 4.14 No review of how well HM Treasury and HMRC are working together has been published.
- 4.15 As a result of the uncertainty regarding the roles of HM Treasury and HMRC, the quality of consultations has been reduced.<sup>17</sup> In evidence to the Treasury Select Committee, the Tax Faculty argued that the blurring of responsibility between HM Treasury and HMRC had harmed the consultation process: ‘There have been a number of poor quality consultations over the past year ... We are concerned that the need to seek views and input from external stakeholders has sometimes fallen into a “black hole”, with neither department paying sufficient attention to understanding the needs of stakeholders.’<sup>18</sup>

#### Problems associated with undervaluing technical knowledge

- 4.16 The new relationship seemed positive at first, in the sense that it brought HM Treasury and HMRC closer to work together, but over the last two or three years it seems to have struggled to be as effective as one would expect and the will to work together seems to have significantly reduced. HM Treasury expertise has dissipated and the replacements are often very junior. There is a real feeling that a problem in HM Treasury is the lack of experience and engagement with the real world.
- 4.17 Technical tax knowledge and experience seems to be much less valued than it was in both HMRC and HM Treasury. In meetings with HM Treasury, the comment is heard that it is good to approach the problems raised by tax matters without being ‘encumbered’ by prior knowledge of the issues. While it is recognised that the HM Treasury officials are clearly highly intelligent people, dealing with tax policy does not just require intelligence. The tax system is intricate and complex. Change one part of it and there are almost always numerous repercussions throughout the system.
- 4.18 It is understood that before embarking on tackling a new area of tax policy, those involved in HM Treasury will have a day or two of background education, but this is woefully inadequate. Experience has shown this to be the case on numerous occasions. Most recently, discussions regarding proposals to deal with false self-employment in the construction industry showed that those

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<sup>16</sup>Ibid, at paragraph 48.

<sup>17</sup>There are numerous practical concerns with the consultation process, which will be dealt with by a separate paper.

<sup>18</sup>At paragraphs 36 and 37 of Memorandum submitted by the Tax Faculty of the Institute of Chartered Accountants in England and Wales, 17 January 2007, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtreasy/192/7012413.htm>.

from HM Treasury had very little understanding of the underlying legal principles and case law involved. This leads to the very real concern that proposals are put together that are misplaced. Huge amounts of effort are then put into the process by stakeholders to seek to achieve viable proposals. Stakeholders in turn become frustrated by the lack of understanding of the underlying issues and consultation weary. It is understood that secondees both from HMRC and from private firms are used to bolster the technical understanding of HM Treasury, but this does not appear to be sufficient technical input. (Often, the secondees from professional firms are relatively inexperienced in the tax field.)

#### Lack of continuity and depth of experience

- 4.19 The problems associated with a lack of technical understanding in HM Treasury are exacerbated by the people responsible for a particular policy leaving before it has been followed through to the end. Lack of continuity amongst those responsible for policy makes the process at best frustrating for the stakeholders involved. It is not just continuity from one proposal to the next; it is also continuity during the consultation process involved with a particular proposal. The process is prolonged by constant re-invention of the wheel. In addition, it is, no doubt, felt not to be worthwhile investing large amounts of resources in giving tax training to people who will only stay in a particular role for a short time, but this reduces the quality of the policymaking and consultation by those people.
- 4.20 An example of policymaking that suffered from these problems was the income shifting proposals. An experienced person in HM Treasury moved on (away from tax policy) and their replacement had to start from what seemed like scratch – without the benefit of a proper opportunity to develop knowledge and experience.
- 4.21 It has appeared on occasions that there is little in the way of records of previous reviews kept and consultees will find themselves having to revisit issues not only because the civil servants involved have changed but also because the new ones are not aware of what has been discussed before. There appears to be little or no ‘corporate memory’ at times. This position is exacerbated when responsibility for running the consultation shifts from HM Treasury to HMRC as the policy development work comes to an end and the implementation phase is reached. Such management issues have been keenly felt in the context of the foreign profits consultations.
- 4.22 The interface between policymaking and technical knowledge is vital. The civil service practice of moving people on after a couple of years has led to HM Treasury losing tax technical knowledge; their replacements cannot

achieve proper tax knowledge in the available time to be effective. There seems less encouragement to work with HMRC experts than there should be. HMRC can also suffer from losing people to departmental moves, but at least most people stay within HMRC and their replacements have a tax background and are very often from within the same team.

#### The work pattern and relationships are not formalised

- 4.23 One of the key criticisms of the previous structure in the O'Donnell Report was that the working relationships between those involved in policy work were not formalised and the work pattern tended to be adapted in practice to the particular circumstances of the policy and the different teams involved.
- 4.24 It is understood that, under the new structure, the relationships are not formalised. There is no Framework Document as recommended. In addition, it appears that various factors can determine who leads on which proposal. If it is politically sensitive, HM Treasury will lead; otherwise, it will depend upon where the available manpower is – in other words, the decision will be adapted to the particular circumstances of the policy and the different teams involved.

### **5 Recommendations**

- 5.1 For the reasons explained in section 4, the organisation of tax policymaking should be reconsidered.
- 5.2 At a minimum, there should be a review of the relationship between HM Treasury and HMRC, as recommended by the Select Committee on Economic Affairs in 2008.
- 5.3 A Framework Document as recommended by O'Donnell may clarify the relationship both internally and externally.
- 5.4 However, a Framework Document would still leave many of the problems of the current arrangements in place: the disconnect between those responsible for tax policy and those operating in the field; the lack of unified approach; the lack of continuity; and the undervaluing of technical knowledge.
- 5.5 If HM Treasury are to retain their current tax policy role, they need to review their staffing arrangements to ensure they have – and then both retain and develop – tax technical expertise.
- 5.6 There are three sources of tax policy: Ministers, HM Treasury implementing Ministers' policies and HMRC (currently limited in their maintenance role to reacting to problems and avoidance). There are three options for the location of the policymaking generated by these sources: HM Treasury, HMRC or a separate policymaking office. Moving all policymaking to HM Treasury would exacerbate the problems identified above. Moving policy back to HMRC has

some appeal as it would reconnect the tax policy with those operating in the field and may be a way of re-energising policy and technical work in HMRC. However, it may be considered politically inappropriate.

- 5.7 This leaves the possibility of looking at a third location, a single body of tax expertise acting to give the unified approach, continuity and input of technical knowledge that are so clearly needed.
- 5.8 It is noted that it has been proposed that the Office of Tax Simplification examine the existing tax code and make proposals for simplification. The details of any such body are eagerly awaited, but there is considerable concern that the effectiveness of the OTS will be seriously limited if, on the one hand, it is trying to simplify and modernise the tax system and, on the other hand, departments are developing tax policies that pull against that aim.
- 5.9 The situation is quite different from that of the Tax Law Rewrite. In that case, the tax code was not being changed, just rewritten to make it more accessible. If the OTS is to make a real difference and simplify the tax code, it will need to make fundamental changes to the tax system and will be directly involved with the direction of tax policy. It would seem therefore that there may be scope for extending the role of the OTS to act as a first stop for others when developing tax policy. The OTS could provide HM Treasury with the expert view, taking into account the whole system and recognising the issues that will be met, before HM Treasury and/or HMRC face the public with proposals.
- 5.10 Taking the idea beyond an independent advisory body, the OTS could include members of HM Treasury and HMRC to join up the thinking behind the development of tax policy as much as possible. Technical and policy work could once again be seen to be valuable in HMRC if the OTS included members of HMRC recognised to have considerable technical and policy skills. Including such members could help to reconnect tax policy with operations in the field, although it is recognised that there may be resource issues for a department whose technical resource is already spread thinly over various types of work currently (including casework as well as policy measures) and which may be stretched even more thinly in coming years. A body such as this type of OTS could provide immediate expertise, continuity and a unified approach to tax policymaking in the UK. At its best, representatives of such a body would participate in consultations with stakeholders so that those steering policy would understand issues raised by stakeholders *and* stakeholders would understand the drivers of the policy.
- 5.11 This does not mean that a government would be fettered in its freedom to govern by raising, lowering or otherwise altering taxes. Instead, it would mean that in making such changes, the government would have readily available

expert advice to help it avoid some of the pitfalls and U-turns that have been suffered in recent years because of policies that were badly thought through. However, in order for it to be an effective force, the OTS would need to be seen as more than purely a body advising HM Treasury and HMRC. It would also need to exercise an executive function, preparing and driving forward real changes to the tax system, so as to attract the people and skills it requires.

## Appendix 1 Extracts from O'Donnell Report

‘The review recommends that:

- ‘● the Treasury should have lead responsibility and accountability for tax policy, with support from the new department, and subject to this, the new department should lead on policy maintenance, with support from the Treasury; and

- ‘● the Treasury’s capability for high-level analysis of the tax regime should be strengthened, to develop a better evidence base for tax policy and a clearer focus on tax policy objectives.

‘Flowing from these recommendations:

- ‘● the new arrangements should be founded on an outward facing culture of policymaking, with greater contact between officials and external stakeholders. To facilitate this and to broaden the perspectives on tax policymaking, the number of external secondees in the policy centre should be increased;

- ‘● the Treasury and the new department should ensure that the links between implementation and policy continue to improve as a result of the proposed changes to policy arrangements; and

- ‘● a significant new tax analysis and statistics unit should be established in the new department, with a work programme and resources governed by a steering group including important Government stakeholders, incorporating and building on existing analysis and research functions in Customs and the Revenue.’<sup>19</sup>

- ‘● a Framework Document setting out who is accountable to whom, for what, in the new department, should be published. The Framework will be an opportunity for Ministers to set out long-term principles to govern the work of the department; and

- ‘● structures should be established to ensure that the Treasury and the new department have a close dialogue, developing a shared view of key issues, and agreeing advice to the Chancellor on the form of the annual Remit.’<sup>20</sup>

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<sup>19</sup>From the Summary and Recommendations in chapter 5.

<sup>20</sup>From the Accountability Recommendations after paragraph 1.31.

The Tax Law Review Committee (TLRC) was set up by the IFS in autumn 1994 to ask whether the tax system was working as intended, efficiently and without imposing unnecessary burdens. Its role is to keep under review the state and operation of tax law in the UK, which it does by selecting particular topics for study. It does not seek to question Government policy as such but to look at whether existing arrangements achieve the policy in a satisfactory and efficient way. The Committee's members represent a broad cross-section of informed opinion from industry and commerce, the judiciary, academia and the professions. Among its current projects is one considering the effectiveness of tax legislation, including anti-avoidance legislation.

Five years have passed since the reorganisation of tax policy making with lead responsibility and accountability now resting with HM Treasury and HMRC being responsible for policy maintenance. This TLRC paper considers that the organisation of tax policy making is not working as well as it should to produce clear and effective tax policies. It argues that if steps are to be taken to improve the system of making UK tax law and to simplify the UK tax system, the tax policy making function also needs to be addressed.

The paper considers how this might be done, either improving the operation of tax policy making within HM Treasury and HMRC, or by using a separate body for this purpose. If an Office of Tax Simplification (“OTS”) is to be set up then it may be appropriate to look at how it could contribute to policy making. However, if the OTS was seen to be a way of dealing with the problems perceived in current tax policy making it would need to be more than an advisory body.

The discussion paper is published in order to encourage debate on these issues and to inform the TLRC's further work in this area.