



Chartered  
Institute of  
Taxation

Excellence in Taxation

## House of Lords Constitution Committee inquiry into the legislative process

### The Passage of Legislation through Parliament

### Response by the Chartered Institute of Taxation

#### 1 Introduction

- 1.1 As an educational charity, the primary purpose of the Chartered Institute of Taxation (CIOT) is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.2 Our objectives for the tax system include:
- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
  - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - Greater certainty, so businesses and individuals can plan ahead with confidence.
  - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
  - Responsive and competent tax administration, with a minimum of bureaucracy.
- 1.3 Our interest is in taxation so we limit our comments in this submission to tax legislation, in particular the Finance Bill. This, of course, has some key differences to other legislation, in particular the more limited scrutiny provided in the House of Lords.
- 1.4 This submission draws on input – particularly from our members and other tax professionals – to a project on improving the tax policy making process, which we

carried out jointly during 2016 with the Institute for Government and Institute for Fiscal Studies, and which led to a final report – ‘Better Budgets - Making Tax Policy Better<sup>1</sup>’ – published in January 2017. The comments in this submission are, however, our own only.

## 2 Executive summary

- 2.1 Regarding **parliamentary scrutiny processes**, the quality of parliamentary scrutiny of tax legislation is not high. The absence of meaningful House of Lords scrutiny of Finance Bills during their passage means that flaws in Commons scrutiny are all the more glaring. These deficiencies are only partly compensated for by the pre-legislative work of select committees and other earlier consultation.
- 2.2 We welcome the fact that it is now possible to submit written evidence to public bill committees. However we are concerned that the process is not operating in a timely fashion. We welcome the granting of the ability for public bill committees to take oral evidence. However we are disappointed that the Government have – despite cross-party pressure – so far been unwilling to do this for Finance Bill committees. We find their arguments unpersuasive.
- 2.3 We favour more effective liaison between select committees and the Finance Bill public bill committee so that concerns identified by the former are pressed more by the latter. There is a strong case for increasing the resources available to Parliament for scrutinising tax matters. We believe there are ways that the House of Lords could play a greater role in scrutinising tax legislation without challenging the Commons’ ultimate financial privilege.
- 2.4 Regarding **timetabling of legislative scrutiny**, Finance Bill clauses selected for consideration in Committee of the Whole House tend to get less technical scrutiny. This selection should be used sparingly. Additionally we would find it helpful to have a longer gap between publication of bills and the commencement of committee stage – a minimum of four weeks.
- 2.5 Finance Bill **explanatory materials** often simply repeat what the legislation itself says, without being particularly explanatory. Good Explanatory Notes should state the purpose and effect of each measure clearly, a matter of fundamental importance to interpretation. Asking the Office of Tax Simplification to publish simplification assessments of new tax proposals would assist parliamentary scrutiny.
- 2.6 In relation to **public engagement**, we have seen significant improvements in the pre-legislative consultation process on tax policy in recent years but engagement with Parliament for stakeholder groups during the passage of legislation remains difficult. Once a Finance Bill has been published, it is difficult to get a change, even where there is a clear error in the drafting. Governments frequently need to come back in following Finance Bills to correct mistakes made in earlier ones. There is an over-reliance by government on non-binding HMRC guidance rather than amending legislation.
- 2.7 **Technology** could be used more effectively to show how existing legislation would change if proposed legislation were enacted. Government could consider an online

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<sup>1</sup> <http://tinyurl.com/betterbudgets>

facility to input comments by clause numbers, so MPs can see who says what against each clause.

### **3 General comments**

- 3.1 This submission should be considered in the context of our two earlier submissions to this inquiry, covering Preparing Legislation for Introduction in Parliament, and the Delegation of Powers. In particular we emphasise our previous comments about the value of timely, meaningful pre-legislative consultation, in accordance with the Government's 'new approach to tax policy making', introduced in 2011 and reaffirmed in 'The new Budget timetable and the tax policy making process' in December 2017. When this approach is followed, a higher quality of tax law generally results. We find pre-legislative scrutiny of this kind – including, but by no means limited to, early stage consultation and the publication of draft clauses for comment – to be generally far more effective than parliamentary scrutiny at improving tax legislation and ensuring that it delivers the Government's intentions effectively and without unintended consequences.
- 3.2 In recent years the quantity and pace of legislative change has been a hindrance to effective scrutiny of tax legislation. Tax change is also one of the greatest causes of complexity in the tax system and, in our view, having two major fiscal events a year encouraged government to keep fiddling about with the system, while frequently not allowing enough time to consult on planned changes or evaluate the impact of previous changes. From this perspective the Government's move to hold just one fiscal event a year – with the 'Spring Statement' having a more limited role – is welcome. The move to a single fiscal event is something the CIOT and our Better Budgets partners had argued for. We believe that it can enable more time to be spent on consultation and scrutiny and reduce the strain that two big fiscal events a year put on government and consultees alike. In a similar vein we are hopeful that, following a year (2017) when a record 829 pages of Finance Act legislation was passed, the relatively modest 196 page length of Finance Act 2018 is a positive sign for the future.
- 3.3 In arguing for less tinkering with the tax system it is important to emphasise that we are not against well thought through change, rather we are concerned about (a) successive sets of changes not getting a chance to bed in before further changes are made, and (b) changes which prove ineffective because of unforeseen consequences. For example, the dividend allowance was announced in Summer Budget 2015, without prior consultation, with the purpose of tackling the problem of tax-motivated incorporation. In Spring Budget 2017, less than two years later, the level of the allowance was reduced by 60 per cent with the same purpose. Clearly the Government judged that the 2015 reform had not achieved its intended objective. Consultation in advance of the initial change might have enabled the Government to get the reform right first time.

### **4 Parliamentary scrutiny processes**

- 4.1 Opinions among tax advisers of the quality of parliamentary scrutiny of tax legislation are not high. In particular there is a perception that, with a few honourable exceptions, MPs on the Finance Bill public bill committee take little interest in proceedings and that such debate as there is is characterised by political knock-

about rather than diligent technical scrutiny. The absence of meaningful House of Lords scrutiny of Finance Bills during their passage means that flaws in Commons scrutiny are all the more glaring. These deficiencies are only partly compensated for by the pre-legislative work of select committees of both Houses (see below).

- 4.2 In fairness the length of most recent Finance Bills and the highly technical nature of most clauses does not make effective scrutiny of the legislation easy. The CIOT, along with our Low Incomes Tax Reform Group, our sister body the Association of Taxation Technicians, and other professional bodies, seeks to support parliamentarians in their scrutiny by providing briefing notes to opposition frontbenchers and others on the Bill's clauses. We do this with three objectives in mind:
- To educate – our briefing helps MPs to understand what they are discussing and its implications;
  - To get better law - while it is rare that we get policy change at this late stage, we do often succeed in eliciting clarifications from ministers that will be helpful in interpreting legislation, or commitments to put particular things in guidance;
  - To put concerns on the record for future reference.

- 4.3 We welcome the fact that it is now possible to submit written evidence to public bill committees, including the Finance Bill Committee. CIOT takes regular advantage of this facility. However we do have some concerns that the process is not operating in a timely fashion. For example, see the following exchange between two members of the latest Finance Bill Committee during the committee's first hearing:

*Alison Thewliss (Glasgow Central) (SNP): My hon. Friend makes a very good point on the need for evidence. Some of the written evidence submitted to the Committee—it was made available very late, I must say; it came yesterday at around 4 pm, which gives us very little time to read a huge amount of evidence—suggested that there are things that need to be changed and that people would like to see tweaked. ...*

*Kirsty Blackman: I would go so far as to bet that all Committee Members have not read all the written evidence that has been provided. I bet that they have not had time, given that the customs Bill is running at the same time, and the majority of us who are Front-Benching for that Bill are also Front-Benching for today's Bill.<sup>2</sup>*

We are aware that transmission of written evidence from the Scrutiny Unit to MPs for previous Finance Bills has been slow too and, while we cannot comment on other bills, it seems likely this problem is not limited to Finance Bills. If there is a general problem it may be that the Scrutiny Unit needs additional resourcing to ensure parliamentarians receive written evidence in good time for their debates. We would find it helpful for there to be a set timescale for submission of written evidence (X days before first sitting of PBC) with a commitment by the Scrutiny Unit to get it both circulated to PBC members and published on the parliamentary website (Y days before first sitting).

- 4.4 We also welcome the granting of the ability for public bill committees to take oral evidence. However, to our great disappointment, the Government have so far been unwilling to do this for Finance Bill committees. When an amendment was tabled to the programme motion for the latest Finance Bill committee the Financial Secretary

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<sup>2</sup> [https://hansard.parliament.uk/Commons/2018-01-09/debates/63d31d09-b11f-45b1-b7d1-221ddf493310/Finance\(No2\)Bill\(FirstSitting\)#contribution-42FA937B-5CA1-418D-BFC4-FD43EA87B8AD](https://hansard.parliament.uk/Commons/2018-01-09/debates/63d31d09-b11f-45b1-b7d1-221ddf493310/Finance(No2)Bill(FirstSitting)#contribution-42FA937B-5CA1-418D-BFC4-FD43EA87B8AD)

to the Treasury (Rt Hon Mel Stride MP) argued that pre-legislative scrutiny (such as publishing clauses in draft) rendered oral evidence at committee stage unnecessary, while the fact that the most contentious Finance Bill clauses are considered in Committee of the Whole House meant its value would be substantially reduced.<sup>3</sup> Bluntly, we disagree. While acknowledging the value of pre-legislative scrutiny it is clear from our involvement in other oral hearings (eg on the Taxation (Cross Border Trade) Bill) and from the comments of parliamentarians across parties<sup>4</sup> that MPs find the opportunity to question experts and affected taxpayer groups extremely helpful in their efforts to scrutinise legislation. With regard to the taking of some clauses in Committee of the Whole House these are usually just a small fraction of the Bill and, while they tend to be the most politically contentious parts of the Bill, these are often the measures on which organisations such as ourselves with a technical focus have least to say, as the issues at stake are generally political ones.

- 4.5 Whereas most bills go through a full set of parliamentary stages in both Houses, Finance Bills and other tax bills get just a cursory debate in the Lords, with no ability for the upper House to reject or amend. We understand the reasons for this and would not seek to challenge the Commons' financial privilege. However it does seem to us a waste that the expertise in the Lords plays little part in the Finance Bill process (though the pre-legislative role of the Economic Affairs Committee is noted) – the latest Bill was debated for just half an hour in the Lords. Especially in the context of further Lords reform we wonder if it might be time to think innovatively about mechanisms to enable peers to propose and debate amendments to the Finance Bill, especially on its technical aspects, while retaining for the Commons the ultimate power to get its way should the two Houses be at odds.
- 4.6 We would like to see more effective liaison between the Lords Economic Affairs Committee, the Commons Treasury Committee and the Finance Bill public bill committee so that concerns identified by the first two are pressed more by the latter.
- 4.7 We believe there is a strong case for increasing the resources available to Parliament for scrutinising tax matters. This covers both public bill committees and select committees as well as, potentially, costing of policies for opposition frontbenches and support for individual backbenchers wishing to propose measures. This might be in the form of a Joint Parliamentary Select Committee on Taxation modelled on the US Congress's Joint Committee on Taxation. The congressional committee has a largely technical role. It is supported by a staff of around 40. However, noting that members of Congress have significantly greater powers to make tax law than do members of the UK Parliament, it may be that Australia's Parliamentary Budget Office is a better example. This has a role in costing opposition policy pre-election but can also provide confidential advice on tax options to parliamentarians at any time.
- 4.8 A particular suggestion made in a submission to the Better Budgets project by Andrew Tyrie (then Chair of the Treasury Committee) was 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. We support this.

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<sup>3</sup> [https://hansard.parliament.uk/Commons/2018-01-09/debates/63d31d09-b11f-45b1-b7d1-221ddf493310/Finance\(No2\)Bill\(FirstSitting\)#contribution-92BCAC24-B95E-4BA6-A3A5-57C9A0421681](https://hansard.parliament.uk/Commons/2018-01-09/debates/63d31d09-b11f-45b1-b7d1-221ddf493310/Finance(No2)Bill(FirstSitting)#contribution-92BCAC24-B95E-4BA6-A3A5-57C9A0421681)

<sup>4</sup> In addition to Labour and SNP frontbenches, consecutive Conservative Treasury Committee chairs – Andrew Tyrie and Nicky Morgan – have made the case for oral evidence sessions.

- 4.9 We noted with some concern the restrictive resolutions tabled by the Government that limited the scope of amendments to the latest Finance Bill.
- 4.10 The impact of Brexit on scrutiny of legislation is particular apparent to us in terms of secondary legislation, of which a large amount is anticipated. Looking forward, we are more concerned about the extent of the powers to amend Customs – and to an extent excise duties and VAT – law by secondary legislation. In decades to come, when Brexit is a distant memory, ministers will retain the powers to rewrite virtually every aspect of the UK’s Customs regime without any need for recourse to primary legislation. While recognising the need for the detail of Customs law and rates to be set by secondary legislation we question whether this is an acceptable long-term balance of powers between parliament and the executive.

## **5 Timetabling of legislative scrutiny**

- 5.1 A number of the points raised in section 4 are also relevant here. In particular our support for early Finance Bill hearings to be devoted to oral evidence (4.4).
- 5.2 We understand the reasons for debating the most politically contentious clauses of Finance Bills in Committee of the Whole House. However we feel that, particularly where large parts of the Bill are chosen for this, it can actually have the effect of reducing scrutiny, particularly technical scrutiny. We hope it will be used sparingly in future. (NB. We recognise that this is a matter for the opposition.)
- 5.3 We would find it helpful to have a longer gap between publication of bills (particularly Finance Bills) and the commencement of committee stage (including Committee of Whole House). A minimum of four weeks would be helpful (more if over a holiday period such as Christmas). This would assist with production of briefings / written evidence for MPs debating the Bill. This particularly applies where significant parts of the Bill have not been published in draft.
- 5.4 The tax consultation and legislative process, operated fully, runs over a period of about two years,<sup>5</sup> and usually across three parliamentary sessions. We feel this works well and having annual sessions has no obvious impact on the legislative process.
- 5.5 There have been issues in the past when the Finance Bill process has been interrupted by a general election and either large numbers of clauses have been passed with minimal debate (2015) or large parts of the Bill have been dropped with consequent uncertainty about their fate (2017). We are hopeful that the changed Finance Bill timetable, with the Bill going through its parliamentary stages December – March, will make this a much rarer occurrence going forward.

## **6 Explanatory materials**

- 6.1 There has been widespread criticism of Finance Bill Explanatory Notes by tax professionals for often simply repeating what the legislation itself says, without being particularly explanatory. Good Explanatory Notes state the purpose and effect of each measure clearly, a matter of fundamental importance to interpretation. For

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<sup>5</sup> This is set out in section 1.4 of <https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process>

example, the legislation putting in place the General Anti-Abuse Rule (GAAR) defines tax arrangements as 'abusive' with reference to, inter alia,

*whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions.*<sup>6</sup>

- 6.2 One of the most useful parts of Explanatory Notes (as with Tax Information and Impact Notes (TIINs)) is when helpful background is included such as, for anti-avoidance measures, an indication of whether HMRC has identified avoidance that the measure seeks to shut down (as opposed to it being a pre-emptive measure where no avoidance had yet been detected), and also an indication where a measure is prompted by a court verdict.
- 6.3 The Office of Tax Simplification (OTS) could be asked to publish simplification assessments of new tax proposals. This would assist parliamentary scrutiny. We recognise it would carry resource implications for OTS.
- 6.4 Our perception is that Parliament makes relatively little use of TIINs when considering legislation, though the numbers on TIINs for some high profile measures (digital tax reporting stands out as an example) have been scrutinised closely by select committees. This has generally been in response to external challenges to HMRC's figures. Additionally we see little evidence that the financial impact assessments in TIINs are revisited or checked after implementation for their accuracy, ie that a measure intended to cost (say) £200 million actually does cost around £200 million. We leave open the question of whether this is a task for government or Parliament, but in either case such assessments should surely be openly published.
- 6.5 We make some additional points relating to accessibility of legislation under the Technology heading below (section 8).

## **7 Public engagement**

- 7.1 The CIOT engages directly with both government (relevant officials and, on occasion, ministers) and opposition spokespeople during the passage of tax bills through Parliament, in addition to commenting formally on draft clauses when these are published. The process has improved in a number of ways over recent years, as has the wider consultation framework, and we welcome this.
- 7.2 However engagement with Parliament for ourselves and other stakeholder groups during the passage of legislation through parliament remains difficult. A number of points raised in section 4 are also relevant here. In particular our points around improving the provision of evidence from stakeholders and members of the public to public bill committees (4.4 and 4.5).
- 7.3 It remains the case that, once a Finance Bill has been published, it is difficult to get a change, even where there is a clear error in the drafting. This applies both to direct engagement with government and to getting opposition amendments considered by government. Again, this is an area where oral hearings could help, by focusing attention on aspects of the Bill which were not well thought through or did not do

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<sup>6</sup> Finance Act 2013, s207(2)(a)

what was intended. This would reduce the number of occasions government needed to come back in following Finance Bills to correct mistakes made in earlier ones.<sup>7</sup>

- 7.4 It also remains the case that engagement with government is more effective the earlier in the process it comes. Early stage consultation is more effective than late stage consultation, which in turn is more effective than commenting on draft clauses. Commenting on the published bill is least effective of all.
- 7.5 We often find that, once a Bill has been published, HMT/HMRC are more inclined to deal with interpretation issues arising from legislation by issuing non-binding HMRC guidance rather than changing the legislation. Sometimes this is the best route, but there are instances where we take the view the legislation should be clearer. The legislative process does not help in such cases. We do note that the current Financial Secretary has shown a keen interest in the use of HMRC guidance and has engaged with taxpayers and professional bodies with a view to ensuring its quality and appropriate use, which is very welcome.
- 7.6 It is important to note that we envisage Finance Bill evidence sessions involving a range of affected groups (eg landlords, business groups, Women's Budget Group), not just tax experts such as CIOT and the IFS.

## **8 Technology**

- 8.1 Technology could be used more effectively to show how existing legislation would change if proposed legislation were enacted (i.e. making use of tracked changes), though we recognise that this would only be utilised by a small number of experts, including those in HMRC.
- 8.2 It is welcome that the Government publishes a version of the Finance Bill with changes tracked at the end of committee stage. We would like to see something similar done for the transition from draft clauses to the final bill.
- 8.3 Government could consider an online facility to input comments by clause numbers, so MPs can see who says what against each clause.
- 8.4 The legislative process is opaque to most people. More could be done to provide a flowchart setting out the whole process from idea through consultation to Royal Assent and where/when/how people can input.

## **9 Acknowledgement of submission**

- 9.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

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<sup>7</sup> Recent examples are the 2015 changes to Entrepreneurs' Relief which had to be revisited in Finance Act 2016, and new rules on corporate interest restriction, passed in 2017 and tidied up in Finance Act 2018.

## **10 The Chartered Institute of Taxation**

10.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 18,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation  
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