

**Office for Tax Simplification Review of Definitions in Tax Legislation  
Response by the Chartered Institute of Taxation**

**1 Introduction**

- 1.1 The Chartered Institute of Taxation (CIOT) sets out its comments on the Office of Tax Simplification's (OTS) Review of Definitions in Tax Legislation.
- 1.2 The OTS is carrying out a project to identify and measure the factors responsible for tax complexity. As part of this project, it has looked at definitions in tax legislation and identified common themes and considered some suggestions and guidelines for a 'good' definition.
- 1.3 The OTS has concluded that a high number of definitions might be a contributor to complexity but does not necessarily denote complexity. There is scope for policy makers and draftsmen to focus on definitions especially to ensure that definitions are not over used nor is the same label being used for different definitions. However, the OTS recognises that this has to be balanced with the time pressure under which both policy makers and draftsmen operate, as well as remembering that the definition has to meet a policy objective. One suggestion it makes is the creation of a database of all definitions in tax legislation which would be a readily accessible reference point, not only for policy makers and draftsmen, but also for users of legislation.

**2 Executive summary**

- 2.1 The CIOT supports the work of the OTS in identifying how definitions in tax legislation can be improved in order to reduce complexity and lead to consistency across taxes.
- 2.2 The CIOT is pleased to note that the OTS has provided a comprehensive analysis of what constitutes a 'good' definition. We agree that a more consistent approach to definitions would be helpful in framing future tax legislation and would help users of tax legislation.
- 2.3 We note that the OTS has recommended focusing only on future definitions due to

time and resource constraints. We agree that this is a sensible approach and could help prevent the problems identified with definitions from getting worse. However, we do believe that there is also scope for addressing some inconsistencies in current legislation.

- 2.4 The review of definitions has to be looked at in conjunction with the drafting of legislation. Clear drafting of legislation is crucial. It might be appropriate if a regular review was made of the instructions and guidance issued to the Office of the Parliamentary Counsel to ensure that the drafting of legislation is always consistent, concise, up-to-date and understandable going forward.
- 2.5 The CIOT hopes that the OTS will pass on its findings to the Office of the Parliamentary Counsel so they can be used to supplement the current guidelines on drafting UK legislation.
- 2.6 We recognise, and the OTS acknowledges, that the complexity of tax legislation, and the definitions contained within it, is ultimately a result of policy objectives which are decided upon without regard to complexity.
- 2.7 The OTS report has listed nine separate questions, which we now address in turn.

### **3 Q1: Do you find definitions easy to find in tax legislation?**

- 3.1 In summary, no. There is inconsistency between the locations of definitions in different pieces of legislation which means that definitions are often not easy to find.

### **4 Q2: Where would be the best location for definitions?**

- 4.1 A common policy on where definitions are located is desirable.
- 4.2 UK legislation tends to put the definitions at the end of each Act. This can sometimes make finding the definitions difficult since there are often many schedules after the basic legislation. In general terms, it is more logical to have a definitions section right at the front of the legislation. This aligns with the view that definitions should be terms that the reader needs to know to read the legislation properly. Despite this view, consistency is probably more important than logic, and we think it may be best to follow the example in the rewritten tax legislation noted below.
- 4.3 The Acts which have been rewritten as part of the Tax Law Rewrite Project (TLRP) have included an index of defined expressions, usually as the last schedule of each Act. The index has helpfully been in alphabetical order and with a link to the relevant definitions section of the legislation. It would be useful if a similar approach was adopted in all legislation, perhaps with the definitions located at the front rather than the back of the legislation. As indicated in the report at paragraph 2.5.4, it would be helpful if the current definition schedules were regularly updated and similar schedules introduced into the Acts that do not currently have them.
- 4.4 Inserting a definition inside a section (if it relates solely to that section), can be very convenient but of course may become a problem if what was originally intended to be a limited definition is later applied more widely.
- 4.5 A database (online or otherwise) of standard common definitions would be useful both

to practitioners and the parliamentary draftsmen, with exceptions that had to be justified and cross-referenced to legislation.

- 4.6 We thought that the use of 'word clouds' was innovative and interesting as was the reference to the 'Definer' dictionary in New Zealand. It would have been useful to know whether the 'Definer' database had helped to reduce complexity.
- 4.7 As an alternative to a database, the OTS report suggests that it might be appropriate to introduce a formal 'Taxes Interpretation Act' solely for the purpose of containing standard tax interpretations and definitions. We recognise that the drafting of such an act would take time and resources, and hence may be impractical. However, it would give policy specialists and parliamentary draftsmen the opportunity to carry out a thorough review of standard definitions across taxes.
- 4.8 Wherever a location for definitions is sited, it must be regularly reviewed to ensure that it remains consistent, relevant and up-to-date.

## **5 Q3: Would an online database of definitions in tax legislation be a useful resource in the UK?**

- 5.1 We think that the first step should be the creation of an online database of consolidated tax legislation. Of course such databases are maintained by private providers, but putting unconsolidated legislation online is of minimal use. Legislation would be of limited use, though, to taxpayers and members of the public, due to the complexity of tax legislation. Rather, it would be accessed by tax professionals.

An online database of definitions – without consolidated legislation – would be of limited use to taxpayers and tax advisers.

- 5.2 However, a database of standard definitions could help those setting policy and parliamentary draftsmen to draft better legislation. We believe that ATED is an example of poor drafting due to time pressure. The TLRP improvements in this respect are not being maintained.

## **6 Q4: Would it be possible or practical to have a system of common definitions (with limited exceptions) in tax?**

- 6.1 We believe that it is certainly possible and practical to have some, perhaps many, common definitions for all taxes. However, some definitions are specific to an area, so this may not be practical for all definitions. The successful implementation of common definitions would depend, amongst other things, on availability of adequate resources.
- 6.2 Common definitions should reduce inconsistencies and hence make tax legislation easier to understand. It would help if, at the very least, certain definitions (eg 'dwelling') used in different taxes were common definitions, and only departed from for a stated policy reason.
- 6.3 Clear policy intent normally helps interpretation of legislation, in particular definitions. However, often the policy intent is not known. It may therefore help (and would be fully in the spirit of transparency) if instructions to parliamentary counsel were made public. This may be particularly important in applying the GAAR. If publication of the full instructions to parliamentary counsel is not practical, a summary of the purpose and

intention of the proposed legislation as given by HMRC to parliamentary counsel might be published.

**7 Q5: Which style of definition do you prefer?**

- 7.1 Clear and concise.
- 7.2 Positive rather than negative.
- 7.3 Capable of being read and understood independently.
- 7.4 Written in everyday language.

**8 Q6: Would it be useful to have definitions stand out more within the body of the text?**

**Q7: If so, which formatting method would be most helpful?**

- 8.1 Possibly, depending on the style and font used and so long as there was a consistent approach across legislation and between paper and online formats. We understand that there is a long-standing legal drafting convention where definitions are commonly capitalised.
- 8.2 If a purpose of having definitions stand out more within the body of the text is to help find them, then we suggest a consistent approach to the location of definitions in tax legislation.

**9 Q8: Have the right principles underlying a good, or helpful, definition been identified?**

- 9.1 Yes, we believe that the OTS has thoroughly analysed the characteristics of a good definition.

**10 Q9: Do you have any other suggestions in relation to definitions?**

- 10.1 It goes without saying that simpler legislation would normally need fewer difficult to understand definitions. However, it is not always possible, practical or desirable for legislation to be simple. Improving definitions could make a real difference: if definitions were clearer then they could help make otherwise complex legislation easier to understand.
- 10.2 We note that the report refers to the fact that 'each parliamentary draftsman has their own individual style' (paragraph 2.3.2). And at paragraph 2.4.6, when referring to the outcome of the TLRP, it is noted that 'different draftsmen were responsible for redrafting different parts of specific Acts'. These comments lead us to question whether there is scope for introducing more consistency of drafting between different draftsmen through education, training or the reviewing process.

- 10.3 We do think that the OTS severely limited its horizons by looking at just three Acts, all of which concerned direct taxes. It would have been very interesting if the project had also made a comparison of rewritten old law (Income Tax), European driven law (VAT) and modern tax law (Environmental Taxes). This would have had the potential to illustrate some substantial differences.
- 10.4 While harmonisation could help, different taxes have developed their own concepts which could make harmonisation difficult; for example, EU law has a significant effect on VAT, but much less effect on, for example, income tax.
- 10.5 Most VAT definitions are relatively clear; this is helped by the fact that VAT legislation follows the Principal European VAT Directive.
- 10.6 A recent First-tier Tribunal decision has suggested that a clear provision of UK legislation had to be interpreted differently in the light of the Principal VAT Directive. This is not just a VAT issue, either, and this principle of 'conforming interpretation' has applied in other taxes. It may mean, therefore, that a definition for VAT may not be the same as the definition for, say, corporation tax when the purpose of EU legislation is taken into account.

## **11 The Chartered Institute of Taxation**

- 11.1 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 17,000 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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