



# ICAEW REPRESENTATION 113/16

## TAX REPRESENTATION

### SIMPLIFYING TAX FOR THE FUTURE

#### RESPONSE TO OFFICE OF TAX SIMPLIFICATION STRATEGY PAPER PUBLISHED 12 MAY 2016

ICAEW welcomes the opportunity to comment on the consultation document [Simplifying Tax for the Future: Our high level strategy – a stakeholder consultation](#) published by the Office of Tax Simplification on 12 May 2016

This response of 25 July 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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## MAJOR POINTS

### Key point summary

1. We believe the (Office of Tax Simplification) OTS should define what it means by simplification and should develop a series of measures by which its success can be judged.
2. We suggest the OTS should become more involved in the policy setting process, assessing emerging policies for how they might add to the complexity or simplification of the tax system.
3. The OTS should work more closely with the Administrative Burdens Advisory Board (ABAB) and should seek to establish clarity between the roles of the National Audit Office (NAO), ABAB and itself.
4. Big challenges for the UK in the future, on which the OTS could focus its efforts, are
  - Britain's decision to leave the EU
  - Digitisation of the tax system
  - The trend towards self employment
  - The sharing economy
  - Migrant workers ability to cope with the tax system.

### General comments

5. ICAEW congratulates the OTS for the work it has done since it was established in 2010. In particular we recognise the time and contributions of John Whiting and Michael Jack, together with the many volunteers and secondees who have helped on its many projects.
6. ICAEW offers its full support to Angela Knight and her team.

### Simplification

7. We recommend that an early task for the new reconstructed OTS should be to reflect on what simplification means? For example the cash basis has introduced more choice to the system, but needs to be claimed, as does using fixed rate expense deductions or the flat rate scheme for VAT. These are all simple to use, but choice of itself adds complexity and adds to the administrative burden of the system.
8. In measuring simplification, the OTS could perhaps consider several aspects, including the effect of its proposals on
  - The operation of the tax system, does it reduce a burden?
  - The tax content of UK legislation. Does the proposal bring simplification when considered alongside other relevant legislation?
  - The comprehensibility of the legislation itself. Is it reasonable to expect the person it is aimed at to be able to understand it?
  - The need for guidance. Will considerable guidance be needed for the public, lay expert (eg parliamentarians and the press), the tax specialist?
  - Whether a sunset clause might be appropriate?
  - Adding to the length of the tax code.

All, some or none of these could be relevant in specific cases.

9. In June 2015, the OTS published its [complexity index](#), a spreadsheet tool for analysing and measuring the relative complexity of the UK tax system. It said at the time that it would be used by the OTS to identify future projects and to monitoring changes in complexity in different areas of tax. This does not appear in the current strategy paper, but should surely be taken into account when identifying this new work stream.

10. The OTS could consider reviewing definitions used for tax. Standardising definitions across the Taxes and NIC Acts would be a step towards simplifying tax, for example, minority shareholders and connected parties.

### **Policy setting process**

11. The OTS should consider and clarify where it stands in the legislative process
  - pre implementation, responding to consultation documents and commenting on impact assessments at the same time as everyone else, and/or
  - as part of a post implementation review.
12. We suggest the OTS should consider becoming more involved in the policy setting process at an earlier stage, assessing emerging policies for how they might add to the complexity or simplification of the tax system.
13. The Tax Faculty uses its Ten Tenets by which to judge tax policy. The Treasury Select Committee uses a similar approach to assess how policy is made. We suggest the OTS could consider adopting a similar objective set of measures.
14. The Finance Bill 2016 is the second longest already (the 12 July draft version) and the sixth Bill this century to exceed 600 pages: no Bill in the 20<sup>th</sup> century reach 500 let alone 600 pages. It has also, like other recent Bills, been rushed through Parliament without adequate scrutiny. The OTS could participate in assessing whether Finance Acts themselves have added to the complexity of tax by being inadequately reviewed and needing to be amended in subsequent Bills/Acts. The reluctance of governments to make changes to a Bill once it is published is often more about maintaining credibility than creating better law.

### **Working with Government departments and committees**

15. The OTS should work more closely with ABAB.
16. The OTS should seek to establish clarity between the roles of the NAO, ABAB and itself.

### **Specific questions**

**Question 1 (page 5): As well as these, are there other significant trends or issues, in the wider context or on the horizon that may change the tax landscape that we should take into account?**

17. In view of Britain's decision to leave the EU, there will be new opportunities to simplify tax law. VAT and duties will be the taxes most affected and the OTS may wish to be involved with strategic decisions at an early stage. Working with ABAB, the OTS would be well placed to make recommendations.
18. The OTS could consider what a digital tax system might look like and what tax simplification measures are needed to achieve this. In particular the extent to which mandating particular aspects of such a digital system actually simplifies it or whether this adds to the complexity of its operation for particular taxpayers or businesses. OTS should consider what changes to digital practices would make tax simpler and review its success once implemented;
19. The trend towards self employment will reduce the amount of employers' NIC collected. The line between employment and self employment is blurred and many businesses are unwilling to take on staff. Many businesses will incorporate without understanding what burden they are taking on. The tax problems are well known, but are complex and IR35 has attracted a notoriety of its own which does not reflect well on UK tax. Although the OTS has looked at this area before, it is one it might return to.

20. The sharing economy is growing and presents new challenges. Different taxes adopt different approaches to taxing transactions. The OTS might consider how these could be standardised or simplified.
21. Migration. The UK already has a large workforce from overseas. More work is needed to make the UK tax system comprehensible and accessible to migrant workers coming to the UK. As face-to-face services by HMRC are now almost non-existent, foreign workers and business owners must rely on digital contact or the telephone. The OTS might wish to consider whether this poses a risk to the UK tax base as people who don't understand their obligations are less likely to meet them. For example, a foreign plumber wants to pay his tax, but how would he know where to start?

**Question 2 (page 7): Bearing in mind our legislative framework, do you have any comments on the observations above on the OTS's purpose and aims?**

22. We consider these to be sensible.
23. The OTS has always positioned itself to make very practical suggestions. While considering the tax system in relation to big themes is a coherent way to approach tax simplification, there remain many smaller areas of complexity which need to be dealt with too. We would encourage the OTS to continue to identify these as well.

**Question 3 (page 8): Do you have particular suggestions for areas of the tax system that the OTS should consider in the coming years? How do you see our main priorities?**

**Partnership tax**

24. Following its earlier work, we suggest the OTS looks again at the taxation of partnerships and also whether compliance could be simplified.

**VAT**

25. When the UK leaves the EU, the government will have its first major opportunity since VAT was introduced on 1 April 1973 to make significant changes and simplifications. The following points were made in our representation to the EC on the future of VAT in [TAXREP 35/11](#), which are equally relevant to a potential review of UK VAT:

- Allow full input tax recovery relating to business or charitable activities
- Abolish the concept of exemption - all supplies to be either positive rated or outside the scope with recovery
- Substantially reduce the range of supplies not subject to VAT
- Eliminate all reporting requirements other than VAT returns
- Abolish the concept of input tax for public authorities – use alternative government funding to substantially reduce administration and compliance costs.

**Proliferation of personal and trust income tax rates**

26. The large number of personal and trust tax rates and allowances, including those caused by the high income child benefit charge and interest deductions, now need urgent review. Few taxpayers will know or understand their actual tax rate in spite of the annual tax summaries now being displayed in personal tax accounts. The high marginal rates at incomes of £50k and £100k are opaque and create disincentives.
27. Some reliefs are given by deduction from income, while others are given as a tax reduction. This adds to the complexity for an individual trying to understand the tax they pay. The new personal tax accounts give an overview, but mask the detail.

**Reviewing legislation and the role of extra statutory concessions**

28. The OTS should review new legislation and advise government on the words and structure of legislation. We often see poorly targeted legislation which then needs to be interpreted by guidance. Tax should be simple enough to enable (most) people to handle their own tax affairs. The work of the Tax Law Rewrite project could be used to guide the approach to new legislation.
29. The OTS could consider the role of extra-statutory concessions, which were introduced to make tax simpler, and remove some of the tax rough edges and inequities, but which have been significantly reduced in number following the ECJ Wilkinson decision and the subsequent review. We suggest their role should now be re-examined.

**Question 4 (page 9): Do you have any comments, principles or ideas in addition to the above, that you would like us to consider as we further develop our approach?**

30. We believe that the overarching aim of the OTS should be to ensure that its recommendations will make the tax system simpler. This means that the concepts can be understood by a reasonably intelligent individual and also that HMRC's IT can cope better. Some recent proposals of the OTS, see next paragraph, will create an even more complicated tax system and lead to even more HMRC mistakes than at present.
31. For example, making NIC annual, cumulative and aggregated will mean that the complications of the income tax PAYE system, and resulting errors, for example wrong code numbers and end-of-year PAYE income tax reconciliations, will be replicated for NIC.

**Question 5 (page 10): We are sure it is right to have a mix of private and public sector people but do we get the balance right? Are there pools of expertise we are not tapping? Or particular skills and expertise we could aim to recruit into our staff?**

32. It will be important to retain independence following the legislation which places the OTS onto a permanent basis, with funding support. There is a danger that undue pressure could be imposed by ministers and the OTS would simply become a branch of the Treasury.
33. We believe that a mix of private and public sector is right. Representative bodies like ours are in principle happy to continue contributing on a voluntary basis to the work of the OTS in meetings and by making submissions as long as we believe that the outcome will be real simplification, transparency and fairness.
34. The views of younger people should be sought actively, particularly in areas such as digitising the tax system.

**Question 6 (page 10): How should the OTS measure its success? Do you agree with the broad measures of success sketched out above or are there other objective measures or subjective criteria we should use?**

35. The success of the OTS must be measured by reference to outcomes. Has a new tax or deduction simplified the tax system, or is this new tax trying to influence behaviour (which often has unexpected outcomes), or does this new relief or extension to an existing one feel like the product of lobbying? More use could be made of grants which can sometimes be targeted more easily, than reliefs via the tax system.
36. Sometimes the list of successes looks rather contrived. Government has an open and unchallenged hand as it strikes things off the list as 'done', just because they are considered.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).