



Structures, processes and governance in tax policy-making: an initial report

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EXECUTIVE SUMMARY

This report documents an international study of the tax policy-making process carried out under the auspices of the Oxford University Centre for Business Taxation (OUCBT).

The objective of the work was to make a comparative analysis of the structures, processes and governance in this important area of government activity, where there has been little work to date, and enable good practice to be identified.

We believe this study will help inform thinking among governments and other interested groups in both developed and developing countries; and provide them with benchmarks against which to measure their own arrangements and a methodology through which to do so. Good structures, processes and governance do not automatically lead to good policy, but we believe getting these elements right will make the achievement of better policy outcomes more likely and reduce the risk of avoidable policy failures.

THE STRUCTURE OF OUR STUDY

The introduction of this study provides an explanation of the approach and techniques used, and sets out the countries that have been involved in it.

For each of the selected countries, the study examines a number of strands of the tax policy-making process:

- the functioning of the executive in relation to the development of tax policy, including the institutional framework within government through which tax policy is developed (section 1: Institutions within the executive);
- the influence and role of external institutions, both formal and informal (section 2: The influence and role of external institutions);
- the role of the legislature in scrutinising tax policy proposals emanating from the executive, and the rights of the legislature to initiate tax law changes (section 3: The role of the legislature); and
- the process through which taxpayer consent is sought for changes in tax law, including the nature and extent of any consultation with the public or with business on tax policy proposals (section 4: The involvement of the taxpayer community).

The recommendations arising from the study and the rationale for them are set out in full in section 5.

OUR APPROACH

The work has been carried out through a combination of initial desk-based research and face-to-face interviews with key figures in tax policy-making: ministers and former ministers, parliamentarians, high-level officials and policy experts, other commentators, business groups and financial journalists. The aim has been to capture both the formal and informal aspects of the policy-making process; the latter usually better understood through interview techniques than published sources alone.

OUR CONCLUSIONS

As a result of our work, we have reached a number of high-level conclusions relating to our subject group of countries:

- in all countries, the importance of tax policy-making is undervalued; and, largely as a consequence, it is under-resourced – particularly compared with other functions of government.;
 - in every country, tax policy is made and influenced by a very small group of people. There are too many outs and too few ins for an issue that affects so many people. The narrowness of the process has the potential to create unbalanced outcomes in the absence of other safeguards;
 - the fundamental link between taxation and representation, through which the public gives consent for tax measures, has been weakened in many countries because governments and political parties shy away from engagement with the electorate on serious tax policy choices - consent is taken for granted rather than explicitly sought. As a result, it is rare for governments to have a clear mandate either to retain the system as it is or to carry out major tax reform. This potentially limits governments' ability to bring outdated tax systems more into line with the needs and aspirations of today's society and to achieve economic objectives; and
 - there are several examples of good structures and governance around some aspects of the tax policy-making process. However, no country in our sample was strong in all its parts. All of the tax policy-making processes that we observed are capable of being improved in ways we believe would help governments deliver better policy outcomes.
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On a more detailed level - based on the evidence that we have seen and heard - we consider:

- most of the tax policy-making processes within government involve too great a concentration of power within one institution, to the detriment of policy outcomes;
 - there is a lack of challenge to emerging policy ideas in some, if not most, countries that weakens policy development;
 - the potential contribution to the tax policy-making process that can be made by the tax administration is generally undervalued;
 - governments do not sufficiently encourage external institutions to participate in the policy process, and rarely maximise their potential to add value to it;
 - most of those involved with tax policy believe that parliament adds little value to the policy process. There is room for improvement in the way in which scrutiny of taxation issues is handled in many parliaments and a case for considering whether there might be benefits from a significant broadening and strengthening of the role of parliament in the tax policy-making process;
 - the provision of more qualified support within the framework of parliament for committees involved with taxation issues would help overcome the asymmetry of expertise and information that currently and overwhelmingly favours the executive against the legislature;
 - debate in parliament is often highly partisan and the value of scrutiny is significantly diminished by the constraints of political allegiance;
 - although consultation with business on taxation issues has improved substantially in some countries in the last 20 years, other governments still do little or no pre-legislative consultation with the business community; they therefore fail both to capture the value of available expertise, or create any sense of a community of interest in seeking the best outcomes;
 - the consultation that does take place with business is often unstructured and rushed, happens too late in the process and lacks the predictability that is necessary to maximise the benefits of engagement;
 - discussion with the general public on taxation issues is negligible in most countries and few governments or political parties provide adequate information to the electorate about the policy programme they are likely to adopt if they are elected or re-elected;
 - the education system gives scant attention to the purpose or framework of taxation and, as a result, levels of knowledge are very low among the general public so it is difficult to engage effectively with them on tax policy issues;
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- the abandonment of tripartite arrangements - that previously brought labour, capital and government together as part of the tax policy-making process - has led to the crowding out of organised labour from the tax policy space and has further eroded the ability of ordinary people to have their views effectively represented in the process; and
- coverage of tax in the media tends to be inadequately informed and often reactive, partisan and emotional; creating a climate in which it is difficult to have a rational debate about the necessary re-structuring of tax systems to make them more reflective of society today.

These are important issues and, in the final section of the report, we set out recommendations based on our analysis, aimed at strengthening the structures, processes and governance in tax policy-making. We believe the adoption of these recommendations is necessary to achieve the minimum standard of a properly functioning tax policy-making process.

Many of the recommendations are interconnected and some of them would be liberating in the sense that their implementation would allow a cascade of benefits to flow down through different parts of the process, achieving a significant step-forward in quality.

THANKS

We want to thank all those who have contributed to the study. We are grateful to the organisations that have provided support and encouragement, including the European Commission and the OECD; those who have helped to fund the work (OUCBT, FTI Consulting); and those who provided some helpful early analysis of government processes (Ernst & Young).

Most of all we want to thank those who have helped us find the right people to meet, and those who have contributed to the study as interlocutors and interviewees and have responded politely, intelligently and patiently to the many questions authors have asked.

FUTURE WORK

This is an initial report and is intended to be a starting point for further work in this area on both a national and an international level. It is far from being the final word on this subject. The authors believe that:

- this work has allowed the development of a series of benchmarking techniques which can be employed in any country and which are very valuable in identifying both weaknesses and perceived weaknesses in tax policy-making;
- there would be significant value in extending the benchmarking process to a wide range of both developed and developing countries. All of the subject-countries covered in this study are, or have been, conventionally functioning democracies and virtually all would regard themselves as part of the developed world; but the techniques and observations we have used clearly have a wider application as a tool for promoting better policy-making;
- there is scope for much more detailed work in each of the countries we have visited during our work. In a study of this breadth, practical considerations constrain the depth of the analysis but the work we have carried out has enabled us to identify many important issues that merit separate and more detailed study; and
- additional work is required in another significant area that we have not attempted to include in this initial study: the impact or contribution of the international institutions such as the International Monetary Fund (IMF), the OECD, the United Nations, the World Bank, the European Commission and any other regional organisations. We have noted, in our interviews, the influence of these institutions on policy at a national level and the effect of certain interventions in specific countries. But before commenting on that, we believe it would be important to examine the structures, processes and governance that influence tax policy development within the institutions themselves. This would enable us to address the issues from all sides. We have made approaches to the European Commission and the OECD regarding the possibility of carrying out such a review and have received encouragement. We plan to undertake this work as a next step.

The conference, *Structures, Processes and Governance in Tax Policy-Making*, held in Oxford on 8-9 March 2012 provided a valuable opportunity to reflect, with others, on the draft report and consider how work can be taken forward in this important area in the future. We are particularly grateful to those who offered detailed comments at, or after, the conference and have, wherever possible, reflected those comments in this final version.

SUMMARY OF RECOMMENDATIONS

We do not publish country-specific recommendations in this report. The published recommendations are summarised below:

ACHIEVING MINIMUM STANDARDS

We recommend governments review the allocation of funding and resources to the tax policy-making process in order to achieve minimum standards advocated in this report.

1. INTERNAL INSTITUTIONS

1.1 Coordination within government

We recommend that procedures be introduced to ensure proper inter-departmental coordination in the prioritisation and development of tax policy proposals.

1.2 The involvement of the tax administration

We recommend steps be taken within government to improve coordination and co-operation between the department that has the lead role on tax policy and the tax administration, with a view to reducing both the formal and informal barriers that currently exist.

1.3 Staffing and organisation of the policy-making department

i. Diversity of staff

We recommend that staff should be recruited to policy-making posts from a wider range of backgrounds.

ii. Training

We recommend that staff training should be expanded to encourage an inflow of alternative experience.

- iii. Intra-departmental communication
We recommend that staff working in different tax policy areas should be encouraged to discuss their work with each other on a regular basis.
- iv. Economists, lawyers, political scientists and generalists
We recommend that greater consideration should be given to the respective roles of lawyers, economists and generalists within the policy-making process and to the role of those with other specialised professional training, such as accountants.
- v. The role for senior economists
We recommend that the organisational structure of the policy-making department include at least one high-level oversight role for an experienced economist focused on tax policy.
- vi. Legislative drafting
We recommend that policy-making departments should consider alternative models for drafting tax legislation.
- vii. Consultation and external relationships
We recommend that staff at every level should be trained in consultation techniques and the handling of external relationships with taxpayers and their representatives.

1.4 Post-implementation review of tax changes

- i. *We recommend that there should be a post-implementation review of all significant tax policy changes to ascertain whether the measure is achieving its policy objective.*
 - ii. *We recommend the review should be carried out independently of the policy-making department and that the scope and timing of this review should be set out in the relevant legislation.*
 - iii. *We recommend that during the policy development process, a standard part of the evaluation process should be consideration of whether a sunset clause would be appropriate for the measure in question.*
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1.5 Mapping the tax policy-making process

We recommend that governments take the necessary steps to map fully their current tax policy-making process.

2. EXTERNAL INSTITUTIONS

2.1 Post-implementation reviews

We recommend that academic institutions should be given a substantial role in the post-implementation review of significant tax policy changes.

2.2 Analysis for policy proposals

We recommend that academic institutions should play a larger role in providing early-stage analysis of tax proposals, particularly where government resources are limited.

2.3 Access to data for research purposes

We recommend that access to ‘confidential’ data for academic research on tax policy issues should be improved and more data should be published as a matter of course.

3. LEGISLATURE

3.1 Statement to parliament regarding the direction of tax policy

We recommend that at the beginning of every legislative period, the government should outline to parliament the intended direction of tax policy.

3.2 Taxation committee

We recommend that each parliament should have a full parliamentary committee dedicated to taxation issues.

3.3 Independent support for members of parliament

We recommend that parliaments should have access to a source of professional support on taxation issues independent of the executive.

3.4 Parliamentary scrutiny

We recommend that procedural exceptionalism should be limited and only used to encourage scrutiny.

4. TAXPAYER COMMUNITY

4.1 A formal process of consultation

We recommend that, in relation to all proposals for significant changes to the tax system, that affect business and investment, governments commit to:

- the publication of an early-stage paper setting out the proposal and the rationale for it, the projected timetable to enactment, and the contact details of officials leading the work;
- at least one phase of formal consultation on the key aspects of the proposal prior to the publication of draft legislation, allowing adequate time for responses;
- a further phase of formal consultation after draft legislation has been published;
- the online publication of minutes of official meetings held as part of the consultation process;
- the release of the data on which the policy proposal has been based; and
- a policy of inclusiveness regarding participation in the process.

4.2 The role of organised labour

We recommend that labour organisations should be more fully involved in the development of tax policy in order to reduce the democratic deficit in this area of government.

4.3 Public reviews of the tax system

We recommend that governments should periodically encourage, fund or undertake a broad-ranging public review of the tax system.

4.4 The democratic mandate for tax reform

We recommend that governments and political parties should be more transparent and communicative in relation to their plans for changes in the tax system –particularly preceding national elections.

4.5 The education system

We recommend that schools teach a broad understanding of taxation to all students.

INTRODUCTION

OUR APPROACH AND OUR SOURCES

The money that governments spend is virtually all raised through taxation. Most governments smooth the peaks and troughs of their spending needs by borrowing but in the long run, governments can, by and large, only spend what taxpayers have contributed.

In a typical Western European country, governments raise taxes equivalent to perhaps 40% of national income. In most countries, they spend or invest all of it during the year. A few governments receive more revenue than they require for their immediate needs; and use the money to create funds for future use, but they are in the minority.

There is a large body of literature that addresses the issue of how tax affects what people do. It is widely accepted that tax has an impact on behaviour, and it is widely understood that both the level and the incidence of taxation influence the behaviour of taxpayers. What governments decide to tax and how heavily they tax it are important issues that potentially affect every individual and every business.

If tax is important, then the issue of how governments decide what and how much to tax is surely important, too. So, in recent years, there has been increasing interest, both within and outside government, in how tax policy decisions are made and who has the ability to influence policy outcomes. We accept good tax policy-making processes do not automatically lead to good tax policy outcomes, but believe they can significantly reduce the risk of random and avoidable failures.

Against that background, we felt there was a real need for an international comparison of structures, processes and governance in tax policy-making to highlight differences of approach and enable governments to observe and learn from each other. We believe that identifying good practice will help raise overall standards in tax policy-making.

This report is not intended to provide a step-by-step account of each stage in each country's policy-making process. Policy-making is, of course, a process and like any other process, it is capable of being mapped.

We started the project by drawing flow charts that mapped the progress of tax policy-making in the subject-countries from the initial idea through to legislation and finally implementation. And we compared those processes in each country from the origin of policy ideas through to the enactment of legislation. But we quickly concluded that,

although valuable at a sufficiently detailed level within one jurisdiction, this approach results in a rather dull and unhelpful analysis for the purposes of the broad-based comparative study on which we had embarked. It led us towards a check-the-box kind of approach to our comparisons that focused on the formal at the expense of the informal.

So, after some initial work, we decided that it would be of greater interest and value to approach the issues in a different way. While recognising that there is a formal flow and a necessary sequence of events in tax policy-making, we focused on the contribution made by different actors in that process and whether they were effective in their particular roles.

In this study, we have attempted to identify, in a range of countries, the structures, processes and governance in tax policy-making by reference to the groups of people who are involved in the process and those who are not - the *ins* whose voice is heard and the *outs* on the wrong side of the door. We have sought to identify how the policy-making process accommodates the *ins* and ignores or closes the door on the *outs*. We have looked at whether the different groups have the same opportunity to influence outcomes in each country; and we have considered the extent to which organisational or structural changes could be made that would enhance opportunities to contribute to policy-making.

We have also focused on challenge. Challenge sharpens policy thinking and can improve the effectiveness of policy measures. It is particularly important that there should be opportunity for real challenge before ideas are adopted at the political level. After that, it is much more difficult to achieve change - however necessary it may be. The policy-making process can either facilitate and encourage challenge or make it more difficult. We believe there should be scope for effective challenge at every stage of the process: within the institutions of government; from external institutions; the wider taxpayer community and within the legislature. Narrowly-based approaches with dominant policy authorities can produce an apparently efficient process but at the expense of challenge and buy-in from external parties and with some risk of sub-optimising policy outcomes.

Our aim has been to produce a single snapshot of the situation in each country at the time of our work. But tax policy-making is a living process. In the year since some of our first visits, processes, structures and even governance may have moved on, as much of it can do, without legislation or ceremony. Indeed we would hope to be a little outdated. Despite this, there was evidence to suggest our visits and dialogue had opened minds to the possibility of doing things in a different way and that, in some countries at least, change might follow.

With such a broad subject area it was necessary to limit the investigation of certain matters. For practical reasons we decided not to cover the development of sub-national

tax policy. This is obviously more significant in some countries than others, as in some federal states substantial tax policy authority resides in lower tiers of government. There is no question that a study of state tax policy-making in America, for example, would be fascinating, but to undertake it as part of this project would have increased the scale of our task enormously.

We have tried to avoid making value judgments about the actual outcomes of tax policy. Much of this report focuses on how processes and structures can support or hinder the development of tax policy - we do not declare any particular result as desirable or not. Some would say that this was ducking the issue. And they might be right. But we wish the next generation of researchers good luck in defining successful outcomes in objective ways that everyone can support and conclusions that link in a meaningful way to policy processes.

The various stages of our analysis focused on the ways in which policy makers turn visions from the political sphere into tax legislation; the process through which external ideas and experience are drawn in, if they are; and the governance arrangements that are intended to ensure that policy outcomes are properly scrutinised. As we have already noted, the report was started with the idea of forging some notion of good practice that might benefit a wide range of countries. We hope that, in our recommendations, we have gone some way towards identifying methods of addressing policy development that may lead to better outcomes.

Some have suggested that because politics is ultimately the determining factor in tax policy-making, there is little to be gained by focusing on the structures, processes and governance around it – but we take the opposite view. It is precisely because of the dominance of politics in tax policy decisions that there is a particular need for rigorous analysis and a process and set of governance arrangements to ensure that a full presentation of the facts and arguments are made to those to whom decision-making authority is entrusted on our behalf.

THE FRAMEWORK FOR OUR STUDY

Policy development is rarely completely transparent and policy itself can be influenced, intentionally or otherwise, by who participates. In framing our work, we have sought to identify, generically if not individually, the ‘ins’ and ‘outs’ of tax policy-making and how the process of inclusion and exclusion works.

We have tried to stand back and assess how different types of organisation, within and outside the framework of government, contribute to policy development. For these

purposes, we have defined policy development to be the process from the origination of ideas through to the enactment of the relevant legislation. We could have gone further. There is scope for influence to be brought to bear on the process of developing regulations or guidance notes that follow on from the enactment of primary legislation; but we have chosen to leave that work for a later study.

This approach has led us to identify four major strands in tax policy-making. These do not correspond to chronological phases in the process but rather to influences. The four strands examined in the main body of our report are:

- The internal institutions of the executive branch of government
- The external institutions that are engaged on taxation issues
- The parliament or legislature
- The taxpayer community (or those who would seek to represent them or their views).

THE INTERNAL INSTITUTIONS OF THE EXECUTIVE

In section 1 we look at several elements of the executive branch of government. This includes the institutions and structures within the government where tax policy authority is located; how tax *units* are organised, the relationship between different parts of government and any coordination between them; and who is responsible for the various parts of the process. We look at where ideas come from and what factors are considered during the development of policy.

EXTERNAL INSTITUTIONS

In section 2 we assess factors affecting the involvement of external academic institutions and think tanks in policy development. We also discuss what external institutions there are in particular countries that work on tax policy issues; and the degree of engagement between external institutions and governments.

THE PARLIAMENT OR LEGISLATURE

In section 3 we discuss the role of democratic representatives in the tax policy process. This includes roles that legislatures have to play, which is often, at least in practice, restricted to scrutiny rather than the development of tax policy itself. We also address, at a high level, legislative procedures and the institutions intended to assist legislators and committees and inform parliamentary debates.

THE TAXPAYER

In section 4 we consider the two main forms of interaction between the government and taxpayer on tax policy issues. The first is the involvement of business, business representatives and professional associations in the development of tax policy. This section includes consideration of the extent, timing and impact of consultation as well as some reflection on whether it is always a valuable process. It also covers the broader interaction between government and the electorate on taxation policy issues.

THE COUNTRIES

The countries covered in our study are:

- Australia
- Finland
- France
- Germany
- Ireland
- Jersey
- New Zealand
- Sweden
- UK
- USA

We also observed tax policy-making practices in the UK dependency, the Turks and Caicos Islands (TCI), where the normal democratic processes had been suspended and there was direct rule from the UK through the Governor and a team of largely UK advisers. What we saw there was so substantially at variance from the standards of governance and practice followed in the UK, that we have finally decided to exclude consideration of TCI from this report. To do otherwise would be to distract attention from the main focus of our work. However, we would note here that both the decision-making framework in TCI and the policy process have raised legitimate concerns among the local population and reflect no credit on the UK government.

We recognise that there are many other countries that could have been added to our list and make no claim that our report is fully internationally representative. However, by covering the aforementioned ten countries in this initial comparative study, we believe we have taken a significant and important first step in opening up an international debate

around tax policy-making process. There is good reason for the work to be rolled out more widely.

The intention of the report was to start the work with a range of countries that ought, in principle at least, to contain many examples of good practice in policy-making. These were countries, which were not exceptionally resource-constrained for their size, and could provide a benchmark against which to measure others.

We wanted the sample group to include countries that we knew had used particular methods of developing tax policy – for example countries that had used external or semi-independent commissions or reviews. A number of the countries in our sample had done so, with varying degrees of success.

We wanted to look at pairs of countries that might be expected to have similar features in their systems or approach, Sweden and Finland for example, that have historical links and issues in common to see whether their approach to policy-making had developed along similar lines.

We also wanted to include a range of economies of very different sizes and with vastly different levels of government resources. We expected to find considerable disparities, for example, between Jersey, with a population of less than 100,000 and the USA, with a population of more than 300m. In this context, it has to be remembered that the challenges and requirements in the taxation area faced by the governments of both large and small open economies are broadly similar. It is simply that the numbers are not so large in the smaller countries and the resources often very much smaller. Of the two, it is usually the latter that counts most.

For the sample we chose countries that had an established history of being conventionally functioning democracies. Most of these have parliamentary systems. There is, nevertheless, a degree of political and constitutional variation between them. For the sake of clarity, we would point out that, in this report, we do not refer to the US as having a parliamentary system. Institutionally, there are sufficient differences for us to treat it as a separate case and references to parliamentary democracies should therefore be read as excluding the US.

There were a number of other factors that influenced our choice of countries. One of those was the ease of access to key people. We have been fortunate in having strong friendships in the taxation world that have proved invaluable in enabling us to obtain very good access to senior people involved in the tax policy-making process in all of our selected countries. Nevertheless, our reception in some countries has been warmer than

in others. It has also been our experience that some informal approaches to countries we had intended to include in the study have given rise to expressions of nervousness about our work and a number of country-visits have, as a result, been cancelled or postponed.

During the course of the study, we were approached by many individuals who suggested additional countries for us to consider for inclusion in our work. These have been excellent suggestions and we would have liked to take them all up. However, we had to work within constraints on our time and costs and accepted the inevitable limitations on the scope of this initial report.

Consequently, we regard this study as a first step. There is a lot more to be done; much of it in countries that are less well-resourced than those we have visited. As we have noted, this work should be regarded as a first step along the path towards exploring the challenges of getting policy-making processes right across a much broader range of countries.

OUR SOURCES

We recognise that tax policy-making is a process driven by people. Their work is often organised in steps or stages and their contribution is typically subject to formal rules of engagement; but we were conscious, in embarking on our study, that there is often an informal process that runs either across or parallel to the formal one. We were keen to capture that informal process in this study. It often explains how the formal process can work in practice.

The tax policy-making process has its own literature: academic articles and books, government publications, websites and reports. Much of it is focused on formal aspects. This is particularly true of government publications. We recognise the value of that work and comment on it in our report.

However, we felt we would obtain a more dynamic, more up-to-date and probably more complete understanding of the tax policy-making process in each country by supplementing our desk-based research from the literature with a series of interviews in each of the countries that we studied.

So, in each country, we sought to set up a series of face-to-face meetings with individuals engaged in some significant way with tax policy and whose involvement falls into one of the four strands of the policy-making process that we identified.

THE INTERVIEWS

We designed our interview programmes to give us as broad a perspective of the tax policy-making process as possible. Our objective was to obtain as close to a 360 degree view as we could.

We concluded that we needed, wherever possible, to interview the following groups whom we judged to be influential in the policy world:

Ministers or former ministers

Ministers are rarely tax policy-experts *ab initio*. But they are the owners of their government's vision for the economy and society. They are also decision-makers within the executive branch of government. Normally they are consumers of advice from officials and targets for lobbying by taxpayers and Non-Governmental Organisations (NGO's). They are the champions of their own policies within the cabinet and leading actors in the parliamentary drama.

Special advisers

Special advisers are often the source of a particular vision that the ministers and the government own. If they are effective in the policy sphere, they are an important link between the ministers and government officials. They translate the policy vision into specific proposals for officials, and translate policy detail into vision for ministers. They are a first port of call for senior officials needing to raise a policy issue at ministerial level. They are an important link to other departments that might be affected by tax policy proposals and a bridge to external interest groups.

Officials

Senior officials in the policy-making arm of government are usually the drivers of the policy engine. They interface with special advisers and ministers on the vision, and with the rest of their team on policy detail. They are the means through which delivery is achieved. Like special advisers, they have an important role in inter-departmental liaison; where other departments are involved in tax policy issues. Retired officials are often best-placed to provide a broad reflection on processes and their strengths and weaknesses. Officials in the revenue department can also provide a different perspective on the policy-making process.

Elected representatives

Members of the parliament or legislature, who sit on various committees charged with the scrutiny of taxation, have specific roles in the policy process. Members

are rarely tax policy experts but in some countries there are structures in place through which they are able to make a broader contribution to the development of policy.

Academics and policy experts

Economists, lawyers, social scientists and others at universities, institutes and think tanks contribute to policy debate. In principle, academics see the policy-process from the perspective of an independent but expert observer. Policy experts at think tanks may have a similar expertise, but their views are often refracted through the prism of a particular political ideology.

Journalists

People who work in the media often have a particular academic background – in economics, law or a social science – that is relevant to taxation policy. Their writing influences public perceptions of policy proposals. At their best, they provide informed, incisive analysis of complex tax issues that makes the issues more accessible to the public and contributes effectively to debate. At their worst, they fall a long way short of that.

Tax specialists at business representative bodies

Representative bodies that cover either single industries or the whole of the business community in a particular country often mediate the interface between business and government. They often employ experienced professionals, or occasionally academics, to fulfill their representative function in working with officials and advisers on policy proposals.

Taxation experts at individual companies

Large companies employ experienced tax professionals, often of the highest calibre, who not only deal with the internal taxation affairs of their employer but also liaise with government officials in relation to tax policy proposals. Some may be asked to join working groups with government officials to help with the task of policy development.

Tax experts from the professions and professional bodies

Tax experts at large accounting and law firms, like their counterparts in industry, are often involved in policy discussions with government officials and sometimes with special advisers. In principle, they represent the highest level of expertise on tax legislation within the private sector – although many lack depth in policy

matters. There is, in some countries, an important flow of professionals into and out of policy roles in government. This is often linked to political change and draws government and the professions closer.

Trade unionists and civil society

The trade unions have historically, in several countries, played an important role in the development of tax proposals, through tripartite working groups with government and employers. In some countries those roles have been diminished but the unions still engage in many countries on tax policy issues and are one of the most influential voices of working people who do not have the expertise or opportunity to contribute directly to debate on tax policy issues. Civil society or NGO's often engage with government on taxation issues and have a membership that uses the organisation to achieve that engagement which, as individuals, they might lack the resources, expertise and opportunity to do effectively.

In each country, we sought to interview members of each of these groups. In practice, it was often difficult to reach all of them, particularly when practical considerations meant that the interviews had to be concentrated into a period of three or four days.

However, in most countries, we succeeded in reaching most of these groups. A typical visit involved around 15 one-to-one meetings in three days.

In addition to the groups outlined above, we also met individuals who did not fall readily into any of the categories set out above. For example, we met an individual in Sweden who had, at various times, been a Ministry of Finance official and a judge in both the national courts and the European Court of Justice. Similarly in France we met an individual from the *Conseil d'état* who worked principally on giving advice on the constitutional propriety of legislative proposals.

All of our interviewees were able to give us a different view of the policy process and add to our understanding of how it worked in practice; we are very grateful for their time and their willingness to engage with us. We are also particularly grateful to the individuals in each country who helped us find and meet the people we were looking.

The interviewees were asked to describe the process as they saw it and to discuss a range of issues regarding the process. We did not use a questionnaire for the interviews because we felt any benefits in terms of consistency were likely to be outweighed by the interviewee's potential perception that this was a check-the-box exercise. We did cover a predetermined range of issues with interviewees, but the route around them was sometimes circuitous.

We agreed at the start that we would neither name nor quote individuals directly. For some, that was a precondition of participation. Others were much less reticent but we have treated both groups equally and maintained anonymity.

In general, we judged that the answers we received from interviewees were truthful and not intended to mislead. Despite this we noted some occasions when individuals seemed not to be fully informed, and other instances where interviewees had, as anticipated, a particular bias. But that did not create any real problems for our work as carrying out a number of interviews in each country in a short space of time enabled some cross-checking and validation of points raised by particular interviewees.

We have noted that one of the advantages of the interview methodology is that it picks up the informal strands of the policy-making process much better than a literature-based review alone would do. It also helps identify points and issues that are not covered in the literature or that may post-date the literature itself.

However, one of the disadvantages of the interview-based approach is that very, very few people have a complete picture of the process (itself quite telling) so it is quite possible that interviewees are not fully-informed or are plain mistaken about some of the aspects that they talk about. It is also clear that some are not so closely acquainted with the policy issues as one might expect. Wherever possible, we have attempted to eliminate misunderstanding. But we too will have made errors and omissions, and their inclusion in this text is our fault alone.

Of the groups of people to whom we have sought access, current members of the parliament and journalists have been the most difficult to meet. In some cases, language was a barrier to access; most commonly this was among parliamentarians. Officials were generally very receptive to our visits although, as we have noted, more so in some countries than in others.

THE LITERATURE

The second main source of information on the tax policy-making process in our selected countries has been published material. This includes descriptive pieces made available on government websites; the analytical work of academics and think tanks with a focus on policy-making personal reflections from those involved in some aspect of policy development. This does not amount to a vast literature.

The process of tax policy development has only become widely recognised as important during the last two decades. This has coincided with a growth of interest in the processes

through which governments make policy of every kind and the literature to which we have referred has often been written with a much broader focus than tax policy development. There are, of course, many lessons to be learned by tax policy-makers from the experience of other areas of government but tax policy-making does retain some unique features.

Authors have taken different approaches to the analysis of tax reform. Some choose to look historically at a single country. Lodin has recently given a personal and historical account of tax reform in Sweden¹. Steinmo in particular has written extensively regarding tax reform and political institutions in both a historical and comparative context². Snape examines in considerable detail the political economy of corporation tax reform in the UK³. There are many academic discussions of particular tax reform measures, such as in the US during 1986 and New Zealand during the 1980s. These focus on the measures themselves, as well as the political economy of their development. Mestrallet, Taly and Samson take a broad look at the development of tax policy in France, believing the process to be crucial to the end product⁴.

In the UK, there has been a wide debate about how policy development ought to work across government. The 1999 UK Cabinet Office report on the ‘professionalisation’ of policy development had no single policy area in mind; instead covering principles behind policy development, long term policy frameworks, flexibility, the use of evidence, consultation, consistency and review⁵. It provided a guide to policy development problems within government.

A further UK Cabinet Office discussion paper in 2001 highlighted many of these challenges and suggested possible solutions⁶. An Institute for Government report in 2011 noted the improved awareness of process issues since 1997 in the UK but described a ‘gap between theory and practice’ in government. This is partly the result of unrealistic policy models and a lack of clarity for policy makers⁷. However, academic models of policy-making – whilst interesting in their own right – provide no particular illumination on current practices and do not help to isolate details of issues facing policy makers.

Few studies have considered the development of tax policy in its entirety but there have been some useful attempts to do so within a national framework. The New Zealand government undertook a major process-review during the 1990s. The eventual product was the Generic Tax Policy Process (GTPP); a 15-step, 5-stage model of how tax policy ought to be made in New Zealand. It recommended policy be guided by medium and long-term strategy, involve intra-government communication, external input and close contact with the legislature. Other governments have carried out broad but not as detailed evaluations.

1 Lodin, S., *The Making of Tax Law, the Development of Swedish Taxation*, 2011

2 Amongst other titles, Steinmo, S., *Political Institutions and Tax Policy in the United States, Sweden and Britain*, *World Politics*, Volume 41 No. 4, 1989

3 Snape, J., *The Political Economy of Corporation Tax: Theory, Values and Law Reform*, 2011

4 Mestrallet, Taly and Samson- *La réforme de la gouvernance fiscale*, 2005

5 UK Cabinet Office, *Professional Policy-Making for the Twenty First Century*, A Report by Strategic Policy Making Team Cabinet Office, September 1999

6 UK Cabinet Office- *Better Policy Delivery and Design: A Discussion Paper for the Performance and Innovation Unit*, 2001

7 Institute for Government- *Policy Making in the Real World: Evidence and Analysis*, 2011

The UK Treasury announced a new approach following consultation during 2010. The *New Approach to Tax Policy Making* proposed greater predictability for taxpayers, stability by slowing the pace of reform, tax simplification, scrutiny, transparency and evaluation⁸. The Australian 1999 Review of Business Taxation proposed an ‘integrated approach,’ that would incorporate policy, legislative and administrative perspectives to improve policy quality on many levels⁹.

Some interesting issues in tax policy-making arise from these general discussions about the development of policy. However, much of the work concentrates on broad failings and general solutions. The detail is often lost in the broader studies and a different approach is required to deliver specific improvements. Some work has been done on individual aspects of policy development, both on taxation and general policy development. A recurring theme in many studies of particular elements of tax policy development is the isolated position of the policy authority. The centralised nature of UK tax policy authority (HM Treasury) is noted by the Mirrlees Review¹⁰, and the IFS report on Tax Policy Making in the UK¹¹.

Other authors discuss various problems that arise during the earlier stages of policy development, whilst measures are still within the executive. These issues vary by country. In Westminsterial political systems, distance between the draftsmen and policy makers has been raised by Bowman who suggests tax is considered a particularly challenging matter¹². The UK Hansard Society has also discussed whether reform of law writing is necessary¹³ and guidelines written intended to help policy makers and draftsmen communicate better make informative reading^{14, 15}.

Policy control has been noted as another issue in some countries. Miranda Stewart, writing about the Australian tax policy network, believes the Australian Treasury, central to the development of tax policy, will have to relinquish a greater degree of control both within and outside government if it is to improve policy development¹⁶. Its domination of the policy making process has reduced communication with other parts of government, in particular revenue authorities.

The negative impact of a disconnect between the revenue authorities and policy makers has been noted as a concern in the UK by the Mirrlees Review¹⁷. The Australian Board of Taxation also sees improved communication between revenue authorities and policy

8 HM Treasury, *The New Approach to Tax Policy Making: A Response to the Consultation*, December 2010, pages 5-6

9 Australian Treasury- *Review of Business Taxation*, 1999, page 96

10 IFS- *The Mirrlees Review- Reforming the tax system for the 21st Century*, 2011, page 1210

11 IFS- *Tax Policymaking in the UK*, Tax Law Review Committee Discussion Paper No. 8, 2010

12 Bowman, G., *Why is there a Parliamentary Counsel Office?* In *State Law Review*, 26(2), 2005

13 Hansard Society- *Making Better Law: Reform of the legislative process from policy to Act*, 2010

14 Australia Office of Parliamentary Counsel- *Working with the Office of Parliamentary Counsel*, 2008

15 UK Office of Parliamentary Counsel- *Working with Parliamentary Counsel*, 2011

16 Stewart, M., *Consultation in Business Tax Reform: Towards an Effective Tax Policy Network*, page 19

17 IFS- *The Mirrlees Review- The Political Economy of Taxation*, by Alt, J, Preston, I and Sibieta, L, page 1214

makers as beneficial to policy quality¹⁸, as do the World Bank¹⁹ and a number of academics^{20, 21}.

Other commentators have expressed views on different aspects of intra-governmental communication. Issues of communication with legislative drafters are more complex because the ownership of law-writing responsibilities differs from country to country but, as Geoffrey Bowman has shown, in Westminster systems there are some concerns about breakdowns between Parliamentary Counsel and policy makers²². Wales writes extensively in the Mirrlees Review and elsewhere about the UK policy environment and relationships between the UK Treasury and HMRC, criticising the efficacy of policy development since the O'Donnell Review²³. The O'Donnell Review was the driving force for giving policy authority to Treasury, amongst other reforms²⁴.

There is much in the literature about the importance of consultation as a part of the policy-making process. The 1999 Cabinet Office paper regarding professionalised policy making states that improved stakeholder consultation results in more effective policy²⁵. The OECD believes it to be beneficial for general policy quality; given enough time and resources²⁶. When considering the benefits to tax policy specifically, many more support the use of stakeholder consultation to improve the available information. Within the UK, the Treasury reaffirmed in 2010 a commitment to consultation in tax policy development, describing it as a 'cornerstone' of the process²⁷, a move supported by the House of Commons Treasury Committee²⁸. The Australian Board of Taxation was established after the 1999 Ralph Review found systemic failings in policy development that the government believed could be minimised by better engagement through consultation²⁹. Further reports in 2002 and 2007 repeat the Australian government's support for external engagement. The GTPP published by the New Zealand government in 1993 also recognised the importance of consultation in policy development. Although not a uniform process for the development of all policy, it remains a powerful statement of the government's perspective on the role of engagement with the private sector.

The potential role of external academic expertise in policy development is also covered in the literature. The report of the UK Council for Science and Technology for the Department for Business, Innovation and Skills commented on the need for better engagement with academia in policy making. They came to the conclusion that interaction between

18 Board of Taxation- Government Consultation with the Community on the Development of Taxation Legislation, March 2002, page 21

19 World Bank- Lessons of Tax Reform, 1991

20 Casanegra, M., Problems in administering a value-added tax in developing countries: an overview, World Bank Report, 1987

21 Bird, R., Administrative Dimensions of Tax Reform, Asia-Pacific Tax Bulletin, March 2004

22 Bowman, G., Why is there a Parliamentary Counsel Office? In *State Law Review*, 26(2), 2005

23 Wales, C in The Mirrlees Review- Reforming the tax system for the 21st Century, 2011, page 1305

24 HM Treasury- Financing Britain's Future- Review of the Revenue Departments, Gus O'Donnell, March 2004

25 UK Cabinet Office- Professional Policy Making for the Twenty-First Century, A Report by Strategic Policy Making Team Cabinet Office, September 1999

26 OECD- Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making, 2001

27 HM Treasury, Tax Policy Making: A New Approach, June 2010, page 7

28 House of Commons Treasury Committee- Principles of Tax Policy, Eighth Report of Session 2010-2011, March 2011, page 22

29 Australian Treasury- A Review of Business Taxation, 1999

government and academics was poor and a result of unprofessional working partnerships, a mutual failure to grasp potential benefits and a negative attitude from both sides³⁰. The British Academy also expressed concern at the failure of policy makers to exploit fully the excellent research facilities for social sciences. Their 2008 report has many recommendations to improve this³¹. Both reports admit that the failure to engage is to some extent mutual.

The role of academia in the development of tax policy itself receives somewhat less attention in discussion of policy development processes. The potential contribution of these external institutions seems to have been overlooked in the New Approach document of the UK Treasury³² as well as the subsequent House of Commons Treasury Committee report³³. Despite the support for evidence-based policy making expressed by governments, the issue is often buried amongst work on stakeholder consultation.

Those who discuss the policy authority of legislatures often question their ability and competence to influence policy. This is the case not just for tax, but also usually for budgetary decisions in general. An index of legislative power over budgets composed by Wehner found a wide spread of authority. However, beyond the USA and several Scandinavian models the average score for countries included in this study was poor – indicating little independence on budgetary issues³⁴. The strength of the US Congress in policy development is well known, having rights of legislative initiation and considerable professional support. Others are not so fortunate. International institutions have examined some of the weaknesses of legislatures in budget processes. The OECD Journal on Budgeting regularly publishes country-by-country analysis of budget processes as well as recommendations for best practice. They particularly support greater budget transparency and better communication between the government and the legislature³⁵. The IMF has also expressed an interest in the budget process, proposing greater openness and clarity³⁶.

The UK Hansard Society also addressed government accountability for revenue raising and spending decisions. The Fiscal Maze report recommends more pre-legislative scrutiny of finance legislation and a reform of the committee process responsible for analysing tax proposals³⁷. Unsurprisingly, the literature tends to focus upon the existing mechanisms for scrutiny: committees, debates, questions and the expertise of members of the legislature. Whilst in opposition, the Conservative Party commissioned Lord Howe to evaluate the development of tax policy, with particular reference to simplifying the tax code. In addition to recommending the now-established Office of Tax Simplification,

30 Council for Science and Technology- How Academia and Government can work together, October 2008, page 3

31 The British Academy Report- Punching our weight: the humanities and social sciences in public policy making, September 2008

32 HM Treasury, The New Approach to Tax Policy Making: A Response to the Consultation, December 2010

33 House of Commons Treasury Committee- Principles of Tax Policy, Eight Report of Session 2010-2011, March 2011

34 Wehner, J., Assessing the Power of the Purse: An Index of Legislative Budget Institutions, *Political Studies*, Volume 54, 2006

35 OECD- Best Practices for Budget Transparency, in *The OECD Journal on Budgeting*, Volume 1, Number 3, 2001

36 IMF- Manual on Fiscal Transparency, 2007

37 Hansard Society- The Fiscal Maze: Parliament, Government and Public Money, 2006

a joint Parliamentary Committee for Taxation was suggested as an improvement to the UK legislative process³⁸. The Forsyth Report, *Tax Matters*, had already proposed a Joint Committee for Tax and an Office of Tax Simplification in 2006, considering it vital to the simplification of the tax code³⁹.

In summary, much of the literature is centred on relatively narrow national themes such as business consultation, pre-legislative scrutiny and the detail of parliamentary processes. There is a lack of comparative international work on the process of tax policy development. The absence of a substantial body of literature on tax policy-making is in sharp contrast to the large body of scholarly writing that addresses the expenditure side of government activity.

The report that follows is not intended to fill all of the gaps in the literature, but begin to fill some of them, and act as a practical tool to help draw together thinking about the process issues in an international context.

38 Conservative Party (UK)- Final Report of a Working Party chaired by Lord Howe of Aberavon- Making Taxes Simpler, July 2008

39 Tax Reform Commission- *Tax Matters: Reforming the Tax System*, the Report of the Tax Reform Commission, 2006

1. INSTITUTIONS WITHIN THE EXECUTIVE

In all of the countries in our sample, the executive branch of government, perhaps unsurprisingly, plays a major role in the development of tax policy. In all but the US, it plays *the* major role.

In this section, we examine how the executive works in relation to tax policy-making; where power lies; how the various institutions within the executive interact; whether the governance arrangements encourage challenge within the machinery of government and who really makes tax policy in the countries we have studied.

We explore these issues through a number of channels:

- the identity and function of the main tax policy-making department;
- the involvement of the tax administration in policy-making;
- coordination within government on tax issues;
- staffing of the main policy-making department;
- the development of ideas and the influence of political agreements;
- the role of independent or semi-independent policy reviews;
- the arrangements for drafting tax legislation; and
- the use of post-implementation reviews.

The recommendations arising from our work are set out in section 5.

THE IDENTITY AND FUNCTION OF THE MAIN POLICY-MAKING DEPARTMENT

Institutional arrangements are never fixed for all time. In each country, at a particular point, there are very specific, formal arrangements in place: ministerial and departmental responsibilities, organisational structures, reporting lines, staffing arrangements and a whole set of rules intended to ensure that tax policy-making is not just an intellectual exercise but a mechanism for delivering an outcome – often annually and sometimes on a specific day. These give a strong impression of permanency. However, these arrangements can and do change. They can change because a minister wills it to be so. They can change as a result of a formal review of processes; such as the *O'Donnell*

Review in the UK. And they can change because of the dominant influence of particular individuals. In this last case, the influence of those individuals can sometimes produce a shift of authority in the tax policy-making process without any formal change in the roles and responsibilities of government departments. This ebb and flow of institutional power is normal within government, where politics is a game not only played by politicians but also, and often more effectively, played by others.

In the parliamentary democracies, where most of our work is focused, power in relation to the making of tax policy has from time to time been shared in different proportions between: finance ministries or treasuries, economics ministries and the tax administration, between the departmental ministers and the prime minister and, in some countries, between the prime minister and the president. In the US, the ebb and flow of power has seen the Treasury and the White House, the Joint Committee on Taxation, the House Ways and Means Committee and the Senate Finance Committee each take their turn in enjoying primacy in making tax policy; with the Internal Revenue Service (IRS) largely standing apart from it. Today, it is widely felt to be politicians in the House and the Senate who hold sway; but there is a constant jostling for power between the institutions. Institutional primacy exerts a powerful influence on career choices for highly-qualified individuals and that can, in turn, help to determine whether an upswing or a decline in the power of a particular institution will be maintained.

In parliamentary democracies, at the time of our work, most of the responsibility for tax policy development was in the hands of the finance ministry or treasury. At a ministerial level, there was generally oversight of the tax administration within the same department, but the two departments were otherwise organisationally separate. This is the case, for example, in the UK, Germany, Finland, Australia and Ireland. In some countries, notably Germany with its federal structure, tax administration and collection is a function of regional rather than central government.

Not all countries have a single finance ministry for overseeing tax policy development and tax administration. France split the responsibility into two, leaving the Minister for Economy, Industry and Employment responsible for tax policy and the Minister for Budget, Public Accounts, the Civil Service and State Reform in charge of the tax administration. New Zealand also has separate departments with ministers in charge of each: a Minister of Finance and a Minister of Revenue. Skatteverket, the Swedish Tax Administration, falls outside the normal ministerial portfolio system, being an agency rather than a department.

Generally, in our sample of countries, tax policy authority within the executive rests with a policy development unit within the Ministry of Finance or equivalent. These ministries or departments have political structures that are conventional for that country. This leads to some differences between countries.

The highest point of authority within the ministry is the Finance Minister. He or she has ultimate responsibility within the department for tax policy decisions. The minister is rarely an expert on taxation matters in our sample countries. The extent to which authority is delegated to others in the political team depends in part on the size of the country and of the government. In most of the countries in our sample, the minister has junior ministers within the finance ministry to whom responsibility for particular aspects of tax policy can be apportioned. In some countries, for example the UK, one of the junior ministers will typically have disproportionately broad responsibility for tax. The Finance Minister may formally allow the junior ministers decision-making powers on tax policy issues up to a certain level of financial impact and may, in practice, exercise relatively light control over a wider range of decisions on tax policy.

In some countries, for example Germany and Sweden, politically-appointed state secretaries have a key role in tax policy development. State secretaries are generally considered to be just below ministerial rank and tend to have more than one area of responsibility. In some countries - again Germany provides an example - there are both political and non-political state secretaries.

In a number of countries, political advisers, sometimes referred to as special advisers, are employed within ministerial offices. In most countries where they have tax policy responsibilities, these advisers tend to be policy experts. In other roles, they may have more of a communications and media focus. In the policy environment, advisers function at the meeting point of politics and policy and may have responsibilities for both policy initiation and development. They use their knowledge and experience to manage both the policy and the related political issues and work closely with senior officials who are involved in policy development. They act effectively as an extension of the minister, although with one key difference: officials are not normally obliged to take instructions from them. Advisers nevertheless exercise considerable informal power. Officials are aware that they usually speak for their minister and, except in unusual circumstances, will normally treat requests from advisers as if they were instructions from ministers themselves.

The use of political advisers in tax policy roles was widespread in countries included in this study. The UK, New Zealand Finland, Ireland and France all make use of them. In Australia, our interviewees indicated that although ministers use political advisers, they sit outside the Treasury; the main tax policy-making department. In Germany, there are no political advisers within the Ministry of Finance but our interviewees felt politically-appointed state secretaries fulfilled a similar role. The US political process is sufficiently different for the question of special advisers to be inapplicable.

At official level, within the main tax policy-making department, there is normally a sub-division of responsibility. This can take a number of forms. We comment more fully later in this report on the division of responsibility between lawyers, economists and generalists. In some departments, the tax policy team is made up almost entirely of lawyers with the economists functionally separated from them. This is true, for example, in Germany. In other countries, there is no such clear division, although we found that lawyers tended to dominate the policy development process in the continental European countries we studied.

The delegation of responsibility within official teams tends to follow broadly similar lines through our sample countries and the split is generally by type of tax. Personal and business taxes are normally kept separate. Most countries have an international tax department, which, for some, is part of a broader group focused primarily on business taxes. Other common subdivisions include indirect taxation and customs duty departments. There may also be functional sub-divisions. Australia has 7 sub-divisions within the Revenue Group, two of which are the Tax Analysis Division and the Tax System Division. The US Treasury Department also has a Revenue Estimating Division and a Receipts Forecasting Division within the Office of Tax Policy.

The size of the tax policy function within ministries is partly a reflection of the size of the country and its economy and partly a reflection of the perceived complexity of the system. We comment further on the issue of size later in this section.

The involvement of the tax administration in policy-making

In all countries covered by this study, there are at least two departments of government that have some claim to particular expertise in relation to tax. As we have noted, policy-making authority typically rests today within the ministry of finance or its equivalent but there is usually a role for the tax administration as well.

In many countries, the tax administration plays three distinct roles in tax policy-making:

- they provide most of the data on which the policy teams in the finance ministry rely for developing options. Finance ministry personnel are often barred from having access to information about individual taxpayers. (Exceptionally, this is not the case in the US.) The tax administrations supply them with anonymised and aggregate data to allow them to cost and evaluate proposals. Some of our interviewees felt the role and significance in policy-making process of cost estimation was underestimated;
-

- they provide inputs to policy-makers in the ministry of finance on the practical and administrative aspects of new policy initiatives; and
- they have primary responsibility for policy maintenance, a term used to describe the process of updating policy detail and legislation to ensure that it is not susceptible to misinterpretation and abuse – and to secure compliance. It is rare for the tax administration to lead in other areas of policy development.

In some countries, until relatively recently, a great deal of tax policy work was carried out by specialist policy teams within the tax administration. So the shift of power has been marked. There is no universal standard for tax administration engagement in tax policy development, but on the whole, their contribution is at a somewhat lower level than it was previously.

This is an issue that has received some attention from a variety of commentators, including tax practitioners and academics; many of whom are concerned that the concentration of tax policy authority in finance ministries weakens policy outcomes. This argument centres on a simple analysis that the finance ministry is often detached from contact with taxpayers and, as a result, has too theoretical an approach to policy-making. In a situation where the ultimate authority lies with the finance ministry, that detachment can result in the subordination of practical and administrative issues to broader policy concerns and some risk to the deliverability of policy intent.

In 2004 Richard Bird wrote:

Devising and implementing good tax policy requires careful balancing of many complex issues related to political considerations, distributive and allocative effects, and legal drafting. In addition, considerable attention should be paid to administrative feasibility; can the policy actually be implemented? Lawyers, economists, information specialists and administrators all need to be drawn into the process of tax policy formation, preferably from an early stage. While some division of labour is of course inevitable, the degree of separation between the various essential actors in the tax policy process appears to be excessive in many countries⁴⁰.

Bird proposed a ‘tax policy unit’ that would bring together specialists from all aspects of taxation to develop policy. Academics such as Casanegra⁴¹ have written about the importance of administrative input to policy formation. So have institutions such as the World Bank with a development brief⁴². The gap between theoretically desirable and administratively practical policy is often greatest in developing nations. However, developed countries do have similar problems. Policy choices often require complex

40 Bird, R., Administrative Dimensions of Tax Reform, Asia-Pacific Tax Bulletin, March 2004

41 Casanegra, M., Problems in administering a value-added tax in developing countries: an overview, World Bank Report, 1987

42 World Bank- Lessons of Tax Reform, 1991

legislation to deliver the policy intent and tax codes remain extremely challenging for the tax administration and the taxpayer alike.

It can be difficult, without regularly observing the interaction of finance ministry and tax administration officials to be precisely sure about how they work together in practice. We were aware that we had limited opportunities to do that in the countries we visited. However, the strong impression we gained from the interviews conducted is that there is considerable expertise within tax administrations that is underutilised today. Two examples help to show how the balance has tipped against their close involvement.

The Australian Tax Office (ATO), the Tax Administration, has had a chequered history of involvement in policy-making in the last decade. It used to be very influential, but following some high-profile problems with the introduction of a Goods and Services Tax, the Board of Taxation undertook a review, as a result of which it recommended, in its March 2002 report, that primary responsibility for legislative development should be moved to Treasury⁴³. Treasurer Costello followed that advice in July 2002, leaving the ATO with responsibility only for policy maintenance. The Australian Government remained committed to an Integrated Tax Design process that explicitly requires input from the ATO; but as the March 2002 Board of Taxation report indicated, their involvement was henceforward to be primarily on administrative matters:

Under any revised structure, the principles of integrated tax design would still need to be applied to the tax design task. In particular, there would still need to be a close working relationship between the tax policy developers in the Tax Policy and Legislation Unit because; choices about policy options and legislative approaches will both influence and be constrained by administrative considerations; administrators must understand the policy intent of the Government's tax measures and administer them accordingly; and the ATO, as administrator of the tax system, has a unique perspective arising from its privileged access to individual taxpayer's records and activities that should inform policy development⁴⁴.

It is possible to draw an inference from this that the ATO's role had been diminished as a result of these changes. Officials from both the ATO and the Treasury advised us that the relationship between the Treasury and the ATO is generally strong and that Treasury officials normally consult colleagues at the ATO on new tax policy proposals unless there are concerns over budget secrecy. Where there are such concerns, we are told that Treasury will still normally involve someone from the ATO – albeit on a strictly confidential basis. There are monthly meetings between senior Treasury and ATO officials to discuss key tax policy and administration issues. Both agencies have recently revisited the way

43 Board of Taxation- Government Consultation with the Community on the Development of Taxation Legislation, March 2002, page 20

44 Board of Taxation- Government Consultation with the Community on the Development of Taxation Legislation, March 2002, page 21

they work together and committed to working closer on the design and implementation of new tax policy and law and cite some recent examples of successful collaboration on policy initiatives.

Nevertheless, the interviews conducted in Australia left us with a sense that the ATO was not always as fully involved in policy development as some both inside and outside government believed it should be. The Treasury and the ATO recognise that inter-agency consultation can sometimes come too late in the process, and that sufficient weight is not always given to ATO advice. We found that there was some frustration at this situation although it is clear both agencies are working hard to get the balance right.

In the UK, there has been an even more marked and deliberate shift of power in the last decade that has led to a significant reduction of the contribution by Her Majesty's Revenue and Customs (HMRC) to policy development. Historically, although ministerial authority for tax policy lay in HM Treasury, most of the policy analysis and development was carried out in Inland Revenue and HM Customs and Excise, the departments that were merged to form HMRC. Tax policy was very thinly resourced in the Treasury and lacked practical experience. In 2004, the O'Donnell Review of 2004 recommended reform. Revenue and Customs were merged to make HMRC, and policy development was transferred to the Treasury.

The reforms were intended to provide greater clarity of responsibility, to ensure better utilisation of expertise and make policy development more fluid. However, they have attracted some criticism. The Mirrlees Review notes that HMRC has valuable knowledge through taxpayer contact and a broader picture of the tax system, but has nonetheless been restricted to an administrative role in the policy-making process⁴⁵. The review suggests that centralising authority with the Treasury has left technical knowledge undervalued by consigning it to policy maintenance. The quality of communication between the two departments has been a cause of concern although officials have been quick to deny there are problems in the relationship⁴⁶.

The Institute for Fiscal Studies notes in its own report that the Treasury's lack of appreciation of the practical aspects of tax policy-making is matched by a disdain for policy development within HMRC⁴⁷. This may be a little harsh. Nevertheless, the authors agree with other commentators that the O'Donnell reforms were not fully thought-through and believe the current structure should be re-visited to address the many concerns to which O'Donnell has given rise^{48, 49}.

In our sample group, the notable exception to the dominance of the treasury or ministry of finance is New Zealand, where Inland Revenue has had the lead role in policy

45 IFS- *The Mirrlees Review, The Political Economy of Taxation*, by Alt, J, Preston, I and Sibieta, L, page 1214

46 House of Lords Select Committee on Economic Affairs, 4th Report of Session 2010-12, *The Finance Bill 2011*, page 19

47 IFS- *Tax Policy Making in the UK*, TLRC Discussion Paper No. 8, June 2010, page 5

48 Wales, C., *The Implications of the O'Donnell Review for the Making of Tax Policy in the UK*, *British Tax Review* 543, 2004

49 Wales, C., *The Making of Tax Policy in the Post-O'Donnell World: Can the HMT-HMRC 'Policy Partnership' Meet the Challenge?*, *British Tax Review* 245, 2009

development since the 1990s. Since that time, there has been a long period during which the Treasury has been considered relatively weak. The changes in both policy and policy-making processes that took place in the mid-1990s left Inland Revenue institutionally powerful. Ever since then, the department has been in a strong position to uphold principles of consistency and neutrality in the system and to resist alternative strategies. The strength of its position was reinforced by the firm grip of a particular senior official in Inland Revenue. At the time of our visit, we felt there was a new assertiveness among Treasury policy-makers that might lead to a re-balancing. However, Inland Revenue enjoyed the confidence of ministers and officials, and were able to use that to effect in policy discussions.

The separation of roles in tax policy-making between the ministry of finance and tax administration, and the subordination of the latter is widespread in the countries covered by this study. However, our work suggests that, in some countries at least, it may be leading to suboptimal outcomes.

We highlight here three specific concerns:

- i. There is a risk, in our view, that subordination of the policy role of the tax administration removes a significant source of challenge to policy-makers in the ministry of finance or treasury. Effective challenge sharpens thinking and its absence weakens policymaking, leaving policy-makers primarily with self-review as an alternative. This can be particularly significant where there is a strong group dynamic within a ministry. We believe the UK provides a good illustration of the problem. Moving the policy-making function into the Treasury shifted policy-making authority decisively away from HMRC and made ministers much more reliant on a single source of ideas and advice. In the previous arrangements, the relationship between departments was more balanced and challenge was both easier and more broadly based. There is a general sense among commentators in the UK that the change has weakened policy-making and led to less satisfactory outcomes.
 - ii. Resources of the tax administration used to inform the policy-making function are often underutilised. Tax administrations hold a vast wealth of both formal and informal knowledge and information. Many of our interviewees suggested that earlier and fuller engagement between the main policy-making department and the tax administration would allow its resources to be tapped more effectively.
 - iii. The separation of policy development and policy maintenance can create a conflict of priorities. On one level, this is good for challenge but it can lead to problems
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in the implementation of policy. Again, the UK provides an example: while the Treasury is focused on high-level policy direction and economic outcomes; HMRC is more focused on the integrity of the tax system. The result is felt to be a lack of coherence in the policy process that can lead to policy intent being diluted as a result of concern about loss of revenue. The sharp division of responsibility at the end of the policy development phase and the beginning of the implementation phase increases that risk.

We also believe, based on our interviews and observations in a number of countries, that the subordination of the role of tax administration in the policy development process can lead to demoralisation among tax administration officials which can have a wider impact.

Coordination within government on tax issues

The nature of the relationship between the tax administration and finance ministry is a particular expression of a broader issue within the tax policy-making process: the coordination across government of tax policy development.

It is rare for tax policy to have an impact only on areas for which the ministry of finance alone has responsibility. Most tax policy changes affect a wide range of taxpayers with a variety of interests for which other governments are responsible: farming, fishing, healthcare, pensions, education and economic development to name but a few. Tax proposals are often aimed at generating a behavioural response in one or more of these areas. However, finance ministries are not always good at coordinating the development of tax policy with other government departments.

Two of the factors that can limit coordination are the status of the finance minister and his department within government; and concern over budget secrecy:

- i. One of the features of the finance ministry in many of the countries that are covered in this study is that it is an extremely powerful institution. Not only does it have substantial policy responsibility in its own right but it is also in a position to influence or control the scale of the activities of other government departments. In parliamentary democracies, finance ministers are usually second only to the prime minister in importance within the political sphere. This can lead both ministers and officials to feel that there is little need to consult colleagues in more junior departments, even where tax changes will have an impact on areas covered by those departments.
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- ii. Budget secrecy has historically been regarded as extremely important. The rationale for this is discussed elsewhere in this report. In recent years it has been seen as less important in some countries in our sample, particularly where their governments make extensive use of consultation in tax policy development. However, in other countries, traditions of budget secrecy still remain strong today, sometimes with the objective of protecting government revenues and sometimes to ensure that the budget remains an important piece of political theatre.

We have found very different attitudes to coordination across government in the countries in our sample.

We believe that budget secrecy should rarely be a reason for not drawing other government departments into the development of tax policy. Unless the circumstances are very unusual, the benefits of inclusion should always outweigh the risks. The other departments will often be able to make an effective contribution to the priority-setting process within government through early-stage involvement. Where tax changes will have an impact on their areas of responsibility, they will usually have more detailed knowledge of the underlying issues than the ministry of finance that will help sharpen the policy focus.

A number of countries do have governance arrangements in place that seek to ensure that there is at least some coordination on tax policy-making across government.

Some of these arrangements are relatively informal. In France, for example, political advisers will typically ensure the relevant ministries are kept informed; and that there is close coordination between the prime minister's office and that of the finance minister. In most countries there is a formal requirement for the cabinet to approve tax proposals before they are laid before parliament but that can be a rather token gesture.

Historically, the UK has provided perhaps the most extreme example of a tightly controlled tax policy-making process in which other government departments were allowed little involvement. Interviewees have suggested there is now a broader engagement within government and that, for example, the influence of the Department for Business, Innovation and Skills has increased. However, the Treasury remains firmly in control of policy development.

We found few formal mechanisms in the countries we visited to ensure early coordination of the government's tax agenda. The most striking example was the Irish Tax Strategy Group. It was established in 1993 as a result of problems within the coalition government and designed to facilitate discussion between rival political interests on tax policy issues.

Chaired by the Department of Finance, it involved ministers and advisers for the Taoiseach, Health and Children, Environment, Heritage and Local Government, Enterprise, Trade and Employment, Social Community and Family Affairs and the Revenue Commissioners. The group meets as part of the budget process to consider agenda-setting papers prepared for it by officials at the Department of Finance. In principle, the group sets in motion the work streams necessary for the department to produce the budget tax proposals. Under Freedom of Information law, details of much of the proceedings of the group are available to the public, from minutes to presented papers. The group's purpose is not to make detailed decisions but to educate and strategise. Most of those who attend the meetings have no tax expertise.

Despite the benefit to communication and education across government, there are critics of the process. Some believe the group is now too large to be effective. Recent minutes show that attendance has been as high as 31. However, we understand that a number of those attended only part of the meeting and that the number of participants for the full agenda is much lower. Other interviewees indicated that there are not enough meaningful decisions being made in the Tax Strategy Group, partly, they suggest, because of the increasing number of small-issue papers being presented but this may be more perception than reality⁵⁰. A more significant issue is perhaps that the timing of meetings in the annual cycle seems to allow only a relatively short period for work that the group might commission from the Department of Finance to be carried out in advance of the Budget. This suggests that it might be difficult for the group to address complex issues that would require more extensive work. Another issue is that the nature of the meetings allows the Department of Finance to exert considerable influence over both the agenda and the group's choice of direction.

Notwithstanding these concerns we believe the Tax Strategy Group is an interesting and important institutional innovation and that its role could usefully evolve over time to strengthen coordination, agenda-setting and information-sharing. Government officials also value the Group. We see little reason why a similar mechanism should not be used by other governments, with a suitable framework of additional governance, to provide a coordinated departmental approach in the early stages of tax policy development.

The staffing of the main policy-making department

In this section, we address issues of scale and capacity amongst government tax policy-making departments and look briefly at some of the staff-related issues that have an impact on policy-development; including the balance of skills and experience in the department.

50 <http://taxpolicy.gov.ie/tax-strategy-group/>

The issue of scale

Size is an obvious and significant determinant of capacity in policy-making departments. Within our sample, there is considerable variation in numbers employed in developing tax policy. We would not want to place too much emphasis on point-comparisons between individual governments. Numbers vary over time, and differences in descriptions of staff functions as well as departmental groupings can invalidate any attempt at precision. However, within our sample, it is possible to identify broadly three levels of resourcing. It was no surprise that we found Jersey has only a small handful of qualified personnel employed in making tax policy, and even at that level of resource is a step up from the position that existed a few years ago. This places a serious restriction on the work that the department can undertake.

Most finance ministries are better equipped than Jersey, but many still face capacity constraints. New Zealand has about 60 tax staff and Sweden has 90. In Ireland the tax policy-making team is just 30 strong⁵¹. Staff in this size-range provide capacity for independent work on key work streams; but leaves little scope for additional work and analysis.

There are a handful of governments with significantly larger tax policy staffs, among them the UK, France and the US, which typically have 100-200⁵². These departments have the most resources, the greatest capacity to deal with current and longer-term issues and the best opportunity to improve upon their policy development process. Thorough analysis of policy options, high levels of consultation with both corporate and public groups and the development of well-tailored proposals are all more easily achievable with larger staff sizes.

Compared to the combined staffs of the spending departments of government, these numbers are all quite modest. A lack of resources is a common complaint amongst policy developers of all nationalities, and we see a good case for increasing resources devoted to tax policy-making – even in times of spending restraint. We believe there are likely to be both short-term and longer-term benefits that outweigh the costs.

The position of smaller countries is particularly difficult. The geographical area of Jersey, for example, is small and the population less than 100,000. However, the complexity and range of tax issues that the government of Jersey faces is not scaled down proportionately. Jersey has to deal with all the usual domestic taxes, for example, taxes on individuals and businesses, consumption taxes and taxes on property. It also has to manage its international tax situation. Although it is not a member of the European Union, it has been drawn into compliance with the Code of Conduct on business taxation and also

51 Details of senior officials are available on-line: <http://taxpolicy.gov.ie/home/about-us/>

52 American policy development is not restricted to the executive. The figure of 160 includes roughly 100 Treasury Department staff, 18 in the Congressional Budget Office and 42 at the Joint Committee for Taxation. Further expertise can be found in the Congressional staff of the Ways and Means and Senate Finance Committees as well as the Council of Economic Advisors.

the Savings Directive as a result of its relationship with the UK; and also has to manage a significant number of international tax agreements, all with no more than a handful of experts. The risk of policy error is greater as a consequence of the staffing position, and even a relatively minor policy error in a small country environment can have a considerable impact on government revenues. Jersey's island status provides some protection against this risk but other small countries in Continental Europe are extremely vulnerable. A senior official from a country outside our sample pointed out that a misjudgement on fuel duties in his country – that makes the pump price just a little higher than in a much larger neighbour – could lead to a complete loss of revenue from this source.

Governments with very low levels of resource in their own tax policy-making functions have a limited range of options through which to address the problem. There are four possibilities, all of them in some way unsatisfactory:

- i. Governments can essentially copy and adapt what is done in larger countries. Historically, this has been an approach that has been followed in a number of countries where there are sufficient similarities in tax and the legal systems. It was, for example, seen as a particularly sensible way of dealing with the implementation of EU directives. It used to be widely said in Ireland that the Department of Finance simply waited until the UK had enacted its own law and then copied it. This kind of anecdotal evidence has to be treated with care, of course, but it often has a ring of truth about it. Hard-pressed policy-makers prefer not to have to re-invent the wheel. However, there is some risk.
 - ii. An approach that some governments adopt is to outsource part of the policy work to academic institutions within their own country. This is most likely to be analytical and data work that is necessary to support policy decisions. Economic institutes and universities are often well-placed to do that work. In some cases, the department may simply have the analysis done by an economic unit elsewhere within the framework of government. The Ministry of Finance in Finland uses this approach and it is one that is available to some extent for most of the medium-sized countries in our sample. Of course one of the difficulties for very small countries is that they often lack the external institutions necessary to do this work. There is no university for the government to turn to in Jersey. So the problem of having very limited internal resources is compounded by the weakness of external institutions.
 - iii. Another option for policy-makers is to buy in resource either from academic institutions outside the country or from commercial consultancies. Some of the countries in our sample use this approach. There are consulting firms that are equipped to do this work on behalf of national governments. Governments need to
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choose carefully to ensure that they have the right balance of skills and experience. Some firms have limited experience on the government side. Others may be over-dependent on key individuals. There are also potential concerns around data handling. Nevertheless, this is potentially a useful method for addressing particular deficiencies in internal resources.

- iv. In some cases, governments are able to turn to the international institutions to supplement their domestic policy-making capacity. The IMF, for example, provides assistance through its own agencies and often puts governments in touch with former members of their own staff with relevant experience. However, we found examples of this only in the Turks and Caicos Islands during our work. We believe this kind of intervention can be helpful in addressing capacity issues but, based on our experience, we have some reservations about the way in which the resource is sometimes deployed and plan to look more closely at the role of international institutions in tax policy-making in a study that will follow on from this report. We hope that, with the cooperation of the institutions themselves, it will be possible to make some further recommendations.

Issues of scale undoubtedly affect the quality of the tax policy-making process. They reduce opportunities to put in place best practice in governance arrangements and there is a significant risk that scale also affects policy outcomes. It is, therefore, of particular importance that risks associated with scale should not be compounded by problems arising from imbalances in staffing.

Departmental staffs

We looked at a number of issues that relate to the staffing of tax policy-making departments:

- The influence of background and training
- The balance between economists, lawyers, political scientists and generalists; and
- The degree of mobility between the public and the private sector

We also gave some thought to the relationship between the skills in the department and the organisation of the work; and to the broader issue of whether the balance of skills and experience and the particular roles of staff encouraged challenge within the policy-making process. We have some high-level observations on these issues.

During our work, it became clear that the officials whom we met were – both within countries and across countries – very similar people: intelligent, well-informed, with a

successful academic background and a strong public service ethos. In Europe, we found they had attended similar universities and many of them came into government service immediately after graduation and had continuity of employment there. In some countries, the officials whom we met were almost all male. In others, they were almost all female but we were unable to draw any general conclusions about gender. We found both women and men in senior leadership roles.

Based on interview evidence, we felt the similarity of backgrounds and pattern of shared experiences among staff tended to lead to a strong sense of cohesion in policy teams and a well-developed feeling of common purpose. However, we also noted that it could restrict the inflow of new ideas and methods, reinforce existing thinking and make challenge to emerging proposals more difficult.

Taxation is a specialist field and policy-makers need to have particular knowledge and training in order to be effective. Much of this can be acquired only through particular educational choices and by people with high levels of intelligence and educational attainment. For those reasons, diversity in recruitment can be difficult to achieve.

We did not carry out a detailed survey of staff backgrounds and qualifications in the countries that we studied. We believe that it would be both interesting and useful to do so on a comparative basis and suggest that it should be an area for follow-on work. The comments that follow are based on our interviews and observations.

We found members of tax policy development teams came from several types of background. There were lawyers, economists, accountants and generalists, often part of a broader circulation of civil servants. In Continental Europe, we found a consistent bias towards lawyers having the lead roles in policy development. In some countries this domination is almost total. That is not to say there are no generalists or economists in these departments, simply that their influence appears to be restricted. The German Finance Ministry is a particular example but we found a similar situation in Sweden and Finland where lawyers dominate the policy-making process. On balance we feel such a heavy emphasis on legal expertise risks overlooking or undervaluing the economist's perspective. Officials accept that this is an issue. However, many regard tax as primarily a matter of law and feel any imbalance in staffing is merely a reflection of the subject matter.

We found a different position in the UK and the US. The UK still has a strong tradition of generalists, even in these relatively technical areas of government. This has some advantages, in that it allows a more diverse range of experience into the junior ranks of policy-makers who are then trained within the system. Of course, the UK also employs

both lawyers and economists, working at every level in the policy-making process. The US Treasury has a broadly equal balance of lawyers and economists - about 50 of each. We understand that the lawyers are responsible for most of the policy content. Economists are primarily called upon to analyse, model and estimate. There are significant differences in employment patterns between these two groups that may have an influence on policy development. The economists tend to spend a very large part of their career in Treasury. Many start their employment immediately after gaining their PhD and work in Treasury for decades. They carry the institutional memory of the department and exhibit a strong public service ethos. The lawyers, on the other hand, are typically hired from commercial law firms and stay in post for just three or four years. Many are close to becoming partners on joining the Treasury and many become so on leaving it. They bring with them an up-to-date knowledge of private sector practice that can be particularly useful in both driving and refining policy detail.

In France, the situation is again quite different, and many of our interviewees associated both significant strengths and serious weaknesses in the French tax policy-making process with the background and training of government officials, all of whom will have gone through the *École Nationale d'Administration* (ENA) before taking up their careers at the Ministry of Finance. Established at the end of the Second World War, ENA has a reputation as a fiercely meritocratic training school for the highest civil service positions in the French government. Those who graduate close to the top of the list typically come to be regarded both domestically and internationally as outstanding civil servants. Nevertheless, there is a concern that, despite the quality of this training the policy-making process is sub-optimal. Our interviewees suggested training reinforces the belief that it is only the officials who can design policy and that external input to the policy-making process is not necessary. That there is only one policy solution and it is for the officials to find it. Academia and the private sector have little to contribute. There is some flow of personnel between the public and private sectors but it tends to be in one direction. There are some examples in France where senior officials have left for consulting firms after many years of public service; but few leave private sector employment to work in the public service in tax policy roles.

This crossover of public and private expertise is unusual in most of the countries in our sample. Movement between the two is often described as a one-way street. Those who have been in senior positions in government may leave for the private sector, which, as noted, is the case for most countries in our study. Few come into government from the private sector and then return, although those who join the public sector on secondment are a separate case. Nevertheless, there have been some notable exceptions among senior policy-makers in New Zealand, France and the UK.

It appears to be relatively uncommon, based on our interview evidence, to find academics or former academics in policy-making roles within governments. The US is an exception and there have also been examples in the UK, where the ability of senior academics to make a contribution of high-level expertise to the tax policy-making process has been recognised. However, these appointments have not always been as successful as hoped. In this group of countries, in general, there seems to be even less of a crossover between government and academia than between government and the private sector.

One of the ways in which the lack of movement from the private sector to policy-maker roles has been addressed in some countries is through the use of secondments. These involve less risk, both for the department and for the individual's career, than a permanent move while offering similar benefits to both sides. In the UK, secondments have been used quite extensively and with some success. For finance ministries, secondments provide a source of trained staff with different expertise and experience often for a fraction of their market cost. Such individuals can be a good addition to any tax policy development team. The importance of secondments is recognised in the 1999 UK White Paper on Professional Policy Making, which talks of extending secondment programs⁵³, and the annual departmental report which lists greater use of seconded external expertise as a key target⁵⁴. However, there are complications. The more promising and skilled the secondee, the higher the opportunity cost for the private sector firm. Firms tend to be hesitant to second their brightest and best; and the individual themselves may be reluctant. Many of those who agree to a transfer do so to benefit future career prospects and may not be satisfied with a junior position in government, even in the short-term, but may lack the specific policy-making expertise to fill a more senior role. Despite this, there is some evidence from among our private sector interviewees that they would welcome the opportunity to second employees into policy positions in government.

Occasionally political advisers are appointed to fill a perceived gap in departmental expertise. Research has indicated that most are professionals appointed from the private sector and the majority motivated by a chance to influence government policy⁵⁵. However, these political appointments should be seen not so much as a cure for a problem but as a symptom of one. The need to parachute expertise into ministries suggests that there is little opportunity to influence policy outside government and a shortage of expertise within it.

We recognise that policy-making involves a blending of individual and institutional experience. We also acknowledge that structures and organisation can influence the process and affect outcomes.

53 UK Cabinet Office, Professional Policy-Making for the Twenty First Century, A Report by Strategic Policy Making Team Cabinet Office, September 1999, Chapter 9

54 HM Treasury Departmental Report 2002-3, page 34

55 Eichbaum, C and Shaw, R., Minding the Minister? Ministerial Advisers in New Zealand Government, *New Zealand Journal of Social Sciences*, Volume 2, 2007

Through the interviews we have conducted, we have reached some high-level conclusions that link the two:

- the backgrounds of the staff involved in the tax policy-making process are important in determining how issues are approached. Similarities in background and experience can lead to both negative and positive aspects of group behaviour that may reduce challenge in the process and weaken policy outcomes;
- economists and lawyers each have an important role to play and ministries should seek to balance the inputs from both. There seems to be some risk that tax policy-making becomes overly focused on legal issues, particularly in some countries. Legal issues are important but it is necessary to ensure that there is also a proper link made between the government's economic policy objectives and the design of tax policy. For that reason we believe there should be a role for a senior economist with an oversight role for the whole of tax policy, in addition to more junior positions for economists to work alongside lawyers on particular issues;
- the development of policy must inevitably be carried out within boundaries. Staff have to concentrate on particular issues; but providing individuals and teams with informal and semi-formal opportunities to present and discuss their work with others in the department is likely to help counteract both group-think within policy teams and a silo mentality; and
- the employment of lawyers to develop tax policy in some countries makes it easy for policy teams to draft their own legislation as part of the policy-making process. The requirement on policy teams to draft their own legislation makes it inevitable that the team will have a strong legal bias. In organisational terms, it is not clear which is the driver here, the organisation of the work or the background and qualifications of the staff. The authors tend to favour external drafting, which helps resolve this organisational dilemma, and provides the opportunity of greater challenge in the process.

These conclusions and the possible steps that could be taken to respond to them are developed more fully in our recommendations.

THE DEVELOPMENT OF IDEAS AND THE INFLUENCE OF POLITICS AND POLITICAL AGREEMENTS

Ideas are important and they come from somewhere. It is often difficult to work out exactly where they do come from. Good ideas can appear to have a remarkable number of parents. Bad ideas are invariably orphans. The history of tax policy-making is full of examples of both.

Through the interview process, we have attempted to get a better understanding of the history of ideas within tax policy in the countries we visited. Most interviewees were able to take us at least one stage back in the process and point to international institutions, academics, other governments and occasionally their own ministers as sources of ideas that had been put to work in policy-formulation. However, we found only one or two individuals who said plainly, 'It was my idea' and could explain how they had come to it.

Part of the problem is that ideas are generally recognised only when they finally emerge in a relatively developed form. For most of the people engaged in tax policy-making, the initial idea comes to them largely pre-packed so its precise origins are generally obscure. Government officials are not simply given a blank slate on which to develop tax policy; governments assume power with a host of ideas and plans and some policy commitments.

Policy commitments can come in several forms. Potentially, the most important starting points for the development of tax policy are election manifestos. However, in many countries, manifestos can seem relatively unimportant in practice, either because they lack detail and specificity; or because they quickly (and not unexpectedly) become subsumed in a programme for government, agreed by a coalition of parties. Countries such as the UK and Australia traditionally produce clear election winners but even in those countries, the manifesto may not give tax policy officials much to bite on. There are exceptions, where tax reform is an unusually prominent element of a party platform. For example, the FDP of Germany has recently published extensive reform proposals⁵⁶. In the UK, in recent years, manifestos have been very light on detail about tax policy. Politicians, recognising the problem with winners and losers and rightly concerned about media coverage, tend to shy away from discussing tax reform in the run-up to an election, except at the margin. Manifestos also age quickly, reflecting last month's political debate: a rise in national insurance contributions⁵⁷, a tax on bankers' bonuses⁵⁸ or a generic 'green tax'⁵⁹. During elections politicians talk about the need for greater simplicity, fairness and competitiveness⁶⁰ that are inoffensive to all; and once in power the first-past-the-post system all but guarantees them free rein.

Countries such as Finland, Sweden, Germany, Ireland and many others almost never see a majority one-party government. The absence of a dominant political force makes manifestos just the first stage of political bargaining. Coalition agreements and programmes for government are important statements of intent and perhaps the closest thing to a political contract. They can provide an element of certainty for policy-makers in a complex political situation; but, although important, their influence on the tax policy development varies enormously. The relationship between these documents and eventual policy is complicated.

56 FDP (Germany) – Liberale Reform der Direkten Steuern, 2005

57 Conservative Party (UK) - Invitation to Join the Government of Great Britain, the UK Conservative Party Manifesto 2010, page 8

58 Labour Party (UK) - A Future Fair For All, The Labour Party Manifesto 2010, page 6

59 Liberal Democrat Party (UK) - Liberal Democrat Manifesto, 2005, page 10

60 A commitment to these values can be found in almost any manifesto or party platform regardless of party philosophy.

The nature of a coalition agreement and its usefulness to policy-makers varies depending upon the political system within which it was forged and the circumstances of the coalition itself. Three examples illustrate this point:

- The UK has little experience of coalitions. It is not surprising, therefore, that the 2010 UK Coalition Agreement is more similar to manifestos in giving limited attention to tax than more typical programs of government found in Continental Europe. There are commitments to an increase in personal allowance, freezing of the rate of council tax for a year and the lowering of corporation tax rates; but many more sensitive issues are left out or identified as subjects of a review. There is a general commitment to reform in order to make the tax system ‘more competitive, simpler, greener and fairer⁶¹’.
- By contrast, the programmes for government in Finland are highly specific. The 2007 programme has a breakdown of the direction that policy is to take, including a list of aims for the coming parliament. The 2011 programme opens on tax policy with the following:

The basic objective of taxation is to ensure adequate funding for the delivery of welfare services and at the same time to achieve balance in central government finances. The tax base will be broadened with a view to strengthening public finances. Taxation will serve to bolster economic growth and employment, improve social justice and encourage environmentally more sustainable production and consumption. Income disparities will be reduced among other things by increasing capital tax rates and taxes on large inheritances and by lowering tax rates on low incomes⁶².

The 2011 document discusses in detail, planned tax reform for many different sectors. Both the 2007 and 2011 programmes contain a costing for intended tax changes alongside estimates for changes in expenditure⁶³. The ease with which voters can see the net impact of reform is unusual by international standards. Providing policy detail and related figures enhances accountability. The process of forming a coalition is a regular occurrence in Finland so there is established practice to lean on, and the result is a good starting point for policy development.

- Germany provides contrasting examples from different times. The 2005 election saw a grand coalition formed by the two major parties - the centre-right Christian Democratic Union (CDU) and the centre-left Social Democratic Party of Germany (SPD). The 2009 election saw the centre-right form a government with the Free Democratic Party (FDP), an economically liberal party. In the former, there was little overlap on taxation between the parties and the 2005 coalition agreement

61 UK government- The Coalition: Our Programme for Government, 2010, page 30

62 Finnish Government- Programme for Government 2011, page 12

63 Finnish Government- Programme for Government 2007 & 2011, pages 67 & 91 respectively

contained little in the way of detailed direction for tax policy. Simplifying income tax was a ‘main priority,’ and corporate tax would be focused upon international competitiveness, compatibility, predictability and be largely neutral⁶⁴. In 2009, tax policy objectives appeared to be better aligned among the coalition partners, and the 2009 coalition agreement made tax a priority. With the direction for policy development set out - the parties agreed on a low tax agenda for both personal and corporate taxation. Reform of inheritance tax, company taxation and VAT is described and simplifications of the broader tax system suggested⁶⁵. Perhaps unsurprisingly, parties with common ground on tax policy seem more likely to produce detailed plans, whilst those with greater philosophical differences will tend to shy away from detail.

Policy-makers will look to coalition agreements wherever possible for political guidance in policy development. This is usually helpful but an independent review of the Department of Finance in Ireland pointed out that there were dangers in parties making specific commitments in advance of proper analysis. These are particularly relevant in the case of programmes for government:

Such agreements are core to the political stability of the governing coalition and often include very specific spending and tax expenditure commitments. These initiatives are presented as given, without a full economic or fiscal analysis by the Department of Finance. The process leaves the Department to debate the pace of delivery of new spending and tax initiatives but not the Government’s commitment to these important fiscal matters. The Department could, and did, argue for reallocation of existing spending to offset new commitments in a Programme for Government. But this proved increasingly difficult, and ineffective, given the magnitude of Programme for Government commitments and the availability of resources⁶⁶.

The report suggests that commitment to policy before working out details was partly responsible for government failings during the global financial crisis. The programme for government is recognised as one of the major sources of government policy. It is not clear whether a lesson has been learned as the 2011 programme contains numerous commitments to not reforming several of the largest sources of revenue for the government⁶⁷.

Of course politicians are elected to make judgments and tend to tread carefully where they perceive a serious risk of introducing policy changes that may not prove popular. The new technocratic governments in Italy and Greece may feel that they have more freedom to manoeuvre than most, but they are still likely to be cautious with tax policy.

64 German government- Coalition Agreement between the CDU, CSU and SPD Translation, November 2005, pages 64-66

65 German government- Growth. Education. Unity. The Coalition Agreement Between the CDU, CSU and FDP, 2009, pages 10-16

66 Independent Review Panel- Strengthening the Capacity of the Department of Finance, December 2010, page 23

67 Irish government- Programme for Government, 2011, page 15

Tax reform is notoriously challenging to make popular, and the fear of popular backlash is great. The trepidation with which politicians approach tax policy is born of two common assumptions: that, given a choice between introducing a new tax and fiddling with an old tax, the latter will always be more acceptable to the vast majority; and that if the choice is between high taxes and low taxes, the public will, without fail, choose low taxes. This belief is the subject of some debate and the focus of many long-running public attitude surveys that have produced strong and weak as well as positive and negative correlations.

One set of studies focuses on whether the public displays aversion to taxation. Campbell references American public opinion surveys that suggest since the 1970s taxes have increased at the same time as general dissatisfaction with the government. As a result, taxation has become a more common reason for party preference⁶⁸. Blount discusses Australian attitudes to taxation; finding that there is a tendency to favor lower taxation⁶⁹. Another study found a significant correlation between levels of income tax and electoral defeat in the UK, but the relationship was with average and effective rates, not the basic rate⁷⁰. Others have questioned this correlation. Studies have expanded to cover indirect/direct taxation, marginal/effective rates and even tax structure turbulence/stability. The degree of complexity within these models has led some to the ‘non-attitude thesis’ conclusion; that a large part of the general population simply doesn’t know what it wants and doesn’t understand taxation. Influential academics believe this to be a valid claim. Edlund has attempted to refute the universality of this position, stating that although there is some evidence that people do struggle with taxation issues, no overarching claim can be made and that levels of ignorance vary greatly⁷¹.

Politicians err on the side of caution. Many tax policy ideas that appear to be rational responses to particular circumstances, fail to clear the hurdle of ministerial perceptions of the political implications. One recent example that interviewees raised time and again in our Dublin meetings helps to illustrate the problem. The issue was property taxation in the Republic of Ireland. Ireland had no property tax during the 2000’s except a modest flat rate charge on second homes. During this period, property prices boomed as the appetite for property showed no signs of abating. There were suggestions that a tax on property would be valuable in slowing the boom, and would reduce the government’s dependence on certain sources of revenues. Many members of the Irish tax community believed it to be necessary but, politically, heavier taxation of property was considered unacceptable. The recent independent review of the Department of Finance found that within the department there had been dissenting voices. Cabinet had been warned of the dangers of ‘pro-cyclical’ policy⁷². But the idea of a property tax was apparently never taken seriously because of the political dimension. The success of the housing sector was seen as crucial to the well-being of the Irish and of the Irish economy, the sector employing a disproportionate part of the workforce. Introducing such a tax was dismissed as a vote-loser.

68 Campbell, A., What Americans Think of Taxes, in *The Thunder of History: Taxation in Historical and Comparative Perspective*, 2008

69 Blount, S., Public Opinion and Tax Aversion in Australia, *Journal of Sociology*, Volume 36, No. 3, 2000

70 Johnson, P., Lynch, F. and Walker, J., Income Tax and Elections in Britain, 1950-2001, *Electoral Studies*, Volume 24, 2005

71 Edlund, J., Attitudes towards taxation: ignorant and incoherent? *Scandinavian Political Studies*, Volume 26, No. 2, 2003

72 Independent Review Panel- Strengthening the Capacity of the Department of Finance, December 2010, page 21

Within government, policy-makers are obliged to respect the primacy of the political actors, whether they agree with them or not. The minister of finance is typically the principal, immediate source of authority and exerts control – often through junior ministers, state secretaries and political advisers – over the process by which ideas progress to proposals and proposals to legislation. The range of policy options that may be acceptable in any given situation will be constrained by his or her party's political principles, a manifesto commitment or wider set of agreements. As we have shown, the policy development process has to respect all of those influences.

Although many of our interviewees were critical about the effect of politics on the development of tax policy the authors are not suggesting that technocracy is an attractive alternative. As we expand elsewhere, political choices are crucial in determining tax policy and the need to reduce the democratic deficit is central to our findings.

THE ROLE OF INDEPENDENT OR SEMI-INDEPENDENT POLICY REVIEWS

Occasionally, a minister will need or want to broaden the range of what is politically possible by encouraging or engaging a third party; usually an academic expert, public figure or a group of such people, to carry out an inquiry into a particular issue and make a public case for action. The separation from government, or at least the theoretical separation, gives a minister the opportunity to test opinion; among the public, businesses, or both - without having to make a prior commitment to accept the findings. In the UK, this approach has been used extensively in non-tax areas and Gordon Brown, as Chancellor of the Exchequer, also used it in areas that touched tax policy. The Stern Review is a case in point⁷³.

In this section of the report we look at the contribution that reviews have made to the development of tax policy in those countries that have used them or at least experimented with them. We define reviews widely to include effectively all inquiries into particular taxation issues that would consider themselves to be such; except for those carried out entirely by a branch of government as part of their executive function. We consider first the use of review structures and techniques in Sweden, where the examination of tax policy issues by Committees set up by the Ministry of Finance is a normal and familiar part of the policy-making process. We then consider the contribution of other types of review - for example independent or semi-independent reviews such as the Mirrlees Review and the Henry Review - and we reflect on some of the factors that influence the value they can add to policy development.

73 Stern Review- The Economics of Climate Change, Cambridge, 2007

Reviews in Sweden: the role of the Committee

The Swedish government has a long-established tradition of using a review or committee structure in tax policy-making to investigate a particular issue or set of related issues. For example, at the time of writing, a committee is currently sitting, charged with investigating and making recommendations on a number of business tax issues that affect revenue integrity and the international competitiveness of the Swedish system.

In terms of structure, there may be little difference between a particular Swedish committee and some of the more high profile reviews that have taken place in the countries included in this study. In practice, there are a number of differentiating points. It is the Ministry of Finance in Sweden that sets up the committee and dictates the terms of reference. The minister appoints members of the committee – which may comprise five or six members. Their identity will reflect the nature of the issue under investigation. On business tax issues, membership is likely to include lawyers, economists, academics and prominent private sector individuals from the business community. Within the framework of the committee, a group of experts will often be appointed. Again, if the issue is one that relates to the taxation of business activities, this group will largely be made up of experts from the business tax community. The Swedish committee typically has a relatively narrow mandate with a focus on a particular issue or set of issues within the tax system.

The committee conducts the investigation, hears witness evidence and commissions papers on the basis of which it produces a formal report that makes specific recommendations for changes in the law. These are not binding on the minister. However, the committee's report will normally include legislative proposals for the Minister of Finance to consider. The drafting is normally done within the committee itself. The process may take as long as two years. Historically, that has been seen as a sensible period for proper consideration of the issues. Tax policy experts often express concern that today, the ministry of finance expects committees to report much sooner. We found that there was strong support for this type of process in Sweden as well as a belief that it invariably leads to a better-informed policy-making process – even if the Committee's proposals are ultimately rejected at the political stage of the process.

Although these committees are essentially creatures of the government, there is an important distinction to be made between committee-based reviews and reviews conducted entirely within the framework of government. It is that distinction which gives them value in the eyes of the tax community. The committee process is a process set up by the Ministry of Finance rather than a Ministry of Finance process; and the committee is seen by the tax community as having a life of its own. In practice, members of the committee will often have their own views about problems and solutions and, as with

some of the government-sponsored reviews in our sample countries, the ministry may find itself unable to control the outcome even if it wishes to do so. One of our interviewees, who had been the *Rapporteur* for such a Committee, told us that his report was still lying on the minister's table, a sign that the outcome had not been exactly what was expected.

In section 4, we consider the use of this type of committee in the context of consultation with the business community.

The use of reviews in other countries covered by this study

In a number of countries covered by our study there has been a recent tax policy review undertaken outside the immediate framework of government. Tax reviews come in many shapes and sizes. They can cover narrow aspects of policy or very broad areas. In this section, we have focused mainly on large-scale reviews. There are several examples: the Mirrlees Review, undertaken by the Institute for Fiscal Studies (IFS) in the UK; the Henry Review in Australia; the various commissions of inquiry undertaken in Ireland; and the recent reviews carried out by Tax Working Groups in both New Zealand and Finland. We also make passing reference to the National Commission on Fiscal Responsibility and Reform in the US.

Other commentators have written extensively in this area⁷⁴ and we do not seek to duplicate their work. However, we want to draw attention to international experience of broad-ranging tax reviews because of their potential usefulness in a number of dimensions of tax policy-making that are explored in this report: the encouragement of debate among a wider audience than is normally reached by government; the relationship between government and external, academic institutions; and the process of policy-making within government itself. We examine some of the factors that have affected the usefulness of reviews as a structure in the policy-making process.

Part of the usefulness of reviews of this sort arises from the fact that they are not carried out by government itself. Another part of their usefulness lies in their ability to draw in government so conclusions and recommendations of the review can lead to action. Getting the balance right between independence and relevance is not easy. Some reviews have probably been too close to government and others too far away to be wholly effective. The Henry Review was very close to government and the Mirrlees Review looks too far away. It may be too early to make a definitive judgment, but there may be better models than either of these for the transmission of policy ideas.

One commentator, Chris Evans – who has focused on the issues affecting policy reviews

74 Evans, C., Reflections on the Mirrlees Review: An Australasian Perspective, *Fiscal Studies*, Volume 32, No. 3, 2011

– believes distance from government is a double-edged sword. This is on the basis that although it provides greater freedom of thought and public statement, there is a lower chance of impacting policy development in the near-term⁷⁵. There is substantial evidence to support this.

We comment here on three specific aspects of tax policy reviews: their independence from government, the setting and scope of their terms of reference and their use as a catalyst to debate.

Independence from government

The Rudd Government of Australia, with the intention of bringing together all elements of the tax community and involving the general public, commissioned the Henry Review in early 2008. The Panel included two academics, a business representative and a government official – a promising indication of openness. However, the chair of the review was Treasury Secretary, Ken Henry, who retained his Treasury position whilst carrying out the review. This proximity to government may have created the expectation that when the review was completed it would be published immediately and some, if not all, of its recommendations accepted and legislated. However, the report was left unpublished between its completion in December 2009 and May 2010 when it was released side-by-side with a response from the government. The only major tax measure introduced was the Resource Super Profits Tax. The policy sparked a major rift between the primary resource sector and the Rudd Government. The ensuing fallout was largely considered to have led to the fall of Rudd, and his replacement within the Labour Party. While the proximity to government may have contributed to the negative outcome, the government's failure to publish the report upon completion may have indicated that the Rudd government would have wished to have even more control over the outcome. At the time of our meetings in Canberra, the Australian Treasury indicated that the issues covered in the Henry Review were still very much part of their on-going work programme – even though they had little public visibility.

The Mirrlees Review, by contrast, was conducted very much at arm's length from government by the IFS, the organisation also responsible for the Meade Report in 1978. The authors were principally academics, as were the core team. It took five years to complete. Compared to the Henry Review, the Mirrlees Review was effectively unconstrained. Evans described the Mirrlees Review as, 'a far more considered, reflective and comprehensive approach⁷⁶'. The review was scholarly and conducted outside the policy development environment. As an examination of the UK tax system it is unparalleled – of enormous breadth, detail and length. Tax specialists were invited to discuss current thinking across the whole spectrum of tax policy issues. It was believed the review would provide valuable

75 Evans, C., Reflections on the Mirrlees Review: An Australasian Perspective, *Fiscal Studies*, Volume 32, No. 3, 2011

76 Ibid, page 380

direction and information to policy makers in the medium and long-term; rather than have immediate impact. And while it may have that impact – referred to extensively in policy-making circles today – its distance from the centre of policy development may prove to have come at some cost, despite allowing contributors greater freedom.

In terms of proximity or distance from government, the New Zealand Tax Working Group fitted neatly between Mirrlees and Henry. Their Review was carried out contemporaneously with the Henry Review and was funded jointly by the New Zealand Treasury and Inland Revenue Department and the Victoria University of Wellington⁷⁷. The group was given public backing after the government was criticised for not establishing a review like that just held in Australia. The support given by the government to the group gave them a national importance without imposing government control. Instead of preventing certain options being considered; the government made it clear that they would not be ruling out any options until the report was complete, and that whilst officials participated in the group they had no final say over its conclusions. In fact, government officials were not only allowed to attend group meetings, they were encouraged to think and speak freely, to the extent that officials could publicly disagree with each other about the future of the tax system.

The Finnish Tax Working Group was arguably much closer to government than its New Zealand equivalent. The group resided within government and drew heavily on the Ministry of Finance. However it also included academic economists from outside the ministry. The government was not bound by the conclusions of the review but published the group's interim and final report prior to the 2011 general election, to facilitate public debate.

Some proximity to government can make the work of the review team easier, if only in the provision of resources. In that respect, the Tax Working Group in New Zealand, under the chairmanship of Professor Bob Buckle, probably got the balance about right. It was able to draw on government resources and a government secretariat without having to concede drafting rights to them.

Terms of reference

Apart from the issue of independence, the most significant issue that can limit or enhance the usefulness of reviews of this sort is their terms of reference. These set out the scope of the work and normally the rationale for the review itself.

The terms of reference will typically be constrained in some way by government unless

⁷⁷ The Centre for Accounting, Governance and Taxation Research at the Victoria University of Wellington was very much an equal partner in funding and leading the work. It provided the Chair and two other members of the Tax Working Group and ran two tax policy conferences. See: <http://www.victoria.ac.nz/sacl/cagtr/twg/Report.aspx>

the review is completely independent. So it is perhaps unsurprising that some of the broadest reviews have been those that have been conducted very much at arm's length from government.

The Mirrlees Review had a very broad remit. It was intended to examine the 'characteristics that would make for a good tax system in an open economy in the twenty-first century; and to suggest how the British tax system in particular might be reformed to move closer to this ideal⁷⁸'. The long-term aim was to be progressive but not inefficient, and with an awareness of environmental issues.

However, that is not to say reviews conducted close to government cannot be broad ranging. We have noted the openness of debate on tax policy in Finland, and the Tax Working Group set up by the Finnish Government which was very broad, encompassing an examination of the medium and long-term future of the Finnish tax system.

The Henry Review, commissioned in 2008, was meant to have a long-term impact on the shape of Australian tax policy and had a relatively broad brief. Yet it was restricted from considering some particular issues, including the Goods and Services Tax (GST), a major issue in the politics of Australian taxation.

A commission on taxation was set up in the Republic of Ireland just prior to the financial crisis and reported during 2009. The terms of reference were more restrictive than some other reviews. These included an insistence that the 12.5% rate of corporation tax would remain; and that the overall tax burden would stay low⁷⁹. At the time, there was some criticism of the terms of reference, and this criticism was renewed in light of the economic crisis that unfolded during the period of the inquiry.

The review undertaken by the Tax Working Group in New Zealand had very few restrictions, but was more short-term in scope. The report, completed in January 2010, had four stages: identifying concerns with the current tax system, where it failed to be fair, efficient and supportive of growth; setting out a more desirable tax system; establishing reform packages and finally evaluating them⁸⁰.

Into this group of reviews, we would also put the Bowles-Simpson report (also known as the National Commission on Fiscal Responsibility and Reform) from the US. We recognise it was not a pure tax review like other reviews referred to in this section but we feel it should be mentioned here, if only because of the conclusions it reached regarding the US tax system. It was to focus on improving the fiscal situation in the medium-term, and achieving fiscal sustainability in the long-term⁸¹.

78 IFS- The Mirrlees Review- Dimensions of Tax Design, 2010, page vii

79 Commission on Taxation (Ireland)- Final Report 2009, page 1

80 Victoria University of Wellington Tax Working Group, A Tax System for New Zealand's Future, January 2010, Wellington, Centre for Accounting, Governance and Taxation Research, page 9

81 White House Office of the Press Secretary- Executive Order- National Commission on Fiscal Responsibility and Reform, February 18th 2010

The review as a catalyst to public debate

An important factor that can limit or enhance the usefulness of a review, is the extent to which members or sponsors seek to give it the necessary profile needed to be a catalyst to public debate about the tax system. We explore this issue more fully in section 4 and make only a few comments here.

To be useful in stimulating public debate, a review has to be transparent; and more than that, it has to have members and participants who actively seek to use the process and the outcome of the review in that way. We have commented on the sense of disappointment with treatment of the Henry Review which, as yet, appears to have had little value in stimulating public debate other than that of the most negative kind associated with the Resource Super Profits Tax. The Mirrlees Review has drawn in almost all of those around the world interested in tax policy. It has reached members of the political establishment and also the tax professionals. However, it is an intensely academic piece of work and without a group of advocates able and willing to explain its conclusions in layman's terms, it has not reached a popular audience. Media coverage has tended to keep the interest only within the tax policy community.

By contrast, the outcome of the Finnish Tax Working Group has reached a popular audience, not only by virtue of the group making documents and minutes available online and accessible to all but by providing a series of issues for discussion in the 2011 national election. And in New Zealand, the transparency of the process and public advocacy role of Tax Working Group members in debating and selling their proposals, through the press and other media, has had a very similar and possibly even broader effect.

Some reflections on the success and failure of reviews

The authors are aware that the fate of a review may ultimately be conditioned by factors beyond the control of those who set it up, design its remit, determine its composition or decide where it will sit in relation to government. The fate of the Irish Commission on Taxation that was set up in 2008 and reported the following year was effectively sealed by the financial crisis; which occurred after the commission had been initiated but before it had been due to report. This unforeseen crisis changed everything and the commission was thereafter unlikely to have a major impact. However, there has been criticism that the commission failed to adapt sufficiently, while it could, to keep its work and its findings relevant.

In other situations, the political context may make it extremely difficult to gain acceptance for the findings of a tax review. Perhaps the most obvious example of this, among the reviews to which we have referred, was the Bowles-Simpson report. Any headway this review might have made in presenting tax policy options was effectively lost in the political inferno that engulfed it. It remains an interesting report, but may not have much practical impact on US tax policy.

The New Zealand Tax Working Group used public reactions in a very different way. Aware that a sympathetic public would make serious reform more likely, the group chose both to hold a very public process – as we have noted – and begin its work by focusing on problems with the tax system and particular examples of injustice. Alongside a public account of the meetings, details were given to the media, and core participants made numerous public appearances to discuss the tax system. When the particulars of possible reform emerged from the group, there was a healthy public debate on what was preferable. The end result was a relatively smooth acceptance of the case for reform.

There are lessons for governments in all of this. We see some merit in governments exploring public reviews further as a means of encouraging public debate, and are supportive of governments using this technique with the benefit of previous experience, both good and bad. They are not a substitute for an effective government-led policy-making process, but can be a valuable complement to it.

THE ARRANGEMENTS FOR THE DRAFTING OF TAX LEGISLATION

Institutional responsibility for the drafting of tax legislation varies significantly from country to country. We have identified five different approaches that are, or have been, used in the countries included in this study. These are:

- The tax legislation is drafted within the ministry of finance/treasury by the policy team responsible for the issue (e.g. Germany);
 - A separate, specialist team of parliamentary draftsmen produce the draft legislation on the basis of instructions from the policy team (e.g. UK);
 - External private sector firms undertake the drafting (several countries have at least experimented with this);
 - The legislation is drafted by the commission of inquiry team leading work on the development of policy (e.g. Sweden); and
 - The legislation is drafted by the ministry of finance but scrutinised by an independent arm of government (e.g. France).
-

In some countries, there may be more than one approach used at any one time. In Sweden, ministry of finance officials have responsibility for drafting the legislation for proposals that do not arise from committees.

Setting aside the option for private sector firms carrying out the work – an arrangement that has not found universal favour among government officials – the other four options represent two fundamentally different approaches.

Westminster-type systems typically have an office of parliamentary counsel (OPC) that takes responsibility for all drafting of primary legislation. There is some variation in the structure of this department; which sits within the executive branch of government. In Australia, the OPC has no minister. In the UK, responsibility for this function falls to the cabinet office minister. In New Zealand, the OPC is run by the attorney general but tends not to draft tax law. The UK has the largest staff of parliamentary counsel with 60 drafters and around 20 support staff. There were just 40 drafters in 2000, but the OPC expanded the office to avoid a legislative bottleneck. The Australian Office of Parliamentary Counsel has 35 drafting staff and 20 in support. Although highly trained, the staff struggles with the increasing volume of work required⁸².

Centralising responsibility for legislative drafting means, in principle, that parliamentary counsel excel at drafting legislation, but that few are experts in any particular type of policy. In practice, counsel often tend to have greater experience and expertise in some areas than in others; and, over the course of an OPC career, an individual may draft and re-draft the same or similar provisions a number of times and so may acquire a certain familiarity with them. Some commentators consider that the distance between those who draft and those who make policy can create tension⁸³; and that the primary function of parliamentary counsel - turning policy intent into a well-crafted law - is made harder by distance from those developing policy and their expertise⁸⁴. Government officials must provide instructions to counsel and the drafting process involves frequent communication to minimise loss of meaning. Although acknowledging that it has much to offer policy makers, the OPC states that its normal relationship with policy development is 'cautious detachment'⁸⁵.

The structure of the OPC/policy-maker relationship implicitly emphasises drafting issues over policy issues. The OPC relies on the quality of instruction and re-instruction between policy-makers and draftsmen to ensure policy intent is fully captured. In practice, unfortunately, the draftsmen are often involved relatively late in the process and have little chance to craft legislation that embodies all qualities considered desirable. Recent changes in the UK's publication schedule for draft finance bill clauses may ultimately lead

82 Hansard Society- Making Better Law: Reform of the legislative process from policy to Act, 2010, page 86

83 Australia Office of Parliamentary Counsel- Working with the Office of Parliamentary Counsel, 2008, page 20

84 Bowman, G., Why is there a Parliamentary Counsel Office? In *State Law Review*, 26(2), 2005

85 UK Office of Parliamentary Counsel- Working with Parliamentary Counsel, 2011, page 16

to improved drafting, and could be more widely adopted. However, with this approach, there is arguably less time for the initial draft to be perfected.

The other approaches seem implicitly to emphasise policy issues over drafting. In most Continental European countries, policy makers are from a legal background and consider legislative drafting to be a natural part of their job; it is a key responsibility for tax departments, for example, in Finland, Germany and France. Linking policy development to the drafting of legislation makes it more likely that drafters will be able to translate purpose into law. It also helps prevent confusion over complexities, which many OPC draftsmen have complained about⁸⁶. However, we believe there can be some disadvantages in this as well.

We do not intend to comment on the relative merits of the outputs of these two systems. However, in terms of policy development, we consider that there are two important principles that need to be reflected in the choice of drafting process:

- it should ensure that the legislation always accurately and completely transcribes policy intent into law; with consistency of concepts and terminology between policy pronouncements, legislation and administrative guidance; and
- it should facilitate additional challenge to policy thinking.

There is a trade-off to be made in these arrangements.

We hesitate to offer an opinion on tax legislation itself. However, a brief review of the literature reveals others are not so timid. One of the most persistent themes is that complexity is of critical importance. Commentators point out that drafting is not a scientific process to which there can be only one answer; there are many ways to write the same policy into law⁸⁷. The style of the law is important. Raising concerns about the complexity of the statute book is a time-honoured tradition dating as far back as King Edward VI. Currently, a number of governments run plain-English type projects in order to encourage accessible legislation; and many governments have made a commitment to eliminating unnecessary complexity from the law. The tax code is deeply embedded in the public discussion of legal complexity.

There is wide agreement among commentators about the importance of achieving simplicity in the tax system⁸⁸. Numerous committees have been established across the world to address overly complicated tax systems. In Australia both the Asprey Committee of 1972 and the Ralph Review of Business Taxation in 1998 addressed complexity, as did the 1989 Tax Simplification Consultative Committee in New Zealand. Tax simplification was also a key target of the US tax reform bill of 1986.

86 Bowman, G., Why is there a Parliamentary Counsel Office? In *State Law Review*, 26(2), 2005, page 71

87 Bowman, G., The Art of Legislative Drafting, *Speech for the Sir William Dale Memorial Lecture*, 2005

88 Steuerle, E., *Contemporary US Tax Policy*, 2008, page 14

This sentiment has been translated in the UK into the Tax Law Rewrite Project. Staffed by as many as 30 and chaired by a former chancellor of the exchequer, the work mainly involved legislative consolidation rather than issues of tax structure. The project was considered to have clarified the tax system, although making the tax code longer in the process. Another recent UK attempt to simplify the tax system is the Office of Tax Simplification. Recommended in a Conservative Party report during opposition, it was originally conceived of as ‘an authoritative and independent voice on tax law, creating a powerful institutional pressure for simplification of the tax system⁸⁹’. The Conservative Party proceeded to create the Office of Tax Simplification upon gaining power in 2010; but not quite as originally suggested. It is thinly-resourced and has, as yet, only limited scope for making serious progress. The board minutes note:

A balance has to be struck between a desire that the OTS is bold in relation to its recommendations, and that by being bold it will be apparent that there are some large simplifications that could be made. Whilst this is the core mission of the OTS, there is less scope for reform in reality, as there are other economic and political factors the Government needs to take into account when formulating tax policy⁹⁰.

The work so far has been useful but not ground-breaking.

These two UK projects are steps toward simplifying the existing tax code. Embedding simplicity in policy-thinking and legislation from the moment of its origin is also important.

We acknowledge we are probably a little out of step with the reformers, in believing tax legislation has to be as complicated as the subject matter requires, and that statutory interpretation will always be a game played by experts.

The use of post-implementation reviews

The final area of our work on the internal institutions of government relates to the use of policy evaluation through post-implementation reviews. This should itself be the final step in the policy-making process; allowing valuable feedback to those with policy responsibility.

There is wide recognition in both the academic and government spheres that a thorough process of post-implementation review can be very useful as a source of information for future decision-making.

89 Conservative Party (UK)- Final Report of a Working Party chaired by Lord Howe of Aberavon- Making Taxes Simpler, July 2008

90 Office of Tax Simplification Board Minutes, 23rd February 2010

The UK government report, *Professional Policy Making for the Twenty First Century* states:

To be effective, policy making must be a learning process, which involves finding out from experience what works and what does not and making sure that others can learn from it too. This means that new policies must have evaluation of their effectiveness built into them from the start; established policies must be reviewed regularly to ensure that they are still delivering the desired outcome; and the lessons learned from evaluation must be available and accessible to other policy makers⁹¹.

In 1993, the New Zealand government – believing that their policy-making processes were suboptimal – adopted the Generic Tax Policy Process. The process was based around a 15-step flow chart in which the final two phases were ‘post implementation review’ and the ‘identification of remedial issues.’ The 2002 report⁹² of the Australian Board of Taxation, which set out a model for improved tax policy development called Integrated Tax Design, recognised the cyclical nature of policy-making and the importance of feedback loops. In 2003 the UK Treasury published guidance for departments and executive agencies that addressed evaluation as part of the policy cycle⁹³. During our interviews, we found government officials generally recognised that carrying out post-implementation reviews of policy outcomes would provide valuable additional knowledge for the policy-making process. It was also accepted that post-implementation review was most valuable where – undertaken in respect of policy changes – were introduced with the expectation of there being a behavioural response.

However, we found that relatively little of it was done in practice.

The only country in which there appeared to be both a commitment to post-implementation review and practical application of that commitment was Finland, where, we were told by interviewees, it is now expected that all important tax reform will be subject to review, with the requirement written in to the legislation. In most other countries, officials acknowledged that policy-level post-implementation review work was not undertaken.

A possible exception is the UK. However, the evidence is mixed. In its June 2010 publication, *Tax policy-making: a new approach*, the Treasury confirmed its support for the principle of post-implementation review, stating, ‘The Government is committed to evaluating the effectiveness of tax reforms, to ensure they are meeting their objective⁹⁴’. The consultation with experts that followed suggested there was some appetite to see that policy strengthened. However, the Treasury made no further specific commitment to policy evaluation in their responses, other than to say, ‘monitoring and evaluation

91 UK Cabinet Office, *Professional Policy Making for the Twenty First Century*, A Report by Strategic Policy Making Team Cabinet Office, September 1999, page 54

92 Australian Board of Taxation, *A Report to the Treasurer and the Minister for Revenue and Assistant Treasurer*, Government Consultation with the Community on the Development of Taxation Legislation, March 2002, page 35

93 HM Treasury- *The Green Book: Appraisal and Evaluation in Central Government*, 2003, page 3

94 HM Treasury, *Tax Policy Making: A New Approach*, June 2010, page 13

work should cover a wider range of impacts than focusing on compliance costs⁹⁵. When questioned in the House of Lords, government officials stated that post-implementation work was undertaken and that 120 research reviews had been published in the past decade. However, most of those reviews focused on relatively minor aspects of legislation. Commentators suggested that rigorous ex-post review ‘probably does not happen very often’⁹⁶.

There are a number of potential barriers to post-implementation review:

- i. Availability of data can present some difficulties. In order to carry out a proper evaluation of the impact of a change in tax policy, economists and statisticians need;
 - a. To be able to isolate the effects of the change from other factors that might affect the outcome; and
 - b. To have access to good baseline data so that change can be measured from the time of implementation.

Neither of these is particularly straightforward. However, good practice would normally require policy-makers to collect and analyse baseline data before making policy recommendations to ministers. The implementation of a standard requirement for post-implementation review would reinforce this discipline in the policy process.

- ii. It is often difficult to know when to carry out post-implementation review work. Different timing will be relevant for different measures, as behavioural responses often work through at different speeds. The timing issue can normally be resolved for a particular measure at the start and written in to the legislation. However, subsequent events can affect that early judgment. Repeated ‘tinkering’ with policy detail can make an assessment of a measure much more difficult. Similarly, large changes in a country’s economy can either accelerate or slow down the impact of tax reforms.
- iii. Finance ministries are often fully-stretched with their existing workload and have little spare capacity to undertake post-implementation review work.
- iv. Most of all, there is often no political will to review the effectiveness of measures. This can be a particular barrier where there is either a long-serving finance minister or a government has been in power for many years.

95 HM Treasury, *The New Approach to Tax Policy Making: A Response to the Consultation*, December 2010, page 19

96 House of Lords Select Committee on Economic Affairs, *4th Report of Session 2010-12, The Finance Bill 2011*, page 25

Among the governments that we cover in this study, we found political will and resources were most often cited as reasons for not undertaking the work.

In principle, none of these issues need, at present, an insuperable barrier, provided the requirement for post-implementation review is determined in advance. Where ministers may be unwilling to have reviews undertaken, the parliamentary process should normally provide an opportunity for that unwillingness to be debated.

The greatest value is likely to be added where the review work is undertaken outside government. This addresses the resource issue, although it creates an additional financial cost. More importantly, it should ensure that the review is undertaken independently of political influences within government. In all cases, the review should be published to enhance transparency and facilitate scrutiny.

The authors believe that similar standards of scrutiny should be applied to tax expenditures, through the granting of tax relief, as are applied to other forms of government spending. Post-implementation reviews should help give effect to that approach.

Summary

In this section, we have covered a wide range of issues affecting the part of the tax policy-making process that takes place within the framework of government or under its control. This is the most significant part of the process in most countries. In addressing how the internal aspects of policy-making work, we believe governments need to consider not simply how to make the process more efficient in translating ideas into law, but also how to encourage and facilitate challenge. Challenge is essential before ideas acquire political energy and are taken outside government. In a number of countries, the structures and governance around tax policy-making do not appear to provide sufficient scope for challenge.

In all of the countries that we have visited in our work, we consider that improvements could be made in the way in which the work is carried out, and make a number of broadly-applicable recommendations reflecting this in the final section of the report.

2. THE INFLUENCE AND ROLE OF EXTERNAL INSTITUTIONS

In this section, we look at the role and influence of external institutions in the development of tax policy.

We have defined this group primarily by reference to their status and the way in which they engage in relation to tax policy issues:

- i. We have included in this group institutions that are independent of government in their ability to address tax policy issues; by which we mean organisations that have freedom to carry out and publish research without reference to government, even where government may be a source of funding, and perhaps the main source of funding. So a university funded by government is regarded as falling within this group. So too are economics institutes that are not part of a university but which enjoy similar freedoms and independence, even where they receive funding from government on one basis or another.
- ii. We have included only those organisations that we consider to have a degree of institutional permanence, so a single researcher or even a small group of academic researchers at a university will not normally be thought of as an external institution for these purposes. However, we do also refer to academic engagement in a broader sense and where we do, would conceptually, include all such researchers.
- iii. We have only included organisations whose engagement is essentially academic in nature, by which we mean those that employ rigorous research techniques in their published work.
- iv. We have also applied a further filter that relates to the organisation's method of working. We have excluded those organisations whose outputs are principally responsive to government announcements and proposals and included only those that have a free-standing research programme.

We would not pretend that this definition does not give rise to some boundary issues. In light of this, we initially struggled to be sure on which side of the line to place think tanks.

The problem here is that there can be quite big differences between them. There are some large think tanks that meet all of the criteria. They have a strong research capability of their own, produce academically rigorous work, enjoy independence from government (if not necessarily from all political allegiance) and have a forward-looking programme of research. They belong in this section and we include them in it. However, there are think tanks that meet some, but not all of the criteria. In particular, they may have a relatively limited research capability of their own and draw in policy expertise from outside, including quite often from academics. They may use or employ people who produce work of a high academic standard in another capacity but who, in their think tank role, fit into a house-style of publication that is much less rigorous. These think tanks do not qualify fully to be included in this section. However, we feel it would unnecessarily complicate the analysis to exclude them from it. On that basis, we treat think tanks generically as external institutions. We have not, however, included professional or industry bodies in this group, even where they have strong academic credentials or their own research agenda. Nor have we included NGO's such as charities and pressure groups. We have defined them instead as part of the much broader 'taxpayer community' with whom we deal in section 4 of this report.

We believe that academia and think-tanks can, in different ways, potentially make a significant contribution to tax policy-making, providing challenge at both ends of the process – in the sphere of ideas and in the review of policy outcomes. They can also contribute to policy development. Our initial premise is that their actual contribution is currently constrained by a number of factors: attitudinal issues that particularly affect the relationship between academia and government; structural issues that limit the capacity and incentives for academics to engage with government on policy issues; and a number of very specific issues that restrict both academia and think-tanks from making as full a contribution as they otherwise might. We explore the possibility that a broader and more regular engagement between policy-makers and academics might help to remove some of the attitudinal problems. We also investigate whether there are mechanisms that governments could use to draw external institutions more effectively into the policy-making environment and strengthen their capacity to give effective inputs.

The engagement with government

The conclusion that we reach about the influence and role of academic external institutions is that it is weaker and less important than it could, and perhaps, than it should be. Think-tanks contribute in a different way and at a different level, and are not constrained by some of the factors that are a particular problem for academics. However, there are some issues that affect both groups and we address these later in this section.

Notwithstanding the generality of these comments, our work has shown that the impact of external institutions on tax policy-making differs greatly from country to country, from institution to institution and from policy question to policy question. In this section, we explore the factors that influence engagement between government and external institutions. We think of this in terms of the rationale for the engagement, the nature of the engagement and the issues that make effective engagement easier or more difficult. These are all interconnected and we consider them both generically and in the context of particular countries.

The rationale for the engagement between external institutions and government resolves itself around the relatively blunt central question of what's in it for the various parties: academics, policy-makers and the think tanks.

The relationship with academia

Although many academics are interested in the policy sphere and happy to have contact with government on policy issues; it is clear that not all academics are prepared or in a position to invest the substantial amount of time and effort that a close working relationship with the government requires. At the level of the individual, there is a perception that there is a lack of reward and incentive within the academic system that would justify frequent involvement with the government on policy-level work. This is not only because it takes time to build an effective relationship with government on policy issues, but also because it may not be rewarded in career terms. Young academics often see little reason to engage with the policy process. Applied research is usually undervalued, relative to theoretical work and will contribute less to an academic's career. An additional problem for the young academic is that work with government on policy development may get little or no public acknowledgement. It does not normally result in journal articles, no peer-reviewed work is disseminated and we found a perception that academic input is often neglected in any case. So there is little personal incentive to be more than a commentator on policy.

In the UK, the Council for Science and Technology published a report on academic engagement in the development of policy and although it was focused on the hard sciences, what it says rings true across the wider academic world.

Academics are, in general, very eager to engage with Government. However, if the engagement cannot contribute to building an academic career then it risks being crowded out by other activities. At more senior levels (at Professor and above) academics can exercise more control and engaging with Government

can bring additional rewards. At more junior levels however it takes time away from teaching, publishing and other core academic promotion criteria⁹⁷.

The need to incentivise academic engagement is also noted in a British Academy report on the humanities and the social sciences⁹⁸.

In our interviews, we found that academics had other reasons to avoid becoming involved in policy development. The process of policy-making can be messy and the decision-making process is often intensely political. This increases the risk that input will be ignored or even criticised. Academics usually have little control over how issues are presented in the public domain, and they often have concerns that their recommendations will either be overstated or presented in a watered down manner. They can simply feel used; and sometimes they are concerned that their work may seem tainted by too exploitative a use in the political world. Experiences of this nature can quickly dissuade many from making further contributions. Repeated disappointment is not a good incentive.

Some of the academic work in the taxation area is not, of course, closely linked to policy-making. This can be true of elements of the work of academic lawyers, as while issues of drafting and interpretation that they may address are very important; for policy-makers in government they can seem quite detached from their everyday concerns. Similarly on the economic side, some of the work carried out by academic institutions has a high level of abstraction. Scholarly work can be esoteric. Whilst complex theoretical models are often interesting and valuable within academic circles and can help to set the framework within which policy-makers work; they do not necessarily provide a basis for day-to-day engagement.

Some academics have written about the difficulties currently hindering communication, most notably an ignorance of practical difficulties⁹⁹ and a lack of urgency¹⁰⁰. Most policy-level involvement tends to come from universities and institutions that have 'professionalised' policy engagement¹⁰¹.

Essentially most university-based academics teach and supervise students, carry out research and publish their findings. Any contact with policy-makers is likely to be a consequence of these activities rather than part of them. The Council for Science and Technology suggests that governments are forced to go elsewhere for expertise because the structure of academia does not accommodate a policy role. There are few policy positions; they lack a well-defined infrastructure and funding for academic institutions do not often support policy engagement.

97 Council for Science and Technology- How Academia and Government can work together, October 2008, page 21

98 The British Academy Report- Punching our weight: the humanities and social sciences in public policy making, September 2008, page 27

99 Hill, L., Political and Academic Linkages in Public Sector Policymaking, *Journal of Higher Education Outreach and Engagement*, Volume 11, No 1, 2006, page 226

100 Ibid, page 229

101 Council for Science and Technology- How Academia and Government can work together, October 2008, page 18

On the government side, it often seems to be the case that policy-makers place a low value on the contribution of academia. We found in our interviews that many academics were regarded as detached from the realities of policy development. Some of the published reports suggest their contribution is often considered too inaccessible to be of use¹⁰². The relationship between the two tends to be inconsistent in impact, point of engagement and degree of participation. It would be easy to conclude that policy-makers seem to find it difficult to have a stable and productive working relationship with academics.

However, this would probably be unfair. The fundamental questions are, what kind of a relationship do tax policy-makers want with the academic community and individual academics? And what do they want to get out of it? Of course, they can want different things at different times, and that helps to confuse the picture. Policy-makers typically want something from academic institutions that is different from what they want from other outside parties in the tax community. Sometimes they want independent thinking in the form of well-researched new ideas that can take policy in a particular direction – a short cut to a policy proposal. Sometimes they want rigorous analysis that will help them understand better the nature of a particular issue, and the likely impact of a specific change. Sometimes, they just want the credibility and political cover that a highly respected academic or institution can provide by endorsement of a particular policy initiative. So, government's engagement with the academic community today is characterised more by a tendency among policy-makers to regard them as individuals and organisations to consult; rather than a desire to bring them collectively to the table as potential partners in policy development.

This means that they are unlikely to seek or value a general engagement with academic institutions. They want something far more specific and individual. And they want it when they want it – on demand. Occasionally, they seem to overlook entirely the potential contribution of academia. A recent UK Treasury document outlining a new approach to tax policy development discusses the engagement of 'other institutions,' and 'interested parties' but makes no mention of academic involvement¹⁰³.

There is a question as to whether government is equipped in an organisational and management sense to make best use of engagement with academia. Academics often look at issues in different ways from policy-makers. An effective engagement therefore requires not just detailed and specialist knowledge, but also a different mindset on the government side. Of course, the more often policy makers are involved in this kind of engagement, the easier it becomes. Unfortunately, the somewhat irregular manner of some government approaches to the involvement of academia can prevent the necessary experience from being developed. In governments that tend to employ generalists and rotate staff from department to department, the problem can be compounded by a

102 The British Academy Report- *Punching our weight: the humanities and social sciences in public policy making*, September 2008, page 27

103 HM Revenue and Customs- *Tax Policy Making: Draft Tax Consultation Framework*, December 2010

lack of real expertise on the side of the policy-makers. The UK Council for Science and Technology notes this as a problem¹⁰⁴. Policy-makers stay in post for just a few years and institutional memory is easily lost. It is a problem that particularly affects governments that employ a high proportion of generalists and do not involve their tax administration closely in policy development. The problem is recognised and governments are aware that to make best use of research material they must be ‘intelligent customers’¹⁰⁵. However, there are still many frustrations.

All of this seems currently to undermine the potential that academia has to make a contribution to and participate in the policy process.

The contribution of think tanks

The position of think tanks is a little different. Many draw on the research techniques and qualities of academia but tend to put their outputs to work in a different way, and use different channels to get value for their contribution in the policy arena. If the traditional academic way could be characterised as someone throwing a brightly-coloured ball into the air to see whether anyone will notice or catch it, the think-tank’s method is often more akin to a fast bowler delivering a cricket ball the length of the pitch. The ball does not have to be quite so colourful or shiny to be noticed, and the affect of its journey through the air is likely to have as much to do with the method of delivery as with the ball itself.

Think tanks work at the interface of ideas, politics and policy. To get their funding, they depend on providing a flow of new ideas and analysis for the media and the political classes to feed on. They rely on the quality of their thinking, at least as much, as the quality of their underlying research. They normally have a political affiliation somewhere on the left or the right and typically have strong links with ministers or senior opposition spokespeople. In tax policy, their influence is generally through the political channels. They will work with policy-makers, but seek to make their impact through engaging high-level political interest. They can be prolific producers of information and analysis. Many have long-established research programmes and a track record of excellence in what they produce – and are often quick to respond to government announcements or proposals. In the US, in particular, they are a force to be reckoned with in the tax policy space.

Their need to be policy-relevant means they are both takers and contributors in a policy engagement with government. They seek information and provide ideas. They can have a long-term policy perspective just like an academic institution might do but, in their outputs, are likely to be looking to make an immediate impact. They have less scope than academia for pursuing a highly theoretical approach. With changes in government and the public mood, they can go in and out of fashion. A group of politicians or advisers is

104 Council for Science and Technology- How Academia and Government can work together, October 2008, page 9

105 UK Cabinet Office- Professional Policy Making for the Twenty First Century, September 1999, page 36

likely to favour one approach or philosophy over another, empowering or disempowering a particular institution in the process. Academic institutions are usually not so closely associated with one political viewpoint over another, although individual academics may be, so changes in the mood of the country or the colour of the government tend to have less impact on them. However, the political composition of the government, both in terms of faction and party, can still have an important influence.

The level of engagement

In the course of the interviews undertaken for this study we have sought to identify the extent to which the policy-making process today draws effectively enough on the expertise and work of external institutions. As we have noted, the picture does seem to vary considerably from country to country but we are particularly conscious that, in this area, the identity of interviewees can significantly affect our own perceptions of the position and have tried, wherever possible, to establish whether there is hard evidence of influence or not.

Some countries, of course are really just too small to support external institutions of their own. Jersey is one of those. There are fewer than 100,000 people living on the island. The Treasury has a very small number of qualified tax policy staff and an economics team that is supported by a Fiscal Policy Panel drawn from outside the island and includes some academic expertise. However, there is no organisation on the island that constitutes an external institution as defined for this study. The government recognises that it can benefit from external inputs to the tax policy-making process, but tends to draw on commercial consultancies rather than academia.

The Irish Government has a range of institutions to draw on, but Ireland has so far proved to be a relatively difficult environment in which to establish an institution with a strong focus on taxation. Most of the institutions that carry out research on tax policy issues do so as part of a broader remit. This is particularly true of the Economic and Social Research Institute (ESRI), one of the largest and best-known institutions. ESRI does occasionally publish research papers on taxation issues. Its academic staff has entered the debate on the rate of corporation tax, environmental taxes and property taxation in recent years. However, whilst it remains influential it is not regarded as a major contributor on taxation policy. The Foundation for Fiscal Studies (FFS) was set up in 1985 and was modelled on the UK's IFS, but has had less of an impact in the policy arena than the IFS. There have however been efforts by individual academics to establish a tax-focused organisation, and we understand a new institution, the Centre for Fiscal Research, is now in the process of being set up with private sector support. Despite this, there are relatively few external institutions engaged in policy debate in Ireland today.

There may be a number of reasons for this. As we have noted, in spite of good intra-government coordination of tax policy development, there is still a strong thread of centralisation in tax policy-making in Ireland, particularly in relation to the budget process. This leaves little scope for academic input at the sharp end of the process.

In principle, the government is open to discussion with the academic community just as it is to the business community, but our interviewees felt that it was difficult for an academic institution to make an impact on government thinking. There is little use of external evaluation of tax policy outcomes that might involve academic institutions. The Department of Finance has tended to use commissions as a semi-external mechanism for policy development, and otherwise to buy in the external resources needed from professional firms. But that has not drawn many academics into the process. The 2009 Commission on Taxation had just two full-time academics in a membership of 18, far fewer representatives than the private sector.

Tax policy-making is considered highly politicised and there have been intense public debates on particular issues. Some academics have felt there was a danger that academic work would be used just to provide political cover rather than as input to policy thinking and that the nature of public debate had not given some of the academic material, published over the past decade, a fair hearing. The staunch positions held by main political parties, media outlets and many individuals are hard to reconcile with a more open academic approach.

Ireland's Department of Finance has limited capacity for making best use of academic contributions. The departmental staff is relatively small, and a review of the department in late 2010 found that generalists tended to dominate the policy environment¹⁰⁶; potentially reducing the scope for effective engagement with academia. By the standards of many countries covered in this study, the department employs significantly fewer economists and lawyers in senior policy roles in taxation.

A similar situation exists in France. The French Government has done relatively little to open up to academic input in its highly centralised policy development process. As we note elsewhere in our report, consultation with the private sector is very limited and the academic community fares no better. The process does not accommodate early external inputs and, once policy proposals have been announced, there is often little opportunity for serious academic involvement. Our interviewees attribute much of the responsibility for this relatively insular policy development process to the civil service training at *ENA*. Many believe the teaching approach encourages among officials a philosophical position that inputs from outside the Ministry of Finance are not necessary. Some of our interviewees reflected that this could be deeply frustrating for those who remain outside the policy development process.

106 Independent Review Panel- Strengthening the capacity of the Department of Finance, December 2010, page 35

However, we found evidence in our interviews that reluctance to engage was not just a failing on the government side. The academic community seems to have done relatively little to push for greater involvement in policy development and shows little desire to do so. Policy-relevant tax matters have not been given a high priority, and fail to attract the interest of academics of the highest quality. We were also told that language could be a significant barrier, preventing crossover from academics in other countries. Over the past few years some tax policy experts have worked toward the establishment of an institute along similar lines to the UK's IFS. However these efforts have, as of yet, been unsuccessful. This is partly because funding has been a challenge. The private sector has been reluctant to provide funding without the ability to exercise a high degree of control over research, and there has been uncertainty about the value of the work in an environment in which government appears reluctant to engage with outside parties. Those research institutions that do take some part in the debate tend, as in Ireland, to do so as part of a wider brief and with limited commitment of expertise, for example, *L'Observatoire Français des Conjonctures Économiques (OFCE)*.

In Australia, we found there were a number of universities where individual academics were engaged in tax policy-related research, for example, the Australian National University and the Australian School of Taxation at the University of New South Wales, but we found little evidence of strong external institutions that could make an effective contribution to policy debate. We also found a relative reluctance on the government side to draw academics into tax policy issues. The Henry Review Panel was unusual, with two of the five members being academics. The Board of Taxation has, however, taken some important steps towards improving the situation. By linking the private sector and senior tax officials as well as improving communication on specific issues between them, the board has shed light on the potential for greater engagement with academia, as well with the private sector. Aware that the Treasury could be better informed – at the time of our visit to Canberra in February 2011 – the board was considering whether it could encourage or fund the establishment of an academic tax policy institute.

This was followed in October 2011, by an announcement that the Government would provide seed funding of \$1 million per year for three years to establish a Tax Studies Institute (TSI). The centre was conceived as a 'a centre for research excellence, linked to our universities'. The treasurer announced the institute would look at such issues as the design and simplification of the tax-transfer system. He also announced the government would treat financial contributions to support the work of the institute as tax-deductible and encourage state governments to participate. The Board of Taxation has been given the task of bringing the proposal to fruition.

This is a significant development for tax policy-making in Australia and continues their tradition of institutional innovation. However, many of our interviewees were sceptical at the time of our visit about the treasury's willingness to engage seriously with an external institution. The Australian Government has been unusually self-aware about the development of tax policy during the past 15 years but has yet to take maximum advantage of its work. A succession of reviews has not taken forward academic involvement to a significant extent. The 2007 Board of Taxation report on tax policy consultation notes that greater use of academic research capacity would improve policy development¹⁰⁷. Despite this, the work of the Board of Taxation has largely focused on engagement of the private sector. The board itself is intended as a link between the government and the private sector, rather than with academia, but their latest initiative is an important recognition of the potential for an academic contribution.

It is interesting to note that for a number of countries in our study – not all of them English-speaking – the two main external institutions in the UK, the IFS and OUCBT, have been regarded as a model to adopt. The UK has not had a long history of external institutions focused on taxation or fiscal policy issues and, as we have noted, both of these institutions were set up to address a deficiency in this area. However, it does have a history of outstanding academic achievement on both the legal and economic aspects of taxation and academia is institutionally more secure in those areas than some countries. The OUCBT carries out research in those areas of policy that affect the taxation of business, and engages directly with government. By producing accessible but expert analysis related to current tax matters, it has provided policy makers with another resource that can help improve the quality of their decision-making. The IFS has a broader remit and, like the OUCBT, serious academic credentials to engage with government. It has established a strong reputation for robust critical examinations of government policy, regardless of the party in power. The UK also benefits from a number of other academic institutions with a tax focus that includes policy-related matters such as the Cambridge University Centre for Tax Law and the University of Nottingham Tax Research Institute. In addition to this, there are numerous think-tanks of varying political flavors – official and otherwise. These include: NIESR, the Institute for Public Policy Research, Policy Exchange, Demos, the Social Market Foundation, the Centre for Policy Studies, the Adam Smith Institute and the Fabian Society; all of which have a tradition of research on tax policy issues.

Although external institutions are relatively strong in the UK, as we have noted, the involvement of external institutions in the actual development of policy has been relatively limited. A number of institutions have had an impact at political level promoting, for example, developments in policy on environmental taxation and research and development, but the pull from government has not been strong. Although efforts made

107 Board of Taxation- Improving Australia's Tax Consultation System, 2007, page 38

during the past 15 years to professionalise all types of policy process have involved reaching out to universities; the discussion of improved process has, as in Australia, largely undervalued academic input. The 1999 Cabinet Office document does discuss the use of evidence in policy development at length, and highlights the importance of using existing research, commissioning research within government departments and being an intelligent customer¹⁰⁸. However, as we have noted, the 2010 consultation paper on the development of tax policy did not even mention academia¹⁰⁹ and the new framework also failed to discuss their potential role¹¹⁰. The House of Commons Treasury Committee produced a report on the proposed new approach to tax policy in March 2011 and this document also had little to say about the input of academia, choosing to focus instead on the role of the private sector in policy development¹¹¹. In practice, the Treasury Committee recognises the value of inputs from the external institutions. The Director of the IFS is, for example, frequently a witness for committee enquiries but this largely comes after the fact.

Compared with the UK, and even more so, compared with the other countries in our sample, the US is well-endowed with external institutions engaged on tax policy issues. Amongst the academic institutions there are, for example, groups of academics with global reputations working on tax policy issues at the University of Michigan, Harvard University and Berkeley. The academic tax community in the US is among the best in the world. In addition to these centres, there are organisations like the National Bureau of Economic Research that take on taxation issues as part of a much wider range of policy interests. To attempt a full roll-call of those that make a policy contribution would require too much space in this brief survey.

Washington is also extraordinarily well-endowed, with think-tanks that both carry out detailed research and seek to influence the policy debate. Many of these again deal with a very broad range of issues beyond taxation. Some clearly fall on one side or the other of the political divide. The Heritage Foundation and the Cato Institute both support policy based upon free market principles and small government. The American Enterprise Institute (AEI) similarly espouses a conservative approach to public policy. The AEI had close links to the Bush administration and all three have a working relationship with the Republican Party. The Hoover Institute of Stanford University is another influential conservative public policy think-tank. The Brookings Institute leans the other way – popular with the Democratic Party and playing a similar role to Heritage. Both the AEI and Brookings believe that the publication and analysis of data is a core responsibility of such an institution. The Tax Policy Center is a joint venture between the Urban Institute and Brookings and makes a substantial contribution to research, analysis and debate. The Tax Policy Institute regularly comments on tax issues. The Centre for American Progress also contributes on tax policy and is influential with the Democratic Party.

108 UK Cabinet Office- Professional Policy Making for the Twenty First Century, A Report by Strategic Policy Making Team Cabinet Office, September 1999

109 HM Treasury, Tax Policy Making: A New Approach, June 2010

110 HM Treasury, The New Approach to Tax Policy Making: A Response to the Consultation, December 2010

111 House of Commons Treasury Committee- Principles of Tax Policy, Eight Report of Session 2010-2011, March 2011

These institutions have a number of opportunities to contribute to the development of policy. There are several points of access in various parts of government. Those seeking to influence policy can do so through the White House, the Treasury, the House Ways and Means Committee and the Senate Finance Committee. Further communication can be had with the Joint Committee for Taxation and the Congressional Budget Office. All of these parts of government welcome external contributions and actively seek it. In addition to private meetings with individuals, members of external institutions have formal opportunities to speak, particularly at hearings for the congressional committees responsible for tax policy.

Those who staff these institutions are usually academically very well qualified, and there is a lower ratio of generalists to specialists. The Treasury department employs PhD economists and lawyers with many years of experience. The Senate and house committees may be elected officials, but their political staff is usually experienced and knowledgeable, albeit partisan. The Joint Committee on Taxation and the CBO both have similarly high levels of specialism. So not only does the US policy process present several internal institutions open to external input, but these institutions are well staffed and should have little difficulty in assimilating the expert input that is available.

However, despite this unusual degree of access and quality of available inputs, the ultimate impact of the external institutions is arguably limited. Tax reform in the US over the past two decades has been piecemeal and often unsatisfactory. There is little indication that US tax policy outcomes benefit significantly from external institutions. This is no fault of the institutions themselves and is largely the result of the role that politics plays in tax policy-making in the US system.

High-quality research and analysis, fed in to the debate through rational and reasoned papers, does not often survive in such an intensely political atmosphere. There are potential veto players who are willing to combat almost any type of tax reform. Any influence that external institutions have on individual policy makers or parties is often lost in the process of settling on a proposal that will simply command enough votes to become law.

The situation in the US is somewhat different from that in New Zealand. Within the Generic Tax Policy Process (GTPP) academia has good opportunities to contribute effectively. Communication with the government is regular and high-level. External experts are not only consulted early into the development of tax policy, but are able to see government officials at any time to express concern about an element of the tax system. Discussion with external experts is a recognised step in policy development through the GTPP. Tax academics have not only had the opportunity to make an impact on policy development in New Zealand, they also make good use of it. Intellectual transmission is fluid. The

Treasury and the Inland Revenue Department recognise that they lack internal resources and appear to welcome input on both a general level and on specific matters. It was an academic who was invited to lead the Tax Working Group that carried out what was regarded in New Zealand as a very successful review of the New Zealand tax system¹¹².

Historically, the Institute of Policy Studies at Victoria University played an important role in relation to tax policy development. We understand from interviewees that, in the last decade, it is the Centre for Accounting, Governance and Taxation Research that has provided leadership in this area. However, the institutional capacity of academia in New Zealand is still relatively small. The current strength of engagement depends upon the expertise and involvement of a few individuals.

In Sweden, the academic infrastructure is strong, particularly for a country of its size, and there is a healthy engagement between government and the leading academics in tax policy. Stockholm, Uppsala and Lund, for example, have well-developed reputations. Stockholm, in particular, has been able to boast several academics of outstanding stature and real influence in the international tax arena. Swedish tax academia is respected by the government and recognised internationally.

The committee-based process of policy development described in the previous section, allows academia to make a considerable impact on the development of tax policy. Academics regularly form part of the committee and may be asked to chair the investigation. Academia is well placed to contribute to the current review of business taxation in Sweden. As we have noted, the eventual report from Sweden's committee-based approach could have a significant impact on the outcome of policy. A position of authority in such a process allows academics to influence and inform policy development in a way that few can in other countries. If, unusually, academics do not form part of the committee in Sweden then there is a strong likelihood that they will be asked to give evidence. The degree to which the academic community can contribute is highly unusual by international standards, but we found some fears that this ability to contribute might be threatened by a tendency of the current government to use investigative committees less frequently.

Sweden is less rich in prominent think-tanks than some other countries, but there are some that address tax matters. Amongst them are Timbro, a free market organisation; and Centre for Business and Policy Studies (SNS). The SNS attempts to bring together experts from all sectors in order 'to improve the basis for rational decisions on major social and economic issues, by promoting social science research and stimulating public debate'¹¹³. However, there seems to be little doubt that academia has a stronger influence on tax policy-making in Sweden today than think-tanks.

112 Victoria University of Wellington Tax Working Group- A Tax System for New Zealand's Future, January 2010

113 <http://www.sns.se/english>

German academia is strong in the areas of both law and economics and is potentially a valuable source of support for the Ministry of Finance, which, on taxation issues, is more fully staffed with lawyers than economists. Our interviewees indicated that the ministry makes use of economics institutes such as Deutsche Institut für Wirtschaftsforschung (DIW) and Zentrum für Europäische Wirtschaftsforschung (ZEW) both of which have a strong research and modelling capability, as well as other academic institutions such as the University of Cologne, the Max Planck Institute for Tax Law and Public Finance, the Heidelberg University, Faculty of Law and Mannheim University. The government puts research projects out to tender and there are sufficient institutions with strong capability for meaningful competition for the work. Some are considered to have political leanings towards left or right. DIW is perhaps considered to have stronger links with the Social Democrats and Greens, Kiel and Ifo Instituts für Wirtschaftsforschung (IFO) to be more conservative or liberal. Our interviewees suggested some institutes felt their input could be used more extensively. Germany has a good academic infrastructure, but the impression we were left with from our interviews was that it is not common for experts to be given a chance to contribute to policy development in its early stages or play a continuing role on an issue they may have made a contribution. Many of these organisations will have an opportunity to communicate their analysis only during the legislative phase, when the relevant committee is permitted to call experts to give testimony regarding tax proposals.

Among the German think-tanks, our interviewees mentioned the particular contribution of the Sachverständigenrat and the Stiftung Marktwirtschaft, both of which have played significant roles on particular tax policy issues and also Bertelsman Stiftung which plays a higher level, agenda-setting role.

Among the countries in our study group, Germany is unusual in having an academic advisory panel that works with the Ministry of Finance, and appears to have some scope to influence tax policy thinking – although it is not particularly visible in any public debate on tax policy. It contains substantial expertise on public policy issues, including taxation. Its membership is drawn from professors of economics, business administration and law. The constitution of the board ensures its independence:

- members are elected by the board itself, not the Minister of Finance; appointment is for life, so the minister of the day is unable to dismiss or replace individual members (although they lose their voting rights after the age of 70);
 - the board is free to choose the subject and content of its reports;
 - all reports are published, although the board can choose to classify a report so the minister can decide whether or not to publish it; and
 - All matters discussed at the board meetings are confidential.
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Members of the board meet Ministry of Finance officials frequently during the process of preparing reports and the reports provide input to the policy-making process. They deal with both broad and narrow issues in tax policy: flat tax reform proposals, the treatment of companies in inheritance taxation, loss offset provisions and fiscal federalism in Germany and Europe. The board currently meets six times a year¹¹⁴.

As a relatively small country, Finland has a more limited tax academic infrastructure, comparable to Ireland and Sweden. There are several university law departments that house individual expert in tax matters, and some that specifically research tax policy issues. The University of Helsinki has no formal tax law centre, as many European universities do, but it does have experienced academics, as does Aalto University. The Research Institute of the Finnish Economy (ETLA), is an important source of external economic analysis. It 'carries out research on economics, business and social policy as well as makes economic forecasts¹¹⁵'. It is part of the Euroframe network that includes ESRI in Ireland, DIW in Germany and NIESR in the UK and it shares their macro-economic focus¹¹⁶.

The Ministry of Finance also benefits from the analytical work of the Government Institute for Economic Research (VATT) that covers: the effectiveness of public services, taxation and social transfers, the labour market and policies promoting growth¹¹⁷. Policy makers in Finland appear to make good use of the limited academic resources available to them. The Finnish government welcomes the input of external institutions, and the Finance Ministry has an open approach to the development of policy. It has attempted to set up an academic advisory panel, but interview evidence suggested it was not felt to have been a particularly successful initiative. Interviewees also felt the country lacked an equivalent to the IFS that could provide an impartial critique of policy from outside government. The Finnish policy development process is unusually open, and the use of external institutions is no exception. Academic input is used throughout the process, from the earliest stages of modeling until the legislative committee phase.

Models of external institutions

It is clear from the foregoing that there is a perception in a number of countries that the tax policy-making process would benefit from the establishment of an independent institution that could engage effectively with government on tax policy issues. Some of the more recent foundations have been seen as valuable models for others to follow, and we set out here some of the key points about the process through which they have been established:

114 http://www.bundesfinanzministerium.de/nr_3378/DE/Wirtschaft_und__Verwaltung/Finanz_und__Wirtschaftspolitik/Wissenschaftlicher__Beirat/node.html

115 <http://www.etla.fi/eng/index.php?did=381>

116 <http://www.euroframe.org/>

117 <http://www.vatt.fi/en/research/>

- i. There has to be a catalyst to achieve the necessary shift from a situation in which individual academics are working on tax policy issues largely independently, to one in which the nucleus of an institution can be created. This can come from within the academic community but there are examples where small groups of people outside academia have provided this catalyst by promoting a particular vision and model.
 - ii. Funding is a necessary precondition and it is significant that, in the UK, the OUCBT and the IFS were both founded with non-governmental funding – although both now benefit from government funding through National Research Council grants. In Ireland, as we have noted, a Fiscal Policy Research Centre is in the process of being set up with private funding; by contrast, in France, attempts to find private money for this kind of work have so far failed. In Australia, public sector funding has been made available through the Board of Taxation to fund a new research organisation.
 - iii. For an institution of this sort to be viable, there have to be enough academics that believe it has real potential. It is not a given that academics – lawyers, economists and social and political scientists – will see value in working together in this type of institution. Part of the problem, again as we have noted, is the multidisciplinary nature of taxation: the fact that the study of taxation is not an academic subject in its own right, has a significant influence on how it is perceived in the academic world. The collaborative working across disciplinary boundaries that has to be at the core of this type of institution is highly valued in government as well as the private sector and fundamental to good tax policy work, but gives rise to negative perceptions in academia.
 - iv. There are a number of possible approaches to governance arrangements. One of the most significant issues is whether the institution should be part of a larger organisation such as a university or whether it should stand-alone. There are examples of each and arguments for and against each model. The IFS was set up as an independent organisation with its own governance arrangements. Within those arrangements, it has the ability to operate entirely free from outside control. The OUCBT, by contrast, was set up within Oxford University and, although it has its own governance, also draws on the wider framework that the university provides. The former approach is more common where the founders of the institution are not academics themselves. In the case of the OUCBT, the founders felt there were four main advantages for establishing the centre within a larger institution: it would reinforce the independence of the centre's work and ensure that it was seen as clearly separate from the organisations funding it; it would
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provide a natural framework within which issues of academic rigour could be effectively addressed; it would allow a cross-flow of ideas between the academics in the centre and those working on related issues elsewhere in the university; and it would provide the centre with immediate reputational advantages in the public mind through association with the university.

Setting up this kind of specialist institution is not easy, but where there is broad-based support and the right level of expertise, the contribution one can make to the tax policy process is valuable and it is encouraging to see that efforts are being made in a number of countries to establish such a centre. However there are some other steps that need to be taken in addition, to enhance the contribution that external institutions can make.

Enhancing the contribution of external institutions

Although there are some important exceptions, the generally patchy quality of the engagement between government and academics in the tax policy-making process today is an issue that needs to be addressed.

As we have noted, very few governments make as effective use of academic contributions as they could. Countries such as the UK, France, Ireland and Australia have some way to go to make serious steps toward better academic engagement. In some cases, this is surprising. The UK has been increasingly aware of the importance of good processes in policy-making; harvesting the fruits of academic research is an obvious omission. The Australian Government has been unusually self-aware about the way tax policy is made, and Ireland recently held an independent review to see what lessons could be learned for the Department of Finance from failings of the financial crisis¹¹⁸. However, in looking outside, governments have tended to focus on the business community rather than academia as a source of external expertise and built their relationships in that direction.

The lack of a well-developed relationship between the government and academia seems to be an important stumbling block to more constructive engagement. As we have noted, engagement with academia becomes easier when it is done more frequently and more regularly. In countries such as Sweden – where academics from well-respected institutions have a regular and meaningful opportunity to contribute – a practical working relationship has developed. There seems to be evidence of this in Germany as well. It is a natural complement to the more focused consultation with the business community.

In considering how to address these issues, we have sought to find practical ways to draw academia and government closer and enhance the usefulness of the former to the latter, without prejudicing academic independence and freedom.

On the basis of the work we have carried out across the countries covered by this study, we have identified a number of steps that could be taken to strengthen the contribution of external institutions to the tax policy-making process.

Data access and data collection issues

One of the principal issues for external institutions in our sample countries is availability of data. There are a number of aspects to this and our interviewees highlighted three specific issues:

- changes are needed to extend the range of data that is collected and improve the form in which it is collected;
- greater efforts should be made to improve academic access to taxpayer information for research purposes; and
- governments should publish more tax-related data as a matter of course.

Quality of data and data access are among the factors that most seriously restrict the quality of research work on taxation issues that can be undertaken outside government. These factors contribute to the imbalance of information that affects all debates between the taxpayer community and the government on tax policy choices; and restricts the quality of debate in the legislature. We have commented, in the previous section, on the desirability of government publishing the analysis that underpins their costings of measures. This would be helpful, but the release of information for *bona fide* research purposes would provide a more powerful tool in the hands of academics and others.

Academics have stressed to us the potential value of a more open dialogue between university researchers and government officials aimed at achieving improvements in each of these areas. They recognise the concerns that exist over confidentiality in many countries and the political sensitivity associated with it. However, it is clear that many feel more can be done to improve effective access to data, without significant risk of unwanted disclosure.

If the concerns about confidentiality can be addressed, there is little doubt that making more information available for the research work of external institutions would greatly increase the utility of that work for all those within government and many other interested parties.

Parliamentary statement of tax policy intent

Another issue that academics face in drawing up their research programmes and funding them, is that it can be difficult to make sure that research is policy-relevant. Greater transparency regarding the tax policy intentions of a government over the life of a parliament could significantly improve the ability of external institutions to design multi-year research programmes and obtain funding for them. A change that would make a major difference for external institutions and others would be for newly elected governments to publish a tax policy programme, through a statement made in parliament, early in their administration. The broader rationale for this is set out in more detail in the next section of this report.

Post implementation reviews and pre-legislative analysis

We have highlighted concerns that academic research can seem detached from a government's policy agenda, reducing its usefulness from the policy-makers' perspective. In section 1, we have identified the importance of post-implementation reviews of significant policy changes as a way of enhancing the evidence base for tax policy-making. We have also noted the contribution that outside bodies can make to pre-legislative analysis, particularly in countries where government capacity is very limited. There is a potential role for external institutions in both of these processes, which would strengthen their ability to make useful inputs to government and create a virtuous circle of improvement and added value.

Academic institutions often rely on funding from grants and donations, together with an irregular flow of funding for particular projects. This limits their size and their ability to attract top-quality people. The establishment of a regular programme of post-implementation review work and pre-legislative analysis, carried out with academic rigour, would potentially strengthen these institutions and give them a new flow of funding that would enable them to address these issues of scale and resource. Such a programme would also necessarily draw the institutions into policy-relevant work. By doing so, it would address concerns that we have heard from both government and academia during this study that government officials feel much of the work done by academics is not sufficiently relevant or close to policy; and a sense among academics that there is little point in doing policy-related work because governments simply do not listen to them. It would allow academic thinkers and researchers in the taxation field to align their work more closely with the government's areas of interest and enhance the value of their contribution. It would also allow them to build up their staff and capability; and increase their usefulness to policy-makers.

Taken together, we believe such changes could significantly improve the contribution of external institutions to tax policy-making in countries covered by this study and have made recommendations in this report to that effect.

Summary

External institutions can potentially make an important contribution to the tax policy-making process, providing particular challenge in the generation of policy ideas and the rigorous review of policy outcomes. Today, that contribution is constrained by a number of factors. In some countries, there are simply too few external institutions that have the capacity to engage effectively with government. In others, there are such institutions but their capacity is limited by attitudinal issues in both government and academia, and by structural issues within academia. We consider that a broader and more regular engagement between policy-makers and academics might help remove some of the attitudinal problems. We also consider that there are specific changes that governments could make to draw external institutions more effectively into the policy-making environment and strengthen their capacity to give effective inputs. We recommend that those changes be made.

3. THE ROLE OF THE LEGISLATURE

In this section, we explore the role of the legislature in the tax policy-making process. Given our choice of countries, we expected and indeed found significant differences.

We have not examined the minutiae of processes within the various legislatures. While we recognise the importance of those details, we have sought to focus our work on broader issues, in particular:

- opportunities and limitations affecting the role of the legislature;
- the procedural framework;
- the expertise available to the legislature; and
- environmental and structural influences on challenge, scrutiny and the contribution of the legislature.

There are some deep-seated issues in many parliamentary systems about the relationship between parliamentary representation, democracy and the levying of taxation. We touch on some of those, both in this section and in section 4.

Our findings suggest that, in virtually all the parliamentary systems in our sample, challenge and scrutiny are weaker than they could be because:

- information is provided by the executive relatively late in the process, reducing the scope and opportunity for parliamentary inquiries;
- there is inadequate support for elected members on technical issues;
- long-established rules tend to restrict scrutiny on tax and financial issues more than in other policy areas; and
- political factors limit consideration of amendments and alternative strategies.

This is not true of the United States, which as we have noted, sits outside our definition of a parliamentary democracy in this report.

In Section 5, we make recommendations that address the concerns that we identify.

Opportunities and limitations affecting the role of the legislature

In principle, there are three main roles that a legislature can play in the tax policy-making process. It can:

- scrutinise and approve or reject legislative proposals from the executive;
- contribute to policy development; and
- initiate proposals on its own account.

Within most of the countries in our sample group, it is the scrutiny role that predominates. The contribution of the legislature to tax policy development is quite limited and powers of initiation, where they exist, are seldom used.

Of the countries included in this study, the only legislature that regularly initiates and develops tax policy, independent of the executive, is the US Congress. Equal rights of initiation, the relative weakness of party discipline and political cohabitation give Congress a powerful position in the process not otherwise seen in our sample countries. Elsewhere, legislative activism is restricted – in practice if not always in theory – by the political context within which parliamentarians operate and by the concentration of political and policy authority in the hands of the executive. The scrutiny and challenge provided by the legislatures in these countries varies in strength and efficacy as a result of a number of factors.

In several countries, our interviewees confirmed that although their parliament has powers to initiate legislative proposals; in practice it would be highly unusual for them to do so on taxation issues. In Sweden, we found that this had happened in the relatively recent past, but even there it was regarded as exceptional. The US Congress is the only legislature included in this study to have a regular role as a senior partner in tax policy development.

The US model

Whether a legislature has an active role in initiating taxation policy proposals or not is largely determined by the constitutional relationship between the executive and the legislature. The American political system has an active legislature with considerable powers. In relation to taxation, *Article 1, Section 8 of the Constitution* explicitly gives Congress:

‘...Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States¹¹⁹’.

119 Constitution of the United States of America, Article I, Section 8

Bills to raise revenue must originate in the House of Representatives, 'but the Senate may propose or concur with Amendments as on other Bills'¹²⁰. The US Constitution was deliberately framed to restrict the opportunity for domination of government by the executive, legislature or judiciary¹²¹. Key powers are allocated to each of the three branches, and the independence of each explicitly stated¹²². This separation of powers has implications for the way tax policy is developed. Congress has at least equal rights in policy development. Policy authority is explicitly conferred upon the legislature, and the executive has no power under the Constitution to force action through Congress.

The combined effect of the constitutional position and the electoral process in the US makes an active legislature more likely but the outcomes unpredictable. Representatives are elected every two years, senators every six years and the president every four years. It is common for each party to control at least one of these three sources of tax policy and relatively unusual for just one of the parties to control all three for a sustained period. The two-year cycle for representatives and weak party discipline makes it tempting for a congressman to give higher priority to re-election issues than the immediate wishes of his party leadership and therefore push his own policy agenda on tax as on everything else.

Within Congress, there are two committees that have responsibility for tax policy proposals: the House of Representatives, Ways and Means Committee and the Senate Committee on Finance. Members of these committees are elected officials from both sides of the party divide. Technically, responsibility for initiation rests with the Ways and Means Committee but this requirement imposes no real limitation in practice on the ability of the Senate Committee on Finance to initiate revenue legislation.

The nature of the US system tends to create veto opportunities. The power to block is highly valued. It can shift power to or from the key players: the House of Representatives, the Senate and the White House. Every stage of the process can give rise to political bargaining.

The strength of Congressional authority in tax policy-making has been demonstrated very clearly in recent months. The Democratic president and Senate, and the Republican House of Representatives have been engaged in fierce debate over the future of tax policy and the role it should play in reducing the deficit. This boiled over during the normally routine process of raising the government's debt ceiling. In the political deadlock, Senate Democrats, House of Representative Republicans and a bipartisan group of six senators made proposals that, if adopted, could have shaped tax policy for a decade or more. But Congress has not always enjoyed such primacy in tax policy-making. Many of those whom we interviewed saw its current dominance as a relatively recent and perhaps transitory phenomenon, at the expense of other institutions with policy authority.

120 Constitution of the United States of America, Article I, Section 7

121 Madison, J- The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts, The Federalist No. 51, 1788

122 Constitution of the United States of America. Section 1 of Articles I, II and III

Parliamentary systems

In the parliamentary systems covered by this study, there is much less of a sense of institutional power shifting between the executive and the legislature. In most, it is clear that the legislature, in practice, plays a subordinate role.

Some of the Westminster-style parliaments provide the sharpest contrast with the US model. The UK and Australian parliaments are amongst the most restricted in this study. There is no constitutional separation of powers. Although in theory, parliament has rights to initiate legislative proposals, in practice, apart from very occasional private members bills, successful proposals come only from the executive. This is particularly true of tax policy proposals. The first-past-the-post electoral process provides a 'winner's bonus' that can translate small margins of electoral victory into insurmountable majorities¹²³. Party discipline is strong. The power of patronage that rests in the hands of the prime minister ensures they can effectively control both the executive and legislature. The prime minister can set the legislative agenda in the knowledge that party discipline will make it certain that proposals will be enacted in all but the most extreme situations. This permits a particular approach to tax policy-making that can, in principle, allow the executive to develop policy proposals and see them become law with little more than a nod to parliament and outside parties.

The same can be true in most parliamentary democracies, where a convincing election victory can deliver to a particular party effective control of both the executive and the legislature. However, in many of the countries in our study, the electoral system denies the control that could theoretically exist. The use of proportional representation is common throughout Europe. It works against the dominance of just two or three large political parties and allows the proliferation of small parties with representation in parliament. It is much more difficult for a single party to have an absolute majority in most of the countries in our sample. Multiparty government is standard practice.

This has an impact on what can be put through parliament. In many cases coalitions involve one of perhaps two major parties and one or more philosophically compatible smaller parties that can create a workable majority or a sizeable minority. This is the case in Germany, where the two largest parties are the SPD and the CSU/CDU. France is currently similar, with the Union pour un Mouvement Populaire (UMP) and the Parti Socialiste (PS) looking to form the government. Other political systems tend to result in governments made up of several small parties. In some Western European countries this can involve as many as five or six parties, finely balanced in coalition. Even parties with strongly opposed political philosophies occasionally work together with the benefit of a carefully crafted programme for government. However, fragmentation and dependency

123 Curtice, J., So What Went Wrong with the Electoral System? The 2010 Election Result and the Debate About Electoral Reform, *Parliamentary Affairs*, Volume 63, No. 4, 2010, page 625

can make parliamentary outcomes in this kind of political environment uncertain and tax policy proposals can be as vulnerable as anything else.

This obviously has an influence on tax policy development. Coalitions present policy-making difficulties partly because they involve multiple parties with different philosophies, and partly because ministerial government involves delegating entire areas of policy authority to individual members of government. The delicate balance of coalition government makes it easier for the opposition to influence government policy and encourages legislative activity within the coalition. Relations between the legislature and the executive are more complex than conflict between two parties. It is commonly accepted that there are several possible forms of relation between the two¹²⁴. Regardless of whether one accepts the precise typology of interaction suggested by academics such as King, Andeweg, Nijzink¹²⁵ and other political scientists, the framework makes it clear why varying degrees of scrutiny are likely to be seen in different constitutional and electoral situations. The UK and Australian executive branches have sufficient control to stifle intra-party scrutiny and limit the significance of conflict between government and opposition. But the brutality of this type of control is usually missing from the more finessed arrangements in many European parliaments.

In summary, constitutional and political context provides the broad limits within which any legislature can participate in the development and scrutiny of tax policy. Differences in approach between countries often stem from macro-political circumstances that are difficult to address except on a much broader canvas. We have consciously sidestepped these issues in our recommendations and focused on some of the more addressable issues that affect the role of the legislature in the policy-making process.

The procedural framework

In all of the countries covered by this study, most of the work on taxation-related issues is undertaken through parliamentary committees. Committees that have a remit that covers a much broader range of issues typically deal with tax. In Ireland, Germany, France and Finland tax falls under the parliamentary finance committee. Germany and France have one for each chamber. In the UK, the House of Commons Treasury Committee covers taxation issues, but legislative scrutiny is reserved to a public bill committee, the Finance Bill Committee. To the extent that the House of Lords looks at taxation, it does so through the Economic Affairs Committee. In Jersey taxation is covered by the remit of the Economic Affairs Committee. In New Zealand, tax is the responsibility of the Finance and Expenditure Committee. In Australia, it is the economics committee of each house that deals with taxation. As we have noted, in the US, the House Ways and Means Committee and the Senate Finance Committee have the responsibility¹²⁶. In some countries, there

124 King, A., Modes of Executive-Legislative Relations: Great Britain, France and West Germany, in *Legislative Studies Quarterly*, Volume 1 No. 1, 1976

125 Andeweg, R. and Nijzink, L., Beyond the Two-Body Image: Relations Between Ministers and MPs, in *Parliaments and Majority Rule in Western Europe*, ed. H. Döring, 1995

126 Our interviewees advised us that scrutiny of tax matters is also exercised on occasion by the House Committee on Oversight and Government Reform and the Senate's Permanent Subcommittee on Investigations, which is a subcommittee of the Senate Committee on Homeland Security and Government Affairs.

are sub-committees dedicated to taxation issues. This is the case, for example, in Finland and in the UK House of Lords. However, only in Sweden is taxation given full committee status.

As we have noted elsewhere, taxation provides almost all government income and funds – virtually all government expenditure. In that context it is surprising that it is not considered to merit a committee in its own right. Many of the broad-based committees have a very heavy workload and struggle to deal with the range of issues that confront them. In some cases, difficult choices have to be made between issues on which to hold an inquiry. Should the UK's House of Lords Economic Affairs Committee investigate the potential impact of independence for Scotland, or the influence of tax on business investment? Should the Treasury Committee investigate principles underpinning tax policy or the mortgage market? In some cases, it may have the capacity to do both, but the creation of a separate, focused tax committee would help resolve this tension. It would also have a number of other benefits. It would signal parliament's recognition of the significance of taxation as a public policy and scrutiny issue. It would create a stronger nucleus of expertise on taxation matters among the members of parliament and officials who support them. It would also begin to provide a framework within which to enhance the technical support for members on tax issues, the need for which is addressed later in this section.

Under current arrangements, the efficacy of committee scrutiny of tax policy varies greatly from country to country. Much of the impact of the committee is dictated by the constitutional role of the legislature, the often-challenging nature of tax legislation and the degree of professional assistance provided to legislators.

However, the structure and composition of the committee and the ability to summon ministers, government officials and others as witnesses can also be significant. In the UK, for example, changes to the former standing committee arrangements for scrutiny of bills has empowered members to go beyond the minister concerned in seeking information, and input for their scrutiny of draft legislation but there is, as yet, little use being made of that new power. There are also less formal factors affecting committee influence. The value placed on committee work by participants and observers, the motivation behind scrutiny and the politics of committee oversight are all important.

The relevant parliamentary committees in the countries covered by this study generally have powers to amend legislation, subject to their being a majority of members in favour, before returning it to the parliament as a whole for approval. There are nuances to this, often resulting from procedural exceptionalism of tax legislation. In some bicameral legislatures, notably the UK, Australia and Ireland, the upper chamber is not given

committee authority. Usually this is part of a wider set of constitutional limitations on its involvement in financial matters.

Superficially, parliamentary committees appear to make full use of the power of amendment. Most annual pieces of tax legislation are subject to a multitude of amendments during their progress through the scrutiny stage in the committee. Many of these involve small, detailed changes to the legislation. However, it is easy to mistake the number of amendments and the debate that takes place on them for signs of real power not just residing in the legislature but being exercised by it. Referring to the UK, Peter Riddell in the Mirrlees Review had this to say about the role of the House of Commons Committee in the process:

‘The committee and report stages of the annual Finance Bill are the occasion for... amendments, seldom the cause of them¹²⁷’.

Riddell believes that the number of amendments is not an indication of the strength of parliamentary scrutiny but of weakness elsewhere in the process. Activity in parliament is closely linked to the failings of pre-legislative scrutiny. When pressure is successfully brought to bear or new information finally persuades policy makers to rework the legislation, the only opportunity to do so is during committee. The flurry of activity cannot be attributed to the independence of parliamentary scrutiny.

There are indications that this is the case in other countries with little pre-legislative scrutiny. The weaknesses in Irish approach to consultation have made the legislative phase extremely important. Instead of having the opportunity to take part in consultation during the run up to the budget, interest groups only have the legislative scrutiny phase during which to lobby on issues that are most pressing for them. The amending of tax legislation in this instance reflects less the exercise of democratic authority on the part of the legislature and more the deficiencies in the broader policy-making process. The committee stage is simply the mechanism through which the executive acts.

In most countries, committee oversight is dominated by the executive. Committee activity can be considered a microcosm of the entire legislature. The executive introduces the legislation, has virtually all of the expertise and is, through the virtues of party discipline, in a position to command a majority. These factors are extremely difficult to overcome. Committee membership reflects the political composition of the broader legislature. Most committees responsible for tax oversight are not just majority government by membership but also chaired by a member of the governing party. Normally, for any amendment to be successful both the committee and the whole house must approve it. This is unlikely. Many of those interviewed for this report highlighted the inability of opposition members

127 IFS- The Mirrlees Review- Reforming the tax system for the 21st Century, 2011, page 1290

to have an impact on the shape of legislation without cooperation from the dominant party – although this was seen to be less of a barrier to engagement in countries with coalition or minority governments. Some observers noted that the absence of a properly developed and informed narrative from the opposition was the most significant barrier to challenge in their parliament.

It is a common feature of parliamentary committees that almost all successful amendments originate from the government side; and, typically, the executive will table most. This does not entirely undermine the value of the committee process. Government amendments will often reflect either some small change of mind that an opposition member may have provoked in the committee debate or, more likely, a new realisation that a particular clause does not quite do what the draftsmen intended. Again, this may be a reflection of concerns raised in the committee – a common event in the countries included in this study.

Of course, there may be value for a member in proposing a committee-stage amendment, even where the chances of it being accepted are nil. In both the political and technical spheres, there can be significant value in having a minister make a statement on the record about the legislation under scrutiny. This will typically occur during, or as a result of, a committee debate and arise from the tabling of an amendment by a committee member. In general, however, most committee members who propose amendments do so only to create debate and to meet political objectives.

The position in the US is somewhat different. The US Congress regularly amends tax policy proposals. Tax legislation is expected to change considerably whilst passing through Congress. This is the case regardless of whether the two main political parties have split control over the presidency and Congress. It is also quite common for there to be tax amendments to totally unrelated legislation. The legislative activism of congressional committees and individual members of Congress is extremely important in US tax policy development.

The expertise available to the legislature

One of the factors that empower US congressional committees in their work on tax policy issues is the level of expert resource available to their members. One of the factors that diminishes the role of parliamentary committees and their members, in the other countries of our study, is the lack of that same resource.

This question of available resource goes to the heart of whether the legislature is properly equipped to participate in tax policy-making, either as initiator or co-developer, or to

scrutinise proposals from the executive. The fundamental issue is competence, in its natural sense.

Most politicians are not experts in tax law, tax policy or economics. They are simply professional politicians. Few are quite as honest about their ‘ignorance’ as the Revd. Ian Paisley in the 2005 Finance Bill debate in the UK parliament:

I am not an expert on tax, but I welcome the Bill even though I find many of its paragraphs hard to understand. I shall not go into detail, lest my ignorance be seen ... In tax matters, one needs to consider the policy issues that lie behind proposed changes, and whether the changes will deliver the stated objectives. As the Bill makes its way through the House, I hope that hon. Members of all parties will have a full understanding of the consequences of what is proposed. The parliamentary process can struggle with such technical matters, in which very few hon. Members are expert¹²⁸.

Most are in fact just as ignorant as he admits. Effective challenge in the parliamentary stage of the tax policy-making process requires high levels of expert knowledge and practical experience. In most countries, very few members of the legislature are tax experts and there are even fewer who do not require some professional assistance to understand and provide effective scrutiny of tax proposals. Economists often require help with the legal framework and drafting; lawyers with the economics of proposals. Those who are neither often need help with both. Long-serving members of scrutiny committees that cover taxation will normally have acquired a good deal of knowledge, but few have sufficient expertise in the theory and practice of taxation to be fully effective either in a scrutiny role or in weighing up alternative policy options. Most have to rely on support from others, both as ordinary members of parliament and as members of committees.

In our work, we have found that different methods are employed in different countries to try to deal with the imbalance of information and knowledge between the legislature and the executive that otherwise leave the legislature significantly disadvantaged.

We have drawn a sharp contrast between the constitutional and political environment in the US and that in parliamentary democracies. We can do the same here. The analysis and expertise that is available to members of the US Congress is far greater than we have seen anywhere else in our work.

There are two main non-partisan sources of support, both independent of the executive: the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT).

128 *Hansard*, 7 June 2005, Column 1164

The CBO is a relatively recent institution, established in 1974 to provide ‘nonpartisan, objective analyses of budgetary and economic issues to support the U.S. Congress¹²⁹’, thereby strengthening scrutiny in Congress and enhancing its role in policy initiation. The CBO has around 240 staff members of whom about 20 are dedicated to tax analysis. The nature of CBO work means that most of the staff comes from an economics background. Our interviewees reported that there is a healthy movement of expertise between the CBO and other government departments like the Treasury. This contributes to the relative ease of communication between the CBO and those departments.

One of eight divisions within the CBO is dedicated to tax analysis. This division has two main roles. The first of these is revenue forecasting. Working with the CBO’s own macroeconomic forecasts, the division provides source-by-source revenue estimates for the next ten years – assuming static legislation. These are then updated twice a year with changing economic conditions and new tax legislation. The second role is providing impact estimates of proposed tax law. This analysis is carried out not just for annual tax legislation, but also for the many tax amendments attached to unrelated bills. The CBO publishes all of its analysis. Our interviewees felt the CBO’s work was well respected and accepted as non-partisan. Inevitably some felt their estimates were occasionally inaccurate; yet few suggested this was intentional, systematic or a result of bias.

The JCT was established in 1926, pre-dating the CBO by several decades. For tax policy matters – where most of the congressional work is done in the Senate Finance Committee and the House Ways and Means Committee – the JCT is the more prominent and directly connected of the two organisations. Formally, the committee has a membership of ten, of whom five are drawn from the Senate and five from the House of Representatives. The organisation is run by a chief-of-staff. He or she and their team are responsible for providing expert and non-partisan support to the two tax law writing committees and individual members of Congress. The JCT is highly respected for its expertise. It has just over 40 staff of whom around half are economists and the remainder typically lawyers and other tax professionals. Unsurprisingly, the JCT will often hire staff from the same pool of expertise as the Treasury.

The JCT operates at a more detailed level than the CBO Tax Analysis Division, and is also more directly linked to the process of developing legislation. According to its own website, ‘The Joint Committee Staff is closely involved in every aspect of the tax legislative process.’

129 <http://www.cbo.gov/about/our-agency>

The JCT identifies seven specific functions for which it is responsible. These are:

- preparing hearing pamphlets, committee reports and conference reports
- assisting in the drafting of statutory language
- assisting members of congress with the development and analysis of legislative proposals
- assisting members of congress in addressing constituent issues and problems
- preparing revenue estimates of all revenue legislation considered by Congress
- reviewing proposed large income tax refunds
- initiating investigations of various aspects of the federal tax system¹³⁰.

There is also work done privately for individual congressmen, such as literature reviews or the costing of a particular tax policy proposal.

As with the CBO, the non-partisan nature of the Joint Committee on Taxation is extremely important. Staff must work with both sides of the political divide and must often prepare both brief and counter-brief for a debate.

There is some crossover of responsibility between the Tax Analysis division of the CBO and the JCT. The CBO, focusing on expenditure and revenue choices, does not perform all of the functions of the JCT, but is responsible for macro-economic forecasting. There is, of course, a significant interdependency between the estimates that each of these organisations provide. But on taxation issues, it is the JCT numbers that feed into the CBO analysis rather than the other way round.

The value of both the CBO and the JCT is clear. Elected representatives are expected to initiate proposals and make decisions about tax policy that require a high degree of knowledge, expertise and analytical capability. Members of the US Congress generally do not have that. The JCT and CBO can bridge the gap. Their contribution does not prevent bad decisions being made in Congress, but it potentially empowers politicians to make good ones.

It is arguable that Congress does not strictly need the CBO and the JCT to operate separately and that; given a clean institutional slate, the structure might be different. However, neither could easily be disbanded today or absorbed by the other. The greater threat to the position and role of the JCT is perhaps the size and influence of the explicitly political congressional staff.

In addition to the resources they enjoy at the CBO and the JCT, members of congressional committees have access to highly qualified political staffs. Both the Ways and Means Committee and the Senate Finance Committee have tax staffs made up of experienced professionals with strong technical skills – comparable to those of the JCT. They provide a valuable combination of experience and expertise. These staffs are responsible for much of the day-to-day support of committee members' needs: researching issues, meeting lobbyists and providing broad policy support. Involvement with the lobbyists is important for the effective transmission of information from the private sector to powerful members of the committees. The committee staffs' combination of strong analytical capability and proximity to power has given them considerable weight in the balance of power between the Washington institutions.

This level of resource is not available to members of any parliaments in the countries included in our study. Our interviewees confirmed that, generally, the elected representatives have little or no professional expertise available to them within the framework of parliament to support them in dealing with tax issues. Our US interviewees expressed some surprise that this should be the case.

In the UK, there has been some debate in recent years about the adequacy of support for members of parliament in this area. There is no equivalent of the JCT or CBO. Some resources can be found in the House of Commons Library but few would claim them to be the equivalent of what is available in the US. Committees, such as the Treasury Committee and the House of Lords Economic Affairs Committee have started to draw in some expert support, for example from retired members of HMRC on a part-time basis, but the level of analytical capacity available to the Committees remains very low. They are largely dependent on information and analysis provided by the executive and witness evidence – taken through hearings – from external parties. Individual members of parliament employ their own research staffs but few have more than a small team of relatively inexperienced research assistants. This issue has been highlighted in a number of articles over the last few years¹³¹. Some close to parliament believe that MPs have access to expertise if they so wish, but those who consider this adequate are firmly in the minority.

The Chartered Institute of Taxation (CIOT) published a report on the making of tax law in the UK during 2010, in which they highlighted the lack of support for members of parliament. The CIOT recommended the establishment of a British Joint Committee on Taxation¹³². The IFS commented in 2003 that parliament lacked the expertise to scrutinise tax policy with any degree of efficacy¹³³. The current government recognises the external dissatisfaction at the lack of technical capacity in parliament, but its *Tax policy making: a new approach* fails to tackle the problem¹³⁴. Currently, those responsible for tax policy

131 Including articles by one of the authors in the British Tax Review. Wales, C- The Implications of the *O'Donnell Review* for the Making of Tax Policy in the UK, *British Tax Review* 543, 2004; Wales, C- The Making of Tax Policy in the Post-O'Donnell World: Can the HMT-HMRC 'Policy Partnership' Meet the Challenge?, *British Tax Review* 245, 2009

132 Chartered Institute of Taxation- The Making of Tax Law: Proposals for Reform, 2010

133 IFS- Making Tax Law: Report of a Working Party on the Institutional Processes for the Parliamentary Scrutiny of Tax Proposals and for the Enactment of Tax Legislation, 2003, page 5

134 HM Treasury- The new approach to tax policy making: a response to the consultation, 2010, page 15

oversight have very limited access to expert analysis that is not provided by interested parties; and parliament has shown little interest in addressing the issue.

Only in Sweden did we find some evidence that the need for dedicated support for parliamentarians was recognised. Our interviewees from the Swedish Parliament drew our attention to a body of experts within the framework of parliament on whom they could rely. Although this was a small group by comparison with the CBO and JCT in the US, it was, nevertheless, seen as a valuable resource to members of the tax committee. It comprises of economists and lawyers and can be used both in scrutiny and in the broader consideration of policy options.

The lack of such a body in other parliaments seems to have a number of possible explanations:

i. A constitutional issue

If there is no separation of powers between the executive and the legislature, and party discipline is strong, why should members of parliament need independent professional support for their consideration of taxation issues? They will simply divide on party lines and the governing majority party will always win the vote; so arming them with the capacity for critical analysis would be without purpose.

ii. A funding issue

The provision of professional support would have to be properly funded if it was to have any value. Employing a handful of people would be unlikely to deliver real value either for scrutiny or the broader consideration of policy options. The group would need critical mass before it could address a broad enough range of issues. It would also need to capture real expertise, which is rarely cheap. The funding would ultimately come from government, so there would have to be recognition within the executive that empowering parliamentarians to carry out their role more effectively was a good thing.

iii. A question of demand

Without a real push from parliamentarians themselves, additional resource is unlikely to be gifted to them. Yet we saw little evidence that parliamentarians in our sample of countries were ready to demand such support and some evidence of resignation and complacency. Some have simply said 'tweaking scrutiny will not improve outcomes' and downplayed the lack of technical support. Governments have little incentive to strengthen scrutiny and seek out criticism. Control of the policy development process is often a significant reason for seeking office.

Among these issues, it is the first that is the most fundamental. It begs the question as to what parliament is for. Many of those whom we interviewed – among them people close to the heart of tax policy development – did not see a significant role for parliament in the process, now or in the future. This is an issue we return to later in this section.

The absence of internal resource means that parliamentarians have to look elsewhere for support in dealing with tax issues. This is usually available from a number of sources but there are some problems associated with each of them.

The main source, in most countries covered by this study, is the executive itself. Government officials commonly provide private briefings aimed at enhancing the knowledge of committee members involved in the scrutiny of proposals. Although the impartiality and integrity of the officials who provide these briefings is not usually in question, it is nevertheless clear that they can rarely be entirely neutral towards a proposal, particularly if it is their own work.

In France, the *Direction de la Législation Fiscale* (DLF) can provide background information on tax measures for deputies. However, the DLF is always responsible for the legislative content and somewhat tied to the government position. The situation is similar in New Zealand: government officials who draft tax-legislation, brief opposition members and backbenchers. These officials will typically then report back to their ministers with information about potential points of conflict. Irish civil servants also provide committee members with information on a similar basis. Committee members faced with long and complex legislation are, of course, happy to accept help from this source. However, in an adversarial political system, the logic of government officials being the principal source of briefings for members is questionable.

Most elected members recognise that this is suboptimal and those from opposition parties in particular will reach outside parliament and outside government for help. In most countries, accounting firms, law firms, business representative bodies, think-tanks, and lobbyists are often willing to provide help but the experienced will be aware that the input may not be entirely neutral. Many of those providing the briefings are either officially or unofficially affiliated. It is also the case that the quality of these private briefings can be quite patchy, usually focusing on what are perceived to be the more high profile or controversial aspects of the proposals. Only the larger law and accounting firms are usually in a position to provide comprehensive support. Some of these recognise their responsibility (and possibly their advantage) in being helpful to opposition committee members. Where they do, it can greatly enhance the quality of scrutiny.

For the members of tax committees another source of expertise is the oral and written evidence that is gathered within the framework of the committee itself. Evidence-taking during scrutiny is permitted in most countries and used as a technique in most of them as well. The UK has been unusual in that regard. Until the last few years, the Finance Bill Committee has had no powers to call witnesses. Although the powers of standing committees have changed, the scrutiny of finance bills is, as we have noted, still conducted between members and the minister standing alone. In Germany, by contrast, it is entirely normal during the committee process for a panel of experts to be convened and examined about the executive's proposals – and a large number of experts always attend. However, some of our interviewees questioned the value of these expert sessions. They expressed the view that, although a degree of expertise is useful, the German committee stage is overloaded. Each major political party has a 'bank' of several expert witnesses, whom cynics suggest can be relied upon to give the required answer. We were told that experts are often closely affiliated with a particular party and contributions are well-managed. They are not just academics but stakeholders and representatives of each party's electoral constituencies. A similar process occurs in other countries. In Finland, for example, during the committee stage of the finance bill process, academics, tax professionals, researchers and others are invited to provide testimony.

Of course, it is also true that in the US, notwithstanding the quality of support that is available from the CBO and the JCT, members of Congress will reach out to external advisers to help with scrutiny and policy initiation, both individually and through the congressional committees. The expertise available in the US outside the framework of government is considerable. Committee hearings can involve the summoning of many expert witnesses. Both written and oral evidence is taken, often in an explicitly partisan environment. Written statements tend to carry more weight as hearings are often too rushed to allow the detailed examination of an issue. Congressional committees clearly have greater access to expert opinion than any of the other legislatures in our study, regardless of how this eventually manifests itself as completed policy.

There is, however, no effective substitute for impartial analysis provided by a group of experts dedicated to the legislature. We believe that the handling of taxation issues within parliaments in our sample group of countries could be significantly enhanced by a gradual process of increasing the support available to members on taxation issues.

Environmental and structural influences on challenge, scrutiny and the contribution of the legislature

The role of the legislature in the tax policy process is also affected by parliamentary procedure and, in particular, by the procedural exceptionalism¹³⁵ of annual tax legislation. Expenditure and revenue legislation is accepted as being of unique importance everywhere, and most countries have developed a separate process for dealing with it. Given its importance to the operation of the state the expectation would logically be that scrutiny would be stronger in this area than in any other. However, this is often not the case. In a number of countries, scrutiny of taxation policy proposals is in fact significantly weaker.

There are a number of elements in this. We identify three as being of particular significance:

- traditions of budget secrecy mean that members of the legislature are often unaware of impending tax proposals and committees are, therefore, unable to undertake preparatory enquiries in advance of a legislative proposal being put forward;
- finance bills are often exceptionally long and the legislation complex, frequently adding to existing law that has itself been amended several times. This can be true to some extent of bills dealing with other policy areas but finance bills typically also involve a very short timetable for parliamentary scrutiny; and
- in some countries with bicameral systems, the lower house asserts primacy in relation to tax and budget matters and the upper house may be excluded from, or restricted in its participation in, the process of scrutinising tax proposals.

In many countries, budgets and annual tax acts are subject to a high degree of secrecy. We comment in section 4 on the effect of secrecy on the involvement of the taxpayer community in the development of tax policy. It also has a significant impact on parliamentary processes: weakening scrutiny and diminishing members' ability to influence policy proposals. In the UK, the lack of pre Finance Bill scrutiny was considered a priority for improvement in the Mirrlees Review¹³⁶, which noted the Pre Budget Report had failed to become an early starting gun for scrutiny of tax proposals, leaving little time for seriously influencing policy. The response document to the UK Treasury's new approach consultation on the development of tax policy recognised this as an issue and addressed it by committing that the majority of changes would be confirmed three months before the Finance Bill is laid before Parliament and draft legislation published¹³⁷ – a move the House of Commons Treasury Committee supported¹³⁸. However, it remains to be seen how far this will succeed in putting an end to Finance Bill surprises. Initial evidence suggests that it will not. The political dynamics of Budget Day and the Finance Bill are too strong to

135 The Hansard Society- The Fiscal Maze: Parliament, Government and Public Money, 2006, page 19

136 IFS- The Mirrlees Review- Reforming the tax system for the 21st Century, 2011, page 1274

137 HM Treasury- The New Approach to tax policy making: a response to the consultation, 2010, page 12

138 House of Commons Treasury Committee- Principles of tax policy, 2011, page 26

be overcome by procedural commitments of this nature. Nor is budget secrecy a strictly British problem. It is particularly common where policy authority is centralised and where legislative majorities are easily conjured. Historically, this has been true in Australia and is true today in countries such as Ireland and France. Unsurprisingly, budget secrecy is less common where legislative majorities are pieced together from multi-party coalitions.

There are political and philosophical arguments that can be made for and against budget secrecy. For parliamentarians and for parliamentary committees the practical problem it poses is essentially the impact it has on scrutiny. Where there is advance notification of issues on the government's tax agenda – whether for the short or the longer term – committees have the opportunity (which they may or may not take) to hold inquiries and take both written and oral evidence that will help them in their scrutiny role and in making constructive input to policy development. Where there is no advance notification, committees will be largely unprepared and under-informed. As a result, there will be much less opportunity to take evidence; and scrutiny will be weaker as a consequence. We believe, and have noted elsewhere, that a statement of intent on tax policy, made in Parliament early in an administration, would have very significant benefits, not least for committees tasked with scrutinising emerging tax proposals.

The problem is often made more acute by timing and political issues. Finance bills containing tax measures are usually presented as part of the budgetary process and have a very tight timetable in parliament. They are often long, complex and, in the countries covered by this study, typically cover a wide range of topics. With limited resources and expertise, legislatures struggle to examine the proposals effectively in the time available. In several countries, the difficulty is compounded by the fact that this phase of legislative scrutiny usually coincides with last-minute consultation with the private sector – which will have been equally unaware of potential contents of the bill and will typically have amendments that they want to push forward. This is common in Ireland, for example, where Budget secrecy combines awkwardly with an otherwise open approach from the Department of Finance.

Politics is also a big factor. The finance bill is not just an important part of the legislative schedule for any government. Its introduction is a major piece of political theatre and the bill itself is a high-profile battleground between the political parties. The rejection of a finance bill is likely to be fatal to a government and major amendments would also be seen as extremely humiliating. So parliamentary scrutiny takes place in a highly charged political environment in which party politics may well trump all other issues.

Most countries choose to legislate annually on all tax matters at the same time. This bill, therefore, typically contains every type of tax measure: personal and corporate, the purely

technical, the controversial, new measures and re-authorised taxes due to expire. They are all in the bill. As a result, finance bills can be enormous. The UK Finance Act of 2011, by no means the longest in recent times, covered more than 400 pages. The Republic of Ireland's Finance Act of 2011 was more than 200 pages long, the French 2010 Finance Act; more than 270 pages. The sheer volume of proposed new law presents particular problems for scrutiny where time is short. In Ireland, the issue has recently been highlighted by a combination of a change of government and the crisis in government finance resulting in more than one 'annual' piece of legislation.

Complexity is also a problem. Internationally, this is widely recognised as an issue. In the UK the Office of Tax Simplification was established partly to address it. In 2003 an IFS report chaired by Sir Alan Budd found that one of the biggest stumbling blocks to effective parliamentary scrutiny of tax legislation was its complexity¹³⁹. A recent report by the House of Lords Select Committee on Economic Affairs noted the large quantity of detailed technical issues in the Finance Bill was problematic; mentioning some suggested splitting the bill between purely technical and more political matters in order to improve parliamentary scrutiny¹⁴⁰.

Some division of this sort does take place in other countries in this study. France typically has two tax bills each year: one for new measures and the other dealing with corrective and amending measures. The use of the second bill has extended in recent years. Our interviewees felt that it had become 'a handy tool' for the government. The judgment was, however, that it had made little difference to the perceived shortcomings of the process, which was regarded as secretive and hurried. Legislation is published the day of introduction to parliament and even those working beforehand to evaluate the legislation, such as the *Conseil d'État*, find themselves under considerable time pressure. New Zealand spreads the process across a number of bills so the workload falls more evenly throughout the year making considered scrutiny of measures more practical. Interviewees felt there were benefits in dealing with just one area of taxation at a time, lessening the impact of a lack of specialist knowledge within legislatures.

While recognising that this might improve oversight, we have some reservations about the idea of splitting tax legislation between the political and the technical. It is often the more political issues that require the greatest scrutiny and these would still be subject to time pressures that affect the current arrangements and would only benefit indirectly from the dropping of the technical changes from the main finance bill. There is also a significant question about how the categorisation of technical and political would be made. We believe that there are more important and more effective steps that can be taken to improve parliamentary scrutiny.

139 IFS - Report of a Working Party on the Institutional Processes for the Parliamentary Scrutiny of Tax Proposals and for the Enactment of Tax Legislation, Chaired by Sir Alan Budd, 2003

140 House of Lords Select Committee on Economic Affairs- 4th Report of Session 2010-12, The Finance Bill 2011, page 27

In many countries the burden of scrutiny falls heavily on one chamber of the legislature. This is often because annual tax legislation is not considered a standard bill and is subject to different procedural rules. Some countries with bicameral parliaments have restrictions on upper chambers. The UK, Australia, the USA, Germany and Ireland all give some level of primacy in financial affairs to lower houses. The discrepancy in powers of scrutiny differs from country to country. In the US, the House of Representatives must be the origin of budgetary legislation, but in reality this is little more than a technicality. The Senate can easily initiate a proposal. The Australian Senate has limited powers of scrutiny over revenue raising bills, and in the UK the House of Lords has no mandate in affairs of public finance and is effectively barred from scrutiny of the Finance Bill. Of course, some legislative chambers are the sole source of oversight because they have unicameral systems. New Zealand, Sweden and Finland have just one house. Regardless of the constitutional background it is self-evident that one house can provide less oversight than two. Given the same level of expertise, time and authority, two chambers scrutinising a large finance bill are likely to be more effective than one.

Where two chambers are involved, and both are in some way entitled to amend tax legislation, there has to be a mechanism for resolving conflict between them. In the US, where the Senate and House of Representatives are prone to disagreement, the mechanism that is employed is a conference committee. This committee – usually made up from members of the relevant committees – is charged with settling legislative differences without introducing new matter – although this is not always simple. However, once a compromise bill is finalised and voted for within the committee, the compromise legislation is sent directly to the floor of both houses, with no option for further amendment. In Germany, there is a similar kind of process. A mediation committee of 16 members of the Bundesrat and 16 members of the Bundestag – proportionate to political representation – performs the same role in the event that the Bundesrat does not accept a bill that has been approved by the lower chamber.

However, this kind of process and its outcome can be extremely contentious. In order to encourage successful mediation, the committees are often deliberately kept quite small and many with a strong interest in the outcome typically feel excluded from the process. Those who have been closely involved in political haggling, voting and intense work on a piece of legislation may find that significant changes to the bill have been made behind closed doors. Many question its democratic value, believing it to be an admission of defeat for the normal legislative process – a procedural ejector seat. Instead of forcing the legislation to be reconciled, a compromise is manufactured by a select group of individuals, with no further change permitted. The practical application of the concept of no new material being added to a bill is difficult to handle and arguably impossible to enforce; but without this process it is questionable whether some bills

would ever be successfully passed. Officials may or may not be invited to participate in the process. In Germany, they are typically only brought in to provide information. Some of our interviewees expressed concern that what emerged from the reconciliation process was unworkable in practice.

Summary

Workable or unworkable, what emerges from parliament after all the votes have been taken either is, or quickly becomes, the law in the parliamentary democracies that are covered in this study.

There is, however, a lingering question that has emerged from the interviews we have conducted and that profoundly affects the subject matter of this section: in a parliamentary democracy, what is the parliamentary process for?

This is a deceptively simple question and it has no easy answer other than to say that it is the mechanism through which the will of the executive is converted into law.

Conventionally, the party that has a majority in the parliament or the coalition of parties that has such a majority, controls the executive, has the right to introduce bills to parliament and can secure the enactment of legislation unless there is a breach of party discipline. Given that is the case, how important is scrutiny?

This seems to us to be a question that has only two possible answers: either it is important or it is not. There are no shades of grey.

The argument that it is not, rests on the premise that the party in power is in power. The people have entrusted their sovereignty to it. It has the majority of members in the whole house and in committees. It can secure the passage of its bills. The members will vote in line with their party allegiance. On that analysis, it is not necessary to equip parliamentarians to scrutinise the proposals from the executive or empower them to take part in the development of those proposals.

The alternative standpoint is that – notwithstanding one party enjoys the benefits of a majority in parliament – there is a higher responsibility for members to the public good to ensure that legislative outcomes are as good as possible in all circumstances. It follows from this that the process of scrutiny is crucial and members should be equipped to exercise this responsibility effectively.

That they are not is self-evident. Only in the US is proper support available. The recommendations that we are making in parliamentary processes are modest, although

they do have some funding implications. They support the concept that, in a parliamentary democracy, the members – individually and through committees – can stand apart, at least to some extent, from party interest and the executive, as well as provide effective challenge both to policy direction and to individual tax policy proposals. They support the principle of an activist legislature rather than one that is merely the passive recipient of draft legislation for approval in the shortest possible time and with the minimum of fuss. Unfortunately, the US demonstrates that a powerful legislature can have problems of its own, although we have no reason to believe that the changes we are recommending will lead parliaments into the same difficulties.

We have conducted many interviews in many countries in the course of our work and in no country that we visited, did we find external support for the idea that parliament was doing a good and worthwhile job in relation to tax policy-making. That is a matter of profound concern and our proposals seek to address it.

4. THE INVOLVEMENT OF THE TAXPAYER COMMUNITY

In this section, we examine the involvement in the tax policy-making process of what we have referred to as the ‘taxpayer community’. Conceptually, we think of this as including all of us in our private capacity together with those organisations that we might regard as representing our views in some way: principally the trade unions and civil society, as well as the whole of the business community. We have dealt separately with the academic institutions, think-tanks and research organisations.

Having identified the taxpayer community in this way, we then subdivide it into two elements: the business community and everybody else. We do this for two reasons. The first reason is that this is effectively how the division works in practice in most countries. Governments’ relationships with business are usually different today from its relationships with other taxpayer groups and taxpayers as individuals: different in scale, scope and intensity. The second reason is that we see a distinction in the fundamental nature of the engagement with business compared with the nature of the engagement with taxpayers and their representatives. The latter has its roots in the democratic foundations and traditions of the countries in our sample. The former does not. It recognises economic power. The engagement with business is usually, either directly or indirectly, about creating an appropriate and stable environment for investment. The latter is often more broadly-based, where it occurs. But this, in practice, is seldom.

It is part of our thesis that, in most countries, there is a democratic deficit in relation to the tax policy-making process and we find this a useful framework in which to address this issue. As we note later in this section, the democratic deficit is more acute in some countries than others.

THE RELATIONSHIP WITH BUSINESS

We start by examining the involvement of business in tax policy-making. This is a familiar feature of the policy-making process in many of our subject countries although, as we will show, it differs substantially in form from country to country.

Again, we believe it is useful to think of the relationship between government and business on tax issues within a framework that recognises there are two elements to it that are

conceptually quite distinct; but which nevertheless overlap and give rise, in practice, to a good deal of activity.

The first is consultation by government in relation to its own tax agenda; in which government seeks to engage with businesses to ascertain their views and acquire additional information and knowledge, upon which it may act.

The second is often generically referred to as ‘lobbying’ but in practice it involves a broader range of communication from the business community to government that may or may not be intended to have a direct influence on the development of tax or any other policy.

It is clear that, in practice, government-led consultation may provide opportunities for businesses to raise issues that could lead to improved policy outcomes for them. This is the area where there is considerable overlap between the consultation and lobbying processes.

We start by looking at the aspects of the relationship that are government-led and refer to these as ‘consultation’ in this report. Our interviewees expressed a wide range of views about it, which we have sought to reflect in the analysis that follows. There can, of course, be differences of opinion about, for example, the extent, breadth, timing and value of consultation; depending on whether your interlocutors are from the government or the business side. This is not a precise science, and one of the factors that influenced opinions was whether the interviewee had experience of consultation outside the national framework in which they normally operated and therefore had points of comparison. Many of our interviewees had seen consultation exclusively or almost exclusively in a domestic context, so we have attempted to provide some breadth and balance by interviewing a number of tax directors of major multinationals whose experience is geographically wider. In evaluating the answers, we then set them in a framework of emerging knowledge of our own.

Consultation

There are four general points about consultation with the business community that should be recognised at the outset:

- consultation with business on tax issues is, unsurprisingly, primarily about matters that affect businesses directly;
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- other parties are typically not excluded from most consultations that take place about business tax issues, although they may not be invited to join working groups formed to discuss particular issues;
- the specialist nature of the subject matter dictates that most contributions to the consultation process tend to come from individual large businesses and representative bodies; and
- most of the consultation that is undertaken by governments in our sample countries is on tax issues that predominantly affect businesses. There is typically little consultation on other tax matters, so consultation with business represents a very high proportion of all consultation on tax policy issues.

The arguments about the use of consultation in the development of tax policy are well rehearsed.

The case for and against consultation with business

Governments that consult on tax policy issues normally do so for two basic reasons:

- i. They need or want access to more information and knowledge than they currently have. Policy makers are not omniscient and, more often than not, they now recognise that the resources and expertise available to them are insufficient for the task in hand. Imperfect information, uncertainty over assumptions, ambiguity in impact assessments and administrative problems are common features of the policy development process. Consultation with outside experts is one way to gain access to additional sources that can help fill the gaps in policy-makers' knowledge. Proponents of the case for consultation believe informational benefits tend to improve the quality of outcomes, making tax more effective as a policy instrument, raising the standard of the legislation and facilitating better administrative processes.
 - ii. They want to make sure there is business buy-in to policy outcomes or at least that businesses feel they have been involved in shaping them. This is considered particularly important at a time when investment is highly mobile and competition between governments to attract it is intense. Investors, whether domestic or overseas, are perceived to be more likely to be comfortable with a particular location if they feel there is scope there for giving input to tax policy developments: so many governments seek to provide that scope. Businesses are collectively (and often individually) significant sources of tax revenue.
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On the business side, the willingness to respond to government-led consultation is usually predicated on the belief that there is value to be gained by doing so; either for the business itself or, less frequently, for the broad community of businesses. Although today, in the sample countries, there was no question of companies having a democratic right to be consulted or the ability to give or withhold consent for changes, nevertheless many increasingly feel that governments have a duty to consult them, at least on significant changes. In general, there is a willingness on the part of businesses, particularly large, relatively well-resourced businesses, to participate in and devote time to consultation and a real sense of frustration when the opportunity is denied. Within the private sector there are numerous organisations and individuals that take a keen interest in tax policy and have expert knowledge. Many individuals in business have strong feelings about the tax system and are happy to play a role in informing policy development.

Both parties to the consultation process want to ensure that policy priorities and policy direction are understood; that changes are predictable and that, as far as possible, policy detail makes the government's policy choices acceptable and workable.

There are, nevertheless, a number of arguments against the use of consultation in the tax policy-making process. Some of these are voiced more strongly in some countries than others:

- i. The process of publishing government proposals in advance of their becoming law may give taxpayers too much scope to re-order their affairs in such a way as to avoid or mitigate their impact. The potential loss of revenue as a result of this kind of planning is a valid concern and will certainly happen in relation to some types of proposal where the change is significant. In general, governments that do consult widely have learned to live with that; and manage the risks as well as they can, for example, by means of targeted anti-forestalling measures. Some proposals do not, of course, worsen the position of taxpayers, so there is only a range of measures for which it may be a problem and, in many cases, the revenues at risk will not be so great. In general, in those countries where government consults extensively with the business community on tax proposals; the risks of forestalling are considered to be outweighed by the overall benefits of consultation.
 - ii. The input from businesses will be entirely self-serving. Although there is a danger that business inputs will reflect some bias and vested interests; experienced policy makers should be capable of filtering out the majority of such elements, making these external contacts still a potentially valuable resource. Or experience is that the more consultation that takes place with
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the business community, the lower the risk of unrecognised bias affecting outcomes.

- iii. A long period of consultation over significant parts of the tax system may create a climate of uncertainty in which business will be reluctant to invest. Again, this can be a valid concern and the length of the period of consultation should be sufficient to ensure all parties with an interest in the subject matter have time to express their views, but not so long that it becomes de-stabilising. Some countries, of which Sweden and increasingly the UK are examples, have had very long consultation processes but appear to have been able to manage the risk of instability and paralysis among investors. In general, the impact of a sudden, unforeseen change is more destabilising than a long period of consultation with the parties concerned.
- iv. In some cases, a willingness to listen may be misinterpreted as a willingness to act; particularly if government officials and business people involved in the consultation process are relatively inexperienced or untrained. In general, governments do not yield automatically to requests for tax concessions by businesses, and they should be aware of that. Nevertheless, some elements of training on the government side should focus on making sure officials do not create false expectations among consultees.
- v. Consultation with business gives the business community more power than other groups on taxation issues and leads governments towards system-wide outcomes that favour them over other taxpayers. This is an issue that has had increasing resonance in the last two or three years and involves some questions of balance that we address later in this section.

Notwithstanding these concerns, provided consultation with business is handled appropriately by officials, we believe that, in terms of getting access to valuable information and knowledge, there is much for policy-makers to gain and very little to lose in the consultation process.

The importance of consultation has been reflected in recent years in the attention that has been paid to it by governments and others. Government publications that stress the role and necessity for consultation are typically responding to perceived political pressure for involvement of society in government decisions. Other commentators approach the issue from a more technical or philosophical perspective.

The UK Government has published a number of papers that address the case for consultation, the majority of which are not specific to tax policy development. They articulate a high level of support for the principle and attempt to embed consultation firmly in the policy-making process. In its 1999 report on the professionalisation of policy development, the Cabinet Office gave support to stakeholder consultation as a source of expert information for evidence-based policy making. The report goes on to say that the use of stakeholder consultation makes policy more effective¹⁴¹. Although the commitment to greater consultation was not specific to tax; it nevertheless demonstrated the government's belief that it should be an integral part of modern policy development.

More recently, the UK coalition government reaffirmed the commitment to consultation in a tax policy context. In June 2010, the Exchequer Secretary to the Treasury signaled a new approach to making tax policy. Confirming Treasury ministers' belief that a better process should help produce better policy outcomes; the Treasury published a discussion paper about how the process could be improved. In setting out principles behind the new approach, the discussion paper highlighted consultation as something that should be a 'cornerstone' of the new approach, helping to 'ensure that changes are well targeted and without unintended consequences'¹⁴². The details of the government's new approach to consultation were published in final form in March 2011 as the Government's Tax Consultation Framework, following discussions with interested parties¹⁴³. The framework is a valuable document and key elements of it accord with our thinking on model consultation processes, as reflected in the recommendations section of this report.

It is predicated on the belief that knowledge gained from consultation can be very useful. If policy makers are better informed they are more likely to be successful, whatever the specific aims of a piece of tax policy. All tax policy is a means to achieve an end; whether that is simply revenue raising; a particular economic outcome; a rebalancing within society or something else. There are many factors that affect the outcome of policy and even apparently simple objectives may prove challenging to achieve. Consultation can help reduce the uncertainty regarding outcomes by providing policy-makers with information, a different perspective or business awareness that they might otherwise lack. With more information, those responsible for developing tax policy should be better able to understand and anticipate the impact of their policies, reducing avoidable policy errors and failures.

The Australian Government has published similar views on how consultation can contribute to successful policy-making. The Board of Taxation, created in 2000, has published two reports on consultation in tax policy development. In their 2007 report they state that consultation can help government make tax policy decisions 'fully informed about the

141 UK Cabinet Office, *Professional Policy-Making for the Twenty First Century, A Report by Strategic Policy Making Team*, Cabinet Office, September 1999, Chapter 8

142 HM Treasury, *Tax Policy Making: A New Approach*, June 2010, page 7

143 HM Treasury and HMRC, *The Government's Tax Consultation Framework*, March 2011

range of options and the benefits, costs and risks¹⁴⁴. Their earlier 2002 report stressed that a programme of regular consultation would minimise the unintended consequences for both tax practitioners and government¹⁴⁵.

The Board of Taxation also regarded consultation as important for reducing the administrative burden of taxation. The implementation of tax policy is one of the last considerations of policy development; a stage almost entirely dedicated to administrative issues that tend to spring from rather than directly affect policy content. In 2002 the Board of Taxation described this as road testing; intended to reduce the difficulties of compliance¹⁴⁶. A good way to encourage higher levels of compliance is to make tax administration simpler, something that policy development teams should recognise but may not treat as a high priority. Having responsibility for policy intent rather than policy administration can colour policy-makers' approach to the policy development process. Those in government and the private sector who work with the tax administration can have a different perspective, and are likely to have a stake in improving administrative functions. Consultation on the administrative issues of policy change helps capture the value of their experience.

The Hansard Society has argued that consultation can improve the legislation as well as policy outcomes¹⁴⁷. Early and regular communication between those with drafting responsibility and other stakeholders in the policy development process can, in principle, pre-empt the need for legislative patches later on. Consultation on draft legislation should take place early enough in the process to prevent sudden changes in the approach becoming necessary. If policy makers leave consultation too late, this is much more likely. Given the long-standing criticisms of the complexity of tax legislation and the not insignificant challenges already faced by legislative drafters, it seems sensible that pre-draft and early-draft consultation be considered, at least among a relatively expert group of consultees.

However, effective consultation does require some effort and a significant commitment of resources from all parties involved if it is to be effective. The OECD, discussing citizen engagement in all policy development, acknowledges that effective consultation needs investment of time and resources¹⁴⁸. Finance ministries rarely have much spare capacity in their tax teams, and governments need to consider issues of investment and resource allocation in relation to this process. Shortage of resources is not an adequate reason, in our view, for governments keeping stakeholders out of the tax policy-making process. In fairness, resource constraints have not been widely used as an argument against consultation with business in countries that are the subject of this study; and we have not found consultation to be an issue on which well-resourced large countries are necessarily

144 Board of Taxation- Improving Australia's Tax Consultation System- A Report to the Treasurer, February 2007, page 1

145 Board of Taxation- Government Consultation with the Community on the Development of Taxation Legislation, A Report to the Treasurer and the Minister for Revenue and Assistant Treasurer, March 2002

146 Ibid, page 10

147 Hansard Society- Making Better Law: Reform of the Legislative Process from Policy to Act, 2010, chapter 2

148 OECD- Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making, 2001, page 21

able to do better than small ones. As one interviewee remarked to us, governments in small countries sometimes have the advantage of being able to hear the views of people affected by a particular proposal through their ability to get everyone into the same room at the same time.

The nature and timing of consultation

In our interviews, we found that the nature and timing of consultation – in relation to the rest of the tax policy-making process – are two of the factors that have the most significant impact on perceptions and on the success of tax policy. There are essentially three stages of the policy-making process during which consultation can sensibly take place. By no means do all governments consult at each of these stages, and not all consultation with business fits precisely into one of these categories. Nevertheless, we believe the categorisation is useful.

Preliminary consultation.

We define preliminary consultation as a period of informal discussion between government and what is usually a relatively narrow group of business interests – often the largest domestic companies – providing the opportunity for an exchange of views about policy direction and priorities. It often takes place between ministers, advisers and senior officials on the one side, and senior members of the companies' board on the other: usually the chairman, chief executive or chief financial officer. In some countries, this process takes place in a semi-formal environment and there can be a degree of expectation that the discussion will influence policy-makers.

Pre-legislative consultation

Pre-legislative consultation can take many forms, depending on the nature of the underlying process. Sweden, the UK and the US, for example, offer very different models. For the purposes of this generic discussion, we define it as a period of consultation taking place when the government has established the intent of the policy and at least some initial detail but does not yet have a complete proposal ready to put forward. In a few countries, this stage of the process will be quite formal and carried out on the basis of a published document that sets out the proposal and issues for consultation. The discussion at this stage of the process typically takes place between experts. The consultation is designed to allow decisions to be made on particular choices for delivering policy intent and for draft legislation to be produced.

Post-drafting consultation.

We define post-drafting consultation as consultation taking place after draft legislation has been published but before the end of the period of scrutiny by parliament. It may or may not have followed a period of pre-legislative consultation. Some governments do not consult on tax policy until the legislation has already been drafted. By this stage the government has normally adopted a policy and is either about to send or has already sent a bill to parliament for consideration. Depending on the impact of the policy and its consultation history, the discussion may provoke board-level involvement from companies affected. In an orderly process, in which pre-legislative consultation has already taken place, this involvement is more likely to simply involve tax professionals. By this stage, there will normally be little chance of influencing the policy itself and the focus will typically be on making sure the legislation delivers the established policy intent without collateral damage. There may be scope for last-minute amendments or corrections. But this is likely to be limited.

As already noted, there are advantages and disadvantages in the various generic models of consultation. Informal consultation, in particular, has drawn some criticism. It can be very valuable to senior policy-makers and help drive a top-down model of policy-making. However, it often lacks transparency. It appears to favour a relatively small group and, in practice, does allow a minority to have an influence on the setting of priorities and sometimes on the final detail. Concerns were expressed about both transparency and minority influence in response to the UK coalition government's proposals regarding informal consultation. As a result, the final version of the Tax Consultation Framework states:

Informal consultation will be as transparent as possible, consistent with the need to protect revenue. The best principles of formal consultation will be applied to informal consultation to ensure clarity of scope, impact, accessibility, and meaningful feedback... Informal consultation can run alongside formal consultation but will often be most appropriate at the earliest and latest stages of tax policy development to identify options and then to fine-tune the detailed legislation and implementation of change¹⁴⁹.

It is not just the small and medium-sized enterprises, which are already underrepresented in consultation, that feel disadvantaged by this informal process. Many larger companies and tax professionals take a similar view and would welcome greater transparency in agenda setting. Both the Australian Board of Taxation¹⁵⁰ and the UK Treasury¹⁵¹ acknowledge the importance of transparency. We believe informal consultation can be valuable but that its

149 HM Treasury and HMRC, *The Government's Tax Consultation Framework*, March 2011, page 10

150 Board of Taxation- *Improving Australia's Tax Consultation System: A Report to the Treasurer*, 2007, page 16

151 HM Treasury- *Tax Policy Making: A New Approach*, June 2010

use should be limited, and that there should be transparency regarding the outcomes if not about the process itself.

We subscribe to the view that regular, formal consultation can lead to a better and more mature relationship between government and the private sector. There is evidence that this has occurred in a number of countries. Some commentators suggest regular consultation reduces the pressure on participants to seek personal gain from every process; whereas irregular consultation often tends to bring responses that are more influenced by self-interest. Eventually, we argue, it is possible for regular consultation to allow an established network of individuals from many different backgrounds and companies to provide a core of expertise that can help governments develop better tax policy. These commentators call this a 'policy network'¹⁵²: several interdependent actors with different interests coming together to help shape tax policy. The developing relationship between the consulters and the consultees is recognised and valued by governments¹⁵³. However, we are cautious about accepting this model in its entirety.

A strong network of interested and engaged parties is difficult to build and takes time. Confidence and trust are key factors. As a result, the network can be fragile. Confidence can be damaged in a number of ways. The most obvious is if a particular violation of trust occurs. In the UK, the government has slowly been improving the quality of its consultation processes on tax matters and has earned goodwill from the business community through both the nature of its consultation processes and its attempts to formalise their best features. However, some of the goodwill of the private sector was endangered when the government announced, in its March 2011 budget, a substantial and unexpected tax on North Sea oil companies. The money was used in a somewhat populist way to postpone a planned increase in fuel duty and finance a small immediate reduction in the pump price of road fuel. Although the tax itself was unpopular with the industry on policy grounds, the main part of the frustration expressed by the business community was with the absence of consultation beforehand; which appeared to run directly counter to the government's commitment to consultation on all significant policy proposals. This damaged relations between the government and the North Sea oil companies and the months that followed saw public recriminations.

Of course, it is not just governments that can damage the trust in consultation. The aggressive use of tax planning techniques by the business community during a period of consultation – to take advantage of existing rules before changes are brought in – can quickly sour feelings on the government side.

152 Stewart, M., *Consultation in Business Tax Reform: Towards an Effective Tax Policy Network*, page 5

153 Board of Taxation- *Improving Australia's Tax Consultation System: A Report to the Treasurer, 2007*, page 17

Establishing a collaborative relationship between the private sector and government for the development of tax policy is not easy. It requires the commitment of considerable time and resources. It involves a certain amount of risk and a high degree of trust. Many governments have come gradually to the view that it is desirable; but not all have integrated consultation with business into the tax policy-making process.

We believe that, if asked, all of the governments in our sample countries would say that they consult business on tax policy issues that affect them directly. That may be true. However, we have found that there is currently no common international standard for consultation even among our sample group of developed countries, where we might have expected to find very similar processes in place. In fact, practices vary significantly from country to country and can also vary within countries. There are also differences in what is consulted on; the formality of the process; and in the stage at which consultation takes place.

In the next part of this section, we highlight some of the key issues around consultation in the countries we have visited. As we noted earlier, practices can change without much formality and our observations reflected this position when we made our country-visits. This was primarily during December 2010-June 2011.

Practices in our sample of countries

There is an important distinction to be made between countries that have embedded consultation into the tax policy-making process as a fundamental part of it, and those that have not. The former tend either to be countries where governments have recognised the policy-making process as an issue in its own right and accepted the logic of business involvement in tax policy development; or countries where inclusiveness is part of the national character and consultation is an expression of that inclusiveness. Sometimes these come together in a pleasingly rational way.

We did not find that there are major differences between the governments in our sample group in the approach they take to preliminary consultation. We believe that all governments, at a senior level, engage in agenda-setting and priority-setting discussions with important parts of the business community on tax policy matters. As we have noted, in some countries, like the UK, this stage of consultation is explicitly recognised and the government has addressed the issues to which it gives rise. In others, it just happens.

However, there are some clear differences between governments in how they approach other aspects of consultation. The comments that follow largely relate to the pre-legislative phase of consultation.

Among our sample group, based on the interviews we have conducted, we would distinguish six countries from the rest of the group as having formally-recognised tax policy-making processes that include consultation with business as a fundamental part of policy development at a pre-legislative stage. These are the UK, Finland, Sweden, New Zealand, Jersey and Australia. Within this narrower group, we believe that four of the countries have successfully embedded consultation into the process and that the outliers, Australia and Jersey, are still in the process of working towards that goal. Philosophical, political and structural issues largely dictate an alternative approach in the remainder of the sample.

In the first group, the UK has among the strongest processes. There is a clear, ministerial commitment to consultation; formally documented and articulated in a series of government publications. The different phases of consultation are recognised and the timetabling of the process is fully addressed. Consultation on individual proposals is normally undertaken on the basis of a formal, initial document that sets out the government's objectives and how the proposal will help the government achieve them. Later phases of consultation may be accompanied by extracts of draft legislation and the full draft legislation will normally be published at least three months in advance of the publication of the finance bill itself – with consultation for a minimum period of eight weeks. For what it regards as major changes in particular taxes, the government will often set up working groups comprising both private sector and government experts to oversee multiple work streams. The business community has responded positively to the gradual development of the consultation model and to its increasing formalisation. The points made against it are:

- that consultation has now become so widespread that the business community is unable to participate as fully as it would wish in all of it;
- that, nevertheless, those outside the core group of business representatives find it difficult to get an opportunity to make a contribution;
- that it slows down the process of reform (an explicit objective of the current government¹⁵⁴); and
- that it allows business to dominate government thinking on tax issues.

However, it is widely regarded as a good model of consultation for a well-resourced policy-development department.

The Finnish approach incorporates much of the same good practice, with the increasing use of formal documents to outline proposals for reform and the creation of working groups to provide business input into government as proposals are developed, and a real

154 HM Treasury, Tax Policy Making: A New Approach, June 2010, page 5

sense of engagement in the process by the business community. Interviewees felt that the value of consultation was well understood and a culture of consultation embedded in the Ministry of Finance.

The same is true of New Zealand where the Inland Revenue Department, which has had responsibility for the development of tax policy since the mid-1990s, provides good examples of consultation informing policy formulation. The government's commitment to consultation is institutionalised in the GTPP, created in response to a situation in which political difficulties had caused policy development effectively to grind to a halt. Government officials set out what they regarded as best practice in the document and formalised some of the unofficial practices of the previous decade. Amongst these practices was early consultation on tax measures. Consultation is a core aspect of the GTPP. Consultation is expected to happen in the pre-legislative period and on proposals for both major tax reform and technical changes.

New Zealand is a relatively small country, like Finland, and the tax community is not large. Most of the consultation is done through the New Zealand Institute of Chartered Accountants (NZICA) and the Corporate Taxpayers Group (CTG). The New Zealand Law Society is also involved, but less regularly than the others. Companies may contribute on an individual basis, but most work through the representative organisations. As elsewhere, small and medium sized enterprises tend to be less well represented, reflecting their more limited resources. Well-connected and trusted individuals can meet informally with policy makers, but this is less common.

Our interviewees reflected a generally-held view that the regularity of consultation and the seriousness with which contributions are taken has resulted in better tax policy outcomes. Senior tax professionals believe that the government is aware of the priorities and needs of business, even if it does not always act upon them. Government departments demonstrate a culture of consultation that has resulted in the private sector having an opportunity for constructive input, which they are happy to take.

The Swedish tax policy-making process embodies some different structures from those used in other countries, especially where significant reform is intended. On business tax issues, this will normally involve a high level of business input before a bill is put before parliament. As we have noted, the process typically starts formally with the appointment of a committee to investigate a particular aspect of taxation. The ministry of finance sets the terms of reference and appoints the members of the committee which may comprise a single rapporteur and five or six members, usually drawn from among lawyers, economists, academics and prominent private sector individuals. Within the committee framework a group of experts will often be appointed; largely drawn from the business tax community

who are usually eager to be involved. The committee conducts the investigation, makes recommendations and will normally produce draft legislation for the minister of finance to consider. It takes evidence as part of that process, including evidence from technical experts. The process may take as long as two years. The members are not paid.

The extensive period of time allocated to the process gives business representatives ample opportunity to make their opinion known, formally and informally, and to help shape the outcome. The committee process itself is intended to be confidential but that confidentiality may not always be fully maintained. Once the committee's report has been completed, it will normally be sent to more than 50 individuals and organisations for review and comment. Again, those involved will include many from the business community. The recipients of the report will usually be given 2-3 months to respond.

Business has little formal opportunity to influence the original terms of reference, but can otherwise make a significant contribution to the policy development process. It is a significant factor that the process is not rushed. With many investigations taking years, not weeks, there is plenty of time for the private sector to consider the issues. If business representatives are invited to discuss the matter in hand, they have time to consult their members and agree a common position. If a stakeholder is invited, they have time to come to a reasoned opinion based upon the best information available. The process invariably produces better-informed policy makers and, although a committee's proposals may ultimately be rejected or set aside at the political stage of the process, committee recommendations are considered to have strong default value.

Our interviewees regarded this form of consultation – with sufficient time allowed for a full investigation – as extremely worthwhile. They felt that, apart from any specific outcomes from a particular committee, this form of collaborative working in the development of policy contributed to a relationship of mutual respect between the private sector and government in which tax professionals could acknowledge a social responsibility beyond the immediate interests of their shareholders.

However, a number of issues were noted. One problem that interviewees identified was that while many technically based reforms could be handled in this way by committees with good business input; more contentious issues tended to become politicised, with representatives being added from among the members of parliament. It was also pointed out that while the ministry of finance often accepts committee recommendations on technical, business tax issues; this was not always the outcome. The ministry of finance is not obliged to take action on the committee's report and may take an alternative approach.

The length of the process could also create a number of problems. Businesses, including foreign investors, looking for certainty in the tax code are well aware – for a significant period – that change is likely, but will often not know exactly what changes will be made for more than a year and may defer investment as a consequence. None of our interviewees felt that this had been a significant problem in practice but they recognised that it could be. Particular issues could arise where a committee's work might cover a national election and a change of government. In such a situation, it was recognised that the recommendations might have no lasting value, although the investigative work might.

Our interviewees noted that although there is a strong culture of collaborative working and consultation between business and the government in Sweden, not every tax measure is the subject of such a process. The Ministry of Finance is not obliged to hold an investigation before making tax policy changes. Revenue-protection measures are developed in isolation from the private sector and there is a widely held belief that an increasing amount of tax policy is being made strictly within the Ministry of Finance and without consultation. The use of committees has been decreasing since the current government came to power in 2006, and there has been a tendency for those committees set up to have a shorter period in which to report their recommendations. Some concerns were expressed that this might lead to a much less open and consultative process of policy development. However, our interviewees were broadly, very content with the extent of consultation between the Swedish government and business.

Positively, we also found evidence of good consultation practices in Jersey. The government has used a variety of different consultation methods. The island's business community is small; making consultation arguably more straightforward than in larger countries, although against a background of much less government resource. The Government of Jersey also faces a potential problem, in that it has substantial inbound investment from countries that, in some cases, have sophisticated and extensive consultation processes. Inbound investors can be harder to reach and can have different expectations of consultation. Consultation typically takes place with a number of representative organisations, including the Chamber of Commerce, the Institute of Directors and Jersey Finance (which represents the large financial services sector on the island). Our interviewees felt the government made good attempts to consult, in what was often a difficult climate in which a variety of international institutional pressures dominated over local concerns. However, there were some observations that it was not always clear whether the government would or could act on inputs given during consultation.

The picture that we took from our interviews in Australia was slightly less positive than for most of the countries in our sample that have relatively formal consultation processes.

Australia has a history of some awkward relationships between government and the business community on tax issues and, although considerable attention has been paid to getting the structures right, our interviewees often reflected a sense that the process was not yet working as well as it should.

The Australian Government has taken a number of steps to address the weaknesses in its relationship with the business community on tax matters that were identified in the 1999 Review of Business Taxation. The report described poor consultation as contributing to a lack of cohesion and accountability; as well as a growing frustration within the business community¹⁵⁵.

The most significant change that followed from this report was the establishment of the Board of Taxation. The board has ten full members, seven of whom are in senior private sector positions. The other three are members *ex officio*: the secretary to the treasury, the first parliamentary counsel and the commissioner of taxation. The board is intended to facilitate communication between the private sector, Treasury and the ATO: not just on single issues but in relation to tax issues in general. The 1999 Review of Business Taxation stated that many of the problems of Australian tax policy could be prevented or lessened by the creation of a forward work programme: designed within the Treasury but with extensive private sector input. This would help prevent *ad hoc* policy development and facilitate a working relationship with the private sector. A more open approach would provide 'an opportunity to build confidence and trust between taxpayers and the revenue authorities¹⁵⁶'. The board has completed 18 reviews in 10 years of work and shows signs of evolving into a force in its own right within the policy development process. However, our interviewees felt that the board lacked institutional independence and the capacity to do more than advise.

We also found there was concern that there was little real commitment to consultation within the Treasury. The Australian executive is strong, and Treasury currently dominates policy development. The scepticism that we encountered was focused around the belief that if the Treasury wanted business to participate fully in the tax policy-making process, then an effective mechanism would be in place that would allow them to do so. There has been ample opportunity for changes to be made in the process - a report in 1999 and two further reports in 2002 and 2007. However, it is felt consultation is still not used extensively or early enough in policy development. As a result, lobbying can be intense during the budget process in the hope that the government will amend legislation that could have been improved, in the eyes of the business community, by much earlier consultation.

155 Australian Treasury- Review of Business Taxation, 1999, page 119

156 Ibid, page 125

There have been a number of high-profile reviews of the tax system, or large parts of it, in Australia but we encountered a widely-held view that the government had failed to take advantage of either the review process itself or the publication of the review to generate a sensible public debate about the issues addressed by it. The most recent example of this has been the Henry Review. The delay in publication of the review, and the related introduction of the Resource Super Profits Tax with little or no prior warning, sparked a very public campaign of opposition that ultimately brought down the prime minister. Prior consultation during or after the review process might well have helped make the proposals more acceptable and this outcome could, perhaps, have been avoided.

While our interviewees generally accepted that the reaction to the proposal for the Resource Super Profits Tax was unusually strong; a number felt the process that gave rise to that reaction was by no means unusual. Treasury has an idea and develops it internally, with limited external contact. When the proposal is made public the private sector must lobby intensely and immediately for alterations to be made to the draft legislation. A shortage of time means that efforts have to be focused on only the highest-priority issues. Sectoral organisations struggle to put together a common position with many members; and much of the legislation does not get the attention it deserves.

In 2008, the Tax Design Review Panel recommended that substantive tax changes should be developed by a tripartite team led by the Treasury with ATO and private sector involvement¹⁵⁷ and the government, in principle, accepted this recommendation. The relationship with business has been improving, and there are projects such as the Tax Issues Entry System being developed to encourage taxpayer input on policy maintenance issues, but on the whole, it is considered that tax policy is developed within and only within the Treasury.

Among the other countries in our sample, we found that there was considerable variation in the extent to which consultation with the business community was used. In some cases, the lack of formal recognition of consultation was observed against a backdrop of considerable activity at the interface of government and business. In others, it was more reflective of a level of contact on tax matters between government and business that was generally low.

Our interviews suggested we should regard France as falling within the latter category. The policy-making process provides little opportunity for business to give input and lacks a significant phase of pre-legislative consultation. We found no evidence of any legal or procedural obligations on officials to consult.

157 Tax Design Review Panel- Better Tax Design and Implementation, A Report to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, 30 April 2008, recommendation 2.

Policy development normally begins in response to specific direction from ministers within the Ministry of Finance, with a proposal being worked up in a closed environment by officials in the *Direction de la Législation Fiscale* (DLF). They work closely with ministerial advisers, who are very influential in the French system. Once the proposal has initial ministerial approval and the legislation has been drafted, again within the Ministry of Finance, it is sent to the *Conseil d'état*, which examines the bill from a legal and constitutional perspective and returns it with comments and suggestions to the government. The suggestions may be either accepted or rejected before the Cabinet formally adopts the bill and sends it to the National Assembly for approval. Most tax legislation only becomes public once it has been sent to the National Assembly.

The interviews that we undertook in France confirmed that practically no consultation takes place prior to this stage of the process. A handful of trusted advisors, who used to be public servants, may be contacted during policy development work but their opinion is often sought more for their public sector experience than as a result of their connection to the business community. Otherwise, there is no formal opportunity for input and little informal discussion with outside parties. Occasionally parts of the finance bill may be leaked prior to publication in order to test public reaction but this does not constitute consultation as we have defined it here.

Once a policy is announced there may be some consultation and the frequency with which this takes place appeared to be increasing at the time of our visit. Government officials will contact organisations such as *Mouvement des Entreprises de France* (MEDEF) and *L'Association Française des Entreprises Privées* (AFEP) and perhaps some individual companies. With very little time these groups will be asked to respond formally. A frequent complaint among our interviewees was that there is almost never enough time to do so properly. One of the problems for business representative organisations' is that they must canvass the opinion of many members before adopting an official position. Without the time to do so, only the more general aspects of a proposal can be addressed, or the least desirable elements targeted.

Interviewees commented that, in their experience, even well-argued, detailed replies did not seem to have an impact on policy proposals. We found that most of our interviewees felt there did not appear to be a cultural commitment within DLF to the more open processes that we have seen in other countries, a feature of the French system that some related to the educational and training background of officials in the French government.

We found a rather different situation in Ireland but one in which consultation was nevertheless considered to be unsatisfactory. The people we interviewed described relationships between the business tax community and the Department of Finance as very good. The government was felt to be very open to approaches from business on tax

matters. However, there was a widely-held view that there is effectively no pre-legislative consultation, formal or otherwise.

Budget secrecy is a feature of the Irish process. This is considered important for revenue protection by the Department of Finance and our interviews showed that, by and large, business accepts that some measures must be developed in secret. Consultation with business is not part of the annual finance bill process; during which almost all tax policy is made. Business input to the process is limited to formal, mostly written, submissions. We found that there was some frustration among the business community, that measures, which could have been improved significantly through wider consultation are brought, untested, to parliament. There is a sense that the quality of the process and the outcome continues to be sacrificed in order to ensure that the budget itself can maintain its significance as a piece of political theatre.

The result of this approach to policy-making is that there is often an intense period of consultation and lobbying immediately after the draft legislation has been published; but with such tight deadlines that there is little opportunity to influence direction or detail. Business representatives described their activity in this period as ‘frantic’ and recognised that, in the time available during the parliamentary process, they could usually focus only on those aspects of the legislation that gave rise to the most significant concerns.

Our interviews in Germany also revealed a concern that consultation was invariably rushed. The main business representatives groups, including *Deutschen Industrie und Handelskammertage* (DIHK) and *Bundesverband der Deutschen Industrie* (BDI) reported that they can be given draft legislation by the Ministry of Finance and asked to respond within two weeks or sometimes less. These groups have very substantial memberships and organising a common position, even through tax-sub-committees, is very difficult, particularly when time is short. Responses can potentially be flawed and may be unrepresentative of the membership. Smaller companies with no significant in-house tax policy expertise are often effectively excluded because of the shortage of time. Business representatives prefer to be contacted early in the process of policy development, believing it gives them a greater opportunity to help shape tax policy, although this is not always the case.

In practice, most consultation takes place on draft legislation, although not necessarily after it has been presented to parliament. Tax law in Germany is drafted by the Ministry of Finance officials who develop the policy; so it is natural that, where consultation occurs, the policy and the draft legislation are presented together.

The Ministry of Finance also looks for external assistance with technical changes to the law and representative bodies participate in that process.

Our interviews with senior officials in Berlin suggested that consultation with the business community was valued and that they welcomed contact at all stages of the policy-making process. They recognised that the business view might not be neutral but did not discount it for that reason. However, we did not sense enthusiasm for engagement with the private sector that we have seen in some other countries.

The structural differences between the US tax policy process and those in other countries in our sample, make direct comparisons on business consultation difficult. In general terms, as we shall observe in a later part of this section, the various institutions involved in the US process are very open to taxpayers and business, particularly large business, enjoying frequent and easy contact with all institutional players on tax policy issues. However, there is no equivalent to the pre-legislative consultation phase of the parliamentary democracies in our group. Formal evidence-gathering processes tend to take place in the Senate or the House of Representatives, which have very different roles from most parliaments. From time to time, the US Treasury reaches out to the business community on particular tax issues but it tends to use a semi-formal mechanism, such as a speech, to do this rather than a UK-style piece of formal consultation. However, our interviewees indicated that this tended to be an effective way of getting input and that the response rate was high.

OTHER CONTACT BETWEEN BUSINESS AND GOVERNMENT ON TAX POLICY

We have focused, so far in this section, on the consultation process through which government typically seeks the help of the business community in shaping policy detail and aims to obtain information and knowledge that will improve policy outcomes. However, we have noted another aspect to contact between business and governments on tax policy issues, in which business is the driver. Some of this contact is intended simply to keep governments aware of issues that the business community face in relation to taxation; but other elements of it are aimed at encouraging government to adopt policy ideas which may assist – some would say favour – particular types of business. Not all contact initiated by the business community falls into the ‘lobbying’ category. However, business generally has a purpose in raising issues with government.

In most of countries covered by this study there is frequent interaction between policy-makers and the business community outside the formal consultation processes that we have described. We do not intend to take much space in this report to describe this activity, although it might be an area for follow-on work by other researchers.

We believe that most of this activity can be very helpful to policy-makers and that it is rarely harmful. Like the preliminary consultation process that we have described, it can result in issues being placed on a government's agenda that might not otherwise have been there; and it can result in some reprioritisation by governments. However, this should occur only when significant new information or analysis has been presented, leading to a new awareness of issues. In most governments, contact with the lobbyist will normally be regulated by the standards of the policy-making department and take place in accordance with established rules of engagement. It will generally be handled by senior policy-makers of considerable experience who are more than capable of filtering out the interesting from the self-serving. Many of the senior policy-makers, whom we met during our work, demonstrated a keen appreciation of the risks associated with contacts of a lobbying nature and of the limits to the usefulness of contact with business. In our recommendations, we have suggested that governments should ensure a suitable programme of training is in place for officials involved in consultation. This will also prepare them for dealing effectively with more general lobbying. It should be obvious that, in all cases, analysis and information provided by lobbyists must be independently tested and verified before the issue to which it relates is placed on the government's agenda.

We found some differences between countries in the extent to which informal approaches by businesses to policy-makers were considered to be appropriate. Most of the countries that have established consultation processes with the business community are also open to informal approaches from business on tax issues. Our interviewees confirmed that this was true of the UK, Finland, New Zealand and Jersey. In Sweden, our interviewees suggested that most of the informal contact was likely to come from business representative groups rather than companies, which would be relatively reluctant to approach government individually.

In Ireland, we found that, while there was universal disappointment with the consultation process on the private sector side; they felt they had very good access to the relevant officials in all other respects. For their part, the officials from the Department of Finance whom we met confirmed their view that, as taxpayers, these groups have every right to discuss taxation issues with them. They have a strong commitment to maintaining a constructive relationship with the business community.

It is worth noting that there is undoubtedly a 'small country effect' in relation to informal contact between business and government. Government institutions are small and senior private sector individuals are well known. The tax community is typically very interconnected. Tax professionals, in business and professional firms will normally have long-standing working relationships with government officials; so there are few unknown quantities. This by no means guarantees positive informal interaction, but it certainly makes it less of a risk for governments.

In contrast to many of the countries in our sample, the German government was considered difficult to approach informally. Officials in the Ministry of Finance whom we met expressed a willingness to meet and to receive information from businesses; although acknowledged some scepticism about the benefit and value of this kind of contact. Interviewees told us that many companies make initial contact with the Länder on tax policy issues. They normally have a long-established relationship with tax administrations in the länder that are responsible for collecting taxes. Even though regional governments have no substantial or formal tax policy role, they have proved to be a useful conduit through which concerns about taxation may be raised in Berlin.

We found that informal approaches to the Australian Government were also regarded as difficult. A similar situation was reported by interviewees in France, who typically regarded the French Government as difficult to approach informally on tax issues. Even in our discussions with political advisers in France, we did not get a sense that this type of contact was encouraged, although we did not form the view that it was excluded at the most senior levels in government.

At the other end of the spectrum, we found, without surprise, that informal contact between business and the tax policy-making institutions in the US is extensive. This is partly a reflection of the political process in the US, partly the result of the complex institutional framework for tax policy-making and partly a reflection of a broader set of business attitudes in the US that is not seen so sharply elsewhere. Between the White House, the US Treasury Department, the Joint Committee on Taxation, the House Ways and Means Committee and the Senate Finance Committee, not to mention the other elected representatives, there are many points of access for private sector input. In addition, most of these access points are relatively well staffed; presenting many avenues for involvement. There are more people working in the Joint Committee on Taxation alone than many European finance ministries employ on tax policy. Tax specialists in the US, working on the development of policy see it as their responsibility to consult with taxpayers. This is particularly the case for political staff, who view discussions with the private sector as especially valuable. The vast majority of contact between the private sector and those involved in tax policy development is informal in the sense that it does not take place as part of a formal process in tax policy development.

Although communication is frequent and involves all elements of the policy development process there are many who are nevertheless disappointed with consultation on tax policy in the US. A significant source of complaint is that access is considered to be unbalanced. As we have noted, it is often the case in many countries that larger companies seem to get the best opportunity to influence policy. This is a concern deeply felt in the US. A second concern is that the influence exerted on the process by business is often seen to

be largely negative: focused on preventing unwanted measures and suggesting specific new reliefs in a political climate in which it is usually extraordinarily difficult to make progress on more broadly-based reform. The views of business are invariably caught up in the intense political environment that surrounds tax policy-making in the US.

Some additional inputs on consultation and lobbying

As we have noted above, we were aware that the interviews conducted during our visits to sample countries tended to be with experts who work mostly within a particular national framework. Many of them are not engaged in any form of consultation or lobbying process outside their own country. While we had no reason to doubt what they told us about their national situation; we felt that it would be useful to try to conduct some interviews that might give us a broader perspective. We therefore supplemented our interview work at the national level with a number of interviews with tax directors of multinational companies who had experience of direct engagement with policy-makers in several countries. The number of interviews we conducted was modest, but we again supplemented the information obtained by means of standard questionnaires that the tax department of those multinationals filled in and returned to us. They were kind enough to do this for every country in which they had what they regarded as a policy-level engagement with the national government.

We plan to carry out further work in this area, and present only limited conclusions from this work in this report. It can be summarised as follows. In general, where engagement was considered to be good by local tax experts, the evidence of our interviews with multinationals was consistent with local responses. There were no instances in which the multinationals felt that relationships were worse than we had found locally. We did, however, get a sense that, in some countries, some multinationals had a more favourable view of relationships than the local tax community. In relation to Germany, some interviews with multinationals gave a warmer view of informal engagement with officials than we had otherwise had; and we felt that this was more consistent with the impression that we had obtained from the senior officials whom we had met. In relation to France, one interview with a particular multinational gave us a much more positive report on informal contact with DLF than we had obtained anywhere else.

The relationship with the general public, organised labour and civil society

Although the relationship between the business community and government tends to dominate thinking about governmental attitudes towards embracing outside involvement in tax policy development, it is, of course, only one aspect of a much broader issue. In the remainder of this section, we deal with the involvement in the tax policy-making process

of those parts of the taxpayer community that are not engaging on a business agenda. We address four aspects of this involvement:

- the exercise of political choice in relation to tax policy
- the role of organised labour in tax policy-making
- the contribution of NGO's
- the use of broad-based reviews to promote public discussion about tax policy choices.

We recognise that these are important issues and that each of them merits a much fuller discussion than is allowed by the scope of our work for this report.

The exercise of political choice in relation to tax policy

Governments require consent in order to levy taxes. Consent is the prerogative of those elements of the taxpayer community that have voting rights. In most countries, this is broadly the adult population – subject to any restrictions that may apply to non-nationals and to some others. We do not propose to explore those restrictions here, although we recognise that they do give rise to some concern.

We believe that, in the UK, the mechanism through which consent for taxes is sought and given, is a little rusty; and we have found a similar situation in most of the countries that form part of this study. There is a tendency for consent to be taken for granted by elected representatives rather than specifically sought. There is little attempt by political parties to set out their tax agenda. It is usually regarded as too difficult and, historically, some governments that have attempted an open statement of their plans for taxation have regretted it on election day. However, governments that do not set out their policy intent can rarely claim a democratic mandate for what they subsequently do. This weakens the momentum for much-needed tax reform and helps explain why most of the tax systems in our sample countries were designed and appropriate for the society and economy of the previous century – if not the one before that, rather than for the world today.

In practice, the public and those who speak for many of them, including trade unions and civil society, has little opportunity to give or withhold consent either to the tax system as it is, or to specific proposals to change it. In most countries, a number of interconnected factors affect the operation of consent. These include a lack of knowledge among a large part of our populations about the tax system and how it works; a lack of opportunity to see and choose between detailed proposals at the time of national elections; a lack of opportunity to hear the case for and against major changes in the system explained and

justified in plain terms; a lack of opportunity to benefit from high-quality reporting in the media of tax proposals; and a lack of effective representation in relation to tax issues of groups who are not equipped to engage personally.

We believe that there is, as a result, a democratic deficit in the tax policy-making process in most of the countries covered by our study and that it represents a fundamental problem within our societies.

Somehow, governments and the public tend to muddle round this and it is only at the margin that serious protest occurs. However, recent experience, for example in the US, suggests that there is enormous latent resentment, at least on the right, against the automatic presumption of approval of our tax systems. In Europe, the latent resentment arises, arguably more from the left, in relation to the apparent failure of the tax system to address, adequately, the growing disparities in income and wealth between different parts of society. These are both potentially powerful forces and we consider that they justify some real reflection on the part of government and society about how to reduce the democratic deficit. Of course, this is not easy. The steps that are necessary to remedy the problem seem to require substantial change, some of it structural in form. In our recommendations, we put forward a number of changes that we believe are at the minimalist end of the spectrum in terms of what is needed.

During the interview process in each of the countries we visited, we asked interviewees about the public debate on taxation policy. We also asked about the extent to which political parties set out their position on tax policy as part of the electoral process and whether there was an opportunity for the electorate to exercise effective choice at elections in relation to taxation. In most countries, it was felt that there was little public debate on specific tax policy options and little scope for democratic choice. However, there is a high degree of subjectivity in personal perceptions of public debates, and it was not uncommon to find very different views on the same issue in the same country.

Interviewees were sometimes able to identify particular issues on which there had been a significant amount of discussion but there was a general sense that there were few occasions on which anything other than a single tax issue was the subject of debate. Levels of expectation about the engagement of the general public on tax issues were also low.

We did find countries within our sample where there was evidence of a stronger engagement. It was difficult in some of them to be sure whether this was a reflection of a particular issue that was important at the time of our visit or whether it was a sign of a more general awareness. For example, at the time of our visit to Dublin (May 2011), it

was impossible to get into a cab without hearing the driver's views on the rate of tax on corporate income. There appeared to be a high level of awareness about the importance of business taxes to the economy. Not everyone agreed with the government's line, but all seemed surprisingly conversant with the arguments and highly articulate in discussing them.

The level of public debate in the UK about taxation issues is relatively poor by contrast. It tends to be on single issues and usually centred around a relatively narrow government proposal. It is rare for there to be a broadly-based debate covering multiple areas of tax policy; but it is common for debate to be intense, often supported by emotive media reporting. In the US, tax is a very current issue for debate; and it can be very fierce and even more partisan than in the UK. It will often run across a range of tax issues and will typically be politically-led. However, the analysis underpinning the political rhetoric is not always of the highest quality.

We also found some evidence of a higher level of engagement in Germany, although our interviewees felt there was generally relatively little public debate about tax issues. We had a limited engagement with the public in Finland, but our interviewees felt there was a healthy climate of discussion about taxation among the wider public. We had expected to find Finland and Sweden to be broadly alike in their openness to discussing taxation policy issues. In fact, our interviewees felt that there was not much discussion about tax policy in Sweden. However, we believe they may have set the benchmark rather high. Our own experience has been that there is, by the standards of most of the countries in our sample, a relatively substantial and well-informed debate about both the general level of taxes in Sweden and the particular forms of taxation.

Across our sample countries, many of those we met linked the deficiencies in the debate about tax policy choices to two factors: a lack of political leadership and a lack of education among the public about taxation that would allow such debate to be effective. Several also criticised the role of the media in creating a climate in which rational debate was difficult.

We agree that changes in these areas could enhance the quality of debate, which we consider to be important to the proper exercise of democratic choice. Much of this report has focused on those who are included and those who are excluded in the tax policy-making process. We believe that the general public is largely in the category of 'outs' and, in the sections that follow, we address some of the issues affecting the quality of engagement opportunities available to the general public, in particular those relating to the media and elections. In doing so, we also consider whether there are acceptable surrogates for the involvement of the general public in the development of tax policy, for

example the trade unions and NGO's, and whether they can intermediate to inform and facilitate the exercise of choice.

No one expects the general public to engage on the minutiae of tax policy. However, there are policy choices to be made and, in a democratic society, there should be a reasonable expectation that – at least for those who would be willing to participate – there should be an opportunity to be involved at some stage in that choice, and an opportunity to be properly informed so they are able to participate in a meaningful way. The process should not automatically exclude or disqualify them.

It is not unusual, particularly in a discussion among experts, to find many who question the role that the wider public does, could or should play in the development of tax policy; and it is not unusual to find that taxation policy choices are discussed in a binary language of what is right and wrong in economic terms. Tax policy has a very significant social dimension that is rarely explored except in the broadest of terms, and where the debate is often too general to inform narrower policy choices governments make. There are choices to be made about the level of taxation: about its incidence and about the redistributive impact that it can have. With good access to information, these are all issues on which the public can reasonably be expected to express an opinion. But they need to be given the opportunity and they generally need intermediaries to play a role on their behalf in decoding the more complex issues. The media has an important role in this process. Taxation is of fundamental importance to the most vital functions of the state. What taxes are levied is not a matter for tax experts alone to decide. Decisions about the direction that tax policy experts should be following are for the people to make. Viewed through a democratic lens, some of the countries that appeared inclusive, particularly of business representation, do not look quite so open.

Of course, no one can deny that there is an issue about education. Education in our sample countries places little emphasis on understanding taxation, despite interaction with the tax system being a near-universal experience. Without some level of public education on taxation, it is difficult to hold a constructive debate. But this is an addressable issue and we recommend that it should be addressed over time. Some basic teaching about taxation can help kick-start a process of re-democratising the tax policy process. It is not necessary that every member of the public should be able to have an informed opinion about the likely effects of, for example, a financial transactions tax or be required to express one. However, the importance of taxation and taxation choices is such that the public should at least have some context in which to consider the approach and instruments that the government might contemplate.

Elections and tax policy

In most countries, the most obvious opportunity for a debate on future tax policy is a national election. It is the moment at which the public can, in principle, make a choice. But to do so, there has to be a clear choice to be made. When a voter goes to the ballot box, he or she is presented with a choice not of policies but of individuals and political parties. This is clearest in majoritarian systems, where voters' views are effectively unrepresented if their chosen candidate is not successful. Even if a citizen backs a successful candidate, the legislative agenda is controlled by a small group of political leaders whose policy authority stems from having received more votes than anybody else. Proportionally representative systems, although better correlated to the expressed party preferences of the public, still emphasise support for a political party, not policy choices. In these systems, the greatest policy influence a citizen can hope to exert is when the political parties provide him or her with clear and differing tax policy platforms from which to choose. Unfortunately, in many of the countries in our sample, political parties rarely announce tax platforms in any detail prior to an election.

Our interviewees reported mixed views on elections as an opportunity for the political showcasing of tax policy intentions. In Finland, interviewees said the political parties did offer real choice, not just in very general terms, but also about specifics. Our interlocutors at the Ministry of Finance felt opportunities for political parties to engage in debate about tax choices in the 2011 national elections had been made easier by the then-recent completion of a broad-ranging review of the tax system, that had made recommendations about specific choices between the taxation of consumption and the taxation of labour. In the post-election period, the specificity of the pre-election debate has been reflected in a detailed tax policy section of the programme for government. In Sweden, taxation policy choices have been widely discussed in election campaigns in the past decade.

In the UK, both of the main opposition parties had set up tax commissions in the years leading up to the 2010 general election to develop proposals for consideration. These were published but neither party adopted them in full as part of their election manifesto. Given the dominance of economic issues at the time of the election, it should have been dominated by questions of public sector funding, of which tax would have been central. However, there was relatively little discussion of tax policy. None of the three major parties publicly committed to reform and the language used in manifestos was vague. The Labour Government's planned National Insurance rise, the rate of VAT, the new income tax band above £150,000 and the headline rate of corporation tax were the main battlegrounds. In general, UK elections are characterised by a lack of debate about specific tax policy choices or the offering of specific commitments to reform. The debate has often been about what particular parties will not do rather than what they plan to

do. Party spokesmen tend to hedge their bets by ‘not ruling out’ certain types of change but this makes it difficult for the public to exercise effective choice and difficult for the winning party to claim a mandate for specific tax reform proposals.

The picture in Germany has varied. As we have noted elsewhere, there has been serious debate about tax choices in some recent elections. A senior figure in the FDP shared with us his party’s proposals for major tax reform, which had been put forward in the previous election. These were substantial and detailed. However, our interviewees agreed that it was rare for policy intent to be specified in an election campaign at that level of detail.

The problem in the US can be more about delivery than commitment. As we have noted, the institutional shape of the US government can mean that neither the president nor the legislature is able to get measures enacted. The system nearly always requires compromise on tax measures and certainly on tax reform programmes. This allows politicians to have individual measures pushed through, often on bills that have otherwise nothing to do with tax. Our interviewees, almost without exception, looked back on the 1986 reforms as a historic moment: when the US finally managed to achieve a compromise that allowed substantial reform. Most regarded the years since then as a serious disappointment and had no great expectations for the immediate future. It remains to be seen whether the 2012 presidential election will provide an exception.

Overall, our interviewees left us with the impression that there is, in most countries, little opportunity in the run-up to national elections to debate serious tax policy choices.

There is, of course, an issue as to whether the media play a role in raising or lowering the profile of taxation policy choices and we touch briefly on that issue in the next part of this section.

The media and tax policy

One of the principal channels today through which the public can be informed about tax policy issues and engage in debate about them, is the media; but a great deal hangs on the quality, accuracy, scope and impartiality of the reporting.

We have not carried out detailed research on media coverage of tax policy issues in our work to date, and have relied substantially on input from interviewees regarding their national situation. However, there appear to be some common issues:

- coverage of tax policy issues is considered to be coloured significantly by the political alignment of the newspapers;
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- tax is covered most effectively in those newspapers that we would call ‘broadsheets’ in the UK. These tend not to be mass circulation papers and some of them have a relatively modest readership so their influence can be limited;
 - reporting of tax policy issues is normally handled by members of the economics team. There are relatively few media outlets that have a journalist who works exclusively on taxation issues or in-house expertise at a professional standard, with which to cover tax policy. This has an impact on the depth and sometimes the quality of the reporting. Many reporters and commentators working in this area will have a general background in economics and, on some tax issues, will have to rely extensively on the analysis and thoughts of others;
 - notwithstanding these competence issues, we were impressed by the command of the subject matter by some of the journalists whom we interviewed;
 - we were also surprised, in some cases, to see relatively weak linkages between the media and the ministry of finance that affected the reporting of tax issues. Journalists sometimes ‘have to rely’ on a few apparently well-connected insiders who pass information on voluntarily. This is, of course, an unreliable method of providing the public with information about tax policy. It is a symptom of the fact that the media, along with all other ‘outsiders’ has limited access to the process of tax policy development in some countries;
 - national newspapers, with or without an international readership, that serve primarily a business audience, tend to provide the most in-depth coverage, including both macro-economic and micro-level issues. Unsurprisingly, business taxation issues dominate coverage. Tax is rarely a headline issue and articles tend to be short and single-issue focused. There is a tendency for them to follow a flow of information provided by government, reflecting the nature of the leadership of the debate on tax issues;
 - relatively few papers are in a position to challenge the government’s economic and financial analysis of particular proposals. Like the external institutions discussed in section 2, they usually lack the relevant data; and few have the necessary detailed knowledge and expertise to provide challenge at that level;
 - broader tax policy issues are usually covered in editorials or comment pieces rather than as news items but there are few days on which tax is considered to merit this level of attention;
 - tax is occasionally a matter for headlines in the mass-circulation newspapers, usually in circumstances where a negative shock is felt to have been experienced. No country is immune to the related emotive reporting;
 - there is a tendency for the line between fact and opinion to be blurred; for estimates of tax impacts to be sensationally reported, and for journalists to reflect known prejudices of readers; and
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- television has become a dominant news provider for a large part of the population. It is generally perceived to provide the same broad spread of coverage on taxation issues as the press, and in some countries, the political influence is apparent.

Reporting of tax issues does, of course both reflect and lead public interest. This can be a circular situation. Only in Ireland did we find taxation was expected to be a front-page or headline issue.

In summary, we found that, in most of our sample countries, tax is considered to be poorly and often partially covered. This is not a surprise but we nevertheless regard it as a matter of concern. For the majority of the population, the media outlets of television, radio, and the press are the main, if not the sole, source of information and analysis of tax policy. Few individuals have both direct access to information and a personal framework of knowledge and experience in which to assess tax issues. In that environment, it is arguably the responsibility of the media to provide objective and insightful coverage; but, of course, it is also incumbent on their journalists to produce copy that sells newspapers and scripts that attract large TV audiences.

The role of organised labour in tax policy-making.

Historically, the labour organisations have played a significant role in government decision-making on economic policy in many countries, including several of the countries in our sample. These organisations often had formal roles in tripartite discussions that also included representatives from government and the business community. This appears to have been particularly important in Northern European countries. However, the general decline in trade union membership in many countries has created a climate in which it has been possible for them to be sidelined in the tax policy debate and that has often been the case.

The labour organisations are regarded as more challenging to deal with in the policy-making process than business, and although many European governments are open to and recognise the necessity of engagement with them on tax issues; the engagement with organised labour is less frequent and regarded as less productive than that with much of the private sector. Governments in most countries would say they do not exclude organised labour from participating, through consultation or informal approaches, in tax policy-making. However, we have observed that they are now a relatively small voice among many in the consultation process.

In part, this is because governments tend to consult much more extensively on the minutiae of business taxation, of which the labour organisations have less detailed knowledge,

than on the taxation of individuals, where the labour organisations have much greater expertise.

To help address the issue of expertise, the labour organisations often draw on external advisers to provide support in areas where they recognise that they have less capacity but, in some cases, their advisers have also lacked the necessary skills or experience to engage at an appropriate level.

The unions frequently become involved on broader economic policy issues where tax has a place and, in some countries, they have taken a high-profile position in relation to international tax issues, particularly where there is a social dimension. A lot of recent attention has been given to: taxes on banks and financial transactions, the role of tax havens and tax avoidance.

We can recollect only two countries in which the role of organised labour in tax policy-making was raised by an interviewee without prompting, and we have found little evidence of organised labour being effectively involved in tax policy-making today across our subject-countries.

Nevertheless, the labour organisations fulfill a representative role for large sections of the population on a wide range of issues and many would regard them as being in a position to make a strong contribution to tax policy development. We believe that, in most countries, the democratic deficit in tax policy-making is such that there is a clear argument for involving them more fully in the tax policy-making process. Over time, greater involvement will result in higher standards of engagement, as it has for business representatives in the private sector, as well as better understanding and buy-in to policy outcomes.

The contribution of civil society

Many of the points that are relevant to the fuller involvement of trade unions in the tax policy-making process are valid in a similar way in relation to the NGO's: civil society. Most NGO's exist only because of the public support that they enjoy; and much of that support comes from a sense among their membership that they are doing and saying what the members and donors would like to feel that they were doing and saying as individuals. They recognise that as individuals they lack the time and opportunity, or perhaps the expertise, to do it themselves and that the NGO's are generally equipped to do it better. They are free to choose whether or not to provide financial support to them. The organisations derive their legitimacy from their membership.

A large number of NGO's seek to make a contribution either to the debate about tax policy and policy choices, or to play a role in its development. In countries where there are formal consultation processes on tax policy issues, they have a broadly similar opportunity to the labour organisations to make a contribution. However, it is in the setting of agendas and priorities that NGO's are typically most influential. They aim to influence the policy debate, often without reference to a current government proposal – and in that, some of them are expert. Their campaigns are designed to attract public attention, support and funding; and they use the strength of that public backing to try to influence government policy. NGO's have historically made a significant contribution to the push for wider use of the tax system to achieve environmental objectives, and, in relation to the tax system in our subject countries, currently have a wide range of campaigning activities.

One of the most important areas in which some of them are active today, either nationally or internationally or both, is in support of a tax on financial transactions as a means of funding work towards the improvement of conditions in developing countries. They typically employ outside experts, working with their own economists, to produce data and analysis for working with governments. This particular campaign has been successful in raising the profile of the issue in the public mind, with polling data suggesting that a majority of people in a number of major European countries now support the tax. It has also ensured that the tax remains on the agenda of both national governments and some international institutions.

However, outside the political domain, their work is less influential. For most policy-makers they are simply lobbying organisations, and officials give them the same reception. They have a specific agenda and the outside expertise that they use is rarely considered to be truly independent. The analysis that they present is seen as lacking the depth and detail that policy-makers need to evaluate a proposal. They are often regarded as difficult for policy-makers to deal with and their access to the media can make serious engagement problematic.

They play a relatively small role in the normal processes of consultation in which governments engage. Like labour organisations, they tend to suffer from the fact that governments often focus consultation on business tax policy issues – where they are less involved and less expert – than on the range of issues that are more central to their purpose. In the sample of countries covered in this study, they are typically not considered to be major players in consultation or in policy development by policy makers. However, their importance in the overall process of tax policy-making is fully recognised.

The use of broad-based reviews to promote public discussion about tax policy choices

Earlier in this report we have discussed the use of independent or semi-independent reviews of the tax system as a method for developing tax policy. There have been several examples in countries that are the subject of this study. They include the Henry Review in Australia, the Mirrlees Review in the UK and the New Zealand Tax Working Group. We believe that reviews of this type can also have a role to play in improving engagement between the taxpayer community and government in relation to tax policy choices.

Part of their value lies in the direct participation of a variety of organisations in the reviews themselves, as shown in the Henry Review¹⁵⁸ and the 2009 Irish Commission on Taxation¹⁵⁹. However, there can also be significant and wider value for the government and the taxpayer community in the engagement to which the review may give rise. To a large extent, this will depend on the nature of the review and the transparency of the process. The Mirrlees Review has brought together an outstanding group of experts in the field of taxation policy and the work is of great interest to the taxation specialists at whom it is aimed. The core group of authors and editors have worked hard to bring transparency into the project by making draft texts for each chapter available on their website. They have also held seminars at different stages to launch their work and reach a wider audience. There is no doubt that it will be influential and we are aware that policy-makers and politicians alike recognise its importance. However, it is not an easy document with which to engage the general public, nor was it ever intended to be.

By contrast, the review undertaken by the Tax Working Group in New Zealand did give rise to considerable public debate. The group was committed to transparency and undertook to publish all the papers that it commissioned as part of the process. A number of the members of the group were active in the media, both press and radio, addressing the issues covered by the group's work and speaking in support of its outcome. The result was a much better understanding among the public of the issues and choices.

We believe that both types of review have great value but, in the context of encouraging public engagement, there is a need to bring the intensely academic into the public domain by making its conclusions more accessible. This undoubtedly involves some loss of fine detail but we believe that public benefit is sufficient to justify it. We strongly support the idea that governments should periodically encourage, fund or undertake a broad-ranging public review of the tax system, and make that recommendation later in our report. The review should be undertaken with the specific objective of drawing the public into debate. We believe that, in conjunction with other recommendations that we make, this will help

158 Henry Review- Australia's Future Tax System, Report to the Treasurer, December 2009, page 122

159 Commission on Taxation (Ireland)- Final Report 2009, page 476

strengthen the legitimacy of the tax system and enable it to be shaped more easily to fit with changes in the economy, society and in people's needs and aspirations.

Summary

In this section, we have explored, in our subject countries, the similarities and differences in the methods through which governments engage with the taxpayer community.

We have found considerable variety in the practices regarding involvement of the business community in development of tax policy. This is surprising in a world in which governments consider themselves to be under significant pressure from international businesses to conform to international norms. On balance, we believe that engagement between the business community and government is healthy and tends to lead to better tax policy outcomes as well as satisfying the need that representatives of business feel to be involved in shaping the economic environment in which they operate. It can have benefits in the political world as well. We believe that there will be advantages in some countries from governments taking a more open approach to consultation with business on tax policy issues. We also believe that there will be advantages in all countries that undertake consultation, in moving to a more formal approach with a clear process and timetable. The approach in each country does not have to be identical, but we believe there will be a natural convergence over time, at least with regard to the structure and phasing of consultation.

We have again found different standards and practices in the approach that governments take in our sample countries to the process of engaging with others in the taxpayer community. In our short section covering this area, we have highlighted the broader issues for democracy about which we have some concerns and have suggested a number of ways in which the deficiencies in the current situation could be addressed.

We have made a number of recommendations arising from our work and these are to be found in the final section of this report.

5. RECOMMENDATIONS

It will be clear from the recommendations that follow that we believe that there are improvements that can be made in the tax policy-making framework in most, if not all, of the countries that we have visited in the course of this study.

Some of our recommendations are quite fundamental. Others are modest by comparison and have an impact only at a detailed level.

Many of the recommendations that we make are interconnected. Some of them would be liberating, in the sense that their implementation would allow a cascade of benefits to flow down through different parts of the process, achieving a significant step-forward in quality.

We recognise that, in some cases, we are recommending change in areas that have their own long-standing traditions and we understand that long-established procedures are not going to be changed without considerable further thought and discussion. We also recognise that there is likely to be challenge and opposition to some, at least, of the changes that we recommend and we have tried to be clear in our explanations of why we believe change to be necessary.

In the difficult economic climate in which we are presenting our findings, we are aware that most of our proposals would require additional resources: both people and money.

For that reason, we start by setting out our thoughts on funding and resources.

FUNDING AND RESOURCES.

We recommend that governments review the allocation of funding and resources to the tax policy-making process in order to achieve the minimum standards advocated in this report.

Many of the observations and recommendations included in this report relate to problems that, from our interviews, we know policy-makers themselves would want to address if they had the resources. They are often acutely aware that current processes and institutions are inadequate for the effective development of tax policy. This is not just true in the very smallest nations. Some of the largest finance ministries and treasuries have problems of

capacity. Tax policy-making is a much more challenging and demanding process than many outside it allow, and requires substantial resources.

The staff involved in developing tax policy varies enormously from country to country: in numbers, in expertise, and in training and length of service. Whilst concerns are often underplayed in public, the human resources of the policy-making department are usually the single most important determinant of how well or badly policy is made.

There is sometimes an imbalance between resources devoted to the tax policy-making process and to other functions of government. To put the issue in perspective, in Whitehall today, a group of fewer than 200 people in the UK Treasury are responsible for ensuring the successful design of the UK tax system; which accounts for effectively all government revenues and effectively all of its spending power. Most of the rest of Whitehall – many thousands of civil servants – is responsible for overseeing how those revenues are put to work.

We do not recommend in this report that less attention be paid to other functions of government, but we do recommend some additional resources be made available to improve the tax policy-making process.

Some of our recommendations have a very modest cost, but potentially large benefits. For example, wider and more effective use of consultation, although resource-intensive in itself, draws in real external expertise at a low-cost to government and generally contributes to better policy outcomes. Better internal communication within government generally reduces wasted expertise and underutilised capacity; improving value for money.

There are several areas in which we believe that an increase in funding could make a significant difference. Based on the interviews we have undertaken, we consider that there is a strong case in most countries for:

- an increase in the numbers of appropriately qualified staff employed in tax policy-making in order to enable governments to meet the current challenges more effectively; and believe that additional training for the staff in a number of areas will help improve their productivity;
 - an increase in funding to support our recommendation for the much more extensive use of independent, post-implementation reviews which would, we believe, bring substantial long-term benefits through strengthening the evidence-base for policy-making; and
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- additional funding to support our recommendations that are aimed at enhancing parliamentary scrutiny which we believe will address real concerns about the value added by the parliamentary process.

We believe that the combination of reform and modest additional resource-allocations recommended in our report will be effective in most countries in helping to raise the quality of tax policy-making, and that there is likely to be a positive impact on policy outcomes. Although the current economic and public climate is not favorable to calls for increased government expenditure in any area, the argument for allocating more funding to the tax policy-making process is strong. Tax policy development is extremely complex in the modern world and the revenue is vital to the effective functioning of the state. Errors and policy failures can have a high public profile and are potentially extremely costly. If increased expenditure were only to reduce the incidence of errors and oversights, the potential benefit to revenue integrity would easily outweigh any costs of investment.

We believe the recommendations made here would lead to more efficient, predictable and consistent tax policy-making and would have net financial benefits in reducing waste and failure in tax policy.

INTERNAL INSTITUTIONS OF GOVERNMENT

We have five areas of recommendations regarding the part of the tax policy-making process that takes place within the framework of government. These cover:

- The coordination of the tax policy-making process within the internal institutions of government
- The involvement of the tax administration in the policy-making process
- The staffing and organisation of the policy-making department
- The post-implementation review of tax policy changes
- The mapping of the tax policy-making process.

Coordination within government

We recommend that procedures be introduced to ensure proper inter-departmental coordination in the prioritisation and development of tax policy proposals.

Ideally it should combine the best features that we have found in our study:

- the use of a formal committee structure involving, at a minimum, advisers and senior officials, to ensure that priorities are identified and agreed in advance of significant work on policy proposals being undertaken; and to make other government departments aware of the development and progress of tax policy proposals that may have an impact on their areas of responsibility;
- the sign-off at ministerial level of proposals that have an impact on the work of departments other than the finance ministry/treasury; and
- the sign-off of all tax policy proposals at cabinet level, in advance of their publication.

The development of tax policy in many countries is highly centralised. Proposals are created, usually within the ministry of finance or treasury, by a group of people on whom there is no organisational obligation to seek the perspective or input of other institutions within government; even where there will be direct effects on areas of activity for which they have policy responsibility.

This recommendation recognises that there is often today an implicit and sometimes explicit assumption made in the tax policy-making institution, that tax and budget issues are too sensitive to be shared with other departments. We believe that concern is often exaggerated and that better coordination between government departments is likely to lead to better policy outcomes; especially in areas where tax changes are being made in order to achieve behavioural outcomes. The behavioural issues are often better understood outside the ministry of finance.

We consider that there is potentially significant value to be added by engaging government departments that have an interest in the policy content of tax measures earlier and more fully in the policy development process. This should include not just those departments responsible for businesses, the workforce and welfare; but also those with non-financial perspectives on policy choices. The more centralised and exclusive the tax policy-making process; the greater the risk that valuable information, analysis and perspective will be lost to policy-makers.

The involvement of the tax administration

We recommend that steps be taken within government to improve coordination and co-operation between the department that has the lead role on tax policy and the tax administration, with a view to reducing both formal and informal barriers that currently exist.

We believe that two factors are particularly important to achieving better outcomes:

- the tax administration should employ senior officials in each of the main policy areas. These should normally be individuals with experience of working directly with taxpayers. They should be involved in all policy-related meetings and discussions and have the same authority as their counterparts from the department with the policy lead. This will allow the tax administration to form its own view of the impact of policy proposals. It will enhance the opportunities for challenge to policy ideas; and
- the career path of officials in each department should allow opportunities for individuals to work in other departments, either on assignments or on a longer-term basis. This will strengthen the experience base of both departments and allow the recruitment of a broader range of talent into the tax administration.

In many countries, the tax administration has only limited involvement in the development of tax policy. Based on the evidence that we have seen, we believe that this significantly reduces the opportunities for challenge within the policy-making process and is likely to lead to suboptimal policy outcomes.

The tax administration has a natural interface with taxpayers and usually a better and more detailed understanding of how policy works at an implementation and operational level. Its early involvement in the design of tax policy proposals can help sharpen the focus of measures; and reduce the risk that policy measures are difficult to apply or enforce, or otherwise fail to meet their behavioural objectives.

While focusing the tax administration on process issues can lead to enhanced outcomes on the collection side; the separation of the tax administration from policy development can weaken the transmission of useful policy-related information to policy-makers.

We have seen evidence that the removal of all policy work except 'policy-maintenance' from the tax administration can lead to demoralisation among the workforce; and a sense of being disregarded by the policy-making department. During this study, we have seen a number of situations in which the personal dynamics of meetings between tax administration and policy people have clearly been affected by these issues. It is a near-universal complaint of high-level officials in the tax administration that their potential contribution is undervalued and that policy outcomes are weaker as a result.

We have found little evidence that the separation of the two departments has benefits for policy outcomes.

Staffing and organisation of the policy-making department

One of the recurring themes of this report is that the policy-making process is too narrowly based in almost all of the subject-countries and that, as an approach to making policy, it lacks adequate challenge.

In this section, we make seven recommendations regarding the staffing, training and organisational structure of the work in the main policy-making department that we believe would help counter those tendencies.

These are:

- staff should be recruited from a wider range of backgrounds
- training should be expanded to encourage an inflow of alternative experience
- staff working in different tax policy areas should be encouraged to discuss their work with each other
- greater consideration should be given to the respective roles of lawyers, economists, political scientists and generalists
- the organisational structure should include at least one oversight role for an experienced economist
- alternative models for drafting tax legislation should be considered
- staff at every level should be trained in consultation techniques and the handling of external relationships.

The objective and rationale for these recommendations is as follows:

i. Diversity of staff

We recommend that staff should be recruited to policy-making posts from a wider range of backgrounds.

During our work, it became clear that the officials whom we met were, both within countries and across countries, very similar people: intelligent, well-informed, with a successful academic background and a strong public service ethos. They had attended similar universities and many of them came into government service immediately after graduation and had continuity of employment there. In some countries, the officials whom we met were almost all male. In others, they were almost all female.

We believe that the similarity of backgrounds and pattern of shared experiences can lead to a strong sense of cohesion among policy teams and a well-developed feeling of common purpose. However, we also believe that it can restrict the inflow of new ideas and methods; reinforce existing thinking; and make challenge to emerging proposals more difficult. For those reasons, we recommend there should be greater diversity in recruitment.

Taxation is a specialist field, and policy-makers need to have particular knowledge and training in order to be effective. Much of this can be acquired only through particular educational choices and by people with high levels of intelligence and educational attainment. For those reasons, diversity of recruitment can be difficult. However, we believe that the relevant departments should attempt to draw recruits from as wide a field as circumstances allow and aim to provide a broader range of training internally – partly through workshops, round-tables and seminars, and partly through work experience – in order to ensure that diversity of backgrounds on recruitment does not result in lower levels of skills within the tax policy teams. We have additional recommendations regarding training which will be covered separately.

One of the ways in which tax policy-making departments can achieve greater diversity is by bringing in more people at an experienced level. Senior level recruitment always requires careful handling of cultural differences and can sometimes fail because of those differences. However, those differences can often be a positive feature, especially when coupled with special skills, insights and expertise that is not otherwise available in the department. These attributes can be found among: academics, tax professionals in business, law and accounting firms, in think tanks and even in other government departments. In general, these organisations are underused as possible sources of employees.

The private sector is perhaps the most obvious source of people with the requisite skills and experience to meet the needs of the department. Secondments are potentially a useful way to borrow expertise from the private sector without having to try to compete on salary and some, but by no means all, finance ministries have at least experimented with private sector secondment arrangements. There are some risks on both sides with this approach and not all secondments are successful. However, we believe that with adequate safeguards in place, governments should attempt to make wider use of this source of expertise and the alternative perspective it can bring.

These types of secondment are easier where there is already an effective working relationship between government and the private sector on tax policy issues but in all circumstances they require a commitment to making best use of the individual secondees.

There is always a risk of cultural isolation and particularly of a secondee's views being marginalised.

The permanent appointment of private sector experts should also be encouraged. There is no shortage of individuals within the private sector who are motivated by a desire to see improvements in the tax system and for whom a lifetime corporate career may not be inevitable. It is often the inflexibility of the private sector that presents the main obstacle to the effective use of these people's skills. In most countries, it is very rare for individual professionals to move into a government role from the private sector and later move back to the private sector. The skills acquired by the individual are often undervalued in the private sector, and a period spent in government is frequently seen as a career break. That effectively presents individuals with the choice of staying in the private sector or making a one-way journey into government.

If there was greater fluidity between the public and the private sectors, it would become much easier and choices would not be irreversible. Sufficient people with private sector experience would be willing to spend part of their career doing rewarding and well-respected government work; perhaps returning to the private sector with an enhanced understanding and experience that would be valued there. The US provides the best example of a country where this can happen. Legal experts can, for example, be drawn in to the Treasury from the private sector for a number of years, to return, better and differently qualified, to high profile roles in professional firms and large businesses. We believe that the wider application of this practice would help to improve the quality of tax policy-making and introduce fresh thinking and greater challenge.

Some of these considerations also apply to the recruitment of academics into policy-making departments. Economists and lawyers can bring high-level expertise into both the theoretical and practical aspects of tax policy-making and help strengthen a department's capacity to translate vision into law. In our view, there is a particular role for economists of the highest calibre in providing direction and oversight to the development of tax policy.

Essentially, tax policy-making departments need a broader range of expertise and experience within their staff. Whilst policy staff tends to be intelligent, well-educated and strongly-motivated, the broad range of tax experience is not fully represented among them. We consider that the quality of policy-making would improve if there were greater diversity in recruitment and appointments.

ii. Training

We recommend that staff training should be expanded to encourage an inflow of alternative experience.

We have set out above our concerns that departmental thinking on policy issues can be self-reinforcing as a result of a lack of diversity in the background and experience of staff.

We believe that one of the ways of tackling this can be through training, and that it is at least as important to apply this at a senior level as to more junior staff.

Staff training in policy departments varies internationally. We believe that, in all cases, it should include three elements that will encourage the inflow of new ideas and alternative experience:

- training with private sector experts
- training with academics
- training with similar levels of staff from the policy-making departments of other governments.

Private sector engagement with policy-makers in a training forum will tend to enhance policy-makers' focus on detail and consequences. In this setting, it will come with less baggage than interaction that occurs in the context of a government-led consultation process.

Training with academics can potentially strengthen thinking at both high and detailed levels and give policy-makers more direct access to new academic research and research techniques.

Training with policy-makers from other governments can bring fresh and often detailed insights about different approaches to common problems.

In all three cases, we believe this will tend to enhance the generation of new ideas and the process of challenge within the policy-making teams.

iii. Intradepartmental communication

We recommend staff working in different tax policy areas should be encouraged to discuss their work with each other on a regular basis.

We believe that policy-making departments should provide substantive opportunities for both formal and informal discussion between policy-makers working on different tax proposals and on different taxes. In the academic world, presentation and discussion of work to colleagues and peers has an important role in raising standards and is seen as part of a necessary process of challenge to the presenters. Policy-makers' ultimate audience is rarely expert on a technical level; and so internal challenge in this form at an early stage in the development of a proposal is potentially very valuable.

This type of interaction should also provide opportunities for officials working in related policy areas to identify early risks of conflict or inconsistency.

iv. Economists, lawyers, political scientists and generalists

We recommend that greater consideration should be given to the respective roles of lawyers, economists and generalists within the policy-making process and to the role of those with other specialised professional training, such as accountants.

Tax is not a discipline in its own right. At an academic level, it falls uncomfortably between law, economics and social and political science, and some parts of it lean on accounting and financial training. Tax policy-making is necessarily multi-disciplinary. We believe that a successful tax policy-making department should embrace economics and law at every level. The thinking of social and political scientists is normally provided through the political team of ministers and advisers and often helps set the overall framework for policy.

As we have noted in our report, most government departments have an employment bias, whether intentional or not, towards economists, lawyers or generalists. The balance varies significantly by country. The US Treasury appears to come closest to achieving balance, although not necessarily at every level. The UK is dominated by generalists and in most of the continental European countries we visited the main officials in the policy-making department appear to be lawyers. Where lawyers dominate, there is usually a separate group of economists to whom policy proposals are referred.

It has been clear from our meetings that departments that employ officials overwhelmingly from a single discipline often lack a broad perspective and that, as a consequence, the range of policy options that they consider may be more limited than it could be. Embedding more staff with varied skills in policy-making teams would strengthen the development of ideas and provide more challenge to existing thinking. It could make for better policy quality.

v. The role for senior economists

We recommend that the organisational structure of the policy-making department should include at least one high-level oversight role for an experienced economist focused on tax policy.

We believe that the effectiveness of some tax policy-making departments is undermined because:

- tax policy-making is not properly linked to economic policy objectives;
- the economic framework for tax policy teams is not communicated effectively to those teams; and
- economic expertise is too often directed at proposals with a relatively narrow scope rather than to system-wide issues.

We believe that the appointment of high calibre experienced economists to positions that provide oversight of the whole tax policy-making function would help overcome those problems.

vi. Legislative drafting

We recommend that policy-making departments should consider alternative models for drafting tax legislation.

As noted in the main body of our report, we found quite different drafting practices in the countries we visited. Each of those practices has evolved in the broader framework of government procedures in those countries, and each approach has some strengths and weaknesses.

Based on the evidence of our country-visits, there are at least five ways of approaching the drafting process:

- the tax legislation is drafted within the ministry of finance/treasury by the policy team responsible for the issue (eg Germany);
 - a separate, specialist team of parliamentary draftsmen produce the draft legislation on the basis of instructions from the policy team (eg UK);
 - external private sector firms undertake the drafting (several countries have at least experimented with this);
 - the legislation is drafted by the commission of inquiry team leading the work on the development of policy (e.g. Sweden); and
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- the legislation is drafted by the ministry of finance but scrutinised by an independent arm of government (e.g. France).

Setting aside the option for private sector firms carrying out the work – an arrangement that has not found universal favour among government officials – the other four options represent two fundamentally different approaches.

Westminster-type systems with a separate office of parliamentary counsel implicitly emphasise drafting issues over policy issues. They rely on the quality of instruction and re-instruction between policy-makers and draftsmen to ensure policy intent is fully captured. In practice, unfortunately, the draftsmen are often involved relatively late in the process and have little chance to craft legislation that embodies all the qualities considered desirable. In the UK, recent changes in the publication schedule for draft finance bill clauses may ultimately lead to improved drafting and could be more widely adopted. However, with this approach, there is arguably less time for the initial draft to be made right.

The other approaches seem implicitly to emphasise policy issues over drafting. This helps explain the fact that in most continental European countries, policy makers are from a legal background and consider legislative drafting to be a natural part of their job.

In terms of policy development, we consider there to be two important principles that need to be reflected in the choice of drafting process:

- it should ensure legislation always accurately and completely transcribes policy intent into law; with consistency of concepts and terminology between policy pronouncements, legislation and administrative guidance; and
- it should provide additional challenge to policy thinking.

The first of these might be considered more likely to be implicit in a situation where the ministry of finance has end-to-end control. But this benefit could come at the expense of challenge. As noted elsewhere in our report, the authors believe that challenge strengthens both policy development and policy outcomes. We, therefore, favour drafting processes that enhance opportunities for the questioning of policy. We see that opportunity in the UK system; where the process of officials writing instructions that are then scrutinised by parliamentary counsel allows scope for challenge. We also see it in, for example, the French system that requires all legislative drafts to be reviewed by the *Conseil d'état* before publication. For challenge to add real value, it is normally desirable for drafting issues to be addressed before policy detail is finally settled and, in practice, neither the

UK system nor the French system may fully allow for that to happen. But in principle, we believe an approach that involves some separation of the drafting function from the main policy development team is to be recommended.

vii. Consultation and external relationships

We recommend that staff at every level should be trained in consultation techniques and the handling of external relationships with taxpayers and their representatives.

Consultation between the government and taxpayers, at least from the business community, has become more widespread than it once was. Elsewhere in this report, we recommend that policy-making departments should regularly consult taxpayers on specific policy choices and should be open to engagement with taxpayers on a broad range of tax policy issues. We believe it would be appropriate for staff to have training in these processes, in order to ensure the maximum value is obtained from both formal and informal contact with taxpayers, and to safeguard staff on issues of propriety in relation to these contacts.

Post-implementation review of tax changes

We have three recommendations regarding the implementation of a programme of post-implementation reviews of tax changes:

- i. We recommend that there should be a post-implementation review of all significant tax policy changes to ascertain whether the measure is achieving its policy objective.*

We believe that this is a particularly important recommendation for measures that provide tax relief with the objective of generating a behavioural response.

- ii. We recommend that the review should be carried out independently of the policy-making department and that the scope and timing of this review should be set out in the relevant legislation.*

The timing will not normally be the same for each measure but will vary according to expectations regarding behavioural changes.

- iii. We recommend that during the policy development process, a standard part of the evaluation process should be consideration of whether a sunset clause would be appropriate for the measure in question.*
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The combination of a mandatory post-implementation review and a sunset clause would allow proper consideration to be given to whether particular tax measures were delivering value for money; and would aid the process of tax simplification by giving a predictable method of bringing to an end provisions that might otherwise simply add unnecessary complexity to the system. It would also prevent interested parties from taking for granted the continuity of particular reliefs. We acknowledge that, in certain circumstances, there might be a risk that a sunset clause would have a negative impact, especially where the continuity of measures could be significant for investment. And there is, of course, a danger in the overuse of sunset clauses. Critics of US tax policy have noted the tendency for Congress to reapprove ‘sunset’ measures automatically. There are now more than 100 such measures, and Congress arguably lacks the resources or will, to adequately evaluate all of them. They are simply passed over to deal with later. In tax policy, there are always issues around resource and political behaviour. However, we consider that even the momentary pause for reflection that a sunset clause can require; is a better alternative than simply allowing the unchecked continuance of an unnecessary or over-generous measure.

We believe that the evaluation of a tax measure after it has been given time to have an effect, is an essential part of the policy-making process. Policy makers should embrace its value as a feedback loop into policy development. Post-implementation review should become ingrained in the policy process. It would bring governments one-step nearer to the holy grail of evidence-based policy-making.

We also believe that, widely and properly used, post-implementation reviews would become a valuable tool in the scrutiny process. In particular, we envisage they would allow ministers and senior officials to be questioned more effectively about whether policy was delivering the anticipated benefits and whether further changes were likely to be required.

Public expenditure is generally the subject of close scrutiny. We see no valid reason why tax expenditure – the cost of tax measures that give relief from normal levels of taxation – should not face the same scrutiny. Governments should be required to evaluate the policy impact against expectations and provide justification in public for the continuation of the measure and the related costs.

Mapping the tax policy-making process

We recommend that governments take the necessary steps to map fully their current tax policy-making process.

We believe that tax policy-making should be regarded as a single continuous process: from the development of the initial idea, through policy analysis and consultation, the drafting of the legislation, scrutiny and enactment by the legislature, to the subsequent review of its success or failure as a policy instrument. Every stage of this process has an impact on the next. Facilitating a smooth transition between stages, and good communication between those responsible for different aspects of the process has been a recurring theme in this report.

New Zealand's Generic Tax Policy Process is perhaps the best example of how policy ought to be documented. Acknowledging that several phases of policy development were inadequate, a senior and experienced policy maker was commissioned to create a new model of tax policy development with a group of distinguished and strong-minded individuals in support. We believe that other governments could usefully follow this example.

Addressing and mapping tax policy-making in this way would lead many to reach the same conclusions as we have done about its structures, processes and governance.

External institutions

Based on evidence of the countries we have visited, we believe that academic and other external institutions have the potential to make a significant, independent contribution to government thinking and the broader tax policy-making process – their input should be used more extensively.

We have three recommendations that affect the role of external institutions in relation to tax policy-making:

- academic institutions should be given a substantial role in the post-implementation review of significant tax policy changes;
 - academic institutions should play a larger role in providing early-stage analysis of tax proposals particularly where government resources are limited; and
 - access to 'confidential' data for academic research on tax policy issues should be improved and more data should be published as a matter of course.
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i. Post-implementation reviews

We recommend that academic institutions should be given a substantial role in the post-implementation review of significant tax policy changes.

We have recommended elsewhere in this report that there should be a statutory requirement for a post-implementation review of the policy impact of each significant new tax measure. We have also recommended that that review should be carried out independently of the policy-making department.

We recommend here that the review should normally be carried out by means of a properly funded and resourced study by an academic institution, although in some particular circumstances, a professional firm might be an effective substitute – so too academics and professionals acting together.

The choice of institution should be based on analytical expertise and independence from both government and client interests.

ii. Analysis for policy proposals

We recommend that academic institutions should play a larger role in providing early-stage analysis of tax proposals, particularly where government resources are limited.

Some governments lack the internal capacity for extensive pre-legislative analysis of the likely impact of particular proposals especially when policy-makers are under pressure in a number of areas. We recommend that, where human resources are limited within the policy-making department, carefully managed use be made of external academic institutions to make up the deficiency. Again, there may be circumstances in which professional firms or academics and professionals acting together might be an effective substitute.

The quality of policy decisions generally improves with deeper analysis and, used as an input to decision-making, policy-makers will have few reasons to feel threatened by this type of independent analysis. Academics and policy makers have different roles to play. Outsourcing evaluation to academic institutions could provide policy makers with accurate and independent information for which they lack the internal resource. Bringing external agents into policy development at this early point could also pave the way for easier involvement of external institutions after implementation although it may be that different external institutions are used for the two roles.

iii. Access to data for research purposes

We recommend that access to 'confidential' data for academic research on tax policy issues should be improved and more data should be published as a matter of course.

During our work, we found that data access was a frequent topic of conversation when discussing the role of academia in policy development. The sensitivity of taxpayer information is a common explanation given for reluctance amongst policy-makers to engage with academia and other external bodies. Academics also complain that they are not given the opportunity to examine data they believe present few ethical or practical difficulties.

There have already been some useful and productive data sharing agreements between governments and external institutions that provide templates for engagement. If some academic organisations and some governments are capable of achieving this, then, subject to local legal restrictions, it would seem possible for the same to be achieved elsewhere, with suitable precautions to avoid unaccountable institutions receiving taxpayer information. This would support a more valuable contribution from the academic institutions. Changes are also needed to extend the range of data that is collected, and improve the form in which it is collected to facilitate academic research.

We recognise that there is a cost associated with doing this but believe the long-term benefits are likely to outweigh those costs. We also recognise that greater availability of data would normally require parliaments to take a view on what is an acceptable level of confidentiality around taxpayer information. This is a difficult issue, particularly in some countries. Nevertheless, we believe that governments can and should begin to work towards achieving the goal of providing better data access.

The issue of access to data is not, however, simply related to taxpayer confidentiality. A frequently-voiced concern from those outside government is that it is often impossible to understand how a particular cost or revenue yield has been attributed to a particular tax proposal on the basis of information put into the public domain. This often makes acceptance of outcomes by interested parties difficult to achieve. We believe that this is largely unnecessary. If estimates of costs or yields have been properly prepared, as they should be, and are published in budget documentation, there seems little reason why the underlying analysis should not also be made available – including the assumptions on which it is based. This would make a significant contribution to better scrutiny and external analysis. The improvement in transparency should both drive up standards of costing measures and give greater confidence to those outside government.

We believe that, taken together, our three main recommendations in this area provide an opportunity to establish a virtuous circle involving: policy makers, evaluation, external institutions and funding. The end result of which will be stronger institutions and better tax policy.

Setting aside the attitudinal issues, which we have covered in section 2, three main factors limit the involvement of academic institutions in the tax policy-making process today:

- a lack of adequate funding;
- a lack of ‘closeness’ to the government’s policy programme; and
- limited access to relevant data.

These proposals would potentially eliminate all three.

Academic institutions often rely on funding from grants and donations, together with an irregular flow of funding for particular projects. This limits their size and ability to attract top quality people. The establishment of a regular programme of post-implementation review work and pre-legislative analysis, would potentially strengthen these institutions and give them a new flow of funding that would enable them to address these issues of scale and resource.

Such a programme would also necessarily draw the institutions into policy-relevant work. By doing so, it would address concerns we have heard from both government and academia during this study, that government officials feel that much of the work done by academics is not sufficiently relevant or close to policy; and the sense among academics that there is little point in doing policy-related work because governments simply do not listen to them. This type of arrangement would draw the academics into the policy environment to do post-implementation review work and pre-legislative analysis. This would allow them to build up their staff and capability; and by engaging in this type of work, they would become more directly useful to policy-makers.

In a similar way, the requirement for academics to have good access to relevant data as part of this process, subject to whatever safeguards were felt necessary, would enable their contribution to policy thinking to be more robust and evidence-based and would increase its practical value.

We strongly recommend that external institutions be used in this way. We recognise that there would be an additional expense for government as a consequence but believe that

by reducing the often hidden cost of policy failure or sub-optimisation, this would be a change that could easily pay for itself as well as improve the structure and governance of the policy-making process.

Legislatures

In our sample of countries with parliamentary systems, the majority of people we interviewed considered parliaments to contribute very little to the tax policy-making process; either at the policy development stage or the scrutiny stage.

There is some disagreement among commentators about what the role of a parliament should be in relation to tax policy. We have discussed the differing views in the main body of the report. We favour a broad interpretation of what parliaments can do and would like to see them take on a more substantial role in relation to tax policy. That will require them to assert greater independence from the executive. Our recommendations lead in that direction.

We make four recommendations regarding the role of parliament in tax policy-making. These are:

- at the beginning of every legislative period, the government should outline to the legislature its plans for tax reform;
- there should be a separate parliamentary committee dedicated to taxation issues;
- parliaments should have access to a source of professional support on taxation issues independent of the executive; and
- procedural exceptionalism should be limited and only used to encourage rather than restrict scrutiny.

We believe these changes could transform the way in which parliaments work in relation to taxation policy.

i. Statement to parliament regarding the direction of tax policy

We recommend that at the beginning of every legislative period, the government should outline to parliament the intended direction of tax policy

We believe that this proposal would have significant benefits in a number of dimensions in those countries where the taxation programme of the government is not already documented elsewhere.

For members of parliament and, in particular, parliamentary committees, it would allow the development of an orderly programme of scrutiny of policy direction that could be linked to examination of the government's broader economic policy agenda. It would allow parliamentary committees, with appropriate support, to consider alternative proposals that might better deliver the government's intended outcomes.

Within the executive, it would encourage a more cohesive approach to policy development and encourage those with policy authority to view taxation reform systematically.

It would enable external institutions to shape their research programmes to dovetail more effectively with the government's agenda. This would allow these institutions to become more directly policy-relevant; strengthening their capacity to play a significant role in policy development.

Most of all, the expectation or requirement that a new government would lay out the direction of tax policy at the start of a parliament would encourage political parties to address the issues more fully and perhaps more openly before a national election. Currently, few political parties are willing to commit to specific tax reform, even subject to budgetary constraints, and most rely on rather vague statements about competitiveness, simplicity, efficiency and tackling tax avoidance. This provides very little information about what a political party would do if elected. If this recommendation were to become established practice alongside the other recommendations in this section of the report, the quality and scope of scrutiny within parliament could improve markedly.

In the UK, the principle underlying this proposal has already been embraced by the present government through the publication of the road map for corporation tax. The intention with that document was to set out a path that the government intended to follow with the implicit assumption that other factors remained broadly constant in relation to expectations. There is, therefore, no reason why it should not embrace the broader principle recommended here.

In many European countries, a process of post-election negotiation among potential coalition partners results in the publication of a broadly agreed set of tax policy proposals that can have the same benefits for all participants in tax policy debate as those described.

In the US, the position of Congress in relation to taxation policy is substantially different and this proposal has little relevance there.

ii. Taxation committee

We recommend that each parliament should have a full parliamentary committee dedicated to taxation issues.

We have commented elsewhere in this report that, in the long run, substantially all government expenditure is funded by taxation. This alone would seem to justify the need for a parliamentary committee, dedicated to taxation issues, meeting regularly throughout the year. Indeed this is recognised in a number of countries, but not all.

In Sweden, for example, the Tax Committee is an accepted part of the parliamentary architecture. But by contrast, in the UK, there is no such committee. Within the House of Commons, tax policy is broadly considered to fall within the scope of the (now somewhat overworked) Treasury Committee but certain aspects also fall within the purview of the Public Accounts Committee. Scrutiny of new tax legislation falls within the remit of the Finance Bill Standing Committee, while broader tax policy issues related to the Finance Bill are covered in special sessions of the Treasury Committee. In the House of Lords, where convention is that there is very limited scrutiny of draft tax legislation, the Finance Bill Sub-Committee of the Economic Affairs Committee looks at broad issues related to the bill.

The implementation of the simple recommendation that, in all parliaments, there should be a committee dedicated to tax matters should result in more focused and expert scrutiny. Tax policy is vital to the operation of the state, but it is not given the equivalent level of scrutiny that is accorded to other policy areas; including the range of public expenditure issues. Creating a tax committee should, hand in hand with other changes, improve oversight capacity.

We envisage that this tax committee would have the power to summon ministers, policy-makers and other external policy experts to answer questions both on policy proposals and draft legislation. This is standard practice in a number of European countries. Policy makers should be expected to answer questions about the rationale for a tax measure and its relationship with existing measures. They should be able to comment on the detail of the measure itself, any alternative measures that would address the same issue, and the intended and expected impact of the proposal.

Scrutiny committees should provide the same kind of robust oversight that can be found in many public accounts committees. Government officials and politicians alike often consider these committees formidable opposition. There is no reason why tax committees should not provide the same level of challenge.

iii. Independent support for members of parliament

We recommend that parliaments should have access to a source of professional support on taxation issues, independent of the executive.

Effective challenge in the parliamentary stage of the tax policy-making process requires high levels of expert knowledge and practical experience. In most countries, very few members of parliament are tax experts. Long-serving members of scrutiny committees that cover taxation will normally have acquired a good deal of knowledge, but few have sufficient expertise in the theory and practice of taxation to be fully effective either in a scrutiny role or in weighing up alternative policy options. Most have to rely on support from others, both as ordinary members of parliament and as members of committees.

In the majority of countries in our sample – again excluding the US where a very different situation exists – the level of available support for members is very limited. Opposition parties typically have to rely on a combination of external part-time support from willing tax professionals and the input of just a handful of their own political advisers; a few of whom may have been trained as economists, lawyers or tax professionals.

In some, but by no means all countries, this deficit of expertise is bridged by the convention that government officials, usually those responsible for having developed the policy, are permitted to brief members on both the government and the opposition side in advance of debates on draft legislation. This is helpful but insufficient. Officials can normally be relied on to brief members of parliament with political impartiality but, unsurprisingly, they often find it more difficult to show complete impartiality towards the policy proposals, particularly policy proposals on which they have worked themselves.

Information and analysis that comes from a source independent of the executive is key to effective scrutiny at both the policy development and the legislative stage. We have seen some examples of limited attempts to provide that independent support. In Sweden, the Tax Committee has access to a small group of economists and lawyers who can provide independent analysis. However, in most countries, we have found no evidence of an effective level of professional and analytical support to members in their scrutiny role in relation to tax issues.

In the US, the situation could not be more different. Congress has heavyweight support from the combined forces of the Joint Committee on Taxation (JCT) and the Congressional Budget Office (CBO). These bodies primarily exist to provide information and analytical capability to the members of the Senate Finance Committee and the House Ways and Means Committee. Both committees also have political staff but their ability to call on an impartial source of analysis improves scrutiny as well as legislative capacity.

We strongly recommend that parliaments should have an independent institutional source of professional support, staffed primarily by economists and lawyers, to assist in scrutiny of taxation issues. This body of professional support should, like the CBO and JCT, be both reactive to government policy and pro-active in analysing policy options. However, as parliaments are mainly responsible for scrutiny and oversight rather than policy initiation, most of the work would normally be in response to government proposals and their declared programme of tax reform.

We envisage that such a body would provide independent costing, forecasting, analysis and information. It should also provide help to develop and draft amendments, and assess their likely impact. Currently, opposition drafting of amendments to finance bills is often a little haphazard. In many parliaments, this has little practical consequence because such amendments are usually a mechanism for triggering a political debate rather than a serious attempt to amend the law. The vast majority of amendments that are approved originate with the government.

It would be important that this new institution should be funded independently of the executive and that appointment to it should be within the purview and control of parliament.

It should be given resources adequate to be effective in its role. The JCT is a good model, providing a blend of the skills and experience necessary to deal with economic, legal and accounting analysis.

Scale is clearly an issue for many countries. For example, where a finance ministry has only a small number of economics graduates, it would be inappropriate for parliament to employ dozens of them. In general, we suggest that parliaments employ small, professionally expert staffs in the first instance, with an initial emphasis on capability rather than breadth of coverage.

It is often said that institutional innovation is difficult, and a widely-held view that this may be so, is too often a barrier to worthwhile reform. In this context, we believe that some of the institutional changes made by the current UK government are particularly significant. The creation of the Office of Budget Responsibility (OBR) and the Office of Tax Simplification (OTS) are important steps and the developing institutional model for the OBR could well have long-term and beneficial consequences for economic policy-making; including tax policy-making in the UK. The OBR is just a short institutional step away from having a role equivalent to the CBO and could usefully be turned in that direction. The OTS has further to travel. It is certainly not a JCT. However, if its remit were

really to look at tax simplification independently of Treasury control, it could also find a role for itself within the framework of parliament.

We have generally sought to avoid recommendations that are purely national and our principal recommendation in this section is for the creation of an independent institutional source of professional support for national parliaments in general. However, in the case of the UK, we add a specific recommendation that the OBR and the OTS be made creatures of parliament rather than the Treasury. We believe that this would allow both organisations to flourish and add real value to the process of scrutiny of tax policy.

iv. Parliamentary scrutiny

We recommend that procedural exceptionalism should be limited and only used to encourage scrutiny.

In most countries, the budget process allows tax legislation to be introduced annually in conjunction with the scrutiny of public finances and the government's spending plans. Tax legislation is arguably among the most important that parliaments consider; sometimes because of the subject matter itself, but always because of the fundamental link in a democracy between taxation and representation.

Over time, parliamentary procedures have evolved for the budget and finance bill that are different from those for other forms of legislation. This procedural exceptionalism affects a number of aspects of the legislative process. A common alteration affects the committee stages of scrutiny. Some legislatures have separate committees for annual tax legislation, or separate procedures for the same committees. Amendments are often restricted, or subject to a higher degree of legislative support for approval. There may be a strict time-limit applied to various stages of scrutiny. In many legislatures, there are limitations on the role of the upper house. Unfortunately from the point of view of scrutiny, most exceptionalism serves to weaken rather than strengthen legislative oversight. It is extraordinary that this should be the case.

We recommend that such procedures should be reconsidered and believe there is a strong case for applying procedures that are much closer to those that apply to other types of legislation in order to strengthen scrutiny.

Engagement with the taxpayer community

We believe that the relationship between government and the taxpayer community in the development of tax policy is of fundamental importance. The issues of involvement and consent go to the very heart of our democratic systems.

In this section, we make a number of recommendations that we believe are important in restoring balance in the relationship that we consider to be lacking at the moment.

We address five areas:

- consultation with the private sector which focuses primarily on tax issues that affect business and investment;
- the involvement of organised labour in tax policy development;
- the use of broad-ranging public reviews of the tax system;
- the need for governments to seek a democratic mandate for their tax policy proposals; and
- the role of the education system in enhancing public understanding of tax policy choices.

Our programme of interviews raised issues about each of these areas of interaction between governments and the taxpayer community.

A formal process of consultation

We recommend that, in relation to all proposals for significant changes to the tax system, that affect business and investment, governments commit to:

- the publication of an early-stage paper setting out the proposal and the rationale for it, the projected timetable to enactment and the contact details of officials leading the work;
 - at least one phase of formal consultation on the key aspects of the proposal prior to the publication of draft legislation, allowing adequate time for responses;
 - a further phase of formal consultation after draft legislation has been published;
 - the online publication of the minutes of official meetings held as part of the consultation process;
 - the release of the data on which the policy proposal has been based; and
 - a policy of inclusiveness regarding participation in the process.
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We believe that the adoption of these recommendations would help to build a much stronger climate of trust between the government and the business community and have significant benefits for the tax policy-making process. It would give the private sector certainty that any major reform will be prefaced by an acceptable opportunity to contribute and, in doing so, help to create the stability that business investors value.

However, the commitments have to be real and substantial. Exceptions will bring them into disrepute; and both the scope of the consultation and the time allowed for it must be appropriate to the proposals.

The growth in the importance of consultation with business on tax policy issues is a relatively recent phenomenon in many countries and, in some, is yet to become a normal part of the process. It has origins in the tripartite processes that governments have historically employed to bring capital and labour into agreement on policy objectives and methods but, where it happens, consultation on tax policy today has a different flavour. It is largely a bilateral exercise between governments and business interests, in which organised labour plays little part. It is dominated by experts on both sides and the discussion is more focused on detail rather than on the broader economic issues.

Today's engagement is based on two needs:

- the first is a need on the government side for access to more information and knowledge. It arises because policy makers are not omniscient and, more often than not, the resources and expertise available to them are insufficient for the task in-hand. Imperfect information, uncertainty over assumptions, ambiguity in impact assessments and administrative problems are common features of the policy development process. Consultation with outside experts is one way to gain access to additional sources of information and experience that can help fill the gaps in policy-makers' knowledge. Within the private sector there are many organisations and individuals that take a keen interest in tax policy and have expert knowledge. Many have strong feelings about the tax system and are happy to play a role in informing policy development. Although there is a danger that their inputs reflect bias and vested interests; experienced policy makers should be capable of filtering most of that out, making these external contacts a potentially valuable resource. In terms of information, there is much for policy-makers to gain and very little to lose; and
 - the second need is for governments to make sure there is business buy-in to policy outcomes, or at least business involvement in shaping them. This is considered particularly important at a time when investment is highly mobile and competition between governments to attract it is intense. Both parties to the consultation process want to ensure that policy priorities and policy direction are understood,
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that changes are predictable and that, as far as possible, policy detail makes the government's policy choices acceptable and workable. Businesses are collectively (and often individually) significant sources of tax revenue and increasingly expect to be included in the tax policy-making process. For companies, there is no question of there being a democratic right to be consulted or an ability to give or withhold consent for change; but many nevertheless see consultation in a quasi-democratic context. Investors are more likely to be comfortable with a particular location if they feel that there is scope there for giving input to tax policy development.

There is currently no common international standard for consultation. Practices vary significantly from country to country and can also vary within countries. There are also differences in: what is consulted on, the formality of the process and in the stage at which consultation takes place.

It can be limited to preliminary consultation, to tease out concerns and priorities. It can take the form of formal or informal dialogue early in the pre-legislative phase or after legislation has been drafted. It can even occur while the bill is with the legislature. Consultation can be rushed through in a matter of weeks or sometimes days. It can be slower and more considered. Contact can be formal and part of a well-defined process; or informal and off the record. In some countries it simply does not take place

Against this background, our recommendations are aimed at establishing a minimum standard for consultation.

The role of organised labour

We recommend that labour organisations should be more fully involved in the development of tax policy in order to reduce the democratic deficit in this area of government.

We have noted in our report that there is little real opportunity for the public to contribute to the development of tax policy. The quality of consultation with the business community – its representatives and the professions – tends not to be replicated in other engagements between government and interested parties on tax policy. Many individuals and non-business organisations find even the more open policy development processes difficult to access.

Historically, one of the ways in which this democratic deficit has been addressed has been for governments to involve labour organisations in tripartite discussions with the business community. However, the general decline in union membership in many countries has

created a climate in which it has been possible for them to be sidelined in tax policy consultation.

In part, this is because governments tend to consult much more extensively on the minutiae of business taxation, of which the labour organisations have less detailed knowledge; than on the taxation of individuals, where the labour organisations have much greater expertise.

The unions frequently engage on broader economic policy issues where tax has a place and, in some countries, they have taken a high-profile position in relation to international tax issues, particularly where there is a social dimension.

The labour organisations fulfill a representative role for large sections of the population on a wide range of issues and many would regard them as being in a position to make a strong contribution to tax policy development. We believe that, in most countries, the democratic deficit in tax policy-making is such that there is a clear argument for involving them more fully in the tax policy-making process. We believe that, over time, greater involvement will be beneficial and raise standards on both sides of the engagement.

Public reviews of the tax system

We recommend that governments should periodically encourage, fund or undertake a broad-ranging public review of the tax system.

In a number of countries, broad-ranging tax system reviews have been undertaken in recent years. Some countries have a long history of such reviews. We believe that reviews of this nature are potentially very valuable in a technical dimension and also as a mechanism for achieving better engagement with the public on taxation policy.

If structured correctly, they allow policy-makers to ensure that system-wide issues are addressed and that the whole taxpayer community has an opportunity to engage. We believe that, in conjunction with other recommendations, this recommendation will help strengthen the legitimacy of the tax system and enable it to be shaped more easily to fit with changes in the economy, in society and in people's needs and aspirations.

Politicians and policy-makers rarely have the leisure to step back and examine the tax system as a whole. The day-to-day focus of officials tends to be limited to developing individual measures or reforms. There is little spare capacity in most policy development teams to consider the broader context. Organisational structures within tax policy-making departments typically focus work on a single tax or a small group of related taxes; and

this often acts as a barrier to wider thinking and leads to policy decisions that give rise to suboptimal system-wide outcomes.

Internal contradictions and inefficiencies, particular in policy-signaling, are quite common within tax codes. These problems are exacerbated by a tendency for tax policy to be seen as a tool to solve any number of problems: social, economic, environmental and political. Outside government, the failure to view the tax system as a whole is one of the complaints about politicians and senior policy makers.

We do not believe that wide-ranging tax reviews will automatically solve all these problems. However, based on the evidence of this study, we believe that the periodic use of such a review can have benefits.

We suggest that governments either put in place a systematic programme of reviews that will ultimately cover the whole system, or preferably support the periodic setting up of a semi-independent reviews with a very broad remit and terms of reference that avoid leading the findings down a particular route.

We envisage the work should be led by or, in any event involve, policy experts from outside government: representatives of the private sector, tax professionals, academics, civil society and many others. The review would need to strike an appropriate balance between the academic and the practical. Such a review would provide an excellent opportunity to obtain democratic input, currently lacking in many countries, and to reflect the latest trends in international tax thinking through a domestic prism, so that the tax code could be updated to reflect both global and local economic, social conditions as well as technological change.

The democratic mandate for tax reform

We recommend that governments and political parties should be more transparent and communicative in relation to their plans for changes in the tax system, particularly preceding national elections.

One of the broadest conclusions of our work across the countries in our sample is that governments rarely seek and consequently rarely have a clear mandate for tax reform. And it leads to this, one of our broadest recommendations.

Election manifestos often contain many commitments and pledges on the spending side, but it is relatively rare, in most of our subject-countries, for a party to specify a programme of particular tax reform, which it intends to introduce, or for elections to offer genuine choice between parties on taxation issues on anything other than the very highest level.

Outside election periods, even in the developed western democracies that form the main part of this study, the public has little opportunity to contribute effectively to tax policy development.

Perceptions of public opinion based on media and polling data are sometimes used as a substitute for an informed engagement with the public, and can be a driver of policy choices by parties in power or in opposition. But these are inadequate for those who would personally welcome an opportunity to contribute to debate on the issues. Much of this report has focused on those included and those excluded in the tax policy-making process. We believe that the general public is largely in the category of 'outs' and that decisions on most tax measures are made in an environment in which experts are included but ordinary people are excluded.

Both government and society should aspire to a higher level of debate on tax policy and a more democratic process for arriving at decisions. The choices that are exercised on our behalf are important and we believe they justify the effort that a better engagement requires.

The education system should provide everyone with a broad understanding of taxation

We recommend that schools teach a broad understanding of taxation to all students.

One of the barriers to the better engagement that we seek between the taxpayer community and the government is a lack of education in tax matters among the general public.

In most countries, the education system teaches students almost nothing about taxation and its role in the public finances. Yet almost everyone will pay taxes directly throughout most of their lives, and everyone will be affected indirectly by a vast range of tax measures. For some, taxation is likely to take more than half of their lifetime earnings. Against that background, it seems strange to place such a low educational priority on this subject.

One of the most significant consequences of a lack of education about the tax system amongst the public is that it is genuinely difficult to democratise the process of tax policy development. Without a framework of understanding about taxation and the tax system,

most members of the public have no chance to contribute effectively and meaningfully to any discussions about tax policy choices.

We believe that this is undesirable and should change.

APPENDIX: COUNTRY SUMMARIES

As we have noted in the introduction, we have decided against including in this report a full description of the tax policy-making process in each of the countries. We have also decided not to publish a country-by-country scorecard evaluation of the different aspects of the process or a line-by-line comparison.

However, we have set out below some brief comments, highlighting in summary form some key features of each country's structures, processes and governance arrangements and related strengths and weaknesses. In the paragraphs that follow, we have made a number of more broadly-based observations of a comparative nature.

In general, governments that have focused on tax policy-making as a process in its own right tend to have better policy-making structures, processes and governance. It is not conclusive that there is a causal relationship but we believe that there probably is and that better processes are likely to emerge from a proper examination and mapping of what is done today.

We have been particularly impressed by the strength of policy-making in three of the smaller countries covered in our work: New Zealand, Sweden and Finland.

Of these, New Zealand is perhaps the most self-aware and structured in its approach, and has been for more than two decades. We suspect that policy-making there is likely to go through a period of change in the very near future and that changes may already have begun. We felt intuitively, as all-too brief observers in February 2011, that there were policy challenges that the government needed to address, and could see that some change in the policy-making environment might be necessary to make that happen. However, it will be important to ensure that the changes do not damage the country's established good practices in this area.

We found considerable strength in the Swedish arrangements and are pleased to note that, as with so many things about the Swedish approach to life, it appears to be different, to be inclusive and to work; but we were not sure that the model would transplant easily to another culture. As with New Zealand, we felt that, at the time of our visits, the approach that has been used hitherto was somewhat at risk from external pressures: pressures on government and pressures from government.

It was in Finland, though, that we found the greatest satisfaction in what we saw. While our interlocutors were conscious that the situation was not perfect, there seemed to be a high degree of awareness of what needed to be done and most of it was already being done or had begun to be done. There appeared to be a rationality about the processes, including engagement with the taxpayer community, that was refreshing and a natural inclusiveness that enabled changes to be achieved relatively easily that would have caused great difficulty elsewhere. Our main regret was that, in spite of considerable efforts, we were not able to get access to parliamentarians in Finland in order to obtain their perspective on the process. We had to rely instead on external observations.

Other countries also showed considerable strengths in key areas. The UK has a highly-developed and well-structured approach to consultation on business tax issues that generally meets the wishes of participants. It is not perfect but it provides a useful model. The publications associated with consultation in the UK are highly regarded elsewhere. The weaknesses in the system are primarily associated with the lack of challenge within government to policy ideas; the weakness of parliamentary scrutiny (which again may be in the process of change) and the failed engagement in the political domain. The UK Government will also need to address serious problems associated with its approach regarding tax policy-making and dependent territories.

France and Germany both have work to do to reach the standards of the best in this group. Inclusiveness is particularly weak in France. External institutions are surprisingly lacking and there is a perception that parliament contributes little (but the last of these is a problem that is by no means unique to France). Our principal concerns in Germany were about the internal processes of government and the inclusiveness of policy-making.

Jersey has a mixture of strengths and weaknesses. Resource constraints are a key factor. There are some good reports of consultation and inclusiveness but not every interviewee subscribed to them. Inevitably in such a small community, there were also some issues noted about the parliament.

Australia has some interesting institutions and has shown a great capacity for institutional innovation. We were impressed by many of the things we saw and heard in Canberra. For more than a decade, the government has been very self-aware and has published good and thoughtful papers on the tax policy-making process through various agencies. It could be on the verge of greatness but unfortunately it probably isn't. A sense of considerable disappointment and frustration came through in our interviews and we were left with a strong impression that hard work and possibly a change of attitudes by key individuals were necessary to make best use of the structures that have been put in place.

We were a little surprised that Ireland did not rate more highly against the measures that we employed in our evaluation. We visited Ireland at a difficult time and what we found may partly have reflected the mood of the moment. However, we felt that some of the issues went quite deep. All of our interviewees commended the Department of Finance on its openness to taxpayers and appreciated officials' willingness to meet them on policy issues. We were impressed by the structured approach to internal coordination of tax policy development within the Irish government. But we did find considerable frustration with the Budget and Finance Bill process and the lack of opportunity to contribute effectively to policy-making before Budget Day. We also found that external institutions were struggling a little and an academic community that often felt it was on the wrong side of the door.

That leaves the US. The institutions of government there are different from those in other countries in our study, and that has a significant effect on comparisons. However it does not invalidate all of them. We were impressed by the institutional arrangements for the CBO and JCT and by the scope and quality of the support they provide to members of Congress. We were impressed by the scale, strength and quality of external institutions. The US Treasury impressed us as well. And we were even more impressed at the overall calibre of people engaged in the policy-making process in all of these institutions. However, all of this only served to make us even more frustrated and disappointed that such an assembly of talent and such an array of strong institutions could produce such poor policy outcomes. We said at the start that we would avoid commenting on outcomes because of the inevitable subjectivity in doing so. However, we feel justified in making this exception. The US has the potential to enact world-leading tax policy but utterly fails to do so because of the dominance and nature of the political process.

AUSTRALIA

Internal institutions

- Tax policy authority is centralised within the Treasury and has been ever since shifting from the ATO.
- There appeared to be scope for better communication between government departments. The ATO's role is limited and budget secrecy is tight.
- There may be opportunities to change the staffing mix to achieve a more balanced approach.
- Institutional innovation has yet to bear fruit.

External institutions

- The academic infrastructure is relatively weak but its ability to contribute to policy development appears to be improving.
- Attempts to encourage academic contribution have, at least until recently, found limited support from government, but the private sector has recognised the need for it.
- The government has decided to provide seed-funding for a semi-independent institution to address tax policy research and has asked the Board of Taxation to undertake the initial work.

Role of legislature

- Parliamentary scrutiny is hindered by budget secrecy, strong party discipline and a tendency for the electoral system to deliver comfortable majorities.
- Committees have limited expertise and support available.
- The recent events that led to a change in the parliamentary balance have made tax policy more sensitive politically, but had little impact on the process.

Taxpayer engagement

- The Board of Taxation operates as a communication channel between Treasury, ATO and the private sector. It has improved the quality of contact and has the potential to play a bigger role in day-to-day policy development and post-implementation review.
 - The Australian Government has regularly addressed the role of taxpayers in developing tax policy. Reports have been published regularly, but surprisingly little progress has been made.
 - Budget secrecy has largely inhibited early consultation.
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FINLAND

Internal institutions

- The Ministry of Finance has limited resources and lawyers dominate tax policy-making, but there is a strong minority of economists and the overall approach appears to be well-balanced. There seems to be sensible use of external resources.
- Policy direction tends to be predictable. It is unusually well laid out in government programmes developed during the political process; including coalition talks.
- Special advisers play a significant role in policy development and coordination.
- There is evidence of good communication and cooperation between government departments on tax policy issues.

External institutions

- The small size of the country limits the academic infrastructure.
- However, there are some strong economic institutions and their usefulness is fully accepted by the Ministry of Finance. They are involved in research during the early stages of policy development.

Role of legislature

- The tax committee has strong powers of oversight and is considered to be effective in its role.
- The tax sub-committee can take testimony from academics, experts, private sector representatives and policy makers.
- We understand parliament has taken the initiative in requiring policy changes to be the subject of post-implementation review.

Taxpayer engagement

- Civil society groups and organised labour are able to contribute to policy in the development stage.
 - Consultation processes in the pre-legislative phase are open and well-developed. The use of formal proposals is increasing and is popular with the private sector.
 - There appears to be an unusual level of rationality in public debate of tax issues.
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FRANCE

Internal institutions

- Policy authority is highly centralised in the Ministry of Finance, within DLF.
- The department has very high-quality staff, but recruitment is dominated by graduates of *I'ENA*. The approach tends towards the monolithic and seems to lack effective challenge.
- There is some evidence of good coordination today between government departments, but officials believe this is as much the result of personal relationships as of institutional strength.
- The role and structure of the *Conseil d'état* is unusual but has some value.

External institutions

- Although academia is strong, there is little reflection of this on tax policy.
- The government and private sector has hitherto shown a mixture of a lack of interest in and opposition towards the idea of an independent academic institution engaged on tax policy. No private funding has been made available, despite some efforts by interested parties.

Role of legislature

- There is little scope for commenting on policy development. Measures tend to be kept secret until they arrive in Parliament.
- Parliamentary committees have the right to summon DLF officials, but the power is considered to be underused and the process has some restrictions.
- There is little professional support for members from within parliament on taxation issues.

Taxpayer engagement

- Business is largely excluded from the policy-making process. This gives rise to considerable frustration in MEDEF and other business organisations.
 - Recent attempts to improve communication have made some small progress.
 - Only a handful of very trusted external individuals are involved.
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GERMANY

Internal institutions

- Policy process is complicated by operation of the federal system: regional government is responsible for administering taxes but not making policy.
- Lawyers dominate policy development within the Ministry of Finance with economists in a subordinate role.
- There is little evidence of challenge in the policy-making process.
- Consistency of policy programme is affected by the politics of coalition.

External institutions

- There is strong academic infrastructure, in both economics and tax law.
- External institutions seem yet to establish a full role in policy development.
- The Academic Advisory Board is unusual within this group of countries.

Role of legislature

- There is limited professional support for elected representatives.
- Committees use expert witnesses in scrutiny but their contributions are perceived to have become highly politicised.
- Disagreement between Bundestag and Bundesrat involves a formal reconciliation process.

Taxpayer engagement

- There is no consistent policy of pre-legislative consultation with the private sector. The Ministry of Finance has usually drafted the legislation by the time consultation occurs.
 - The process is considered too rushed for large organisations like BDI and DIHK to respond effectively. The best chance for non-private sector organisations to contribute is during the legislative phase.
 - There is some evidence of pre-election development and debate of tax policies.
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REPUBLIC OF IRELAND

Internal institutions

- The tax policy team at the Department of Finance needs to be better resourced, and consideration should be given to strengthening the influence of specialists such as economists and lawyers.
- The coordinating Tax Strategy Group has potential as an institutional arrangement for bringing other government departments into the process.
- Budget process is weakened by an attitude to secrecy.

External institutions

- It has proved difficult to establish a successful external institution with a strong focus on tax policy.
- The contribution of external institutions is limited by nature of Budget process.

Role of legislature

- Annual tax legislation is perceived to be rushed through parliament.
- The committee process is dominated by Government amendment: considered to reflect the weakness of pre-legislative consultation.
- Legislature often the scene of 'frantic' consultation with the private sector.

Taxpayer engagement

- Taxpayers and interested parties are given excellent contact with the Department of Finance on demand. They are free to communicate opinion or information and to make submissions.
 - Despite this, there is very little productive pre-draft legislation consultation on budget measures. Details are released very late and consultation is usually rushed.
 - There is some frustration amongst the business community at proposals that have not been sufficiently exposed to comment.
 - There is high level of public awareness of tax issues and strong media interest.
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JERSEY

Internal institutions

- Tax policy development is subject to serious resource constraints. There are too few staff, not enough training and a limited range of experiences.
- Much tax policy has to be adapted from other sources.
- There is some use of external consultancies to fill gaps in internal capacity.
- Policy programmes are at the mercy of larger countries and international organisations. Recent problems with the EU Code of Conduct group have created serious revenue shortages.
- We understand that there has been change since the time of our fact-finding visit.

External institutions

- There is effectively no academic infrastructure because of the small size of the island community.
- There is limited capacity within government to absorb and deal with external contributions.

Role of legislature

- Legislature in Jersey is small by international standards and has a very limited role in policy development. Party politics are much less of an issue on the island than elsewhere.
- There are very few resources to support members and no real policy authority. The legislature is considered to have very little impact.
- Officials frequently appear before parliament to brief members on tax issues.

Taxpayer engagement

- Interviewees believe there is a reasonable level of taxpayer consultation, but would prefer a stronger engagement.
 - There is a developed pool of financial expertise in Jersey but its influence on tax policy has to be weighed against the risk of vested interest.
 - The lack of resources within government necessitates but also limits outreach into the tax community.
 - The government has consulted extensively on some non-business tax issues, including the introduction of VAT.
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NEW ZEALAND

Internal institutions

- New Zealand is unusually self-aware regarding tax policy development. The government has mapped the various steps and stages of policy-making as a single process. This has been documented in the Generic Tax Policy Process.
- New Zealand is also unusual in having the policy lead taken by the tax administration rather than the Treasury.
- The policy-making function is small, which limits the work that can be undertaken within government.

External institutions

- The academic infrastructure is limited by the population and size of the country, and affected by geographical isolation.
- Victoria University played a significant role in the recent Tax Working Group: leading, co-funding, hosting and running much of it.
- Government officials have proved very open to academic contributions.

Role of legislature

- Scrutiny is limited. Party politics is a dominant factor. The committee process is taken seriously by participants but has a limited impact.
- Assistance for members of the legislature is virtually non-existent.
- The government officials responsible for developing tax policy also advise members of the tax committee, including opposition members.

Taxpayer engagement

- GTTP encourages close contact with the private sector. Since the GTTP was made, government-private sector relations on tax policy have generally been good.
 - Trusted members of the private sector are part of the policy development community. Engagement extends beyond self-interest.
 - Commitment to consultation is not just on paper, but an integral part of the culture of policy development.
 - The recent Tax Working Group process was used to good effect in raising the profile of tax issues and choices with the general public.
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SWEDEN

Internal institutions

- Lawyers dominate the development of tax policy in the Ministry of Finance.
- The policy development process is extremely open and engaging when committee process is used. However, the current government is considered to be using it less.
- The committee process can be very long, sometimes years. Some believe it creates uncertainty for taxpayers.
- The government is not obliged to take heed of the work of a committee, but they have high default value.

External institutions

- Academic infrastructure is limited by the relatively small size of Sweden, but is still impressive in capacity and quality.
- Academics are extensively involved in the tax policy-making process.

Role of legislature

- Riksdag Tax Committee is amongst the better resourced in this study.
- However, parliament still relies on the government for input on proposals. The committee takes witness evidence from officials.
- The committee can and does ask the government to pursue issues on its behalf. The working relationship is quite cooperative.
- Members of parliament sit on the higher profile tax committees of investigation set up by the Ministry of Finance, but experts have expressed concerns about the impact of this.

Taxpayer engagement

- Corporate taxpayers are represented in policy development by business organisations. Occasionally they make direct representations themselves. Their contribution is usually welcomed.
 - Like most consultation processes, the largest companies are best heard.
 - The openness of the policy process encourages social organisations as well as the private sector.
 - Organised labour also features more prominently than elsewhere.
 - There is a relatively high level of debate among the general public about taxation issues.
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UNITED KINGDOM

Internal institutions

- Tax policy decision-making is highly centralised.
- Government processes are dominated by the Treasury; with HMRC playing a limited role.
- There is a substantial headcount devoted to tax policy-making at the Treasury.
- Challenge within government has been weakened by the O'Donnell reforms.

External institutions

- There are few academic institutions focused primarily on tax policy but those that are have high level skills and publish top quality analysis.
- There is some evidence of good engagement with government but it is difficult to assess the real impact on policy.
- External reviews have added value, but have also been targeted on longer-term issues and structures.

Role of legislature

- There is little evidence of value added.
- Recent committee changes could strengthen independence of scrutiny, but party allegiance usually dominates.
- The Finance Bill process is rushed and scrutiny is normally of limited effect.
- Members of parliament and committees lack resources for analytical work.
- The introduction of the OBR/OTS could be the first step to institutional change that would strengthen independent scrutiny.

Taxpayer engagement

- There are well-developed and formalised processes of consultation with business, albeit dominated by some large companies.
 - There is some risk of consultation fatigue.
 - Consultation is being used in a context where government is explicitly committed to slowing the pace of reform.
 - Doubts over government's real commitment to consultation was raised following Budget 2011 announcements.
 - The engagement of government and political parties with the wider taxpayer community is comparatively weak on tax policy.
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- Media coverage of tax tends to work against mature debate.
- Government does not systematically seek views of organised labour.
- Emerging group of NGO's are active on particular tax policy issues.

UNITED STATES

Internal institutions

- US Treasury is extremely well staffed. Lawyers tend to dominate the process, but economists are well represented. There is considerable movement between the private and government sectors.
- IRS has considerable contact with taxpayers, but rarely contributes to policy development.
- Even within the executive, policy authority is not centralised. There are many departments, individuals and groups that are normally involved in the development of tax policy.
- Veto play is a feature of US tax policy-making.

External institutions

- Policy makers have no shortage of external institutions of a high quality to turn to in Washington and across the country – a highly unusual situation.
- The external institutions are usually able to contribute at several points of access to the government sphere: the White House, Treasury, Joint Committee on Taxation, Senate Finance Committee, House Ways and Means Committee and individual elected representatives.
- Despite this ease of access and the high standard of institution, the quality of debate is sometimes open to question.

Role of legislature

- Congress has an enormous impact on the development of tax policy.
- The tax expertise available in the JCT and to the CBO is unparalleled elsewhere in the world. Personal political staffs further assist Congressmen and senators.
- Whilst elsewhere, initiation by the legislature of tax proposals is not common, it is a constitutional requirement for the House to do so and the Senate is able to engineer opportunities.
- ‘Rogue’ tax amendments are frequently attached to unrelated legislation.

Taxpayer engagement

- There is limited formal consultation by Treasury on tax issues but much informal discussion.
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- Taxpayers have a variety of institutions involved in tax policy with which they can engage. Most are very open to input from significant organisations but some complain of limited access for others.
 - Much influence is exerted against rather than in favour of proposals. There is a considerable amount of inertia in the US policy process.
 - Taxpayer consultation and lobbying are not always held in high regard.
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