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# MAKING TAX LAW

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*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*

**TAX LAW REVIEW COMMITTEE**

**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**  
**CHAired BY SIR ALAN BUDD**

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**TAX LAW REVIEW COMMITTEE**  
**Report of a Working Party on the Institutional Processes**  
**for the Parliamentary Scrutiny of Tax Proposals**  
**and for the Enactment of Tax Legislation**

**Summary of Recommendations**

1. The stages and timing of consultation on tax proposals prior to the commencement of Parliamentary scrutiny of proposals should be a matter for government.
2. The government's tax proposals should move seamlessly from development via consultation to effective Parliamentary pre-legislative review. The former should inform the latter and the latter should guarantee the satisfactory conduct of what precedes it.
3. Parliament should be in a position to undertake effective appraisal of tax proposals in terms of the policy, technical details and detailed implementation and to assess the relative complexity that the proposals involve. The manner of its doing so should not constrain the government's freedom to develop or bring forward tax proposals.
4. Parliament should be actively involved in pre-legislative scrutiny of tax proposals once they have moved beyond the drawing board and government has decided to implement them.
5. The stage in the development of tax proposals and the time at which government engages Parliamentary scrutiny is a matter for government. Parliament, however, should always be given the time and the means to consider the tax proposals that the government intends in due course to ask Parliament to endorse through enactment in the annual Finance Act. Neither the timing of events nor the existence of a consultative process outside Parliament should enable governments to present their tax proposals to Parliament as *faits accomplis*.
6. Government should engage the process of Parliamentary scrutiny in every case by formulating its proposals either as draft legislation or as a detailed statement of the proposal.
7. The mechanism for Parliamentary scrutiny should be a Select Committee on Taxation, constituted either as a Joint Committee of both Houses or as a Committee of the House of Commons alone. Its terms of reference should specifically recognise the need to enquire into the relative complexity of tax proposals.
8. There should be greater time allowed to debate the Pre-Budget Report.
9. The requirement to give statutory effect to Budget measures having provisional or temporary effect through Budget Resolutions should not provide a basis for the

enactment of any other measure to amend tax law without regard to the time and ability of Parliament properly to scrutinise those other measures.

10. The time required by the Provisional Collection of Taxes Act 1968 for giving statutory effect to measures having provisional or temporary effect through Budget Resolutions (and therefore the deadline for enacting the annual Finance Bill) should be extended from 5 August to 5 October for resolutions passed in February or March (and from four to six months for resolutions passed at other times).
11. There should be established a Tax Structure Review Project (TSRP) as a parallel Project complementing the Tax Law Rewrite Project (TLRP). The TSRP would have a remit to review current tax legislation free of the policy constraints imposed on the TLRP and in particular from the perspective of seeing what can be done to simplify the tax system. As such, it should act as a constant reminder within government of the need for tax simplification.
12. The TSRP should be funded and staffed largely by the Revenue Departments but would include others recruited from the tax professions and other sources. It would report to the existing TLRP Steering Committee and through the Steering Committee to Treasury Ministers.

**MAKING TAX LAW**  
**THE INSTITUTIONAL PROCESSES FOR THE PARLIAMENTARY**  
**SCRUTINY OF TAX PROPOSALS AND FOR THE ENACTMENT OF**  
**TAX LEGISLATION**

**REPORT OF A WORKING PARTY ESTABLISHED BY THE TAX**  
**LAW REVIEW COMMITTEE AND CHAIRED BY SIR ALAN BUDD**

**1. Introduction**

- 1.1 In December 2001, the Tax Law Review Committee established a working party under the chairmanship of Sir Alan Budd. The working party's terms of reference were

‘To review the institutional processes for the Parliamentary scrutiny of tax proposals and for the enactment of tax legislation and to consider whether changes to those processes would promote simplification and improve the quality of tax legislation and, if so, what the nature of those institutional changes should be.’

- 1.2 The working party was established on these terms in response to Lord Howe's Hardman Memorial Lecture of November 2000.<sup>1</sup> In his lecture, Lord Howe addressed the continuing need to do something to tackle complexity in the tax system. The working party's terms of reference, however, reflected a desire to focus not on complexity as such but on the need to ‘promote simplification’. In particular, the aim was to consider Lord Howe's view that what was needed was

‘to establish and institutionalise a process whose continuing insistence on simplicity is as irremovable, and as constantly present, as the voice of the tax-raising departments—and as the politically restless, impatient, input of successive Chancellors.’

- 1.3 This Report sets out the working party's conclusions. Sections 2 to 4 look at the role of Parliament in the development of tax proposals and how Parliament currently discharges the duties that the UK's constitution assigns to it on taxation. Sections 5 and 6 contain proposals that are designed to enable Parliament to discharge those duties more effectively and to provide the basis for the institutional counterbalance that Lord Howe was seeking. Section 7 addresses issues raised by the existing tax system, which the current Tax Law Rewrite Project has identified. Section 8 summarises and concludes.

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<sup>1</sup> Howe, *Simplicity and Stability: The Politics of Tax Policy*, [2001] British Tax Review 113.

- 1.4 The central proposition of this Report is that Parliament should have the time and the means to consider the tax proposals that government asks it to endorse. Without constraining government's freedom to bring forward tax proposals, Parliament should be in a position to undertake an effective appraisal of tax proposals in terms of the policy, technical details and detailed implementation and to assess the relative complexity that the proposals involve.

## 2. Parliament's Role in Taxation

- 2.1 Parliament's supremacy is built on its successful assertion, first, of the control of taxation<sup>2</sup> and, second, of the power of appropriation. Governments can neither tax, nor spend the revenues they raise, without Parliamentary approval of the rules and levels of taxation on the one hand, and of the broad purposes of expenditure on the other. This remains the fundamental support for the central position of Parliament within the UK's constitution.<sup>3</sup>
- 2.2 In its recent Report on Parliamentary Scrutiny, the Hansard Society Commission expressed the view that 'Financial scrutiny should be central to the work of the Commons since it underpins all other forms of accountability' and that 'The Commons has a unique legal role in the authorisation of tax and spending proposals and therefore a special responsibility to scrutinise them.'<sup>4</sup> The role of the House of Commons in authorising tax legislation is not only unique in terms of its relationship with government. It is unique also in Parliamentary terms given the constitutional restriction on the role of the House of Lords in financial legislation.<sup>5</sup>
- 2.3 Despite the link it makes between tax and spending, the Hansard Society Commission has little to say on the Parliamentary scrutiny of tax legislation.<sup>6</sup> This omission may reflect the fact that taxation proposals, and the rules that give effect to them, are invariably a matter for primary legislation. By convention, limited use is made of secondary legislation in imposing taxation.<sup>7</sup>

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<sup>2</sup> See the Bill of Rights 1689, Article 4.

<sup>3</sup> Daintith and Page, *The Executive in the Constitution: Structure, Autonomy, and Internal Control*, chapter 4, pp. 104–105 (OUP, 1999).

<sup>4</sup> *The Challenge for Parliament, Making Government Accountable*, Report of the Hansard Society Commission on Parliamentary Scrutiny (Vacher Dod Publishing, 2001).

<sup>5</sup> Financial legislation includes both money bills within section 1(2) of the Parliament Act 1911 and bills of aids and supplies. Not all Finance Bills are money bills and approximately half only of the Finance Bills sent by the Commons to the Lords since 1911 have been certified as such. Nevertheless, the Lords are debarred from amending bills of aids and supplies, such as Finance Bills, by the Commons' claim to privilege, and in practice the House of Lords has never sought to amend or reject a Finance Bill since its rejection of the 1909 Bill precipitated the passage of the 1911 Parliament Act.

<sup>6</sup> Similarly, Daintith and Page devote three chapters in *The Executive in the Constitution* to issues of public expenditure but do not consider Parliament's oversight of the exercise of the executive's powers in respect of the form and amount of taxation.

<sup>7</sup> Parliament delegates its legislative powers far more extensively in the social security and indirect tax fields than it does for direct taxation. This reflects the fact that in both the social

The exercise by governments of their power to tax, or to relieve from tax, is invariably subject to Parliamentary endorsement through the annual Finance Bill.<sup>8</sup>

- 2.4 The issue, however, is whether Parliament's approval of the Finance Bill each year is an adequate expression of the constitutional principle described in paragraph 2.1. In relation to Parliament's role in authorising appropriations, the Hansard Society Commission concluded that the House of Commons fails to scrutinise government expenditure in any systematic or effective way. In the case of taxation, the unfortunate reality is that the House of Commons fails to scrutinise the rules (if not the levels) of taxation in any real sense at all.
- 2.5 The truth of the matter is that the House of Commons has neither the time nor the expertise nor, apparently, the inclination to undertake any systematic or effective examination of whatever tax rules the government of the day places before it for its approval. The irony of the Commons' failure is that, because current constitutional arrangements allow the House of Lords no participatory role in the scrutiny of tax legislation, taxation legislation receives *less* Parliamentary scrutiny than other legislation. The criticism of Parliament implicit in this statement is not new. Parliament has rarely attracted praise for its role in enacting tax legislation.<sup>9</sup> The longevity of this problem, however, is no reason for the continuing failure to address it.

### **3. The Role of Consultation on Tax Measures**

- 3.1 Rather than address the way in which Parliament fulfils its role, successive governments over the last 25 years have sought to improve significantly their consultation on tax measures. As a result, by the time that Parliament is asked

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security and indirect tax fields, the legislative detail of proposals frequently relates to the practical administrative implementation of the taxing framework provided in primary legislation (whether domestic UK or, as for example in the case of VAT, European legislation). Delegated legislation is used in the direct tax field to give practical administrative effect to particular proposals, for example the PAYE system. The need for detailed primary legislation in much of the direct tax field derives from the need to define with some precision what is or is not to be taxed. Regulation has nevertheless been resorted to in recent years to deal with a number of highly complex and detailed direct tax provisions and power is taken more often than has previously been the case to amend particular aspects of certain direct tax regimes.

<sup>8</sup> No doubt it is for this reason that the current authors of *Griffiths & Ryle on Parliament* state that the House of Commons has a more active and directly significant role when authorising taxation than it does in relation to authorising expenditure; see Blackburn, Kennon and Wheeler-Booth, *Parliament: Functions, Practice and Procedure*, 2<sup>nd</sup> edition, p. 358 (Sweet & Maxwell, 2003).

<sup>9</sup> Among the best-known modern criticism of Parliament's role in the process is Lord Howe's lecture to the Addington Society in 1977 in which he noted in opening that 'the archaic ritual by which Parliament decides how this [i.e. imposing taxation] shall be done is about as appropriate to a modern industrial democracy as tally sticks to the international money market.' (Howe, *Reform of Taxation Machinery* [1977] British Tax Review 97–104.)

to consider the government's tax proposals in the annual Finance Bill, much of its content will reflect the outcome of prior consultation. Furthermore, to an increasing extent the Bill now also reflects consultation on draft legislation published prior to its formal introduction in Parliament.

- 3.2 If complaints of continuing complexity are accurate, improvements in consultation on tax proposals have not especially advanced the cause of tax simplification. Simplification is on the agendas of most of those involved in consultation, both inside and outside government. The need for simplification is frequently referred to and, indeed, simplification may be the focus of particular proposals. As a general matter, however, the cause of tax simplification is rarely the sole or central or even a high priority in the consultative process. The interests of simplification are rarely paramount in the discussion of particular policies and, as a result, its cause receives lip-service only, especially from those who represent particular vested interests in the consultation process.
- 3.3 Consultation on tax proposals follows a variety of courses and takes a variety of forms. There is a code of 'best practice' that the Treasury and Revenue Departments adopt when they consult publicly.<sup>10</sup> This relates, however, to the detailed conduct of a public consultative exercise. It does not dictate when consultation should start or what form it should take. Consultation on particular tax proposals starts at different points, pursues different courses and contains a variety of stages. There is no uniformity in the process.
- 3.4 This is not a criticism. Consultation on tax proposals does not always work perfectly.<sup>11</sup> Nevertheless, there is virtue in tailoring the form and timing and the path that consultation takes in the case of particular proposals. In each case, it will be for consideration to what extent different stages in the process of formulating tax policy, designing proposals and working out the detail of implementation should be above or below water: above water in the form of public consultation; below water as part of the government's internal consideration and development of proposals or as part of private or semi-private consultation with those outside government.
- 3.5 The important aspect of consultation, rather than a uniform path, is for those responsible within government for particular proposals to have a clear appreciation of the ultimate objective of the consultative process. In working from the formulation of tax policy to the design of proposals and the detail of implementation, the aim at every stage should be to test the particular policy objectives of the proposals and how they may be best and most simply realised. At all stages, the process should ensure that proper time, care and attention are taken to achieve that outcome.

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<sup>10</sup> *Code of Practice on Written Consultation* (for consultation documents issued after 1 January 2001), Cabinet Office (November 2000) [www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm).

<sup>11</sup> For recent criticism, see Chartered Institute of Taxation, *The Good, the Bad and the Complex, A Survey of Tax Consultation*, July 2001.

- 3.6 The resort by governments to greater consultation can be viewed both as their acceptance of the need to produce better-quality tax proposals and as a means of smoothing the process of obtaining Parliamentary approval for those proposals. Members of Parliament, if they have an interest in a particular topic, are as free to participate as anyone else. They may do so in an individual capacity, on behalf of their constituents or by representing particular interest groups. Parliament as such, however, currently plays a negligible part in public consultation on tax proposals.
- 3.7 The absence of Parliamentary participation reflects the fact that consultation is an essential part of the process for developing the government's tax policy and for designing particular proposals to implement that policy. As such, much Parliamentary time would be wasted if Parliament sought to participate at too early a stage. It should remain the government's prerogative to choose at what point it wishes to involve Parliament in the development of particular proposals.
- 3.8 Parliament must necessarily become involved, however, once proposals have moved beyond the drawing board to the point at which the government has decided to implement them. Neither the timing of that event nor the existence of pre-legislative consultation, however, should enable governments to present their proposals as *faits accomplis*.
- 3.9 Consultation is not and should not become a substitute for Parliamentary scrutiny. Tax proposals should move seamlessly from development via consultation to effective Parliamentary pre-legislative review. The former should inform the latter and the latter should guarantee the satisfactory conduct of what precedes it. This, clearly, does not happen under present arrangements.

#### **4. The Current and Prospective Parliamentary Timetable**

- 4.1 The Parliamentary process currently starts with the Pre-Budget Report in November or December each year. This provides the Chancellor with the opportunity to expose for debate measures that he is currently considering for the following spring Budget. At this stage, his announcements are unconstrained by any requirement to incorporate measures in Budget Resolutions and the Finance Bill.
- 4.2 The House of Commons has not, however, taken advantage of this earlier notification to debate the government's proposals more extensively. In Parliamentary terms, the Pre-Budget Report involves a government statement by the Chancellor of the Exchequer followed by responses from the Opposition front bench and questions from backbenchers. In 2000, this whole process took just under 2 hours; in each of 2001 and 2002, it took around 1 hour 40 minutes.
- 4.3 Parliament could take steps to remedy this lack of debate, although this does not mean that the debate on the Pre-Budget Report should become a full-scale



rehearsal for the spring Budget debate. More importantly, in terms of Parliament's role in these matters, the House of Commons has not seen the presentation of the Pre-Budget Report as marking the start of a systematic process extending its timetable for examining the government's tax proposals by some three to four months before the Chancellor presents them in his spring Budget. By the time of the spring Budget, and the Finance Bill that immediately succeeds it, there is little or no scope to have any impact on proposals except in terms of the smallest details of legislative drafting.

- 4.4 The Budget Resolutions and the constitutional conventions regarding the amendment of Finance Bill measures restrict to some extent how Parliament can deal with tax legislation. These restrictions do not, however, account for the longstanding and widely held view that Parliament's part in the enactment of tax legislation, and the Finance Bill Standing Committee debates in particular, are largely ineffectual and of little real value in satisfactorily scrutinising the government's tax measures.
- 4.5 In effect, Parliament comes to the subject too late to discharge its duties. It has too little time and is without the motivation or resources to play any significant role. This may be explicable partly by increasing calls on Members' time and by the perception that there is little that can be done to the Finance Bill. Ultimately, however, the constraint that arises following the spring Budget on the time allowed for Parliamentary scrutiny lies in the requirement of the Provisional Collection of Taxes Act 1968 (PCTA) that measures given temporary effect in Budget Resolutions must be enacted by early August.
- 4.6 This short Parliamentary timetable has been reduced further through the adoption of the proposals of the Select Committee on Modernisation of the House of Commons.<sup>12</sup> As a result, there is an additional week for constituency work in the first half of each year at times when the Finance Bill is before Parliament. In addition, the new sitting hours of the House of Commons may serve to reduce the time available for consideration of the Finance Bill in Standing Committee. The main impact on the Finance Bill of the Modernisation Committee's changes, however, is the earlier start for the summer recess. If the current PCTA deadline is retained, this will restrict the already foreshortened timetable for the enactment of tax legislation by imposing a mid-July deadline on the Bill.
- 4.7 Whatever the case for change, there is no case for changes to reduce the time for Parliamentary scrutiny of the Finance Bill. Over the years, it has frequently been suggested that the government should separate its tax proposals into two Bills: the first containing measures that, for administrative or practical reasons, need to be enacted within a short time of their Budget announcement, the remaining measures proceeding in the second Bill at a pace consistent with

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<sup>12</sup> Select Committee on Modernisation of the House of Commons, *Modernisation of the House of Commons: A Reform Programme*, Second Report of Session 2001–02, HC 1168. Hereafter the Modernisation Committee.

the requirements of proper scrutiny. Governments have resisted these proposals, on the grounds that there is no easy way to separate tax measures into two Bills and that Parliamentary time may not be forthcoming for a second Bill which is not subject to any special time constraints.<sup>13</sup>

- 4.8 Even if one assumes that Parliamentary time would be forthcoming for a second Bill, it is unlikely that any of the Treasury, Revenue Departments or taxpayers would wish to extend unduly the time allowed to enact tax legislation. The Treasury and Revenue Departments will wish to move on to the next Pre-Budget and Budget cycle without the distraction of legislation in Parliament, and taxpayers are likely to prefer the greater certainty that the final enactment of the legislation brings. The Finance Bill also cannot realistically be included amongst legislative measures that can carry over to another Parliamentary session. The retention of a PCTA requirement would therefore be a continuing constraint.
- 4.9 In practical terms, more time is frequently taken over substantial pieces of tax legislation if one includes the consultative process within the overall timetable, including the publication of draft clauses. The fault in terms of the Parliamentary timetable is, as we have noted, the failure of Parliament to enter that process at an early enough stage. Even if this aspect of the matter is addressed—as other proposals seek to do—it seems inappropriate to reduce the time available for the formal Parliamentary stages of the Finance Bill. In this respect, the fact that the House of Commons will sit in early September after the summer recess offers the opportunity instead to extend the PCTA deadline from 5 August to 5 October (in the case of Budget Resolutions passed in February or March in any year) or from four to six months after the date of a resolution passed at some other time.
- 4.10 To prevent governments using an extension of the PCTA deadline to facilitate the introduction of new measures or the production of previously announced proposals at a late stage in the Bill's process, it should become the convention that the government should make no substantive change to the Finance Bill increasing taxation or otherwise unfavourable to taxpayers after the start of the summer recess.

## **5. Securing Effective Parliamentary Scrutiny**

- 5.1 As the last section indicates, there is no escaping the conclusion that if Parliament is to fulfil its obligation to scrutinise the government's tax proposals, it must engage in the current process earlier and more effectively than is presently the case.
- 5.2 The manner of its doing so should not constrain the government's freedom to bring forward tax proposals; nor should it dictate the stage in their

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<sup>13</sup> See Procedure Committee, Second Report, *Budgetary Reform*, 1992–93, HC 727, paras 121–125.

development at which government must invite Parliamentary review. As there is virtue in tailoring the form of consultation to the measures in question, so there is virtue in leaving open the point at which particular proposals should move from the development stage to that of Parliamentary scrutiny.

5.3 The counterbalance for these prerogatives for government to dictate the course and pace of events, however, is that Parliament should have the time and the means to fulfil its obligations effectively.

5.4 The Modernisation Committee points the way in relation to government legislation generally, when it states that (emphasis added)

‘28. We attach the highest importance to pre-legislative scrutiny. We believe it brings gains to both Parliament and Government. Members are much more likely to play a decisive part in the shape of Government legislation *when the Commons is able to scrutinise Bills while they are still in draft*. Government is likely to find official proceedings on a Bill easier when it has already been tested and amended in draft.’

5.5 The Revenue Departments now release in draft large amounts of tax legislation on particular proposals for consultation with taxpayers, the professions and other interested parties. At present, however, Parliament itself does not feature among those interested parties. This is notwithstanding that, almost without exception, the issue of draft legislation notifies or gives effect to a stated government intention to legislate. As such, it marks the point at which, at the latest, Parliament should be engaged in the process.

5.6 Legislation is not published in draft for every tax proposal. The Modernisation Committee recommends, however, that ‘where it is not possible to produce a complete legal text the Government should submit proposals for pre-legislative scrutiny on the basis of a detailed statement of policy’. Thus, for every tax proposal there should be a point at which the proposal is formulated either as draft legislation or as a detailed statement sufficient to initiate the process of Parliamentary scrutiny, whether or not there has been any earlier consultation.

5.7 To the extent that the government engages the process of Parliamentary scrutiny before the spring Budget, the current timetable for enacting its proposals becomes less of an issue. The real issue of the current Budget and Finance Bill is whether the existence of measures to which Budget Resolutions give immediate effect (and which necessarily engage the Provisional Collection of Taxes Act and its timetabling requirements) should allow Chancellors to introduce and require Parliament to enact, within the PCTA timetable, unlimited other measures to amend tax law without regard to whether Parliament has fulfilled its obligation to scrutinise and authorise particular tax measures.

5.8 The effective implementation of the Modernisation Committee’s proposals in the field of tax legislation requires that the government should engage the process of Parliamentary scrutiny at an earlier stage. It also requires that the

need to give statutory effect to Budget measures having provisional or temporary effect through Budget Resolutions should cease to provide the basis for general enactment of any other measure to amend tax law, however scantily it may have been examined by Parliament.

## **6. A Parliamentary Select Committee on Taxation**

- 6.1 This leaves open what form of Parliamentary institution should be responsible for the active scrutiny of the government's tax proposals, its procedure and what resources should be at its disposal.
- 6.2 The most effective way to increase Parliament's scrutiny of the government's taxation proposals would be by creating a Parliamentary Select Committee on Taxation. This would most appropriately be a Joint Committee of the two Houses. The Joint Committee on Tax Law Rewrite Bills and the Joint Committee on Human Rights provide precedents for cooperation between the two Houses. A Joint Committee would allow members of the House of Lords with experience of and specialist knowledge of tax matters, and with the time, to contribute to Parliament's consideration of these matters.
- 6.3 A Joint Committee would have no power to initiate tax proposals. The proposals for its scrutiny would come to it at the government's initiative through the publication of draft legislation or the issue of a detailed statement of its proposals, designed in either case to engage the process of Parliamentary scrutiny. Thus, a Joint Parliamentary Committee on Taxation would be dealing with current tax proposals rather than with legislation that was before Parliament for enactment. On that basis, the constitution of the Committee as a Joint Committee would not infringe the current prerogatives of the House of Commons in tax legislation.
- 6.4 The need to constitute a Committee that has the responsibility for scrutinising the government's tax proposals is more important than whether it is constituted as a Joint Committee of both Houses or as a Committee of the House of Commons alone. The exclusion of the House of Lords would deny the Committee the time, expertise and knowledge on these matters that can currently be found in that House. The Commons would need to find ways to make good this loss. It would nevertheless provide a forum that would have the government's proposals as its focus.<sup>14</sup>
- 6.5 The exclusion of the Lords from the Committee would not prevent the House of Lords establishing its own Committee on Taxation. Indeed, the Economic Affairs Committee of the House of Lords has recently established a subcommittee on Taxation. With two such creations, the softening of attitudes

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<sup>14</sup> This would not prevent any other Select Committee from considering particular tax proposals that impinge upon its area of responsibility. See, for example, the House of Commons Environmental Audit Committee, *Pre-Budget Report 2001: A New Agenda?*, Second Report of Session 2001–02, HC 363.

over time and, perhaps in due course, further reform of the House of Lords, the foundations would exist for a Joint Committee of both Houses.

- 6.6 As in the case of a Joint Committee, a Commons Select Committee on Taxation would be unable to take the initiative in considering tax proposals. It would have referred to it the government's tax proposals whether emanating as consultation documents, draft legislation or detailed statements of proposals. As such, its scrutiny of proposals would not necessarily be tied either to the Chancellor's announcements in the Pre-Budget Report or to those in the spring Budget, although inevitably these are likely to remain the government's own focus for initiating the process of Parliamentary scrutiny of its tax proposals.
- 6.7 The Committee's examination of proposals will include reviewing what has gone before in developing tax proposals, both within government and through public consultation. As such, the Committee would be free to take evidence from Treasury Ministers and officials, the Revenue Departments and outside bodies and thereafter to report on the proposals. In this respect, the Committee would fulfil Parliament's obligation to scrutinise tax proposals and underpin the time, care and attention taken within government and in the consultative process in formulating tax policy and developing particular tax proposals. Its terms of reference should explicitly recognise the need to enquire into the relative complexity of tax proposals.
- 6.8 This description of the Committee on Taxation's role focuses its activity prior to the introduction of tax proposals in a Finance Bill. The Committee's creation would not alter the formal process of enacting legislation in the Finance Bill. Measures would continue to be debated at that stage and in particular be subject to the scrutiny of a Finance Bill Standing Committee. Members of Parliament are not naturally equipped to conduct an effective scrutiny of tax legislation at the legislative stages and the process of debate across the floor of the House is also poorly suited to the task. The task would be better performed by a properly staffed Select Committee, with the ability to take evidence and to arrive at a balanced understanding of the issues in an atmosphere that lends itself to question and answer as a means of resolving points in issue. An effectively functioning Select Committee on Taxation should therefore have a significant impact on the legislative stages of the Finance Bill. In enacting the government's tax proposals, the House will be informed by the work of the Select Committee on Taxation. It is unnecessary, however, to speculate at this stage whether this should result in any change in the current Finance Bill process or whether, for example, the Select Committee on Taxation should serve as the Finance Bill Standing Committee.

## **7. Reviewing Existing Legislation**

- 7.1 Improvements in the way in which Parliament fulfils its role of scrutinising the government's current tax proposals leave untouched the vast bulk of current tax measures. Even at current rates of amendment, it will be some time before a reasonable proportion of current tax rules come up for review in the context

of new proposals. There needs to be a different approach if there is to be any significant consideration of the current tax system and the frequent complaints about its complexity.

- 7.2 At present, there is an ongoing review of direct tax measures in the context of the Tax Law Rewrite Project. The benefit of this Project in terms of clearer and more user-friendly legislation is apparent from the Capital Allowances Act 2001 and the Income Tax (Earnings and Pensions) Act 2003. The benefits of its work can also be seen in its influence on the drafting style of many Finance Bill measures. The TLRP is, however, prevented from conducting a more extensive review of current tax legislation by its existing remit not to change the law except in minor, well-defined ways.
- 7.3 The process of reviewing, restructuring and rewriting existing legislation has identified many detailed policy points that raise the question whether it is appropriate to retain particular measures in their current form or whether it is better that they be modified, improved or abandoned. The TLRP maintains a record of items to which further consideration for reform might be given but which lie beyond the Project's remit to address.
- 7.4 In his Hardman Lecture, Lord Howe proposed the creation of a Tax Structure Review Programme, the ultimate objective of which<sup>15</sup>
- ‘must be the evolution of a strategy for tax simplification that becomes incorporated into the process of generating tax policy itself ... [with] a degree of independence from government and Parliament alike [but] not so detached from either that its work and input can be ignored. It must be able, “to put forward proposals for tax law reform and simplification”.<sup>16</sup> But it must be able to do more than just propose. It must have, in Adam Broke's most recent prescription, some guaranteed “ability to get Ministers to promote the change it recommends”.<sup>17</sup>
- 7.5 There are risks, however, in extending the remit of the current TLRP to allow it to consider the policy issues that it has identified or to develop along the lines that Lord Howe proposes. It could lead to an undesirable blurring of the Rewrite Project's purpose and sidetrack it from its primary purpose of producing clearer legislation. It could slow its work even further if it were to become engaged in policy debates as a backdrop to the production of better tax legislation.<sup>18</sup>

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<sup>15</sup> See [2001] British Tax Review at p. 120.

<sup>16</sup> See *Report of the Commission to Strengthen Parliament* (Chairman: Lord Norton of Louth, 2000), pp. 41, 47.

<sup>17</sup> Broke, *Simplification of Tax or I Wouldn't Start from Here*, 1999 *Hardman Memorial Lecture*, [2000] British Tax Review 18–26 (the words cited by Lord Howe come from page 26).

<sup>18</sup> In the 1999 Hardman Memorial Lecture, Adam Broke proposed the creation of a Tax Reform Committee, separate from the Tax Law Rewrite Project. He said that he would ‘write in stone the government's continued support for the [Tax Law Rewrite] Project’; see Broke

- 7.6 The solution lies in the creation of a parallel Tax Structure Review Project team, which could select topics for review and to which the existing TLRP team could pass issues that it had identified for review. The various professional and business bodies that currently participate in the TLRP through the Consultative Committee could participate in a similar way in the work of the parallel Project team. Both teams would report to the existing Steering Committee. From there, proposals and recommendations would pass to Ministers and, on Ministers' initiative, to the Parliamentary Committee on Taxation as government proposals for change.
- 7.7 As with the TLRP, the TSRP would be funded and staffed largely by the Revenue Departments but would include recruitment from the tax professions and other outside sources.

## 8. Conclusion

- 8.1 The catalyst for the working party's consideration of these issues was Lord Howe's renewed challenge that something should be done to tackle complexity in the tax system. This is not a new challenge. In response to a demand in the House of Commons that tax law should be made intelligible to persons who had not received a legal education, Gladstone remarked in 1853 that the nature of property in the UK made it almost impossible to deal with income tax in a simple manner. Referring in 1981 to Gladstone's comments, the then Presiding Special Commissioner, Hubert Monroe QC, suggested that it would be some advance if tax law were intelligible to those who *had* received a legal education.<sup>19</sup>
- 8.2 As this suggests, complexity can be a relative matter on which opinions may differ. Complexity also has a variety of causes. It may, as Gladstone observed, be rooted in the nature of the subject matter that is sought to be taxed. More frequently, however, the origins of complexity lie in the policy sought to be achieved. The use of the tax system to achieve social objectives may be a particular source of problems because it requires drawing boundaries between the 'good' and the 'bad' where there is no clear principle to underpin the legislation. Here, as with many aspects of tax policy, there is a balance to be struck between fairness, certainty and simplicity, which is rarely easy. There may well be broad agreement within Parliament on the policy without those concerned realising that the problem lies in the complexity of its practical implementation or in striking the right balance between the different considerations of policy implementation.

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op. cit. at page 26. The working party considers that proposals to extend the remit of the current Tax Law Rewrite Project would be likely to undermine its valuable work. It therefore believes it important that any wider remit should be given to a separate body, which would work closely with but separately from the Tax Law Rewrite Project team.

<sup>19</sup> See H. H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax*, The Hamlyn Lectures (Stevens, 1981).

- 8.3 There is therefore no necessary relationship between better Parliamentary scrutiny of tax proposals and simpler tax proposals. It is always possible that better scrutiny will lead to demands for greater detail, for the recognition of more special cases or for greater fairness, all of which may produce more complex rather than simpler tax legislation. Thus, in many ways, Parliament is not the best environment in which to resolve these issues and Members of Parliament are unsuited to the task of doing so. The issues of complexity have to be addressed in a satisfactory manner at an earlier stage in the process, in the formulation and development of the policy and in the Ministerial decisions that lead to the presentation of proposals to Parliament.
- 8.4 The working party recognises these points and its conclusions do not deny the need to address complexity at an earlier stage in the process. Indeed, its support for Lord Howe's proposal for a Tax Structure Review Programme team is designed to build into the fabric of government tax policy work a body of people who will complement the Tax Law Rewrite Project and at the same time provide a focus in government for the need to accord simplification a higher tax policy priority than heretofore has been the case. As such, this element of the working party's proposals, if properly realised and commanding Ministerial support, offers greater potential for a significant impact on complexity than do the proposals for Parliamentary reform.
- 8.5 That said, as Lord Howe recognised, the present system, which allows so much tax legislation to reach the statute book in the form in which it does, reflects in part the lack of balance in the process: the absence at any stage in the process of any institution that is entitled to demand and to receive an explanation of the policy and of whether the complexity it involves is justified. Parliament may be an imperfect instrument with which to fulfil this function but this can hardly be an objection when Parliament has that role and responsibility already. The imperfection lies in its failure to fulfil its role properly rather than in its having the responsibility in the first place.
- 8.6 The working party's focus has therefore been to consider how Parliament may better fulfil its responsibility to scrutinise tax proposals before giving effect to them as legislation. It is the existence of effective participation by Parliament later in the process that should drive what happens at the earlier stages. It is true that Members of Parliament, in general, show little interest in the detail of tax legislation and have no special competence or expertise enabling them to deal with the detail. They are unlikely, therefore, to be best able to assess the complexity or otherwise of tax proposals. Furthermore, as Parliamentary proceedings in the tax field tend to be partisan in nature, the scope for dispassionate discourse may be limited.
- 8.7 The working party does not underestimate the difficulties that these points raise for achieving the effective participation by the House of Commons in the process of tax legislation. It can scarcely be acceptable, however, that points such as these should be regarded as unalterable facets of our Parliamentary democracy. And if the House of Commons is unprepared or unwilling to grasp the nettle of proper Parliamentary scrutiny of tax legislation, it can scarcely claim to maintain its prerogative to be the only House competent to consider



tax issues. If it requires expert input and support for it to function effectively in this field, it should seek the means rather than neglect its duty.