

*c. Chris Markham*  
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Treasury Chambers, Parliament Street, SW1P 3AG  
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*Dear Tim,*

... You wrote to me on 8 September and Willie Rickett on 19 and 29 September, about the correspondence which you and we had been having with Mr Peter Rowland of Roland, Debono Limited. I now attach the note you asked for as background to the Ministerial discussion on Mr Rowland's ideas which the Prime Minister has decided to hold. I hope that the minute is self-explanatory.

There is one other point you may like to bear in mind. Some of the questions Mr Rowland makes raise general questions about the handling of legislation and Parliamentary procedures and timetable. You may therefore like to consider, if you had not already done so, inviting the Lord Chancellor and the Leader of the House to be represented at any meeting, as well as Lord Cockfield and Parliamentary Counsel.

*Yours,*

*Judith*

MISS J C SIMPSON  
Private Secretary



SUMMARY OF CORRESPONDENCE WITH MINISTERS

(a) Drafting

Mr Peter Rowland first wrote to the Financial Secretary in January. In a series of letters he suggested that tax legislation was unnecessarily verbose and obscure and sometimes plain wrong. His suggestion was to rewrite it in shorter, simpler language, and at the same time to remove anomalies and ambiguities: and he produced an example of what he had in mind. In reply, the Financial Secretary explained the difficulties under which the Parliamentary draftsmen work, acknowledged that there would be scope for improvement if Acts of Parliament were rewritten at leisure, but pointed to the difficulty of changing the drafting without inadvertently changing the meaning, and the problem of obtaining Parliamentary time for consideration of revised versions of legislation which deliberately introduced some changes of substance.

2. In his letter of 7 September, Mr Rowland summarised his objectives as:-

- (a) shortening and clarifying Acts;
- (b) deleting provisions of little practical importance;
- (c) correcting anomalies and ambiguities;
- (d) reducing the need for extra-statutory concessions;
- (e) overturning undesirable Court decisions;
- (f) consolidating relevant Acts.



He suggests that his ideas should be tested by a "trial run" for a fortnight by a team consisting of himself, a Revenue lawyer with good drafting experience, and an official "qualified to pronounce on policy matters".

(b) Content

3. In his first letter Mr Rowland made it clear that he was concerned only with the drafting of legislation, not its content. He said "I am not criticising the content; on the contrary, I think the Revenue officials do a quite remarkable job in spotting the numerous consequential amendments which new provisions, or changes in the law, so often necessitate."

4. In his latest letter to the Prime Minister, however, he says "an excess of Revenue caution can stifle the good intentions of Ministers" and he encloses a note in which he criticises as unnecessarily elaborate some of the safeguards in the 1982 "purchase of own shares" legislation.

COMMENTS

(a) Drafting

5. Criticism of the length, complexity and obscurity of tax legislation has a very long history. The 1920 Royal Commission on Taxation called for a codification of tax law which would reenact the law in a modern form and incorporate decisions of principle in the Courts. A highly qualified "Codification Committee" worked on this for 9 years, but their efforts were finally abandoned in 1939. Since then, for a variety of reasons, the size and complexity of tax law has increased substantially.

6. Finance Bills are drafted by Parliamentary Counsel on the instructions of the Revenue Departments. Because of the late stage at which many policy decisions are taken, drafting frequently has to be done against a very tight timetable, with little



opportunity for polishing the final product. Moreover, some policy decisions on which the original drafting is founded may subsequently be changed, either as a result of policy changes by Ministers before the Bill is published or following discussion in Parliament. Counsel has therefore to adopt a flexible approach which will accommodate quick changes as the Bill progresses, and inevitably that may not result in the provisions which finally emerge being framed in the most economical and elegant way.

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7. It is true, therefore, as Mr Rowland suggests that it should be possible to produce improved versions of many existing tax provisions. That is not a simple task - a shorter version is often not a clearer version; it is all too easy to change the meaning inadvertently and in removing one ambiguity to introduce another. But, given time and resources, everyone is agreed that improvements should be possible.

8. Against this background it is doubtful whether Mr Rowland's suggested "trial run" would produce any very new information. It would be disappointing if a talented team of the kind he envisages could not produce some better, shorter drafts. Extensive consultation would be necessary to establish whether they were really better, and had not inadvertently changed meanings, introduced new complexities and ambiguities etc. The total resources required for this whole process over the 1,000 pages or so of the Income and Corporation Tax legislation could be considerable - within Government, within the accountancy and legal professions and in Parliament. There is a special Parliamentary procedure for ordinary consolidation Bills which is intended to minimise the Parliamentary time devoted to them; but Parliament might not be willing to apply it to a Consolidation Bill with radically changed wording even where there was no intention of changing the substance.



9. The Renton Committee, which reported in 1975, suggested a new procedure under which any Bill which was found to be obscure or otherwise defective in form could be rewritten shortly after Royal Assent in clearer language and ~~re~~-enacted without using much Parliamentary time under arrangements similar to those used for Consolidation Bills. This recommendation applied to all types of legislation, not just Finance Bills. We do not know why it has never been implemented - it is presumably a matter primarily for the Lord Chancellor and the Leader of the House. The considerations no doubt included the pressure on Parliamentary time and on the resources available for drafting work in Parliamentary Counsel's office and in Departments.

10. All the above is concerned with improving the drafting of legislation. Mr Rowland really enters a new ball game when he wishes to make changes to the law in the process of streamlining it - to delete provisions of practical importance, to correct anomalies and ambiguities, to enact extra-statutory concessions, to overturn Court decisions etc. This inevitably means that it could not be a purely technical/legal exercise but would entail a heavy involvement for Ministers and officials in the necessary policy decisions. And by the same token the consultative process would need to embrace not only the professions (on the technical details) but also industry and commerce (on the substance of the provisions).

11. The Parliamentary implications would be important. If the substantive law itself were being changed, experience suggests that it would be impossible to confine discussion to the mainly minor changes being made when technically the whole of the various pieces of tax legislation were being re-enacted. So there would be a danger that such a Bill would give rise to a wideranging, difficult and lengthy



debate. Apart from the problems of fitting a Bill of this kind into the Parliamentary timetable, all the indications are - judging from the recent report of the Procedure Committee - that Parliament is not sympathetic to the suggestion that more time should be devoted to tax legislation.

12. What then can be done if - with the best will in the world - the resources of manpower, money and Parliamentary time are not available for something more ambitious? One possibility is an occasional ancillary Finance Bill of the kind Sir Geoffrey Howe advocated, dealing with minor uncontroversial changes such as the correction of anomalies, extra-statutory concessions etc. But the Procedure Committee rejected that idea in favour of their much more sweeping proposals.

13. There are 2 developments which clearly should help. One is the increasing use we have made in the past few years of "exposure drafts" of legislation well in advance of the publication of the Finance Bill. This allows the representative bodies to make detailed comments over a much longer period than would normally be possible, and provides an opportunity for clearing up ambiguities and obscurities before the Bill is introduced. In practice, this often results in increasing the length of the legislation. During the autumn we shall be publishing in this way most of the provisions held over from the original 1983 Finance Bill as a result of the Election.

14. The second point is that, since the correspondence with Mr Rowland began, a new consolidation of the main tax legislation in the Income and Corporation Taxes 1970 and subsequent Finance Acts has been announced by the Law Commission. A consolidation is, of course, nothing like so ambitious as Mr Rowland's proposals. It amalgamates the existing legislation in a single Act without altering its substance (apart from any minor changes which can be made - in the Finance Bill - as preconsolidation amendments). But it should save a lot of time for all users of tax legislation



because it means that all the provisions on each topic will be gathered together in one place in a single Act rather than scattered a succession of separate enactments. And the Consolidation Act will be considerably shorter than the legislation it replaces. Even a consolidation of legislation on this scale is a major task - it will not be completed until 1988. To the extent that Mr Rowland is primarily concerned with the objective in the initial correspondence - improving the text of the legislation rather than changing it - it might (if the Prime Minister thought it desirable and the Lord Chancellor saw no objection) be worth his getting in touch with the people concerned in the Law Commission.

(b) Contents

15. Mr Rowland's latest correspondence suggests that Revenue caution on the details of new provisions stifles the Ministerial initiative underlying them. This is rather ironic since his first letter was sparked off by a press report he had seen of a letter the Financial Secretary had written to Mr Tim Smith MP in December 1982 on simplification, in which he had been at pains to emphasise that Ministers, not the Revenue, decided the detailed contents of tax legislation.

16. The provision he criticises - the same one as he has redrafted - illustrates this point very well. It contains the tax rules complementing the new "purchase of own shares" legislation. A consultative document <sup>was</sup> issued before the legislation and virtually everyone who responded to it agreed on the need for it to include effective safeguards to prevent accumulated profits simply being distributed tax free. In considering what these rules should be, the then Minister of State (Peter Rees) travelled to the United States to learn



at first hand how their rules worked. The rules he decided on, and which are incorporated in this legislation, were therefore drawn up with the benefit of practical experience over many years in the United States. They were designed to extend tax relief in the kind of situation where the purchase of own shares can be of real benefit to the trade of a small or unquoted company, but not to give relief in the kind of situation where the transaction is more in the nature of a distribution of accumulated profits, or dividend. Obviously, there can always be differences of view about the merits of particular aspects of such provisions (though the main provisions mentioned by Mr Rowland have direct parallels with the United states provisions), but Mr Rowland is entirely mistaken in suggesting that Ministers had not carefully considered the details of these provisions and, by implication, that they had given little thought to their impact on business taxpayers.

17. Finally, I should add that they are working well. The Revenue have received over 900 applications for clearance for purchase of own shares under the 1982 legislation, and has approved some 88 per cent of them, involving some £m90.