

PRIME MINISTER

SIMPLIFYING TAX LEGISLATION

You will wish to look at the Policy Unit note at A and the Cabinet Office brief at B. If you have time you may also like to refresh your memory of Lord Cockfield's minute at C and the Treasury note at D.

The major issues are:

- (i) How far is it possible to improve the drafting of tax legislation without affecting policy?
- (ii) What is the appropriate Parliamentary procedure
 - (a) where only drafting changes are involved, and
 - (b) where minor policy changes are necessary?
- (iii) Can a more rapid and effective programme of consolidation be devised, and what are the resource implications?

In the light of the discussion you will wish to consider how best to respond to Mr. Rowland.

DMS

13 December 1983

CONFIDENTIAL

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Policy Unit

PRIME MINISTER

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Mr Peter Rowland is right. The tax legislation in this country is too complex and long-winded, and often the tax Acts are badly written.

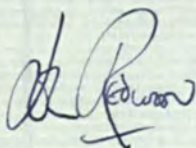
His solution, however, of rewriting the tax legislation in a simpler and clearer form, removing anomalies but leaving aside policy issues, is not sensible. Any rewritten legislation of this kind would have to be put to Parliament for approval. If this amount of time is to be devoted, it would be much better to examine the underlying policy issues at stake as well.

In Corporation Tax, for example, one of the main causes of complexity is the nexus of allowances and reliefs offered against the mainstream tax. This is being reviewed by the Treasury. We should press for an early and cogent reform. The time to simplify tax legislation is when a new Finance Bill is put to Parliament incorporating the policy review as well as simpler language.

The way forward must be to:

- (a) encourage the Treasury and Inland Revenue to propose tax reforms that result in a major simplification in the structure and incidence of taxes;
- (b) use clearer and simpler English in the resulting Finance Acts that need to be passed - perhaps drawing on some outside experts for help;
- (c) speed up the consolidation process in the usual way to simplify areas of tax law which have not been reviewed.

Greater simplicity and clarity in our tax policy and law would strengthen the hands of Ministers and the public against any efforts to frustrate the true intentions of Government.



JOHN REDWOOD

CONFIDENTIAL

MR BARCLAY

c Mr Hatfield

TAX LEGISLATION: CORRESPONDENCE WITH MR PETER ROWLAND

1. The Prime Minister is holding a meeting on Wednesday 14 December at 10.00 am to discuss the issues raised in correspondence by Mr Peter Rowland. There is also a note by the Treasury, a minute from the Chancellor of the Duchy of Lancaster to the Prime Minister (of 17 October) and a note by First Parliamentary Counsel (of 7 November; ~~DA~~ Renton recommendation No. 107).

Background

2. Mr Rowland has 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.

His primary concern is the drafting of tax legislation, but some of his objectives ((b), (d) and (e)) bear on policy. He has provided examples of the end-product he has in mind and 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."

3. There is general agreement that tax legislation (indeed most legislation whether concerned with taxation or not) could be better formulated, though shortness and clarity (objective (a)) do not necessarily go hand in hand. The difficulties are (1) Before introduction of a Bill

(i) policy is formulated and drafting undertaken to a tight timetable, the two activities frequently inter-acting. Very little time is available to recast material to make the best presentation of the final policy in its context.

(ii) Both policy and drafting must have in mind the need to avoid ambiguities and close loopholes if difficulties are to be avoided later for the revenue departments or in the Courts. These factors militate against shortness and simplicity.

(iii) Increasingly the device of exposure drafts is used to begin the formulation of legislation well in advance and for consultation. The result may be wider agreement but is also likely to be more complex legislation (because of points thrown up in consultation) and there are the same difficulties as in (i) in a late reformulation. They use a lot of resources.

(2) In Parliament

(iv) the process of Parliamentary amendment of the existing text is likely to produce further complication. The Parliamentary timetable, particularly for the Finance Bill, is very tight if it is to be enacted before the Budget Resolutions lapse.

(v) Rewriting in improved form immediately after Royal Assent (on the lines of Renton recommendation 107) is unlikely either to be welcomed at least in the short term by the users (who will have been lobbying and doing their homework on the original text) or to be acceptable to Parliament without further extended debate, for which time is not available under present arrangements. (The difficulty is changing the form without, however inadvertently, changing the substance.)

(3) Subsequently

(vi) Consolidation Bills do, up to a point, achieve Mr Rowland's objectives. But they may not change the law (if they do, they are not eligible for the expedited Parliamentary procedure) and could not therefore overturn "undesirable" Court decisions or make policy changes. It is, however, possible to deal with anomalies and anacronisms in a Finance Bill running in front of the consolidation. Consolidation is a major resource-consuming task.

4. The opportunities for improving matters in the pre-legislative or Parliamentary stages are few. Perhaps exposure drafts could be used more than they are (but the result will not necessarily be what Mr Rowland is aiming for). Perhaps policy-makers could try harder to keep it simple. But it is probably not realistic to suppose that the time-pressures on Ministers, officials and draftsmen in preparing legislation can usually be anything but extremely tight.

5. In any case most of the problem Mr Rowland perceives already exists in the form of the present body of tax legislation. So it is the arrangements for

consolidation or other improvement of the Tax Acts that is most important.

The main options are:-

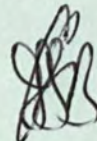
- The Rowland approach ie. a small mixed team of draftsmen and policy-makers concentrating for a short period on a manageable area of tax legislation. Presumably the result would be the subject of consultation and subsequent enactment in a Finance Bill. The question is How long would it take, using this approach, to make an impact? The Chancellor of the Duchy comments that Mr Rowland seriously underestimates the magnitude of the task.
- A special Commission (analogous to the Law Commission) charged with the task of rewriting and improving the Tax Laws (this is one of Lord Cockfield's suggestions). Such a body existed before the war but its work ran into the sand, probably because its task was too big. The volume of tax law has much increased since.
- A low-key approach (also Lord Cockfield's) asking "every Inland Revenue specialist to go through the legislation for which he is responsible and identify the opportunities [for improvement] with the intention (and determination) of acting in the ordinary Finance Bill whenever the opportunity arose". The danger is that this too would run into the sand because of other pressures on the Inland Revenue staff and on Finance Bills.
- To build on the present procedures for Consolidation Bills and pre-consolidation amendments in the Finance Bills. The Income and Corporation Tax Acts were consolidated in 1952 and 1970 and work has just begun on a new consolidation which should be completed in 1988. Other tax laws have been consolidated from time to time (Capital Transfer Tax is also going on at present). Perhaps what is needed is a clearly set out and continuing programme of tax law consolidation, and associated improvement, to a timescale that meets the problem (18 years between Income Tax consolidations may be too long) with sufficient input of resources to be able to keep to the programme. Scarcity of draftsmen is a major reason why more is not being done, but Ministers and officials would also need to find the time to discuss policy implications.

Handling

6. The Prime Minister may first like to discuss whether it is agreed that there is a problem and what sort of priority should be attached to dealing with it. In particular, Is it possible to disentangle the drafting and policy aspects or do they have to be treated together? (All those attending are likely to have views.)
7. Discussion might then concentrate on what can be done -
- (a) in preparing legislation in the first place (Treasury and First Parliamentary Counsel). Is there further mileage in the use of exposure drafts?
 - (b) in Parliament (Lord Privy Seal and First Parliamentary Counsel). It seems doubtful that there is much room for manoeuvre here.
 - (c) to improve legislation that already exists. The options are those in paragraph 5. Treasury and Chancellor of the Duchy have ideas. The Lord Chancellor will have views on the role of the Law Commission and First Parliamentary Counsel on the availability of drafting resources. Can resources be brought in? (First Parliamentary Counsel is likely to argue that suitable resources are simply not available in the private sector.)

Conclusion

8. The conclusion might be that there is a problem and it is worth giving a measure of priority to improving the situation. Exposure drafts and perhaps a conscious effort to keep legislation simple will help improve new legislation. But the main thrust must be on the body of existing legislation. The sheer volume of this suggests the need for a planned programme of consolidation and improvement (perhaps under the auspices of the Law Commission) to a reasonable timetable (a complete cycle of consolidation every ten to 12 years?) An increase of drafting resources would certainly be necessary for this.
9. The next step might be for the Treasury, in consultation with the Lord Chancellor and First Parliamentary Counsel, to make proposals for a programme of work and the resources needed.



C J S BREARLEY

Now for
Simplifying
the Tax
Legislation.