Office of Tax Simplification
Clause 100

Executive Summary

This proposal to increase the size of the OTS's board is not controversial. However the absence of any more substantial changes to the OTS's role as a result of the recent review of its work raises broader questions when few of the office's substantive recommendations are being implemented and the tax system as a whole is continuing to become more complicated.

The government's responses to recent OTS reviews show how difficult it is to make significant progress. The challenge the OTS faces is that, while ministers buy in to the principle of simplification, whenever it comes up against political or revenue obstacles they seem to trump it.

We are concerned that sometimes recommendations are accepted in principle by government but subsequent progress is slow and/or hard to discern.

While the OTS has had a positive impact on the existing tax system, new tax legislation has been working in the opposite direction, making the system more complicated. Unless the government makes simplification central to tax policy making, the work of the OTS is likely to continue being dwarfed by the mountain of new complex tax legislation and processes. We have a number of proposals for how this might be done, including giving OTS a greater role in scrutiny of new tax proposals, undertaking post-enactment review of new legislation, and requiring the government to respond in good time to all OTS reports.

1.	**Background and history**
1.1.	This clause implements a recommendation of the Treasury's review of the Office of Tax Simplification (OTS). It increases the number of OTS Board members from 8 to 10. It is intended that the additional members will bring expertise in 'customer experience' and 'current developments in the digital sector'.
1.2.	The OTS was originally created by the coalition government in 2010, as an independent office within the Treasury. It was put on a statutory footing by Finance Act 2016 (ss 184-188 and Schedule 25). Its role is to advise the Chancellor independently on the simplification of the tax system, including improving the efficiency of its administration. It focuses both on areas identified by the Chancellor, and on those chosen on its own initiative.
1.3.	The OTS Board is responsible for taking forward the strategic aims and objectives of the office. It includes the Chair and Tax Director of the OTS (currently Kathryn Cearns and Bill Dodwell respectively) who are responsible to ministers for the office's work, including the

	content of its reports. Additionally two other members of the Board are appointed from HM Treasury and HMRC. Up to four further members with relevant knowledge or experience can currently be appointed to the Board.[1]
1.4.	The OTS's reports must be published. In practice the government's responses to reports have been published too, albeit that this has often been done only after a long delay (eg. a July 2019 OTS report on the design of inheritance tax was only responded to in November 2021). Some OTS reports (typically those chosen on its own initiative) have not prompted a government response.
1.5.	Increasingly the OTS has taken a broad view of what 'simplification' is about: not obsessing with the length of the legislation but looking at the impact of the tax system on the lives and businesses of those who have to comply with it, considering compliance costs, distortions of behaviour, and unintended consequences in the round.
1.6.	During the OTS's 11 years it has had some notable achievements. Its first report led to the abolition of more than 40 tax reliefs (though these were generally fairly niche and the number of new reliefs created since is rather larger). Cash basis reporting has been adopted by more than a million small unincorporated businesses. Reforms to employee expenses and inheritance tax reporting have led to significant improvements in these areas. An analysis carried out in 2015 found that of the OTS's first 402 recommendations 166 had been wholly accepted by government and a further 33 partly accepted.
1.7.	However, as those statistics suggest, a large number of the OTS's recommendations have not been accepted by government.[2] Among the higher profile examples, two reports in 2016 made the case for closer alignment of national insurance with income tax but the government decided not to pursue this.
1.8.	More recently the OTS published two reports on each of inheritance tax (IHT) and capital gains tax (CGT), in each case looking separately at the design of the tax and at technical and administrative issues around it. The government accepted 5 out of 14 recommendations from the report on the technical and administrative issues with CGT. These include extending the 'no gain no loss' window on separation and divorce, and increasing the period to report and pay CGT (clause 23 of this bill). It accepted 7 out of 8 recommendations on the administration of IHT, including changes to cut by more than two-thirds the number of estates each year which have to complete IHT forms for deaths.
1.9.	However the government has not accepted any of the OTS's proposals for changes to the design of either tax. For CGT, the OTS had suggested that the levy's annual allowance might be reduced given the evidence of how much it distorts behaviour; and its rates could either be aligned with income tax or set at a single flat rate instead of the complex partial alignment that currently exists. In a letter[3], sent in November 2021, the Financial Secretary responded: "these reforms would involve a number of wider policy trade-offs and so careful

[1] Current board members include CIOT Director of Public Policy John Cullinane. A full list of board members is available at: https://www.gov.uk/government/news/office-of-tax-simplification-board-changes
[2] There is a published index of OTS's reports and government responses, kept reasonably up to date, at: https://www.gov.uk/government/publications/index-of-ots-reports-and-government-responses
[3] The Financial Secretary wrote to the OTS on 30 November regarding the Treasury's first five-year review of the OTS and to respond to its reports on Inheritance Tax and Capital Gains Tax. https://www.gov.uk/government/publications/chancellor-responds-to-the-office-of-tax-simplification

	thought must be given to the impact that they would have on taxpayers, as well as any additional administrative burden on HMRC. The Government will continue to keep the tax system under constant review to ensure it is simple and efficient. Your report is a valuable contribution to that process.”
1.10.	In the same letter, the Financial Secretary also rejected all 11 of the OTS’s proposals for changes to the design of IHT. She stated that, “after careful consideration of your recommendations, the Government has decided not to proceed with any changes at the moment, but will bear your very valuable work in mind if the Government considers reform of IHT in the future.” The OTS’s proposals had included simplification of lifetime gift exemptions and changing the scope of reliefs such as those for business property and agricultural property.
1.11.	The 2016 legislation provides that the Treasury will review the OTS every five years. The first review took place in 2021 with the report published in November.[4] It concluded that: “the need for the OTS’s statutory function to advise the Chancellor on simplification of the tax system remains undiminished.”
1.12.	The Treasury report makes a number of recommendations, including that the OTS: • Expose their reasoning behind their recommendations, particularly where there are trade-offs between simplification and other policy objectives that government must consider; • More clearly prioritise those recommendations which the OTS considers of most value to taxpayers; • Maintain and expand the breadth and balance of knowledge, experience and expertise within the Secretariat, while also seeking professional expertise in how it consults externally; • Consider the volume and type of output it produces, and focuses more on activities that build its preliminary evidence base and embed its work; and, • Clarifies its aims and objectives in light of its articulation of how it interprets ‘tax simplification’, using this to inform which areas it will prioritise over the next five year period to maximise its impact [Note: there is comparatively little statutory definition of this within the 2016 legislation.]
1.13.	In relation to the OTS Board, the review concluded “that there is scope for the Board to further develop and document its role in relation to the oversight of the Secretariat”. It noted that stakeholders consulted during the review had “expressed the importance of independent representation on the Board, both in bringing external insight and diversity of thought to Board discussions, but also in reassuring external stakeholders of the independence of OTS advice to government.” The review recommended that the Treasury should build on the expertise of the current Board, further widening the diversity of the Board’s skillset.[5]
1.14.	Specifically, the review noted suggestions that tax simplification must take into account the experience of the everyday person interacting with the tax system, and also noted

[4] The report can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039595/HMT_Review_of_OTS_Report_FINAL.pdf

[5] Conclusions and recommendations relating to the OTS Board can be found in paragraphs 3.10 to 3.17 of the review’s report.

	technological advancements in tax administration. Consequently it concluded that: "HM Treasury should introduce an amendment to the legislation governing the OTS to provide for two additional independent Board members" (under the 2016 legislation the size of the board is limited to not more than eight members) and that they "should consider appointing members with expertise in the digital sector and/or customer experience."
2.	**CIOT comments**
2.1.	This proposal is uncontroversial. We recognise the potential benefits of broadening the diversity and expertise of the OTS Board (though we note that, through its staff, secondments and advisory committees constituted for each review, the OTS can already draw on a wide range of expertise for its work). However we think there is a need for a much broader debate about the role of the OTS and the role it can play in simplifying the tax system.
2.2.	We think that the tax profession, and to some extent the wider public, have a positive view of the OTS - but this raises the question of why so little progress has been made on tax simplification in the 11 years of OTS existence? - indeed the tax system has by common consent continued to get more complicated since then[6], including the creation of eight more taxes, with up to six more in the pipeline (two in this bill).[7]
2.3.	We see a puzzling contrast between, on the one hand, the government's enthusiasm for continuing (and in a sense extending) the OTS's work - the review's findings do not imply any fundamental criticisms and do imply greater resource input – and, on the other hand, the fact that so few of OTS's substantive recommendations on the tax system are accepted and fully taken forward in practice.
2.4.	In our view the OTS has tried hard to make its recommendations substantive enough to offer meaningful simplification but respectful enough of ministerial policy decisions to avoid the charge of lack of realism or attempting to subvert the prerogatives of the elected government. (This is not always an easy balance to strike!)
2.5.	The OTS has also proved able to mount effective consultations, identifying and engaging with wider groups of stakeholders than have tended to be involved in the tax policy consultative process - which the Treasury and HMRC would do well to imitate.[8]

[6] This case is made on pages 10-11 including figures 1-3 of the report 'Better Budgets: making tax policy better', jointly published by CIOT, the Institute for Government and the Institute for Fiscal Studies in 2017 (https://www.instituteforgovernment.org.uk/sites/default/files/publications/Better_Budgets_report_WEB.pdf).

[7] See https://www.tax.org.uk/new-finance-bill-means-20-new-taxes-since-2000. The eight taxes range from the Bank Levy in 2011 to Digital Services Tax in 2020, and the six are Plastic Packaging Tax (to take effect next year), the Health and Social Care Levy (from 2023), the Building Safety Levy, the Residential Property Developer Tax, the Economic Crime Levy, and the Online Sales Tax currently being consulted upon. The number of new taxes is higher if the devolved administrations in Scotland and Wales are included. Over the same period no taxes have been abolished.

[8] This was a recommendation of our 2017 report 'Better Budgets' (see previous footnote), where we said: "HMRC and the Treasury should follow the more proactive approach taken by the OTS and develop new ways of engaging stakeholders to ensure that they hear from people who do not usually contribute to tax policy making. This may involve conducting focus groups outside London, and engaging representatives of difficult-to-reach groups." (page 45, Better Budgets)

2.6.	Nevertheless, as the government's responses to the CGT and IHT reports (see paragraphs 1.8 to 1.10 above) illustrate, when it has gone beyond technical and administrative tweaks the OTS has consistently struggled to get government backing for its ideas for change in the tax system.
2.7.	There is a 'motherhood and apple pie' flavour to the Treasury's report findings (see paragraph 1.12 above). It is hard to argue against them. Yet it is hard to believe that of themselves they will do anything to make it more likely that OTS recommendations will be accepted.
	Political and revenue obstacles to reform
2.8.	It seems to us that the reasons for the lack of success in seeing things through to accepted and implemented recommendations are that, while ministers buy in to the principle of simplification, whenever it comes up against political or revenue obstacles they trump it. If a significant reform costs the Exchequer money the government reject it. If a significant reform doesn't cost the Exchequer money it normally produces losers who will make a fuss so it gets rejected then as well.
2.9.	For example, on **revenue cost,** in 2017 the OTS published a report on VAT simplification[9]. A key finding was that the UK's VAT threshold of £85,000 revenue per annum was causing significant distortion, constraining economic activity as traders adopted a variety of means to avoid their businesses generating revenues in excess of the threshold, obliging them to start charging VAT and putting them at a 20% price disadvantage with competing firms still below the threshold. The OTS produced a number of ideas to deal with this to smooth the effect of this cliff-edge in the system: for example traders operating just above the threshold might be able to keep some of the VAT they collected. This would have cost money. One option might have been to freeze, rather than continue to index, the threshold to provide an amount of savings to part-finance some of this cost. In the event the then Chancellor opted to keep the recommendations 'under review', but in the meantime to freeze the threshold as a contribution to fiscal consolidation.[10]
2.10.	Where a revenue cost is avoided, this is likely to be because the simplification proposed will produce **winners and losers**. Typically potential losers make more political noise than potential winners. (Or it may be that there is a fear that they will, so reform is never attempted.) For example, consider income tax and national insurance. it is common to see media commentary along the lines that employees' national insurance is nowadays simply an additional income tax on people's earnings and the two could be merged. The OTS in fact

[9] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/657213/Value_added_tax_routes_to_simplification_web.pdf

[10] Government response to the report:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/661062/Letter_from_the_Chancellor_to_the_Office_of_Tax_Simplification__OTS__web.pdf.
The OTS's evaluation of progress on the report:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835709/OTS_Paper_-_VAT_Evaluation_update.pdf.

	produced a report[11] on a somewhat more modest objective: aligning the bases of the two taxes which would have saved compliance cost and confusion. The significant losers from this proposal would be employees with fluctuating earnings that were above the national insurance upper limits in a good month, but at or below the threshold expressed as an annual limit. It was estimated that, under the proposal, 7.1 million workers would pay an average of £175pa less NICs (£1.2 billion in total) but 6.3 million workers would pay more on average of £275pa more NICs (£1.7 billion in total). This led to a further report[12] with slightly refined estimates and various options for reform. The then Chancellor's response concluded that: "the reform would also be a major upheaval, with consequences for the labour market and a large number of individuals and businesses. On the basis of the scale of change required, I do not consider now to be the right time to make this major reform but I am grateful to you for bringing these issues to light."
2.11.	Sadly there are not many substantial simplifications which are cost-free and controversy-free. So long as this remains the government's approach it seems the OTS's impact will be limited to simplifying administration and technical processes – useful work, but a disappointment to the many people who look to it to set a broader agenda on simplifying the tax system.
	Slow progress
2.12.	Sometimes recommendations are accepted in principle or the impression is given that more work is to be done on them by Treasury and/or HMRC but subsequent progress is slow and/or hard to discern.
2.13.	For example the OTS recommended in their October 2019 report, *Taxation and life events*[13], that, *inter alia,* improvements should be made on behalf of those who might miss out on national insurance credits toward their state pension as an unintended result of the introduction of the high income child benefit charge. The charge has led many of those who would be affected to not claim child benefit at all in the mistaken but entirely understandable and predictable belief that there was no point to doing so, given that the charge would claw back any child benefit received. Other than updating the wording on the child benefit claim form (which does nothing to alert those who decide not to claim), we are not aware of any other progress which has been made towards these recommendations.
2.14.	There is a similar pattern to other recommendations designed (i) to address another unintended effect (the difficulty faced by children in respect of whom no child benefit is claimed in getting national insurance numbers upon entering the labour market in later years); and (ii) to alert people to their obligation to report to HMRC that they might be impacted by the charge. This may seem counter-intuitive, given that the state is normally aware of all the circumstances which might give rise to the charge, but is simply unable to aggregate the required information from different departments' data. This lack of progress has not prevented HMRC from using 'discovery assessments' to pursue taxpayers who have failed to report this (and, in this Finance Bill, introducing retrospective legislation to

[11] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/505610/PU1909_cover___prelims_web.pdf

[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/567491/OTS_report_web_final.pdf

[13] https://www.gov.uk/government/publications/ots-life-events-review-simplifying-tax-for-individuals

	legitimise these assessments whose validity has been called into question by a tribunal decision).[14]
2.15.	Finally, the OTS only looks at the existing stock of tax legislation and administrative practice. Even if all its recommendations had been implemented, it is likely that any simplification achieved would still have been exceeded by the complexity added to the tax system by new legislation created in the same period.[15]
2.16.	By way of example, in the current Finance Bill, clause 23 implements an OTS recommendation to extend the deadline on reporting capital gains on residential property from 30 to 60 days. This is a welcome easement, but it is an easement of a new compliance burden[16] which was itself only introduced in Finance Act 2019.
	Potential strengthening of OTS
2.17.	CIOT see a number of ways in which the role and influence of the OTS could be usefully broadened and strengthened. We set these out in our submission to the OTS review[17], and some of the key ones are summarised below.
2.18.	We believe that OTS should have a greater role in **scrutiny of new tax proposals**, reviewing new measures being introduced or developed by government and considering whether those measures, and the implementation of them, introduce unnecessary complexities into the tax system that contradict with the simplification agenda. For example, it is important that new measures do not impose disproportionate expectations on technology simply because future technology is anticipated to provide 'the answer' or to hide the likely complexity. Integrating tax simplification into the Tax Consultation Framework and decision-making process, with a formal role for the OTS, and the resources to match, would underscore the importance of stemming the tide of ever greater complexity.
2.19.	We suggest that the government should have to **respond formally to all OTS reviews** – not just those requested by the Chancellor – within a prescribed time period, and they should have to respond to every recommendation, as they are obliged to do with select committee reports, indicating in detail which recommendations will be taken forward.
2.20.	It may also be beneficial to expand the OTS's role to incorporate a **post-enactment review** of new legislation – perhaps two to three years after implementation. This could not only determine the real-life impact of the measure as compared to that envisaged during its development, but also identify valuable 'lessons to learn' for the development of future policies.
2.21.	We would like to see **periodic revisiting by OTS of proposals** from its earlier reviews, to identify recommendations that were not taken forward and to consider whether they should be revisited, revised or dropped. (While the OTS does do some reviews of

[14] See the representation of the CIOT's Low Incomes Tax Reform Group to the committee on clause 95 (discovery assessments)
[15] Consider, for example, the new taxes mentioned in paragraph 2.2
[16] The requirement to report such gains – entirely separately from the normal self-assessment process and the personal tax account intended to become the main interface between the tax payer and HMRC – has a raft of complexities, as well as being an additional compliance burden. It is noteworthy that this obligation was introduced in Finance Act 2019 after a process in which, as often happens, there was no 'Stage 1' consultation.
[17] https://www.tax.org.uk/ref808

	implementation (as in examples cited above) these tend not to call out failure to make progress or draw the implications of that.)
2.22.	In summary, we see the work of a strengthened OTS fitting into three areas going forward: scrutiny of new measures, periodic revisiting of earlier recommendations, and a continuation of the existing cycle of reviews of policy areas. The latter might usefully include pensions tax and a review of employee benefits and expenses in light of increased working from home. The OTS would, of course, require adequate resourcing in order to take on these additional tasks.
2.23.	However, ultimately, the success or otherwise of efforts to simplify the tax system depends on ministers. Ministers must give a much greater priority to simplification, in the broad sense of the experience that taxpayers have in complying and interacting with the tax system, and its impact on their lives and businesses, considering compliance costs, distortions of behaviour, and unintended consequences in the round.
2.24.	OTS needs direct access to ministers to put its case, but ministers also need to recognise that tax simplification is not something they can delegate to the OTS – it requires their engagement and they need to be willing to amend or drop otherwise attractive proposals if the complexity cost is too high.
3.	**The Chartered Institute of Taxation**
3.1.	The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
3.2.	The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
3.3.	The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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