1 Introduction

1.1 Our comments in this submission reflect our experience as a frequent participant in government consultations, especially in relation to consultations by HM Treasury and HM Revenue and Customs. They also draw on comments made – particularly by our members and other tax professionals - as part of a project on Improving the Tax Policy Making Process, which we are carrying out jointly with the Institute for Government and Institute for Fiscal Studies. This has so far led to an open letter to the Chancellor and is expected to lead to a final report in November 2016. The comments in this submission are, however, our own only.

1.2 As our area of interest is primarily tax legislation our remarks are particularly directed at the (usually) annual Finance Bill, and may not be applicable to other legislation which is prepared and treated differently.

2 Summary

2.1 Creating good law: We are supportive of the ‘new approach to tax policy making’ introduced by the Government in 2011, including the publication of Finance Bill draft clauses for consultation as a matter of course. However we are concerned about the increasing volume of tax legislation and about growing complexity. We propose a reversion to one principal fiscal event a year to reduce the volume of legislation. We support the work of the Office of Tax Simplification and believe an appropriately resourced OTS could have its remit expanded to allow it to look at some draft legislation. We would like to see greater consistency of definitions used in legislation. Consideration should be given to publishing instructions provided to the Office of Parliamentary Counsel, and also to the potential for a ‘tiered’ approach to legislation. We support the use of ‘roadmaps’.

2.2 Brexit: Out of the EU we will have more options to vary our tax system, particularly in relation to VAT, but this risks adding to complexity. We see no reason why the process of amending tax law incorporated from EU law should be different from the process for other changes. Consultation on the practical implications of policy changes will be important.

2.3 Technology: Technology can be used to make consultation more accessible and communication more effective, for example through the use of webinars. Appropriately framed online surveys can have a role in consultation, but are best targeted at those who may not commonly reply to consultations and thus could use a survey to give limited responses. Datasets should be made available wherever possible; more data has been made public but there are still too many cases where
making more data public would enable better responses to consultations.

2.4 Public involvement and engagement: There are still too many occasions when changes are rushed through. Secondly, consultations sometimes start at too late a stage, with the central proposal already decided upon, meaning that other routes to achieve the objective more effectively are excluded. Secrecy on the basis of ‘market sensitivity’ may be being over-used. Informal pre-consultation is sometimes useful but is not a substitute for full, open consultation. Potential consultees would be encouraged by the provision of feedback on their submissions, by systematic inclusion of the evidence base for proposals, and by use of the full three months consultation period wherever possible. Broad consultations, whether through roadmaps or independent reviews, might boost public engagement, as would more proactive outreach by departments. Also there should be efforts to encourage greater public understanding of taxation generally, including teaching of tax in schools as part of a broader ‘life skills’ programme within the national curriculum.

2.5 Information provision: Finance Bill might be published as soon as they are drafted, rather than all together in December. We are concerned about the quality of information published alongside tax measures. Explanatory notes are not always as helpful as they could be. The quality of Tax Information and Impact Notes (TIINs) is felt by our members to have deteriorated. There are also issues around standing HMRC guidance on existing legislation. Gov.uk covers generalities but often lacks detail.

2.6 Parliamentary involvement: Meaningful parliamentary scrutiny of tax legislation is made difficult by technical complexity and the constitutional importance of ‘supply’. The House of Lords Economic Affairs Committee deserves credit for the work of its Finance Bill Sub-Committee. The House of Commons Treasury Committee periodically looks at tax issues. However, this scrutiny should not be mistaken for the actual development of legislation, which remains closely guarded by the Treasury.

3 Creating good law

The Office of the Parliamentary Counsel describe “good law” as “law that is: necessary; clear; coherent; effective; [and] accessible.”

1. How effective are current practices in Government and Parliament at delivering clear, coherent, effective and accessible draft legislation for introduction in Parliament?
2. Are there mechanisms, processes and practices at this stage of the legislative process that hinder the development of ‘good law’?
3. Are there improvements that could be made at this stage of the process that would result in law that is more easily understandable by users and the public?

3.1 The ‘new approach to tax policy making’ introduced by the Government in 2011 has led (when followed) to an improved tax consultation process which has in turn led to better tax law. The publication of Finance Bill draft clauses for consultation as a
matter of course is a key and welcome part of this. (We suggest further potential improvements to the consultative process in the ‘Public involvement and engagement’ section below.)

3.2 We are concerned, however, about the increasing volume of tax legislation. Finance Bills have increased significantly in length over the last two decades. HM Treasury produces more legislation than any other department. More legislation makes it harder for taxpayers, and even their specialist advisers, to stay on top of all relevant developments. In our view reducing the volume of tax measures and the frequency of significant changes of direction would release resource for better consultation, produce higher quality legislation and more effective implementation, make life simpler for taxpayers, and potentially increase the impact of measures concluded upon. For this reason we, alongside the Institute for Government and Institute for Fiscal Studies, are calling for a reversion to one principal fiscal event a year (while recognising there may still be a need for technical changes at other times of the year) to reduce the volume of legislation.

3.3 While the length of Bills, and of the tax code as a whole, is not a direct proxy for complexity it is one factor that has contributed to the increased complexity of the UK tax system. The establishment of the Office of Tax Simplification (OTS) has been a welcome move and the statutory underpinning of the OTS a further positive step. The OTS’s work has led to some welcome improvements to the tax system. While care should be taken to ensure the OTS is not stretched too thinly, an appropriately resourced OTS could have its remit expanded to allow it to look at some draft legislation, assessing whether it simplifies, adds complexity or makes no difference to the complexity of the tax code. This could be part of the Tax Information and Impact Note (TIIN) process (see ‘Information provision’ section below). In any case it is important that the role of the OTS in the consultation and policy development process is clearly defined.

3.4 One factor that makes tax law less clear than it might be is inconsistency of terms and definitions used in legislation. Terms such as ‘dwelling’ and ‘residential property’, for example, are defined differently for different taxes and sometimes even in relation to different sections of law relating to the same tax. (An OTS study in 2013 highlighted quite how widespread this problem is.) Greater consistency of definitions would assist understanding of legislation both in draft and in statute.

3.5 Our members and other tax practitioners are concerned that the intention behind tax legislation is not always clear and, consequently, it is not obvious whether government intentions are always being accurately translated into statute. One way in which this might be tackled would be by publishing instructions provided by departments to the Office of Parliamentary Counsel (OPC). It may also be worth exploring the potential for a ‘tiered’ approach to legislation where core aims – which might be the same or very similar as instructions to OPC – are set out at the start of a piece of legislation in a form suitable for the general taxpayer, and more details are provided in lower ‘tiers’ for specialists.
3.6 It may be a problem that Parliamentary Counsel are not apparently advisers, answerable to the departmental policy sections who 'instruct' them, but have to be requested to consider changes to their drafts in order to meet policy concerns, including those of simplification and concerning compliance costs. One reflection of this is the plethora already noted of different definitions in legislation for what is intended to be essentially the same thing.

3.7 The use of ‘roadmaps’ can increase clarity and public understanding. The 2011 corporate tax roadmap is a good example of a roadmap which went beyond merely restating the current position and set out a clear direction of travel over the course of the Parliament. Its 2016 equivalent, while still helpful in some respects, did not achieve this to the same extent. Roadmaps are particularly useful in areas where taxpayers need to plan and make long-term decisions, such as environmental taxes, or pensions and savings. The more that roadmaps can be developed in consultation with those affected, the more effective they are likely to be. Roadmaps also offer an opportunity for pre-legislative scrutiny of the broad direction of travel of a government in a particular area, tax or otherwise.

4 **Brexit**

> Following the UK’s withdrawal from the EU, Parliament will have to legislate across a range of areas previously legislated for at an EU level.

4. What impact will the UK’s withdrawal from the EU have on the volume and type of legislation and how will that affect this stage of the legislative process?

5. Will there be changes required to how the Government and Parliament deal with legislation following Brexit?

4.1 Obviously the Brexit vote creates a large amount of uncertainty, in tax as elsewhere. Out of the EU we will have more options to vary our tax system but it is far from clear whether government would, or should, take them up. For example, creating new VAT exemptions and zero rates will no doubt have its advocates, but the Government should give careful consideration to whether the benefits of any change outweigh the additional complexity that this would create.

4.2 VAT is in origin a European tax. If freedom to change it means that options to significantly simplify it are pursued, this could be worthwhile and respond to one of the key concerns about complexity on the tax system raised by small businesses. We do however have a concern that it may mean on the contrary that it becomes subject to a higher volume of changes adding to complexity and formulated without initial consultation, as has happened, without comparable EU constraints, on a greater scale with other taxes.

4.3 Many areas of UK tax law have incorporated legislation based on EU principles, but these are now part of UK law. While leaving the EU will enable us to amend these, should we choose, they will remain in place until this is done proactively. We see no reason why the process of amending this tax law should be different from the
process for other changes. Obviously the capacity of government to effect and communicate changes is limited so changes in these areas should be seen as an additional reason why the volume of changes in tax law more generally should be reduced.

4.4 In all these matters it will be important for the Government to consult carefully with business, tax professionals and others on the practical implications of policy changes, and for the Government to be as clear as possible as early as possible which EU laws they intend to retain and which they intend to repeal. Business hates uncertainty and anything which can provide them with greater confidence on the environment they will be operating in for the future will be helpful.

5 Technology

New technologies—and particularly developments in information technology—have changed the way that people access information and share their opinions, experiences and insights.

6. How effectively do Parliament and the Government make use of technology at this stage of the legislative process?

7. How could new or existing technologies be used to support the development and scrutiny of legislation?

5.1 Technology can be used to make consultation more accessible and communication more effective. For example tax practitioners in many countries took part in the OECD’s webinars around their Base Erosion and Profit Shifting (BEPS) project, which proved to be an effective way of keeping practitioners updated on the project. We would encourage HM Treasury, HMRC and other parts of the UK Government to expand this kind of activity, though we recognise it will generally be more effective at outward communication (presenting and explaining proposals) than at gathering in feedback. Often working with professional bodies such as CIOT (HMRC officials regularly take part in our webinars) can be an effective way to reach particular groups.

5.2 Technology could be used to enable interested parties to see responses to consultations. At present, individual consultation responses are not made public, although HMRC or HM Treasury do sometimes summarise responses. Whilst not a technology question per se, consideration should be given as to whether it would be helpful (or not) to publish responses. Publishing responses may be seen as aiding transparency but has the obvious downside that companies would be unlikely to reveal confidential information (which they may do currently, to aid policymakers).

5.3 Online surveys can have a role in consultation, and might be used to reach people (typically non-experts) who wouldn’t dream of putting in a written response. However government departments and other public bodies should be careful not to use surveys in place of more sophisticated responses. The European Commission has
conducted a number of surveys which, on some questions, have unhelpfully sought to lock respondents into choosing one of several unsatisfactory answers.

5.4 Economists and other analysts can be assisted in their scrutiny of legislation and government proposals generally by making datasets widely available and easily accessible wherever possible.

5.5 Technology could be used more effectively to show how existing legislation would change if proposed legislation were enacted (i.e. making use of tracked changes), though we recognise that this would only be utilised by a small number of experts, including those in HMRC.

6 Public involvement and engagement

Engagement with those affected by new legislation, or those with expertise that can assist the development and scrutiny of legislation, is an important factor in ensuring that legislation is effective in meeting its policy objectives.

8. To what extent, and how effectively, are the public and stakeholders involved in this stage of the legislative process?

9. What factors inhibit effective engagement?

10. What mechanisms could be used to increase or improve engagement with the public and stakeholders?

6.1 As mentioned above, the ‘new approach to tax policy making’ introduced by the Government in 2011 has led to an improved consultation process which has in turn led to better tax law. The CIOT welcomes the generally open and accessible approach that the government departments with which we deal (in particular HMRC) generally take. (A good example of effective consultation was the process around the statutory residence test where the process resulted in legislation which, although long, catered for people with complex circumstances.) However there are still a number of ways that we feel the consultation process might be improved.

6.2 Firstly, there are still too many occasions when the ‘new approach’ is not followed. One example of this is the 2015 changes to entrepreneurs’ relief, which were announced at Budget 2015 to take effect from the same day, 18 March 2015, and rushed through Parliament the following week in a pre-election Finance Act, with no prior consultation on the changes. These changes had to be revisited and numerous changes made in Finance Act 2016. That the Government were willing to reopen the issue was welcome but a proper consultation process would have enabled the flaws in the legislation to be identified and acted upon before passing into law.

6.3 Secondly, many changes, including significant policy changes, highly technical changes, and sometimes both at once, have been announced in Budgets and Autumn Statements without an initial stage of consultation. For example since the 2015 elections basic changes to the taxation of interest and dividends, to the
taxation of buy-to-let landlords and to the structure of stamp duty land tax have fallen into this category. This is sometimes in contrast to a more consultative approach in closely related non-tax areas. Consideration needs to be given to how to comply more fully with the declared policy on consultation or, to the extent that this is unrealistic, what alternatives there might be including more rigorous institutionalised internal challenge within government.

6.4 The result of starting consultations at too late a stage, with the central proposal already decided upon, is that other routes to achieve the objective more effectively are excluded, and also that unforeseen consequences can only be raised by outsiders after the government is committed to a course of action. This results in wasted resources and less effective consultation, as well as excluding groups who might be interested in the purpose and options but have less to say on the technical detail. Tax technical people often feel that they are in a damage limitation exercise in subsequent late-stage consultations and less tax technical stakeholders often feel effectively excluded from the process. Wherever possible we would encourage government to consult on the broad principles of legislation, not just the details.

6.5 Sometimes late announcements without prior consultation are justified by government on the basis of ‘market sensitivity’. While this may sometimes be justified, there is a widespread feeling that this risk is exaggerated. The desire of past Chancellors to produce ‘rabbits out of hats’ on Budget day (and Autumn Statement day) has also been responsible for the emergence of some poorly designed policies at too late a stage of policy development for consultation to be effective at any level above the technical detail. We hope the new Chancellor will resist this temptation so far as possible.

6.6 In the field of tax, informal pre-consultation consultation with selected practitioners and bodies, has proved useful in ensuring the right questions are asked in consultations. However it is important to recognise that this kind of consultation – which is often carried out very rapidly, at short notice - is not a substitute for full, open consultation.

6.7 The volume and frequency of consultations means that organisations such as the CIOT – let alone small firms and private individuals – are often stretched in our efforts to respond to all relevant consultations. (In 2015 the Institute, including our Low Incomes Tax Reform Group, made 187 formal submissions to HMRC alone.) Potential consultees would be encouraged to put effort into responding to consultations by the provision of feedback on their submissions, including why proposals have been rejected. We recognise that the limited capacity of HMRC and other government departments may make this a challenge. Allowing the full three months consultation period recommended in the ‘new approach’ (especially when the consultation period includes a holiday time such as August or Christmas/New Year) would also help increase the number of respondents.

6.8 We noted earlier that the use of ‘roadmaps’ can increase clarity and public understanding. Broader thematic consultations on a particular area of tax – land and property taxation, taxation of pensions and savings – of the kind that might lead to
roadmaps may also succeed in drawing in consultees who are interested in the big picture but lack the technical expertise to scrutinise and assess the detail. In key areas these should be carried out as independent reviews, as with the Turner Review on pensions (which led to the introduction of automatic enrolment). The Turner process achieved a substantial level of public engagement around its emerging conclusions.

6.9 The content of consultations can also help make them more accessible. The Government should seek to ensure that consultations always include the evidence base for the proposals in question. Government should also try to avoid making consultations too narrow, ensuring that consultations cover possible interactions between the policy under consideration and other areas of policy. Above all consultation must be genuine and meaningful, and not simply ‘going through the motions’ for form’s sake.

6.10 We believe the Government could improve engagement with stakeholders and the wider public through a more proactive approach to consultations. As mentioned earlier, webinars can play a role. So too can actually going out and meeting people from relevant groups around the country. Depending on the policy area, bodies such as the CIOT can help arrange such meetings. In the area of tax the OTS has done good, proactive outreach of this kind, especially with small business, and HMRC and others could learn from this. While there are, again, resource implications for this, we believe these could be overcome if the volume of legislation were reduced, as we recommend above.

6.11 Finally, increasing public engagement on tax legislation requires greater public understanding of the tax system. There is very little public debate in the UK about most specific tax measures, and public understanding of key elements of the tax system is limited. Rectifying this is a long term ambition – and a task for bodies such as CIOT as well as for government – but one element of the strategy for doing so should be tax education within schools. Schools do virtually nothing to educate pupils on tax issues. Teaching of tax in schools could fit into a broader ‘life skills’ programme within the national curriculum, explaining what tax is and where it goes.

7 Information provision

Informing the public, stakeholders and parliamentarians about potential legislation is an important part of effective law-making.

11. How effectively is information about potential legislation disseminated at this stage in the process?
12. How useful is the information that is disseminated and how could it be improved?

7.1 As indicated above, the publication of draft clauses (for the Finance Bill) as a matter of course is a positive move. There is a case that, in order to allow additional time for
comment, draft clauses should be published as soon as they have been drafted, rather than all together as a ‘big bang’ in December.

7.2 We are concerned about the quality of information published alongside tax measures. Explanatory notes to legislation are not always as helpful as they could be. Sometimes they simply repeat what the clauses of the Bill say. Information on the objective behind the legislation should always be included.

7.3 The quality of Tax Information and Impact Notes (TIINs) is felt by our members to have deteriorated. In particular, figures for the cost to business of measures frequently fail to match the assessments of tax advisers working with those businesses, and of the businesses themselves. TIINs could be improved by including not only objectives but what a measure of success would be, to assist post-implementation review. Additionally, as mentioned above, we would support inclusion of a simplification test within TIINs.

7.4 Although the questions relate to proposed legislation, there are also issues around standing HMRC guidance on existing legislation. Historically the ill effects of complex and unsatisfactory legislation were partially mitigated by detailed HMRC guidance. Although this was an inherently imperfect mitigation it did help. The general perception now is that the guidance is less comprehensive and up to date, in part because the pace at which new law is produced is harder to keep up with, and in part because guidance has had to be migrated from HMRC’s own website to the government-wide one (gov.uk) where the style seems to be to cover the wider generality of situations rather than the relatively exceptional ones that are where many uncertainties of tax law lurk. Such situation may represent a small proportion of the population at any point in time but may arise for many people at some point in time, e.g. loss of job, retirement, marital breakdown or death of a close friend or relative.

8 Parliamentary involvement

Parliament is central to the legislative process, but its involvement varies across the different stages of the legislative process.

13. To what extent is Parliament, or are parliamentarians, involved in the development of legislation before it is introduced into Parliament?
14. Is there scope for Parliament or parliamentarians to be more involved at this stage of the legislative process?

8.1 Really meaningful parliamentary scrutiny of tax legislation is made difficult by the technical complexity of the legislation, the traditional constitutional importance of 'supply' and the greater implications felt for confidence in the Government if a tax measure fails to get through, and the limited role that the House of Lords in particular can play. As an Institute we do not have a view on such conventions per se, but draw attention to the fact that their practical implications are different when
each Finance Bill is several hundred pages long, as compared to earlier periods when
the content was simply much less.

8.2 The House of Lords Economic Affairs Committee deserves credit for setting up a
Finance Bill Sub-Committee which analyses, in the period between publication of
Finance Bill draft clauses and the publication of the final Bill, some of the key (often
most controversial) elements expected in the forthcoming Bill. The Sub-Committee
takes evidence from tax practitioners and others and makes recommendations,
which are generally solidly evidence-based. There is no House of Commons
equivalent. The Treasury Committee periodically looks at tax issues in the round –
such as its current inquiry into the tax base – and the Finance Bill Committee
considers the legislation once it has been introduced into Parliament, but currently,
within Parliament, only the Lords carries out meaningful pre-legislative scrutiny of
the Bill.

8.3 However, this scrutiny, welcome though it is, should not be mistaken for the actual
development of tax legislation, which remains closely guarded by the Treasury.

9 Acknowledgement of submission

9.1 We would be grateful if you could acknowledge safe receipt of this submission, and
ensure that the Chartered Institute of Taxation is included in the List of Respondents
when any outcome of the consultation is published.

10 The Chartered Institute of Taxation

10.1 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.

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.

The CIOT’s 17,600 members have the practising title of ‘Chartered Tax Adviser’ and
the designatory letters ‘CTA’, to represent the leading tax qualification.

20 October 2016