The Process for Making Tax Policy: An International Comparison

Proceedings of a Round Table on the Tax Policy Process

Summary of Proceedings

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INTRODUCTION

On June 20, 2013, the Canadian Tax Foundation (CTF) sponsored a one-day invitational round table in Ottawa to discuss the tax policy process in Canada and other selected countries. The round table was attended by senior Canadian tax practitioners (many of whom have previous experience with the federal Department of Finance), government officials from Canada and other countries, and representatives from the corporate sector, think tanks, and the Organisation for Economic Co-operation and Development (OECD). Larry Chapman, the CTF's executive director and chief executive officer, and I chaired the discussions.

The round table focused almost exclusively on the process for developing tax policy, rather than the tax legislative process. Although there is considerable overlap between these two processes, for present purposes it is convenient to distinguish between them. In Canada, the tax legislative process may be considered to commence with the announcement of a tax change (often on the tabling of the annual federal budget by the minister of finance) and includes the introduction, consideration, and enactment of tax bills by Parliament. The process is transparent and reasonably well understood. In contrast, the tax policy process is not well known by those outside government, and it is difficult for anyone who has not worked in the Tax Policy Branch of the Department of Finance to find detailed information about the process. Generally, the process for developing Canadian tax policy can be considered to include all of the activities carried out by the Department of Finance and others before the announcement of a legislative change and the introduction of a bill in the House of Commons.[1] Those activities include the generation of ideas for tax reform, research and data analysis, analysis of options for reform, design of tax reform proposals, consultation with the public, and the preparation of draft legislation.[2]

Although the tax policy process is widely acknowledged to be important, it has not received much attention in Canada in recent years. Accordingly, the fundamental purposes of the round table were to give government officials and tax professionals a better understanding of the process for making tax policy, both in Canada and in other countries, and to initiate a conversation on the tax policy process among members of the Canadian tax community. In order to facilitate an assessment of the Canadian tax policy process, government officials and private-sector tax experts from selected countries—Australia, New Zealand, the United Kingdom, and the United States—prepared brief papers describing the most important aspects of their tax policy processes. With the exception of the United States, these countries were selected because they have parliamentary systems and legislative processes similar

1 Aspects of the tax policy process continue during the legislative process—for example, the review and refinement of draft legislation.

2 As noted during the discussions, tax policy considerations may be taken into account in the administration of the tax system and in court cases. Moreover, the way in which the tax system is administered and the way in which tax cases are decided by the courts may have an impact on the need for tax reform.

to Canada's and they have all recently made significant changes to their tax policy processes. In addition, the Department of Finance prepared a paper on the Canadian tax policy process. All of these papers are reproduced following this summary.

The participation of current and former government officials deserves special mention. The participating officials (or former officials) from outside Canada included Rob Heferen of the Australian Treasury; Struan Little of the New Zealand Inland Revenue; John Whiting of the UK Office of Tax Simplification, and non-executive director of the board of HM Revenue & Customs (HMRC); and Eric Solomon of Ernst and Young in Washington, DC, formerly assistant secretary (tax policy) in the US Treasury department. Representing Canada were several senior people from the Department of Finance, including Nancy Horsman, senior assistant deputy minister, and Brian Ernewein, general director of the Tax Legislation Division. Their participation and support, in particular, must be acknowledged. Without their willingness to be involved, the round table would probably not have been possible, and certainly would not have been as interesting and informative as it was.

As noted above, details of the tax policy process are best known to insiders, and without that perspective, trying to understand the process is almost impossible. In addition to preparing the papers, all of the contributors participated in the discussions openly, frankly, and with good humour, even when aspects of their tax policy process were subject to criticism.

All of the participants attended in their personal capacities, and the round table operated in accordance with the Chatham House Rule: the proceedings were not recorded and participants were told at the outset that this summary of the discussions would be published without the attribution of any comments to specific participants. As is customary, the seating for the presenters was set up in a rectangular format, in order to encourage discussion. Although the large number of participants and observers limited the opportunity for spontaneous interactions, the discussions were useful and at times lively. The tone and quality of the discussions reflected the high level of the participants' knowledge and experience. There is a tendency for meetings such as this to turn into a litany of complaints, with government officials on the receiving end, and although critical comments were directed at both officials and tax practitioners concerning their roles in the tax policy process, the discussions were invariably respectful.

The agenda for the round table was straightforward. After a brief introduction, the first session involved a discussion of the strengths and weaknesses of the tax policy process in the countries represented. The second session looked at the human resources necessary to carry out an effective tax policy process. The third session focused on what is perhaps the most controversial aspect of the tax policy process in many countries, namely, public consultation on tax reform proposals. The fourth session featured a grab bag of topics involving the tax policy process, such as the relationship between the government departments responsible for tax policy and tax administration; the need for broad, systematic forward-looking tax policy research; the role of politics and politicians; and the role of the media. The final session considered whether it would be possible or desirable to develop best practices or model guidelines with respect to the tax policy process for countries to follow, and what, if any, further steps should be taken in Canada to continue the conversation about the tax policy process started at the round table.

OVERVIEW OF THE TAX POLICY PROCESS IN SELECTED COUNTRIES

The first session of the round table consisted primarily of presentations concerning the tax policy process in Australia, Canada, New Zealand, the United Kingdom, and the United States. The background papers prepared for the round table provided basic descriptions of the process in these countries and insights about those processes that are unavailable elsewhere. Participants were expected to have read the papers in advance. As a result, the presentations focused primarily on identifying the strengths and weaknesses (or challenges and concerns, as some participants preferred to call them) of each country's tax policy process, any recent changes to the process, and the major factors causing those changes. It was noted during the discussions that the strengths of any particular country's process were also potential weaknesses.

Australia

Australia is a parliamentary democracy. Like Canada, it has a bicameral legislature (the House of Representatives and the Senate). Unlike Canada, however, in Australia the Senate is rarely controlled by the political party that forms the government, and therefore it has a significant role to play in the Australian legislative process.

Significant tax reform has been a priority for successive Australian governments since the 1980s. Since then, several broad reviews of the tax system have been undertaken, the most recent of which was the Henry review, the report of which was released in May 2010.[3] The process for making tax policy has also been subject to serious scrutiny in the last 15 years.

Until 2002, broad tax policy was formulated by a small group in the Treasury, most of whom were economists; technical tax policy analysis (legislative design and the preparation of drafting instructions) was performed by the Australian Taxation Office (ATO), whose primary responsibility is the administration of the tax system. In 2002, the tax policy functions of the ATO (and many of the ATO officials who performed those functions) were transferred to the Treasury. The Office of Parliamentary Counsel drafts all federal legislation, including tax legislation on instructions prepared by the Treasury. Therefore, since 2002, the responsibility for tax policy has been centralized in the Treasury.

Although in general the Australian process for making tax policy works quite well, the centralization of the process in the Treasury means that there is a lack of

3 Australia, Department of the Treasury, *Australia's Future Tax System: Report to the Treasurer* (Canberra: Department of the Treasury, May 2010).

competing tax policy advice from inside or outside government. The government has attempted to compensate for this lack of contestability through consultation with the tax community on proposed tax changes. In effect, the government consults on how tax measures should be implemented, but not on why they should be adopted in the first place. The government rarely consults on fundamental tax policy issues for two main reasons:

1. the perceived desirability for political control, and
2. the desirability to avoid uncertainty for taxpayers with respect to tax policy matters.

That said, public consultation on tax reform proposals in a variety of forms is extensive, with consultations conducted by both the Treasury and the ATO. The extent of consultation is both a strength and a weakness of the Australian tax policy process. Its strength lies in the access that consultation provides to the views of the public, especially tax professionals. Its weaknesses are twofold: first, the private sector is experiencing "consultation fatigue" as a result of the need to participate in so many consultation exercises; and second, consultation sometimes produces mixed responses, with no clear direction for the government. Both weaknesses point to the necessity for tax professionals to coordinate their responses to consultations. In addition, since most input from tax professionals is provided on a voluntary, unpaid basis, there is some concern about the quality and independence of the advice.

Another strength of the Australian process is the role played by the Board of Taxation, a quasi-independent, non-statutory body consisting mostly of tax professionals. Funding for the board's activities is provided by the Treasury. The board provides tax policy advice and conducts post-implementation reviews of recently introduced tax proposals on matters referred to it by the government. The government has also responded to the lack of competing advice on fundamental tax policy issues by recently funding a Tax and Transfer Policy Institute at the Australian National University to stimulate academic tax policy work.[4]

In summary, the strengths of the Australian tax policy process are

- extensive consultations with the public by both the Treasury and the ATO,
- the role of the Board of Taxation, and
- periodic comprehensive reviews of the tax system.

The weaknesses are

- a lack of competing tax policy advice for government,
- a lack of consultation on fundamental tax policy decisions, and
- a degree of consultation fatigue among tax professionals.

4 See "Tax Policy Formulation in Australia," following this summary.

Canada

The process for making tax policy in Canada is not generally well known to Canadians. The responsibility for making tax policy rests with the Tax Policy Branch of the Department of Finance, although the Canada Revenue Agency (CRA) is involved in aspects of the process.[5]

Decisions about changes to the tax system are subject to the approval and close scrutiny of the minister of finance and the prime minister. This centralized control of the process raises the issue of the need for competing tax policy advice. The motto of the Canadian public service—"Fearless advice; faithful implementation"—was raised to highlight the challenges faced by tax policy officials in the Department of Finance. They are sometimes required to give advice that may not be consistent with the government's chosen policy direction when they believe that the government's proposals would result in poor tax policy. However, the government has the ultimate authority to make decisions concerning tax policy, and it is the duty of the public service to implement the government's decisions.

The following strengths of the Canadian tax policy process were identified:

- the drafting of tax legislation is an integral part of the tax policy process;[6]
- the centralization of the tax policy function in the Department of Finance means that accountability is clear and provides "one-stop shopping" for stakeholders;
- the relationship between the Department of Finance and the tax community is generally good; and
- the staff of the Department of Finance are both motivated and dedicated in contributing to the tax policy process.

It was also noted that having a strong minister of finance, such as the current minister, was important for the proper operation of the tax policy process.

The challenges faced by Finance officials include the fact that they are seriously outnumbered by tax professionals and that tax professionals are sometimes reluctant to disclose the existence of loopholes in the legislation that operate to the advantage of their clients. The point was made that consultation should be a two-way street, with benefits flowing to tax professionals and their clients in terms of better-targeted policy and legislation, and to the government in terms of the elimination of loopholes.

The recent Canadian experience with a minority government also proved to be challenging for the development and enactment of tax proposals, since a minority government's control of the legislative agenda is subject to more constraints than is the case for a majority government.

5 See "The Process for Making Tax Policy in Canada," following this summary. See also Brian J. Arnold and Heather Kerr, "The Canadian Tax Policy Process," in Heather Kerr, Ken McKenzie, and Jack Mintz, eds., *Tax Policy in Canada* (Toronto: Canadian Tax Foundation, 2012), 3:1-33.

6 As it is in New Zealand, but not in Australia or the United Kingdom.

It was also noted that the tax system has been used increasingly as a mechanism to deliver social and economic measures. As a result, the annual budget often deals with an expanding range of essentially non-fiscal matters that have complicated the tax system and the tax policy process. In addition, the growth in other priorities, such as ministerial correspondence, briefings, media requests, and access-to-information requests, detracts from the time available to deal with core tax policy analysis.

In summary, some of the weaknesses of the Canadian tax policy process are

- the difficulty for Finance officials to get unbiased and full disclosure from tax professionals about proposed tax measures,
- the extensive use of the tax system to deliver economic and social programs, and
- competing priorities that can limit the time available to do long-term thinking about the tax system.

New Zealand

New Zealand, being a small country (with a population of about 4.5 million), has a correspondingly small community of tax professionals, government officials, and academics. New Zealand is a parliamentary democracy with a unicameral legislature. Major tax reform in New Zealand began in the mid- to late 1980s with a strong minister of finance, Roger Douglas, and a small group of dedicated and capable officials in the Treasury. Some of the major new measures adopted included a broad-based goods and services tax, an imputation system, controlled foreign corporation rules, and foreign investment fund rules.

Responsibility for tax policy advice is shared jointly by the Inland Revenue Department and the Treasury. Within Inland Revenue, responsibility for tax policy, including drafting, rests with Policy and Strategy (formerly the Policy Advice Division),[7] which is also responsible for the general administration of the tax system. There is also a small group in the Treasury that performs high-level tax policy analysis.

The relationship between the Treasury and Inland Revenue concerning the responsibility for tax policy became strained in the early 1990s, and in 1994 a committee chaired by Sir Ivor Richardson performed a comprehensive review of the organizational structure of Inland Revenue, including the role of the policy unit.[8] As a result of this review, Inland Revenue and the Treasury acquired joint primary responsibility for tax policy. Inland Revenue is responsible for tax policy analysis, including data collection and analysis, legislative design, and drafting. The government also endorsed the recommendation of the organizational review committee to adopt a

7 See "Development of Tax Policy in New Zealand: The Generic Tax Policy Process," following this summary.

8 New Zealand, Organisational Review Committee, *Organisational Review of the Inland Revenue Department: Report to the Minister of Revenue (and, on Tax Policy, also to the Minister of Finance) from the Organisational Review Committee* (Wellington: Inland Revenue Department, April 1994).

"generic tax policy process" (GTPP) to govern the formulation of tax policy and legislation. The GTPP has not been enacted as a statute and is not binding on the government; however, in general, successive governments have adhered to the process. It is generally agreed that the GTPP works well.

The strengths of the New Zealand process for making tax policy are

- the participation of private-sector tax professionals in the process on both a formal and an informal basis;
- the open access to Inland Revenue tax policy officials and the minister accorded to tax professionals;
- the shared responsibility for tax policy and cooperation between the Treasury and Inland Revenue;
- the integration of the broad policy, legislative design, and drafting functions, coupled with a tight legislative process, which results in a tax policy process that is fast and certain; and
- the publication each year by Inland Revenue of its work program for the next 18 months, so that the public is notified on an ongoing basis of the tax issues that the government considers to be important.

The weaknesses of the New Zealand process are the following:

- The resources devoted to tax policy are shrinking at a time when demands on tax policy officials are increasing; as a result, insufficient strategic thinking occurs with respect to tax policy and fewer foreign consultants are used.
- There is insufficient post-implementation review of tax measures.
- Consultation on proposed tax measures limited to the New Zealand tax community is increasingly inadequate in a global economy.

United Kingdom

The United Kingdom is a parliamentary democracy with a bicameral legislature—the House of Commons and the House of Lords (though the House of Lords has no power in relation to tax legislation). It has been the model for the governments of many Commonwealth countries. The tax legislative process in the United Kingdom is an annual affair and is characterized by the speed with which tax measures can be enacted; measures announced in March, for example, can be enacted as early as July.

The process for making tax policy in the United Kingdom is centralized, with control vested in the chancellor of the exchequer.[9] Responsibility for the tax policy process is shared by HM Treasury (HMT) and HMRC, with HMT doing the broad tax policy work and HMRC the technical aspects. When this shared responsibility works,

9 See "Tax Policy Making in the United Kingdom," following this summary.

it works well; however, apparently it does not always work. Drafting is done separately by the Office of Parliamentary Counsel on instructions from HMRC.

The government recently adopted a new approach to making tax policy with the publication in June 2010 of *Tax Policy Making: A New Approach*.[10] Under this new "TPM" approach, the government has committed to consult on all tax changes, even minor ones, and at all stages of the tax policy process. Previously, consultation was increasingly a feature of the UK landscape but the incoming government wanted to formalize the process—though consultation is a code of practice rather than a statutory requirement. This new approach appears to be working well generally, although it has not always been adhered to and some of the departures have arguably served to emphasize its importance.

The strengths of the UK tax policy process are

- centralized decision making, with HMT having primary responsibility, and
- the government's recent commitment to extensive public consultation on tax changes.

The weaknesses of the process are the following:

- Extensive consultations are time-consuming and necessitate a serious commitment of human resources.
- HMT recruits generalists rather than tax specialists, and they lack experience in dealing with tax and tax policy issues. The structure of the process is not conducive to building such experience, since teams that work on policy issues are typically disbanded once a project is completed.
- There is seldom, if ever, a formal post-implementation review of tax legislation.
- There is a lack of long-term strategic thinking about the tax system, which makes it difficult to evaluate short-term changes.
- There is no competing tax policy advice, from outside government or from Parliament, to the advice provided by HMT, though naturally there are plenty of submissions from professional and business bodies and other interested parties.

United States

In international comparisons, the United States is often seen as exceptional. This exceptionalism is certainly true with respect to its system of government and the tax policy process. Unlike the process in the other countries reviewed here, the US process is decentralized, and intentionally designed as a system of checks and balances.

10 United Kingdom, HM Treasury and HM Revenue & Customs, *Tax Policy Making: A New Approach* (London: HM Treasury, June 2010), together with *The New Approach to Tax Policy Making: A Response to the Consultation* (London: HM Treasury, December 2010).

Enactment of tax legislation requires the agreement of the House of Representatives, the Senate, and the president. Since the same political party does not usually control all three branches of government, the process works best when the key players cooperate.[11]

The president, through the Department of the Treasury, prepares tax proposals that are sent to Congress. Both the House Ways and Means Committee and the Senate Finance Committee have important roles to play in virtually all aspects of the tax policy process. The Joint Committee on Taxation also plays an important role in developing legislative compromises on tax matters between the House and the Senate. The Treasury and the Internal Revenue Service (IRS), which is responsible for tax administration, generally work well together. Their respective roles are clearly defined, with the Treasury having no role with respect to specific taxpayers. The Office of Tax Policy in the Treasury includes both lawyers and economists, who have considerable expertise and experience that they apply in designing tax policy.

The strengths of the US process are

- transparency;
- extensive consultations (including, but not limited to, lobbying) on all tax issues; and
- the availability of considerable competing tax policy advice from within government and from taxpayers, tax professionals, think tanks, and academics outside government.

The weaknesses of the US process are generally the converse of its strengths:

- The checks and balances that are designed to ensure that diverse interests are taken into account sometimes result in polarized confrontation rather than agreement.
- Political partisanship and the role of the media and the Internet in conveying information to the public about tax proposals make political compromises difficult and sometimes impossible.
- The tax system is increasingly used to deliver economic and social programs.
- The huge US fiscal deficit makes the revenue effect of tax policy proposals critical in the current political environment; as a result, revenue forecasting about tax proposals is very important.[12]

11 See "The Process for Making Tax Policy in the United States: A System Full of Friction," following this summary.

12 In general, any proposal that is forecast to reduce taxes will be rejected unless coupled with proposals to increase taxes or reduce spending by at least an equivalent amount.

HUMAN RESOURCES NECESSARY FOR THE TAX POLICY PROCESS

The second session focused on the human resources necessary to carry out the tax policy process effectively. The purpose of the discussion was to get information about the resources devoted to the tax policy process in the five countries studied in order to facilitate comparisons among them. It was acknowledged at the outset that the tax community would naturally think that more resources should be allocated to the tax policy function. However, a comparative study published in 2012 concluded that the tax policy process was undervalued and under-resourced in every country.[13]

It should be acknowledged at the outset that it is difficult to draw comparisons among the countries with respect to the human resources involved in tax policy making, for several reasons. First, the availability and allocation of resources are constantly changing. Second, the estimates of the number of people employed in the tax policy department may not be comparable because some departments perform more functions (such as data collection and analysis and drafting) than others. With respect to the United Kingdom, HMT has its permanent policy groups and HMRC has its policy teams. The issue is the continuity of individuals assigned to the particular policy groups or to specific tax policy matters within those groups. As noted above, teams are often formed to work on particular projects but are usually disbanded when the work is complete. Moreover, the level of experience and expertise of tax policy officials are arguably at least as important as their numbers, if not more so. A simple chart prepared for the round table, reproduced as an appendix to this summary, summarizes the information provided in the papers.

All of the countries indicated that the number of tax policy officials would be shrinking over the next couple of years as a result of the financial situation of their governments, and this financial situation makes it difficult for tax policy departments to obtain additional resources. In addition, the compensation of tax policy officials is not generally competitive with compensation offered by the private sector to similarly qualified individuals, especially at the more senior and experienced levels. The reduction in human resources will make it even more difficult to perform long-term strategic tax policy work. Australia appears to be the exception in this regard, with long-term strategic planning carried out on an integrated basis with economic and social policy. Moreover, Australia carries out periodic fundamental reviews of the tax system more frequently than the other countries.

The extent of public-sector resources allocated to making tax policy raises the obvious questions of whether and how they might be supplemented through access to private-sector resources. However, it was noted that even prestigious private

13 See Christopher John Wales and Christopher Peter Wales, *Structures, Processes and Governance in Tax Policy-Making: An Initial Report* (Oxford: Oxford Centre for Business Taxation, March 2012). Further, the report of an internal audit of the Canadian Department of Finance in March 2013 questioned whether the Tax Policy Branch had sufficient resources to fulfill all its responsibilities; see Canada, Department of Finance, Internal Audit and Evaluation, *Evaluation of the Tax Policy Branch: Final Report* (Ottawa: Department of Finance, March 1, 2013).

institutions have serious difficulty raising funds for tax policy projects. In general, private-sector resources were devoted to more immediate, short-term tax concerns, including responding to government consultations on tax issues.

The discussion indicated a wide range of country practices with respect to the use of interchanges with the private sector. Canada was the only country with a regular interchange program. Although the United States does not have an interchange program, there is a strong tradition of public service that encourages leading tax professionals to spend time during their careers working for Treasury or the IRS. For some countries, interchanges with the private sector seemed like a good idea, but only at relatively junior levels. In the United Kingdom, conflicts of interest have been raised as a problem with respect to temporary secondments from the private sector.[14]

CONSULTATION

The extent and the form of public consultation on tax reform proposals are among the most important and controversial aspects of the tax policy process. The papers confirm the intuitively obvious view that, in principle, consultation with the public is desirable, since it assists in avoiding unintended consequences and undue compliance burdens. Moreover, as the principal humourist in the group said, if the art of taxation consists of plucking the goose with the least amount of hissing, then probably the goose deserves a say.

However, consultation does have costs, and some of the papers raised concern about consultation fatigue, indicating that you can have too much of a good thing. As a result, it is important to ensure that public consultation on proposed tax measures is conducted in a way that maximizes the benefits and minimizes the costs to ensure that consultation is worthwhile.

In all of the countries with the exception of the United States, where public consultation takes place on everything, public consultation on technical amendments and integrity measures is typically limited to implementation issues and draft legislation.[15] In general, consultation takes place after the fundamental tax policy decisions—identification of the problem and the identification and evaluation of the available options for dealing with the problem—have been made.[16] This initial stage of the tax

14 The concern is that tax practitioners might use the knowledge gained while on a temporary assignment with the tax policy department for private gain after returning to private practice.

15 In all of the countries, however, as noted below, periodic major consultations occur with respect to more fundamental tax policy design issues; for example, the Henry review in Australia (supra note 3), the Tax Working Group in New Zealand (*A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Wellington: Victoria University of Wellington, Centre for Accounting, Governance and Taxation Research, January 2010)), and the Technical Committee on Business Taxation in Canada (Canada, *Report of the Technical Committee on Business Taxation* (Ottawa: Department of Finance, April 1998)).

16 Under the United Kingdom's TPM (supra note 10), consultation should include the policy-making decision, but this is clearly not always adhered to.

policy process is the point at which tax professionals and taxpayers would like to see more consultation. The final stage of the tax policy process—post-implementation review—appears to be rare in most countries, although there appeared to be general agreement that such post-implementation reviews were desirable.

To begin the discussion on consultation, the participants in the round table were asked to address what types of issues are suitable for public consultation and what type of consultation is appropriate for different types of tax issues.

One view was that, as long as an issue was not one that the private sector could take advantage of, the issue was acceptable for consultation. Another participant suggested that, from a practical perspective, consultation was appropriate whenever there was an opportunity to influence the proposed tax changes and the government was prepared to listen. Several participants considered that consultation on broad policy issues at an early stage of the tax policy process was important for purposes of educating the tax community and the public at large, and perhaps avoiding the necessity of more consultation later in the process. The lack of involvement at an early stage left many feeling that the real policy decisions were often presented as faits accomplis. However, one concern expressed with respect to consultation at an early stage in the tax policy process was that it could turn into lobbying.

Several participants raised the point that trust between tax policy officials and tax professionals was crucial for consultation to be effective. Tax professionals had to feel that their suggestions were not only listened to, but also acted on in more than just rare instances. Tax policy officials had to feel that tax professionals were acting in an objective, unbiased way in the consultation process by raising issues that were sometimes against the interests of their clients. This is a very controversial issue, and not surprisingly, tax professionals take different views about how far the interests of their clients extend. The situation in New Zealand is quite interesting in this regard. As the New Zealand paper points out, there appears to be an excellent relationship of trust between New Zealand tax practitioners and government tax policy officials, and the paper notes several instances in which professional bodies have made recommendations that were contrary to the general interests of their clients.

One participant noted that consultation was more nuanced than simply obtaining the public's views on all proposed tax changes. Different types of consultation were appropriate for different types of issues.[17] For example, one of the important purposes of some consultations is to educate the public or tax professionals about proposed tax changes. Also, governments sometimes consult privately with individual tax professionals or small groups of tax professionals. Most participants accepted that such private consultations were necessary and appropriate in certain circumstances, although concerns were raised about the lack of transparency. The view was expressed that experience with public consultations suggested that some people and

17 An example of a different type of consultative exercise that proved to be very effective was the working group of tax advisers, financial institutions, and government officials set up by HM Treasury in 2000 to deal with Islamic finance in London.

organizations sent in comments just to have their names published in the list of those making submissions. Private consultations, on the other hand, could be more flexible and were especially useful for identifying tax reform options and deficiencies in proposed solutions. Most importantly, they allowed tax professionals to be candid in their dealings with tax policy officials.

Some participants suggested that, from the government's perspective, another important purpose of consultations was to help governments to change course with respect to prior tax policy decisions. Public consultation can provide the government with an opportunity to say that it is changing course in response to input from the public.

Some participants raised the most important question of all: whether public consultation was worth the effort, time, and expense. Presumably, as a matter of principle, consultation could be justified (apart from making the public feel involved) only if the outcome—tax legislation—was better as a result. Others were strongly of the view that consultation in its various forms did improve the quality of a country's tax policy and legislation. The point was made that the result of consultation was dependent on what questions the government asked and whom it asked. Some questioned whether governments were really receptive to input from tax professionals and whether tax professionals had the necessary broad tax policy expertise to be useful at early stages of the policy-making process. Consultation that consists of asking what tax professionals are thinking about, or what they think tax policy officials should be thinking about, was said to be a waste of time. Instead, specific proposals for change, often in the form of draft legislation, which has the salutary effect of focusing the mind, was said to be the more appropriate stage for tax professionals to exercise influence. Apparently, in Canada at least, the issuance of draft legislation for comment is unique to tax legislation. Others thought that consultation could also be valuable at earlier stages to deal with implementation issues and problems with existing legislation (for example, legislation to reverse the result of unacceptable court decisions).

Two important cautions to government were voiced with respect to public consultations. First, government officials should avoid going through the motions just so the government can say that it has consulted. Second, following consultation, the government needs to provide some type of feedback concerning the submissions received, including its reasons for adopting particular policy options. If these two concerns are not addressed, they have the potential to seriously undermine any attempt to conduct meaningful consultations on tax proposals.

Finally, participants mentioned that it was important to understand the many constraints on the tax policy process. One important constraint in Canada—the tradition of budget secrecy—means that advance public consultation on the nature and design of tax measures to be included in the budget is often not possible. Moreover, the budget process itself is not conducive to effective consultation because the decisions on what to include in the budget are taken in the context of other spending and fiscal decisions, and are often not made until the last minute, when it is too late for consultation. However, other participants suggested that budget secrecy was primarily a political issue rather than a practical constraint on public consultations concerning proposed tax changes. Other countries have apparently found ways to deal with the issue of budget secrecy. For example, in New Zealand, two tax bills per year are dealt with outside the annual budget process.

Lack of time precluded any discussion of whether the role of public consultations as part of the tax policy process should be institutionalized, as it has been in Australia, New Zealand, and the United Kingdom. The role of the Board of Taxation in Australia was discussed briefly. Although the board is quasi-independent, it acts only in response to requests from the Treasury; it does not act on its own initiative. It is a business-friendly advisory body, and the Treasury uses the board to get the perspective of tax professionals on policy questions and post-implementation review of selected tax measures. In addition, as a result of concerns about inadequate disclosure of conflicts of interest, the Treasury is in the process of preparing a "Charter for Consultations on Tax Policy and Law" to govern the participation of tax professionals in the consultative process.[18]

The Australian Treasury also conducts semi-annual meetings with tax professionals to discuss tax policy issues in general, rather than measures under active consideration with respect to which some tax practitioners may have financial interests. The purpose of these meetings is to facilitate a shared understanding by all stakeholders, including the Treasury and the ATO, of their different perspectives.

In the United Kingdom, the recent adoption of the new process for making tax policy has been accompanied by the formation of a Tax Professionals Forum to review whether the new consultation process has been followed by the government. The forum is chaired by a Treasury minister and consists of eight members from the professional community. It issues an annual report but has no formal powers.

OTHER ASPECTS OF THE TAX POLICY PROCESS

The next session of the round table dealt with other important aspects of the tax policy process, including

- the need for long-term, forward-looking tax policy research and analysis;
- the relationship between the tax administration and the tax policy department with respect to the tax policy process;
- politics and the role of politicians; and
- the role of the media.

The discussion on each of these topics is summarized below.

18 See "Tax Policy Formulation in Australia," and "Some Additional Comments on Australia's Tax Policy Process," following this summary.

The Need for Long-Term, Forward-Looking Tax Policy Work

It is widely acknowledged that the tax policy departments in government should be conducting long-range tax policy research in addition to day-to-day tax policy work, which generally responds to more immediate concerns. Such forward-looking tax policy research is important for the purposes of establishing directions and goals for the tax system. However, it was also acknowledged that tax policy departments are often stretched in terms of resources, and long-term tax policy research was usually accorded a lower priority than more immediate problems. As a result, the question arises as to whether such work is being done, or should be done, by the private sector. The lack of resources and the absence of any obvious immediate payoff were mentioned as factors that discourage private-sector involvement in long-range tax policy work.

Several participants pointed out that meaningful tax policy research required access to government data that might not be available to researchers outside the government or might be costly to obtain, and sometimes the necessary information simply does not exist. Another problem is that it is often necessary to know what information is available in order to ask for information. Obviously, confidential information about specific taxpayers is not available to outside researchers, but ideally there should be easy outside access to information that is not taxpayer-specific. The UK Office of Tax Simplification has access to the data prepared by the data analysis group in HMRC.

Despite the difficulties, long-term tax policy research is done periodically. For example, the Mirrlees review[19] in the United Kingdom, the Henry review in Australia,[20] and the Victoria University of Wellington Tax Working Group (TWG) in New Zealand[21] were mentioned as exemplary in this regard. New Zealand's TWG was a joint effort of the government, academics, and tax professionals. The group was used to provide a neutral environment in which contentious issues could be discussed freely, while the government stood back until clear options were identified.[22] Tax officials worked closely with the chair of the TWG to design the agenda, and the government supported the work by providing analytical and other resources. In addition, the New Zealand Institute of Chartered Accountants has established a Tax Advisory Group (TAG) consisting of 12 volunteers from the major accounting firms, with 3 to 4 permanent full-time professional staff. The TAG has done some longer-range tax policy work, resulting in recommendations that occasionally conflict with

19 James Mirrlees, Stuart Adam, Timothy Besley, Richard Blundell, Stephen Bond, Robert Chote, Malcolm Gammie, Paul Johnson, Gareth Myles, and James Poterba, eds., *Dimensions of Tax Design: The Mirrlees Review* (Oxford: Oxford University Press, 2010), and Mirrlees et al., *Tax by Design: The Mirrlees Review* (London: Institute for Fiscal Studies, September 2011).

20 Supra note 3.

21 Supra note 15.

22 Therefore, the government could, if necessary, distance itself from the group's recommendations.

the interests of the institute's members, although the bulk of the TAG's recent work focuses on detailed technical analysis.

The role of universities and academics in providing long-range tax policy research was also discussed. The Institute for Fiscal Studies (IFS) is the predominant tax and economic research organization in the United Kingdom and was formed in 1969 with a view to challenging government tax policy. It now has 30 to 40 economists on staff and focuses on economic policy generally. It has also established a Tax Law Review Committee with 20 to 25 members, which makes periodic recommendations concerning the tax system. Oxford University's Centre for Business Taxation is relatively new but has produced some excellent tax policy research; it is funded by the United Kingdom's 100 largest companies. Another recent initiative is the establishment of a centre for the study of tax administration at the University of Exeter, in conjunction with the IFS and with the support of HMRC.

The Relationship Between the Government Departments Responsible for Tax Policy and Tax Administration

In New Zealand, Inland Revenue is responsible for both tax policy and tax administration; therefore, cooperation between officials responsible for the two functions is purely an interdepartmental matter. In the other four countries, however, tax policy and tax administration are dealt with by separate departments, although in the United Kingdom both HMT and HMRC deal with aspects of tax policy. This separation poses potential problems for the tax policy process, which (arguably at least) requires the integration of broad tax policy (economic and statistical) analysis, technical analysis, and drafting. The formulation of tax policy requires input from the tax administration with respect to the administrability of, and taxpayer compliance with, proposed tax measures. Therefore, close cooperation between the two departments is important.

In the United States, the relationship is not problematic because the roles of the Treasury and the IRS are relatively well defined and distinct. In Canada, the relationship between Finance and the CRA is also working well at present. There is daily interaction on various issues, as well as cooperation on special projects such as a joint working team on the OECD's base erosion and profit-shifting project. In addition, the CRA and the Department of Justice attend legislative drafting sessions in the Department of Finance, and Finance officials participate in meetings of the CRA's committees on adverse decisions and the general anti-avoidance rule. In the United Kingdom, the new "tax policy partnership" between HMT and HMRC (following the 2005 reorganization) has taken time to develop satisfactorily but is now thought to be working reasonably effectively, although not perfectly. In Australia, where the ATO had a significant role in tax policy until 2002, there is occasionally tension in the relationship between the Treasury and the ATO, which manifests itself in the ATO's practice of litigating some cases on a basis that is contrary to the Treasury's understanding of the tax policy underlying the legislation.

According to some participants, the key to a good working relationship between the tax policy department and the tax administration is good personal relationships between the officials involved, but they felt that it was difficult to institutionalize these relationships.

Politics and the Role of Politicians

The reality is that politicians have the ultimate decision-making authority with respect to tax policy, including the tax policy process. One of the issues raised during the discussions was the difficulty of getting politicians, other than the responsible minister, engaged in tax policy issues. Typically, individual members of Parliament are not knowledgeable about tax policy, or the tax system in general, and have few resources to call on for assistance with tax policy issues. In countries with a centralized tax policy process, one suggestion was for the private sector to help educate Opposition party members about tax issues. It was acknowledged that it was important for private institutions to provide an effective check on the centralized control of tax policy by the government. Various methods of doing this were raised, such as being proactive with the media, interacting with parliamentary committees, and educating the public generally. Some expressed hope that the good tax policy ideas expressed publicly in the media might drive out, or at least suppress, some of the inappropriate tax policy ideas that politicians come up with. Another suggestion was that government should make more frequent use of truly independent reviews of the tax system, such as those conducted through royal commissions, even though such reviews generally provide a snapshot rather than an ongoing scrutiny of the tax system.

One extraordinary fact that emerged from the discussion is that in New Zealand the tax policy advice prepared by Inland Revenue for newly elected governments (and the similar document prepared by the Treasury) becomes a public document once the responsible ministers have had sufficient time to consider the advice. This has become standard practice and works well.

One point made during the discussion was that an important role for tax policy officials was to advise against the adoption of measures contrary to good tax policy. This role can be especially problematic given that the tax system can be used as a mechanism to deliver social and economic programs. Not surprisingly, a 2010 recommendation of the TWG in New Zealand, to develop more institutionalized arrangements to ensure that tax policy is treated by the government as a long-term or quasi-constitutional exercise, garnered little support from the major political parties.

The Role of the Media

The discussion concerning the role of politics and politicians in the tax policy process led seamlessly to a spirited discussion of the role of the media with respect to tax policy. The question posed was how to encourage the media to become more engaged with tax policy issues (and be more responsible when they do engage) when, in general, they do not appear to be interested unless an issue can be reduced to a short sound-bite. Some participants sounded an optimistic note, suggesting that there were some responsible journalists, perhaps in niche media, who could be encouraged to become more engaged in tax policy issues. Others were concerned that few journalists were interested in (or perhaps capable of) becoming better informed about tax policy and prepared to deal with the issues in a responsible way. Nevertheless, despite their misgivings, many participants agreed that journalists play an important role in influencing politicians. Consequently, government, governmental organizations, and private institutions working on tax policy issues need to have a strategy for dealing with the media; otherwise, it was suggested, lobbyists would exploit the absence of objective, unbiased, and informed opinion. In the United Kingdom, HMRC has recently become more proactive with the media and holds periodic briefings on tax issues for the media.

In summary, although there appeared to be a consensus that efforts should be made to educate the media about tax policy issues, there was no consensus on how to do so or whether the media were interested in becoming better informed. If the media were better informed about tax policy issues, the public would be better informed and public confidence in the tax system would be improved.

BEST PRACTICES AND CONCLUSION

Not surprisingly, given the round table's full agenda, the time available to discuss best practices with respect to the process for making tax policy was limited. This may have been just as well since some participants noted that the term "best practices" was outmoded, and perhaps the development of one or more model tax policy processes would be more appropriate. Another participant suggested that a catalogue of good ideas for tax policy making would be worthwhile and should include the collection and availability of reliable data, adequate human resources, a media strategy, and provision for post-implementation review of tax measures. Another participant thought that public consultation should be added to the list. Several participants liked the suggested distinction between "Big P" tax policy issues (broad issues of tax structure, design, incidence, distributional effects, etc.) and "Little P" issues (more technical tax issues). Tax professionals do not deal with or have expertise in the Big P issues; as a result, it is necessary have some type of external body perform this type of tax policy research, which could serve both as a supplement to the work done by government and as a check on that work. The point was made that increased consultation and transparency might come at the cost of less grandfathering and tighter effective dates for new measures, in order to prevent taxpayers from exploiting any delay in the implementation of proposed tax measures.

Some participants thought that the tax policy process was too dependent on each country's particular situation to develop a model process that would suit each country's needs. For example, New Zealand's situation is so special in many respects (and not just because of the country's small population) that its GTPP is not readily transferable to other countries. Nevertheless, it was suggested that it would be worthwhile to develop model or best practices with respect to the institutionalization of the relationships among the principal players in the tax policy process.

The round table concluded without much time for discussion of the next steps that might be taken to continue the conversation, apart from the publication of the proceedings. One suggestion was for a similar round table discussion of the tax policy process with politicians. Larry Chapman informed the group that, at the very least, the CTF would facilitate a broader discussion of the tax policy process with the membership of the Foundation.

APPENDIX TABLE 1 Human Resources Assigned to the Tax Policy Process in Australia, Canada, New Zealand, and the United Kingdom

	Number of professionals (excludes administrative staff)	Qualifications/ experience	Internal training	Private-sector interchanges	Consultants	Tax administration issues
Australia	190 (45 in data, 20 in law design, 6 drafters)	Tertiary qualifications in economics, law, public policy, and accounting	Extensive	Yes	Yes: ad hoc	Two-way second-ments with ATO
Canada	160[a]	Economists with graduate degrees; lawyers and accountants	Not available	Yes: 1-2 regularly for senior roles	Not available: ad hoc	CRA responsible for tax administration
New Zealand	51.5	Average: —Senior advisers, 11 years —policy managers, 18 years	Yes	No	Yes: ad hoc	IRD responsible for policy and administration
United Kingdom	HMT—120 HMRC—Not available (no permanent group dedicated to tax policy)	Generalists	Not available	Yes, on unpaid basis Controversial	Rarely	Supplied by HMRC

Note: No detailed human resources data were included in the US presentation at the round table.
[a] Includes legislative draftsmen but not staff devoted to revenue forecasting.
ATO = Australian Taxation Office.
CRA = Canada Revenue Agency.
HMRC = HM Revenue & Customs.
HMT = HM Treasury.
IRD = Inland Revenue Department.

Sources: Papers presented at the round table, reproduced herein.