

Legal perspectives on the development and enactment of tax policy

There is as great deal of frustration in the UK and elsewhere about the quality of the processes for the formation of tax policy and its enactment into legislation. There seem to be systemic points of resistance to meaningful change; thousands of hours are spent on fundamental reviews of tax systems such as the *Mirrlees Review* and very little seems to change; tax legislation is prone to misjudgements and even actual mistakes; democratic and expert scrutiny systems often leave much to be desired; there are concerns about undue influence by powerful actors; and once bad decisions are made, they often create decades-long path dependencies which are exceedingly difficult to escape from.

There is a great deal of tax policy literature on these topics, but we are interested in submissions (from lawyers or non-lawyers) with a closer focus on specifically legal phenomena. Areas that may be of interest include the following, though this list is not remotely exhaustive:

- The role of legal expertise within the processes of policy development and enactment. At what point are legal experts consulted about tax policy? What role do their views play, and do they play a positive or negative role (or a combination of the two)? Is legal expertise drawn from within the tax authority, from the treasury department, from a special legal department or from external sources such as law firms? If the latter, does the system protect itself adequately from undue influences and undesired lobbying activity by these external experts?
- The interface of law and economics. Why does it seem so difficult to implement planned tax reforms such as the *Mirrlees Review*. What legal structures could be adopted in order to facilitate fundamental tax reform? Where fundamental tax reforms have been enacted, have they been successful? How have they coped over time, and have they been robust to subsequent legislative tinkering and judicial reinterpretation? Is there any difference in this regard between 'models' (which can be useful without being implemented in full) and 'planned' (which are either implemented in full or not at all).
- The interface of law and politics. At what point should expert legal opinion give way to democratic imperatives. Are there ways of better reconciling democratic participation in tax policy with the achievement of effective legislation that respects legal values?
- Constitutional constraints. What constitutional constraints apply to the development and enactment of tax legislation, and do they facilitate or impede improvements to the tax system? Under what circumstances can the policy formation or legislative processes be subjected to legal challenge, and what changes ought to be made to this position? In federal jurisdictions, what role do subnational units play in legislative processes?
- Supranational influences. What is the role of EU and other supranational bodies in the development and enactment of tax policy? Why does the EU seem to have difficulties in enacting primary tax legislation and what are the consequences (for good or ill) of this?
- Intra-governmental tensions. Are there any tensions between tax legislative processes and similar processes in adjacent areas of law such as trade, welfare and planning? To what extent do such tensions reflect internal divisions within government?
- Scrutiny processes. Are the procedures for scrutinising draft and enacted legislation adequate, and if not, what ought to be done? Do impact assessments have to be made, and do they have any positive consequences?