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Improving Revenue Law through a policy for Better Regulation

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Improving Revenue Law through a policy for Better Regulation

Summary

In this short paper, I will develop some of the ideas outlined in my presentations at the SIGMA/ Ministry of Finance, Georgia, seminar on the 25-26 September 2009. Essentially, the European Commission and many countries in the European Union have developed approaches to improving the quality of policy-making and legislative drafting. These approaches are known as 'better regulation'. The approaches include specific policies, the development or modification of institutions and the use of certain tools.

Better regulation is needed for a variety of reasons and is of particular relevance to the development and implementation of revenue or tax policies. One of the biggest burdens on citizens and business is taxation. The financial burden of taxation is one issue that may or may not be varied. What can be varied, however, is the manner in which the burden is imposed and the way in which fiscal obligations are communicated to citizens.

Background

Modern Governments are involved in a range of activities. Political pressure for more competent policy-making and better legislative drafting has grown in proportion to the growth of government. Inevitably, as government grows so does the burden of taxation. Governments have, therefore, sought to make the regulation of their countries as efficient as possible. This can be seen at the generic level of improving government processes and at the sectoral level of improving the efficiency and user-friendliness of the delivery of public services.

OECD

In 1997, the OECD developed Guiding Principles for Regulatory Quality and Performance (Box 1). These were updated in 2005. Over the years peer reviews of the regulatory quality of different OECD countries have illustrated the growth of policies to improve the efficiency of government. The EU has also developed a better regulation policy which has been adopted in varying degrees by different countries.

Box 1

OECD Guiding Principles for Regulatory Quality and Performance

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

European Union

The European Union has, over the years, developed a sophisticated body of legislation which continues to deliver economic development, environmental protection and improvement of social standards, notably, through the completion of the internal market. As progress towards these objectives is being achieved, it has also become clear that the way in which we regulate has considerable impact on whether we meet these objectives efficiently.

In the context of the renewed Lisbon Strategy, refocused on growth and jobs, the Commission has launched a comprehensive strategy on better regulation to ensure that the regulatory framework in the EU contributes to achieving growth and jobs, while continuing to take into account the social and environmental objectives and the benefits for citizens and national administrations. The EU's Better Regulation policy aims at simplifying and improving existing regulation, to better design new regulation and to reinforce the respect and the effectiveness of the rules, all this in line with the EU proportionality principle.

Better Regulation strategy is based on three key action lines:

- Promoting the design and application of better regulation tools at the EU level, notably simplification, reduction of administrative burdens and impact assessment.
- Working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators.
- Reinforcing the constructive dialogue between stakeholders and all regulators at the EU and national levels.

Better regulation is a policy which aims to ensure that (existing and future) legislation is as concise and straightforward as its subject matter permits and that ensures regulations are as light as is commensurate with the proper protection or promotion of the various public interests at stake and the burden it imposes on citizens or business.

How is better regulation achieved?

Better Regulation achieved through: policies, institutions and tools. The policy described above of the European Commission is one example. Another is the approach by the government in the United Kingdom to develop a set of principles. A cornerstone of the better regulation strategy in the UK is the five principles of good regulation. The principles state that any regulation should be:

- transparent
- accountable
- proportionate
- consistent
- targeted – only at cases where action is needed

In the Netherlands, on the other hand, the emphasis has been on the measurement of administrative costs, by using the standard cost model, with a view to reducing the administrative burdens on business by 25%. Other countries such as Italy and Belgium have sought to simplify administrative procedures.

Institutions

Many countries have felt the need to develop specific institutions to develop and implement better regulation policies. These can range from a small three person unit such as the Better Regulation Unit in the Office of the Prime Minister Dublin to the sophisticated arrangements in Germany where the establishment of the Normencontrollrat which is a watchdog to review all legislation so as to keep to a minimum administrative burdens. In the Netherlands there is also an independent body called Actal whose role is to ensure progress with the reduction of administrative burdens in the Netherlands.

Institutional arrangements are very country specific and even between two neighbouring European countries the approaches taken to reducing administrative burdens and thereby improving regulations vary somewhat. The German and Dutch models are similar to the extent that:

- their Independence is established by law;
- both have the Political backing by parliament;
- each has a mandate confined to monitoring cost assessments of ministries;
- neither has the role of assessments of legality of Acts;
- both have the possibility to recommend improvements of methodology.

On the other hand the differences between ACTAL and NKR are:

Differences	ACTAL	Normenkontrollrat
Personnel	3	8
Term of office	Limited to end of 2009	Unlimited
Information Rights	Full access to information	Access enabled through 'Amtshilfe' [law that obliges ministries to cooperate]

Tools

The three main tools developed to improve regulation in recent years are: impact assessment, consultation and simplification.

Impact assessment

Impact assessment is a term that describes methods and processes to be used when comprehensively describing advantages and disadvantages (pros and cons) from different actions (projects). Impact assessment implies a systematic practice where assumptions, methods and results are presented in such a way that they can be tested by other analysts. One of the challenges for undertaking impact assessment is to quantify costs and benefits. How much value should be put, for example, on a human life saved by a regulatory intervention?

The European Commission believes that the most effective way of improving the quality of new policy proposals is by making those people who are responsible for policy development also responsible for assessing the impact of what they propose.

To this end, the Commission has rolled out a wide-ranging impact assessment system. It is based on an integrated approach which analyses both benefits and costs, and addresses all significant economic, social and environmental impacts of possible new initiatives.

This approach ensures that all relevant expertise within the Commission is used, together with inputs from stakeholders. In doing so, it also enhances the coherence of initiatives across policy areas.

The Commission's system is both accountable and transparent. It strives for full involvement of stakeholders. All impact assessments and all opinions of the Impact Assessment Board on their quality are published online once the Commission has adopted the relevant proposal.

Impact assessment also helps to explain why an action is necessary at the EU level and why the proposed response is an appropriate choice. It may of course also demonstrate why no action at the EU level should be taken.

Impact assessment has been introduced in different countries in the EU with differing degrees of success. An interesting form of impact assessment is fiscal impact assessment which is essentially a methodology for assessing the impact on the budget of a country of the introduction of new legislation.

As part of its regulatory reviews the OECD has identified that a good impact assessment policy should be characterised by:

- Undertaking impact assessments as early as possible in the policy cycle and as often as necessary throughout the process, though this ideal is rarely reached,
- There should be a close link in the impact assessment process with consultation so that persons likely to be affected by a new policy or law are informed of the proposed changes and contribute to its development,
- The use of impact assessment improves legitimacy and compliance,
- Ideally, impact assessments should be reviewed by a central body to ensure coherence and consistency between them.

Consultation

Consultation means a structured public engagement which involves seeking, receiving, analysing and responding to feedback from stakeholders. A structured consultation process entails defining the purpose and subject of the consultation (such as a policy initiative, a regulatory change, a legislative proposal or a service delivery). It also entails identifying the key audience whose views are to be sought, framing the questions to be asked, providing information and receiving and analysing the responses. It is important to differentiate between ongoing consultative mechanisms (involving standing committees, fora or groups) and once –off consultation exercises.

In theory, consultation improves the quality of policy-making and legislation by drawing down the collective intelligence of society. It is a process which is developing and changing as democratic governments seek more and more to legitimate their actions by involving the public in the decision making process. The challenge, however, is to ensure that the powerful do not dominate the process and those that are unable to communicate their needs are adequately represented.

Consultation can be seen by some as a burden and by others as a blessing. It can be a burden for the public service as it involves a lot of work and a certain amount of patience and tact separating the demands by vested interests from the genuine views on how a proposal can be improved. It can also be a burden on business especially for small businesses at a time of rapid regulatory change.

The crucial challenge of consultation is the time needed for the process. Some say that the process is slow enough without the further delays necessitated by consultation exercises. Others say it is time well spent.

The approach to consultation is also culture specific. Countries that do not have a tradition of consensus and public involvement in consultation may find it more of a challenge to develop the right models for public engagement in contrast to those that have such a tradition.

Simplification

Simplification is concerned with the language used in legislation and in official forms. Widespread efforts have also been made to improve procedures. These have focussed in many countries on the reduction of administrative burdens. However, in some cases it is not possible to reduce burdens in absolute terms. For example, there are not many ways to reduce the burden of taxation. However, in relative terms the tax burden can be reduced by providing good explanatory material to enable tax payers understand the procedures they have to follow and using the internet to enable tax payers fill in forms on line. Further means of simplification include the consolidation, codification and recasting of laws so that less time is required to consult them.

Administrative simplification lies somewhere between a policy, a tool and institutional reform stands administrative simplification. Many countries have adopted the standard cost model and are expending a great deal of time and energy measuring the costs of administrative burdens with a view to their reduction.

There is no doubt that the use of I.T. to disseminate information and simplify administration is an irreversible trend. Allowing citizens to complete tax forms on line provides substantial savings of time and effort and reducing the number of times that the State seeks the same information also frees up resources for more productive activities.

The move towards administrative simplification has developed many new ways of achieving objectives that in the past required much more effort and energy. Taxation burdens weigh heaviest and offer many opportunities for administrative simplification.

Taxation is one of the biggest burdens imposed by government on citizens and businesses. Therefore, governments should make every effort to simplify tax collection. Better regulation policies can be applied to tax policies.

Conclusion

There is an increasing awareness in OECD and EU countries of the fact that the regulatory environment in which businesses operate influences their competitiveness, and their ability to grow and create jobs. It is now widely believed that by reducing red tape and overbearing bureaucracy, governments and the European Commission can help business people and entrepreneurs improve competitiveness. An important feature of better regulation policies is, therefore, the development of a better regulatory environment for businesses.

References

SIGMA documents

SIGMA (1997), *Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe*, SIGMA Paper No 15, <http://www.oecd.org/dataoecd/42/21/1823473.pdf>

Regulatory Management Capacities of Member States of the EU that Joined the Union on 1 May 2004 (2007)

[http://www.ois.oecd.org/olis/2007doc.nsf/linkto/gov-sigma\(2007\)6](http://www.ois.oecd.org/olis/2007doc.nsf/linkto/gov-sigma(2007)6)

OECD Documents

OECD Council, Recommendation of the OECD on Improving the Quality of Government Regulation, 9 March 1995, OECD/GD/ 95(95).

OECD/PUMA, Synthesis Report on Regulatory Reform, 1997:

<http://www.oecd.org/dataoecd/17/25/2391768.pdf>.

OECD/PUMA (2002), *From Interventionism to Regulatory Governance*, PUMA(2002)3,

[http://www.ois.oecd.org/olis/2002doc.nsf/8d00615172fd2a63c125685d005300b5/492ca7053d67be94c1256b73005e6ecb/\\$FILE/JT00121942.DOC](http://www.ois.oecd.org/olis/2002doc.nsf/8d00615172fd2a63c125685d005300b5/492ca7053d67be94c1256b73005e6ecb/$FILE/JT00121942.DOC).

OECD Reviews of Regulatory Reform, Taking Stock of Regulatory Reform: a multidisciplinary synthesis, 2004.

OECD Guiding Principles for regulatory quality and performance, 2005:

<http://www.oecd.org/dataoecd/24/6/34976533.pdf>.

OECD (2006), *Alternatives to Traditional Regulation*, Working Party on Regulatory Management and Reform (OECD) GOV/PGC/REG (2006) 9.

EU Documents

Declaration 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty, 1997.

Mandelkern Group on Better Regulation, Final Report, 13 November 2001:

<http://ec.europa.eu/governance/impact/docs/mandelkern.pdf>.

Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, 2003:

http://europa.eu.int/eur-lex/en/about/techleg/guide/index_en.htm.

Inter-institutional Agreement on Better Law Making, 2003:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_321/c_32120031231en00010005.pdf.

Advancing Regulatory Reform in Europe, A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the European Union, 7 December 2004:

<http://www.hm-treasury.gov.uk/media/95A/52/6presidencies.pdf>.