
INSTITUTIONALIZING THE
PROCESS
OF TAX REFORM:
A Comparative Analysis

by Michael J. McIntyre & Oliver Oldman

Volume 2 in the Series:
SELECTED MONOGRAPHS ON TAXATION

Harvard Law School International Tax Program
International Bureau of Fiscal Documentation

**INSTITUTIONALIZING
THE PROCESS OF TAX REFORM**

SELECTED MONOGRAPHS ON TAXATION

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Volume 2

MICHAEL J. MCINTYRE

OLIVER OLDMAN

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The authors wish to thank the editors of the *Harvard International Law Journal* for permission to reprint portions of this monograph which appeared in volume 15 of that journal and express their indebtedness to them and especially to Thomas H. Brantley and Wesley C. Gryk, Jr., for their conscientious work in editing the original article. They also thank Gretchen Hovemeyer and May Ping Soo Hoo for their assistance in preparing this monograph for publication.

FOREWORD

This monograph is the second in a series published jointly by the International Tax Program and the International Bureau of Fiscal Documentation. Work on this study began in 1972, in preparation for a conference on tax reform planning sponsored by the Organization of American States in Mexico City. The authors substantially revised the paper prepared for that conference for publication in the *Harvard International Law Journal* in 1974. The paper has again been revised and updated for publication here. A number of United Nations documents on tax reform planning not generally available have been added as appendixes.

The political problems of implementing tax reform proposals are familiar to everyone. These problems have proved to be so formidable for so many years that many people have become completely cynical about the prospects for meaningful tax change. The authors of this monograph are not unaware of the political element in tax reform; in their analysis, in fact, they insist on the importance of using the political processes for resolving basic conflicts over values that are inherent in any tax reform movement. Their analysis shows, however, that the political obstacles to reform are magnified by the absence of sound institutional arrangements for updating and revising a country's tax laws.

The text of this monograph presents a conceptual framework for evaluating the effectiveness of a country's tax reform institutions. Since the institutional requirements vary depending on the nature of the tax change contemplated, the text distinguishes four major categories of reform. The notes accompanying the text report on the experiences of a wide range of countries in the use of specific techniques for improving the tax reform process. Many of the most creative techniques have been employed by the developing countries, particularly Colombia and Chile.

The International Tax Program is a research and training center in the fields of international tax law, comparative tax law, and fiscal reform in the developing countries. Each year about 20 foreign officials, teachers, and researchers participate in a full-time, multi-disciplinary academic curriculum. Research is carried out by Program staff and visiting scholars. The Program has for more than 20 years formed an integral part of the educational activities of the Harvard Law School in Cambridge, Massachusetts, U.S.A.

The International Bureau of Fiscal Documentation has long been an international research and service center with headquarters in the Netherlands. Its objectives are the

study and promotion of knowledge of the international aspects of taxation, including regional harmonization of tax laws and systems and the tax relations between developed and developing countries. For more than 35 years it has disseminated worldwide tax information upon request and through its periodical and loose-leaf services.

Readers may send any comments they may have on this study to either of the undersigned.

May, 1975

J. van Hoorn, Jr.
Director of the
International Bureau of
Fiscal Documentation

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**INSTITUTIONALIZING
THE PROCESS OF TAX REFORM:
A COMPARATIVE ANALYSIS**

"Not only is tax reform inevitably a piecemeal process from the nature of the problems and the political and human resources available to deal with them, but it is also a continual process. Even if some grand once-for-all reform scheme were adopted, it would probably soon have to be altered. Circumstances change, and policies must change with them. No tax system can long remain the optimal system for any country in a changing world. The Carter Report, if one accepts its value judgments, may well have depicted the optimal tax system for Canada in 1965. It is still, in my opinion, largely valid in 1970. But it is unlikely to handle adequately the problems of 1980 and almost certain, I would argue, to be wrong for 1990. The kaleidoscope is turning continually, and the appropriate pattern of tax legislation must shift too."

Richard M. Bird, "The Tax Kaleidoscope: Perspectives on Tax Reform in Canada," 18 *Canadian Tax Journal* 444, 456 (1970); *see also* Professor Bird's words to the same effect in *Taxation and Development: Lessons from the Colombian Experience* 208 (1970).

CHAPTER I

INTRODUCTION

Few government activities are as complex, or require such intense planning and coordination, as a successful tax reform. Nevertheless, until very recent years, far too little attention was given in the United States or in any other country to the creation of institutions that could manage the tax reform process.¹ Most reforms have been made on an ad hoc basis and by almost any standard have had major defects. Some of these defects had identifiable political roots, but it is a fair assumption that many were the result of poor preparation and unskilled and overly hasty implementation. Even more disappointing, a number of promising reform movements never resulted in any tax legislation at all, though it appeared that sufficient political support for reform

1 The tax reform process includes all the planning and other steps taken to formulate proposals and then the steps taken to implement those proposals. A number of countries have focused on certain portions of the process, but only the Philippines has tried to take a comprehensive view of the entire process. See *Tax Reform in the Philippines*, U.N. Doc. ESA/FF/AC.1/10 (Kintanar, consultant, 1970) at 9-11; *infra* note 8.

The United States has been a pioneer in the collection and effective processing of statistical data needed for tax reform planning, and some of the techniques developed, in particular the use of sampling and computer models, are being refined and adopted by other countries. See U.S. Commissioner of Internal Revenue, *Annual Report 1973*, 61-68 (1973). The United States, however, has been quite unsophisticated in the coordination of tax policy with other national objectives, perhaps in large measure because of the absence in the United States of any centralized agency responsible for development planning. Governments using central planning have paid more attention to the problem. For a proposal for a more coordinated approach to reform, see Government of Ceylon, *Report of the Taxation Inquiry Commission* (1968). For a discussion of the Indian government's efforts to relate tax policy and developmental policy, see Singhal, "Taxing for Development: Incentives Affecting Foreign Investment in India," 14 *Harvard International Law Journal* 50, 53-54 (1973). The tax legislative process in the United States, and in particular the system for deciding upon the national budget in light of revenue goals, has been subject to well-deserved scholarly and political criticism in recent years. See, e.g., Graetz, "Reflections on the Tax Legislative Process: Prelude to Reform," 58 *Virginia Law Review* 1389 (1972) [hereinafter Graetz]. For other references in this area, see *infra* note 18. A major effort at improving the budgeting procedures was taken with the enactment of the Budget Reform Act of 1974. Implementation of the Budget Reform Act has just begun, and its effectiveness is still uncertain. *Business Week*, January 13, 1975, p. 30; and May 5, 1975, p. 70.

existed. The political support had been dissipated before the general feeling for reform could be reduced to a concrete set of legislative proposals² [*4]

- 2 The experiences of Chile, Venezuela, and Colombia are instructive. In each case, the role of politics is difficult to separate from the role of institutional arrangements, for there is little doubt that overwhelming political support could have overcome most institutional deficiencies. Since the political support for tax reform is seldom overwhelming, however, it is our view that institutional arrangements can play a pivotal role, and did play such a role in the three countries discussed below.

In Chile, at the beginning of the Frei administration, there was widespread feeling in tax circles that the political will existed for increasing the progressivity of the income and sales taxes and improving the administration of all of the taxes. Progress on administration which had begun before the Frei administration with the help of the Foreign Tax Assistance Staff of the U.S. Internal Revenue Service continued through the early years of the administration. Legislative reform on issues not reached in earlier substantial reforms had, however, to await the staff development of carefully worded specific proposals. This was ultimately accomplished with the help of a team supplied by the Harvard Law School International Tax Program [hereinafter International Tax Program]. The Ministry of Finance during most of that period was headed by Sergio Molina, an expert on public finance in his own right. Had there been a properly functioning, well-institutionalized staff for the preparation of tax policy reform legislation, it might well have been ready to seize the opportunity presented by the apparent political will for reform. As it was, those not anxious for reform could rely on the excuse of, "Yes, of course, the reforms will be made, but let's take the necessary time to prepare them properly." By the time the reform package was ready, the end of President Frei's term of office was approaching, and the political obstacles to the adoption of these sensitive reforms could no longer be overcome. A number of the sales tax reforms, however, were ultimately adopted by the Allende government in 1972, when the political climate for reform had improved. Our information on the Chile situation is based on the International Tax Program's experience with the reform activity in 1967 and on subsequent discussions with former participants in the Taxation Curriculum of the International Tax Program. Unfortunately, nothing has yet been published on the history of tax reform in Chile, and the perspective of Chilean participants in the process may yield a picture which differs from that presented above.

In the case of Venezuela, the Shoup mission report, prepared under the aegis of a caretaker government in 1958, led to a comprehensive set of tax reform proposals. *See C. Shoup et al, The Fiscal System of Venezuela* (1959). The caretaker government wanted to have the basic staff work done so that a duly elected government would have it available after it came into office. The Shoup mission proposals, while detailed in an economic sense, did not include draft

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legislation. Elected governments, one after the other, failed to implement any significant part of the Shoup mission proposal for almost 10 years. When implementation did begin, the absence of a tax policy planning staff with some experience and skill was at least in part responsible for the poor technical quality of the legislation finally adopted in 1966. For a discussion of the reform efforts in the 1960's, see Gittes, "Income Tax Reform: The Venezuelan Experience," 5 *Harvard Journal on Legislation* 125 (1968). There has been no major impetus for reform in Venezuela in recent years. The great increase in income from oil has removed one of the traditional motivations for tax reform in Latin America, the need for government revenues.

In the case of Colombia, the political will for tax reform was at a high level at the time the work of the Musgrave Commission began in the spring of 1968. While this Commission, and the strong Colombian staff organized to support it, was extremely efficient in the speed with which it produced recommendations and draft legislation, it was nevertheless too late. When the report, recommendations and suggested legislation became available in about February 1969 and the process of converting them into legislation was begun, there had already also begun a change in the international coffee prices which ultimately became the single most important factor in reducing the budgetary pressure for reform.

Had there been in existence a properly functioning tax policy planning staff in the spring of 1968 (an idea that had been recommended to the Colombian government several years before and which had been accepted in principle), then it may well have been possible for specific recommendations, including those of the Musgrave Commission, to have been ready by the summer of 1968, so that action on them might have been taken while the political will was at its peak. See R. Musgrave & M. Gillis (eds.), *Fiscal Reform for Colombia* (1971). See also L. Vazquez Caro, *Revenue Policies of the Colombian National Government: 1969 to 1972* (unpublished paper on file at the International Tax Program, April 1973). With the change in government in August, 1974, elements of the Musgrave proposals were revived, and a number of new proposals were developed by a transition team appointed by the president-elect. A sweeping reform, one of the most comprehensive reforms on record for any country, was enacted during 1974 and 1975. The reforms were enacted by decree, under emergency 90-day powers invoked by President López under Article 122 of the Colombian Constitution. Important procedural reforms, largely developed during the Pastrana presidency, were included in the reform package, but the Supreme Court (after a 6 to 6 vote, resolved under the procedures of Decree 1265 of 1970), held that President López had exceeded his constitutional powers under Article 122 in regard to most of them. The López government was forced to request approval of the procedural reforms from the legislature, and, though it held a substantial majority, approval was given only after the deletion of some key provisions. The existence of the Musgrave proposals and the work on procedural reform done during the Pastrana government made it possible for the López

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Improved institutional arrangements for changing a country's tax system can (1) improve substantially the quality of tax reform proposals and (2) increase the chances that the proposals will be enacted. The quality of the reform proposals will improve because of better information flows and more systematic planning. The chances of implementing the reforms will increase for a variety of reasons. First of all, well planned reform proposals can be packaged to attract political support and to undermine political opposition. Second, if changes in the proposals become politically expedient, sound changes that preserve the basic intent of the reform can be made accurately and swiftly.³ Third, inaccurate but emotionally appealing arguments against the reform proposals can be refuted if careful economic studies on the effects of the proposals have been prepared. Finally, the political leaders supporting reform will have much better control of the reform process. They will be able, for example, to introduce reform legislation when political support for it is at its height or when opposition to the reform is in disarray. Similarly, it is much less likely that they will be surprised by the public reaction to the reform proposals. Improvements in institutional arrangements cannot bring about tax reform if the political forces in control of the country oppose it. What they can do is prevent politically viable reforms from being defeated for non-political reasons.

2 (...continued)

government to put together its proposals in a very short time and to thus be in a position to invoke emergency powers immediately after taking office.

3 Without a tax policy staff that understands the implications of apparently minor amendments in a tax bill, it is possible for those favoring reform to lose their cause even if they have the necessary political support. See G. Myrdal, *The Political Element in the Development of Economic Theory* 189 (1969):

[A]n alteration in an apparently quite insignificant section of a tax bill can shift the whole distribution of the tax burden. To bring about a change in quantity and price relationships, a change at the margin is sufficient. Hence any clause in a tax bill may indirectly affect persons who are not directly affected by it. An analysis of the repercussions must therefore examine the special conditions in each particular case. Every sentence, every word, must be scrupulously weighed.

In recent years, the institutional aspects of tax reform have become an [*5] important topic in international tax conferences.⁴ The hope of these conferences has been to begin the development of guidelines that would be useful to various countries in the design of their tax reform institutions. As a preliminary step toward that goal, the conferences have tried to improve the wholly inadequate literature on the process of tax reform. Published literature on the process of tax reform is available for only a handful of countries, and, even when available, it is not nearly detailed enough for purposes of comparative studies.⁵ Even for countries such as Canada, where there is considerable information on recent reform activities, almost all attention is devoted to major, once-in-a-decade reform, than to equally important annual reforms. In fact, for analytical purposes, information on the institutional arrangements for minor reform is probably more useful than similar data on major reform since the political factor in major reform is so overwhelming that it is nearly [*6] impossible to isolate the effects of institutional arrangements on the success or failure of the reform. For minor

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- 4 See, e.g., Secretaría General, Organización de Los Estados Americanos, *La Política Tributaria como Instrumento del Desarrollo: Documentos y Conclusiones de la III Conferencia Inter-americana Sobre Tributación* (fourth in the series, *Reforma Tributaria para América Latina*, 1973), English edition forthcoming, *Papers for III Inter-American Conference on Taxation, September 3-8, 1972, Mexico, D.F.* See also *Tax Reform Planning: Report of the Expert Group*, U.N. Doc. ST/ECA/135 (1971) [hereinafter, Report of the Expert Group, reproduced in Appendix A. This document contains a full list of documents considered at the September 1970 meeting of the Expert Group on Tax Reform Planning. These include country studies (about 100 pages each) of Chile, Ghana, Guinea, Jamaica, Pakistan, Philippines, Senegal, Tanzania, Trinidad and Tobago, and Turkey. See *infra* note 7.
- 5 The literature on the United States is the most extensive, but, because of the absence of central planning and the existence of a unique legislative process, it has limited usefulness for comparative studies. See items in note 18 *infra*. A considerable amount of material has been generated about Canada as a result of its major tax reform efforts over the past ten years. See R. Bertrand *et al.*, *Study for the Royal Commission on Taxation No. 22: Legislation, Administration and Interpretation Processes in Federal Taxation* (1968); Bird, "The Tax Kaleidoscope: Perspectives on Tax Reform in Canada," 18 *Canadian Tax Journal* 444 (1970); Head, "Evaluation of the Canadian Tax Reform," 1 *Dalhousie Law Journal* 51 (1973); MacIntyre, "Public Consultation Before Major Tax Reforms," 2 *Singapore International Tax Conference Manual* (1974).

reform, the intense emotional controversies that are the hallmark of major reform may not be present.

A major effort at improving the literature on tax reform in developing countries was begun by the establishment of an “Expert Group on Tax Reform Planning” by the United Nations in September of 1970.⁶ As part of the work of the Expert Group, studies of the system of tax reform in 11 countries were undertaken and completed.⁷ The studies demonstrate that very little attention has been given to the institutional aspects of reform. They also suggest that better guidance is necessary to record [*7] and preserve information relevant to the process of tax reform.⁸

6 See *Report of the Expert Group*, supra note 4, reproduced in Appendix A. See also *Tax Reform Planning*, U.N. ECOSOC Res. 1271 (XLIII), 43 U.N. ECOSOC, Supp. 1, at 4, U.N. Doc. E/RES/1271 (XLIII) (1967), reproduced in Appendix B; Secretary-General, *Financing of Economic Development: Tax Reform Planning*, U.N. Doc. E/4366 & Add. 1 (1967), reproduced in Appendix G; Technical Assistance Administration, *Taxes and Fiscal Policy in Under-Developed Countries*, U.N. Doc. ST/TAA/M/8 (1954); United Nation’s Secretariat, *Tax Reform Planning: A Suggested Framework for Discussion*, U.N. Doc. ESA/FF/AC.1/12 (1970), also excerpted in R. Bird & O. Oldman (eds.), *Readings on Taxation in Developing Countries* 58 (3d ed. 1975).

7 United Nations, *Tax Reform Planning in Chile* (Thomas, consultant), U.N. Doc. ESA/FF/AG.1/4 (1970); *Tax Reform Planning in Ghana* (Shaw, consultant), U.N. Doc. ESA/FF/AC.1/3 (1970); *Study on the Planning of Tax Reform in the Republic of Guinea* (Bademba, consultant), U.N. Doc. ESA/FF/AC.1/8 (1970); *The Tax System in Iraq* (Alsagaban, consultant), U.N. Doc. ESA/ECOSOC/LI/Misc. 2/Add. 5 (1971); *Tax Reform Planning in Jamaica*, U.N. Doc. ESA/FF/AC.1/7 (1970); *Tax Reform Planning in Pakistan* (Uddin Baqai, consultant), U.N. Doc. ESA/FF/AC.1/9 (1970), and *The Tax System in Pakistan* (Uddin Baqai, consultant), U.N. Doc. ESA/ECOSOC/LI/Misc. 2/Add. 6 (1971); *Tax Reform in the Philippines* (Kintanar, consultant), U.N. Doc. ESA/FF/AC.1/10 (1970); *Tax Reform Planning in Senegal* (Cire Sall, consultant), U.N. Doc. ESA/FF/AC.1/11 (1970); *Tax Reform Planning in the United Republic of Tanzania* (Kaduma & Modi, consultants), U.N. Doc. ESA/FF/AG.1/6 (1970); *Tax Reform Planning in Turkey* (Bulutoglu, consultant), U.N. Doc. ESA/FF/AC.1/2 (1970); *Tax Reform Planning in Trinidad and Tobago*, U.N. Doc. ESA/FF/AC.1/5 (1970) [hereinafter, e.g., U.N. Country Study: Chile].

8 Tax planning in Chile is carried out by the *Sub-Dirección de Estudios* (Office of Studies), a subdivision of the *Servicio de Impuestos Internos* (Internal Tax Service), located in the Ministry of Finance. The permanent tax policy planning activities of the Office of Studies is carried out by the *Departamento de Planificación* (Department of Planning), with inputs from the

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A preliminary draft of this monograph was first prepared in July of 1972 for use in a conference on tax reform planning sponsored by the [*8] Organization of American States in Mexico City.⁹ The heart of that paper, which remains the heart of this one, is an inventory of the various functions which must be performed in order to

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Departamento de Organización y Métodos, the *Departamento de Estadística*, and the *Departamento de Máquinas*, which provides computer services for the entire *Servicio de Impuestos Internos*. Ad hoc committees are formed during periods of major reform. See U.N. Country Study: Chile, *supra* note 7, at 3. The Chile Report contains much useful information. The U.N. consultant for this report was Roger W. Thomas, who was a part of the International Tax Program advisory team in Chile in 1967.

In Ghana, tax reform planning has in the past been carried out by foreign advisors, with no permanent arrangements for study and evaluation of the tax system on an on-going basis. U.N. Country Study: Ghana, *supra* note 7, at 62. A tax reform commission has now been formed to study the tax system and proposed changes, but no report has yet been published. Members of the Commission visited with the staff of the International Tax Program in April of 1973. Despite the appointment of the commission, only preliminary steps have been taken to institutionalize the tax planning process. Guinea also had no institutional arrangements for tax reform planning at the time of the country study. See U.N. Country Study: Guinea *supra* note 7, at 29.

In Jamaica, Senegal, Tanzania, and Trinidad and Tobago, tax reform planning takes place in the Ministry of Finance under the direction of high level officials with substantial duties in addition to tax planning. No information is given on the details of the planning process. Trinidad has a special procedure for proposals to increase or decrease tax incentives. See U.N. Country Studies: Jamaica, *supra* note 7, at 3-4; Senegal, at 7; Tanzania, at 6; Trinidad and Tobago, at 5-8. Pakistan does most of its tax reform planning in the Ministry of Finance, but has some arrangements for coordination with other agencies. The activity of the Ministry is supplemented by ad hoc committees. See U.N. Country Study: Pakistan, *supra* note 7, at 10, 14.

The Philippines, at the time the U.N. Country Study was prepared, had a unified tax planning office which served both the executive and the legislature and which was headed by high ranking members of both branches. With the change to military government, however, the coordination role is no longer necessary, and only the technical staff remains. See *infra* note 15. The technical staff is responsible for commenting on proposed legislation, but other functions are unclear. See U.N. Country Study: Philippines, *supra* note 7, at 9-11. For a more detailed discussion, see R. Thomas, *Institutional Devices for Tax Policy Planning* 26-31 (Harvard Chile Project, unpublished paper on file at the International Tax Program, 1967).

9 See Oldman & McIntyre, "Institutionalizing Tax Reform Planning" (OEA/ Ser. K/XX.3/Tax 8), in *Papers for III Inter-American Conference*, *supra* note 4.

efficiently manage the modification of a tax system. We have first catalogued the various types of tax changes that are needed, and then identified the functions which should be performed in planning and implementing these changes. Our Inventory is general, in that it is intended to apply for almost any country, but the inclusion of most of the items is based on experience, direct or vicarious, with tax, reform projects in specific countries. We have relied in large measure on our knowledge of the United States system and on the collective experience of the International Tax Program with foreign government officials through its training program¹⁰ and its technical assistance projects.¹¹

Because of the paucity of the literature and the vagueness of some of our second hand information, our Inventory is not as complete or as specific as we would have liked. For the same reasons we could make few positive recommendations on the optimal governmental structure for managing the process of tax reform. We hope, nevertheless, that countries which are trying to improve their tax reform institutions will find our analysis a useful starting point. Substantial refinement of our analysis, however, should be possible if the research recommended in Chapter IV of this monograph is conducted.

10 The International Tax Program has had over 360 participants from more than 60 countries since its founding in 1952. For a recent description of the training program, *see* "The International Tax Program: A Tri-dimensional Approach," 24 *Harvard Law School Bulletin* 6 (1973).

11 The International Tax Program and members of its staff have provided technical assistance to the governments of Argentina, Chile, Colombia, Costa Rica, El Salvador, Ethiopia, Indonesia, Mexico, Puerto Rico, Virgin Islands (American) and Venezuela.

CHAPTER II

INVENTORY OF INSTITUTIONAL FUNCTIONS

A. Scope, Definitions, and Context

1. Scope

The Inventory contained in Section B below sets forth the institutional requirements for formulating a realistic and coherent tax reform plan and then implementing a recognizable version of that plan. Every tax reform is unique in some respects and thus has its own particular institutional requirements. For purposes of this Inventory, we have divided all reforms into four main groups: (1) technical changes in the tax law, (2) enactment of special provisions, or “tax expenditures,” (3) short run changes in tax rates, and (4) major overhauls of the system. A number of further subdivisions would have been possible; it might have been useful, for example, to break down the last category into several parts. But we view this Inventory as only a preliminary functional analysis of the process of reform. Further refinements in the analysis can best be made when more information on the process of reform in various countries becomes available.

Within each of the four categories, we have identified the functions which must be performed in order for the process of reform to work smoothly and reasonably, and have then suggested the kinds of institutional arrangements best suited for fulfilling the required functions. Although the objectives of the types of reform differ, a number of the institutional needs are the same and have thus been consolidated in a summary at the end of the Inventory. Our Inventory is intended to be applicable to any country, regardless of degree of development or type of political structure. We have not, therefore, discussed institutional problems that we felt arose from unique situations in particular countries. We have, nevertheless, tried to provide some specific information about the experience of particular countries in the notes.

2. Definitional Problems

In preparing this Inventory, we had to decide, first of all, what we meant by “tax reform” and, secondly, what we meant by “institutionalizing” the process of tax reform. Most commentators use the term “tax [*10] reform” to include only major legislative changes that result in some “improvement” of a country’s tax system. Our definition, however, is much broader. As used in this Inventory, a “tax reform”

includes any legislative change in a country's tax laws that is the product of serious planning. By serious planning, we mean a considered attempt to adjust the tax system to accomplish some specific tax policy goals, in contrast to ad hoc changes for political purposes in which the implications for income distribution and economic stabilization are ignored. We found that a narrower definition of "tax reform" would involve us in controversy, useless for our purposes, as to what kinds of adjustments were major and what constituted a "good" change.¹²

Our definition, although broad, is not all-encompassing. We have excluded changes caused by judicial decisions or by improved administration. Judicially created reform does not involve tax reform planning, but is instead done on a case-by-case basis, without much coordination with other departments. It is implemented by judicial decree rather than by any legislative process. For statutory reform the key institutional requirements concern the formulation of a tax reform plan and then the implementation of that plan through the political process of the country. Administrative reform is a key element in tax reform planning, for it is the ability of the tax administration to effectuate a range of alternative [*11] proposals that makes tax policy possible.¹³ The process of implementing administrative reform, however,

12 The distinction between a major and a minor tax reform is obvious in a few situations, but in most cases the distinction is almost completely subjective. Distinguishing between good and bad reforms is equally elusive. A reform may be technically good, in that it is reasonably designed to accomplish certain ends, but be morally bad, in that the ends are not in harmony with some ethical norm. Since this Inventory is concerned with the process of reform and not the substance, it was not necessary for us to determine what would constitute an ethical tax change. For a discussion of some of the difficulties involved in judging tax reforms to be either "better" or "worse," see Harriss, "Government Finance, Political Processes and Economies," 40/2 *Tax Policy* 1, 12 (1973).

13 Carl S. Shoup, in an address delivered before the First General Assembly of the Inter-American Center of Tax Administrators, Panama City, Panama, May 5, 1967, remarked, "Policy makers and administrators alike can recognize that the . . . range of successful policy formulation depends largely on advances in administration. As tax administration becomes more and more efficient, policy makers can consider a wider range of possible tax patterns, or combinations." P. Kelley & O. Oldman (eds.), *Readings on Income Tax Administration* ix (1973). On the interplay between policy and administration, see W. Hellmuth & O. Oldman (eds.), *Tax Policy and Tax Reform: 1961-1969: Selected Speeches and Testimony of Stanley S. Surrey* 531-541 (1973) (speech (continued...))

is sufficiently dissimilar from the process of statutory reform to warrant its exclusion from this Inventory.¹⁴

Unlike the term “tax reform,” the phrase “institutionalizing the process of tax reform” has no popular meaning. “Institutionalizing” is an ugly word, rarely used in common discourse. Moreover, despite several international conferences on the subject, there has been no serious attempt to define the phrase. Generally speaking, we have used the term in this monograph to mean the imposition of a management system on the process of reform. That is, for us the desideratum is the existence of a system for dealing with tax reform as a continuing and predictable problem. A management system requires that the tasks to be performed be analyzed and assigned to departments capable of accomplishing them. It requires [*12] that there be long and short term planning and that the operating departments concerned with the various tasks be coordinated. It also requires that a rational decision-making process be established for resolving conflicts. In contrast, the absence of a management system for reform means that reform will be done on an ad hoc basis, with unreliable structural support for the reform efforts.

The somewhat vague description given above is of little help in deciding whether a particular function relating to tax reform has been institutionalized. After all, it is

13 (...continued)

before the Inter-American Center of Tax Administrators, Panama, May 5, 1967); *see also* McIntyre, “Reweaving the Indian Tax Net: A Lawyer’s Approach,” 8 *Jaipur Law Journal* 26 (1968).

14 The types of planning and data needed for administrative reform are similar to those needed for legislative reform in a number of respects. An efficient tax administration, like any other complex organization, requires long term planning. To prepare itself for future needs and remain adaptable to changed circumstances, the tax administration should have some institutional arrangements to (1) evaluate past performance; (2) estimate future workload needs; (3) plan for the introduction of new equipment, especially computers; (4) formulate new approaches and techniques to increase compliance; (5) study the organizational structure of the department; (6) propose legislative changes needed for effective administration, especially relating to such areas as filing requirements, penalties, estimated tax payments, withholding, information returns, etc.; (7) formulate programs to improve the fairness of the administration in its dealings with taxpayers. For a description of the planning activity of the United States Internal Revenue Service, *see* U.S. Commissioner of Internal Revenue, *Annual Report 1973*, 62-67 (1973).

reasonable within a management system to deal with some problems on an ad hoc or personalized basis. As a rule of thumb, we suggest that there are three typical features of institutional arrangements that distinguish them in the normal case from personalized or ad hoc arrangements. First of all, an institutional arrangement for performing a necessary tax reform function should generally be permanent. The task might be assigned to a special department in charge of tax reform, or to some traditional government agency; but whatever the specific arrangement, performance of the function should not be regarded as a special procedure, out of the department's normal responsibilities. Secondly, provision should be made in the budget for conducting the tax reform task, so that the daily business of tax reform can be carried out without the necessity for special appropriations or for "borrowing" funds from other tasks. In a sense this feature is a refinement of the first. The third requirement is that the technical functions relating to tax reform should be insulated from undue political pressures. Of course, all tax reform efforts are highly political, and it is both inevitable and desirable that politics play a major role in shaping any tax reform. But political input should enter the reform process at a relatively high level; it should not "subvert" the technical staff. The agency responsible for gathering and compiling statistical data and the group responsible for economic analysis must be allowed to exercise professional standards without being pressured for or against a particular view by political considerations. Every government has techniques for limiting political activity in certain areas. The detailed civil service rules found in most countries are a good example. A feature of institutional arrangements for reform should be the use of these and other techniques to protect essentially technical functions from political undermining. [*13]

3. Context of the Analysis

Our basic approach has been to provide an analytical framework which other writers can use in describing the institutional arrangements of particular countries. By relating the institutional arrangements to specific functions, it should become possible for countries to learn from the positive and negative experiences of other countries. Since for most countries there are only a handful, if any, sister states with similar economic and social conditions, comparative research would be largely useless unless institutional arrangements were classified according to generic functions.

For example, if Country A finds that its institutional arrangements for making quick, temporary changes in its tax rates are defective, where it can go to find a suitable model depends on the function that the institutional arrangement is meant to serve. If the problem is to avoid political interference, then it would look to a country with a similar political framework. On the other hand, if the problem is lack of coordination between the tax office and the development planning office, it might look at the institutions of a country with similar kinds of central planning. Likewise, if Country B is thinking of establishing an independent government agency with full responsibility for tax reform planning, where can it look for guidance? Only the Philippines has such a system, and much of the Filipino experience would not be relevant.¹⁵ The best hope of obtaining useful experience would be to analyze the functions that the centralized agency would be expected to perform and then to examine how these functions are carried out in other systems. The Filipino experience might give some guidance about internal operating procedures of a unified agency, but for other functions, such as methods of long term planning, the experiences of Canada or the United States might be more relevant. [*14]

This Inventory assumes that any tax reform proposals must pass through some legislative process, but the mechanisms for obtaining legislative approval are not discussed. For countries without a legislature, or with a legislature without power to affect tax statutes, some of the functions discussed in this Inventory may not be relevant. Every country, however, needs some arrangements for resolving conflicts over economic, social, and political objectives inherent in any tax reform movement, and if this function is not performed by the legislature, then some other institution will be created to perform it. References in this Inventory to the legislature may be applicable by analogy to the substitute institution. We have not discussed in systematic fashion the tax legislative process, although the notes accompanying the text are filled with examples of specific suggestions for reform. There is no question that a well-designed tax legislative process is a *sine qua non* for enacting serious

15 See U.N. Country Study: Philippines, *supra* note 7. The Joint Legislative-Executive Tax Commission set up in 1959 to formalize tax reform planning in the Philippines was abolished in September of 1972 and converted into a purely executive, single-headed agency under the administrative supervision of the National Economic Development Authority, and is now called the National Tax Research Center. See Presidential Decree No. 74, in F. Pinpin (ed.), *The First 107 Presidential Decrees 223-224* (1973).

reform. Comparative research on this topic, however, is difficult. In fact, the term “tax legislative process,” while widely used, has not been adequately defined. It is used to include the organizational structure of the legislature, as established by the national constitution or long tradition. It also includes the procedural structure of the legislature, including rules for public hearings, for amendments on the floor of the legislature, for coordinating tax bills with revenue bills and much more. In addition, the term is used to refer to the legal structure for tax policy review. This structure would include laws requiring reports on the effectiveness of various provisions, laws which phased out various special provisions after a certain number of years, and laws granting the executive the power to make temporary changes in the tax rules. Comparative research on the organizational structure is not likely to be useful, for its design is determined by factors unrelated to tax reform and as a practical matter is unlikely to be changed simply to facilitate reform. Comparative research on the procedural and legal structures is more promising, but still difficult. Information on the effectiveness of these structures is difficult to obtain and hard to evaluate as to reliability.

B. Inventory

The two essentials for a successful tax reform are (1) the formulation of a tax reform plan and (2) the implementation of that plan. The two [*15] steps are inherently distinct, and planning should logically precede implementation. It is not uncommon, however, for the procedures for implementation to have begun before any planning has been started. Moreover, in the usual case, planning will continue all through the process of implementation, as original proposals meet political defeat and are replaced by new proposals. The logical distinction is further blurred by the difficulties of distinguishing planning from implementing in a number of situations. For example, the drafting of a tax bill may be either the last step in formulating a plan or an early step in implementing the plan. Finally, the whole approach to planning and, of course, the substantive proposals that result from the planning process, are intimately related to the prospects for implementing various types of reforms. The objective of planning, after all, cannot be the design of the best possible tax system, but rather the best system that can be implemented under existing conditions. Nevertheless, we have assumed that planning is generally prior to implementation and can be usefully distinguished from it in most situations.

The four categories of reform presented below have some characteristic differences in the amount of planning needed and in the significance of problems of implementation. The planning required for technical amendments is relatively uncomplicated and is basically a task for lawyers and administrators. Planning for special provisions is somewhat complicated, but there is still no need to reconsider the basic premises of the tax system. A temporary change in tax rates requires detailed economic analysis, but only in unusual situations does it raise fundamental issues of tax policy. Major reform, however, is extremely difficult to plan for, in part because it raises difficult economic and legal questions and in part because it may challenge longstanding social conventions and, indeed, the basic power structure of the society.

The procedures for implementing tax changes should vary considerably for the four categories of reform. Technical amendments and short run rate changes should generally be implemented without serious political confrontation, and the legislative processes for enacting such reform should be streamlined. The process for implementing special provisions should be as similar as possible to the procedures for approving items in the budget, since the types of cost/benefit issues raised are similar to [*16] those for direct expenditures. Major reform always involves serious political confrontation; the emphasis in designing institutional arrangements should be to ensure that the basic conflicts are understood by all elements of the society that are politically able to participate in the decision making process.

1. Technical Amendments

A “technical amendment” as that term is used here, is a change in the tax law which reflects no substantial reexamination of tax policy. The existing tax structure is not changed, but the wording of particular provisions is altered somewhat in order to implement better the underlying policy of the provisions. A technical amendment may be necessary because: (1) the original law opened an unintended loophole; (2) a judicial or administrative interpretation of the law has given an undesirable result; (3) the original law is unintentionally harsh on a particular taxpayer or group of taxpayers; (4) a change in the procedure for reporting information is desired; or (5) the law as passed contains a clerical error.

A technical amendment is probably the simplest type of tax revision, since there is no need to reexamine basic principles or to engage in serious economic analysis. It is also

by far the most common, at least for tax systems which deal with technical defects in the law by way of legislation. In some systems, especially those with a civil law foundation, there is a tendency to leave a good portion of the obligation for correcting such defects to the tax administration,¹⁶ but even when much of the burden has been so delegated, a need will remain for at least some technical changes, especially in closing judicially sanctioned loopholes. Every tax system needs to have some institutional arrangements for [*17] eliminating technical defects in its tax laws. First of all, procedures must be established for identifying technical defects. In institutional terms, the problem is chiefly one of controlling information flows. Clerical errors, for example, should become apparent quite quickly to those drafting regulations or to the revenue officers in the field, but such defects will not come automatically to the attention of the legislature. The tax administration will quickly learn, also, of the need for procedural changes and of the existence of hardships. Other groups which may have ready knowledge concerning the need for technical modifications include the tax bar, tax scholars, and the taxpaying public.

Some types of defects, however, can only be discovered by intensive research and analysis. Tax systems are often very complex, with countless artificial rules and definitions that interrelate in countless ways. It is very possible that there might be loopholes or unfair hardships that would not get reported to the tax administration. Besides providing for control of existing information, an effective institutional arrangement for locating technical defects must provide for some research capacity.¹⁷ The second institutional requisite is a mechanism for correcting the defects once they have been identified. If administrative machinery for making corrections is available, so that only a modest number of technical amendments is needed each year, a special legislative procedure for dealing with them is unnecessary. If there are a large number

16 Most Latin American countries, for example, have very general code provisions, and most technical defects are dealt with in the regulations. For a proposal for delegating more authority in dealing with technical matters to the Treasury Department *see* Surrey, "Complexity and the Internal Revenue Code: The Problem of the Management of Tax Detail," 34 *Law & Contemporary Problems* 673, 703-707 (1969).

17 None of the Country Studies commissioned by the United Nations, *see supra* note 7, and none of the countries treated in the World Tax Series of the International Tax Program has specific institutional arrangements for discovering technical defects, and no other country with such arrangements has come to our attention.

of such amendments, however, a streamlined procedure is a practical necessity; following the cumbersome procedures appropriate for decisions on major policy issues would require an unrealistic amount of legislative time. The type of streamlined procedure that would be appropriate for a given country depends entirely on its legislative system. In the United States, for example, where control of the tax laws is divided between the executive and the legislature, and then again between the upper [*18] and lower houses of the legislature,¹⁸ an effective procedure for adopting technical amendments is very important and also very complicated. Without a streamlined procedure, small changes in the tax law can become the vehicle for political maneuvering among rival politicians in the House of Representatives, the Senate, and the executive branch. The government always runs the risk of losing control of its tax bill, and is thus wary of correcting minor defects which, if not made, will cumulatively undermine the tax system. For British-style parliamentary systems, the problem is much simpler, since the government will almost always have a working majority in the Parliament and can, therefore, control the course of the tax legislation. The critical problem for any system, however, is to guarantee that the streamlined procedures will be used only for technical amendments and not for tax changes that involve serious policy issues which should be openly debated. The need to limit the streamlined procedure to genuine technical changes requires an institutional arrangement for screening proposed amendments. If there is not screening by a competent professional staff with high prestige, there will be complaints, many of them undoubtedly legitimate, that the procedure is being used as a back door for enacting politically motivated relief measures for legislative friends or for avoiding

18 For a discussion of the tax legislative process in the United States, see Graetz, *supra* note 1; J. Pechman, *Federal Tax Policy* (1971); R. Musgrave & P. Musgrave, *Public Finance in Theory and Practice* (1973); Surrey, "The Congress and the Tax Lobbyist — How Special Tax Provisions Get Enacted," 70 *Harvard Law Review* 1145 (1957); R. Blough, *The Federal Taxing Process* (1952). In contrast, for a description of the process in Great Britain, see Kean, "Drafting a Bill in Britain," 5 *Harvard Journal on Legislation* 253 (1968). The legislative process for Australia, Brazil, Colombia, France, Germany, India, Italy, Mexico, Sweden, the United States, and the United Kingdom is described in Section 1/6 of the respective volumes of the International Tax Program, Harvard Law School, World Tax Series. The Canadian system is described in Note, "Tax Adjustments for Economic Stability and Growth: Proposals for Reform of the Legislative Process," 5 *Harvard Journal on Legislation* 265, 267 (1968); and in MacIntyre, *supra* note 5, at 17/5-17/6.

[*19] open debate on serious policy issues.¹⁹ Whatever screening technique is adopted, it must be open to public scrutiny, as a safeguard against abuse. It may also be desirable to severely limit the activity of the screening authority by providing it with a carefully drawn definition of a technical amendment. For example, any tax bill would be barred from following the streamlined route if its revenue impact were over some predetermined amount, if it involved potential conflicts of interest for any legislator or ministry of finance official or if it involved any of a list of sensitive topics, such as investment incentives.²⁰

In many instances, the legislature has created its own problems, for a large number of technical amendments are the direct result of bad draftsmanship in the original legislation. The volume of technical amendments could be reduced if (1) the legislators had available a competent drafting staff in which they could place confidence, and (2) the lead time for drafting a statute could be increased. Most tax bills are passed under great time pressure, with little opportunity for careful reflection on alternative drafting approaches.²¹ Skilled draftsmen, if given some leeway by the legislature, can do a good job even on short notice. If the legislation has been properly prepared, moreover, the draftsmen will have had an opportunity to complete a preliminary version of the bill before time pressures became intense. [*20]

19 For a hard-hitting description of abuses of streamlined procedures in the United States, see Tax Reform Research Group, "Citizen Action: ACORN Helps Block Mills Loophole Plan," 1/5 *People and Taxes* 1 (1972). See also Woodworth, "The Federal Tax Legislative Process," 25 *National Tax Journal* 405, 409 (1972). For a discussion of how the technical complexity of a bill obscures the policy issues, see Surrey, "The Congress and the Tax Lobbyist," *supra* note 18. The U.S. system allows the normal legislative procedures to be waived for "Members' Bills," which in theory are bills to correct technical errors or to provide for hardship relief. Beginning in 1975 with the 94th Congress, new informal procedures have been introduced for safeguarding against the old abuses of Members' Bills. The heart of the reform is the requirement of full disclosure of beneficiaries. See Black & Byrne, "Private Interest Tax Bills: A New Day Promised, But Vigilance Still Necessary," 3/17 *Tax Notes* 3 (1975).

20 Compare techniques for making technical amendments with the techniques for making short run rate changes, *infra* Chapter II, B, 3.

21 See Surrey, "Complexity and the Internal Revenue Code," *supra* note 16, at 695-697.

2. Special Provisions

A “special provision,” for purposes of this monograph, is a provision in the tax law which intentionally deviates from the generally accepted notions of tax equity in order to accomplish non-tax economic or social objectives. Most special provisions are intended as incentives for investment or as public welfare subsidies, but there are a variety of other categories.²² Since special provisions are in effect a sacrifice of tax revenue in order to achieve a non-tax objective, they have in recent years been referred to as “tax expenditures.”²³ In order to distinguish a special from an ordinary tax provision, it is necessary to have a general notion of what an ideal system would look like from the point of view of tax equity. In most cases, the concept need not be at all precise, since the majority of special provisions are labeled as incentives and make no pretense at being basic requirements of an ideal income tax. As has been well demonstrated in the controversy over defining a “tax expenditure” in the United States, however, there are considerable definitional problems at the edges of the concept.²⁴ [*21]

22 Deduction or credit for taxes of local government or penalty taxes on cigarettes, gambling, or alcoholic beverages are examples. For a list of incentives in the United States tax system, see Aaron, “Inventory of Existing Tax Incentives — Federal,” in Tax Institute of America, *Tax Incentives* 39 (1971). See also “The Tax-Expenditure Budget: A Conceptual Analysis,” in U.S. Secretary of the Treasury, *1968 Annual Report on the State of the Finances* 326-340 (1969); Bittker, “Accounting for Federal ‘Tax Subsidies’ in the National Budget,” 22 *National Tax Journal* 244-261 (1969). The Treasury Department’s Office of Management and Budget estimated tax expenditures for fiscal 1976 at \$91 billion, more than one fourth the size of the direct expenditures listed in the budget. Publication of a tax expenditure budget by the Treasury is required by law for fiscal 1977 and thereafter. See 3/6 *Tax Notes* 3 (1975).

23 Surrey, “Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures,” 83 *Harvard Law Review* 705, 706-711 (1970); S. Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (1973).

24 *Id.*; Bittker, “Accounting for Federal ‘Tax Subsidies,’” *supra* note 22. The debate over what constitutes a “tax expenditure” is similar in many ways to the debate over the comprehensive tax base (CTB) and its definition. For a collection of articles on the debate that took place in 1967-68 in the pages of the *Harvard Law Review*, see B. Bittker, C. Galvin, R. Musgrave & J. Pechman, *A Comprehensive Income Tax Base? A Debate* (1968). For an excellent article that relates the CTB controversy to the tax expenditure question, see Andrews, “Personal Deductions (continued...)”

The enactment of a special provision, unlike that of technical amendments, does involve questions of policy. Moreover, other governmental departments may, depending on its objective, have an interest in the special provision.²⁵ Consideration of the provision should, therefore, take place at a high level of the government, with the views of all the various departments represented.²⁶

If special provisions are to be enacted, the necessary institutional arrangements include the following: (1) study and evaluation of both the tax proposal and alternative non-tax means of accomplishing its objectives; (2) drafting the legislation; and (3) study and evaluation of the effects of the legislation.

Before a proposal for a special provision can be seriously considered, the policy makers should have: (1) an estimate of costs, including taxes forsaken; (2) a study of its administrative feasibility; (3) an evaluation of the suitability of the tax system for accomplishing the objectives; and (4) a report on the overall effect of the proposal on the distribution of tax burdens.

A reliable cost estimate is always difficult to obtain. For countries using computers extensively in the tax administration, it may be possible to build a computer model

24 (...continued)

in an Ideal Income Tax," 86 *Harvard Law Review* 309 (1972).

25 For example, in the United States tax incentives and other tax changes are often promoted by other government departments, such as the Department of Housing and Urban Development (tax incentive for low-income housing), the Department of Health, Education and Welfare (tax credits for tuition to private schools), the Council of Environmental Quality (tax penalties on leaded gasoline), the Labor Department (tax treatment of pensions and other employee benefits). See Graetz, *supra* note 1, at 1395, n. 25.

26 Information from other departments can be biased if the revenue losses from tax expenditures are not included in the departmental budgets. A proposal for including tax expenditures in the national budget was approved by the United States Senate as part of the Revenue Act of 1971, but in conference a decision was reached to simply publish the data on tax expenditures and submit it to Congress. See H.R. Rep. No. 708, 92d Cong., 1st Sess. (1971). In Argentina, the amount of all tax reductions resulting from incentives must be published in a statistical register, Law No. 19115 of July 7, 1971, reported in OAS, Joint Tax Program, 1/4 *Inter-American Bulletin on Taxation* 12 (1971).

of the tax system for the generation of cost [*22] estimates.²⁷ For other countries, it may be necessary to rely exclusively on the best judgment of experienced officials.²⁸ Whatever method is used, the estimate will be reliable only if accurate and meaningful data on the taxpaying public is available; institutional arrangements must, therefore, be made for the collection and analysis of data. A study of administrative feasibility might well be done within the tax administration. If this institutional arrangement is adopted, however, it will be necessary to involve administrative personnel in the early stages of tax reform planning. One part of any feasibility study should include an estimate of administrative costs. It is important that such a report also include a description of administrative changes and an estimate of the time required to implement them.²⁹

If it is reasonably clear that some governmental action is desirable, serious consideration should be given to alternatives to a tax relief measure for accomplishing the proposed objectives. Whether a government program is administered through the tax

27 Smith, "Automation in Tax Administration," 24 *Law & Contemporary Problems* 751; 765 (1959). Smith lists the following tax changes for which a computer model is useful: "(i) new tax rate schedules; (ii) changes in the exemption allowance for different categories of exemption; (iii) floor and ceiling limitations on specific deduction items (similar to the present medical deduction); (iv) exclusion of a portion of certain types of income (sick pay, dividends, and so forth); (v) changes in the treatment of capital gains; and (vi) substitution of credits for specific deductions." For special provisions that affect only a small percentage of the taxpaying public, a computer model will not be very useful due to the lack of a sufficient data base. For a detailed description of the uses of a computer for calculating the effect on revenue of changes in the tax base, see Okner, "Constructing a New Data Base from Existing Microdata Sets: The 1966 MERGE File," 1/3 *Annals of Economic and Social Measurement* 325 (1972) (reprinted as Reprint 251 by the Brookings Institution 1972); Pechman & Okner, "Individual Income Tax Erosion by Income Class," in U.S. Joint Economic Committee, 92d Cong., 2d Sess., *The Economics of Federal Subsidy Programs, A Compendium of Papers, Part I*, *General Study Papers* 13 ff. (Comm. Print 1972) (reprinted as Reprint 230 by the Brookings Institution 1972).

28 For a discussion of estimates of the revenue effect of changes in special provisions; see Graetz, *supra* note 1, at 1419-1421.

29 See Gillis, "Sales Tax Reform," in *Fiscal Reform for Colombia*, *supra* note 2, at 596; Bird, "Sales Taxation and Development Planning — Colombia," in G. Papanek (ed.), *Development Policy — Theory and Practice* 239 (1968); R. Bird, *Taxation and Development* 195-196 (1970).

system or through some [*23] other government agency, there are going to be costs. For most governments, there is a natural bias toward using the tax system for economic and social programs because (1) the cost of lost revenue is not nearly so politically visible as the cost of a direct appropriation; (2) the tax administration is an on-going department, typically one of the more efficient in government, capable of absorbing the new program without great delay and with only hidden costs; (3) the legislative procedures for enacting tax legislation differ from those of direct appropriations. Because of this bias, it is imperative that some counterbalancing institutional arrangements be created if the tax system is to avoid becoming enmeshed in multifarious non-tax matters. There are undoubtedly some situations in which the tax system will be the best means of accomplishing a governmental objective. It is also true, however, that most countries are overusing their tax systems, with a considerable unnecessary loss in revenue and equity. Whenever a special provision is being proposed, the government should consider whether guaranteed loans, grants and fellowships, interest subsidies, rent supplements, health-care programs, or any of a vast number of other direct programs might be more appropriate.³⁰ Finally, but perhaps most importantly, a study must be made on the inequitable effects of the special provision. All special provisions, by definition, violate the basic equitable principles underlying the tax system. If the violation is rather minor, the economic or other gains may justify the departure. But a major violation should not be tolerated. The majority of special provisions are grafted onto the income tax system. This tax has historically been favored because it has been thought to promote fairness. Except as a political charade, an unfair income tax thus never makes sense, for the income tax is undoubtedly the most complicated of the various taxes in wide use throughout the world. In order to assess the effects on the tax's fairness of a special provision, it is necessary to estimate where the tax benefits go and what the results are on average tax rates for various income classes. Unfortunately, no government [*24] presently evaluates its special provisions in these terms.³¹

30 See Rice, "Tax Reform and Tax Incentives," 34 *Law & Contemporary Problems* 782, 797-798 (1969).

31 For an example of how these estimates can be made, see Pechman & Okner, "Individual Income Tax Erosion by Income Class," *supra* note 27. In the United States, the Budget Reform Act of 1974 makes a first step in requiring some review of the effects of special incentives. An interesting and perhaps trend-setting innovation was made in the Revenue Act of 1971, which

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As with technical amendments, a good staff is vital for the drafting of special provisions. It is likely that a proposed special provision will undergo several drafts before enactment, since political leaders will want to ensure that their constituents will participate in some share of the benefits. A crucial task of the draftsmen will be to limit the benefits of the special provisions as much as possible to the target group, so as to minimize windfalls to taxpayers whose conduct will be unaffected by the incentive or who are not in need of public welfare benefits. The draftsmen, therefore, should have an accurate understanding of the intent of the policy makers. At least one of the persons responsible for drafting should be present at the more important conferences of the policy makers and should be thoroughly briefed on all other relevant discussions.

No country has documented the success of its tax incentives or other special provisions. Only a handful of the many tax incentives have been the subject of research, and the results of these few studies have been inconclusive.³² The effects of welfare provisions have generally not been analyzed. Efforts at evaluation would be facilitated if more data were collected by the government.³³ Data collection can be costly; to minimize [*25] costs, data collection might be centralized in a single agency serving both the tax policy makers and the development planning officials. Existing research

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- 31 (...continued)
included a special incentive for exports from the United States. Section 506 of the bill required that the Treasury report annually to Congress on the effectiveness of the incentive. The reports have shown that the costs far exceeded expectations. H.R. 10947, 92d Cong., 1st Sess. (1971). *See* 3/16 *Tax Notes* 3 (1975).
- 32 *See* J. Heller & K. Kauffman, *Tax Incentives for Industry in Less Developed Countries* (1963); Brannon, "A Requiem for the Investment Tax Credit," in Tax Institute of America, *Tax Incentives* 175 (1971).
- 33 In 1971, the United States granted tax relief to the business sector by liberalizing the depreciation rules, in part on the argument that the liberalization would stimulate investment. At the time of the change, the Office of Industrial Economics was established in the Internal Revenue Service to collect and evaluate data on the workings of the new system. The data will greatly facilitate any future study of the effectiveness of the tax relief. *See* U.S. Department of the Treasury, *Asset Depreciation Range (ADR) System* (1971).
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institutions such as the Di Tella Foundation in Argentina,³⁴ the Getulio Vargas Foundation in Brazil,³⁵ the Canadian Tax Foundation in Canada³⁶ and the Brookings Institution in the United States³⁷ may be available sources of data. Universities, especially those with research capability, may also be helpful.³⁸ [*26]

34 The Di Tella Foundation of Buenos Aires, Argentina; has frequently sponsored fiscal research (for example, the tax incidence studies carried out by Dr. Federico Herschel), and has also fostered visits of public finance experts to Argentina.

35 The Getulio Vargas Foundation in Brazil, with major programs in both Rio de Janeiro and Sao Paulo, has long sponsored research and training in the tax field. Its Inter-American School of Public Administration regularly conducts tax courses covering administration and policy. In 1965 the Foundation sponsored the study of Professor Carl S. Shoup and published his report, *The Tax System of Brazil* (1965).

36 The Canadian Tax Foundation conducts annual seminars on tax reform and publishes the *Canadian Tax Journal*.

37 The Brookings Institution of Washington, D.C., is famous among tax experts for its series of Studies of Government Finance, a number of volumes covering almost every major aspect of taxation during the 1960's. Brookings continues to conduct tax incidence and tax analysis studies as part of its Economic Studies program and announces, through annual brochures, its research and publication plans. Its current "Brookings Program 1974" contains the following introductory paragraph:

The Brookings Institution is a private nonprofit organization devoted to research, education, and publication in economics, government, foreign policy, and the social sciences generally. . . . In its research, Brookings functions as an independent analyst and critic, committed to publishing its findings for the information of the public. In its conferences and other activities, it serves as a bridge between scholarship and public policy, bringing new knowledge to the attention of decision makers and affording scholars a better insight into policy issues. Its activities are carried out through three research programs (Economic Studies, Governmental Studies, Foreign Policy Studies), a Social Science Computation Center, an Advanced Study Program, and a Publications Program.

38 The Universities of Buenos Aires, Chile, and Mexico, with their "Institutes" in their law faculties have from time to time sponsored tax research by students and faculty. Universities in Indonesia are presently engaging in such activity. The Vargas Foundation in Brazil has also sponsored university-based research in the tax field in that country. A number of European universities also engage in extensive research programs in the tax area. The International Tax Program of Harvard Law School is an American example.

In addition to economic analysis of incentives, it is important to review the objectives of the incentives periodically, to determine whether they are in tune with current development needs.³⁹ This review should be made jointly by the tax policy makers and the development planning officials. It would be particularly useful if institutional arrangements were to involve the public in the review of special provisions. The general public will ordinarily not be organized to oppose special provisions, even when their shortcomings are obvious.⁴⁰ On the other hand, those favored [*27] by the

39 A bill was introduced in 1972 by Wilbur Mills, Chairman of the Ways and Means Committee of the U.S. House of Representatives, to systematically repeal all special provisions unless those benefiting from them could show that continuation was in the national interest. H.R. 15230, 92d Cong., 2d Sess. (1972). See Press Release, May 31, 1972, reproduced in *1972 Taxation with Representation Library Edition* 346-348. Mills subsequently abandoned his proposals, but his basic idea received considerable comment. See Graetz, *supra* note 1, at 1402-1403, for a discussion of the proposal and a criticism of it on the grounds that it would cause economic uncertainties and disruptions. For additional comments, see *1972 Taxation with Representation Library Edition* 395-396 (argument for: John A. Bailey), 399-401 (argument against: Fred I. Raymond), 387-388 (partially favorable: Michael J. McIntyre). In the Tax Reform Act of 1969, *infra* note 60, Congress enacted several new tax incentives, but specified that they would lapse in five years. The objective of the cut-off was to reduce procedural obstacles to the review of the incentives after some experience had been obtained on their usefulness. The incentives were, however, extended in 1974 for one year without debate. For a discussion of the use of the cut-off technique, see M. McIntyre, "Improving the Legislative Process: Cutoff Dates for Tax Benefits," *3/24 Tax Notes* 5 (1975).

40 The need for public interest groups in the tax area has long been recognized by tax scholars. J. Pechman, *Federal Tax Policy* 45-47 (1971). In the United States, the need has been partially satisfied with the founding of Taxation with Representation (a non-partisan group of tax experts), the Tax Reform Research Group (a Ralph Nader-sponsored group), and the National Committee for Tax justice (a coalition of the following local organizations: Arkansas Community Organizations for Reform Now (ACORN), Arkansas Tax Action Campaign, California Tax Reform Association, Delaware Citizens Coalition for Tax Reform, Movement for Economic Justice, New York Citizens for Tax Reform, Ohio Tea Party, Pennsylvania Tax Equity for America, Public Citizen Tax Reform Research Group, and St. Louis Tax Reform Group), see *2/15 Tax Notes* 19-28 (1974), plus the entrance into the tax field of Common Cause. But the information reaching Congress is still heavily weighted in favor of those with an immediate financial stake in tax legislation. See Graetz, *supra* note 1, at 1422-1427, for an analysis of the United States situation. In most other countries, there are no institutional arrangements for

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provisions can be expected to lobby effectively for their continuation. A desirable review process would allow interested citizens to make their objections and would require those interested in the special provisions to answer any reasonable objections or face the termination of the provision.

3. Change in Tax Rates

A change in tax rates may be temporary or relatively permanent. A temporary change is generally the result of fiscal policy, not tax policy.⁴¹ A short run change is one of the

40 (...continued)

public interest people outside of the government to present testimony on tax matters.

41 The distinction between fiscal and tax policy is important, but difficult to make. The simplest distinction between fiscal and tax policy is that fiscal policy is concerned with how much tax will be paid and tax policy with who will pay the taxes. Fiscal policy was defined by the Carter Commission, *see infra* note 54, as “the term used to describe changes in effective tax rates and government expenditures for the purpose of changing aggregate demand in order to maintain full employment and stable prices, in other words, for stabilization purposes.” *2 Report of the Royal Commission on Taxation* 24 (1966) [hereinafter Carter Report]. Other objectives of fiscal policy are to maintain or achieve a balance in the foreign accounts of the government and an acceptable rate of economic growth. *See* R. Musgrave & P. Musgrave, *supra* note 18, at 14. For a full discussion of the definitional problems, see OAS, “General Approach and Methodology for Future Tax Policy in Latin America” (OEA/ SER. K/XX.3/Tax 4), at 1-4, in *Papers for III Inter-American Conference*, *supra* note 4.

Fiscal policy, under the above notions, has two branches, budgetary policy and tax policy. As a branch of fiscal policy, tax policy is a narrow, technical subject which deals with the amount of revenue to be raised in the aggregate and from each of the taxes within the tax system. The subject is narrow because the objectives dealt with are limited to the objectives of fiscal policy. In its broadest sense, however, a country’s tax policy is its long and short run strategy for using its tax system to achieve social, political and economic goals. The making of tax policy involves the political resolution of conflicts among the various goals. As an academic subject, tax policy is the study of methods of using a tax system to achieve specific societal goals.

The broad meaning of tax policy is the one used in this monograph. Under our broad usage, fiscal policy would be subordinate to tax policy, since the goals of fiscal policy are narrower than those of tax policy. For a contrasting approach, *see* Heller, “Fiscal Policies for Underdeveloped Countries,” in R. Bird & O. Oldman (eds), *Readings on Taxation in Developing Countries* 5, 21-22

(continued...)

tools of Keynesian economics, designed to stabilize the economy by increasing or decreasing aggregate demand. The temporary change is not made because of any effect it might have [*28] on the distribution of tax burdens, which is the major concern of tax policy.

The tax policy objective concerning a temporary change is usually to minimize the shift in relative burdens among taxpayers. An ideal short run change would be one which had no effects on relative burdens, but which still accomplished all of its fiscal objectives. The burdens of a tax system, however, are imposed not by one, but by three, four, or more different taxes. Each of these taxes would have to be adjusted harmoniously in order to keep the same burden pattern. For many kinds of taxes, such as excise and customs taxes, the existing burden pattern can only be guessed at. As a practical matter, therefore, most countries are content to adjust only one or two of their taxes. If the personal income tax is chosen as the tax to be adjusted, it is possible to design a short run rate change which is reasonably neutral as to income tax burdens and involves only minor administrative problems.⁴² Use of the income tax for stabilization adjustments is practical only if that tax raises a significant portion of total government revenue and is administered in large measure through a withholding system. If these conditions are met, however, the personal income tax is probably the best instrument for countercyclical fiscal policy.⁴³

A relatively permanent change in tax rates is usually in furtherance of tax policy objectives. For example, in order to reflect better the ability to pay of families versus single individuals, it may be desirable to increase the tax burdens on married couples by adjusting the existing rate schedules. In some situations, however, fiscal policy requires a permanent rate change. For example, if predictable expenditure patterns will substantially exceed tax revenue under existing rates over the next several years,

41 (...continued)
(3d ed. 1975).

42 See *Tax Policy and Tax Reform: 1961-1969*, *supra* note 13, at 233-236. For equity reasons, Surrey suggested that the corporate income tax be adjusted along with the individual income tax. *Id.*, at 240-242.

43 Note, 5 *Harvard Journal on Legislation* 265, *supra* note 18, at 293. R. Goode, *The Individual Income Tax* 307 (1964); J. Pechman, *supra* note 3, at 19.

a permanent rate increase may be needed to reduce inflationary pressures. Even if the primary consideration in the long run rate change is fiscal policy, however, the proposed change will unquestionably involve many[*29] tax policy issues.⁴⁴

The institutional arrangements for tax rate changes should distinguish between short run and long run changes. Long run revisions normally involve an adjustment in the pattern of income and wealth distribution and should be subjected to the normal political procedures of a country.⁴⁵ Short run changes, however, should be at least in part cut off from political debate, since they are made for essentially technical, not policy, reasons.⁴⁶ Insulating short run changes from the normal debates over tax policy is difficult, since any change in the tax laws can open up old controversies about the proper distribution of the tax burdens. Only if the technique for making short run changes has been approved in advance by the major political factions is there much chance that debate can be limited to fiscal policy questions.⁴⁷ A short run rate change

44 For example, the rate reduction introduced in the United States by the Revenue Act of 1964 required eight weeks of hearings in the House of Representatives, with the Finance Committee of the Senate then making over 25 major changes in the House revision of the bill. The total process took over 13 months. See Note, 5 *Harvard Journal on Legislation* 265 *supra* note 18, at 267-269. The heart of the debate was over which segments in society were to get the largest share of the rate reduction.

45 There is seldom any urgency in making long run changes. If there is urgency, the change can be made for an interim period, with extensions subject to normal procedures.

46 An interesting discussion of the procedures in the United Kingdom for making short run changes to cover budget deficits is contained in Clark, "The Long-Term Planning of Taxation," in B. Crick & W. Robson (eds.), *Taxation Policy* 161-163 (1973).

47 In the United States, the Ford administration proposed a 5 percent surcharge in October, 1974, but no action was taken on it by Congress. Part of the reason for its rejection was a dispute over fiscal policy; the Ford administration was itself uncertain about the need for a tax increase, finally reversing its position completely in January, 1975, when it recommended a tax reduction. An important additional reason for the rejection was the fact that Congress and the President could not agree on the technique for implementing the tax increase. The Ford surcharge proposal deviated from the "neutral" technique developed in the 1960's by including preferences for low and middle income groups and for some married couples. The legitimate debate over fiscal policy was confused by an essentially irrelevant debate on the proper level of exemptions for middle income groups. See McIntyre, "The Ford 5 Percent Surcharge Proposal

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may either increase or decrease the amount of [*30] tax collected. In some situations, at least, it may be logical to have a different technique for increasing taxes than for decreasing them, though in normal circumstances, parallel treatment would seem appropriate. If the tax change is made prospectively, the argument for parallel treatment of increases and decreases is strong. If a tax decrease is made by rebating taxes already collected, however, the tax cut will almost assuredly be viewed as the equivalent of an expenditure program, with no attempt made to minimize shifts in relative burdens among taxpayers.⁴⁸ A short run revenue change could also be implemented by a change in the tax base. An increase, or decrease, in the amount of the personal allowances, for example, could have the same fiscal impact as a change in the rates. Changes in the base, however, will almost always involve a redistribution of the tax burdens and are thus more suitable for long run changes. From a political point of view, moreover, it may be difficult to keep a tax decrease by way of a base adjustment from being permanent. Fine tuning an economy by short run rate changes demands considerable economic analysis. A prerequisite for any serious fiscal policy is the existence of some department charged with the responsibility for making that analysis. The result of that analysis should be a recommendation on the total amount of revenue to be raised under the tax system for a given year. Setting fiscal policy is in the end a political matter, but the most highly regarded input to the decision making process should be the technical advice of public finance economists. One's main concern in designing a system for short run rate changes should be the amount of

47 (...continued)

and Its Discrimination Against Single Persons," 1974 *Taxation with Representation Library Edition* 270-286; see also "Congressmen Find Surtax Base Too Low," *Boston Globe*, October 9, 1974, p. 42, col. 1.

48 The United States Congress, on the recommendation of the Ford administration, provided a tax rebate for 1974 taxes and a tax reduction for 1975 taxes in order to stimulate the economy. The rebate went primarily to low and middle income groups and was quite obviously treated as an expenditure program. The tax cut for 1975 was effected primarily by reductions in the tax base. It was a complicated bill, and commentators speculate that many of its provisions will be extended beyond the 1975 cut-off date. Tax Reduction Act of 1975, H.R. 2166, 94th Cong., 1st Sess. (1975). For a summary of the bill, see 3/13 *Tax Notes* 4 (1975).

authority to be given to the economic technicians or political representatives acting on their advice.⁴⁹ [*31]

Two different techniques are available for giving the economic- technicians the control they need over short run rates without undermining legislative control of the tax system.⁵⁰ Under the first method, the Ministry of Finance is granted the power to make temporary changes in rates, but that power is carefully circumscribed. No power vests until the need for a change is shown by certain economic indicators. The change is limited to a year or less in duration. The amount of the rate change and the method of imposing it are fixed by statute. As a further safeguard, the legislature might retain the power to veto any changes.⁵¹ The second technique is for the legislature to enact

49 In some countries, such as the United States, there is a strong bias against delegating authority to technicians on both tax and non-tax matters, but in other countries, such as Brazil, a large number of governmental decisions are in effect made by the “technocrats.”

50 The effect of a rate change can also be obtained through automatic, or built-in responses of the tax system to changes in economic conditions. See R. Musgrave & P. Musgrave, *supra* note 18, at 539-547. Many economists stress the importance of taxes with a high degree of elasticity — that is, that adjust automatically to rising national income — for developing countries, or for any country that wants to tax away a substantial portion of additional income. See Due, “Requirements of a Tax Structure in a Development Economy,” in R. Bird and O. Oldman (eds.), *Readings on Taxation in Developing Countries* 33 (rev. ed. 1967).

51 Discretionary authority has been granted to the Ministry of Finance for making short run changes in a number of countries. In Germany, as part of a comprehensive package of fiscal tools granted under the Law Promoting Stability and Growth of the Economy, the Federal Government was granted the power to make short run rate changes in the income tax. Law of June 8, 1967, Promoting Stability and Growth of the Economy, [1967-1] BGB1 582; International Tax Program, Harvard Law School, World Tax Series: *Taxation in Germany* [hereinafter WTS: *Germany*] § 1/2.3b.

The British government has had since 1961 the power to adjust most indirect taxes on a temporary basis, but no power as to the income tax. Finance Act of 1961, 9 & 10 Eliz. 2, c. 36, §§ 9, 30. Sweden has, in effect, the power to control its corporate tax rate by its power to allow disbursements from liberal reserves allowed to business. WTS: *Sweden*, § 6/6.2c. For a recent discussion of the Swedish use of the tax system for stabilization, see M. Norr, *Reserves for Future Investment: A Swedish Tax Incentive* (1974) (vol. 1 in this Series of Monographs). Proposals for similar authority have been made in the United States and Canada. See Note, 5

(continued...)

legislation that establishes the ground rules for short run changes.⁵² This standby legislation would determine which taxes would be changed and in what [*32] manner, as well as any other policy matters which might be involved. When economic indicators show that a rate change is needed, a bill would automatically be introduced in the legislature; there would be no opportunity to delay by holding preliminary hearings or by other political maneuverings. The details of the system would depend in great measure on the pattern of the legislative process.⁵³ Since it is not easy to predict in advance what the optimum type of rate increase should be, an automatic provision sacrifices precision for speed. If the legislature has a record of acting swiftly on tax matters, it would be sensible to make the standby legislation somewhat flexible.

4. Major Reform

A “major reform” of the tax system, for purposes of this paper, is a reform which requires a fundamental reexamination of some of the basic assumptions of the system. A paradigm of a major reform is the Canadian reform begun with the appointment of the Carter Commission⁵⁴ in 1962 and climaxed by the passage of the Tax Reform Bill (Bill C-259)⁵⁵ in 1971. The Canadian reform passed through three major stages. In the first stage, the Canadian tax system was studied in detail by a group of tax and public finance specialists, resulting in a six volume report with 27 supporting staff studies,

51 (...continued)

Harvard Journal on Legislation 265, *supra* note 18, at 271-283; 2 *Report of the Royal Commission on Taxation* 325-327 (1966).

52 For a discussion of a proposal for such legislation during the 1960's in the United States, *see* Note, 5 *Harvard Journal on Legislation* 265, *supra* note 18, at 284-287.

53 The problem of legislating rate changes in an American type of governmental system is similar to the problem of passing technical amendments. *See supra* Chapter II, B, 1.

54 Royal Commission on Taxation, headed by the late Kenneth leM. Carter. For a discussion of the history of the Canadian tax reform, *see* Head, “Evolution of the Canadian Tax Reform,” 1 *Dalhousie Law Journal* 51 (1973); *see also* MacIntyre, *supra* note 5.

55 *Stat. Can. c. 63* (1971).

which was presented to Parliament in February of 1967.⁵⁶ The report provided a blueprint for tax revisions that would have fundamentally altered the existing system by systematically defining income according to the definition of Henry Simons.⁵⁷ The second stage [*33] began with a national debate on the Carter Report and ended with the publication in 1969 of a White Paper containing the government's proposals for tax legislation.⁵⁸ The White Paper, while not so sweeping as the Carter Report, would nevertheless have made important changes in the distribution of the income tax burdens. The final stage began with the Parliamentary debate on the White Paper and ended with the enactment of Bill C-259 at the end of 1971. The bill was a major retreat from both the Carter Report and the White Paper, but it did alter the Canadian system in at least one major respect by including a portion of capital gains in income.

The three stage approach followed by Canada is typical of reform movements which begin with the appointment of a tax reform commission.⁵⁹ When the reform proposals originate in the Ministry of Finance, the first two stages are typically telescoped into one.⁶⁰ The long period of gestation is symptomatic of the "commission" approach to

56 Carter Report, *supra* note 41.

57 See H. Simons, *Personal Income Taxation* 50 (1938): "Personal income may be defined as the algebraic sum of (1) the market value of rights exercised in consumption and (2) the change in the value of the store of property rights between the beginning and end of the period in question." The Carter Report made a large number of deviations from Simons' definition for perceived administrative reasons, but the definition provided the unifying theme of the reform proposals.

58 E. Benson (Ministry of Finance), *Proposals for Tax Reform* (1969) [commonly called the "White Paper"].

59 Other examples include Venezuela and Colombia, *see supra* note 2.

60 For example, the Tax Reform Act of 1969 grew out of a detailed set of proposals prepared by the United States Treasury Department. The reform was controversial and contained many new and highly technical proposals, yet was converted into legislation less than a year after publication of the Treasury studies. Act of December 30, 1969, Pub. L. No. 91-172, 83 *Stat.* 487, amending the Internal Revenue Code of 1954.

reform, but is by no means typical of most reform programs.⁶¹ The modesty of the final Canadian reform is, however, typical of most reform movements.

Complete overhauls of its tax system are mercifully rare in a country's history.⁶² As used in this paper, the term "major reform" also includes much less ambitious movements. The introduction of a new tax, such [*34] as the value added tax or an estate tax, would be a major reform. A comprehensive attack on tax avoidance, such as the crackdowns by the United States in 1962 on corporations using foreign tax havens or that in 1969 on abuses by charitable foundations, would also be a major reform. More commonly, a substantial expansion or contraction of the tax base or a long run change in tax rates would be a major reform. Alteration of the tax base is the most frequent change in an income tax system. The most dramatic example of base changes in recent years has been the introduction of a capital gains tax in many industrialized countries.⁶³ Changes in rates are common for both the income tax and the sales tax, but rate changes for the income tax are usually more complicated and involve more fundamental issues of tax policy.⁶⁴

61 The experience of Venezuela with tax reform in the 1960's was at least as drawn out as the Canadian experience. *See* Gittes, *supra* note 2. In contrast, the preparation period for the reforms proposed by the Colombian Commission on Tax Reform in Colombia was less than a year. Government action on the Colombian reforms, however, took an additional six years. *See Fiscal Reform for Colombia, supra* note 2, at xvi-xvii.

62 Some commentators argue that piecemeal reform is more likely to be effective than the comprehensive reform of the Canadian type. *See* Bird, "The Tax Kaleidoscope: Perspectives on Tax Reform in Canada," *supra* note 5; Brannon, "A New Tax Reform Plan," 1 *Tax Notes* 26, 30 (1973).

63 For example, a capital gains tax was introduced in England in 1964 and in Canada in 1971. Other countries, such as Sweden, have greatly expanded the base for capital gains taxation.

64 The most common rate changes have been due to changes in the tax treatment of single persons and two-job families as against married couples with only one working spouse. For a discussion of recent changes in a variety of countries, *see* International Fiscal Association, "The Income, Fortune and Estate Tax Treatment of Household Units," in LVIIa *Cahiers de Droit Fiscal International* (1972). Rate changes have also been made in Canada, Denmark, Sweden, Iceland and Switzerland because of inflation distortions. For a discussion of the tax policy issues involved, *see* Bossons & Wilson, "Adjusting Tax Rates for Inflation," 21 *Canadian Tax Journal* 185 (1973).

In order to plan and implement a major reform it is necessary (1) to discover and debate possible defects in the existing tax system; (2) to formulate specific legislative proposals which are both analytically sound and politically realistic for correcting agreed defects; (3) to secure the adoption of the core of these proposals by the legislature; and (4) to prepare the public and the tax administration for the new tax laws. The first two functions must be well executed if a tax reform is to be worthwhile, for without first class planning, the effects of most changes in the tax law are unpredictable. Without performance of the third function, of course, there can be no tax reform at all. Adequate performance of the fourth function makes an immediate and critical difference in the effectiveness of the reform in the short run and probably increases the prospects for future reform. [*35]

In evaluating the existing system, it is necessary to review its effectiveness from an economic point of view. For this purpose, there must be some institutional arrangements for the comprehensive gathering and evaluation of basic public finance data on the tax system.⁶⁵ For example, the decision maker should have reliable estimates concerning the total tax burdens being imposed, the distribution of those burdens, the elasticity of the tax system as a whole and of each of the taxes within the system, and concerning the coverage or comprehensiveness of the system.⁶⁶ Arrangement should also be made to discuss how well the taxes are being enforced and what the pattern of burdens is among various income classes and groups of taxpayers. The data must be collected systematically over a number of years, since in most cases changes in figures over a given time sequence are the most reliable and useful information about a tax system.

The economic objectives of the tax system must then be integrated with the political and social objectives. The tax reform planners will have little role in defining the political goals of the tax system, but they cannot ignore them in formulating their tax reform plans. The planners do have an important function, however, in determining how compatible the tax system is with implicit social goals of the system. For example,

65 For a description of the variety of governmental agencies involved in making fiscal policy in the United States, see Hinrichs, "CPR Department Study/The Treasury Department," 1 *National Journal* 36-47 (Center for Political Research, 1969).

66 See *Report of the Expert Group*, *supra* note 4 (reproduced in Appendix A).

in considering whether to tax the husband and wife on aggregate or individual income, the planners must be concerned with the social ramifications of their choice. The more comprehensive the reform planned, the more intricate is the mix of social implications.

The key to implementing tax reform proposals put forth by the tax reform planners is an effective tax legislative process. For most countries the political structure of the legislative process cannot be overhauled to accommodate the special needs of tax reform. Changes in some operating procedures, however, can have important political implications. For example, since tax policy matters are so complicated, great efforts could be expended on improving information flows, so that the legislators and [*36] the taxpaying public can understand the implications of the tax bills under consideration. The legislators need to have available the technical information provided by the tax reform planners and also the nontechnical opinions of a broad cross-section of the population. Similarly, the decision making procedures can be adjusted somewhat to take into account the special nature of tax reform, since it can be expected that the legislature will have to deal with some major reform on an annual or bi-annual basis. What the altered procedures for information flow and decision making should be, however, depends in large measure on the unique political situation of each country.

During the process of implementing a set of tax reform proposals, there are a number of technical tasks which must be accomplished. First, the tentative proposals must be reduced to a draft bill. If the bill is not competently drafted, the risk is great that the purposes of a proposed bill will be defeated because of technical defects. It may be possible to get a proposed bill competently drafted on an ad hoc basis; the real difficulty arises when the bill must be redrafted on short notice because of legislative changes. Moreover, the legislature cannot operate with much efficiency if most of its members must be familiar with the exact wording of each draft bill. Unless the legislators have confidence in the draftsmen, however, they will feel obliged to check the wording of every amendment. The only way to build the legislators' confidence in the draftsmen is through continual association.

Second, the typical tax proposal will be changed during the legislative process, and the tax reform planner's original analysis of the proposal will no longer be applicable. The revised proposal must be evaluated quickly, especially as to its long and short run

revenue implications.⁶⁷ A description of the new proposal understandable to the public should be prepared in order to facilitate public debate. [*37]

The problems associated with a tax reform increase geometrically with increases in the scope of the reform. For comprehensive reform, such as that proposed by the Carter Commission for Canada, many more planners, draftsmen, and other technicians are needed than would be required on a regular basis. The difficulty of comprehensive reform may induce many countries to limit each reform effort to one or two areas of the law. If comprehensive reform is to be undertaken, however, arrangements should be made for making the existing tax reform machinery the nucleus of an expanded operation.

In planning a major reform, the experience of other countries is often instructive. It can also be very misleading if the experience is not properly understood. Every country engaging in reform should have some people on its planning staff who have been exposed to foreign tax systems. Such individuals will be useful in suggesting alternative techniques and in affording a fresh perspective on the existing tax system. Ideally, every country will make provisions for some of its tax specialists to study overseas.⁶⁸ In addition, many countries will find the use of [*38] foreign tax experts

67 Just as the legislature must have confidence in the drafting staff, so also must it have confidence in those making revenue estimates, since the revenue estimates can have enormous political impact. For an excellent discussion of the difficulties of revenue estimates, the techniques used for making estimates in the United States, and the political effect of inaccurate estimates, *see* Graetz, *supra* note 1, at 1415-1422. For a less recent, but still valid discussion of the problem of hasty estimates, *see* R. Blough, *The Federal Taxing Process* 298-299 (1952).

68 A number of international institutions play an important role in the training of tax officials for the various tasks necessary for effective tax reform planning. The institutions which train or provide for training of officials on a regular basis include:

(1) The International Tax Program of Harvard Law School, which conducts a nine month program for about 20 officials each year. During its 23 years of existence, the ITP has had participants from most of the developing countries and a number of developed countries. *See supra* note 10.

(2) The United Nations Division of Public Finance and Financial Institutions and the U.N. Technical Assistance Administration, which provide scholarships for training.

(3) The Organization of American States, through CIET, the tax training school in

(continued...)

helpful in providing technical back-up and on occasion in furthering political purposes.⁶⁹

68 (...continued)

Argentina, and through its scholarship program.

On an ad hoc basis the following institutions provide training to tax officials:

- (1) The Organization for Economic Cooperation and Development (Paris);
- (2) German Foundation for Developing Countries (Berlin);
- (3) International Monetary Fund (Washington, D.C.).

To benefit from these training opportunities, a country must make some arrangements for selecting promising candidates and, when necessary, for funding the candidates. The process of selection is very important, since there will be little benefit if the official does not return from the training to a post in which he can utilize his added knowledge. The costs of training are low in relation to benefits, but unless the necessary funds are budgeted on a regular basis, the department will not be able to make long term plans for the use of trained officials.

69 There are a number of institutions which are willing to send tax specialists abroad. A few governments, including the United Kingdom, the United States of America and Canada, have continuing programs for sending experienced tax administrators to other countries. The OAS, often in cooperation with the Inter-American Development Bank, sends teams of tax advisors to Latin American countries. The United Nations has often sent teams of specialists to developing countries to work with the tax policy makers on tax reform. The International Monetary Fund regularly sends advisors abroad to discuss fiscal policy formulation. A number of universities have participated in foreign tax research. For example, the International Tax Program of Harvard Law School worked with the Government of Chile for a number of years.

To make good use of foreign specialists the government must have its own specialists to interact with and to evaluate the work of the foreigners. Foreign specialists can often make a contribution because of their broad backgrounds and the fresh approach they take to old problems. This contribution can be nullified, and in some cases may be negative, if the government does not have its own specialists to inform the foreigners of local conditions and to adapt the suggestions of the foreigners to the local situation.

For a bibliography of foreign tax assistance programs in Latin America, *see* Bird & Oldman, "Tax Research and Tax Reform in Latin America — A Survey and Commentary," 3 *Latin American Research Review* 5, 17-23 (1968). For an evaluation of foreign tax policy recommendations, *see* Schlesinger, "Tax Policy Recommendations of Technical Assistance Missions: Evolution, Pattern, and Interpretation," in *Fiscal Policy for Economic Growth in Latin America* (papers and proceedings of a conference held in Santiago, Chile, December 1962)

(continued...)

Tax statutes are not self-executing. Changes in the tax law can be very disruptive of administrative procedures unless the administration and the general public are properly prepared. The more comprehensive the reform, the more important it is to have institutional arrangements to accommodate the transition from the old law to the new. Provision should be made for the following functions: (1) preparation of new tax forms and explanatory material; (2) education of the taxpaying public on the substantive changes in the law and the date on which the changes will become effective; (3) training of the employees of the tax administration concerning the new law and any new duties; and (4) updating of administrative procedures, including the writing of new computer programs when required. [*39]

All of these functions could be carried out by an efficient tax administration without the need for any new institutional arrangement. What is required, however, is an arrangement for involving the administrative staff in the reform process at an early stage. If the reform is comprehensive, it will of course be necessary to increase the tax administration's budget and to provide for additional employees.

5. Summary Outline

For the various reasons advanced above, institutional arrangements for performing the following functions must be provided:

- (1) Drafting all types of tax changes;
- (2) Collecting and evaluating the following kinds of data:
 - (a) microstudies on the burdens imposed on taxpayers, according to income class, geographical region, occupation and other categories;
 - (b) amount of non-compliance and tax avoidance of various categories of taxpayers;

69 (...continued)
(1964), excerpted in *Readings on Taxation in Developing Countries*, *supra* note 50, at 528-536; Oldman & Surrey, "Technical Assistance in Developing Countries," in R. Bird & J. Head (eds.), *Modern Fiscal Issues: Essays in Honor of Carl S. Shoup* 278 (1972).

- (c) basic public finance data on the economy and the tax system.
- (3) Performing research on the following topics:
 - (a) major and technical defects in the tax laws;
 - (b) revenue effects of tax changes;
 - (c) administrative feasibility of tax changes;
 - (d) effects of tax changes on the distribution of the tax burdens among various income classes and interest groups.
 - (4) Formulating legislative proposals for tax law changes;
 - (5) Coordinating the inputs of the different government departments that have an interest in tax changes;
 - (6) Making use of foreign experience with tax reform;
 - (7) Managing information flows on technical defects in the tax system and on the implications of tax reform proposals;
 - (8) Screening technical amendments from other types of tax changes;
 - (9) Making quick, but short run, changes in tax rates;
 - (10) Providing for public participation in the process of tax reform.
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CHAPTER III

ORGANIZATION OF THE TAX REFORM PROCESS

The preceding Inventory analyzed the kinds of tasks which must be performed in order to have a successful reform, but it did not specify how a government, should organize itself to perform these tasks. In making that determination a government must first decide whether to assign the necessary responsibilities to existing departments, or whether to create new departments.⁷⁰ If new departments are needed, the government must then decide where in the bureaucratic hierarchy they should be placed.

The optimum type of organizational structure varies considerably from country to country. The organizational structure for tax reform must be adapted to an existing and generally complex political and bureaucratic structure. Minor changes in the status quo will be tolerated, but major changes are unlikely for most countries.⁷¹ Similarly, there is a great disparity in the size of various tax departments and in the amount of resources that can be devoted to tax reform planning. Countries also differ in the kinds of existing tax reform institutions, in the availability of trained professionals, in the types of private institutions that can be utilized, and in a host of other pertinent characteristics. It is, therefore, unrealistic to attempt to design model organizational arrangements of general applicability.⁷² There are, however, a few features which we believe should be included in nearly every organizational structure.

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70 As used in this monograph, the word "department" refers to any type of governmental division, whether major or minor. A department normally has a chief, but it is not necessary that the chief's major function be the management of the department.

71 Our approach is in contrast with the approach of the Secretariat of the Organization of American States. The Secretariat developed a general *a priori* model for institutional arrangements that would be applicable to all countries, despite differences in political structure. Our approach is to adapt the tax reform institutions to the existing political structures. See OAS, "Institutionalization of the Process of Formulating and Implementing Tax Policy" (OEA/Ser. K/XX.3/Tax 23), in *Papers for III Inter-American Conference*, *supra* note 4.

72 For a discussion of a similar problem of making recommendations "apart from particular real-world situations," see R. Bird, *Taxing Agricultural Land in Developing Countries* 13-14 (1974).

However different the circumstances, most countries will find it desirable to establish a permanent department with the responsibility for drafting tax legislation.⁷³ The drafting of tax statutes is a highly specialized skill and is often politically sensitive. If the draftsmen can specialize in tax matters, they will not only be more skillful in their work, but they will be more likely to develop the rapport with the policy makers that is required for an efficient legislative process. The drafting staff could also be used for writing administrative regulations and for completing other tasks requiring similar skills.

Some countries may want to have more than one drafting staff, chiefly because of political considerations. In the United States, for example, both the Congress and the Treasury Department have permanent drafting staffs.⁷⁴ Moreover, in the Internal Revenue Service there are a number of draftsmen who work on revenue rulings and proposed regulations. If more than one staff is going to be created, it is usually obvious where they will be located in the bureaucracy. If only one staff is possible, however, it is necessary to decide whether the executive, the legislature, or some joint department will have authority over it. Before imposition of martial law in 1971, the Philippines had its drafting staff in a joint legislative-executive commission.⁷⁵ The tendency of most countries is to put the drafting staff in the Ministry of Finance, but it is impossible to determine on an a priori basis where it should be located.

Most countries will also want a permanent department in charge of gathering and analyzing statistical data relevant to the design of the tax system. A permanent statistical unit is a prerequisite to tax reform [*42] planning, for, without it, it is very unlikely that data on the tax system will be collected systematically over a number of

73 Very small countries may be forced to assign duties for drafting tax statutes to a general staff used for drafting all types of legislation. In Senegal, for example, the permanent staff of the Legislative and Contentions Division of the Directorship of Revenues and Estates (Ministry of Finance) has a chief; four inspectors, each in charge of a major tax; and two clerical workers. Specialization is thus impossible. *See* U.N. Country Study: Senegal, *supra* note 7, at 9-10.

74 Drafting responsibilities in Treasury are assigned to the staff of the Assistant Secretary for Tax Policy. In Congress drafting is done by the staff of the Joint Committee on Internal Revenue Taxation. Hinrichs, "The Treasury Department," *supra* note 65, at 39.

75 *See supra* note 8.

years.⁷⁶ The proper placement of the statistical unit in the bureaucracy is a difficult management problem. If the task of collecting and analyzing data is assigned to the departments generating the data, it is probably easier to protect the confidentiality of sensitive information. For example, since the tax administration needs a reputation for keeping taxpayer returns confidential in order to function efficiently, it may be more circumspect in its handling of raw data than would be the Ministry of Finance. On the other hand, a multiplicity of statistical units is expensive and may be beyond the means of many countries.⁷⁷ Moreover, centralization of the data collection process makes it easier to guarantee uniformity in approach and to minimize the likelihood of important gaps in the collection process. A single unit is also likely to have a higher status, which is of assistance in attracting and retaining competent personnel.

For most countries, it will also be desirable to establish a permanent department with the responsibility for tax reform planning. The department ought to be composed of a group of tax professionals with an adequate clerical staff. Most of the staff members should be lawyers, statisticians, and public finance economists, but to assist in understanding particular tax proposals the staff should also have ready access to management and public administration specialists and any other type of expert that might be needed.⁷⁸ The department should have a regular budget large enough to pay competitive salaries and to sponsor basic research on occasion. The budget should also allow for consultation by outside specialists when appropriate and for a good tax and public [*43] finance library.⁷⁹ The specific functions assigned to the department will

⁷⁶ For discussion, *see* Chapter II,B,4.

⁷⁷ Several of the Caribbean countries have agreed to cooperate on common problems of tax administration. Their organization, the Caribbean Organization of Tax Administrators, plans to cooperate on research on levels of compliance among member countries. *See* St. Lucia Conference Resolutions, Resolution No. 4, in 1/4 *The Caribbean Tax Administrator* 5, 6 (1971).

⁷⁸ Major tax issues arise in a broad range of contexts, such as those of pollution, employment, transportation, urban crises, crime and social discrimination on the basis of class, sex and ethnic background. It is particularly likely that outside experts will be needed if the tax system provides incentives for various purposes.

⁷⁹ Especially for smaller countries which must rely heavily on foreign research and which typically have few large, private libraries, the existence of a good library is of critical importance. The International Tax Program, has provided technical assistance to a number of governments in
(continued...)

vary from country to country, but at a minimum, it should be responsible for most of the research functions and for the formulation of legislative proposals.⁸⁰

For a few very small countries, it may not be feasible to have a separate unit for tax policy.⁸¹ If, for example, there is a shortage of trained professionals in a country, and only a small number can be allocated to the management of the tax system, it may be necessary to assign the tax planning functions to officials with substantial operational responsibilities. A minor advantage of using operational personnel for planning is their closeness to the problems of the tax system. This closeness, however, can also be a major disadvantage, since the pressures of daily work will almost assuredly cause the long term planning function to be subordinated to more immediate, though perhaps less important, concerns. Countries that have never before engaged in serious tax reform planning may also find some advantage in assigning planning responsibility to operational personnel until the basic infrastructure for planning is established. The assignment of high level persons in the Ministry of Finance to the planning function may make it easier to obtain financial support [*44] for the enterprise and may give greater authority to recommendations that emerge from the planning process. Since high quality planning is impossible until good data become available, the loss of quality in planning that results from such a part-time staff may not be significant. In

79 (...continued)
setting up good libraries.

80 For an example of the type of function that might be assigned to a tax policy staff, *see* U.N. Country Study: Chile, *supra* note 7, at 4:

Planificación itself is sub-divided into three sections, all having to do with the tax policy planning process: (a) tax studies, (b) economic and financial studies, and (c) planning. Planificación is a department of modest size; its personnel, in all three sections, rarely exceeds twelve. The department and section heads are drawn from the ranks of the tax administration and are subject to the same civil service regulations as the other members of the Servicio. The majority of the personnel of Planificación, including department and section heads, are lawyers who have had no formal training in tax law and whose only specific preparation in taxation is that which they have received by way of experience as members of the Servicio responsible for administering the tax system. There is no formally trained economist in the unit.

81 The problems faced by cities, states, and other sub-national units in tax planning are similar to those of small countries, though the possibilities of joint efforts with sister units may be better.

the long run, however, it is unlikely that the modest advantages of a part-time staff will outweigh the disadvantages.

At those moments in history when truly comprehensive reform becomes politically viable, it will be necessary in most countries to expand greatly the normal tax reform machinery. One possible step would be to add needed professional and clerical persons directly to the tax policy staff.⁸² Alternatively, it may be possible to make use of other government departments for the performance of certain functions. A common device in many countries has been the appointment of an ad hoc committee to be responsible for most of the technical aspects of tax reform.⁸³ The advantage of an ad hoc committee is that its membership may consist of persons of high academic and political stature who can help sell the reform proposals to the legislature and the general public. Unless there is an existing tax policy staff that has prepared the ground for the reform, [*45] however, it will be nearly impossible for an ad hoc committee to function with the necessary speed and competence. Moreover, at least for large countries, the loss in continuity that can result from an ad hoc committee may outweigh any political advantages.

82 In Chile, the permanent staff becomes the technical staff for an ad hoc reform committee. *See* U.N. Country Study: Chile, *supra* note 7. In the United States, the staff of the Assistant Secretary for Tax Policy is expanded somewhat and the existing staff works longer hours.

The United States has never used an official commission to prepare tax reform proposals. In 1959, however, the Committee on Ways and Means of the House of Representatives invited testimony on tax changes which was printed in a three volume report. U.S. Congress, House Committee on Ways and Means, 86th Cong., 1st Sess., 1-3 *Tax Revision Compendium: Compendium of Papers on Broadening the Tax Base: Submitted to the Committee on Ways and Means in Connection with the Panel Discussions on the Same Subject to be Conducted by the Committee on Ways and Means Beginning November 16, 1959* (Comm. Print 1959). A comprehensive set of tax reform proposals was recently published by the Commission to Revise the Tax Structure, a private group composed of economists, lawyers, and accountants. Commission to Revise the Tax Structure, *Reforming the Federal Tax Structure* (1973).

83 The British and a number of other commonwealth countries have traditionally used Royal Commissions for tax reform planning. *See* WTS: *United Kingdom*, § 1/2.2a. Sweden uses a similar system of ad hoc committees for preparing recommendations for legislative action on a wide range of social and economic issues, published in a series known as Government Official Investigations. WTS: *Sweden*, § 1/3.3.

For those countries that find an advantage in having a separate tax policy staff, there is the further question of where to place it in the bureaucracy. A subsidiary question is whether all of the tax planning functions are to be assigned to it, or whether some functions can be assigned to existing government departments. Nearly every country in the world that has a permanent tax policy staff has placed it in the tax administration department or the Ministry of Finance.⁸⁴ For many countries, almost all of the functions discussed in our Inventory are assigned to this staff. These countries include Brazil,⁸⁵ Chile,⁸⁶ Jamaica,⁸⁷ Pakistan,⁸⁸ and Trinidad and Tobago.⁸⁹ A number of other countries, however, have divided the planning functions among the Ministry of Finance, the Tax Administration, and sometimes such other departments as the Development Planning Agency, the Budget Office and legislative [*46] committees. This group includes such countries as the United States,⁹⁰ Japan⁹¹ and

84 The Philippines is the notable exception. *See supra* note 8. In a number of countries, the tax administration department is located in the Ministry of Finance, but we nevertheless treat the two departments as if they were separate.

85 Brazil makes some provision for coordination between the Ministry of Finance and the Ministry of Planning and Development, but as a practical matter, tax planning takes place in the Ministry of Finance. *See* Decree Law No. 200-67(1967) and Decree Law No. 900-69 (1968) in G. Carvalho (ed.), *Administração Federal: Organização e Reforma* 22, 31 (1973). The bulk of tax reform planning in Brazil from 1963 to 1966 was done by the Reform Commission of the Ministry of Finance. The whole work was done under contract with the government by the Getulio Vargas Foundation and is described in the final report of the Reform Commission. *A Reforma do Ministério da Fazenda e Sua Metodologia* xxi-xxiii (1967). The Minister of Finance recently established a special tax reform commission made up of members from the ministry, representatives of different sectors of the economy, and members of the practicing tax bar.

86 *Supra* note 2.

87 U.N. Country Study: Jamaica, *supra* note 7, at 3. The department is called the Ministry of Finance, Planning and Development.

88 U.N. Country Study: Pakistan, *supra* note 7, at 3-5.

89 U.N. Country Study: Trinidad and Tobago, *supra* note 7, at 6. The preparation of legislative drafts, however, is the responsibility of the Ministry for Legal Affairs. *Id.* at 5.

90 *See* Graetz, *supra* note 1.

91 *See* Tax Bureau, Ministry of Finance (Japan), *An Outline of Japanese Taxes* 9 (1974).

Venezuela.⁹² For a number of years, the Philippines, the sole representative of a third pattern, had assigned most of its tax planning functions to a joint legislative-executive commission outside the executive branch; since the imposition of martial law, the commission has come under the administrative supervision of the National Economic Development Authority.⁹³

Bureaucratic politics may determine the placement of the tax policy staff and may also determine which functions are assigned to it. If placement is an open question, however, a detailed examination of the circumstances of each country is essential in determining the optimum location or the optimum distribution of functions. In addition to the Ministry of Finance and the tax administration department, a natural contender in some countries for control of the tax policy staff is the Development Planning Agency. Those who favor placing the staff in Planning argue (1) that it is hard for Finance, plagued by shortages of high caliber personnel, to allow a staff to remain insulated from operations; (2) that Planning is more sensitive to the requirements of long run planning; (3) that Planning will have more power politically, especially if it has substantial budgetary authority, and will therefore be able to press effectively for reform; and (4) that Planning is a more attractive career choice for the bright young professionals who must form the nucleus of a strong tax policy staff.

Some or all of these arguments are not valid for most countries.⁹⁴ The third and fourth arguments obviously apply only in limited circumstances. In a number of countries, Japan being the outstanding example, [*47] the Ministry of Finance is the most powerful and most attractive agency of the government.

The first two arguments raise the more interesting issues. It is undoubtedly true that a tax policy staff located in Finance could be subjected to raids by other branches. The

92 See C. Shoup *et al*, *The Fiscal System of Venezuela* 176-178 (1959).

93 The NEDA is made up of 11 members, headed by the President. The other members are heads of important government agencies. Its daily business is conducted by an executive director. See Presidential Decree No. 1, in *The First 107 Presidential Decrees*, *supra* note 15, at 32.

94 The arguments for placing the tax policy staff in Planning are typically made in the context of relatively small countries. No one suggests that the arguments apply to countries the size of Japan or the United States.

same tendency, however, might be present if the staff were in Planning. The basic problem comes from a shortage of qualified technicians, not from any organizational issues. What lies at the root of the first argument is the belief that persons in charge of operations will appreciate the capabilities of bright young planners and thus will become interested in acquiring their services if close contacts between operations and planning are established. If the tax planning staff is doing its job, however, the staff members will be in close touch with people in operations no matter where in the government the staff is located. Even if the argument is marginally correct, it may be outweighed by the more serious risk that a tax policy staff in Planning will not be in touch with operations.

The second argument is similarly defective. Planning, which typically is dominated by economists, will have a number of people familiar with the techniques and terminology of long run planning, whereas Finance may not. If the work of the tax policy staff is to have practical effects, however, the staff must sensitize key persons in Finance to the need for long run planning. To say that Finance is indifferent to the need for planning is to state a problem that needs to be solved. Placing the tax policy staff in Planning runs the risk that the problem will simply be pushed aside.

A major theme of this monograph is that a multiplicity of perspectives is needed to produce realistic tax reform packages. Planning agencies that do not have a good mix of perspectives are poor candidates, therefore, for assuming responsibility for the tax planning function. As planning agencies mature, however, they are likely to recruit professionals outside the economics field, since the need for realistic planning is as important in other fields as it is in taxation. The choice between Finance and Planning would then be a difficult one.

A further question remains: where within a ministry should the tax policy staff be placed? In some countries, the difficulty of attracting the quality professionals needed for tax reform planning may make it necessary to give the staff high prestige in the government. In such [*48] circumstances, the staff might be attached to the minister's office and made very visible to the public. In other countries, burying the staff deep in

the ministry may be preferred in order to minimize political interference with the work of the technicians.⁹⁵

In deciding which departments should be assigned the various tax planning functions, the government should consider the effect of placement with reference to the decision making process. Under traditional decision making theory, the best organization of the institutional arrangements is the one that promotes the most rational decisions by the top level policy makers. Some recent literature, however, argues that “objective” analysis by a single individual or group of individuals does not afford the multiplicity of perspectives or the high degree of motivation that is needed to explore the range of issues and values that are involved in complex policy making. It is argued that an adversary process, with different groups in the society and different government agencies pressing their own interests, will result in better decision making.⁹⁶ Not every country would find advocacy decision making congenial to its traditions. The United States, with a long tradition of adversary proceedings in its [*49] judicial system, may find it more suitable than Japan, with its tradition of conciliatory proceedings. The possibility, however, that non-traditional organization of the tax policy making process may be optimal for some countries highlights the importance of each country

95 The low status of the Chilean tax policy staff and the civil service status of its members have apparently shielded it from political interference. On the other hand, it does not enjoy any political support. See U.N. Country Study: Chile, *supra* note 7, at 5.

96 See, e.g., A. Wildavsky, *The Politics of the Budgetary Process* (1964), for an argument that the adversary process of setting the budget in the United States is superior to a traditional “rational” model, given the basic political rigidities of the American system. The fundamental idea of advocacy decision making is supported in George, “The Case for Multiple Advocacy in Making Foreign Policy,” 66 *American Political Science Review* 751, 756 (1972):

[M]any executives and scholars take a dim view of bureaucratic politics; they deplore the fact that important policy decisions are influenced by negotiation and bargaining within the policy making circle rather than being settled through more detached intellectual analysis. Other students of government, including the present writer, see possible merit in competitive policymaking. They believe that conflict is normal, perhaps inevitable, and potentially healthy; for them, internal disagreement about policy within the organization is not necessarily an abnormal strain that must be abolished in the interest of rational decision making. Rather, conflict may help produce better policy *if* it can be managed and resolved properly.

tailoring its management system to its own particular needs. Increasing our information about the functional requirements of tax reform may thus be far more important than doing comparative studies on modes of organization.

CHAPTER IV

CONCLUSION

Comparative research on tax reform institutions involves many of the same difficulties as comparative research on substantive tax laws. Institutions which appear the same and employ the same names may prove on closer examination to have little in common. Likewise, the *common* features of institutions are often obscured. The World Tax Series of the International Tax Program is an ambitious attempt to translate the tax laws of a number of countries into a compatible language. In order for comparative research on tax reform institutions to progress, the same type of analytical and descriptive work must be done concerning the process of tax reform.

The preparation of country studies on tax reform institutions is made particularly difficult by the fact that the most useful information has never been reduced to writing. For example, we found no published materials on the role of European universities in the tax reform process, though we know from talking with authors of the European volumes of the World Tax Series that universities play a critical role in the Netherlands and a few other countries. Similarly, the organizational charts for a government do not tell how the various departments interact in the real world. One of the most important contributions of comparative research, however, could be to show how interdepartmental coordination among, for example, the Office of the Budget, the Ministry of Finance, the Tax Administration and the Ministry of Planning and Development actually takes place. As the notes to this monograph suggest, the only information now available on interdepartmental coordination relates to a number of developing countries, and this information is sketchy. One objective of this monograph is to provide guidance for the preparation of more useful country studies in the future.

Of the various institutional arrangements discussed in this monograph, the most important are those which produce the data and other materials for tax reform planning. Further research may show that a lot of these materials will be useful for a number of different countries and that cooperation on a number of the particular tasks of tax planning would thus be fruitful. For example, some groups of countries, such as those in the European Economic Community and those in other regional [*51] common market organizations, are already endeavoring to harmonize their national income accounts statistics. They are probably also the best candidates for joint action, since compatibility of data is a prerequisite for comparative analysis.

Institutional arrangements for tax reform are needed because tax systems require revision continuously. As a tax system becomes more complex and its effects more pervasive, the institutional arrangements for making change will also have to be reexamined. It is our hope that the functional analysis provided in this monograph will be of help to different governments in making that reexamination.

APPENDIXES

APPENDIX A [OMITTED]

Tax Reform Planning: Report of the Expert Group

[U.N. Doc. ST/ECA/135 (1971)]

APPENDIX B [OMITTED]

Tax Reform Planning: Resolution

[U.N. DOC. E/RES/1271 (XLIII) (1967)]

APPENDIX C [OMITTED]

Financing of Economic Development: Tax Reform Planning

[U.N. Doc. E/4366 (1967)].