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Tax Law Rewrite: the *Capital Allowances Bill*

Bill 10 of 2000-2001

The *Capital Allowances Bill* was introduced in the House of Commons on 9 January 2001. Explanatory Notes to accompany the Bill were published at this time (Bill 10-EN). The Bill is the first piece of legislation to be produced by the Tax Law Rewrite Project – established in December 1996 with the aim of rewriting the UK's existing primary direct tax legislation to make it clearer and easier to use, without changing or making less certain its general effect.

Rewrite Bills are to be subject to a new streamlined procedure for Parliamentary scrutiny, following recommendations made by the House of Commons Procedure Committee in January 1997 (HC 126 1996-97). The intention is that rewrite Bills should be introduced in the House of Commons, referred to a Second Reading Committee, and then to a joint Committee of both Houses. However the *Capital Allowances Bill*, as the first rewrite Bill, is to have its Second Reading on the floor of the House. This is set provisionally for 15 January 2001.

This paper provides a short introduction to the project as a whole.

Antony Seely

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Summary of main points

The *Capital Allowances Bill* (Bill 10 of 2000-2001) is the first piece of legislation to be produced by the Tax Law Rewrite Project – established in December 1996 with the aim of rewriting the UK's existing primary direct tax legislation[1] to make it clearer and easier to use, without changing or making less certain its general effect. A draft version of the Bill was published in July 2000, following the publication of four 'exposure drafts' – each covering one section of the rewritten code – over the preceding eighteen months. The approach taken in rewriting this legislation may be summarised as:

- A new, more logical structure for the rewritten legislation
- Shorter sentences and better use of definitions
- Use of modern language – provided this can be done without changing the law or making its effect less certain
- Better signposts and similar rules grouped together, to make the rules easier to find
- A new format and layout to make it easier to read

In recent months the rewrite project has been working on three areas of income tax – trading income, savings and investment income and employment income – together with its work on capital allowances. The first Income Tax Bill - covering employment income and possibly social security and pensions income - is planned to be ready in November 2002. The aim is to have a second Income Tax Bill - covering trading income, property income and savings & investment income - ready for November 2003.[2]

In general these Bills are not intended to change the *effect* of current legislation in any significant way, although the Revenue has stated that each will include a number of minor changes to the law (eg, to legislate on Extra Statutory Concessions). In addition, they plan to take the opportunity this project affords to discard any provisions which are now obsolete.[3]

Although concerns about the complexity of tax law are not new, the project to rewrite the UK's primary direct tax legislation had its origins in the proceedings of the Finance Bill in March 1995. Tim Smith MP proposed a new clause requiring the Revenue to publish a report on the increasing length and complexity of the Revenue tax code, and on possible solutions to deal with this problem. Although the then Financial Secretary, Sir George Young, argued against the clause, it was accepted, and became section 160 of the *Finance Act 1995*.

The Revenue's report – *The Path to Tax Simplification* – was published in December 1995. Its main proposal was that most of the primary legislation on Inland Revenue taxes should be rewritten in simpler, more user-friendly language. In July 1996 the Revenue issued a consultation document on taking this project forward, and in his November 1996 Budget the

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1 ie, income tax, corporation tax, capital gains tax, inheritance tax, petroleum revenue tax & stamp duties

2 HC Deb 5 July 2000 cc 201-2W

3 Inland Revenue, *Tax Bulletin 47*, June 2000 p 760-1

then Chancellor, Kenneth Clarke, confirmed that the rewrite programme would go ahead. It was estimated that the rewrite would produce over 6,000 pages of rewritten legislation – and as a consequence, a series of coherent and self-contained Bills – containing a single tranche of legislation – would be presented to Parliament over a period of years.[4] Broadly speaking the project has attracted support across the political spectrum since its inception.[5]

Initially it was thought the project as a whole would take about five years, but the original targets set were soon recognised as unattainable. In 1998 the Revenue carried out a wide-ranging stocktake, which suggested that it was infeasible to estimate precisely how long the rewrite might take, though it would clearly be longer than five years. It noted the concerns of some respondents that this might result in a loss of momentum "particularly if considerable amounts of traditional-style new legislation continue to be added to the statute book each year", adding, "we share this concern and we will continue to make every effort to keep up and increase our momentum."[6]

A high level Steering Committee, chaired by The Rt Hon The Lord Howe of Aberavon CH, QC, oversees the project. A Consultative Committee of representative bodies and other interested parties also meet every month to consider issues and clauses in more detail.

Rewrite Bills are to be subject to a new streamlined procedure for Parliamentary scrutiny, following recommendations made by the Procedure Committee in January 1997.[7] The intention is that they should be introduced in the House of Commons, referred to a Second Reading Committee, and then committed to a joint Committee of both Houses.

National taxation remains a reserved matter.[8] The rewrite project has no direct consequences for either of the devolved assemblies.

This paper can, at best, provide an introduction to this subject. It lies beyond its scope to examine all of the issues raised by the rewrite project, or to give any technical analysis of the choices made in drafting the rewritten legislation in the *Capital Allowances Bill*. Interested readers are referred to the wealth of material published by the Inland Revenue on the project, which is available on its internet site.[9] For an exposition of the Bill clause by clause, readers are referred to the Explanatory Notes (Bill 10-EN) published with the Bill itself.

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4 Inland Revenue, *Tax Law Rewrite: plans for 1997*, December 1996 pp 24-5

5 Following the General Election in May 1997, the Labour Government confirmed its support for the rewrite project in a written answer in July that year (HC Deb 31 July 1997 cc 449-450W).

6 *Tax Law Rewrite: plans for 1999/2000*, March 1999 p 16

7 *Legislative Procedure for Tax Simplification Bills*, 30 January 1997 HC 126 1996-97. The procedure for tax simplification bills is now provided for by Standing Order No. 60.

8 With the obvious exception that the Scottish Parliament is empowered under ss 73 & 74 of the *Scotland Act 1998* to introduce a tax varying resolution, to increase or decrease the basic rate of income tax for Scottish taxpayers from the rate determined by the UK Parliament by up to 3p in the £.

9 www.inlandrevenue.gov.uk/rewrite/index.htm

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I Tax simplification

A. Introduction

The *Capital Allowances Bill* (Bill 10 2000-2001) is the first piece of legislation to be produced by the Tax Law Rewrite Project – established in December 1996 with the aim of rewriting most of the existing primary legislation on Inland Revenue taxes to make it clearer and easier to use, without changing or making less certain its general effect.[10] All told this accounts for around 6,000 pages of legislation.[11]

Income tax, corporation tax and capital gains tax legislation is consolidated in four Acts – most important, the *Income and Corporation Taxes Act (ICTA) 1988*, which itself has 845 sections and 31 schedules.[12] Each of these have been amended by subsequent Finance Acts, although they do not incorporate every single relevant provision: for example, around two thirds of the legislation on income tax and corporation tax since 1988 has been incorporated in *ICTA*, with the balance remaining in Finance Acts.[13] Provisions relating to other Revenue taxes – inheritance tax, stamp duties, petroleum revenue tax – are contained in separate Acts.[14]

On its internet site, the Inland Revenue provides an introduction to the rewrite project:

> Our work is organised on project lines and a separate project team has been set up. A drafting team, headed by a senior Parliamentary Counsel, works closely with four mixed discipline rewrite teams which are each responsible for a different area of legislation. As far as possible, we try to ensure that each rewrite team has Inland Revenue members with different backgrounds - tax inspectors, Revenue lawyers and those with tax policy experience - and also tax professionals from the private sector who provide vital input from an outside perspective … We are considering both the structure of rewritten legislation and drafting techniques. The structure is being looked at on a lower level which will make the rules easier to find and follow, and at a higher level which will look at the way that legislation is divided into Acts. Drafting techniques include a new, more logical structure for the legislation, the use of shorter sentences, plain language where possible, greater consistency in the use of definitions, and better signposting, together with the greater use of explanatory material.
>
> The project will simplify the language and structure of tax legislation. In general we do not intend to change the underlying tax policy. However in the course of

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10 The rewrite project does not cover those taxes collected by HM Customs & Excise: ie, VAT; excise duties (oils, tobacco and alcohol); insurance premium tax; landfill tax; air passenger duty.

11 Inland Revenue, *The Path to Tax Simplification*, December 1995 p 19

12 The others are: the *Taxes Management Act (TMA) 1970*; the *Capital Allowances Act (CAA) 1990*; the *Taxation of Chargeable Gains Act (TGCA) 1992*.

13 Inland Revenue, *Tax Law Rewrite: the way forward*, July 1996 p 21

14 primarily, the *Inheritance Tax Act (IHTA) 1984* and the *Petroleum Revenue Tax Act (PRTA) 1980*

> the rewrite there will be times when we can achieve further simplification by minor changes to the present rules, subject to the approval of Parliament. In other cases it will make sense to enact current extra statutory concessions or statements of practice and to discard obsolete provisions. In general such minor changes, which we call "proposed rewrite changes" will be included in a rewrite Bill. But before any decisions are taken they will be flagged up clearly for full public consultation.[15]

On the question of reordering of material, the Revenue's working assumption has been that the rewrite will in the end result in the following main Acts:

- Income Tax
- Corporation Tax
- Capital Allowances
- Capital Gains
- Stamp Duties
- Inheritance Tax
- Management

Focusing on capital allowances, over a period of around eighteen months the Revenue published four 'exposure drafts', each part of the tax code related to capital allowances (in October 1998, April 1999, August 1999 and March 2000). In the light of responses to each of these, in July 2000 a draft Capital Allowances Bill was published for a last round of public consultation.[16] Since the inception of the project the Revenue has published an annual report, reviewing recent progress and outlining the work programme for the current year. In the 2000/01 report published in April 2000, the Revenue confirmed its intention to introduce the Bill in Parliament 'as early as possible in the 2000/01 session':

> We must ensure that the passage of the Bill synchronizes with that of the annual Finance Bill. This points to introduction in November 2000, and enactment before April 2001. These constraints mean that we are unable to give as long for comments on the draft legislation as we would like. We are very aware of the burdens this places on those involved in the consultation process, but we see no alternative if we are to continue to make progress. We have been exploring with the representative bodies ways in which we can streamline our processes.[17]

The next stage of the project is the much larger task of rewriting income tax legislation. Over the life of the project the Revenue has worked on the assumption that a single Income Tax Act would be drafted, though it has refined its view of the internal structure

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15 www.inlandrevenue.gov.uk/rewrite/index.htm

16 A list of respondents to the exposure drafts is set out in para 10 of the Explanatory Notes to the *Capital Allowances Bill* (Bill 10-EN).

17 Inland Revenue, *Tax Law Rewrite: plans for 2000/2001*, April 2000 p 16

of that Act over time.[18] However, in July 2000 it was confirmed that for practical reasons, income tax legislation would be enacted in stages, and, that the first in a series of Income Tax Bills should be ready by November 2002.[19] Although the project's remit does not extend to secondary legislation, it is intended that this work programme will include the rewriting of the PAYE Regulations, as an exception, so that the rewritten regulations come into force at the same time as the first Income Tax Bill in April 2003.

Announcing the 2000/01 work programme, the Paymaster General Dawn Primarolo noted "the rewritten legislation produced by the project has been very well received by the main users in the tax community and they are enthusiastic that the project should continue."[20] For example, in its response to the draft Capital Allowances Bill, the Tax Faculty of the Institute of Chartered Accountants in England and Wales said, **"**the draft Bill is an impressive achievement by the Tax Law Rewrite team and we congratulate everyone involved. The Capital Allowances Act 2001 will demonstrate clearly the value of the tax law rewrite process in improving the intelligibility of the tax legislation."[21]

The ongoing progress of the project is also having an effect on new tax legislation, as a recent written answer explains:

> **Mr. Heathcoat-Amory:** To ask the Chancellor of the Exchequer which clauses in the Finance Bill were altered prior to its introduction so that their wording conformed to the aims of the Tax Law Rewrite project in respect of plain language.
>
> **Dawn Primarolo:** Draftsmen always seek to write as clearly as possible, subject to the overriding requirements of accuracy and certainty. Where provisions in a Finance Bill amend past Finance Acts - as is often the case - the drafting has to take account of the structure and wording of the existing legislation. In the case of Finance Bill 2000 the draftsmen have also been able to take account of the draft legislation published by the Tax Law Rewrite Project and have, where possible, taken the Project's approach into account. Part 9 of Schedule 22 (on Tonnage Tax) is an example of this.[22]

The Revenue has emphasised that a number of factors are critical if the project is to achieve its aim:

- The rewritten legislation must be accepted by all the main users as clearer and easier to apply and as preserving the effect of the present legislation apart from minor agreed changes in policy.

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18 *Tax Law Rewrite: plans for 2000/2001*, April 2000 pp 7, 18

19 Inland Revenue press notice 113/00, 5 July 2000

20 HC Deb 18 April 2000 cc 437-438W

21 Institute of Chartered Accountants in England and Wales, *Tax law rewrite: draft Capital Allowances Bill (TAXREP 31/00)*, October 2000 p 1

22 HC Deb 19 April 2000 c 587W

- Parliament must be able to scrutinise and enact the rewritten legislation in accordance with clearly defined and appropriate Parliamentary procedures and an agreed timetable.

- The main users, both inside and outside the Inland Revenue, must be kept fully informed about progress throughout the life of the project and, when appropriate, properly consulted in good time for their views to influence the rewrite work.

- The operational implications of the rewrite work for the Inland Revenue must be identified and properly addressed.

- The lessons learned from the experience of successfully rewriting the legislation should be developed, in close consultation with the users, into new best practice for producing tax legislation in the future.

- The project - including all the people in the Project Team - must be managed effectively and efficiently and the project's objectives must be achieved within the agreed programme and budget.[23]

In this context, it is worth quoting some comments made in the Revenue's consultation document on the rewrite, published in July 1996, on the *users* of tax law:

> Most obviously [the users] are taxpayers themselves. Many taxpayers doubtless rely on explanatory material rather than the legislation itself. But we believe that they would use the legislation rather more if it were made more accessible to them. And by making our legislation clearer, the rewrite will lead to clearer explanatory material, more easily produced, for taxpayers who do not consult the law directly. In many cases, the rewritten legislation should be clear enough to be used unaltered in guidance leaflets and other explanatory material.
>
> Second, there is a significant body of people and institutions employers being the prime example on whom the law imposes specific obligations in addition to those they have as taxpayers. The third category of users is those acting for the taxpayers in a professional capacity, be they accountants, lawyers or other professionals. They probably constitute one of the main direct users of tax legislation at present. Fourth, there are those who apply, enforce and interpret tax law, a category ranging from Revenue staff to judges in the higher Courts.
>
> Finally, there is a small but important category, with Ministers and Parliament at the core, concerned primarily with changes to tax law. This is a very disparate collection of users with differing needs and differing levels of expertise. So our aim is not to make all tax law accessible to everyone. Rather we will try to tailor the particular area of law being rewritten to those who will actually use that law.[24]

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[23] *Tax Law Rewrite: plans for 2000/2001*, April 2000 pp 3-4

[24] *Tax Law Rewrite: the way forward*, July 1996 pp 4-5

B. Origins

Concerns about the complexity of the tax system in this country and the legislation which underpins it are not new. For example, the Royal Commission established in 1919 to examine all aspects of income tax, noted in its report, "no one who is at all familiar with the existing system of income taxation will have any doubt as to the difficulty of the task that confronted us on our appointment. This difficulty is due in a large measure to the complexity which must inevitably be present in any system devised for the purpose of dealing effectively with an almost infinite variety of taxable capacity on the part of individual taxpayers, a variety which is sure to be found in any modern commercial and industrial community."[25]

More recently the *Financial Times* reported in August 1986 that the *Finance Act 1986* had "drawn vitriolic comment from accountants and solicitors … their irritation springs from the length – 265 pages – of an act that makes so few big changes." The newspaper quoted Philip Hardman, then a senior tax partner, as suggesting the technical difficulty of tax law was a 'national disgrace': "Some of the finest brains in the country are trying to understand tax law when they would be better employed producing wealth."[26]

By way of an example, the paper quoted one paragraph from schedule 13 of the *Finance Act 1986* dealing with capital allowances for mineral extraction:

> (4) If, in a case where sub-paragraph (1) of paragraph 10 above applies, neither sub-paragraph (1) nor sub-paragraph (2) above has effect in relation to the expenditure referred to in sub-paragraph (1)(a) of that paragraph, then for the chargeable period related to the disposal or cessation referred to in sub-paragraph (1)(b) of that paragraph, any allowance in respect of that expenditure shall be a balancing allowance.[27]

Legislation of this nature would appear to have inspired these comments from the Tax Law Review Committee's *Interim Report on Tax Legislation* (the Committee's work is discussed below, in section I.D of this paper):

> We believe something more fundamental is wrong with our tax legislation than the rate at which it is being produced. The style in which it is written has been likened to a puzzle – and one which does not have a picture on the box! It is impenetrable; you cannot see even the broad outline of the picture until you have solved the puzzle.
>
> Worse still, there are times when the legislation is wholly incomprehensible. This is unacceptable. It causes taxpayers to incur unnecessary costs in trying to

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25 *The Royal Commission on Income Tax* Cmd 615 1920 pp 1-2

26 "Lawson taxes accountants' patience", *Financial Times*, 11 August 1986

27 para 12(4) of schedule 13 to *Finance Act 1986*

> comprehend their rights and obligations, money which would be better spent productively. And it creates uncertainty when they cannot understand their tax position. The money taxpayers spend on tax compliance runs into billions of pounds. How much of that could be saved if the legislation was comprehensible?[28]

It is ironic that the provisions quoted above were part of a major restructuring of the system of capital allowances, first announced by the then Chancellor Nigel Lawson in his 1984 Budget. Indeed, Mr. Lawson had argued that the existing code of allowances were over complex and distortionary: "too much of British investment has been made because the tax allowances made it look profitable, rather than because it would be truly productive. We need investment decisions based on future market assessments, not future tax assessments."[29]

Evidence that the complexity of tax law was an issue for 'ordinary' taxpayers as well as accountants and solicitors was published in 1992. In June that year the Inland Revenue commissioned research to seek income taxpayers' views on the quality of service issues they saw as important. The survey revealed that income taxpayers had three key priorities: they wanted the Department to work out their tax correctly first time; they wanted clear information about tax; and they wanted to receive a prompt reply to their queries.[30] In June 1994 the National Audit Office published a report on the Revenue's record for the 5 million persons paying tax under Schedule D, as well as the 1.4 million Schedule E taxpayers with particularly complex tax arrangements, such as company directors (known as Schedule E(H) taxpayers).[31] The Public Accounts Committee took evidence in light of the NAO's report, and published its conclusions in December 1994.[32]

The Committee noted that "the Department's view that the move to self-assessing will address the severe problem of taxpayers failing to submit their tax returns and accounts on time. This will only happen, however, if taxpayers are aware of the new arrangements and elect to use them, and the Department will therefore need to publicise them properly." It went on to make a more substantial recommendation about tax law itself:

> We note that the complexity of tax legislation causes problems for taxpayers and Inland Revenue staff. We recommend that the Department continue to use every opportunity to simplify the tax system to make it easier for taxpayers to comply with the rules, reduce taxpayer compliance costs and limit the scope for costly errors. We recognise, however, that a balance needs to be drawn between

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28 Tax Law Review Committee, *Interim Report on Tax Legislation*, November 1995 p vii

29 HC Deb 13 March 1984 cc 295-6 Section III.B1 of this paper discusses this reform in a little more detail.

30 Inland Revenue press notice, *Inland Revenue seek taxpayers' views*, 13 October 1992

31 National Audit Office, *Inland Revenue: Getting Tax Right First Time and Dealing with More Complex Postal Queries*, 10 June 1994 HC 442 1993-94

32 Committee of Public Accounts, *Inland Revenue: Getting Tax Right First Time and Dealing with More Complex Postal Queries*, 14 December 1994 HC 105 1994-95 pp v-xi

> legislating to promote equity and to reduce tax avoidance, and keeping the system simple and easy to use.[33]

It may be helpful to say a few words about self assessment in this context. For those unaware of this radical reform in the personal tax system, self assessment puts the responsibility for assessing someone's taxable income onto the individual taxpayer rather than the tax authorities: all those who complete an annual return calculate their own annual income, using a single form, covering all types of income and capital gains, which is sent to just one tax office. Around nine million taxpayers are required to do this (generally, the self-employed and others with relatively complicated tax arrangements, such as directors and higher-paid employees), although the new system has brought new responsibilities for the remaining 17 million taxpayers who do not.[34]

It was the then Chancellor Norman Lamont in his March 1993 Budget who announced the introduction of self assessment from the 1996-97 tax year:[35] "For those who choose to take it up, self assessment should provide a significant reduction in bureaucracy and paperwork; and it will also bring out more clearly the link between public spending and the burden this places on the individual taxpayer. A more transparent tax system can only lead to more informed choices and debate; and I believe that self assessment for a third of all taxpayers will contribute to that."[36]

One commentator writing in the *British Tax Review*[37] argued self assessment would encourage greater public awareness of the tax system, and that in turn "might result in taxpayers having a greater influence over the ways in which they are taxed. It might also provide a constraint on the apparent propensity of the Government to complicate the tax system."[38] Indeed, as a spur to individuals' self education about the tax system and, one might add, about how much tax they actually pay, self assessment might be thought to encourage a different type of public debate about what taxes are for. A recent study on the relationship between taxation and public expenditure, published by the Fabian Society, suggests "the terms of the debate about tax in the UK need to be changed … [as they] have increasingly made [taxes] seem *illegitimate*."[39]

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33 *op.cit.* pp ix-x

34 Briefly, all taxpayers must, by law, keep records of their income and capital gains, to enable them to fill out a tax return if necessary. In addition, anyone who has not received a tax return, but should have done (say, if they had received income and chargeable gains which should be taxed, but their tax office was unaware of this), must inform the Inland Revenue of this fact.

35 Prior to the then Chancellor's statement, the Inland Revenue had published two consultation documents in preceding years on this reform (*A Simpler System for Taxing the Self-Employed*, August 1991, and *A Simpler System for Assessing Personal Tax*, November 1992).

36 HC Deb 16 March 1993 c 184

37 Simon James, "Self Assessment for Income Tax", *British Tax Rev*iew, No.3 1994 pp 204-212

38 *op.cit.* p 210

39 Commission on Taxation and Citizenship, *Paying for progress*, Fabian Society 2000 p 2 Similar observations were made in Geoff Muligan & Robin Murray, *Reconnecting Taxation*, Demos 1993 – although neither study analysed how the complexity of legislation may have shaped public perceptions of the tax system.

Following the publication of the Revenue's plans for the Tax Law Rewrite in July 1996, the *Financial Times* noted the link between the two reforms:

> One common consumer criticism of self assessment is that it will be a bonanza for tax advisers. For even those doughty individuals willing to grapple with their own tax liabilities may retire hurt when entangled in thickets of legalese ... [The aim of the rewrite] is not to simplify tax law itself but to simplify the language in which the existing law is expressed and the way in which the law - around 6,000 pages of it - is presented. If tax laws are made easier to understand, the Revenue hopes that taxpayers will not need to spend so much money on sticking to the rules.[40]

Writing in *Fiscal Studies* in 1994,[41] Malcolm Gammie noted that one of the costs of complex legislation was borne directly by individuals:

> My particular criticism of recent tax legislation is its 'holistic' approach: you cannot understand one section until you can understand them all. Imagine reading a book where your understanding of each chapter depended upon your having read and understood all its chapters; I do not think that the book would become a best seller. Mastering such legislation is a costly intellectual effort – costly mainly for the clients of professional firms.[42]

C. The report on tax simplification

The *Finance Act 1986* contained 114 sections and 23 schedules, comprising 265 pages. At the time Acts of Parliament were still published in Royal Octavo page format – the change to the present A4 size page was made on 1 January 1987 – but this is roughly equivalent to 212 pages.[43] By comparison the *Finance Act 1993* contained 214 sections and 23 schedules, comprising 312 pages. Worse was to come.

The Act the following year had 463 pages (259 sections and 26 schedules). Indeed the *Finance Act 2000* has 613 pages: 157 sections and 40 schedules! Nonetheless the years 1993-95 were a watershed: as the Tax Law Review Committee noted in 1995 "complaints about tax legislation are not new but they reached new heights with the three longest Finance Bills in history, 312 pages in 1993, 463 pages in 1994 and 380 pages this year."[44]

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40 "Farewell to jargon", *Financial Times*, 17 August 1996

41 Malcolm Gammie, "Legislation for business: is it fit for public consumption", *Fiscal Studies* vol.15 no.3 1994 pp 129-139

42 *op.cit.* p 135

43 Some statistics on the volume of new Inland Revenue legislation are given in Inland Revenue, *The Path to Tax Simplification*, December 1995 pp 17-19. This suggests that A4 pages are 1.25 times larger.

44 *Interim Report on Tax Legislation*, November 1995 p 2 The Committee produces some statistics on the volume of legislation in this report (pp 2-4). They point out, "not only are the number of pages of tax legislation increasing remorselessly but the average length of each section has also been on the rise throughout the last 70 years" (p 3).

During the proceedings of the Finance Bill in March 1995, Tim Smith proposed a new clause requiring the Revenue to detail the growth of tax legislation in recent years, summarise the criticisms made of that legislation, and, analyze possible solutions.[45] Although the then Financial Secretary, Sir George Young, argued against the clause – while supporting its underlying objectives – the Government was defeated on the issue, and the clause became section 160 of FA 1995, reproduced below:

> **160.** (1) The Inland Revenue shall prepare and present to Treasury Ministers a report on tax simplification.
>
> (2) The report shall be laid before Parliament and published before 31st December 1995.
>
> (3) The report shall give
>
> (a) an account of recent tax legislation history;
>
> (b) full details of recent annual additions to both primary and secondary legislation;
>
> (c) a summary of recent criticism of both the complexity of tax legislation and of parliamentary procedure; and
>
> (d) the advantages and disadvantages of possible solutions including a Royal Commission on taxation and a tax law commission.

Part of Tim Smith's argument from the debate was as follows:

> The Bill is the second largest Finance Bill ever … Last year's Bill was the largest Bill—it was so big that it could not be stapled together and had to be published in two volumes. There are two factors: the Bill's sheer length and its complexity … I think that the time has come to address that issue, with which I have been concerned for many years …
>
> I tabled a new clause proposing the introduction of a tax law commission, but it was not called because it would involve public spending. The new clause proposes that the Inland Revenue should review the matter, consider all the arguments and determine the best way forward. I am not entirely happy with having the Inland Revenue do that because I regard that organisation as part of the problem—although I hope that it will be part of the solution. The solution needs an independent element, however, so that whatever emerges from our proceedings, the people who have to use the legislation will also be involved in the review process and in agreeing the solution.[46]

On this occasion, Clive Betts MP also moved a clause to set up the equivalent of the Social Security Advisory Committee with regard to tax:

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45 Standing Committee D 14 March 1995 cc 766-772

46 *op.cit.* c 767

> I want to comment on new clause 26, which stands in my name. I agree with the comments of the hon. Member for Beaconsfield (Mr Smith) on the need to introduce elements of simplicity into the complexity before us ...
>
> Regulations emanating from the legislation that we pass do not receive a satisfactory degree of scrutiny. Indeed, if they are debated at all, it may be on the Floor of the House where, even if technical inadequacies are exposed, there is no opportunity to amend them ... The Institute of Taxation made a useful suggestion. Just as the Government have set up the Social Security Advisory Committee because they believed that advice on technicalities would be helpful, so a similar advisory committee to consider regulations emanating from various Taxes Acts would be helpful to all Members of Parliament, not least to Government Members. It would enable technicalities to be examined for possible flaws and passed to Ministers for proper consideration before regulations are brought to the House ...
>
> The Financial Secretary may say that there would be problems in putting all regulations through that procedure; he may say that there might be occasions when obvious loopholes are seen by the Government or when unintended hardships are caused and there is, therefore, a need to legislate quickly. That may be the case, but I am sure that exemptions could be built into the process to deal with such circumstances. Exemptions could be built in for a regulation that involved a simple change of rate; my suggested process would not then have to be gone through for such simple matters. I would, however, suggest that the proposal is interesting and worthy of consideration.[47]

In his response to the debate, the then Financial Secretary, Sir George Young, argued that the Government shared these concerns about simplification and consultation, but there was no need to enshrine this in legislation:

> My hon. Friend the Member for Beaconsfield made a clear short speech and hoped that legislation might follow his example … The new clause focuses on legislative simplification, but, as my hon. Friend knows, there are other ways in which the Government can make life simpler for the taxpayer—for example, by taking people out of tax, by introducing deregulatory measures to reduce the burden on business or by simplifying the system …
>
> There is a growing feeling throughout much of the developed world that much more needs to be done on the language of tax law. Both Australia and New Zealand have recently launched major exercises to rewrite their entire tax codes in a more user-friendly format. The objective is to minimise a range of costs, both public and private, associated with tax legislation which is both complex and difficult to understand.

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[47] *op.cit.* cc 767-8

> Since becoming Financial Secretary I have become conscious of how strongly many tax professionals feel that the United Kingdom should move in the same direction. Reflecting that concern about our tax regulation, the Institute for Fiscal Studies has recently formed a tax law review committee with a wealth of experience, expertise and talent.[48] The Committee's stated objective is to keep under review the state and operation of tax law in the United Kingdom. One of the projects that it has recently put in hand is to rewrite part of the tax code in a shorter, simpler, more user-friendly form …
>
> The timetable for the work means that, by the end of the year, we shall only just be starting to see the first fruits of much of the work that is now under way. Given the importance and wide-ranging nature of the issue, we must be sure that we have all the information before making any decisions on the potential for making progress on an extensive simplification of tax legislation. For that reason, I do not want to be bound either to the timetable or to the format suggested by my hon. Friend the Member for Beaconsfield in his new clause ...
>
> I turn finally to new clause 26. The argument is that we should replicate the SSAC with a comparable body to examine tax law, but the hon. Member for Attercliffe is not suggesting such a wide-ranging role for his proposed tax Acts advisory committee. Given the diversity of the direct taxpaying population, I am sure that that is right. The key point is that the Inland Revenue already consults widely on secondary legislation, because each set of regulations tends to have a well-defined set of interested parties.
>
> Recent examples include regulations relating to the tax rules on foreign exchange gains and losses and the consultation on the construction industry tax deduction scheme. Both are specific examples of the Inland Revenue consulting directly with the interested parties. Large chunks of the Finance Bill were published in draft and made available for comment at the same time as the relevant primary legislation was published in draft or appeared in the Bill.[49]

One initiative the Financial Secretary also mentioned was a proposal to contract out the drafting of some parts of the Finance Bill to the private sector; further details were given in a written answer at this time, from which the following text is taken:

> Present practice is that most primary legislation in the areas of responsibility which fall to Treasury Ministers is drafted by Parliamentary Counsel. Officials in the Chancellor's Departments provide Parliamentary Counsel with instructions from which legislation is drafted, but none of the Chancellor's Department employs staff who themselves draft primary legislation. There have been occasions in the past where lawyers outside Parliamentary Counsel have been engaged in the drafting of primary legislation.

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48 The Committee's work is discussed in the following section of this paper.

49 *op.cit.* cc 770-1

> My right hon. and learned Friend the Chancellor of the Exchequer is now setting up a pilot project to gain further experience of using the private sector in this area. Potential benefits could include: reducing time pressures caused by the volume of work facing existing draftsmen; widening the range of talent available to departments; bringing relevant specialist skills into the drafting process, and providing fresh thinking as to how our laws should be drafted.
>
> The pilot scheme will cover some aspects of the 1996 Finance Bill, and possibly also some secondary legislation. Treasury Ministers are still considering exactly which topics will be chosen for the pilot, but the bulk of the 1996 Finance Bill will continue to be drafted by Parliamentary Counsel in the usual way … The experiment will be closely monitored and will be subject to a full evaluation to consider the quality of drafting, other advice, whether timetables were met, security issues, and cost. [50]

In the event 32½ pages of the Finance Bill in 1996 were drafted by the private sector.[51] Subsequently this alternative approach has not been employed substantially, as a recent written answer given in the Lords confirmed (only part of this is reproduced below):

> **The Attorney-General (Lord Williams of Mostyn):** The Government's primary legislation is mainly drafted by the Office of the Parliamentary Counsel. Exceptions are the consolidation and law reform Bills drafted by the Law Commission and the work on rewriting tax legislation being done by the Inland Revenue's Tax Law Rewrite project. In these cases, the drafting is done by Counsel on secondment from the Office of the Parliamentary Counsel.
>
> The legislation for Scotland relating to reserved matters (including such elements of consolidation and law reform Bills for the Scottish Law Commission) is drafted by Counsel on secondment from the Office of the Scottish Parliamentary Counsel in Edinburgh. Some Government Bills extending only to Northern Ireland are drafted by the Office of the Legislative Counsel in Belfast by arrangement with the Office of the Parliamentary Counsel.
>
> Since May 1997, a total of four private sector lawyers have been employed at various times to assist with the drafting of legislation being prepared by the OPC or by the Inland Revenue Rewrite project. All four had acquired the necessary skills when they were members of the Office of Parliamentary Counsel, before moving into private practice … Some departments employ private sector lawyers from time to time to draft secondary legislation. However, no central records are kept of the volume of work involved, of the number of private sector lawyers who have been employed nor of their remuneration.[52]

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50 HC Deb 14 March 1995 cc 463-465W
51 HC Deb 30 January 1996 cc 614-5W
52 HL Deb 8 February 2000 cc 83-84W

Turning back to the *Finance Act 1995*, as a consequence of Tim Smith's clause being adopted, in December 1995 the Revenue published *The Path to Tax Simplification*. The then Chancellor Kenneth Clarke discussed the report prior to its publication in his November 1995 Budget speech:

> Tax law has become too long and complicated. That campaign is certainly well founded. Some experts have described tax law as incomprehensible. The Inland Revenue will shortly be publishing a report on tax simplification. We shall propose that the Revenue tax code is rewritten in plain English--a major task. The House has a duty to set out clear legislation, which in that area we have not done. We in the House will need to look at our procedures, to see how that tax rewrite can be sensibly handled.[53]

Its main conclusions were that, "the language of existing tax law can be simplified, that the benefits should substantially outweigh the costs; and that a rewrite of most of the existing code could be accomplished over a period of about five years." In welcoming the report the then Financial Secretary Michael Jack said:

> I warmly welcome this report … [The report's] central proposal is a major project to rewrite tax law in clearer and simpler language. This would reduce the compliance costs which the tax system imposes, in one way or another, on every taxpayer in the country. It would also support the Government's deregulation initiative, the system of self-assessment we are introducing, and the Revenue's continuing efforts to improve customer service, quality and cost-efficiency in all its work. A number of practical issues need further consideration including the parliamentary implications for dealing with the rewritten tax legislation. Meanwhile, the Chancellor has asked the Inland Revenue to proceed with preparatory work.[54]

The report gave some reasons why the length of Finance Acts had been growing so much:

> Tax legislation has grown enormously over the past 25 years. In 1970 there were just over 2,000 pages of primary legislation and marginally under 1,300 pages of secondary legislation (statutory instruments). Following the Finance Act 1995 there are now nearly 6,000 pages of primary legislation, and almost 4,000 pages of secondary …
>
> To understand why tax law in the UK should have grown faster than ever before in the last few years, we have analysed the contents of the last eight Finance Acts in some detail … Measures to implement the Government's economic and social policies accounted for just under half of the total Finance Act legislation in that period; measures relating to management and administration roughly one fifth; and anti-avoidance measures about one sixth.

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53 HC Deb 28 November 1995 c 1066

54 HC Deb 12 December 1995 c 567W

> The growth of Revenue legislation in recent years is not the result of the introduction of new taxes. Since 1980, more direct taxes have been abolished (investment income surcharge, capital transfer tax, development land tax, capital duty) than have been introduced (stamp duty reserve tax and inheritance tax). Existing taxes, on the other hand, have on balance become more elaborate. This reflects a number of different factors including
>
> - deliberate tax reform (e.g. independent taxation, self assessment);
>
> - the need to respond to an increasingly global and sophisticated business environment (e.g. rules on foreign exchange gains and losses, taxation of manufactured dividends);
>
> - the need to respond to changes in the general legal framework within which businesses and other taxpayers operate (e.g. developments in company law have led to provisions for open-ended investment companies, and the demerger provisions);
>
> - the increasing desire for tax law to be detailed and precise so that it is certain in its application (e.g. the detailed rules for re-location expenses).
>
> Few of the factors listed above are UK-specific. Developed economies throughout the world have been experiencing a similar rapid growth of tax legislation. Over the last 10 years, for instance, the volume of Australian tax legislation has more than doubled and in New Zealand it has increased by 80%.[55]

On the possibility of rewriting existing tax legislation, the report made the following observations:

> **Language and organisation of existing law**
>
> The main conclusion emerging from our work on the possibilities for improving the language and structure of tax legislation is that, to have a real impact in a reasonable timescale, the initial focus should be most or all of the existing primary legislation. That is the tax law most often consulted in everyday life by business and other taxpayers, their advisers and Revenue staff … We have therefore considered carefully the possibilities for making significant improvements to the language and organisation of existing law. It is clear that there are significant benefits to be gained from a plain language rewrite of most of the existing tax code to produce a clearer, more user-friendly version of the present Inland Revenue legislation.
>
> To rewrite most of the Revenue primary legislation would take about five years, though we envisage Ministers would probably want to take stock after the first

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[55] *The Path to Tax Simplification*, December 1995 pp 1-2 A substantive background paper accompanying this report was also published at this time.

> tranche had been completed. Such a rewrite could use a variety of techniques — plain language wherever possible, reordering and renumbering, better signposting, rationalised definitions, removal of obsolete or unnecessary definitions and modern design and layout techniques. Our work shows that, taken together, these techniques can provide a substantial improvement in clarity with no loss of precision or certainty. In particular our own experiments, helped by Parliamentary Counsel, point clearly to that conclusion …
>
> Our initial estimates indicate that the public sector cost of a rewrite programme over about five years would be of the order of £5 million a year. There would also be costs to the private sector, both transitional costs of adapting to the rewritten code and costs of participating in the in-depth consultative processes that we see as an essential part of any rewrite exercise.
>
> The first reaction of the representative bodies whom we have consulted informally has been — like our own assessment — that these costs are well worth bearing to secure the on-going benefits of a rewrite. The general reaction was that the benefit of a rewrite project to the economy as a whole should substantially exceed its costs. Compliance costs for Inland Revenue taxes are currently estimated at over £4 billion a year, so there is scope for significant savings if the keystone of the system — the tax code itself — is made more accessible and user-friendly.[56]

The report's conclusions were:

- The problem of incomprehensibility with the tax code is real enough. It imposes inconvenience and costs on taxpayers, businesses and the economy generally.

- Some improvement might be made through policy simplification and the Finance Bill process, but achieving substantial improvement in a reasonable timescale is possible only through a rewrite.

- We are satisfied that a rewrite is technically feasible and that its benefits will substantially outweigh its costs.

- If Ministers wish to proceed with a rewrite the main practical issues on which decisions will be required are
  (a) resources, including drafting resources;
  (b) whether the rewrite should be run from the Revenue, or by a separate body similar to the Law Commission;
  (c) the nature of the Bill incorporating rewritten provisions, and the Parliamentary procedures applying to it.[57]

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[56] *op.cit.* pp 6-7
[57] *op.cit.* p 8

First responses to the report were positive. In a press notice welcoming the report, the Tax Faculty of the Institute of Chartered Accountants stated:

> The faculty accepts the Revenue's view that complete simplification would involve the reform of legislative policy, procedure and language. We agree that, initially, the quickest route to simplification is the use of simple language and that this requires a rewrite … The Revenue is to be congratulated on its forthright and imaginative response to its statutory duty to report to Parliament. The Government must give it the opportunity to work with taxpayers and their advisers to seize this opportunity to free business and individuals from the burdens of unnecessary complexity.[58]

Speaking for the Government in a Lords debate on this issue in March 1996,[59] Lord Mackay of Ardbrecknish noted the decision to rewrite the Revenue tax code "has been widely welcomed on all sides":

> This is a major venture. It is also an all-or-nothing venture. It would create a nonsense to rewrite only a fraction of this legislation, leaving the rest of it untouched. To rewrite 6,000 pages of legislation will take about five years and involve some 40 highly skilled and professional staff. This is a measure of the priority which is being given to this project and of the Revenue's commitment and determination to do it and do it well.[60]

In July 1996 the accountancy firm KPMG published a survey of the views of UK listed companies on tax simplification. There was almost unanimous support for the proposition that tax legislation was 'too complex', and a marked preference among respondents for the removal of legislative 'blackspots'[61] and a shorter plain English rewrite as solutions to the problem.[62]

D. The Tax Law Review Committee

The Tax Law Review Committee (TLRC) was set up by the Institute for Fiscal Studies in autumn 1994, to "keep under review the state and operation of tax law in the UK." Its purpose was set out in an article by a member of its Secretariat published in 1996:

> Until the TLRC was established, no one body had responsibility for asking fundamental questions, independently and objectively, about whether the tax

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58 Institute of Chartered Accountants press notice, 15 December 1995

59 HL Deb 27 March 1996 cc 1716-1753

60 *op.cit.* c 1746

61 These are areas where the law has become so complex that certain interpretation is either impossible or leads to an inequitable result.

62 KPMG, *Tax simplification: research report*, July 2000 p 6 The report was summarised in "Reformation required", *Taxation*, 18 July 1996.

> system is working as intended; how efficiently it is working; and whether the burdens it places on taxpayers and businesses are avoidable. The TLRC fills this gap … It does not seeks to question government policy. But it does focus on whether policy is being achieved in a satisfactory and efficient manner, and, if not, how the means of achieving that policy could be improved.[63]

The Committee's members represent a broad cross-section of informed opinion from industry and commerce, the judiciary, academia, the professions and political and public life, including the full span of the political spectrum. The President is Lord Howe of Aberavon CH QC who, as Sir Geoffrey Howe, served as Chancellor of the Exchequer, Foreign Secretary and Leader of the House of Commons in Mrs Thatcher's Governments between 1979 and 1990. The original Chairman was Graham Aaronson QC. Since 1998 the Committee has been chaired by John Avery Jones CBE QC, partner in Speechly Bircham solicitors and Special Commissioner.[64]

The TLRC has reported on the appeals system for direct and indirect tax, as well as National Insurance contributions, and on the implications for a General Anti-Avoidance Rule (a 'catch-all' rule to prevent tax avoidance by striking at any transaction designed to avoid tax). Current projects cover the differences between employment and self employment, and the treatment of accounting by the tax system. However its first project was on tax legislation: unsurprisingly, given "the driving force behind the establishment of the TLRC was the very widespread feeling that tax legislation was both too voluminous … and written in an incomprehensible style."[65]

An interim report was published in November 1995, and a final report in June 1996. In this the Committee noted that the conclusions of the Revenue's report on simplification "were very much in line with ours, and we are pleased that the debate has moved on from *whether* a more comprehensive drafting style is possible to *how* it should be adopted."[66] An extract from the report's summary and main conclusions is given below:

> We have no doubt that the solutions are those we identified last November:
>
> **Plain English**
> Firstly, tax legislation should be drafted in a plain English style using shorter sentences and a clearer structure. In our Interim Report we showed by rewriting two blocks of existing legislation the sorts of improvement which could be made. The Inland Revenue's report included two further examples. We have nothing to add to this; we believe the point has been proved beyond doubt. Nevertheless, in this Final Report we comment further on a few points of detail, principally the

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63 Chris Davidson, "An update on the work of the Tax Law Review Committee", *Fiscal Studies* vol.17 no.2 1996 pp 103-4

64 Details on the Committee's work are available from the IFS' internet site at: www1.ifs.org.uk/taxlawindex.shtml

65 *Fiscal Studies* vol.17 no.2 1996 p 104

66 TLRC, *Final Report on Tax Legislation*, June 1996 p vii

ways in which definitions should be drawn to users' attention and the changes in drafting style to which the advent of electronic media leads.

Explanatory Memoranda

The second solution is the provision of explanatory memoranda. In our Interim Report we proposed that Ministers should present to Parliament explanations of each clause of the annual Finance Bill. These would include background information, the purpose of the clause, how it would operate and other details to help users understand and interpret the legislation. Further reflection has enabled us to simplify the proposals we made in the Interim Report.

We now propose that an explanatory memorandum should be provided for each and every clause of the Finance Bill and amendments to it; that they should be published contemporaneously with the Bill, amendment or new clause; and that publication of a compendium of these memoranda should be left to commercial publishers. These explanatory memoranda would be helpful to Parliament as the Finance Bill progresses through its Parliamentary stages, they would help users of the legislation, and they would assist the courts in resolving difficult points of interpretation.

Rewriting Existing Legislation

The third principal proposal we made in our Interim Report was to pilot a rewrite of existing tax legislation. It is this legislation which we criticised as being frequently impenetrable and at times wholly incomprehensible. It needs to be rewritten in plain English. But we recognised in our Interim Report that such a rewrite could only be undertaken if we could be reasonably sure that the transitional costs - which would be substantial - were justified by the benefits. We could not, and we still cannot, make this judgement. In our Interim Report we therefore recommended a pilot project to test the position.

The Government has subsequently decided that the rewrite will go ahead, but it will take stock after the first tranche of rewritten legislation has been produced. As long as a genuine review of costs and benefits is then made, we believe this will be equivalent to a pilot project. A number of issues will need to be resolved, though, before a start can be made on rewriting any of the legislation. Many of these will need to be thought through carefully by the project team. But one issue is of crucial importance to the quality and acceptability of the output. This is the control of the project team - to whom should it report? We believe non-Revenue input will be vital through professional, taxpayer and Parliamentary representation on a steering group with executive powers to oversee the rewrite.[67]

One issue the report also discussed was the potential for 'purposive legislation' – the possibility of drafting primary fiscal legislation in general principles: a framework around which layers of detail could be added, mainly through secondary legislation. A detailed analysis of this issue goes beyond the scope of this paper, although it is touched on in the

[67] *op.cit.* pp vii-viii

following section.[68] Nonetheless it is worth noting that the Committee thought this would only be possible with a change in Parliamentary procedures: specifically, the establishment of a new Parliamentary committee with powers to review and amend drafts of Statutory Instruments for tax.

E. Rewriting tax law: 'the way forward'

In July 1996 the Revenue published *Tax Law Rewrite: the way forward*, which set out detailed proposals for rewriting the Revenue tax code. In announcing its publication, the then Financial Secretary Michael Jack stated, "this is a huge project and we are committed to doing it well. The full and continuing involvement of the private sector will be essential to its success. The document sets out how we propose to achieve that aim."[69] At the outset the Revenue made two important decisions, informed by its view that there was no 'magic formula' for improving tax legislation: that is, a single technique, which, if applied to the board, would solve every problem posed by the existing tax code:

- It ruled out the use of 'purposive' or 'general principles drafting' as a blanket approach for the rewrite (this is the drafting approach which sets out underlying policy in legislation using broad, undefined words and phrases, leaving the detailed application of legislation to be filled in by administrative practice or the courts).

- Similarly it ruled out a systematic shift in the balance between primary and secondary legislation.[70]

An extract from the report is reproduced below:

> *'Purposive' or 'General Principles' drafting*
> In its 'Final Report on Tax Legislation' the TLRC has suggested that, for Finance Bill legislation in the longer term, there may be merit in a particular variant of general principles drafting.[71] This would involve transferring the detailed rules to secondary legislation, which would then be considered alongside the (slimmed down) primary legislation. But the TLRC conclude that Parliament would first need to establish a new and robust procedure for considering Statutory Instruments before that could become a practicable proposition. They feel the approach would not work for the rewrite of existing legislation. We agree with that.

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[68] Those interested are referred to the Revenue's publication, *A Purposive Approach to Rewriting Tax Legislation*, February 1998. This has been the second of the Revenue's Technical Discussion Documents which explore general rewrite issues. As with other documents relating to the rewrite project, this is available on the Revenue's site at: www.inlandrevenue.gov.uk/rewrite/tdd/menu.htm

[69] HC Deb 23 July 1996 c 252W

[70] for an analysis of this particular question see, *The Path to Tax Simplification: a background paper*, December 1995 pp 17-20

[71] see also, TLRC, *Interim Report on Tax Legislation*, November 1995 pp 27-31

> Nor do we see much mileage for the rewrite of direct tax law in seeking to follow, as other commentators have suggested, the approach of European legislation. This would involve having the legislation itself in general terms, leaving it to the Courts to apply it in particular cases by reference to principles established elsewhere (in the case of EC law, the Treaties and the preamble to Community legislation). Again we suspect that users would see this as reducing, rather than increasing, the certainty of the legislation. And trying to apply this approach to the rewrite would mean, particularly in respect of legislation which goes back many years, effectively inventing 'principles' long after the legislation was first introduced.
>
> It remains our view that more generally drafted provisions, and possibly even statements of purpose, could have a role to play in the rewrite of direct tax law. They might, for example, allow some of the current detail to be removed from legislation applying to narrow groups of taxpayers in specialist circumstances. But we would contemplate this only where we could be sure that to do so would not increase uncertainty for users.[72]
>
> *The boundary of primary legislation*
> Similarly we do not see much scope for making tax legislation more user-friendly by *systematically* shifting the boundary of primary legislation. During the rewrite, we shall have to examine not just the primary legislation, but all the associated secondary legislation (Statutory Instruments), case law, Extra Statutory Concessions and Revenue Statements of Practice. In our report last December, we concluded that it would be wrong to decide in advance whether the boundary should be shifted so that more (or less) of this other material was included in primary legislation. That is still our view. In some cases it may well make sense to incorporate in the primary legislation material which is at present outside it. And sometimes the reverse may be true.[73]

The Way Forward document set out some preliminary guidelines on drafting tax law, focusing on points of style (eg, shorter sentences, using the active rather than the passive voice, improving the quality of definitions) and language (eg, the possibilities for drafting in the second person, the scope for substituting simple terms and expressions for complex and archaic ones).[74] The report noted the use of these guidelines was necessary, given the project's size, "to try to ensure a measure of broad consistency", adding "no guidelines can be applied in a rigid way: what may be right for one part of tax legislation may be totally inappropriate for another part, which may have a different group of users. And there are always going to be some situations in which applying even the most carefully devised guidelines would give a self-evidently absurd result."

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[72] for a more detailed discussion see, *The Path to Tax Simplification: a background paper*, December 1995 pp 89-108

[73] *Tax Law Rewrite: the way forward*, July 1996 pp 7-8

[74] *op.cit.* Annex 1 (pp 61-78)

The report acknowledged that one particularly difficult area of the rewrite related to the ordering of legislation:

> In addition to the drafting issues discussed in Annex 1, we recognise that the question of how one orders the legislation at the section level is the most important aspect and possibly the least susceptible of being reduced to general guidelines. For all users, any group of propositions is easier to grasp if (a) the individual propositions are separated out and (b) the individual propositions are put together in an order which seems logical from the users' point of view. With its multiplicity of propositions and complex structures, this is perhaps particularly true of tax legislation.
>
> So in every case we will make sure we strip down the existing legislation into its component propositions. Once we have unravelled the existing complex propositions and reduced them to a series of simple propositions, we will put them back together in the order which a user of the legislation would find most helpful. That is the order in which he or she needs to understand and apply the legislation, if that user is to know the effect in his or her case.
>
> As well as going through this fundamental process for each tranche of legislation being rewritten, there are one or two general principles which apply. It is a common complaint that in many parts of tax law, the user has to read to the end of a section or group of sections before he or she can see what the law is about. We therefore propose to make two changes in this area:
>
> - to structure the drafting so that it covers the general before dealing with the particular where appropriate,
>
> - to begin each topic with a section which gives a bird's eye view of what the following sections cover.[75]

In his November 1996 Budget the then Chancellor, Kenneth Clarke, confirmed that the rewrite programme would go ahead, with the first of the rewrite Bills to be ready for enactment in the 1997-98 Session:

> In last year's Budget I announced a project to rewrite Inland Revenue tax legislation in plain English. That is a tall order. The project is as ambitious as translating the whole of "War and Peace" into lucid Swahili. In fact, it is more ambitious. I am told that "War and Peace" is only 1,500 pages long. Inland Revenue tax law is 6,000 pages long and was not written by a Tolstoy. We have consulted extensively on how the project should be carried out, and I am glad to say that there is wide consensus. The Inland Revenue will publish the plans and arrangements shortly after the Budget.

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[75] *op.cit.* pp 9-10

> The aim is to prepare a series of rewrite Bills, the first of them to be ready for enactment in the 1997-98 Session. My noble and learned Friend Lord Howe has produced a thorough and helpful report on how Parliament might handle those Bills. We endorse his broad proposals, and invite the Procedure Committee to consider how the House is going to handle the Bills in a sensible fashion.[76] I can announce that my noble and learned Friend Lord Howe has agreed to chair the steering committee that will oversee the rewrite project.
>
> The project will bring the benefits of clarity and certainty to businesses and ordinary taxpayers. It has been widely welcomed and deserves the continuing support that it has enjoyed in all parts of the House.[77]

The following month the Revenue published its plans for the next stage in the project.[78] This is examined in section III of this paper.

F. HM Customs & Excise

The rewrite project deals exclusively with the *Revenue* tax code – not with those taxes administered by HM Customs & Excise. Following the passage of the *Finance Act 1995* – establishing the Revenue's statutory obligation to produce a report on tax simplification – HM Customs & Excise set up a project to review Customs, VAT and Excise legislation, as a first step to "making the law easier to understand and apply."[79] Details of this project were given in a long written answer in March 1996; part of this answer is reproduced below, as this indicates how differences between the two departments have fostered this separate approach:

> **Mr. Heathcoat-Amory:** Inland Revenue produced a report on tax simplification in December 1995 under Section 160 of the Finance Act 1995 entitled 'The Path to Tax Simplification'. HM Customs and Excise (Customs) shares with the Inland Revenue the objective of seeking to simplify legislation and reduce burdens on business.
>
> The two departments have already started working closely together wherever possible to reduce burdens, particularly on small and new businesses. Early benefits include, for new businesses, a joint leaflet, 'Starting Your Own Business' to help them assimilate information on VAT, income tax and national insurance; the provision of a joint notification form for business start-up and the availability of joint seminars. Other developments include the provision of each other's

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76 The Steering Committee published its report in January the following year (*Legislative Procedure for Tax Simplification Bills*, 30 January 1997 HC 126 1996-97). This is discussed in section II of this paper.

77 HC Deb 26 November 1996 c 170 Further details were given in Inland Revenue Budget press notice REV28, 26 November 1996

78 *Tax Law Rewrite: plans for 1997*, December 1996

79 HM Customs & Excise press notice 28/95, 15 June 1995

> leaflets at inquiry points and the extension last year of the Inland Revenue independent adjudicator's role to cover complaints against Customs …[80]
>
> However, because of significant differences in their role, Customs is following a different approach to simplification. Like the Revenue, Customs collects taxes for the UK Government: VAT and excise duties--oils, tobacco and alcohol; insurance premium tax; and, in due course, landfill tax. Unlike the Revenue, however, Customs also has other obligations. Customs collects customs duties for the EC; operates a range of duty relief and suspension regimes; protects society and UK trade by operating import and export prohibitions and restrictions; and collects trade statistics.
>
> The separate legislation--either UK or EC or both--for each of the taxes operated by Customs creates complexity for business through the different requirements for similar activities, such as registration. Many of Customs' legal requirements also apply to non-fiscal regimes such as the collection of trade statistics or licensing. Altogether, Customs legislation encompasses over 40 Acts of Parliament and more than 500 statutory instruments, together with over 200 Community instruments.
>
> Customs recognises that these different legal requirements impose costs on business, and the importance of removing or reducing them, wherever possible, across nearly 50 duty and suspension regimes it operates. In some cases, complexities are created by exemptions and special rules introduced to meet the needs of businesses. Where appropriate, existing reliefs will need to be retained but keeping tax legislation simple may well mean resisting the introduction of new reliefs.
>
> Customs is working through a rigorous deregulation programme, which has already included repealing a number of unnecessary or redundant provisions … As a Government we have encouraged the EC to deregulate. Some EC law, such as the Community customs code, is directly applicable and wherever opportunities are identified, Customs presses the Commission to simplify regulations ...[81]

The then Paymaster General, David Heathcoat-Amory, touched on the differences during the proceedings of the *Finance Act 1996*; on this occasion Dawn Primarolo MP had put down a new clause – similar in wording to Tim Smith's the year before – to require Customs to produce a report on tax simplification, saying: "I had assumed – as many people had – that Customs and Excise would be included in the review." For his part Tim Smith spoke against the clause:

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[80] for a recent discussion of the Closer Working Programme between the Revenue and Customs see, Treasury Committee, *HM Customs & Excise*, 8 February 2000 HC 53 1999-2000 pp 23-34

[81] HC Deb 1 March 1996 cc 756-758W

> The hon. Lady said it was an oversight that section 160 of the Finance Act 1995 did not apply to Customs and Excise. However since I drafted it, I can tell her it was not … we should discover how the Inland Revenue simplification programme proceeds … There is a scope for simplification, but we should not be overambitious about it. We should clearly have to tackle it in chunks and on a piecemeal basis, starting with the Inland Revenue.[82]

Mr Heathcoat-Amory added, "I urge members of the Committee to reject the new clause, not because the moves behind it are misguided but because we are doing so many of the things that it urges us to do. Furthermore it would clash with work towards the next Budget … [which would be obstructed] were officials and Ministers to be taken off those duties to produce a report which, however interesting, would not achieve what we want."[83] In the event the clause was rejected.

Since then, the focus of Customs' efforts has remained the ratification of policy and simplification of procedure, and for the time being, Ministers have not indicated that they see a rewrite project as a priority in this area.

G. Changes in the format of all statute law

The work of the Tax Law Rewrite project has fed into a review of the format of all statute law which began in 1998, with the result that all Acts passed after 1 January 2001 are to share the new format initiated by rewrite Bills. The background to this review was given in a report by the Lords Procedure Committee published in April 1999:

> **Format of the statute law: Report of the working group**
>
> A working group of officials with responsibilities for legislation was set up in 1998 to consider changes in the format of bills and Acts of Parliament. The Group's report is available in the Printed Paper Office.[84] The case for change arises out of two main factors: (a) new technology, including the Internet on which all bills and Acts are now published; and (b) the Inland Revenue Tax Law Rewrite Project, which both Houses have endorsed in order to make tax law easier to understand.
>
> The Procedure Committee agrees to the recommendations of the working group. The principal changes proposed are:
>
> - a new format for clauses, with bold clause titles instead of side notes;

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82 Standing Committee E 7 March 1996 c 757, c 760

83 *op. cit.* cc 761-2

84 The group comprised of representatives of the Public Bill Offices of each House, Parliamentary Counsel, Scottish Parliamentary Counsel and the Queen's Printer of Acts of Parliament (Controller of HMSO). It was chaired by the Clerk Assistant, House of Lords.

- Schedules in the same type size as clauses;
- more informative headers at the top of each page;
- some left alignment of internal headings, especially in Schedules;
- new format for Repeal Schedules …

> The Committee also considered a number of additional changes proposed by Lord Howe of Aberavon, chairman of the Tax Law Rewrite Project's Steering Committee. Generally the Committee preferred the original recommendations of the working group, but agreed improved layout of indentations and a modification to the style of Part, Chapter and Schedule headings which should be printed in bold type.[85]

As the Lords Committee reported in July 1999, the Commons Modernisation Committee agreed with all but one of these recommendations:

> The Commons Modernisation Committee also considered the proposed changes and agreed to all but one of them, namely the typeface. Whereas the Procedure Committee endorsed the working group's recommendation of Times New Roman, the Modernisation Committee preferred Palatino, which is a larger typeface. Accordingly, the Procedure Committee reconsidered its earlier decision and now recommends a typeface similar to Palatino but one which is more generally available on Windows-based personal computers, namely Book Antiqua. This typeface has also been agreed by the Modernisation Committee …
>
> It is proposed that the new format should take effect from the beginning of session 2000-01.[86]

Those interested in this issue are referred to this report, as an annex to this document provides a sample of the new format.

The Lords formally agreed with the Committee's proposals after a short debate on 22 July 1999;[87] the Modernisation Committee confirmed its approval for the proposals in its First Special Report in November 1999:

> We have reached agreement with the Procedure Committee in the House of Lords on a revised format for bills and Acts of Parliament. The new format takes account of the requirements of new technology and of the work of the Inland Revenue Tax Law Rewrite Project, which both Houses have endorsed in order to make tax laws easier to understand.[88]

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85 Lords Procedure Committee, *Second Report*, 20 April 1999 HL 52 1998-99

86 Lords Procedure Committee, *Fourth Report*, 14 July 1999 HL 84 1998-99 para 1

87 HL Deb 22 July 1999 cc 1176-1185

88 Modernisation of the House of Commons Select Committee, *First Special Report: work of the Committee: second progress report*, 1 November 1999 HC 865 1998/99 para 10

Recently the Leader of the House, Margaret Beckett, announced that the new format for legislation would be phased in; details were given in a written answer:

> **Mr. Levitt:** To ask the President of the Council when primary legislation will be printed in the new format agreed by both Houses in 1999.
>
> **Mrs. Beckett:** The new format is being introduced this Session, using new computer software which has had to be developed. The change will be staged, to allow everyone involved to become accustomed to working in the new format and to minimise the risk of disruption should there turn out to be flaws in the software. For the time being, Bills will continue to be introduced in the old format apart from any Bill originating from the Tax Law Rewrite. Each Bill will be published in the new format in the second House, once it has completed its passage through the first.
>
> So, Bills introduced in this House will be in the old format during their stages in this House; but Bills brought from the other place will be in the new format throughout our consideration of them. Similarly, the other place will deal with Bills introduced there in the old format, but deal with Bills brought from this House in the new format.
>
> All Acts passed after 1 January 2001 will be in the new format. When we are fully confident that the new format and software are problem-free, it will be used for all Bills at all stages.[89]

The work of the Revenue's Tax Law Rewrite Team in redesigning the format of Bills – in the context of the drafting of the *Capital Allowances Bill 2000-2001* – is discussed in more detail in section III.B2 of this paper.

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[89] HC Deb 13 December 2000 cc 185-6W

II Parliamentary Procedure

Rewrite Bills are to be subject to a new streamlined procedure for Parliamentary scrutiny, following recommendations made by the Commons Procedure Committee, and now provided for under Standing Order No. 60.[90] The Committee's work was foreshadowed by a report published by the Tax Law Review Committee. This section looks at these two reports in turn, before summarising the procedures of the House to be applied to rewrite Bills.

A. The report of the Tax Law Review Committee

At an early stage in the rewrite project there was a clear consensus that existing parliamentary procedure was not appropriate for dealing with the series of rewrite Bills Parliament would have to scrutinise in the coming years. Following publication of *The Way Forward* document by the Revenue in July 1996, the Tax Law Review Committee published a report on this issue. The Committee noted that rewrite Bills could not be treated either as consolidation Bills or as ordinary Finance Bills; rather they were an intermediary category between the two.

> It will not be possible to present a Tax Simplification Bill to Parliament as a normal consolidation Bill. Such Bills must be certified not to change the law, but the substantial changes in language which this project is designed to achieve will mean that the risk of minor, inadvertent changes in the effect of the legislation cannot be entirely excluded. Moreover, it is likely to introduce some deliberate, though limited, modifications in some areas. Therefore it will not be possible to give the necessary certificate.
>
> Neither will it be realistically possible to apply the ordinary Public Bill Procedure. There are two aspects to this.
>
> - Firstly, the Inland Revenue estimates that there are 6,000 pages of primary direct tax legislation. The rewritten law is unlikely to be materially shorter and could be significantly longer. Since the full project is expected to take around five years, Parliament can expect to receive several thousand pages of tax Bills spread, at the longest, over four or five years. Using the ordinary Bill procedure would require a prohibitively large time commitment from the normal legislative machinery and from MPs themselves.
>
> - Secondly, it would be quite inappropriate to treat the rewritten legislation in the same way as ordinary Public Bills, including Finance Bills, since this

[90] Standing Order No. 60 (Tax simplification bills), *Standing Orders of the House of Commons: Public Business*, 25 May 2000 HC 518 1999/2000 p 37

> could, and almost certainly would, reopen debate on tax policy issues which had already been enacted and established.[91]

As a consequence, what was needed was an "intermediate, tailor-made procedure, which will enable Parliament to scrutinise the rewritten legislation properly but without opening up debate on policy matters which have already been approved by Parliament and which are not intended to change." Finding a solution to this problem was critical to the success of the rewrite project itself.

The Committee pointed out that there was historical precedent for four different categories of consolidation:

> *straight consolidations*: *Bennion on Statute Law* records that straight consolidations were discussed as early as the 16th century but that it was not until the 19th century that these began to be enacted.[92] We have been told these consolidations faced two problems:
>
> - they were not permitted to make any change in the law and so had to reproduce existing doubts and ambiguities; and
> - at times Parliament was prevented from enacting even straight consolidations by the view, which has at times held sway, that any consolidation must, by definition, change the law.
>
> *consolidation with amendments*: The Consolidation of Enactments (Procedure) Act 1949 was enacted to resolve these difficulties. In order to facilitate consolidation it allowed 'corrections and minor improvements' to be made to the existing law. These are 'amendments of which the effect is confined to resolving ambiguities, removing doubts, bringing obsolete provisions into conformity with modern practice, or removing unnecessary provisions or anomalies which are not of substantial importance, and amendments designed to facilitate improvement in the form or manner in which the law is stated.' But they must not 'effect changes ... of such importance that they ought ... to be separately enacted by Parliament.'
>
> *consolidation with Law Commission amendments*: The changes in the existing law permitted under the 1949 Act are quite limited. More significant amendments can now be made on consolidation where the Law Commission submits a report to the joint Committee on Consolidation Bills, after due consultation, recommending that the existing law be amended and explaining the reasons for the proposed amendment. This procedure has now very largely superseded the 1949 Act.

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[91] Tax Law Review Committee, *Parliamentary procedures for the enactment of rewritten tax law*, November 1996 p 7 Although the Revenue had yet to elect for a *series* of rewrite Bills, the Committee assumed the rewritten code would be enacted this way, given that re-enacting direct tax law in a single bill would necessitate a bill of 6,000 or more pages – both unmanageable and politically controversial.

[92] Francis Bennion, *Statute Law*, Third Edition 1990, pp 66-7

> *ad hoc consolidation*: On a few occasions, ad hoc consolidations have been enacted. The most relevant to our terms of reference was the Customs & Excise Act 1952, but others are the Local Government Act 1933, the Public Health Act 1936 and the Highways Act 1959. The Customs & Excise Act was designed to consolidate the law with amendments to simplify it and bring it into conformity with modern practice, but any amendments which, it was thought, ought to be separately enacted by Parliament were excluded.[93]

Each of these categories of consolidation used its own Parliamentary procedure. In the case of the 1952 Customs & Excise Bill (the fourth category), the Bill was dealt with under a non-statutory procedure, with the successive stages established broadly along the lines appropriate for a straight consolidation Bill:

> Immediately after its Second Reading in the House of Commons, the Bill was referred to a joint committee of both Houses, comprising four peers and five MPs, chaired by Sir Patrick Spens MP. The joint committee sat three times (18, 20 and 25 March 1952) and then made a Report to both Houses, in addition to reporting the Bill itself to the House of Commons.
>
> Its Report records that 'the Committee have made a number of amendments ... which seemed to them to be desirable.' It adds that 'further reforms in the customs & excise law may be desirable' but that 'it would not be desirable for [the committee] to discuss at length proposals for substantial and controversial changes in the law and that the Committee's amendments should not go beyond amendments calculated to simplify or clarify the law.'
>
> The Bill returned to a Committee Stage of the whole House, Report Stage and Third Reading on 15 July 1952, a continuous process which lasted barely more than quarter of an hour. It then went to the House of Lords where the Second Reading debate on 21 July 1952 lasted less than half an hour and the subsequent stages were purely formal.[94]

In the Committee's view it was this piece of legislation which provided the best model for the scrutiny of rewrite Bills:

> From our review of the historical precedents, it is clear to us that the closest analogy to the proposed tax simplification Bills is the Customs & Excise Act 1952. This Act was designed to consolidate customs and excise law — which at the time was spread across 200 separate Acts enacted over more than 150 years — with amendments to simplify it and bring it into conformity with modern practice. Amendments which it was thought should more properly be enacted separately by Parliament were excluded, ensuring that the Bill was widely welcomed and non-controversial.[95]

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93 *op.cit.* pp 9-10
94 *op.cit.* p 10
95 *op.cit.* p 2

The Committee were particularly concerned as to the form of the Committee stage for a rewrite Bill – and recommended that a joint committee of both Houses was the solution:

> The most important issue for consideration is the choice of the appropriate form of Committee Stage. In normal Parliamentary practice, it is axiomatic that Finance Bills are dealt with primarily — if not exclusively — by the House of Commons. The central question in this is whether a Tax Simplification Bill should best be regarded as a Finance Bill or as a consolidation Bill. It is on just this issue that the Customs & Excise Act 1952 points the way to a very practical compromise. For that Bill was introduced, like a Finance Bill, in the House of Commons but was also examined, like a consolidation Bill, by a joint committee of both Houses. This very clear precedent does, therefore, suggest that for a Tax Simplification Bill — the predominant purpose of which will be to consolidate and clarify the language of existing law — the most appropriate form for detailed examination in committee is that which has been proven to work so well in practice for mainstream consolidation Bills.
>
> Given the need to hear evidence from Parliamentary Counsel, Revenue officials, the consultative and steering committees and possibly other witnesses, and also the useful role peers customarily play in the consolidation Bill procedure, we believe there would likewise be real advantage in enabling them to play an active part in the consideration of Tax Simplification Bills. Our fundamental proposal is therefore that each Tax Simplification Bill should be referred, after Second Reading in the House of Commons, to a joint committee of both Houses.[96]

In reaching its conclusions, the Committee was concerned that a balance be achieved between scrutiny and debate on any rewrite Bill:

> Throughout their Parliamentary stages, the extent to which the simplification Bills can be debated and amended will be a critical issue. Parliament must scrutinise them fully, but being very substantially consolidation measures, they will need protection from the buffeting of conventional political debate. The aim should be to ensure that Parliament debates only:
>
> - whether or not the Bill improves the clarity of the law, and whether further improvements could be made to that end; and whether or not the Bill accurately reproduces the effect of the existing law, other than where (with a view to simplification) departures are intentional, as disclosed by the explanatory memorandum. Amendments under this head should only be permissible to the extent that they seek to improve clarity or remove unintentional departures from the effect of the existing law.
>
> - intentional departures from the existing law, as disclosed by the explanatory memorandum. We do not believe there should be any restriction on

[96] *op.cit.* p 3

> amendments which may be tabled under this head within the scope of these departures. [97]

B. The Select Committee on Procedure

Following publication of the Howe report, the Leader of the House invited the Select Committee on Procedure to carry out an inquiry into its proposals, which it published in January 1997.[98] In its essentials, the Select Committee report concurred with the Howe recommendations, agreeing that neither the procedures used for the ordinary run of public bills nor the procedure for consolidation bills were appropriate for the proposed Tax Simplification Bills, and that these Bills should be referred after second reading to a Joint Committee of both Houses, with a Commons majority and a Commons Chairman.

At the outset the Committee noted that "the House has not yet had any opportunity to debate the proposed programme of tax simplification, other than in the Finance Bill Committee or in the context of the annual debates on the Budget" and suggested "the House should be given the opportunity to approve the general principles underlying the rewrite exercise." This suggestion was not taken up. This may explain why it is proposed to take the Second Reading of the *Capital Allowances Bill 2000-2001* on the floor of the House – rather than in Second Reading Committee.

On the assumption the House would have already "had an opportunity to express a view on the general principles of simplification being adopted, before the appearance of the first formally presented bill", the Committee went on to recommend that following a first reading, rewrite Bills be referred to a Second Reading Committee:

> It is accepted that the Tax Simplification Bills should be introduced into the House of Commons. In the normal course of events, there would then follow a debate on second reading on the floor of the House. Such a debate would be likely to be largely technical and "Policy-free". It would therefore prima facie seem to be appropriate to be debated in a Second Reading Committee upstairs. Since implementation of the recent reforms, all Law Commission Bills have been automatically referred to Second Reading Committees, unless specifically de-referred. This has been universally accepted and has caused no difficulty …
>
> **The second reading committee procedure has proved itself quite capable of dealing with comparable bills over recent years, and we are confident that it is the appropriate route for Tax Simplification Bills.**
>
> Under Standing Order No. 58B, Law Commission Bills — 'any public bill, the main purpose of which is to give effect to proposals contained in a report by either of the Law Commissions' — stand automatically referred to a second reading committee. Under Standing Order No. 58A, the questions on second and

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97 *op.cit.* p 4

98 *Legislative Procedure for Tax Simplification Bills*, 30 January 1997 HC 126 1996-97

> third reading of consolidation bills — mainly defined as 'consolidation bills, whether public or private; Statute Law Revision Bills; bills prepared pursuant to the Consolidation of Enactments (Procedure) Act 1949...' — are put forthwith.[99]
>
> It would therefore seem a relatively simple matter for a bill whose main purpose was to simplify tax law to stand automatically referred to a second reading committee. For the avoidance of any controversy, however, it would be possible for a motion to be put forthwith to the House in respect of each bill, to the effect that it be proceeded with as a Tax Simplification Bill. This would trigger the sequence of a second reading committee, select committee and committee of the whole House proposed below.[100]

For those unacquainted with the operation of second reading committees, an extract from the House of Commons Factsheet on standing committees is reproduced below:

> Second Reading Committees may be set up to consider the principle of a Bill, as the House does on Second Reading, the idea being to save time in the Chamber. There is an equivalent procedure whereby the Scottish Grand Committee considers the principle of Scottish Bills. In effect, only non-controversial Bills are so referred, and Second Reading Committees are constituted afresh for each Bill, and the membership made known as for all other Standing Committees. They may report either that the Bill should, or should not, be read a second time; in the latter case they are empowered to state their reasons. The Motion for a second reading is then taken in the House without debate. Recent examples of Bills dealt with in this way are the Birds (Registration of Charges) Bill 1996-97 and the Police and Firemen's Pensions Bill 1996-97.[101]

On the question of committal, the Committee considered that "neither the ordinary Standing Committee procedure nor, by extension, Committee of the whole House would be appropriate" for rewrite Bills, given that "the process in Standing Committee of proceeding by a series of rather formalised debates on amendments and individual clauses offers little opportunity to explore in detail areas of technical complexity. Nor does it give outside experts ready access to Members to explain any points of objection that they may have."[102] The characteristics of rewrite Bills suggested the use of a Joint Committee of both Houses would be ideal, with a Commons majority to symbolise its primacy in all fiscal legislation:

> The perceived advantages of having a Joint Committee are:
> - avoiding duplication of the process of scrutiny by oral evidence being undertaken in both Houses;
> - using the level of legal expertise available in the Lords to the mutual benefit of both Houses;

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[99] These Standing Orders are now Standing Order No. 59 and No. 58 respectively.
[100] HC 126 1996-97 pp viii-ix
[101] *Standing Committees: HC Factsheets - Series L No 6*, March 2000
[102] HC 126 1996-97 p x

- spreading the workload between the Houses; as the Howe Report observed "peers have fewer other duties".

> Experience with the Joint Committee on Consolidation suggests that the Lords Members play a dominant part and that there are indeed frequent problems with ensuring sufficient attendance of Commons Members to provide the quorum. While it may be that the content of the proposed Tax Simplification Bills will be such as to ensure a higher level of interest among Members, there is no doubt a sense that a Joint Committee will be easier to man effectively.
>
> Given that the Lords Procedure Committee has pronounced itself as content with the proposal for a Joint Committee the only evident drawback would be on the constitutional ground of whether it is appropriate for the Upper House to play any significant role in the consideration of bills relating to taxation. We do not on balance consider any such objection to be well-founded. Past consolidation measures on taxation, most recently the 1988 Income and Corporation Taxes Act, have all been passed through the normal consolidation route, having been introduced in the Lords. The 1952 Customs and Excise Bill was committed to a Joint Committee without evident qualms and to good effect …
>
> Where joint Committees have been appointed in the past, there have normally been equal numbers from both Houses … There is however something to be said for the House of Commons to have a majority on the committee, if only for formal purposes and as a symbol of its primacy in this area. We consider that the Chairman should be drawn from the Commons, as does the House of Lords Procedure Committee.
>
> If Commons procedures were followed, as we propose below, there would be the theoretical possibility of all the voting Commons Members being in a minority. We therefore consider that there should be one more Member from the Commons than from the Lords. A Treasury Minister will also have to be included, since it will be the Minister responsible for the bill who will have to defend it in both informal discussion and in the process of consideration of any amendments.
>
> **We recommend the establishment of a Joint Committee of both Houses on Tax Simplification Bills, with a majority of one Member from the House of Commons, and the Chairman being drawn from the Commons members of the Committee.[103]**

On the *modus operandi* of a Joint Committee on Tax Simplification Bills, the Select Committee recommended that "the greatest possible latitude be permitted to the committee in its terms of reference":

> The Howe Report accepted that the operation of the committee would be for the committee itself to decide. We do not see much value in trying to lay down in

[103] *op.cit.* p xi-xii

> advance how it might best proceed – for example, when to hear oral evidence and from whom. The terms of reference in the Standing Order could specify that it was to consider such bills and report to the House on the contents, either generally, or according to set criteria – as is the case with the Statutory Instruments and Deregulation Committees. In both those cases however there was some anxiety that the committees might be tempted to go too far down the path of scrutiny of the merits of the instruments they were directed to examine. That is not the case here. **The Consolidation Committee is directed simply to 'consider' a defined class of bills; that may be sufficient in this case. We consider that the greatest possible latitude be permitted to the committee in its terms of reference, so that it will feel able to report to the House on problems arising from the Tax Simplification Bills committed to it.**[104]

Finally, once the rewrite Bill had completed this stage, the Committee proposed its later stages in the Commons should be purely formal:

> On report of the Bill to the House, it will stand committed to a Committee of the whole House, which will in due course be free to go through the Bill clause by clause. There would evidently be no sense in sending it to a standing committee for this purpose. We do not consider there to be any need for a Report stage, or for anything beyond a perfunctory Third Reading. All this however rests on the House having confidence in the earlier stages of proceedings and in the detailed consideration to be given in the proposed Joint Committee, as well as the opportunity for amendment during Committee of the whole House.[105]

On the question of the House of Lords' scrutiny, the Committee made the following comments:

> It is of course a matter for the Lords to decide the best procedures to employ in their House. It does however seem likely that every effort would be made to make them brief, whether or not the bills are formally certified as money bills within the meaning of the 1911 Parliament Act[106] … we note that the Lords Procedure Committee gave further consideration of the matter on January 28th 1997, and endorsed the general proposition that, while stages after second reading in the House of Lords would normally be formal, the procedure would be flexible enough to allow drafting amendments if necessary.[107]

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[104] *op.cit.* p xii

[105] *op.cit.* p xiii

[106] In evidence to the Committee the Clerk of the House observed, "it is by no means certain that the bills will be certified as money bills … the 1998 Income & Corporation Taxes Act was indeed introduced in the Lords and passed through the normal consolidation route … even if they were certified, that does not mean the Lords could not amend the bills; the Commons has in the past agreed to such amendments" (*op.cit.* p 9).

[107] *op.cit.* p xiii

C. Procedural changes for tax simplification

Following the Committee's report, in March 1997 the House approved a Standing Order to establish the procedure for Tax Simplification Bills, reproduced below:

Tax Simplification Bills

(1) In this order 'a tax simplification bill' means a bill which has been presented, or brought in upon an order of the House, by a Minister of the Crown and which has been ordered to be proceeded with as such a bill.
(2) A motion may be made by a Minister of the Crown at the commencement of public business, that a specified bill be so proceeded with, and the question thereon shall be put forthwith.
(3) A tax simplification bill shall, upon the making of an order under paragraph (2) above, stand referred to a second reading committee unless the House otherwise orders.
(4) A motion may be made by a Minister of the Crown at the commencement of public business, that a tax simplification bill shall no longer stand referred to a second reading committee, and the question thereon shall be put forthwith.
(5) The provisions of paragraphs (3) to (6) of Standing Order No. 90 (Second reading committees) shall apply to any bill referred to a second reading committee under paragraph (3) above.
(6) A tax simplification bill shall, upon its being read a second time, stand committed to the Joint Committee on Tax Simplification Bills.
(7) A bill which has been reported from the said Joint Committee shall stand re-committed to a committee of the whole House unless the House otherwise orders.
(8) If a motion that the committee of the whole House be discharged from considering a tax simplification bill is made by a Minister of the Crown immediately after the order of the day has been read for the House to resolve itself into a committee on the bill, the motion shall not require notice and the question thereon shall be put forthwith and may be decided at any hour, though opposed; and if such question is agreed to the bill shall be ordered to be read the third time.[108]

For reference, subsections 3-6 of Standing Order No. 90 (Second reading committees) are reproduced below:

(3) A second reading committee shall be a standing committee.
(4) A second reading committee shall report to the House either that it recommends that the bill ought to be read a second time or that it recommends that the bill ought not to be read a second time, and in the latter case it shall have power to state its reasons for so recommending.
(5) When a second reading committee shall have made a report to the House in respect of a bill referred to it under paragraph (2) above, the bill shall be ordered to be read a second time upon a future day.

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[108] Standing Order No. 60, passed on 20 March 1997 (HC Deb cc 1099-1100).

(6) Upon a motion being made for the second reading of a bill reported from a second reading committee, the question thereon shall be put forthwith.

Turning to the Joint Committee on Tax Simplification Bills, on 13 November 2000 the Lords approved a motion, agreeing to the recommendations made by its Procedure Committee on the Joint Committee's terms of reference,[109] as well as other procedural matters; the relevant part of this motion is reproduced below:

2. Tax simplification bills

Tax simplification bills are a new form of legislation proposed by the Tax Law Rewrite Project. They are intended to make the language of tax law simpler, but they preserve the effect of the existing law, subject to any minor changes which may be desirable. Such bills will normally be introduced into the House of Commons, and it is expected that the Speaker will certify them as money bills. It is proposed that a joint committee of the two Houses should consider the bills after second reading in the Commons and that the joint committee's report should be laid before both Houses.

Given the subject matter of tax simplification bills, the Committee recommends that when the House deals with such bills:

- procedure in the joint committee should follow the procedure of select committees of the Commons when such procedure differs from that of select committees in the Lords, and the chairman of the joint committee should have power to select amendments to the bill;
- the committee stage of a tax simplification bill, being a money bill, should normally be negatived.

It is intended that the first tax simplification bill should be introduced early next session. The Committee therefore recommends that the Joint Committee on Tax Simplification Bills should have the following orders of reference:

Joint Committee on Tax Simplification Bills

(1) That a select Committee be appointed to join with a committee appointed by the Commons as the Joint Committee on Tax Simplification Bills to consider tax simplification bills, and in particular to consider whether each bill committed to it preserves the effect of the existing law, subject to any minor changes which may be desirable;
(2) That the quorum of the committee shall be two;
(3) That the committee have leave to report from time to time;
(4) That the committee have power to appoint specialist advisers;
(5) That the minutes of evidence taken before the committee shall, if the committee think fit, be printed and delivered out; and

[109] House of Lords Procedure Committee, *Fourth Report*, 8 November 2000 HL 113 1999-2000 para 2

> (6) That the procedure of the Joint Committee shall follow the procedure of select committees of the House of Commons when such procedure differs from that of select committees of this House, and shall include the power of the chairman to select amendments.[110]

For its part the Commons debated a motion on the establishment of the Joint Committee on 19 December;[111] the motion is reproduced below:

> That it is expedient that a Joint Committee of both Houses be appointed to consider tax simplification bills, and in particular to consider whether each bill committed to it preserves the effect of the existing law, subject to any minor changes which may be desirable.

The Paymaster General, Dawn Primarolo, summarised the purpose of the motion as follows:

> This is a narrow motion for the process of agreeing new procedures by which Parliament can scrutinise tax simplification Bills and ensure that they are fit to be enacted ... The question was considered in 1996 by a working party set up by the tax law rewrite committee, chaired by Lord Howe of Aberavon. The group proposed that the Bills should be introduced in the House of Commons and then referred after Second Reading to a Joint Committee of both Houses, with a Commons majority and chaired by a Member of that House.
>
> The general approach was broadly endorsed by the Commons Select Committee on Procedure in February 1997, following which this House passed Standing Order No. 60 on 20 March 1997, setting out the broad procedure for tax simplification Bills. The detailed procedure, including such matters as the composition and the proceedings of the Joint Committee, was deferred until such time as it appeared in the new Parliament that a Bill would be ready for enactment. Today's motion is the first step in setting up this Joint Committee. If the House agrees to the proposal, a message will be sent to another place inviting agreement. If it is agreed, each House will set up its own Committee which, together, will meet as the Joint Committee.[112]

The Paymaster General went on to give some details on the composition of the Joint Committee, and the way in which she expected it would operate:

> At present, we expect the Committee to be composed of 13 members in all, of whom seven will be from this House. The details of the Committee's procedure are still being discussed through the usual channels and will be subject to final agreement ... The Committee will consider the Bill and amend it if necessary. It

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[110] HL Deb 13 November 2000 cc 11-14

[111] HC Deb 19 December 2000 cc 317-325 The motion was agreed to on a deferred division, the results of which were published the following day (HC Deb 20 December 2000 c 468, cc 513-7).

[112] *op.cit.* c 317

> will, of course, be alert to ensure that no more than minor changes are made and that the procedures are not abused … I understand - this will be for the final agreement of the House when the procedure is agreed - that the Committee will decide how best to proceed on scrutiny of the legislation. That will be a matter for the Chairman and members. [113]

Both Richard Ottaway MP speaking for the Conservatives, and Edward Davey MP, speaking for the Liberal Democrats, confirmed their parties' support for the project as a whole and the procedure adopted for the Parliamentary scrutiny of rewrite bills.

On 21 December the Leader of the House Margaret Beckett announced that the Second Reading of the *Capital Allowances Bill* would take place, provisionally, on 15 January 2001 on the floor of the House – rather than in Second Reading Committee.[114] In evidence to the Select Committee on Procedure in November 1996, Lord Howe, suggested this would be best:

> The principle of each chunk of simplified legislation deserves at least to be exposed to the opportunity of consideration on the floor of the House. Certainly the first one, I think, will need to be because the first one will be largely setting the style and the pattern of such legislation … It may be that after the first one or two or three have been presented, and they seem so innocent and routine, that they can be put to a Second Reading Committee, but I think with the first one, all the dogs should have a chance of seeing the newly-invented rabbit, if that is not too confused a metaphor.[115]

Following the House's approval of the narrow motion on establishing a Joint Committee, a second more substantive motion on its operation was introduced on 9 January 2001;[116] unsurprisingly, its wording is much the same as the Lords' motion approved on 13 November. It is reproduced below:

Tax simplification (Joint Committee)

> (1) There shall be a Select Committee, to consist of seven Members, to join with the committee appointed by the Lords as the Joint Committee on Tax Simplification Bills, to consider tax simplification bills, and in particular to consider whether each bill committed to it preserves the effect of the existing law, subject to any minor changes which may be desirable.
> (2) The Committee shall have power to send for persons, papers and records, to sit not withstanding any adjournment of the House and to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

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[113] *op.cit.* cc 317-8
[114] HC Deb 21 December 2000 c 567 To this end a motion was laid on 10 January 2001.
[115] HC 126 1996-97 pp 2-3
[116] House of Commons Order of Business 9 January 2001 (item 6)

> (3) The quorum of the Committee shall be two.
> (4) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.
> (5) The procedure of the Joint Committee shall follow the procedure of select committees of this House when such procedure differs from that of select committees of the House of Lords.
> (6) The chairman shall have the like powers of selection as are given to the chairman of a standing committee under paragraph (3)(a) of Standing Order No. 89 (Procedure in standing committees).

For reference purposes, the relevant sections of the Commons' Standing Orders pertinent to this motion are reproduced below. Paragraph 3(a) of Standing Order No. 89 states the following:

> (3) *(a)* Any notice of an amendment to a bill which has been committed or referred to a standing committee, or of a motion relative to a European Union document or documents or an amendment thereto given under Standing Order No. 119 (European Standing Committees) shall stand referred to the committee, and the chairman shall have the like powers as are given to the Speaker, the Chairman of Ways and Means and either Deputy Chairman respectively by Standing Order No. 32 (Selection of amendments).

On the power of to select amendments, Standing Order No. 32 states:

> Selection of amendments.
> **32.** - (1) In respect of any motion or any bill under consideration on report or any Lords amendment to a bill, the Speaker shall have power to select the amendments, new clauses or new schedules to be proposed thereto.
> (2) In committee of the whole House, the Chairman of Ways and Means and either Deputy Chairman shall have the like power to select the amendments, new clauses or new schedules to be proposed.
> (3) The Speaker, or in a committee of the whole House, the Chairman of Ways and Means or either Deputy Chairman, may, if she think fit, call upon any Member who has given notice of an amendment, new clause or new schedule to give such explanation of the object thereof as may enable her to form a judgement upon it.
> (4) For the purposes of this order, motions for instructions to committees on bills, motions to commit or re-commit bills and motions relating to the proceedings on bills shall be treated as if they were amendments under paragraph (1) of this order.
> (5) The powers conferred on the Speaker by this order shall not be exercised by the Deputy Speaker save during the consideration of the estimates.

In addition a motion to establish that part of the membership of the Committee contributed by the Commons was also introduced at this time; it is reproduced below:[117]

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[117] House of Commons Order of Business 9 January 2001 (item 7)

Tax simplification

> That Dawn Primarolo, Mr Chris Pond, Ms Ruth Kelly, Mr Joe Ashton, Mr Kenneth Clarke, Mr Richard Ottaway and Mr Edward Davey be members of the Select Committee appointed to join with a Committee of the Lords as the Joint Committee on Tax Simplification.

Although it was expected that both of the Motions would be debated by the House on 9 January, in the event neither was moved. At the date of writing, both Motions have been set back in the Remaing Orders and Notices for Future Business, and a date for their being moved has not been set.

III The development of the Taw Law Rewrite project

A. Annual plans 1997-2000

1. Plans for 1997

Following Kenneth Clarke's announcement in his November 1996 Budget – that the rewrite programme would go ahead[118] - the Revenue published its plans for the next stage in the project the next month.[119] One central problem faced by the project concerned the re-ordering of legislation, and whether income tax and corporation tax should be split. In the consultation document issued in July 1996, the Revenue had asked for views on the best way to order legislation; in particular, whether this should be done by separate taxes:

> *Ordering by separate taxes*
>
> 18. This is a very obvious division of the material, and one which is already widely used within the present ordering. There are, for example, already separate Acts for Inheritance Tax, Stamp Duty and Petroleum Revenue Tax. The one big area where the existing ordering does not follow this model is in combining Income Tax and Corporation Tax in ICTA 1988. Capital allowances, which can apply for Income Tax or Corporation Tax, are the subject of a separate Act. Finally though there is a separate Act for Capital Gains Tax, and individuals pay that tax at their marginal income tax rate, the capital gains of companies are in fact charged to Corporation Tax.
>
> 19. Though it would help to provide more obvious entry points for different types of users, it would not be straightforward to split this material into a pure Income Tax Act, an Act covering both tax on companies' profits and on their capital gains, and a Capital Gains Tax Act dealing only with non-company gains. Much of the structure of Corporation Tax rides on the back of the Income Tax structure. So there would need to be either substantial repetition of material in the two new Acts or very extensive cross-referencing.
>
> 20. Under this option, much of the substantive material is likely to end up in the Income Tax Act, which would be very large. From a user's point of view there are drawbacks to any long Act:
>
> - first, the sheer volume makes it difficult for the user to find his or her way around the Act
> - second, the overall context into which any group of individual provisions fits is inevitably more obscure in a large Act than in a smaller Act.
>
> So ordering *within* the Act, comprehensive cross-referencing and clear signposting would all assume much greater importance. And their proliferation

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[118] HC Deb 26 November 1996 c 170

[119] *Tax Law Rewrite: plans for 1997*, December 1996

> would add to the complexity already inherent in the length of the Act. By the same token, the numbering of provisions within the Act …would present bigger problems under any numbering system which sought to give information about the place of an individual section in the structure of the Act.
>
> 21. Finally, assuming future Finance Bill changes continue to be made as at present largely through textual amendment of the existing legislation, amendments and additions made by subsequent Finance Acts would be less easy to cope with. Unless it constituted a separate Act, there would be no possibility of consolidating just that limited part of the tax code most affected by the amendments and additions.[120]

Despite these disadvantages the majority view among respondents to the consultation document favoured the division of separate taxes into individual Acts; in particular that income tax and corporation tax should be split:

> The general view in consultation was that the differences between income tax and corporation tax are now so significant that it makes sense to put them into separate Acts. Most were willing, within limits, to accept some repetition of rules and a resulting increase in the length of legislation if that led to greater clarity. More than one remarked that what matters is not how many pages the rules take up but how long it takes to understand them.
>
> Overall the responses point towards:
> - separate Acts covering income tax and corporation tax, possibly both including the appropriate capital gains charging provisions
> - individual Acts for each of the other taxes
> - separate Acts for capital allowances and for capital gains computational provisions
> - a separate Act for various general administrative provisions currently in the Taxes Management Act 1970.[121]

At this stage the Revenue was unwilling to take a final decision on splitting ICTA, arguing that it would have to make progress in rewriting the main income tax provisions for individuals before coming to a view, although it foresaw the use of individual Acts covering capital allowances, stamp duties, inheritance tax and management.

A second important development announced in *Plans for 1997* was the creation of two new bodies to assist the rewrite: a Consultative Committee to ensure continuous consultation with all relevant private sector interests; and, a Steering Committee to provide strategic guidance. In the case of the latter, the then Financial Secretary, Michael Jack, announced the membership of the Committee in a written answer on 11 December

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[120] *Tax Law Rewrite: the way forward*, July 1996 pp 23-4
[121] *Tax Law Rewrite: plans for 1997*, December 1996 pp 7-8

1996 (just prior to this, Kenneth Clarke had confirmed that Lord Howe would chair the Committee in his Budget speech on 26 November):

> **Mr. Forman:** To ask the Chancellor of the Exchequer who will be the members of the tax law rewrite steering committee being chaired by the right hon. the Lord Howe of Aberavon CH, QC.
>
> **Mr. Jack:** The steering committee will play a crucial role in the rewrite project. Under the chairmanship of the right hon. the Lord Howe of Aberavon CH, QC, the committee will guide the project through the challenges that lie ahead, while ensuring that it keeps to its objectives. The committee combines the talents and experience of a wide range of members drawn from Parliament, the legal and accountancy professions, consumer interests and the private sector.
>
> I am delighted to announce today that the other members of the committee will be the right hon. Sir John Balcombe, Mr. Ian Barlow, Dr. John Avery Jones CBE, Mr. Steve Matheson CB, Dr. John Marek MP, Ms Sheila McKechnie OBE, Sir John Shaw and Mr. Tim Smith MP. I am sure that this important project will benefit greatly from their experience.[122]

Both Committees began to meet in spring 1997;[123] minutes to all of their meetings are published on the Tax Law Rewrite Project internet site.[124]

Plans for 1997 also looked at three other important issues: redrafting rewritten legislation; managing the project as a whole; and, assessing its costs and benefits.[125] On the question of drafting, and the clarity of any rewritten legislation, the Revenue made the following observation:

> **Our objective will be to redraft all the legislation in the clearest and simplest terms we can achieve.** In this way, we expect to make more areas of the legislation more accessible to ordinary taxpayers … However, we do not believe we will be able to achieve a *uniform* level of clarity since some areas of the law are inherently more complex than others. Some provisions will require an understanding of complex underlying concepts and, however clearly drafted, may be accessible only to those with the relevant specialist knowledge.[126]

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[122] HC Deb 11 December 1996 cc 189-190W

[123] The Steering Committee first met on 26 February; the Consultative Committee first met on 23 April (*Tax Law Rewrite: plans for 1998/99*, May 1998 pp 10-12). Lord Howe remains the Chairman of the Steering Committee, although there have been some changes in its membership.

[124] www.inlandrevenue.gov.uk/rewrite/minutes.htm The membership of both Committees as at December 2000 is set out in para 8-9 of the Explanatory Notes to the *Capital Allowances Bill* (Bill 10-EN).

[125] The last of these three issues is discussed below in section III.A3.

[126] *Tax Law Rewrite: plans for 1997*, December 1996 p 16

On the question of management, the Revenue noted the views of the Tax Law Review Committee that re-enacting direct tax law would have to be done in a *series* of Bills,[127] and argued this had implications for the future planning of the rewrite project:

> One approach would be for each Bill to contain a single tranche of legislation, comprising whichever blocks were ready at the time of its presentation to Parliament. But that could be messy because:
>
> - it would probably need a series of consolidation Bills to re-order and renumber the legislation into its final structure, and
> - unless implementation of the new law was delayed – which would itself create difficulties – a very large amount of cross-referencing to the old legislation would be needed.
>
> We would therefore prefer to make each Bill coherent and self-contained … that means that the rewriting should not proceed on a broad front, tackling the whole range of taxes simultaneously.[128]

The Revenue also proposed a stage implementation of rewrite Bills – rather than a 'Big Bang' approach, storing up all rewritten legislation to come into force on an appointed day. Nearly all respondents to the earlier consultation document had supported the former course, as:

> This would produce earlier benefits of:
> - reduced compliance costs
> - earlier implementation of some parts of written legislation
> - a shorter time before significant parts of Finance Bills could be written in the new style
> - allowing practical experience of using the rewritten legislation to be available in time to affect the later stages of the project.[129]

In its work programme for 2000/01 published in April 2000 the Revenue noted that it would "need to revisit this conclusion [in favour of staged implementation] in the coming months, in the light of our experience with the Capital Allowances Bill."[130] However, in July 2000 it was confirmed that for practical reasons, income tax legislation would be enacted in stages, and, in effect, splitting ICTA into a series of Acts:

> The Tax Law Rewrite project, which is dedicated to making over 6000 pages of tax law clearer, has today announced its future work programme for 2001/02 and later years. It proposes a first Income Tax Bill, ready for introduction in

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[127] Tax Law Review Committee, *Parliamentary procedures for the enactment of rewritten tax law*, November 1996 The report is discussed in section II.A of this paper.

[128] *Tax Law Rewrite: plans for 1997*, December 1996 p 24

[129] *op.cit.* p 25

[130] *Tax Law Rewrite: plans for 2000/2001*, April 2000 p 15

> Parliament in November 2002: this Bill will contain the provisions relating to employment income and some related income. As part of the work for this Bill, the project will rewrite the Pay As You Earn Regulations. This new development should be warmly welcomed by employers. A second Income Tax Bill - probably covering trading income, property income and savings & investment income - should follow in November 2003.[131]

The rewrite project team gave more details of this decision in a paper presented to the Tax Law Rewrite Steering Committee at this time:

> The original working assumption had been that the project would bring forward complete Bills for enactment - as was being done for Capital Allowances. In 1999 it had been suggested that it might be possible to enact the Income Tax legislation - which would be very lengthy - in two stages. Largely for practical reasons, the project team was now proposing that this legislation might be enacted in three (or possibly four) separate Bills.
>
> These practical difficulties hinged round the size of the Bills that would be produced by the project and the period of time for which individual drafters from the Office of Parliamentary Counsel (OPC) were likely to be on loan to the project. A complete Income Tax Bill would probably be well over 1000 pages long. Even a two stage process, as proposed in 1999, would mean a first Bill of about 600 pages.
>
> It would be a considerable undertaking, requiring a great deal of time, to assemble such a Bill - based on a number of different Exposure Drafts, produced by different drafters and at different times - and have it ready for introduction in Parliament. Although every effort was made to get the draft clauses in any ED as good as possible, they were in no sense 'final' at that stage. A great deal of work would always be necessary to bring them together into a technically accurate, internally consistent Bill of the high quality for which the project was aiming.
>
> As a general principle, it was highly undesirable for a new leader of the drafting team to take over a large Bill in mid-stream. So it was only possible to envisage the production of very long Bills if the leader of the drafting team were to be seconded to the project for several years. In practice this was most unlikely to be the case: it was more likely that drafting team leaders would be seconded for no more than three years, and junior drafters no more than two years. Any longer secondment would not be in the best interests of the individual or of OPC.
>
> In view of all these considerations, the project team now believed that the best way forward was to produce a series of smaller Bills on income tax, and that the first such Bill should deal with employment income (and perhaps social security income and some aspects of pension income). A second Income Tax Bill would deal with such aspects as trading income, property income and savings and

[131] Inland Revenue press notice 113/00, 5 July 2000

> investment income. The remaining provisions would then be dealt with in one (or maybe two) further Bills.
>
> On timing, the best time to introduce Rewrite Bills in Parliament was likely to be very early in a new session (November/December). This was because it was highly desirable to avoid any overlap with the annual Finance Bill timetable. This meant that the first Income Tax Bill would not be ready for introduction until November 2002, with the second following on a year later.[132]

2. The rewrite project timetable

Following the General Election in May 1997, the Labour Government confirmed its support for the rewrite project in a written answer given by the Paymaster General Dawn Primarolo (then Financial Secretary):

> **Ms Lawrence:** To ask the Chancellor of the Exchequer what progress has been made on the tax law rewrite project.
>
> **Dawn Primarolo:** I am delighted to report that the tax law rewrite project continues to make good progress. The Inland Revenue has today published the project's first exposure draft containing draft clauses. Copies have been placed in the Libraries of the House. A number of innovative techniques have been adopted. The rewritten legislation incorporates easier to understand language, a more logical structure and shorter sentences.
>
> I very much support this important project, which aims to bring clarity and certainty in our direct tax legislation for businesses and individuals. Full consultation is the key to its success, and I urge everyone with an interest in tax law to take this opportunity to comment.[133]

Nonetheless, it soon became apparent that the original assessment that the entire project would only take five years was optimistic. As the Revenue explained in their 1998 progress report, "with no precedents to guide us, in this country at least, we based our plans on some fairly heroic assumptions about how long it would take to research and analyse the existing legislation and then restructure and rewrite it with the appropriate level of internal and external consultation." The report went on to summarise the reasons for this delay:

> 2.8 As the rewrite teams have become fully immersed in their work, they have discovered that our task is even more complex, difficult and time consuming than we first thought it would be. In particular, all the rewrite teams have found - whatever the nature of the subject - that almost every line of the existing

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[132] *Minutes of the 23rd meeting of the Tax Law Rewrite Steering Committee*, 28 June 2000 (item 3)
[133] HC Deb 31 July 1997 cc 449-450W

> legislation throws up awkward questions. These need to be resolved before instructions can be prepared and the drafting team can rewrite the legislation in the clearest way possible. Delays have also been caused by our attempts to legislate certain extra-statutory concessions and other non-statutory material.
>
> 2.9 As everyone involved becomes more familiar with the process we can expect better progress on these aspects of the work. But, unless the quality of our work is to be compromised, we must accept that progress is unlikely ever to be rapid.
>
> 2.10 A further problem we have encountered has been the need to divert some of the drafting team to help out with the Finance Bill. Although this has only been a temporary setback it has nonetheless slowed the rate at which we have been able to produce draft clauses for consultation.
>
> 2.11 Another factor has been that, since the General Election, our Revenue colleagues in the specialist Subject Divisions have not always been able to vet the new rewritten legislation as quickly as they would have liked, because of the need to give priority to urgent Budget and Finance Bill work.
>
> 2.12 Finally, although our approach to external consultation has been welcomed it is undoubtedly very time consuming for the rewrite teams and those being consulted. We believe that consultation is essential to ensure that all controversial issues are properly addressed before any rewritten legislation is enacted and we remain committed to proceeding on the basis of full consultation.[134]

Nevertheless the Revenue noted that "there is general agreement among the tax community outside the Department that the rewrite project is worthwhile and that our rewrite techniques will result in legislation that is clearer and easier to use", and that "the project commands cross party support in both Houses."[135] Moreover the first 'exposure draft' of part of the tax code rewritten by the team was published in July 1997, dealing with the trading income of individuals. Notably the general tenor of responses to this draft "was very positive. Overall people found the new clauses much clearer and easier to read than the old. This was as much due to the new structure and layout we adopted as to the rewording."[136]

To ensure faster progress it was announced that the deadlines set for future years would be much firmer, and that the project would confine its attention to mainstream rewrite work, insofar as this was possible.[137] For the coming year the Revenue anticipated publishing exposure drafts related to trading income, employment income, savings & investment income, and capital allowances. Work in each of these areas has continued – though it is not proposed to examine them in this paper. That said, in its 2000/01 work

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[134] *Tax Law Rewrite: plans for 1998/99*, May 1998 pp 8-9

[135] *op.cit.* p 9

[136] *Tax Law Rewrite: plans for 1998/99*, May 1998 p 13

[137] During 1997/98 the project published two 'technical discussion' documents on issues related to the rewrite (on the specific problems of complex legislation, and on 'purposive' legislation).

programme the rewrite project team noted it had begun work on both property income and foreign income, and anticipated starting work on pensions in the coming year.[138]

One consequence of these delays was that the stocktake of the rewrite project was postponed to the second half of 1998. One of the stocktake's conclusions was that it would be infeasible to estimate precisely how long the rewrite might take, though it would clearly be longer than five years. In its discussion of the stocktake, the Revenue noted the concerns of some respondents that this might result in a loss of momentum "particularly if considerable amounts of traditional-style new legislation continue to be added to the statute book each year", adding, "we share this concern and we will continue to make every effort to keep up and increase our momentum."[139]

The stocktake was the subject of a memorandum by Lord Howe, as Chairman of the Steering Committee, sent to the Chancellor in December 1998. On the overall project timetable, Lord Howe made the following observations:

> There is no escape from the problems posed by the inherent difficulty of this immense task. The project team has found that, whatever the subject, the work of researching and analysing the existing legislation and the related non-statutory material is very time-consuming **if it is to be done properly**. A further factor is the project's approach to consultation ...
>
> More rapid progress could only be achieved by cutting corners and jeopardising quality. We would oppose this and we are therefore much heartened by the support for the project from Treasury Ministers and their continuing commitment to doing it well …
>
> Most of the replies to my letters[140] were relatively relaxed about the timetable, preferring the work to be done well rather than quickly. But many were anxious that it should not be allowed to slip by too much. Some feared a loss of interest or momentum if the work took too long. Others were worried that the rewrite would not be able to keep pace with the considerable volume of new legislation - mostly drafted in the old style - which is added to the statute book each year. We share this concern. [141]

On the wider issue of the project's timetable, writing in the *Tax Journal* in July 2000 Maurice Parry-Wingfield noted, "it is the nature of the rewrite process that to do it properly is a painstaking process. No short cuts can be taken if the end product is going

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[138] *Tax Law Rewrite: plans for 2000/2001*, April 2000 pp 12-13, 15-17

[139] *Tax Law Rewrite: plans for 1999/2000*, March 1999 p 16

[140] One of the main sources for the stocktake were responses to letters sent by Lord Howe to 200 people not directly involved in the project, but with an interest in tax legislation or legislative reform.

[141] Both the Steering Committee memorandum and the Chancellor's response are reproduced in Appendix 2 in *Tax Law Rewrite: plans for 1999/2000*, March 1999.

to be really useful."[142] The author is a consultant to the Tax Faculty of the Institute of Chartered Accountants in England & Wales on rewrite issues, and was a member of the 3 person panel who advised the Revenue following the publication of *The Way Forward* document in July 1996, in the transitional period up to December 1996.[143]

The issue arose at the most recent meeting of the Tax Law Rewrite Steering Committee on 28 June 2000, and an extract from the minutes is reproduced below:

> One member voiced his serious concern (echoed by some others) that there was no clear timetable for the completion of the project as a whole. In the commercial world, a project would be properly planned from start to finish, with clearly defined milestones and sufficient resources would be allocated to ensure that this timetable was met.
>
> Some other members however saw things differently. They thought that, by the nature of the work, the project was fundamentally different from most commercial projects. A closer analogy might be the various projects undertaken by the Law Commission to reform current UK legislation. Even with non-tax legislation, this work invariably proved very difficult and time-consuming. But, until well into the detail, no-one could ever predict how difficult - or where the difficulties would arise. It would be a grave mistake to jeopardise quality and technical accuracy by insisting on a fixed timetable, with arbitrary target dates.[144]

3. Costs and benefits of the project

In its first report on the rewrite project – *The Path to Tax Simplification*, published in December 1995 – the Revenue had concluded that "a precise qualification of the costs and benefits [of a rewrite] is not possible" though it was confident that the benefits would outweigh the costs.[145] One problem was that many benefits would be unquantifiable, such as improvements the project fostered in both the future drafting of Finance Bills and the formulation of tax policy.[146] In its response document *Plans for 1997*, the Revenue stated that it hoped to improve on this analysis, as part of a wider stocktake of the project which it intended to carry out in the latter half of 1997:

> We said [in *The Path to Tax Simplification: a background paper*] that, ignoring other benefits, a 1% reduction in the costs of complying with Inland Revenue taxes - a plausible result - should more than justify the costs of the project, including the costs to the private sector. At the time virtually all those we consulted in the tax professions and elsewhere gave their full support to the

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142 "A milestone for the rewrite", *Tax Journal*, 24 July 2000
143 *Tax Law Rewrite: plans for 1997*, December 1996 p 26
144 *Minutes of the 23rd meeting of the Tax Law Rewrite Steering Committee*, 28 June 2000 (item 3)
145 *The Path to Tax Simplification: a background paper*, December 1995 p 32

> project. That has continued to be the case during our further consultations this year.
>
> A year later our view remains the same. We also note that neither Australia nor New Zealand - who are both further advanced than us in their projects[147] - have any better information about this aspect. For the future, we think it *might* be possible to improve our estimates of costs and benefits in certain areas in time for the stocktake by taking the following steps.
>
> - We will monitor the direct costs of the project over the coming year. We will also seek estimates from the members of the Consultative Committee of the private sector costs of being consulted about and adapting to the rewritten legislation.
>
> - We will try to estimate the likely savings for 'general practice' tax professionals and trainees in the Revenue and in the private sector. Again we will consult the members of the Consultative Committee about how this can best be done.
>
> We recognise that the outcome of this further work cannot be conclusive. But it may give us worthwhile additional information on which the stocktake exercise can draw in the latter part of 1997.[148]

Following the stocktake of the project in 1998,[149] the Revenue acknowledged that it had not been possible to improve its assessment of the project's likely costs and benefits:

> It continues to be difficult to measure most of the costs in advance. And it is impossible to quantify the likely benefits ... But both we, and virtually all those whom we have consulted, remain confident that in the longer term the benefits will outweigh the costs - and by a long way. The benefits of clearer, easier to use legislation will continue to accrue long after the project has ended and long after all the implementation and transitional costs have been absorbed. And the Consultative Committee have pointed out that, insofar as rewrite practice filters through to other areas of legislation, the total benefits will go wider than tax alone.[150]

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146 Chapter 8 & Annex 7 to *The Path to Tax Simplification: a background paper*, December 1995 analyse the issue in depth (pp 31-32, pp 127-133).

147 Both countries initiated rewrite projects in the early 1990s; for details see, Annex 3 to *The Path to Tax Simplification: a background paper*, December 1995 pp 57-82.

148 *Tax Law Rewrite: plans for 1997*, December 1996 p 33

149 As mentioned, in the event the stocktake was postponed for a year, as the original timetable set for the project as a whole was recognised to be quite infeasible.

150 *Tax Law Rewrite: plans for 1999/2000*, March 1999 p 17

B. The *Capital Allowances Bill*

1. Capital allowances

It lies beyond the scope of this paper to give any technical analysis of the choices made in drafting the rewritten legislation in the *Capital Allowances Bill* (Bill 10 2000-01). For an exposition of the Bill clause by clause, readers are referred to the Explanatory Notes (Bill 10-EN) published with the Bill itself. Nonetheless it may be of use to describe what capital allowances are, and sketch the history of the draft Bill's preparation.

Capital allowances provide businesses with a method to write off the costs of depreciation against taxable profits.[151] Generally companies will be able to set off a fixed percentage of any new asset's price in the year it is purchased, and then write off a fraction of its residual value throughout its life. Given that assets will have different lifespans, the date when an asset is finally written off against tax will not necessarily coincide with that asset being worthless. Of course, technological improvements may well make assets obsolete well before this date. Capital allowances are given against corporation tax, and against income tax (ie, for self employed persons), though discussion tends to focus on their use by incorporated businesses.

Under the current system allowances are available for certain classes of assets only, including industrial buildings and structures; plant and machinery; and, agricultural buildings. Most expenditure on machinery and plant qualifies for an allowance of 25% per year on a 'reducing balance basis'. This means that companies can write off against tax 25% of the full cost of a given asset in the year it is bought. In subsequent years companies can write off a further 25% of the balance remaining. Spending £100 on plant and machinery, say, gives a series of allowances of £25 in year 1, £18.75 in year two, £14.06 in year three, and so on.

By contrast, expenditure on industrial and agricultural buildings qualifies for an allowance on 4 per cent per year on a 'straight line basis'. Spending £100 on a building would give a series of allowances of £4 per year for 25 years. There are special rules which allow expenditure on machinery and plant with a life of less than 5 years (short-life assets) to be written off more quickly. In addition capital allowances on machinery and plant with a working life of 25 years or more (long-life assets) are given at a lower rate of 6% per year on a reducing balance basis.[152]

Throughout the post war period governments attempted to encourage certain types of business investment using fiscal incentives. This resulted in a system of capital allowances which, prior to 1984, provided very generous initial and first year allowances, but

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[151] As mentioned, the principal legislation is consolidated in the *Capital Allowances Act (CAA) 1990*. Legislation about allowances for patents and know how is consolidated in *ICTA 1988*.

[152] These rules are restricted in the main to businesses spending more than £100,000 a year on long life assets - which excludes nearly all small and medium sized businesses.

discriminated strongly between types of asset and between sectors within the economy. For example, investment in plant and machinery could be written off entirely in the first year of purchase. Industrial buildings qualified for a first year allowance of 75%, and an annual 4% allowance. However, no allowances were given for investment in land or commercial buildings - with the exception of hotels - on the assumption these assets retained their value.

Though the main rate of corporation tax was 52% in 1984, companies paid tax at a much lower effective rate, or paid no tax at all, by utilising both capital allowances and stock relief.[153] 100% first-year allowances were a distinct advantage when inflation was relatively high - as it was in the late 1970s and early 1980s - since the real value of allowances fell, the longer the period over which expenditure on new capital was written off against tax. In his 1984 Budget speech, the then Chancellor, Nigel Lawson, argued that the high rates of corporation tax were the product of a distortionary system of reliefs, and that tax neutrality should be restored as a guiding principle for taxing businesses:

> The current rates of corporation tax are far too high, penalising profit and success, and blunting the cutting edge of enterprise. They are the product of too many special reliefs, indiscriminately applied and of diminishing relevance to the conditions of today ... With inflation down to today's low levels, this is clearly the time to take a fresh look.[154]

The Chancellor went on to argue the case for a radical restructuring of capital allowances:

> There is little evidence that these incentives have strengthened the economy or improve the quality of investment. Indeed, quite the contrary: the evidence suggests that businesses have invested substantially in assets yielding a lower rate of return than the investments made by our principal competitors. Too much of British investment has been made because the tax allowances made it look profitable, rather than because it would be truly productive. We need investment decisions based on future market assessments, not future tax assessments.[155]

Over a three year period, all initial capital allowances were abolished, and the current structure of annual allowances – 25% for plant and machinery; 4% on industrial buildings - was introduced.[156]

A significant change in these rules was made in 1994, and dealt with the distinction between expenditure on plant and that on agricultural buildings. *Machinery* and *plant* are not statutorily defined; as a standard text comments, "plant has been considered in many [legal] cases. It includes apparatus kept for permanent employment in the trade, but a line is drawn

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[153] This relief compensated companies for being taxed on the gains they made by the nominal value of their stockholdings increasing in line with inflation, irrespective of their physical size.

[154] HC Deb 13 March 1984 c 295

[155] *op.cit.* cc 295-6

[156] In a thorough overhaul of company taxation, stock relief was abolished with effect from Budget day itself, and the main rate of corporation tax was reduced progressively to 35% by 1986-87.

between that which performs a function in the business operations (which may be plant) and that which provides the place or setting in which these operations are performed (which is not)."[157] Clearly, it has been in the taxpayer's interest to be able to write off the cost of a new structure as plant and machinery, rather than as an agricultural building (since depreciation allowances for the former have always been larger).

Legal interpretation of this term over the past hundred years resulted in the category being extended to assets that one would not normally associate with the idea of plant. As a consequence of this legal uncertainty, it was announced at the time of the November 1993 Budget that a statutory rule would be introduced to make a clearer distinction between buildings & structures on one hand, and machinery & plant on the other.[158] The intention of this measure was to clarify the current position, though certain structures that might have been taken as plant before - such as fire safety systems - would not be so defined in future.[159]

In recent years the rate of first year allowances (FYAs) for small and medium sized enterprises have been increased: to 40% for investment in machinery and plant, compared with the 25% writing-down allowance normally available.[160] In addition 100% FYAs for spending by small businesses on information and communications technology were introduced in the 2000 Budget, for investment over the period 1 April 2000 to 31 March 2003.[161]

2. Consultation on rewriting the legislation

The Revenue summarise the consultation process underpinning the rewrite as follows:

- As we develop draft clauses, we involve specialists in the Inland Revenue Subject Divisions (and, where appropriate, interested parties outside the Department) and produce 'work in progress' papers for consideration by the Consultative Committee and Steering Committee.

- In the light of comments from both Committees and further work within the project, we refine the draft clauses (with further Subject Division

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[157] *Tolley's Income Tax 1999-2000* para 10.25

[158] Inland Revenue press notice, *Capital allowances for machinery and plant*, 30 November 1993.

[159] A new schedule – schedule AA1 – setting out those types of expenditure which are not considered machinery or plant, was introduced to *CAA 1990* (under section 117 of the *Finance Act 1994*). This was debated at some length in Standing Committee on the Finance Bill that year (Standing Committee A 10 March 1994 cc 601-638).

[160] Under s 84 of the *Finance Act 1998* & s 77 of the *Finance Act 1999*, this covered investment over the period 2 July 1998 to 1 July 2000. Under s 70 of the *Finance Act 2000*, 40% FYAs for small businesses were extended indefinitely. FYAs for small businesses were introduced in *Finance Act (No.2) 1997* for spending up to 1 July 1998 at 50%.

[161] Under s 71 of the *Finance Act 2000*. For details see Inland Revenue press notice 81/00, 7 April 2000. Both this and its sister provision extending 40% FYAs were the subject of a short debate at the Committee stage of the Finance Bill (Standing Committee H 13 June 2000 cc 660-668).

> involvement) and work up Exposure Drafts for public consultation. These contain a general commentary and a more detailed clause-by-clause commentary. Near final drafts are considered by both Committees before publication.
>
> - We publish these Exposure Drafts for written comments.
>
> - Usually we will publish a response document, summarising the comments received from formal consultation and our response to these points. This provides feedback to all those who have commented.
>
> - Finally we will publish rewrite Bills - with a commentary - for a final round of formal consultation before introducing them in Parliament for enactment.[162]

Over a period of around eighteen months the Revenue published four exposure drafts, each part of the tax code related to capital allowances (in October 1998, April 1999, August 1999 and March 2000).[163] At the start of this process in June 1998, the Revenue's project team presented a paper on their approach to the Tax Law Rewrite Steering Committee, part of which is reproduced below:

> The Project Team proposed retaining the 8 broad areas in Capital Allowances Act 1990, although their order might change. The Committee saw no difficulty in retaining general labels (such as Agricultural Buildings Allowances) which, while not fully accurate, were helpful to the general reader. They thought a layout clause to locate the reader in the text would be helpful.
>
> Few potential rewrite changes had been identified, and all of these brought the law into line with practice and could be expected to be uncontroversial. The main body of case law would be undisturbed, although the Project Team saw some scope for gap filling in line with the steer given by the Committee in previous meetings.
>
> The Committee considered what discussion of matters addressed by case law should be included in the commentary on both the Exposure Drafts and the rewrite Bill. It would be unhelpful to say nothing about terms such as 'machinery and plant' where the reader needed to look at case law to determine the meaning. While the commentaries could not be a substitute for a text book, they should steer the reader towards where the answer might be found. Inland Revenue guidance would be rewritten and published, and although this was internal

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[162] *Tax Law Rewrite: plans for 2000/2001*, April 2000 pp 5-6

[163] Response documents on the first two exposure drafts (ED3 & ED5) were published in June and November 1999 respectively. Both these, and all four EDs are published on the project internet site: www.inlandrevenue.gov.uk/rewrite/exposure/menu.htm

> material intended for Inspectors it might be possible to co-ordinate publication of the Bill and guidance.[164]

The provision of explanatory material for users has presented the rewrite project with some difficulties. In exposure drafts produced in the first two years, the Revenue made use of overviews (giving a road map for the relevant Part or Chapter), and signposts indicating other relevant provisions. These overviews and notes did not form part of the legislation itself but were intended to assist the reader when read in conjunction with it. To make this more obvious, they were distinguished from the substantive provisions by using a different type size or, in later exposure drafts, by placing the text in boxes.

In September 1998 the Steering Committee were asked to consider the implications of the publication of Explanatory Notes to all public Bills,[165] and the concerns of the Office of Parliamentary Counsel (OPC) that the inclusion of overviews and notes "might lead to conflict with the substantive provisions, making the legislation ambiguous or ineffective, and it would also make it a more complicated matter to amend the legislation subsequently":

> The Project Team said that that one way forward would be to export explanatory material from the rewritten clauses to notes, which could be more discursive and would be consistent with material included in Explanatory Notes elsewhere …
>
> The Project Team said that extracting the notes and putting them into a separate document similar to the Explanatory Notes created a disjointed text, and that their suggested approach was to include the notes in the text and identify the explanatory material by smaller font size …
>
> The Committee asked what would accompany rewrite Bills. The Project Team replied that there would be the legislative provisions themselves, the commentary and, if this approach were adopted, the notes. While the boundaries between these three classes of material might be difficult to determine in any particular case, each class might be expected to have a different status. The legislation was the law of the land, while the commentaries might be more similar to Law Commission reports, and the notes were explanatory text …
>
> The Committee considered that they were charged with improving tax legislation alone, which formed a special case. They recognised that there were other needs to be taken into account, but they hoped that others would follow the project example. They concluded that they did not wish to lose the benefits that arose from providing useful material to the reader. The Project Team should continue

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[164] *Minutes of the 8th meeting of the Tax Law Rewrite Steering Committee*, 11 June 1998 para 26-28

[165] Explanatory Notes were introduced in the 1998/99 Session. They replace the Explanatory and Financial Memoranda that used to preface most Bills, but are meant to be more helpful and informative and so contain material that used to be included in Notes on Clauses. They do not apply to Finance Bills or consolidation Bills.

> broadly as before, including important overview and signpost material in the clauses.[166]

A related difficulty has been the use of a three part numbering system in exposure drafts (in which each part corresponds to Part: Chapter: Section), something that the Steering Committee has welcomed as a significant improvement in clarity. At present sequential numbering is the only system presently permitted by Parliament for Bills and Acts. Both issues arose in liaison with Parliament during 1998-99, when both Houses considered changes to the format of all statute law, in the light of the innovations made by the rewrite project.[167] In October 1999 the Steering Committee acknowledged that Parliament had not shown an interest in the 'radical innovation' of overviews and notes, and concluded:

> Parliament had agreed a format for Explanatory Notes which would accompany most public Bills, and these were now an established part of the legislative process. Although these would not apply for rewrite Bills, the Project Team thought that they provided a model for alternative ways to provide the reader with helpful material.
>
> The Committee were concerned that having this material in a separate volume was not user friendly, as readers might not purchase both volumes and the two texts would not be fully integrated. They recognised, however, that the very long Bills, which the project would produce, would probably have to be published in more than one volume. They noted that developments in electronic publishing would make this less of a problem over time.
>
> The Parliamentary debates showed that this was not a top priority for many Parliamentarians. While the use of Overviews and Notes fitted well with the Government's modernisation agenda, the Committee doubted that it would be easy to persuade Parliament that there should be a separate statutory approach for rewrite Bills alone.[168]

When the draft Capital Allowances Bill was published in July 2000, in the introduction to the draft Bill it was noted that "the rewrite Bill differs from the generality of Bills in that it is not proposing new law. So we envisage an additional part of the explanatory notes with the Capital Allowances Bill which comments in greater detail on what are, or might be thought to be, changes in the law." As noted above, Explanatory Notes were published to accompany the *Capital Allowances Bill 2000-2001* on 9 January 2001 (Bill 10 – EN). As well as providing a detailed commentary on the clauses of the Bill, the Notes have two annexes: the first contains details of the minor changes in the law made by the Bill; the second gives notes on technical points of interpretation of the clauses. In the latter case, the notes concentrate on points where it may not be immediately apparent that the Bill preserves the effect of the existing law.

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166 *Minutes of the 11th meeting of the Tax Law Rewrite Steering Committee*, 29 September 1998 para 8-19

167 This issue is discussed in section I.G of this paper.

168 *Minutes of the 18th meeting of the Tax Law Rewrite Steering Committee*, 6 October 1999 para 23

The Committee has been more concerned that rewritten tax legislation should continue to benefit from three part numbering, although this is not used at present in statute; in its meeting on 1 December 1999, it set out the advantages for this system:

> (a) Three part numbering was a more precise navigational tool than sequential numbering. Other design and layout features would be lost if people used electronic publications, but the information on Parts and Chapters would remain whatever the medium.
>
> (b) Numbering in tax legislation acted as shorthand for complicated concepts, and so users would need to master a new form of shorthand. But this should be more informative than now, and tax practitioners were used to adapting following frequent consolidations. Tax practitioners in the US already used a similar numbering style as shorthand.
>
> (c) The representative bodies – whose members would be using the section numbers daily – were in favour.
>
> (d) The Committee recognised the need to maintain the consistency of the Statute Book. But they saw tax legislation as inherently more complex than other legislation, and thought that three part numbering could be ring fenced for lengthy tax bills.
>
> (e) Parliament was already used to seeing legislative material – such as EC legislation – which adopted a variety of styles.[169]

There has been considerable resistance to this proposed change. The issue was raised by the working group established in 1998 on the format of statute law. In evidence to the group the rewrite team had pointed out its attractions:

> We asked about the three part numbering system, and were told [by the project director and principal draftsman of the rewrite team] that it was not an intrinsic part of the system, and that its real usefulness would be when it was used throughout tax law. It would also be useful when amending existing legislation. Instead of numbering a new section '246ZA', it would be possible to add, say, a chapter 3A, within which normal consecutive numbering could be used.[170]

However, the Statutory Publications Office had argued against such a change:

> We met representatives of the Statutory Publications Office in July. The Statutory Publications Office (SPO) has responsibility for the development, implementation and support of the Statute Law Database, which is designed to be the up-to-date on-line version of the law at any given time. The SPO told us that, in the future, the database will be of great importance to drafting departments, Parliamentary

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[169] *Minutes of the 19th meeting of the Tax Law Rewrite Steering Committee*, 1 December 1999 para 26

[170] *Format of the Statute Law: report of the working group*, January 1999 para 13

> Counsel and Parliament as the means of establishing the current state of the law. The SPO had serious concerns about the Tax Law Rewrite Project's current format; if implemented in full, it could put the database at risk because of the cost of making the necessary changes to the software.
>
> In particular, the proposed three part numbering system would have significant consequences for the database. The software would have to be rewritten, at an estimated cost of £250,000. On the other hand, changing the type size of Schedules would have no effect, Schedules already being in the same type size as clauses in the database.[171]

In conclusion, although the working group agreed with many of the changes proposed by the rewrite team, it opposed three part numbering:

> We are agreed that change to the existing format of bills and Acts is desirable. There are a number of factors in favour of change, including: the success of the Tax Law Rewrite Project's current format with the tax community; the fact that Australia and New Zealand have opted for change following consideration of the issue; changes in publishing practice; and the increasing significance of Internet provision, given that some of the formatting will be lost whenever material is posted on the Internet. Greater clarity and ease of use can be achieved by changes in format.
>
> There are also constraints on the extent of change. These include the following
>
> - any change should not make it more difficult for legislation to be considered by and to make progress through each House of Parliament. The core of Parliamentary consideration of bills is amendment, and the format of bills must not make it difficult either for amendments to set out their purpose and effect in a clear way or for an accurately amended text to be prepared quickly. For example, material set out in boxes or footnotes may create problems;
>
> - any new format must allow existing legislation to be amended;
>
> - it is important to ensure that legislation is distinctive and recognisable as legislation, and that there is a strong element of continuity with the existing statute book.
>
> Cost is another significant factor. It is important that any change in format does not cause a significant increase in the costs of production of statutes, or increased cost to those who use the statute book …

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[171] *op.cit.* para 16-17 The Lord Chancellor's Department provide an introduction to the database on the internet site at: www.open.gov.uk/lcd/lawdatfr.htm

> We agree with many of the changes which the Tax Law Rewrite Project has adopted. In particular, we believe that their format for clauses improves clarity ...
>
> We do not believe that the three part numbering system would be appropriate; for example, it would not make sense for a four clause bill to be numbered 1. 1. 1, 1.1.2, and so on. Three figure numbers are also rather cumbersome: there could be problems in cross-referencing, in proposing amendments and when the bill was referred to in Parliament and in court.
>
> We have also taken into account the adverse effect that such a system would have on the Statute Law Database and on other similar database systems and official products both within and outside the public sector. We therefore prefer the current system of numbering. On the other hand, the positioning of clause and subsection numbers as proposed by the Rewrite Project does seem to us to be much clearer than in the current form, and we recommend its adoption.[172]

Neither the Lords Procedure Committee nor the Commons Modernisation Committee, both of which considered the working group's report during 1999, disagreed with this conclusion.[173] In April 2000 the Revenue noted that the Steering Committee were still pursuing with Parliament the use of three part numbering "for lengthy rewrite Bills alone,"[174] and three part numbering was used in the draft Capital Allowances Bill published in July 2000. Although no update on these negotiations has been published,[175] it would appear that the question has been resolved with the publication of the *Capital Allowances Bill 2000-2001* on 9 January 2001 – as this reverts to the 'old style' sequential numbering. More details on the Government's decision in this area might be expected at the Bill's Second Reading, which is provisionally set for 15 January 2001.

3. Publication of the draft Bill in July 2000

In the light of responses made to each of the exposure drafts, in July 2000 the Revenue published the draft Capital Allowances Bill for a last round of consultation, inviting comments by 2 October 2000. In announcing this important stage in the rewrite project, the Paymaster General Dawn Primarolo stated:

> I am pleased to tell the House that the Tax Law Rewrite project will soon reach a major milestone. Next week, the Inland Revenue will publish the project's first draft Bill, on capital allowances, for a final round of consultation. The Bill will be ready for introduction in Parliament by the end of the year. Earlier versions of this rewritten legislation have been extensively revised in the light of comments

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[172] *op.cit.* para 20-25

[173] The Lords Committee's Fourth Report in July 1999 provided a sample of the approved new format, without three part numbering ("Annex: sample of the new format" HL 84 1998-99).

[174] *Tax Law Rewrite: plans for 2000/2001*, April 2000 p 9

[175] The Steering Committee was due to meet on 8 November 2000, though the minutes to this meeting have yet to be published on the Revenue's internet site.

> and suggestions from tax professionals and other interested parties. This continuous dialogue between the project team and business interests, tax practitioners, the legal profession and Inland Revenue specialist is a key feature contributing to the success of the project.[176]

Writing in the *Tax Journal* on the publication of the draft Bill, Maurice Parry-Wingfield – a consultant for the Tax Faculty of ICAEW – made some observations:

> I saw the earlier draft Bill and helped the Tax Faculty put forward many suggestions for changes … some on matters of principle and others on detail.[177] What stood out, however, was the professionalism of the job the rewrite team had done and the light it shone on notoriously opaque areas of the tax law. I expect the improved version we see at the end of the month to be even more impressive. That will be for all of us to judge, however. What I want to do is to take stock at this milestone …
>
> **What the rewrite will do for us**
> To test the effectiveness of the earlier draft and see how easy it was to find my way around it, I looked at three issues in particular: what happens when disposals or successions affect both an industrial building and the plant in it; what allowances are available for different kinds of assets used in a particular activity such as an investment business; and whether, in different situations, assets are pooled fully or partially or dealt with individually. I found the new structure gave answers that I could locate with comparative ease and understand without much difficulty.
>
> With the existing legislation I would have struggled with the wording; I would have run out of fingers to stick in the pages and have had to resort to tags; I would not be sure that I had picked up everything that was relevant. Also, for example, I would still not have been confident what sort of pooling applied in a given situation, if any. And I would have had to guess whether a term had a special meaning and if so where to find it.
>
> But it's not just the tax specialist who should find the legislation easier to understand. So should the high street accountant and solicitor, so should the company accountant, so should the inspector of taxes (who has similar problems to the adviser's), so should the commissioner and judge, so should the Treasury minister and the member of the Standing Committee.[178]

The Chartered Institute of Taxation (CIOT) made some comments on the rewrite process as a whole on the Bill's publication:

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[176] HC Deb 25 July 2000 cc 574-5W

[177] The Faculty published this in May (*Tax law rewrite: capital allowances part 4 TAXREP 16/00*, 2 May 2000). It is available on the Faculty internet site at: www.taxfac.co.uk/facultypublications/index.cfm

[178] "A milestone for the rewrite", *Tax Journal*, 24 July 2000

> The general consensus is that the work of the rewrite team has been of a consistently high standard and that the rewritten legislation is much clearer than the existing legislation which it will replace. Further, the organisation of the material is more logical than the existing statutes.
>
> There is, however, a penalty in terms of the length of the rewritten legislation. For example, the draft Capital Allowances Bill runs to 400 pages, compared with about 170 pages for *CAA 1990*. One reason is that some of the more cryptic sections of *CAA 1990* are set out explicitly in the redraft. This is seen as being a price worth paying if the result is to make the law clearer.[179]

In its response to the draft Bill, the Tax Faculty of the Institute of Chartered Accountants in England and Wales said, **"**the draft Bill is an impressive achievement by the Tax Law Rewrite team and we congratulate everyone involved. The Capital Allowances Act 2001 will demonstrate clearly the value of the tax law rewrite process in improving the intelligibility of the tax legislation.**"**[180]

At this time the Revenue published a draft Regulatory Impact Assessment (RIA) on the costs and benefits arising from the new rewrite Bill. An extract from the draft RIA is reproduced below:

> **Benefits**
> **General :** We have always taken the view that the benefits of the rewrite project will become clear only when the rewritten legislation has been in force for some time. We shall then be able to canvass views on the practical benefits of the rewrite. We carried out a stocktake of the project in late 1998, sending a questionnaire to some 200 people involved in our consultative process. We asked them about the likely costs and benefits of the project. All agreed that it would be difficult to quantify most of the costs in advance, and impossible to arrive at any objective measure of the benefits. But the people whom we consult on our work still firmly believe that any costs will be more than outweighed by the benefits flowing from the project.
>
> **Tax practitioners :** These are people who use tax legislation in the course of their work as tax advisers for private clients or tax managers for individual companies or multinational groups. Others who need to understand tax legislation for their business are providers of software for practitioners and others. The capital allowances legislation has little if any direct impact on payroll software. One indication of the impact of the project is how these users perceive the rewritten legislation.
>
> We have been encouraged by the positive responses to our exposure drafts on capital allowances. For example: "Altogether, the way capital allowances have

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[179] "Institute News: the Tax Law Rewrite Project", *Tax Adviser*, September 2000

[180] Institute of Chartered Accountants in England and Wales, *Tax law rewrite: draft Capital Allowances Bill (TAXREP 31/00)*, October 2000 p 1

been rewritten is to be applauded. The legislation is now clearer and better organised." (ICAEW) "The real achievement of the Rewrite lies not in the simplification of the language at a detailed level, but in the way in which the material has been analysed and reorganised to put it into a coherent order." (CBI)

The benefits to this broad group will come from the clarification of existing law and the clearer expression of future changes to that law. They include:

- less time deciding what the law is, and fewer errors caused by misunderstanding of the law;
- fewer issues on which they need to spend time and money getting specialist advice;
- fewer queries from clients and those they get should be easier to deal with;
- fewer discussions and disagreements with the Inland Revenue about the meaning of legislation;
- people new to tax will find the legislation easier to understand and learn.

Taxpayers : Few taxpayers consult primary legislation in order to resolve questions about their own tax liability and we do not expect this position to change so any benefits to this group are likely to be indirect, derived from the greater ease of use for their advisers (which should result in lower fees for advice).

The Inland Revenue : Inland Revenue staff are in a similar position to other 'tax practitioners'. Clearer legislation is likely to reduce the number of disputes over interpretation and the number of cases which need to be referred to Head Office for a definitive ruling. The production of training and guidance materials should be easier and more straightforward.

Compliance costs

Most businesses claim capital allowances, and most tax advisers have to understand the legislation. Some employees and directors also claim capital allowances. By far the most claims relate to allowances for expenditure on plant and machinery. Other claims relate to:

- industrial buildings allowances
- agricultural buildings allowances
- mineral extraction allowances
- research and development allowances
- know-how allowances
- patent allowances
- dredging allowances
- assured tenancy allowances

We have no information about whether or not the cost of claiming capital allowances will reduce as a result of the rewriting of the legislation. We think there should be a net saving to taxpayers and their advisers, because:

- it will be easier to establish what the true position is, and this will result in lower fees and improved quality of tax advice for taxpayers;
- people new to tax should take less time to learn the legislation - trainee accountants, trainee Tax Inspectors, for example;

- there should be better voluntary compliance with the law and fewer disputes on points of interpretation.

Other Costs
The cost to the Inland Revenue in producing the Bill is approximately £3 million, spread over four years. Other costs have fallen on the practitioners, tax professionals and representative bodies that have taken part in the consultation process. These costs are impossible to quantify. But those whom we are consulting continue to urge us to maintain the same level of consultation. Additional costs will arise for commercial publishers and software suppliers, from the need to update their products. But these products are updated annually anyway, to reflect changes in the annual Finance Bill. There will be other, indirect, costs on the Revenue, as staff take time to adjust to the new legislation. All these costs will be transitional …

Post implementation review
Once the rewritten legislation has been in place for a few years, we shall be considering - in conjunction with the relevant professional and representative bodies, and other interested parties - how best to assemble information on the short and long term costs of this Bill.[181]

4. Simplification measures from the rewrite

Although the rewrite project is not to make any substantial changes in the present law, the work of the project team may feed into future policy changes, as the project's work programme for 2000/01 noted:

> Our consultation from time to time reveals suggestions for policy change that go beyond our remit. We aim to record these suggestions when responding to our consultation, and we pass all of them on to our Revenue Subject Division colleagues to consider further and, where appropriate, to inform Ministers. With them, we continue to look for opportunities to further improve and modernise our tax system.[182]

Generally the rewrite project flags up these suggestions when it publishes details of responses that have been made to its exposure drafts. For example, some examples in the context of the project's sixth exposure draft on employment income were listed in the response document published in December 1999.[183] When the draft Capital Allowances Bill was published in July 2000, the introductory volume listed all the policy and

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[181] Inland Revenue press notice 126/00, 26 July 2000 The Revenue publishes the text of RIAs on its internet site at: www.inlandrevenue.gov.uk/ria/index.htm

[182] *Tax Law Rewrite: plans for 2000/2001*, April 2000 p 10

[183] Tax Law Rewrite, *Responses to the Sixth Exposure Draft Employment Income – Part 1*, December 1999 p 10 Those interested in this issue are referred to "Redesigning the camel", *Taxation*, 9 December 1999, and "Dawn into day", *Tax Journal*, 7 August 2000.

legislative changes or review received in response to the four exposure drafts.[184] Similarly Annex 1 to the Explanatory Notes to the *Capital Allowances Bill* (Bill 10-EN) sets out the details of the minor changes in the law made by the Bill.

The Tax Faculty of the Institute of Chartered Accountants in England & Wales underlined this point when it welcomed the publication of the draft Capital Allowances Bill in August 2000:

> Peter Bickley, Tax Manager at the ICAEW's Tax Faculty said: 'Although the project has taken a good deal longer than the original estimate of five years, the quality of the draft reflects the enormous amount of work undertaken by the Revenue in consultation with organisations such as ours. We were glad to make detailed comments on exposure drafts and wholeheartedly support the project. Even though the draft rewritten legislation is longer than the original, it is a high quality product. It is simpler and therefore easier to understand.
>
> 'However,' he added, 'simply rewriting the legislation in simpler English is just the beginning. The next stage should be to review the anomalies and anachronisms that the tax law rewrite team has found during the course of its thorough review and consider how the law itself should be improved.'[185]

At the time of the March 2000 Budget a deregulatory package of measures was announced, to "make the legislation on capital allowances clearer and easier to use in the Tax Law Rewrite Bill"; a press notice issued at the time listed them as follows:

- abolish the requirement to notify expenditure on which machinery and plant capital allowances may be claimed
- remove the requirement to put expenditure on cars costing less than £12,000 into a separate pool for capital allowances
- give capital allowances to oil companies on machinery and plant used under an oil production sharing contract
- encourage investment in machinery and plant by making it easier to finance investment through leasing
- set out a clear code for giving machinery and plant capital allowances to non-residents
- extend the herd basis to shares in production animals and confirm that capital allowances are not due.[186]

These measures were implemented under ss 73-81 of the *Finance Act 2000*.[187]

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[184] Appendix 1, *Draft Capital Allowances Bill Volume 1: Introduction and Commentary*, July 2000 www.inlandrevenue.gov.uk/rewrite/drafts/Commentary.pdf

[185] ICAEW press notice, 29 August 2000

[186] Inland Revenue Budget press notice REV12, 21 March 2000 For further discussion of these changes see, "Capital changes", *Taxation*, 18 May 2000

[187] These provisions were not subject to any substantive debate at the Committee stage of the Finance Bill (Standing Committee H 13 June 2000 c 668).

IV Simplification and tax reform

Inevitably the Tax Law Rewrite has fostered a wider debate on tax reform, and the benefits of simplifying the tax system as a whole. The following paragraphs look at recommendations made in the Treasury Committee's report on the Inland Revenue published in May 1999, and by Adam Broke and Lord Howe in the last two annual Hardman Memorial lectures.

A. The Treasury Committee's report on the Inland Revenue

The Treasury Committee touched on three proposals in its report on the Inland Revenue published in May 1999:

> **The burden of complexity**
> A recurrent theme of the evidence we received was that the tax system in the UK is complex and subject to frequent change … Some moves are in progress to simplify aspects of the tax system. The Tax Law Rewrite Project should in time lead to legislation which is at least intelligible, though it will not iron out any significant anomalies in the underlying policy. The moves to align tax and NICs provisions should also make the system easier for employers to operate.
>
> Even with these reforms, however, our concern is that the level of complexity makes it difficult and increasingly expensive for taxpayers and employers to comply with tax law and for the Inland Revenue to promote compliance and tackle non-compliance effectively … [and] we have considered several proposals for [simplification] …
>
> The first proposal is the establishment of a further Royal Commission to examine options for tax simplification. The Chartered Institute of Taxation has called for a Commission to "address the complexities within the tax system and how they could be overcome". When we asked the Minister she said that she could not "immediately see the attraction of having a Royal Commission".
>
> The second proposal, suggested by Mr Evan Davis, is that "within the first year after each election, a government would be expected to publish a White Paper outlining its vision of the structure of the tax system at the end of its term, and possibly beyond, with an associated set of objectives. This would motivate the second and later budgets of the Parliament." Mr Davis suggested that this might be followed up by a commission of independent experts which would, "in the penultimate year of each parliament ... produce a report on the degree to which the tax and benefit system are efficient in meeting their objectives". The report would "inform the manifestoes of the parties, and the early budgets or White Paper of the subsequent administration."
>
> A third proposal is to move to a longer term planning cycle for tax policy. This has been introduced in New Zealand as part of the Generic Tax Policy Process: once an Economic Strategy and a Fiscal Strategy have been published there is a third stage, agreement and publication of a Three Year Tax Revenue Strategy

> which provides the basis for a rolling three year work programme as well as an annual work and resource plan …
>
> **We recommend that in its response the Government gives its considered view on the options for simplifying the tax system we have discussed in this Report and sets out its own proposals for a systematic programme of simplification with a view to reducing compliance costs.**[188]

Notably the terms of reference for the Revenue's 1995 report on simplification included "the advantages and disadvantages of possible solutions including a Royal Commission on taxation and a tax law commission"[189] *The Path to Tax Simplification* examined possible changes to the institutional framework:[190]

> It is not clear that a Royal Commission could have a useful role to play in the process of tax simplification we envisage. One possibility would be to set up a Commission to consider the processes by which tax law is formulated and enacted. But … there have been a number of enquiries in recent years[191] … which have covered most of this ground. It is not clear what more a further enquiry might achieve.
>
> A Royal Commission might focus instead on tax policy … [however] it is unlikely that a Royal Commission established today could circumvent the very real constraints … on achieving much policy simplification quickly. Indeed it might exacerbate the problem. Setting up a Royal Commission would mean deferring positive action until that Commission had reported (since 1945 the average time taken has been 2½ years) and its recommendations had been considered by Government.
>
> Another possibility would be to set up a new Government body – such as a Tax Law Commission – to take forward the solutions discussed [here], in particular the proposal to rewrite the existing tax code. Such an arrangement would clearly put the impartiality of the rewrite process beyond question but, providing there is full consultation throughout, an independent body is not required for that reason alone. And a Tax Law Commission would be handicapped by its distance from continuing tax policy development within Government.[192]

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[188] Treasury Committee, *Inland Revenue*, HC 199 25 May 1999 1998-99 pp xxv-xxvii For a recent criticism of the current Budget procedure see Samuel Brittan's piece in the *Financial Times* ("How to give the taxpayer a say", 2 March 2000).

[189] section 160(d) of the *Finance Act 1995*

[190] This section of the report was not uncontroversial. In his 1999 Hardman Memorial lecture – discussed below – Adam Broke argued, "the report was written in such a way that the entire debate was channelled into a project for *rewriting* the law, rather than changing it. It dismissed the concept of a tax law commission in just eight lines" (*British Tax Review*, no.1 2000 p 24).

[191] Annex 3, *The Path to Tax Simplification*, December 1995 pp 23-30

[192] *The Path to Tax Simplification*, December 1995 p 7

This may explain why, in its response, the Government was not very receptive to any of the proposals for wider reform made by the Committee:

> In the July 1997 FSBR the Government set out very clearly its belief that tax policy must be based on clear principles.[193] It went on to set out what those principles were and said that the Government would, over time, seek to develop a tax system that reflects and is underpinned by them. The Government acknowledged then, and continues to acknowledge, that it is important to reduce the cost of the tax system wherever possible, "whether in its administrative cost, the compliance burden on the taxpayer, or wider costs to the economy."[194]
>
> Having set out its tax objectives, the Government has already moved in many ways towards meeting them. The introduction of a modern system for corporation tax payments has, for example, resulted in a system which is not only fairer but, as a result of the abolition of advance corporation tax, is also considerably simpler. The ESFR (published at the time of the Budget) reports both on steps taken and on how Budget '99 measures will contribute to future progress.
>
> The introduction of a pre-Budget report into the annual budget timetable is an important indication of the Government's determination to be more open about how tax policy should be developed as well as encouraging debate on how to create a fairer tax system. The Government carried this process further in its last Budget. It has made advance announcements of a number of proposed changes to the tax system. This provides the opportunity for users of the tax system to have genuine input, through consultation, into the shape of those changes and/or the way in which they are implemented.
>
> Taken together with other announcements already made in earlier Budgets, there is a far more extensive forward programme of work in the public arena than has ever been the case before. It remains the Government's view, as expressed by the Paymaster General in her evidence to the Sub-committee, that a Royal Commission would add little to the process. The Government has set out its objectives for the tax system, it reports regularly on progress against those objectives, it has set in train a rolling programme of consultation across a wide range of issues and there is greater opportunity than ever for business and others to be involved in shaping the tax system of the future.[195]

The Treasury Committee's proposal was the subject of a short debate at the Committee stage of the Finance Bill on 29 June 2000. On this occasion David Heathcoat-Amory moved a new clause to require the Treasury to "submit a report to parliament on the options to simplify the UK tax system":

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[193] *Financial Statement & Budget Report*, 2 July 1997, HC 85 1997-98 p 25

[194] The text from the FSRB goes on to say that the Government intends to achieve this aim "with simplification of the existing tax law, to make it easier to use, so taxpayers understand more clearly their rights and obligations" (*ibid.*).

[195] *Inland Revenue: The Government's Response to the Sixth Report of the Committee*, 22 July 1999, HC 746 1998-99

> The tax law rewrite project is constrained by its terms of reference. It cannot rewrite the underlying law; it can only put the language in a more accessible and simplified form, which is very important. The new clause is important because it urges the Government to take a more radical look at the tax system. We do not suggest that that will be easy or quick, but a start must be made …
>
> I repeat a recommendation of the Treasury Select Committee sixth report 1998-99 that "the Government gives its considered view on the options for simplifying the tax system . . . and sets out its own proposals for a systematic programme of simplification." Our new clause tries merely to encode that recommendation by an all-party Committee, and I urge it on the Government.[196]

In opposing the clause Dawn Primarolo the Paymaster General argued that it was unnecessary, given the Government's efforts to promote simplification:

> The purpose of the tax law rewrite programme is to modernise direct tax law and to make it clearer and easier to use ... There has been full consultation with users of tax legislation throughout the process. The Government have moved to a position that has been widely welcomed ...
>
> The use of the pre-Budget report to lay out strategic directions and to announce consultations has been a significant part of our work. On this Finance Bill alone, there has been extensive consultation on fiscal marks, the climate change levy, corporate venturing relief, research and development and new tax incentives for small and medium-sized companies …
>
> The idea that the Government are not undertaking consultation and are not examining the work of our tax system and looking for ways to improve it is mistaken. We have taken that on in all our work since 1997. Indeed, we are swinging round the Inland Revenue in terms of its enabling facilities. We are looking critically at the compliance costs and undertaking new and further work to find ways to streamline our contact with business and to minimise its compliance costs …
>
> We have a four-year programme of research with companies to look at tax compliance and how we can make it better. Closer working is being initiated and developed between the Inland Revenue and Customs and Excise to ensure that the systems fit together and do not contradict each other. In all those areas, we are doing the work that the new clause recommends. The new clause would merely add to that process another set of reports. I must tell my hon. Friends, who have been so patient throughout the Committee's proceedings, that the new clause is unnecessary and I ask the right hon. Gentleman, having put his argument on the record, to save our blushes, ask leave to withdraw the amendment and live to fight another day on the Floor of the House.[197]

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[196] Standing Committee H 29 June 2000 cc 1045-7

[197] *op.cit.* cc 1048-1049

B. The Hardman Memorial lectures in 1999 and 2000

Simplification was the subject of the 1999 Hardman Memorial lecture – an annual event sponsored by the ICAEW, and named in honour of the late Philip Hardman, a well-known and respected commentator on tax matters.[198] Adam Broke[199] argued that one of the consequences of the rewrite project was to highlight aspects of the tax system that needed reform:

> There is no doubt that the final result [of the rewrite project] is an immense improvement in terms of comprehension … But to what end? What we asked for was simplification. Proper English is a part of that process … but it is not the whole of it by any means. And an immediate consequence is to point up even more strongly the absurdities of the law as it now stands … Our of the rewrite is coming not only a new literature but also a very important development. We are starting to see a flow of candidates for reform.[200]

He went on to argue that what was needed was an institutional change:

> As matters stand now we do not have any institutional means of promoting reform … My recommendation … would be the creation of a tax reform committee – much as proposed by Tim Smith – charged with making recommendations for reform and simplification.[201] It would have to be given greater powers than the Law Commission to get Minister to implement its reports. And it would have to operate so far as possible on the basis of fiscal neutrality …
>
> The committee should be appointed by, but independent of, the Government, and should composed of a mix of MPs, practitioners, the Revenue authorities, businessmen and so on, perhaps along the lines of the composition of the Tax Law Review Committee … it would be told to report regularly on subjects of its choice … I make no recommendations about how politicians would then implement its findings save only that they would have to do so. It would be for Parliament to find a way of doing it that worked.[202]

On the rewrite project itself, Mr Broke said, "I would write in stone the government's continued support for the rewrite … we must not lose the impetus so far developed." He also argued that the *pace* of tax legislation should be slowed down, to have biennial or even triennial Finance Acts, rather than an Act every year. At present an annual Finance

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198 Adam Broke, "Simplification of tax or I wouldn't start from here", *British Tax Review*, no.1 2000 pp 18-26

199 Mr Broke is a tax professional, a previous Chairman of the Technical Committee of the Tax Faculty at the ICAEW, and a past President of the Chartered Institute of Taxation.

200 *op.cit.* pp 24-5

201 Mr Smith discussed this proposal when he put forward his amendment on tax simplification, adopted as section 160 of the *Finance Act 1995*; this is discussed in section I.C of this paper.

202 *op.cit.* pp 25-6

Act is necessary, to set the charge and rates of both income tax and corporation tax for the year. [203]

Finally, in November 2000, Lord Howe of Aberavon – who has been closely associated with the rewrite project since its inception – gave the Annual Hardman Memorial lecture. Notably his speech linked proposals for reform to the parliamentary procedure for approving tax law, and the institutional framework for tax reform, and it is worth quoting at length.[204] On the first issue, Lord Howe argued that the *Provisional Collection of Taxes Act 1968*, "must no longer guarantee the Revenue Departments (and successive Chancellors) unlimited annual access to the statute book - effectively the right to as much new tax law as they want."

As soon as the Chancellor has finished the Budget statement, proposals for tax changes and tax continuations - rather than new taxes - may come into effect immediately. These proposals must be validated by a single motion, approved after the Budget itself. Changes in the rates of excise duty on hydrocarbon oils and tobacco products often take effect from 6pm on Budget day. In the case of the March 1999 Budget, the resolution allowed for new rates of duty on cider, hydrocarbon oils and tobacco products to take effect from 6pm that day, as well as new rates of Vehicle Excise Duty for driving licences issued after Budget day.[205] In addition, within ten sitting days of this, Parliament must approve a series of individual Resolutions - Ways and Means Resolutions as they are known - concerned with each tax or duty to be covered by the Finance Bill. For example, the charge and rates for income tax and corporation tax for 1999-2000 were covered by two Ways and Means Resolutions, approved by the House at the conclusion of the Budget debate on 15 March 1999.[206]

This procedure is established under the *Provisional Collection of Taxes Act (PCTA) 1968*, and it provides the necessary interim authority for taxes to be collected by the tax authorities. Section 1(3)(a) of the *PCTA 1968* states that, "in the case of a resolution passed in November or December in any year" this authority lapses on 5 May in the following calendar year. Section 50 of the *Finance (No.2) Act 1997* added a provision - consolidated as section 1(3)(aa) of the *PCTA 1968* - which states "in the case of a resolution passed in February or March in any year" this authority expires on 5 August that same year. In effect, the Government must introduce its Finance Bill and have it passed by Parliament within this five month deadline - whether the Budget is held in February, March, November or December.[207]

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[203] By contrast, other taxes are imposed by permanent Acts, such as excise duties, stamp duties, and VAT.

[204] Lord Howe, "Simplicity and stability: the politics of tax policy", Hardman Memorial Lecture 9 November 2000; see also, "Boost for tax reform", *Accountancy Age*, 16 November 2000.

[205] HC Deb 9 March 1999 c 190

[206] Resolution 18 and 22 respectively (HC Deb 15 March 1999 cc 830-831). Legislation to impose both taxes for that tax year was included in ss 23 & 27 of the *Finance Act 1999*.

[207] In cases where the Budget is not presented in any of these months, section 1(3)(b) of the *PCTA 1968* states that any Budget resolution must expire "at the end of four months after the date on which it is expressed to take effect or, if no such date is expressed, after the date on which it is passed."

In his lecture, Lord Howe argued that the use of the PCTA should apply "*only* for its originally intended purpose":

> The original purpose of the Provisional Collection of Taxes Act was arguably legitimate. It was a by-product of David Lloyd-George's 1909 budget clash with the House of Lords - and designed to ensure that, whatever the arguments about structure or tax reform, the basic taxes could continue to be collected. For this purpose, each year's Finance Bill implementing the Budget's taxing resolutions was granted by Parliament a "self-imposed and automatic guillotine", which effectively ensured its enactment by the start of the summer recess.
>
> And this benefit was from the outset extended in effect to the entire Bill - whatever its contents and however long. Every other department of state has to fight to gain a place for even the smallest Bill. Not so the Treasury. In Andrew Tyrie's graphic phrase, budgets (and their consequent Finance Bills, however large) are thus "unstoppable juggernauts". Year in, year out. It is this which simply has to stop. Stability as well as simplicity. Legislative appetite must be restrained.
>
> The right way to tackle this, I think, has been on the theoretical agenda - and reiterated by Malcolm Gammie - over some years. The amendment of the Provisional Collection of Taxes Act so that it would apply *only* for its originally intended purpose - for the continuance of the income tax, and the imposition or attraction of any duties necessary for the purpose of adjusting the revenue. The remaining "technical" measures would not then require the Royal Assent until the following October. From this *de facto* division of the Financial Bill into two parts, it would then be only a short step to the more fundamental reform - also long advocated - of a separate Tax Management Bill.[208]

Several commentators have argued in favour of splitting the Finance Bill into two: a short Bill with substantive changes, and a technical Bill for detailed anti-avoidance provisions, changes that improve the operation of existing provisions, and other provisions that did not require Budget secrecy. In a recent piece in *The Tax Journal*, Robert Maas[209] argued that the greater length and complexity of Finance Bills undermined Parliamentary scrutiny – and one solution was to split the Bill:

> The technical Bill would run to a different timetable [unconstrained] by the practical need [for] the Finance Bill passed by the end of July. Indeed it might not be necessary to have a technical Bill every year … The big advantage of such a system is that the technical Bill could have a far longer lead time to allow the relevant professional and trade bodies and others interested in the detailed provisions to consider them fully and make suggestions for improvement.[210]

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[208] Hardman Memorial Lecture, 9 November 2000 The lecture is reproduced on the ICAEW internet site at: www.icaew.co.uk/news/document.asp?WSDOCID=4948.

[209] Chairman of the Technical Committee of the ICAEW Tax Faculty

[210] "Why Parliament fails taxpayers", *The Tax Journal*, 21 February 2000

Turning back to Lord Howe's lecture, he suggested that the 'success' of the rewrite project suggested wider reform was feasible:

> When I say 'success' in that context, I mean two things. First, we can now be seen to be delivering a product that is indisputably an improvement on the previous chaos. The draft Capital Allowances Bill, which the Rewrite team produced in August this year and which should be presented to Parliament before Christmas, has been widely acclaimed. In Adam Broke's words at the Rewrite press conference: 'For me, the Bill represents a revolution in accessibility. It has a logical structure and for the first time in my experience it has actually been designed to help the user.' So, it *is* possible to make things better.
>
> Second, and of greater significance, the conception and structure of the Tax Law Rewrite project itself (and the process which brought it into existence) points the way to a wider future. For it can serve, both as a model and as an encouragement for those who seek a more far-reaching and sustainable improvement in quality, and reduction in quantity, of tax legislation. I cannot repeat too often that lower quantity is at least as important as higher quality.

Previous attempts at simplifying the structure of tax law – rather than its language – had had shown that a 'Big Bang' approach was doomed to failure:

> I [remain deeply suspicious] … of the root-and-branch approach, even when it is dignified by the name of a Royal Commission. I have elsewhere denounced this as "the magic box school of politics". Nowhere is that approach less useful than in the field of tax policy and legislation …
>
> For action today, one is driven towards the same central conclusion - that there is no chance of a knock-out success against tax complexity … Adam Broke has put the point … sharply: 'You cannot', he said, 'achieve true simplification with the political process as it stands; put bleakly, it carries no votes.' An American commentator explains why. 'There is', he says, 'no strong constituency that opposes complexity and, above all, no constituency that is galvanised by simplicity.' This is why it must be our central task to find ways of giving sustainable strength to that unrepresented constituency. Hence the need to establish and institutionalise a process, whose continuing insistence on simplicity is as irremovable, as constantly present, as the voice of the tax-raising departments - and as the politically restless, impatient, input of successive Chancellors ...

As a consequence, any simplification project would require the establishment of a new body, taking on board the structural innovations pioneered by the rewrite project:

> The Tax Law Rewrite Project … is a purpose-built process, established with all-party support and committed to the completion of a clearly defined task. It's basic work is carried out … by a dedicated team serviced by the Inland Revenue - and thus usefully plugged into the system ... There is a comprehensive process of consultation, drawn together through a widely representative Consultative Committee. The whole is overseen by the Steering Committee, which I chair and

> which includes senior figures from the judiciary, the tax professions, the business community and the House of Commons ... And finally there is in place, ready to consider the Bills to be produced by the Project, a streamlined and tailor-made parliamentary procedure - shortly to be triggered, we hope by the introduction of our draft Capital Allowances Bill ...
>
> The Tax Structure Review Programme would take its place alongside the continuing Rewrite Project. Clearly it would face a more challenging and substantial work-load than we have so far done. For much more difficult (and more frequent) questions - of policy rather than language - would have to be prepared for parliamentary and public consideration. It would enhance the authority of the Programme for parliament to be more strongly represented on the Steering Committee of this new project. The Committee might indeed itself be a parliamentary Select Committee … Even more important, however, would be the innovations involved for Parliament (and indeed in government itself) for handling the output of this new Tax Structure Review Programme.

Similarly the changes in parliamentary procedure fostered by the rewrite project provided a model for the way in which Parliament might scrutinise the legislative proposals made by a Tax Structure Review Programme:

> Here too we can learn from the Rewrite Project, even though its purpose-built Parliamentary procedure has yet to be tested. The crucial feature is that Rewrite Bills should go - not unlike present Consolidation Bills - for detailed consideration after Second Reading, not to the usual Commons Standing Committee but to the equivalent of what is known as a Special Standing Committee. This special one would include members of both Houses (under the chairmanship of a Commons Member) and be able to hear evidence about the Rewrite Bill before - or in parallel with - more formal consideration of its contents.
>
> This example of change has a wider significance than just for Rewrite Bills. For it is also, of course, a response to the widespread condemnation of the traditional Standing Committee procedures - certainly as applied to Finance Bills - as "pointless ritual", "almost a complete waste of time", and even "a scandalous spectacle". Tax Structure Review proposals for policy change would more traditionally emerge as part of (or as a contribution to the thinking contained in) more-or-less routine Finance Bills. And that raises again the question; are we still to be confronted with "routine" annual, block-buster, Finance Bills? Or are we, at last, to see this kind of material brought forward in separate parts? ...
>
> The proposal can now be linked, as I believe, with the suggestion … for the substantial curtailment of scope of the Provisional Collection of Taxes Act. This would have substantially the same effect as the two-part proposal. For the tax-raising provisions - for which the PCTA was originally designed - would indeed take effect by the prescribed date; but the structural proposals would enjoy much

> of the greater elbow room so long desired by the champions of the separate Tax Management Bill.[211]

During the short debate on the motion to establish the Joint Committee for rewrite bills on 19 December 2000, Edward Davey MP raised the wider issue of simplification:

> The tax law rewrite project is restricted in the way in which it can simplify the tax system. It has been given the remit to restrict itself simply to the language in which the law is expressed, not to deal with the effects that it gives to tax liabilities. The technical aspects - as well as the language in which the law is expressed - need to be simplified to ensure that there is real tax simplification. I hope that the House accepts this historic measure and that we use it to modernise our procedures with cross-party support. That will ensure that the output of this place is better - not merely in its language, but in its impact on business and compliance costs.
>
> We should develop the link with the other place. The fact that there is to be a Joint Committee is welcome, because Members of the other place can make a positive contribution to some of the complex aspects of these matters. I should like to see the establishment of a House of Lords Select Committee on tax simplification as well as the Joint Committee; it could offer this place some serious lessons.[212]

Mr Davey also mentioned Lord Howe's recommendation that the Finance Bill should be split in two parts, "one containing the key political tax-raising measures and the other technical tax measures that could be debated at greater length with more consultation." Although these issues were wide of the debate, the Paymaster General Dawn Primarolo, gave some insight on the Government's thinking on this occasion:

> The right hon. Member for Fylde and the hon. Member for Kingston and Surbiton (Mr. Davey) referred to simplification. That issue is outside the tax law rewrite requirements, but, in principle, I am sympathetic to their point. I have served on the Finance Bill Committee both in opposition and in government, and I am well aware of the arguments of professional tax bodies, such as the Institute of Chartered Accountants and the Chartered Institute of Taxation. Last month, this issue was the theme of the Hardman memorial lecture that was given by Lord Howe. It is important to acknowledge that pressure from tax professionals was the stimulus for the review in 1995 that led to the establishment of the tax law rewrite project.
>
> However, the issue gives rise to difficult questions and there is no consensus on how tax simplification should be carried out or on what should be simplified. The rewrite project does not just simplify the tax code; it makes it much clearer and easier to understand.

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[211] Hardman Memorial Lecture, 9 November 2000

[212] HC Deb 19 December 2000 c 319

> The Government have taken steps on tax simplification. We included such measures in the Finance Act 2000, and the drafting of new elements of tax legislation and the phraseology that is used follow the example of the tax law rewrite. However, Members will know that such simplification is not always possible, particularly when such measures have to be cross-referenced with parts of the tax code that have existed for a long time.[213]

On the specific question of splitting the annual Finance Bill in two, Ms Primarolo said:

> If the definitions of policy issues and technical issues were so clear cut, I am sure that Governments would have separated them long ago because it seems to be an obvious proposition. The Opposition might take a slightly different view from the Government on what counts as a technical issue and what is a policy issue.[214]

In an address to the Addington Society on 16 February 1977 Lord Howe argued, "Parliament is judged, amongst other things, by the quality of the laws that we produce and by that standard we deserve to be harshly judged." In his introduction to the TLRC Interim Report, Lord Howe recalled his own words, noting, "now, alas – after years in government, almost half of them as Chancellor or Leader of the House and in a position, or so it might be thought, to do something about all this – I have to confess nothing has changed":

> The central responsibility comes back to the legislature itself. In that same talk almost 20 years ago, I described our existing machinery for tax legislation as 'about as appropriate to a modern industrial democracy as tally sticks to the international money market' and I concluded that it was only parliamentarians who could change the system. It is democracy itself, I said, that suffers most from 'the universal scorn that greets the legislative output of our present system.'[215]

Many Chancellors have quoted Louis XIV's finance minister, Colbert, when discussing tax proposals in a Budget speech. Colbert suggested that the art of taxation, if there be such a thing, consisted in "so plucking the goose as to obtain the largest amount of feathers with the smallest possible amount of hissing." Adam Broke recalled this maxim in his 1999 Hardman Memorial lecture, noting that the fiscal policy of the French monarchy in the late 18th century "led to Revolution, and perhaps that is what we need."[216] It is possible that the Tax Law Rewrite represents the beginnings of a quiet revolution – in the construction of tax law and the development of tax reform – marking a more constructive relationship between the authorities charged with plucking, and taxpayers who will continue to hiss.

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[213] *op.cit.* c 323
[214] *op.cit.* c 324
[215] *Interim Report on Tax Legislation*, November 1995 p i
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