



Tax Law Rewrite: the *Income Tax Bill 2006-07*

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The *Income Tax Bill* (Bill 14 of 2006-07) was introduced in the Commons on 7 December 2006. The Bill is the fourth 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. The Bill covers:

- basic provisions about the charge to income tax, income tax rates, the calculation of income tax liability, and personal reliefs;
- various specific reliefs, including relief for losses, the enterprise investment scheme, venture capital trusts, community investment tax relief, interest paid, gift aid and gifts of assets to charities;
- specific rules about trusts, deduction of tax at source, manufactured payments and repos, and tax avoidance; and
- general income tax definitions.¹

Rewrite Bills are not intended to change the *effect* of legislation in any significant way, although it is anticipated that each Bill will include a number of minor changes: say, to legislate an extra statutory concession or to discard provisions which are now obsolete.² As a consequence rewrite Bills are subject to a streamlined procedure for Parliamentary scrutiny: in brief, they are introduced in the House of Commons, referred to a Second Reading Committee, and then to a joint Committee of both Houses. On 13 December the House approved that this particular Bill should be proceeded with as a rewrite Bill.³ This note gives a short update of this project. Further background is given in Library briefings on the first three rewrite Bills.⁴ The internet site of the Rewrite Project provides full details with access to the legislation it has produced and is working on at present.⁵

Contents

A.	Introduction	2
B.	Tax Law Rewrite 2006-07	8
C.	The Bill	11

¹ HM Revenue & Customs press notice, 8 December 2006

² Inland Revenue, *Tax Bulletin issue 47*, June 2000 p 760-1

³ HC Deb 13 December 2006 c 892

⁴ "Tax Law Rewrite: the Income Tax (Trading and Other Income) Bill 2004-05" Library standard note SN/BT/3309, 3 March 2005; "Tax Law Rewrite: the Income Tax (Earnings and Pensions) Bill 2002-03", Library standard note SN/BT/2008, 31 January 2003; *Tax Law Rewrite: the Capital Allowances Bill*, Library Research paper 01/04 11 January 2001.

⁵ <http://www.hmrc.gov.uk/rewrite/>

A. Introduction

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 Inland Revenue to publish a report on the increasing length and complexity of the 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 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.⁶ Broadly speaking the project has attracted support across the political spectrum since its inception.⁷

In January 2001 the first rewrite Bill was published and received Royal Assent on 22 March 2001, in time for it to come into effect in April 2001. As the Tax Law Rewrite (TLR) project noted in their 2001/02 annual plan, “the passage of the Act may ... be seen as having endorsed both the process of rewriting the legislation and the new parliamentary process for handling Bills coming from the project.”⁸

To date the project has produced four pieces of legislation:

- The *Capital Allowances Act 2001* (effective from April 2001);
- The *Income Tax (Earnings and Pensions) Act 2003* (effective from April 2003);
- The *Income Tax (Pay as You Earn) Regulations 2003* (effective from April 2004); and
- The *Income Tax (Trading and Other Income) Act 2005* (effective from April 2005).⁹

Initially it was thought the TLR 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.”¹⁰

⁶ Inland Revenue, *Tax Law Rewrite: plans for 1997*, December 1996 pp 24-5

⁷ 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).

⁸ *Tax Law Rewrite: plans for 2001/02*, May 2001 paras 3.1-3.5

⁹ *Tax Law Rewrite: plans for 2006/07*, May 2006 para 1.3

¹⁰ *Tax Law Rewrite: plans for 1999/2000*, March 1999 p 16

The direct cost of the project is about £3 million per year; the project has 34 employees, of whom 29 are full time.¹¹ A Steering Committee provides strategic guidance to the project, to ensure “that the project is meeting its objectives of clarity and user friendliness, and is taking full account of private sector concerns.” There is also a standing Consultative Committee, whose role is to “ensure continuous consultation on the rewritten law with all the main private sector interests.”¹² Both Committees meet several times a year; minutes of their meetings are available on the TLR website.

Since its inception, the TLR project has dealt exclusively with direct taxes administered by the Inland Revenue – not with VAT, excise duties and other indirect taxes administered by HM Customs & Excise.¹³ The merger of the two departments in April 2005 to form HM Revenue & Customs has not changed this. However, following Budget 2004 when the merger was announced,¹⁴ a series of informal reviews were carried out on various projects in train in each department, including a review of the TLR in spring 2005. The project’s director at the time – Robin Martin – gave details to the project’s Steering Committee in May 2005:

The Project Director explained that the new Department’s Board had considered a report which he had made following a short review of the project. The Board had endorsed the project and decided that it should continue. They also felt that, in addition to the rewrite, the project might be able to do more in the way of suggesting and promoting substantive change to improve the legislation.

The Steering Committee asked if the extended remit for TLR had been agreed and, if so, by whom. The Project Director explained that there was not to be a new remit as such. The priority of the project continued to be to rewrite legislation and to put it to Parliament through the now established process. But the Board hoped that the project would (alongside its main work) contribute suggestions to the new Department’s core agenda of improving customer satisfaction, compliance with the system and internal cost effectiveness.

The Steering Committee welcomed the proposition that they might do more in the way of suggesting and promoting substantive change to improve the legislation and agreed that simplification of this kind could contribute significantly to the fulfilment of the Department’s new core agenda, as described. They had for some time been notifying suggestions for improvement of a minor nature, in accordance with their remit, but generally speaking this had not extended to wider thinking and few, if any, had been taken up for active consideration ... More recently, moreover, they had noted ... with satisfaction that some such suggestions were now being taken into account in planning the sequence and structure of the Rewrite Programme. They endorsed the Chairman’s suggestion that he might seek early opportunities of discussing these aspects of their work, with the Chairman of the Board and, if possible, with the Chancellor himself.¹⁵

¹¹ Thirteen of these employees are either secondees or working on fixed-term contracts (HL Deb15 March 2006 c243WA).

¹² *Tax Law Rewrite: plans for 2005/06*, May 2005 paras 2.6, 2.10

¹³ During the proceedings of the Finance Bill in March 1996 the Conservative Government resisted calls to require Customs to produce a similar report on the tax simplification to the Revenue; the issue is discussed in Library Research paper 01/04, cited above (see pp 28-30).

¹⁴ for further details on the establishment of Her Majesty’s Revenue & Customs see, *Commissioners for Revenue and Customs Bill*, Library Research paper 04/90, 6 December 2004.

¹⁵ *Minutes of the 48th meeting of the Steering Committee: SC (05) Minutes (48)*, 25 May 2005 para 5-8

Although there has not been any firm deadline for the project to be completed, in the TLR's 2005/06 annual plan it was noted that the general intention was to deliver a rewrite Bill every two years.¹⁶ More recently HMRC has taken the view that it would be desirable to accelerate this process, an issue raised at the meeting of the Steering Committee on 11 October 2006:

The project Director said that as part of a wider review the Department had been looking at the pace at which rewrite legislation was being enacted. They have explored the option of accelerating the work of the project and have concluded that it would be desirable to improve customer service and to achieve savings from bringing forward completion of the project. The project said that the final decision would have to be taken by Ministers but they would like to have the Steering Committee's views on the proposal before putting it to Ministers. The project said that if the proposal were to be adopted it would mean that a rewrite Bill would be introduced every year rather than every two years, as is the case now. This would provide a clear improvement in customer service and bring the project to an end sooner.

Under the proposal the acceleration would start immediately after the enactment of Bill 4 but would not affect the current timetable for Bill 5, which would be introduced into Parliament as planned in the autumn of 2008. Bill 6 (the second CT Bill) would be introduced in the following year and the capital gains tax Bill would be introduced a year later in 2010.

The project said that there would be resource implications and in particular, they would require additional staff to ensure delivery without compromising quality. The project added there were no plans to change the consultation process or period – they would continue to expose batches of draft legislation for public consultation as they do now and allow the full 12 weeks for responses. The project said that they had discussed the resource implications with the Parliamentary Counsel Office (PCO) and had been promised some extra drafting resources to help deliver the accelerated schedule. The Department had also indicated that they would be prepared to meet the up front costs needed to meet the new schedule. It is expected that the upfront costs would be more than off-set by savings in later years through earlier completion of the project.

The project said that they had discussed the proposal with the Consultative Committee. That Committee was generally content with the proposal but they had felt that the Law Society might have concerns about such a move because of the volume of other legislation which needed to be considered each year. They had also expressed some concern about how possible changes to the corporation tax legislation might sit alongside an accelerated rewrite.¹⁷

At this meeting the Committee were generally supportive of this idea:

In discussion the following main points were made:

- The Steering Committee suggested that the rewrite of capital gains tax should run parallel to the rewrite of corporation tax for part of the period. The project said that this was what they had in mind.
- The Steering Committee noted that there was no proposal to rewrite Petroleum Revenue Tax and that there was some uncertainty about

¹⁶ *Tax Law Rewrite: plans for 2005/06*, May 2005 para 4.2

¹⁷ *SC (06) Minutes*, 11 October 2006 paras 4-10

rewriting stamp duty and inheritance tax. A suggestion was made that inheritance tax might benefit from being rewritten and that stamp duty should be consolidated. The project said that it was difficult to judge at this stage what the exact position would be in 2011 and suggested that further discussion on possible further work would be required nearer that time.

- There was a short discussion on whether or not the consultation period could be shortened. The project confirmed that the Cabinet Office guidelines only apply to formal consultation i.e. the draft Bill, but it was considered best practice to allow the full 12 weeks for all forms of consultation. The project did not think that there would be any need to change this practice.
- The Steering Committee felt that despite the concerns the Law Society might have about delivering rewrite Bills faster they could see that there were many advantages in speeding up the rewrite process provided quality is maintained, and these clearly outweigh the disadvantages.
- The Steering Committee warmly welcomed the extra resources from Parliamentary Counsel and thanked First Parliamentary Counsel for making additional drafters available.

The Steering Committee endorsed the proposal to accelerate the rewrite process.¹⁸

The issue was also discussed at some length at a meeting of the Consultative Committee on 14 November, which had mixed views on whether acceleration was desirable. Prior to this meeting, the Paymaster General had formally approved of this move, as well as asking that the project “should explore the scope for bringing the project to a conclusion after the rewrite of corporation tax and the taxation of chargeable gains.”¹⁹ Members of the Committee raised concerns about the amount of consultation prior to the Minister’s decision, and it is worth reproducing the explanation given at the time:

The project said that they very much regretted the discontent felt by some about the handling of this issue. The project explained that matters had to be viewed against a wider background. The project was not immune from wider developments affecting the future of the Department, in particular the savings expected following the creation of HMRC and under the spending plans announced in the last Budget. Against this background the project had been able to secure extra resources in the short term. An opportunity to secure extra drafters for the immediate future had also presented itself. The likelihood was that it would be much more difficult to secure such resources in a few years’ time.²⁰

At their next meeting on 22 November, the Steering Committee noted these concerns, suggesting that “the project should engage with the Consultative Committee and other stakeholders to see what could be done to streamline the consultation process and minimise the burden for everyone.” The Committee went on to agree that the rewrite of corporation tax should be completed, to support the rewrite of capital gains tax, and stated that it “fully supported the move to proceed as quickly as possible.”²¹

¹⁸ SC (06) Minutes, 11 October 2006 paras 11-12

¹⁹ CC (06) Minutes, 14 November 2006 para 10

²⁰ CC (06) Minutes, 14 November 2006 para 17

²¹ SC (06) Minutes, 22 November 2006 paras 15

Several commentators have argued that the rewrite project is not an effective solution to the complexity of the tax system, and wider reform should be made.²² For example, in an article on the second Act produced by the project, Roger Kerridge (Professor of Law, University of Bristol) wrote: “the rewrite, by itself, reproduces existing law, however absurd, however illogical. It does not involve change To think of the rewrite, in its present form, as the culmination of some sort of simplification process is to be too easily satisfied. What is now needed is to set in train a process whereby the legislation is *first* rewritten and *then* simplified.”²³

The criticism is long-standing and in response the department have repeatedly drawn attention to the way this type of legislation is approved by Parliament:

The agreed Parliamentary procedures for the project's Bills, which considerably streamline the normal legislative process ... are based on the premise that the Bills do not change tax law and are uncontroversial. They allow a very large parcel of legislation to be enacted, in a way which would be impossible if the Bills had to compete for space with the Government's major political priorities in the main legislative programme.²⁴

This issue was discussed during the proceedings of the Finance Bill in July 2005, when Mark Field put down a new clause, to require the Treasury to review the case for a ‘tax law commission’ – a body mirroring the work of the Law Commission, to review and modernise UK tax legislation. As part of his argument, Mr Field argued that the rewrite project had significant shortcomings:

[The TLR project] is doing some good work, but it is purely a rewriting of the law rather than an assessment at the outset of whether a particular type of legislation will best achieve an intended result. It does not attempt to change the rules in any way. If odd points that seem otiose are found, or pointers suggest that things could be improved, they are logged, but they must be dealt with through the general Finance Bill process.²⁵

In response the Financial Secretary, John Healey, argued, a commission of this type would “add little, and would duplicate something that is probably the task of Government. It is unnecessary and inappropriate to franchise out that task to a separate body.” On the rewrite project, the Minister acknowledged, “the project makes the law clearer and easier to use. That may not be regarded as simplification in its fullest sense by all parties, but the law should be simple to understand and practical to comply with, and that is precisely the impact of the project's work.”²⁶

Lord Howe, the former chairman of the TLR Steering Committee, and a long-standing supporter of the project, made the case for a separate review in an opinion piece appearing

²² Others have stressed that in many cases simplification comes at a significant political cost: see, for example, “Big political obstacles stand in way of pressure for simplification”, *Financial Times*, 8 September 2005.

²³ “The Income Tax (Earnings and Pensions) Act 2003”, *British Tax Review* no.4 2003 p 263. Professor Kerridge's views are discussed at more length in the Library note SN/BT/3309, cited above.

²⁴ *Tax Law Rewrite: plans for 2006/07*, May 2006 para 2.16

²⁵ HC Deb 6 July 2005 c 329

²⁶ *op.cit.* c 337. In the event the new clause was negated.

in the *Financial Times* in March 2006. Lord Howe noted that, “despite the work of the Rewrite project, tax law continues to grow in complexity”:

Why? First, because the Rewrite team is expressly precluded from tackling complexities of policy. And understandably so. It has been hard enough to simplify the law of existing tax policy. The most we have been able to do is to report policy complexities that cry out for attention.

Second, chancellors find it difficult to resist fiddling with the tax structure in pursuit of some social, economic or political objective. Mr Brown has certainly surpassed my own sinfulness in this respect. Two of my own "bright" ideas - the Business Start-up Scheme and the Business Expansion Scheme - turned out to be little more than tax avoidance opportunities. Mr Brown's business taper relief looks as though it is going the same way. Certainly his complex array of tax credits is generating more headaches than benefits.

For this reason, I have long stressed (along with many others) the need for the establishment of a purpose-built Tax Structure Review Project. Its sole purpose should be the pursuit, promotion and protection of tax policy simplification. This continuing insistence on simplicity should be as irremovable, and as constantly present, as the voice of the tax-raising departments - and as the politically restless, impatient input of successive chancellors.²⁷

Indeed the Chartered Institute of Taxation has argued recently that the rewrite has *increased* complexity:

The volume of tax legislation that appears each year does not help complexity and moreover means that much of it is not subject to proper scrutiny. The volume has been increased not only because of new legislation arising out of each Budget but also because the existing legislation is being rewritten in so called plain English.

Rewriting the legislation is only worth doing if it enables the users of the legislation to understand the relevant point quicker or more easily. It is doubtful whether this has been achieved. Not only does much of the old legislation still remain in force (so one is forced to refer to two lots of legislation rather than one) but the quality of the drafting of both new and rewritten legislation is questionable, being long winded and often imprecise (thus increasing the need for HMRC guidance).²⁸ Often old defined terms remain on the statute book and yet the draftsman introduces new definitions with no case law background. By failing to take the opportunity to simplify tax policy at the same time as rewriting legislation the project has been a retrograde step and increased complexity.²⁹

²⁷ “Bipartisan support is needed to clear the tax jungle”, *Financial Times*, 22 March 2006. Lord Howe also made this case at greater length in the Hardman Memorial Lecture in November 2000; for details see Library Research paper 01/04 (cited above – in particular pp 78-9).

²⁸ For example, the drafting of new schedule 20 on inheritance tax and trusts is poor and has already had substantial amendment. The new legislation on trust modernisation for capital gains tax and income tax purposes is certainly not a simplification but simply adds to the existing plethora of tax legislation.

²⁹ CIOT, *Tax legislation in the UK: complexity, avoidance and other issues*, 6 July 2006 pp 6-7

B. Tax Law Rewrite 2006-07

The TLR project publishes an annual plan – giving details of its achievements in the previous year, and its forthcoming programme of work. In May 2006 the project published its 2006-07 plan, noting its intention to present its fourth Bill, on income tax, to Parliament before the end of 2006. A series of consultation papers on a variety of subjects covered by the Bill were issued between May and October 2005, and the first full draft of the Bill had been issued in February 2006.³⁰

One concern that has been raised about the TLR is whether it is cost-effective, an issue addressed in the 2006-07 plan:

Consultants have questioned users about the benefits of rewritten legislation and in particular whether benefits can be quantified. Not entirely surprisingly, the general consensus is that it is difficult to measure benefits accurately. The new law is seen to be a considerable benefit to new entrants to the profession. Respondents indicate that for existing users there is an initial transitional period in which they take time to familiarise themselves with the rewritten law. They predict confidently that after this initial period the legislation will give rise to time and efficiency savings. However, they find this very difficult to quantify. Where people are able to put some value on the benefits, it tends to be with rather vague expressions such as "around an hour a week"; "maybe an hour a month"; or "a few hours a year".

This makes actual quantification of benefits problematic. However, some attempt can be made by using the Department's management information about numbers of tax professionals. A time saving of (say) 3 hours a year per person on average would be the equivalent of an annual benefit of around £18m. A time saving of one hour a month would be the equivalent of an annual benefit of the order of £70m. The benefit from the project is therefore likely to be something within this range, quite possibly (if one wants to take a conservative view) within the lower end. For the same reasons as in the private sector, the work of the project is likely to produce efficiency savings within the Department, but again these are frankly difficult to quantify.

The figures above do not take account of what one might term unregistered tax professionals. Increasingly, with the advent of tax credits, many more advisers (e.g. TaxAid and Welfare Rights offices) are being drawn into relevant income tax law by the tax credits legislation's reliance on income tax law to determine income of claimants (rather than Social Security law as in the past). For this growing constituency rewritten legislation has been found to be a very useful advance on the previous situation.³¹

After the passage of each rewrite Act, it is intended to review the new legislation, to determine whether users have found it clearer and easier to apply, and to provide lessons for future rewrite Bills. In 2003 the review of the project's first Act – the *Capital Allowances Act 2001* – found that the rewrite had been "judged a success and the majority of respondents believed the objective of modernising the primary direct tax legislation to make

³⁰ HC Deb 27 February 2006 c 1WS

³¹ *Tax Law Rewrite: plans for 2006/07*, May 2006 paras 2.23-5

it clearer and easier to use has been achieved.”³² In February 2006 a review of the project’s second Act was published; overall the consensus appears to have been that the legislation is much easier to use and understand, though it was too early to tell if the Act’s implementation has been wholly successful.³³ A short summary is provided in the project’s 2006-07 plan:

The review reported that, overall, the tax community are very positive about ITEPA. Particular points of commendation include:

- the Act is seen to be of particular help to those newly entering the profession (inevitably there is an adjustment to be made by those brought up on ICTA).
- our consultation processes are highly praised by users.
- there is general agreement that, after a transitional period, the new Act will lead to time and efficiency savings in the profession.
- Parliamentary Counsel comment that rewritten tax law is a model of best practice for use across Government legislation more generally.
- tax professionals who are themselves unable to comment on our draft legislation feel confident that they are well represented on the project by professional bodies or accountancy firms.

At the same time the review brought out some important points for the future. For example, the project must avoid any recurrence of the criticism brought about by Schedule 22 to the Finance Act 2003; users are sometimes unclear about whether the law has changed as a result of the rewrite; some users are concerned that changes in the language may give rise to ambiguity; and HMRC’s own staff need to be better informed about new rewritten legislation. We shall consider carefully all points of this sort arising from the review.³⁴

As noted here, one of the principal criticisms of the Act was the Government’s decision to replace part of it with schedule 22 to the *Finance Act 2003*:

The Schedule was included in the Finance Bill, published in April 2003.³⁵ It replaced a substantial part of *ITEPA* (the Rewrite project’s second Act) which had been approved by Parliament and enacted only weeks previously. Critics argued that the style and format of Schedule 22 compared unfavourably with the quality of legislation produced by the project; and that it was highly unfortunate that a substantial part of the second Tax Law Rewrite Act had to be replaced so quickly by new legislation that was perceived to be of lower quality.³⁶

The MORI study found that for the majority of respondents this was “the most negative aspect regarding ITEPA”; this section of the report is reproduced below:

³² “Appendix C” to *Tax Law Rewrite: plans for 2004/05*, April 2004. The report – Opinion Leader, *Evaluation of the Capital Allowances Act 2001 rewrite*, Inland Revenue December 2003 – is available at:

<http://www.hmrc.gov.uk/rewrite/caa-01-rolre.pdf>

³³ “Modern English tax laws lack old-fashioned charm”, *Financial Times*, 3 March 2006

³⁴ *Tax Law Rewrite: plans for 2006/07*, May 2006 paras 31.4-5

³⁵ [For details see, Inland Revenue press notice 53/03, *Finance Bill 2003: Tackling avoidance on equity remuneration and creating a fairer system*, 16 April 2003.]

³⁶ *Tax Law Rewrite: plans for 2004/05*, April 2004 para 3.21. For more details see the discussion at the Steering Committee meeting on 23/9/2003 (“Item 3: Link between TLR and the Finance Bill” to Inland Revenue Rewrite Steering Committee, *Minutes of the 40th meeting of the Steering Committee: SC (03) Minutes (40)*, 24 September 2003).

Many do recognise that this is a result of poor timings; the delayed budget in 2003 meant that the Finance Act came into force later than anticipated. However, it is undeniable that this damaged perceptions of both ITEPA, and indeed the TLRP in general. While tax professionals state that it is part of their role to adapt to changes in the law – and recognise that the Finance Act will bring about change each year – the problem is that fairly radical changes were brought about only days after the implementation of ITEPA. As such, tax professionals were placed in the situation whereby they had just started to make sense of the new piece of legislation only for it to change dramatically.

The real changes were felt regarding Part Seven that deals with shares and securities. By nature of the content of this section it tends to be lawyers who were most affected by this. The major disadvantage that this brought is the fact that much work had been conducted by tax professionals by this stage inasmuch as digesting ITEPA and understanding how it was different to ICTA. However, the implementation of the Finance Act meant this process had to be conducted again, only a short while after. Many tax professionals also point out the fact that the amendments made by the Finance Act are not in rewrite style and, in fact, are written in a manner similar to ICTA. This, for some, brings into doubt the level of commitment to the TLRP.

Even for those slightly more sceptical about the worth of the TLRP, they would rather see legislation that is drafted consistently than in a hybrid of styles. A few tax professionals also express disappointment that they were not consulted as to the changes that would be brought about by the implementation of the Finance Act. Many recognise that this was impossible; as Part Seven deals with issues regarding anti-avoidance and trust they understand that the content has to be kept under wraps until implementation.

However, because the changes introduced here are so wide reaching, and due to the fact that tax professionals welcomed the consultation that came about as part of TLRP, they do feel that some advanced warning would have been useful here. Also, a few express concerns that while ITEPA is easy to navigate at the moment, if substantial changes such as this are made each year with the introduction of Finance Acts, then ITEPA will end up as ICTA did; full of concessions and amendments. As previously highlighted, one of the most frequently cited negative aspects of ICTA was the fact that it was not logically structured. The fear is that with the implementation of Finance Acts year on year, ITEPA will also end up disparate in its structure.

Furthermore, a few mention that the Pensions Act due to come into force next year will also result in fundamental changes to ITEPA. Therefore, while the changes made as part of the TLRP are welcomed, some remain unconvinced as to their permanence. However, on balance it would seem that tax professionals are positive regarding the introduction of ITEPA. The source of most of the negative opinion stems from the introduction of the Finance Act only days after ITEPA and most recognise that this, although unfortunate, was an exceptional case. The consolidation exercise appears to have had biggest impact; ITEPA is now much easier to navigate than ICTA and, coupled with the simpler language, it is felt that this should lead to increased time and efficiency savings in the future.³⁷

³⁷ MORI, *The Income Tax (Earnings and Pensions) Act 2003 – Post-implementation review*, HMRC February 2006 pp 26-7. The report is at: <http://www.hmrc.gov.uk/rewrite/itepa-final-report.pdf>

The 2006-07 plan acknowledged the “need to avoid a recurrence of the situation which arose in 2003”, and to this end the project has “maintained close links” with Parliamentary Counsel working on the Finance Bill and policy officials in HMRC.³⁸

C. The Bill

The scope of the *Income Tax Bill* (Bill 14 of 2006-07) is set out in the Explanatory Notes:

The Bill:

- applies for income tax, continuing the general approach of previous rewrite Bills of separating income tax and corporation tax legislation;
- contains the basic provisions of income tax, such as the charge to income tax, tax rates, how a person's income tax liability is calculated, personal reliefs, and general definitions which apply for income tax purposes;
- deals with various specific reliefs, including reliefs for losses, the enterprise investment scheme, venture capital trusts, community investment tax relief, interest paid, gift aid and gifts of assets to charities;
- broadens the picture by filling in the rest of the income tax picture, in particular in relation to settlements and trustees, avoidance and deduction of tax at source; and
- will take the place of ICTA as the main Act about income tax, complemented by ITEPA and ITTOIA (which dealt with the charges to income tax on employment, pension, trading and other income).³⁹

The Bill has 968 clauses and 4 schedules.

As noted above, rewrite Bills are not intended to change the *effect* of legislation in any significant way, though it is anticipated they may make minor changes to the law: to clarify existing provisions, make them consistent or bring the law into line with established practice. The 2006-07 plan gives details of the project's approach:

The minor changes in law or in approach that we propose typically involve correcting small errors, legislating an extra-statutory concession, or dropping material from the existing legislation which is no longer necessary. We aim at every stage of the consultative process to identify clearly all such changes and to highlight any issues that may arise. In this way we seek to ensure that each minor change is fully examined before Parliament is asked to enact it.

It is difficult to define in precise terms what constitutes a "minor change" for the purposes of the project. The project's Steering Committee have suggested that we should take a reasonably bold approach in the first instance, in identifying and proposing such changes as part of the project's work. All changes are subject to the thorough and open consultative process through which our product is scrutinised; those which go too far can be (and are) challenged by users and rejected. Ultimately, the rewrite Bills are considered by Parliament and it is for Parliament to decide what is acceptable and should be enacted.⁴⁰

³⁸ *Tax Law Rewrite: plans for 2006/07*, May 2006 para 3.11

³⁹ Bill 14-EN(l) para 17

⁴⁰ *Tax Law Rewrite: plans for 2006/07*, May 2006 appendix B

When the first rewrite Bill was considered by Joint Committee in January 2001, the Chairman, Kenneth Clarke MP, discussed the particular role the Committee would have in scrutinising these changes in the law:

Our principal aim is to report on whether or not we are satisfied that the drafting of the Bill is indeed an improvement on the drafting of the previous legislation, that the rewrite has achieved its purpose and that it will be of practical benefit to users of legislation in future, including Ministers and both Houses of Parliament. The second thing we are going to concentrate on is considering each of the minor changes which have been made. It always was contemplated that minor changes would have to be made to accommodate the rewriting of the tax law in simple English, but we think we have a particular duty to ensure that the changes which have been made are minor in the literal meaning of that term as conjugated by the House of Commons, necessary for the purposes of rewriting the Bill in plain language and that they do not involve any policy change or shift in the burden of taxation which really ought to be done in primary legislation, either in a Finance Bill or in a Tax Bill.⁴¹

Annex 1 to the Bill's Explanatory Notes lists 155 changes that the Bill will make to the law;⁴² by way of comparison the explanatory notes to this Bill's predecessor – the *Income Tax (Trading and Other Income) Act 2005* – lists 159 changes. The Notes also set out the consultation process over the Bill's drafting:

This consultation took the form of a series of papers which publish clauses in draft. There were 30 of these, published between April 2004 and October 2005. A draft Bill was published for consultation in February 2006. And two further papers on provisions in FA 2006 were published in July 2006. All these documents are available on the Tax Law Rewrite website.

In addition to formal consultation, the project presents its papers to the Committees to inform the Committees and seek their views on particular issues. The project has also consulted on an informal basis with specialists in particular subject areas. For example, there have been regular meetings of the VCS (venture capital schemes) rewrite group during the development of the draft EIS and VCT clauses. This is a small group of practitioners (who represent a number of professional bodies), policy and technical specialists from HMRC and members of the project.⁴³

The particular features of the draft Bill published in February 2006 were highlighted in an article in HMRC's *Tax Bulletin*:

The tax calculation A key feature of the draft Bill is the tax calculation. This sets out how amounts liable to income tax and eligible for relief are brought together to arrive at the measure of a person's income tax liability. The calculation provides a focal point for not only the income tax provisions in the draft Bill but also those in ITEPA and ITTOIA.

⁴¹ Joint Committee on Tax Simplification Bills, *Minutes of evidence taken on 24 January 2001: Capital Allowances Bill*, 31 January 2001 HL 24-i HC 175-i 2000-01 Q1.

⁴² Bill 14-EN (III) pp 36-229

⁴³ Bill 14-EN (I) para 14-5

Charges on income A significant simplification is the abolition of the concept of "charges on income" with relief for allowable payments now given as a deduction from income.

Income tax only The draft Bill continues the process of greater separation of the income tax and corporation tax codes, not least in relation to the general definitions found in Part 15 of the draft Bill. As was the case with *ITTOIA*,⁴⁴ the draft Bill makes necessary consequential amendments to the source legislation. Though this adds to the volume of tax law, it has been welcomed by users for providing greater clarity.

Origins and Destinations The material published on the HMRC website ... includes (in Volume 4) tables of origins and destinations. These will assist anyone studying the draft Bill to identify the source material for any given provision and trace what has happened to it.⁴⁵

In addition two particular clauses in the draft Bill were flagged in the 2006-07 plan:

The draft Bill also contains ... powers to enable an order to make additional consequential amendments or to correct any errors which might be made by the Bill. The power to make additional consequential amendments is on all fours with that in section 882 of *ITTOIA*, the first order under which was made earlier this year.

The power to correct errors is new, and will be limited to undoing changes made by the Bill so as to restore the law to what it was before the Bill was enacted. In particular, it is envisaged that it will serve to enable errors in making consequential amendments to be corrected. Neither power could be used after 5 April 2010 (three years after the Bill is due to come into force). And it is intended that neither power would be used without the agreement of both the TLR committees.⁴⁶

(These now form clauses 961 & 962 of the Bill that is before the House.)

In September 2006 the project published a summary of the responses it had had to the draft Bill; it found "the general tenor of the responses was very positive." The document flagged two specific points that arose from the consultation:

25. Two particular points arising from the consultation, which we discussed with the Consultative and Steering Committees at their July meetings, are worthy of note here, as well as in the relevant places later in the document.

26. The first concerns the label "unrelieved total income", used to describe the result of Step 2 of the calculation of a person's overall income tax liability in clause 23.⁴⁷ This has been changed to "net income" as this is considered intuitively easier to understand, especially as it makes it explicit that it has been arrived at by deducting something (certain reliefs, such as loss relief) from something else (total income).

27. The second concerns the inclusion of certain provisions about residence in Chapter 2 of Part 13, given sensitivities around residence generally, and certain of

⁴⁴ [*The Income Tax (Trading and Other Income) Act 2005*.]

⁴⁵ HMRC, *Tax Bulletin issue 82*, April 2006 pp 1282-3

⁴⁶ *Tax Law Rewrite: plans for 2006/07*, May 2006 para 3.3

⁴⁷ [This remains clause 23 in Bill 14 2006-07.]

the Annex 1 Changes proposed in relation to that material (in particular the change presented as Change 110 in the draft Bill). In the light of discussion with both Committees, this material (and in particular Change 110) has been retained.⁴⁸

For convenience, the discussion in Steering Committee on the second of these issues is reproduced below:

18. The project said that the provisions in the draft Bill about residence, and in particular Change 110, had caused some controversy in consultation. The Change (codifying case law) extends the operation of a provision about the residence status of individuals who are ordinarily resident in the UK but leave the UK temporarily to all individuals (whereas in the source legislation its operation is limited to Commonwealth and Irish citizens). The Change is in principle adverse to taxpayers, but not in practice - given the operation of case law.

19. One representative body had (both in the consultation responses and at the Consultative Committee meeting) expressed opposition in principle to changes being made in the area of residence in a TLR Bill, because of its general sensitivity.

20. The project also noted that one other respondent had objected to this Change, though a number of other respondents had been content. The project said that they would be interested in the Steering Committee's views to assist them in their ongoing work in this area.

21. The Steering Committee asked why this proposal should cause concern if in practice the law operated in such a way that all ordinarily resident individuals, regardless of their nationality, were treated in the same way. The project said that in principle the proposed Change would deprive nationals of non-Commonwealth countries of an argument they could otherwise make about the interpretation or application of the case law in their particular circumstances.

22. But in answer to a question from the Steering Committee the project said that the Change would merely codify existing case law. The Steering Committee agreed that this was a sensible change and would make the law clearer. This would be in line with the principle of rewriting legislation so as to reflect the reality of the way it operates in practice.

23. One member of the Steering Committee pointed out that in ITTOIA a similar Change relating to Commonwealth citizens (in that case favourable to taxpayers) was enacted.

24. The Chairman noted that the paper mentions possible human rights issues in relation to this point and asked what they were. The project said that this referred in particular to the reference to Commonwealth citizens, noting the comments on this aspect in the book written by James Kessler QC referred to in the paper.⁴⁹ The project confirmed that they were also checking the Bill's compatibility with the Human Rights Act more widely.

⁴⁸ Tax Law Rewrite, *Responses to the draft Income Tax Bill*, 20 September 2006 p 4. Five respondents had made comments on this clause, of which two strongly opposed it, on the grounds it went beyond the scope of the project's remit (*op.cit.* para 336-343).

⁴⁹ [James Kessler QC, "Taxation of Foreign Domiciliaries" 4th edition 2005 – cited in CC/SC(06)11, 13 July 2006 para 13.]

25. The Steering Committee said that they did not consider Change 110 to be outside the remit of the rewrite and that they very much supported its inclusion in the Bill. The project thanked the Committee for their helpful comments.⁵⁰

This particular provision now forms clause 762 of Bill 14; the change made in the law is set out as Change 116 in the Explanatory Notes.⁵¹

Further to this, on 20 November 2006 the project published a paper for the Steering Committee on the passage of the Bill through Parliament. One of the points raised relates directly to the discussion in Steering Committee, quoted above, on human rights issues:

Personal reliefs – Commonwealth citizens and EEA nationals

2. We advised the Committee at their meeting in July that we were giving consideration to potential human rights issues relating to the Bill and, in the context of that discussion, the potential for questions to arise in relation to provisions referring to Commonwealth citizens was mentioned.

3. In the course of that further work, and having taken legal advice, it has proved necessary to limit the scope of the provisions in the Bill about personal reliefs, so as not to include provision for reliefs given to non-UK residents by reference to their Commonwealth citizenship or EEA nationality. Provision for relief in these cases will continue to be available, but under parallel provisions in ICTA.

4. In the particular case of blind person's and married couple's allowances, there are provisions for the allowances to be transferred between spouses or civil partners in certain circumstances. Here, in the theoretically possible case of a couple consisting of two individuals where one qualifies under the rules in the Bill and the other qualifies under the rules in ICTA, it is necessary for the Bill to limit the extent to which such transfers can be made. As a result, when the Bill comes into force, the only people who will be entitled to make such transfers will be those who were entitled to do so immediately before that time. The entitlement of these people will come to an end two years after the Bill comes into force.

5. This is a minor change, and will be recorded as such, in the terms of the draft Change note in the Appendix.⁵²

The Steering Committee discussed this issue at its meeting on 22 November:

29. In discussion the following main points were made:

- The Committee noted that the proposals were only drawn to the attention of the Consultative Committee after their meeting. The project agreed that the timing was unfortunate but it was beyond their control.
- In response to a question about the two-year grandfathering provision for blind persons' and married couple's allowances the project explained that human rights law accepts that national Governments may need a little time to resolve issues of compatibility. The project said that it was in this context, and in the context of the legal advice they had received, that it had been decided to limit the provisions to two years.

⁵⁰ *Minutes of the Steering Committee meeting on 23rd July*, SC (06) Minutes 21 July 2006

⁵¹ Bill 14-EN (III) pp 186-8

⁵² *Paper CC/SC(06)19 – Bill 4: Parliamentary Stages*, 20 November 2006 p 1

30. The Committee felt that on balance the proposals put forward by the project were well considered and were the best (or least bad) available solution to the problem. They noted that the alternative would be to remove all the provisions relating to personal allowances from the Bill which would be very damaging.

31. The Committee endorsed both proposals and recommended that the project should draw the Consultative Committee's attention to these discussions immediately and send them the relevant parts of the Explanatory Notes.⁵³

Following the publication of the *Income Tax Bill 2006-07*, the project published a paper setting out clauses to be added to the Bill at the Joint Committee stage. In its note to the Steering Committee on 20 November, cited above, the project gave reasons for this measure:

Accrued income scheme

6. A draft of clauses rewriting the accrued income scheme (AIS) legislation in sections 710-728 of ICTA was included in the March 2004 draft of the previous rewrite Bill (which became ITTOIA 2005). This material was not in fact included in that Bill – on the basis that the policy was subject to review and so the provisions might be subject to radical overhaul.

7. The AIS provisions relate only to income tax and will certainly benefit from being rewritten. Options for reform of the scheme continue to be subject to review. While there are differing views about possible future reforms, one strong message is coming through clearly – the rules as they stand are too difficult to understand. On that basis, it is considered desirable not to miss the opportunity of rewriting these rules in what will be the final TLR Bill relating specifically to income tax. This will in no way prejudice ongoing work in this area.

8. Although the clauses have been previously consulted upon, that was some time ago and so we want to give stakeholders another opportunity to comment before bringing forward what will be a significant body of material (perhaps around 60 clauses, forming a new Part of the Bill). To maximise the time for stakeholder engagement, we plan to delay inserting them in the Bill until Joint Committee stage (some minor amendments have been made to previous Bills at that stage.)

9. We intend to publish the clauses in draft on 14 December. The clauses will be based largely on those published in 2004, but will be updated to take account of subsequent changes to the legislation and arranged in a form suitable for insertion into the present Bill. This will allow three weeks for comments, as Joint Committee is unlikely to be before the middle of January.⁵⁴

In the covering note to these draft provisions, the project noted,

The time available for consultation is now unfortunately limited by the need to present the clauses for consideration by the Joint Committee. Would you please send any comments on the draft clauses by 5 January 2007. We apologise for the short time available for consultation and are sorry that this is shortened further by the Christmas

⁵³ SC (06) Minutes 22 November 2006 paras 29-31

⁵⁴ Paper CC/SC (06) 19 – Bill 4: Parliamentary Stages, 20 November 2006 pp 1-2

and New Year break, but we hope the fact that the clauses are essentially an updated version of those already published will alleviate the work that needs to be done.⁵⁵

The Steering Committee also discussed this issue at its meeting on 22 November:

35. In discussion the following main points were made:

- The Committee agreed that it makes sense to include the material on AIS in this Bill now that the anticipated reform of the rules is unlikely to happen. But they also noted the unsatisfactory timeframe for consultation and the inevitable pressures this would place on stakeholders.
- The Committee suggested that the project should make a special effort to bring the Consultative Committee up to speed on this so that they are able to contribute effectively to the consultation process.
- The Committee suggested that the project should include a supplementary note outlining the specific changes that have been made since the material was last consulted on both as a result of comments received last time and subsequent Finance Acts. The project should also highlight areas that are new so that people could focus on these areas.

36. Subject to the points made on handling the Committee indicated that they were content with the project's proposal. The project thanked the Committee for their helpful comments and agreed to alert the Consultative Committee as soon as they were able to.⁵⁶

For its part the Consultative Committee has not met since this date.⁵⁷

Finally, the department's regulatory impact assessment on the Bill estimates the cost of producing the Bill to be approximately £6 million, spread over the years 2003 to 2007. On the benefits that the users of this legislation might enjoy, the assessment noted that the post-implementation reviews of the rewrite's first two Acts had not provided detailed monetary estimates. Nonetheless it went on to calculate that cost savings could be "between £18m and £72m for the 120,000 or so tax professionals who deal with the Department on a regular basis."⁵⁸ Details of these calculations are reproduced below:

42. Despite the absence of precise details about savings in relation to either of the Acts, it is possible by building on the general indications given by the users of these two Acts to illustrate the likely benefits for users.

43. We believe that the income tax legislation is used more than the capital allowances legislation and so the time saved by users of this legislation should be correspondingly greater. So building on the responses obtained for the Capital Allowances Act, as we do in the following paragraphs, should give a conservative indication of the likely benefits for users.

44. One indication of these benefits is provided by considering the time saved by tax professionals. If we assume a saving of time for each tax professional of just three

⁵⁵ *The Income Tax Bill (formerly Bill 4): Accrued Income Scheme*, Paper CC/SC(06)20 14 December 2006 p 2

⁵⁶ SC (06) Minutes 22 November 2006 paras 35-6

⁵⁷ Its next scheduled meeting is 27 February 2007 (CC (06) Minutes 14 November 2006 para 37).

⁵⁸ HMRC, *Tax Law Rewrite: the Income Tax Bill – regulatory impact assessment*, November 2006 paras 61, 80. This is published at: <http://www.hmrc.gov.uk/ria/final-fst.pdf>

hours per year and an average hourly charge-out rate of £50 then, on that basis, the value of the time saved will be £150. According to HMRC management information there are approximately 120,000 active tax professionals who deal with the Department on a regular basis. Most, if not all, will benefit in some respect from the rewritten income tax legislation. This suggests an overall potential benefit of around £18m.

45. If the time saved were one hour per month at £50 per hour the overall benefit would increase to around £72m. 46. Based on this we estimate that after a transitional period the total annual benefit by reference to time saved as a result of this Bill could be somewhere between £18m and £72m.

47. These savings may or may not be passed on from practitioners to businesses. Even if they were, the actual saving per business is likely to be very small indeed because the 3 to 12 hours time saved per practitioner would be shared between all clients.

48. There is a further benefit for another important constituency – a variety of advisers who serve people on low incomes in need of help with their tax affairs. Such advisers include TaxAid, and increasingly organisations such as Age Concern and welfare rights offices which are being drawn into the need to consider relevant income tax law by the tax credits legislation's reliance on income tax law to determine the income of claimants. The rewritten legislation should be of direct and indirect benefit to this growing group of advisers, and ultimately to the members of the public they serve.⁵⁹

⁵⁹ op.cit. pp 7-8