



Tax Law Rewrite : the final Bills

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On 19 November 2009 two Bills to rewrite corporation tax and international tax legislation were introduced in the Commons: the *Corporation Tax Bill* (Bill 1 of 2009-10), and the *Taxation (International and Other Provisions) Bill* (Bill 2 of 2009-10). These Bills were the final pieces of legislation to be produced by the Tax Law Rewrite (TLR) 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. They received Royal Assent on 3 & 18 March respectively, and took effect from 1 April 2010.

Prior to this, the rewrite project produced five Acts and one piece of secondary 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)
- The *Income Tax (Trading and Other Income) Act 2005* (effective from April 2005)
- The *Income Tax Act 2007* (effective from April 2007)
- The *Corporation Tax Act 2009* (effective from 1 April 2009).¹

The *Corporation Tax Act 2010* substantially completes the rewrite the corporation tax code, following the *Corporation Tax Act 2009*, and includes provisions about losses and gifts to charities, various reliefs such as group relief, distributions, particular types of companies and activities, avoidance, and definitions. Its companion Act includes provisions about double taxation relief, transfer pricing, advance pricing agreements and tax arbitrage. It also relocates and where appropriate rewrites some provisions which would otherwise have been left unhelpfully in the *Income and Corporation Taxes Act 1988* – which used to consolidate the principal provisions of both income and corporation tax law – or one of the Finance Acts.²

The two most recent rewrite Acts had been published in draft form in March 2009, and in July the Government confirmed that the TLR would close once these Bills were enacted, as the benefits of extending the rewrite to other parts of the tax code were not clear.³ There does

¹ Background on this legislation is five Library briefings written for each Bill's second reading: Library Research paper 01/04 11 January 2001, and, Library standard notes SN/BT/2008, 31 January 2003; SN/BT/3309, 3 March 2005; SN/BT/4204, 22 December 2006; SN/BT/1362, 15 December 2008.

² HM Revenue & Customs press notice NAT82/09, 20 November 2009

³ HC Deb 16 July 2009 cc39-40WS

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not appear to have been any substantive comment on either piece of legislation since publication – something which reflects on the lengthy and detailed consultation procedure that has been used in drafting this type of legislation since the inception of the rewrite.

Rewrite Bills are not intended to change the *effect* of legislation in any significant way, although Bills may include a number of minor changes: say, to legislate an extra statutory concession or to discard provisions which are now obsolete.⁴ 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. Both the *Corporation Tax Bill*, and the *Taxation (International and Other Provisions) Bill* were approved by Second Reading Committee on 15 December 2009.⁵ The Joint Committee on Tax Law Rewrite Bills published a report on the two Bills on 27 January 2010, concluding that the Bills were “a welcome clarification of the existing law”, and that “the only changes that the Bills make to the law are of such minor significance that they need not be referred to the attention of Parliament.”⁶ The Bills received a Third Reading on 4 February,⁷ and completed scrutiny in the Lords in the next weeks,⁸ before receiving Royal Assent in early March – bringing the rewrite project to a close.

This note gives an update of the TLR, and a short introduction to these two last Bills. Full details are available on the project’s internet site.⁹

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1 Introduction

During 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. The clause was accepted, despite Government opposition and became section 160 of the *Finance Act 1995*. In December that year the department published its report - *The Path to Tax*

⁴ Inland Revenue, *Tax Bulletin issue 47*, June 2000 pp760-1
⁵ The House formally gave each Bill a second reading on 5 January 2010 (HC Deb cc 137-8).
⁶ *First report: Corporation Tax Bill and Taxation (International and Other Provisions) Bill*, 27 January 2010 HC 232 & HL Paper 31 2009-10 p3
⁷ HC Deb 4 February 2010 cc491-503
⁸ The Bills had short second readings in the Lords on 2 March (HL Deb cc 1409-1414), and 24 February (HL Deb cc1073-80) respectively; all remaining stages were completed without debate.
⁹ <http://www.hmrc.gov.uk/rewrite/>

Simplification – which recommended that most of the primary legislation on Inland Revenue taxes should be rewritten in simpler, more user-friendly language. In his November 1996 Budget the then Chancellor, Kenneth Clarke, confirmed that the rewrite project 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.¹⁰ The project has attracted support across the political spectrum since its inception.¹¹

The direct cost of the project is about £3 million per year. 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.

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. Following the second rewrite Act, 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.”¹⁴ Lord Howe, who has been directly involved in the TLR from its start, has argued that “in spite of [its] undoubted success ..., it has by necessity left the substance of tax law untouched, and as a result has not been able to stem the rapid increase in complexity that we have witnessed in recent years.”¹⁵ Writing in the Institute for Fiscal Studies’ 2008 *Green Budget*, Malcolm Gammie commented that the rewrite “uses simpler language but at much greater length and without resolving any of the underlying complexity in the legislation.”¹⁶ By contrast other commentators have noted that in many cases simplification comes at a significant political cost, and that grander plans for simplification would be impractical.¹⁷

Nevertheless, 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:

¹⁰ Inland Revenue, *Tax Law Rewrite: plans for 1997*, December 1996 pp 24-5

¹¹ 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).

¹² *Tax Law Rewrite: plans for 2009/10*, May 2009 paras 2,25, 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 “The Income Tax (Earnings and Pensions) Act 2003”, *British Tax Review* no.4 2003 p263

¹⁵ “Why we must change the way tax law is made”, *Financial Times*, 3 July 2008

¹⁶ IFS, *Green Budget 2008*, January 2008 pp 260, 266-7. For a review of these criticisms see, ACCA (Association of Chartered Certified Accountants), [Is there a way out of the tax labyrinth?](#), March 2009.

¹⁷ see, for example, “Big political obstacles stand in way of pressure for simplification”, *Financial Times*, 8 September 2005.

The project's remit to restate, and not to change, the law is sometimes not fully appreciated and can lead to misunderstanding. People sometimes ask: why bother to go to all the trouble of rewriting the law and not take the opportunity to change it substantively? At the project's inception, the Government decided that rewriting the law (to make it clearer and easier to use) itself provided major benefit and that it was important to focus fully on this aim. 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 that would be impossible if the Bills had to compete for space with the Government's diverse political priorities in the main legislative programme.

Rewrite complements the Government's commitment to tax simplification. Indeed, by clarifying the existing law and providing a more robust legislative base on which to build, rewrite can facilitate simplification. For example, the chargeable event regime relating to life insurance originally applied to both income tax and corporation tax. The provisions were rewritten for income tax in the *Income Tax (Trading & Other Income) Act 2005*. However, the legislation, when rewritten in draft form for corporation tax, was disproportionately lengthy considering its limited relevance to companies and was not designed to be readily applied to the corporate sector. The Tax Law Rewrite process was therefore the catalyst for the introduction of more suitable treatment of chargeable event gains for companies in *Finance Act 2008*. These provisions are now in Part 6 of the *Corporation Tax Act 2009* (relationships treated as loan relationships).

The project can also be a catalyst for policy change. For example, consultees asked that there should be no double taxation when trade debts between companies within a group are released. A measure that addresses this issue is included in clause 42 of *Finance Bill 2009*.

The project, its Committees and the wider tax community participating in the rewrite process are encouraged to make suggestions for substantive improvements to tax law, even if they cannot be dealt with in rewrite Bills.¹⁸

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.¹⁹ In response the then 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."²⁰

In January 2009 David Gauke made a similar argument, when he spoke for the Conservatives in the Second Reading Committee on the *Corporation Tax Bill*: "we need to create an office of tax simplification, modelled on the tax law rewrite process ... which was perhaps the intention behind the amendment to the *Finance Act 1995*. We need to look at the structure, not just the drafting, so that we can address the major issues that are of

¹⁸ *Tax Law Rewrite: plans for 2009/10*, May 2009 paras 2.16-20

¹⁹ HC Deb 6 July 2005 c 329

²⁰ *op.cit.* c 337. In the event the new clause was negatived.

concern to British businesses, ensure that we have adequate pre-legislative scrutiny and gather real momentum towards addressing tax complexity.” In response the Financial Secretary, Stephen Timms, said, “I do not agree that it would be a good idea to set up a new independent body to oversee this work. Another layer of bureaucracy in the system is not the right way to do things.”²¹

Mr Gauke reiterated the case for this body at the report stage of the Finance Bill in July, suggesting that its role would be “to examine such areas of fiscal law as seem to it appropriate” though “it would not express a position on rates or yield or make decisions on tax law.”²² On this occasion, Rob Marris argued that the case for such a body underestimated the inevitable difficulties in simplifying the system, as the withdrawal of complex rules often meant the loss of tax relief for one or more group of taxpayers. Responding to the debate Mr Timms argued that this type of reform was “unnecessarily bureaucratic”, and that Mr Gauke’s position appeared contradictory, given the Opposition’s wider concerns about the numbers of quangos that there were in operation.²³

Writing in the *Tax Journal* in May 2007, Maurice Parry-Wingfield, a practitioner and adviser to the department in the project’s earlier phases, noted “people complain that the new legislation is too long, and they were comfortable with the original anyway”:

This is to miss the point. Just as I was handicapped by the lack of electronic equipment when starting my career, so are today’s tyros held back by having to fathom the meaning of traditionally-written legislation, often terse and arcane. I believe the structure and language of the rewritten legislation is infinitely easier for a newcomer to get to grips with.

He went on to observe:

The rewrite throws up plenty of examples of legislation that desperately needs simplifying or even removing. Sadly the challenge hasn’t been taken up and once the provision are rewritten there’s less incentive to do so. What a pity we didn’t learn from the Antipodean approach: try to get the principles sorted out in front of the rewrite (Australia) or alongside it (New Zealand). I’m afraid it’s too late to change course now.²⁴

2 The completion of the rewrite project

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 stock take, which suggested that it was infeasible to estimate precisely how long the rewrite might take. 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.”²⁵ The review did not

²¹ Second Reading Committee (Corporation Tax Bill) 15 January 2009 c8, c14

²² HC Deb 7 July 2009 c902

²³ HC Deb 7 July 2009 c915

²⁴ “A valedictory”, *Tax Journal*, 28 May 2007

²⁵ *Tax Law Rewrite: plans for 1999/2000*, March 1999 p16

result in a fixed deadline being set for the end of the TLR, though the project aimed to deliver a rewrite Bill every two years.²⁶ In May 2008 the Government decided to accelerate this process:

Up to now there has been a gap of two years between rewrite Bills. We discussed and agreed with the two committees plans to accelerate the work on the second of the two Corporation Tax bills. This acceleration means that the income tax and corporation tax codes will be brought more rapidly into line and the benefits of rewritten legislation will be realised more quickly. We have been mindful of the impact of acceleration on consultees and, as a result of discussions with our committees, have streamlined and amended the way we work to ensure the consultation process remains as effective as it has been to date with as little increased consultation pressure as possible. In particular, to help consultees in planning their work, we have agreed our consultation programme with our Consultative Committee and have published it so that consultees are aware of publication dates of draft clauses.²⁷

Consultation on the first Bill to rewrite corporation tax law began in February 2008, and the completed Bill received Royal Assent in March 2009. At this time, the Government announced that *two* further Bills would be introduced in the next Parliamentary Session:

The Financial Secretary to the Treasury (Mr. Stephen Timms): I am pleased to tell the House that Her Majesty's Revenue and Customs will shortly publish drafts of the Tax Law Rewrite project's sixth and seventh Bills. These two Bills are a major landmark in the task of rewriting the legislation for the two main direct taxes which are of great importance to individuals and businesses. The project has, since its inception in 1996, been rewriting the income tax and corporation tax codes in a clearer and more understandable form, making them more accessible than at any time in recent memory. The Bills, when enacted, will complete this work.

One is the *Corporation Tax Bill* which is the second of two Bills by that name which will rewrite substantially the whole of the corporation tax code. (The first is presently before Parliament and will become the *Corporation Tax Act 2009*.) It is expected to become the *Corporation Tax Act 2010*. It includes provisions about the treatment of losses and gifts to charities, reliefs, distributions, particular types of companies and activities, avoidance and definitions. The second is the *Taxation (International and Other Provisions) Bill* which includes provisions about double taxation relief, transfer pricing, advance pricing agreements and tax arbitrage. The Bill also seeks to help users by relocating and where appropriate rewriting provisions which would otherwise have been left unhelpfully in the Income and Corporation Taxes Act or one of the Finance Acts.

It is planned to introduce the Bills into Parliament by the end of 2009. Four previous Bills of the project were enacted as the *Capital Allowances Act 2001*, the *Income Tax (Earnings and Pensions) Act 2003*, the *Income Tax (Trading and Other Income) Act 2005* and the *Income Tax Act 2007*. The scope of these new Bills and the timing of consultation were agreed with the project's Consultative and Steering Committees which together include the main representative bodies and other users. They benefit from a style and structure that has been developed as a result of consultation over the previous rewrite Bills. Earlier versions of the legislation in these new Bills have been revised in the light of comments and suggestions from tax professionals and others who engaged in the consultation process. This has only been possible thanks to the

²⁶ *Tax Law Rewrite: plans for 2005/06*, May 2005 para 4.2

²⁷ *Tax Law Rewrite: plans for 2008/09*, May 2008 para 3.4

close collaboration and co-operation between the project team and tax practitioners, the legal profession and business representatives.²⁸

In May 2009 the project published its annual report, noting that the publication of the two draft Bills was “something not yet attempted by the project and is further evidence of our meeting the aim of accelerating the work.”²⁹ The report went on to comment on the future of the project as a whole:

The support and highly skilled input of representative bodies has been vital to the success of the project. During 2007/08, some of the representative bodies most actively engaged in the work of the Tax Law Rewrite project suggested that the project should be brought to a close upon completion of the rewrite of corporation tax. Subsequent consultation on the future of the project indicated widespread (though not universal) support for this proposal. Significantly, most of those who have made major contributions to the project's work expressed the view that to rewrite capital gains tax, inheritance tax or other complete tax codes would not now represent the best use of scarce technical resources. There was, however, some support for targeted rewrite of particular areas of legislation.

In order to establish more certainly whether there should be any further rewrite work, or the project should come to an end, further consultation was undertaken with the representative bodies and the main accountancy and legal firms in the first quarter of 2009. This sought their views on whether they wished the project to continue and, if so, which provisions of the taxes acts they would like to see rewritten once the work currently being undertaken came to an end. The response to this further consultation is expected later in 2009.³⁰

In earlier years the department has published a review of the new rewrite Acts two years after they have come into force.³¹ In its 2009/10 report the rewrite team explained that they had been unable to commission a review of the second income tax Act – the *Income Tax (Trading and Other Income) Act 2005*, but that it would conduct a review of all income tax legislation in the summer of 2009, approximately two years after the third, and last, of the rewrite Acts dealing with income tax – the *Income Tax Act 2007* – was enacted. The report also explained that it was the team's intention “to conduct a review of all the rewritten corporation tax legislation in 2012, approximately two years after it is anticipated that Bills 6 and 7 will be enacted.”³²

Provision is made in the *Corporation Tax Act 2009* to allow consequential amendments or corrections to the Act to be made by Order, rather than introducing legislation within an annual Finance Act (specifically under ss1323-4 of the Act). Neither of these powers may be used after 31 March 2012 – three years after the Act came into force.³³ During the debate on this legislation in Second Reading Committee the Financial Secretary, Stephen Timms, said, “as before, I can confirm that those powers cannot be used to change the law during periods before the Bill's coming into force” and “a further safeguard that I hope will be welcome is

²⁸ HC Deb 3 March 2009 cc48-9WS

²⁹ *Tax Law Rewrite: plans for 2009/10*, May 2009 para 3.25

³⁰ *Tax Law Rewrite: plans for 2009/10*, May 2009 paras 5.1-3. The project produced a one page summary of this exercise: *Paper CC/SC (09) 10: Future of the project*, 2 June 2009.

³¹ Reviews of the first two rewrite Acts – the *Capital Allowances Act 2001* & the *Income Tax (Earnings and Pensions) Act 2003* – are on the TLR site: <http://www.hmrc.gov.uk/rewrite/publications.htm>

³² *Tax Law Rewrite: plans for 2009/10*, May 2009 paras 4.3-4

³³ Equivalent provision is made in the *Income Tax Act 2007* (ss1028-9); any Order under these provisions may only be made by 5 April 2010. To date five Orders have been made under these powers.

that, as in the past, the powers will not be used unless the tax law rewrite project's consultative and steering committees both agree that they should be used.³⁴ In October 2009 the Government made a number of changes to the Act under this procedure.³⁵ Recently the Financial Secretary has stated that from the five rewritten Acts to date, only 97 errors have been picked up and corrected, mostly by primary legislation.³⁶

Similar provision is made in the last two rewrite Bills: the *Corporation Tax Bill 2009-10*, and the *Taxation (International and Other Provisions) Bill 2009-10*. When the Joint Committee on Tax Law Rewrite Bills took evidence on the Bills, Lord Goodhart asked about the fact that secondary legislation laid under these provisions would be subject to the negative rather than the affirmative procedure. In response John Sellers, head drafter for the Rewrite, gave some insight into this procedure:

[The power to make consequential provision given in rewrite Bills] can only put the law back to what it was if the Bill had not been enacted, so it is not a case of having what is generally called a Henry VIII power to do almost what you like to the statute book, it is much more a question of merely moving from one position which Parliament has, at the accidental invitation of the project, enacted as the law back to the position which Parliament had previously approved. I think that in those circumstances there is much less in the way of potential for controversy than might be the case with a much more open-ended power to make changes to the tax law. It is worth highlighting the fact that neither of these powers can be exercised, because the relevant undertakings have been given by the Financial Secretary on each of the Bills, without the agreement of the project's Consultative and Steering Committees which, I think, are capable of defending the interests of taxpayers quite assiduously and those Committees will remain to oversee the exercise of these powers under the two Bills that are now being considered until the expiry date of the powers three years after enactment.³⁷

The project provided more details of its consultation with the profession about the future of the rewrite, at a meeting of the Consultative Committee in early June:

The Director said that early in the year a letter had been sent to major law and accountancy firms and some representative bodies. The letter asked two questions: should the project be brought to a close after the current work was completed and, if not, were there any suggestions for 'targeted' areas of legislation that might benefit from rewriting? It was made clear that the rewrite of whole areas of the tax code had been ruled out by Ministers. The balance of opinion from the respondents was in favour of closing down the project and there was no clear consensus on targeted rewrite areas. The Director said that this was disappointing but not unexpected - the hands-on support from the tax community had been in decline for some time. This outcome would be discussed by the Steering Committee at their next meeting.

The Committee commented that the Institute of Chartered Accountants in England & Wales (ICAEW) remained of the view that the project should continue on a limited basis and felt that simply bringing the project to an end would involve risks. First, the interests of the tax system would no longer have a champion within HMRC. Second, the momentum behind improving drafting standards would be lost. Third, ending the project could impair the chances of policy simplification. The Committee also acknowledged that the project had already achieved a significant measure of

³⁴ Second Reading Committee (Corporation Tax Bill) 15 January 2009 c16

³⁵ Under SI 2009/2860, which came into force on 18/11/2009.

³⁶ HC Deb 4 February 2010 c499

³⁷ HC 232 & HL Paper 31 2009-10 Q4 Ev26

simplification. It was suggested that had there been some consensus on targeted material to be rewritten, this might have attracted support. The Committee commented that the project's approach to consultation had been a particular success and had established very helpful links with the accountancy and legal professions. The Committee asked about the possibility of a general election being called before Bills 6 and 7 had completed the parliamentary process. The project confirmed that this could cause problems, particularly if the Bills were delayed and another Finance Act were to be passed before a new legislative slot could be secured.³⁸

(Prior to this, the Chartered Institute of Taxation had published its view that they wished "to see the TLRP come to an end on completion of the work currently underway" but would "recommend that there is a review as to the success or otherwise of the TLRP as a whole, to determine whether or not it has been a worthwhile exercise."³⁹)

As noted in the Consultative Committee's minutes, quoted above, the Steering Committee looked at this issue at its meeting a few days later, when it expressed concern at the gap that would be left by the breakup of the rewrite team:

Concern was expressed by some respondents that if the project were brought to a close, any mechanism for future simplification would be lost along with it. The project confirmed that some residual presence would be required to deal with corrections but other than that, the wind down would begin later in the summer ... The Director confirmed that a submission would shortly be made to Ministers about the outcome of consultation, including the views of the Committee. The Committee paid tribute to the scholarship of the project and wished to record their view that it should continue. They also expressed concern that with the ending of the project no body concerned with the standard of tax legislation would exist.⁴⁰

However, on 16 July the Financial Secretary, Stephen Timms, gave a short statement confirming the end of the project in 2010:

As the tax law rewrite project will soon complete the work of rewriting mainstream direct tax legislation, it is necessary to consider whether it should rewrite other parts of the direct tax code. Since it was set up, the project has played a key role in modernising tax legislation and making it far more accessible and easier to apply. Its work has rightly been widely praised, and has provided considerable benefits for users. However the benefits of rewriting other parts of the direct tax code are less clear and there is less support for extending the work of the project into these areas. I am satisfied that when the project's next two Bills are enacted, the time will be right to bring this work to an end.

The achievements of the project would not have been possible without the dedication of everyone involved. Many tax professionals in the private sector have given their time and expertise in reviewing and improving the new provisions during their development, in a productive partnership with HM Revenue and Customs. Their input, and the guidance of the project's steering and consultative committees, have been vital in achieving the excellent quality of the rewritten legislation. With the completion of the project's work, legislation for the mainstream direct taxes will be much easier for users to navigate and understand.⁴¹

³⁸ TLR Consultative Committee, *Minutes of meeting CC (09)*, 2 June 2009 paras 29-35

³⁹ CIOT, *Tax Law Rewrite: Future of the Project*, 9 March 2009

⁴⁰ TLR Steering Committee, *Minutes of meeting SC (09)*, 10 June 2009 paras 18-9, 22

⁴¹ HC Deb 16 July 2009 cc39-40WS

In general, there appears to have been general support for this decision, although many in the tax profession have argued that now that the law has been rewritten, it needs to be simplified. In its submission for the 2009 Pre-Budget Report, the Institute for Chartered Accountants argued that “tax simplification needs to be given a higher priority”:

The UK tax system must support an environment within which UK businesses can create wealth and thereby generate tax revenues. The UK also needs a less complicated tax system, with fewer anomalies and subject to less change. Tax simplification needs to be given a higher priority: areas for simplification need to be decided and a timetable for delivery agreed. We think that an independent Commission should be established to oversee a comprehensive tax simplification programme and to present recommendations for simplification to Parliament. Tax simplification affects a wide range of stakeholders. Those who would particularly benefit from simplification include small businesses, charities and the third sector and individuals. Accordingly, a wide range of stakeholders and experts should be represented on such a Commission to help achieve the shared objective of a less confusing and less costly tax code. We should welcome the opportunity to participate.⁴²

Following the publication of the last two rewrite Bills, tax policy director at the Chartered Institute of Taxation, John Whiting, said, “the Rewrite has done a good job but our concern has always been that it has not really been the right job. The new law is certainly clearer but it would have been better to put the effort into simplifying the system rather than just the wording ... Bringing the Rewrite to a close is correct, as we have previously said. We would hope that more effort can now be put into simplifying the tax system.”⁴³ In August 2009 Mr Whiting wrote a piece on the end of the project which appeared in the *Tax Journal*, when he asked the question whether the rewrite had been “worth it”:

The TLR has been controversial from the outset. There was a lot of support but many (including the CIOT) have consistently argued that it was aiming at the wrong target. As someone once said ... one advantage of the TLR was that the new legislation made it easier to understand why you were confused ... The rewrite team sensibly spent time trying to put a value on the cost/benefit of the whole exercise. Interviews and surveys concluded there was an overall benefit – that the cost of the rewrite to HMRC paid back comfortably through the ease of accessing the new legislation, even allowing for the difficulties established practitioners now had in finding their way around ...

Perhaps it would have been nice to tidy off the rest of the UK’s tax law but the benefit of doing so really was dubious, especially at a time when all those involved in tax are already trying to cope with a seemingly never-ending flow of changes. For my part, I would certainly support a rewrite and consolidation of the direct tax Taxes Management Act provisions – surely that passes the test of stuff that should be accessible to everyman?⁴⁴ The CIOT has also long argued for an Indirect Taxes Management Act – to harmonise the varying rules that apply to indirect taxes. These remain a possibility, once the HMRC Powers review has finished its work – but it

⁴² ICAEW 2009 Pre-Budget Report Submission: TAXREP 57/09, 4 November 2009 p7

⁴³ CIOT press notice, *CIOT comments on end of Tax Law Rewrite project*, 20 November 2009

⁴⁴ For many years the administration of direct taxes has been underpinned by the *Taxes Management Act 1970*. Following the merger which created HM Revenue & Customs in 2005, the Government had considered introducing a new management act, but in Budget 2007 postponed these plans (HC 342 March 2007 para 5.93). Since then the department has carried out a major review of its powers, and introduced new legislation in a number of areas. Details are collated on its site at: <http://www.hmrc.gov.uk/about/powers-appeal.htm>

should be a mix of simplification, streamlining and rewriting, surely what the TLRW should have been doing all along.⁴⁵

The current director of the Rewrite Project, Robina Dyall, commented on the end of the project, when she gave evidence to the Joint Committee on Rewrite Bills in January 2010:

On the basis of [our consultation with the tax profession], we came to the conclusion that we could no longer continue with the project on the basis that we had before, and on the basis which is absolutely essential to the sort of work we do and to parliamentary approval in this kind of process. It is quite a positive point at which to bring the project to an end, because we have now completed the rewrite of the income tax and corporation tax codes, which are the mainstream areas of direct taxation. We have a very substantial legacy of seven rewritten tax Acts, covering the whole of that area. On top of that, I think it is right to say that the work of the Tax Law Rewrite Project has had a considerable impact on the drafting of legislation more widely across the board, which has been a very positive one. We therefore felt that it was the right decision to draw the project to an end but, on the other hand, I think we feel that we are going out on a high.⁴⁶

On 2 March the House of Lords gave a second reading to the *Corporation Tax Bill 2010* – which may well mark the very last occasion when rewrite legislation is formally debated by the House. (The Lords had given its sister Bill – the *Taxation (International and Other Provisions) Bill 2010* – a short second reading on 24 February.) At the end of the debate, Lord Davies of Oldham, speaking for the Government, brought the rewrite project to a close:

This is not ... a moment for political controversy. Let us rejoice in the work of others who have done so very well and let us forgo our normal exchanges in appreciation of that work. We are joined in a constructive enterprise that we all recognise is of value to our fellow citizens. Accordingly, I hope that, with the support of the noble Lords opposite, this Bill may now be read a second time.

*Bill read a second time. Committee negatived. Standing Order 47 having been dispensed with, the Bill was read a third time and passed.*⁴⁷

3 The Bills

3.1 Corporation Tax Bill

The rewrite project published its first draft clauses for the second of its two Bills to rewrite corporation tax law in December 2007. Over the next months the team published 34 more papers covering different aspects of the Bill,⁴⁸ and the entire Bill in draft form was published in March 2009. The scope of the Bill was set out in its 2009/10 annual plan:

[The Bill] contains clauses dealing with a wide range of topics including how to calculate the amount of profits for an accounting period 'on which corporation tax is chargeable', losses, gifts to charities and various other reliefs available to companies

⁴⁵ "The rewrite comes to an end", *Tax Journal*, 3 August 2009

⁴⁶ HC 232 & HL Paper 31 2009-10 Q25 Ev30

⁴⁷ HC Deb 2 March 2010 c1414

⁴⁸ TLR, *Responses to the draft Corporation Tax Bill*, 28 August 2009 para 4

such as group relief, distributions, particular types of company and business, avoidance and definitions. As with the first corporation tax Bill, this second Bill contains some draft clauses which share a common source with provisions already rewritten for income tax purposes. The general policy is for the drafting of these clauses to reflect the drafting of the income tax provisions to ensure consistency and ease of reference for readers.⁴⁹

The consultation exercise on 'Bill 6' as it is referred to, and its sister Bill, 'Bill 7', appears to have proceeded without any major problems.

The Bill was laid before the House on 19 November.⁵⁰ The department's impact assessment on the Bill notes that although it is difficult to quantify the actual benefits of rewritten legislation "until it has been in force for some time", the positive impact of the rewritten corporation tax code is likely to be widespread, affecting as it does "nearly a million companies, over 90 per cent of which are small." Notably the department's analysis has shown that, "small companies do not have significantly fewer sources of income than others and therefore 'small' does not always mean 'simple'. In other words we anticipate that the legislative rewrite should in principle benefit all sizes of business."⁵¹

The assessment goes on to try to give some monetary value to the benefits, and the costs, of the Bill:

In order to monetise these benefits we have used the same methodology as in the first corporation tax Bill and applied an average saving of half an hour per year per company, which is an approximation over the medium-term life of all sizes of company, giving an overall saving of 491,939 hours using a cost of £50 per hour, this would produce a saving of £25m based on a total number of relevant companies of just under one million as shown in the following table ...

Company size	Number of companies with a turnover greater than zero
Total for Small Size Companies:	929,665
Total for Medium Size Companies:	29,778
Total for Large Size Companies:	24,436
Overall total (all sizes):	983,879

This aggregate estimate of benefits includes savings achieved by businesses using internal tax teams and by those using external professionals and agents whether or not the professionals and agents fully pass on the savings to their clients. The business population figures were extracted from HMRC's own analysis of companies making corporation tax returns. We have provided a present value benefit figure of £115m based on a 5-year period, using a discount rate of 3.5% ... The saving may be far greater during the initial phase of the life of a business than when it is established. During both 2005 and 2006 there were around 182,000 business registrations and 143,000 VAT de-registrations for the same years ...

Although there is no major change to the underlying tax system, there will be some one-off costs to businesses and to tax professionals and agents in terms of

⁴⁹ *Tax Law Rewrite: plans for 2009/10*, May 2009 paras 3.18-9

⁵⁰ HC Deb 19 November 2009 c141

⁵¹ *Implementation Impact Assessment : Tax Law Rewrite Bill 6*, November 2009 paras 24, 20, 31

familiarisation with the new structure, section numbers and language used in the Bill ... These one-off familiarisation costs are difficult to estimate, as they will vary considerably depending upon the nature of the business and the nature of the agent. We have applied these costs to the same business population (around 985,000) which benefits from this reform and also to the estimated population of corporation tax agents (around 37,000). In order to take account of the very considerable variations between users, from no time for some to a number of hours for others, we have assumed an average illustrative familiarisation time of twenty minutes each across the combined populations of business and corporation tax agents, and applied an average hourly cost of just £50. This generates a total one-off cost of £17m ...

Compared to the option of doing nothing, the cost to HMRC in implementing the policy decision to produce the second Corporation Tax Bill is approximately £4m spread over the years up to 2010. Some of these costs would have been incurred within the next five years or so if the alternative option of consolidating corporation tax legislation, rather than rewriting it, had been viable and had been adopted. The cost is also a significant reduction on that expended for the previous Corporation Tax Bill.⁵²

The department notes there is some risk to the speed with which the Bill has been prepared:

The second Corporation Tax Bill extends to over 1100 clauses and is the second largest Bill that the project has produced. The accelerated Parliamentary process to which Tax Law Rewrite Bills are subject relies on wide consultation on all draft clauses and agreement to any proposed minor changes. Despite its size, the Bill has been produced to a significantly shorter timetable than any previous rewrite Bill. This has meant much larger volumes of work for our consultees and the project has worked closely with them to manage the process. Although the project has a proven and robust system of consultation on draft clauses, mistakes inevitably happen. A significant risk in rewriting legislation is that an unintended change in the law could result. Any inadvertent errors will as in previous rewrite legislation, be corrected using special powers contained within the Bill. The project has identified only a small number of such errors in previous rewrite Acts.⁵³

On the wider question of evaluation, the assessment comments that “the project has recently proposed, in consultation with its Steering Committee, that a more valuable and significant result would be obtained by evaluating all the rewritten legislation after this final *Corporation Tax Bill* is enacted.”⁵⁴

3.2 Taxation (International and Other Provisions) Bill

The rewrite project published its first draft clauses for its last rewrite Bill in July 2008, and the entire draft Bill was published, alongside the *Corporation Tax Bill*, in March 2009. The scope of the Bill was set out in its 2009/10 annual plan:

As its title suggests this Bill brings together a number of provisions dealing with international matters: double taxation relief (DTR), transfer pricing, advance pricing agreements and tax arbitrage. As its title also suggests it performs a further function - it relocates and rewrites a number of unrelated provisions. This is intended to ensure

⁵² *op.cit.* paras 32-4, 40-41

⁵³ *op.cit.* paras 52-3

⁵⁴ *op.cit.* para 25

that wherever possible provisions are not left stranded in ICTA or one of the Finance Acts but are instead more helpfully located for users. Unlike the Corporation Tax Bill and the earlier rewrite Bills already referred to, this Bill does not conform to the approach of separating income tax and corporation tax legislation. Ultimately therefore the Act resulting from this Bill will be where users find the legislation on the appropriate international matters whether they are looking for something related to income tax or corporation tax.⁵⁵

As noted above, consultation on Bill 7 of the rewrite project appears to have proceeded smoothly. The department's impact assessment on the Bill gives some indicative estimates of the monetary benefits to the new legislation, and the one-off costs faced by practitioners getting to grips with it:

The legislation applies to both businesses (large and SMEs) and to individuals. In order to monetise these benefits we have used the same methodology as in other rewrite Bills and applied an average saving of half an hour per tax payer per year which is an approximation across the range giving an overall saving of 31300 hours. Using a cost of £50 per hour, this would produce a saving of £1.6m based on a proportion of the total number of income tax and corporation tax payers as shown in the following table ...

Category of taxpayer	Number
Large businesses	770
SMEs	1830
Individuals	60,000
Overall	Total 62,600

This aggregate estimate of benefits includes savings achieved by those using the legislation directly and by those using external professionals and agents whether or not the professionals and agents fully pass on the savings to their clients. The population figures were extracted from HMRC's own analysis of income tax and corporation tax returns. We have provided a present value figure of £7m based on a 5-year period, using a discount rate of 3.5% ...

One-off familiarisation costs are difficult to estimate, as they will vary considerably depending upon the nature of the business and the nature of the agent. We have applied these costs to the same population (around 62,600) which benefits from this reform. In order to take account of the very considerable variations between users, from no time for some to a number of hours for others, we have assumed an average illustrative familiarisation time of twenty minutes each, across the combined populations of business and corporation tax agents and applied an average hourly cost of just £50. This generates a total one-off cost of £1m.⁵⁶

⁵⁵ *Tax Law Rewrite: plans for 2009/10*, May 2009 paras 3.22-4

⁵⁶ *Implementation Impact Assessment : Tax Law Rewrite Bill 7*, November 2009