



House of Lords
House of Commons
Joint Committee on Tax Law
Rewrite Bills

Corporation Tax Bill and Taxation (International and Other Provisions) Bill

First Report of Session 2009-10

*Report, together with formal minutes and
written evidence*

*Ordered by the House of Lords
to be printed 11 January 2010
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The Joint Committee on Tax Law Rewrite Bills

The Joint Committee on Tax Law Rewrite Bills is appointed to consider tax law rewrite bills, and in particular to consider whether each bill committed to it preserves the effect of the existing law, subject to any minor changes which may be desirable.

Current membership

Mr Andrew Tyrie MP (Conservative, Chichester)

(elected Chairman, 11 January 2010)

Mr William Bain MP (*Labour, Glasgow North East*)
Mr Colin Breed MP (*Liberal Democrats, South East Cornwall*)
Ms Kali Mountford MP (*Labour, Colne Valley*)
Mr Andy Reed MP (*Labour, Loughborough*)
Mr Stephen Timms MP (*Labour, East Ham*)
Mr Peter Viggers MP (*Conservative, Gosport*)
Lord Blackwell (*Conservative*)
Lord Goodhart (*Liberal Democrat*)
Baroness Goudie (*Labour*)
Lord Haskel (*Labour*)
Rt Hon Lord Millett (*Cross Bench*)
Lord Newton of Braintree (*Conservative*)

Powers

The Joint Committee is appointed under Standing order No. 152C of the House of Commons and pursuant to the motion of 9 December 2004 of the House of Lords. It has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to appoint specialist advisers, and to make Reports to the House.

Publication

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Joint Committee (including press notices) are on the Internet at

www.parliament.uk/parliamentary_committees/joint_committee_on_tax-rewrite-bills.cfm.

Committee staff

The current staff of the Committee are Gosia McBride (Commons Clerk), Daisy Ricketts (Lords Clerk), Simon Fuller (Legal Specialist), Paul Simpkin (Senior Committee Assistant), Michelle Garratty (Committee Assistant) and Dabinder Rai (Committee Assistant).

Contacts

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Corporation Tax Bill and Taxation (International and Other Provisions) Bill

1. The Committee has considered the Corporation Tax Bill and the Taxation (International and Other Provisions) Bill which were referred to it by the House of Commons on 5 January 2010.¹ We received two written submissions from HM Revenue and Customs on the Bills and also heard oral evidence from members of the Tax Law Rewrite Project team. We have taken into account the wide-ranging consultation already undertaken on both Bills via the Consultative and Steering Committees.

2. The Committee paid particular attention to-

- a) the changes proposed by the Corporation Tax Bill expected to increase or reduce the amount of corporation tax payable; and
- b) powers in the Corporation Tax Bill to amend legislation and the assurance given by the Minister that the project's Consultative and Steering Committees would have to consent to any such changes.²

3. The Committee accepts the Government's proposed amendments to both Bills, which are of a minor, technical nature. The lists of amendments accepted by the Committee are published with this Report as Annexes 1 and 2.³

4. We conclude that the Bills are a welcome clarification of the existing law and that they will be of value to Parliament, the judiciary, professionals, business people and all other users in making tax legislation easier to use. The Committee is satisfied 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.

5. There is no other point relating to the Bills to which the special attention of Parliament should be drawn.

¹ *Votes and Proceedings*, 5 January 2010

² For a transcript of these discussions, see EV1

³ See p4 and p9

Annex 1

Amendments made to the Corporation Tax Bill⁴

Clause 30 , page 18 , leave out lines 28 to 31.	1
Clause 30 , page 18 , leave out lines 39 to 44 and insert-	2
‘(5) In subsection (3)-	
(a) “control” has the same meaning as in section 25(4),	
(b) “connection” includes a connection in the past as well as a connection in the present, and	
(c) the reference to a connection between A and B includes any dealings between them.’.	3
Clause 53 , page 31 , line 8 , leave out ‘and’ and insert ‘or’.	4
Clause 53 , page 31 , line 9 , leave out ‘and’ and insert ‘or’.	5
Clause 105 , page 58 , line 33 , leave out ‘total’ and insert ‘gross’.	6
Clause 105 , page 58 , line 34 , leave out second ‘total’ and insert ‘gross’.	7
Clause 105 , page 59 , line 4 , at end insert-	
‘(4A) For the purposes of this section the surrendering company’s gross profits of the surrender period are its profits for that period without any of the following-	
(a) a deduction in respect of any of the kinds of thing mentioned in section 99(1),	
(b) a deduction falling to be made in respect of losses, allowances or other amounts of any other period (whether or not in respect of a kind of thing so mentioned), and	
(c) a deduction falling to be made by virtue of section 63 of this Act or section 1223(3) of CTA 2009 (other amounts carried forward).’.	8
Clause 519 , page 261 , line 12 , at end insert-	
‘(aa) section 598(3) (which provides that certain lettings of property by a joint venture company or a member of a joint venture group are not property rental business),’.	9
Clause 598 , page 306 , line 32 , at end insert-	

⁴ The page and line numbers refer to the Bill as presented to the House of Commons and ordered to be printed on 19 November 2009.

‘(3) References in this Part to property rental business, in relation to a joint venture company or a company which is a member of a joint venture group, do not include the letting of property by the company to (as the case may be)-
 (a) the venturing company in respect of the company, or
 (b) a member of the venturing group in respect of the company.’.

10

Clause **691**, page **348**, leave out lines 27 to 34 and insert-

‘(b) the amount outstanding of any debts incurred by the company which are within section 453(2), and’.

11

Clause **761**, page **383**, line **19**, leave out from ‘if’ to ‘arrangement’ in line 20 and insert ‘-

(a) there is a type 1 finance arrangement,
 (b) the borrower is a company, and
 (c) either-
 (i) the’.

12

Clause **762**, page **383**, line **41**, leave out from ‘if’ to ‘arrangement’ in line 42 and insert ‘-

(a) there is a type 1 finance arrangement,
 (b) the borrower is a partnership, and
 (c) either-
 (i) the’.

13

Clause **1165**, page **570**, line **29**, leave out from ‘with’ to end of line 30 and insert ‘section 99 of TCGA 1992 (application of that Act to unit trust schemes).’.

14

Clause **1165**, page **570**, line **34**, leave out ‘sections 99 and 103A’ and insert ‘section 99’.

15

Schedule **1**, page **591**, line **4**, at end insert-

‘Solicitors (Northern Ireland) Order 1976 (S.I. 1976/582 (N.I. 12))

167A In paragraph 38(3) of Schedule 1A to the Solicitors (Northern Ireland) Order 1976 before “any reference” insert “and section 832(5) and (6) of the Corporation Tax Act 2010”.’.

16

Schedule **1**, page **595**, line **32**, at end insert-

‘Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

217A In Article 16(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 for “section 416 of the Income and Corporation Taxes Act 1988” substitute “section 449 of the Corporation Tax Act 2010”.’.

17

Schedule **1**, page **605**, line **2**, at end insert-

‘Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))

268A In Article 62(8) of the Electricity (Northern Ireland) Order 1992 for “section 839 of the Income and Corporation Taxes Act 1988” substitute “section 1122 of the Corporation Tax Act 2010”.

Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15))

268B In Article 22(2)(c) of the Housing (Northern Ireland) Order 1992 for “section 488 of the Income and Corporation Taxes Act 1988” substitute “Chapter 7 of Part 13 of the Corporation Tax Act 2010”.

18

Schedule 1, page 608, line 22, at end insert-

Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))

290A (1) The Gas (Northern Ireland) Order 1996 is amended as follows.

(2) In Article 39(7)-

(a) for “subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988” substitute “sections 450 and 451(1) to (3) of the Corporation Tax Act 2010”, and

(b) for “Part XI of that Act” substitute “Part 10 of that Act”.

(3) In Article 45(8) for “section 839 of the Income and Corporation Taxes Act 1988” substitute “section 1122 of the Corporation Tax Act 2010”.

19

Schedule 1, page 620, line 32, at end insert-

Trustee Act (Northern Ireland) 2001 (c. 14 (N.I.))

361A In section 19(3) of the Trustee Act (Northern Ireland) 2001 for “section 840 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “section 1124 of the Corporation Tax Act 2010”.

20

Schedule 1, page 627, line 31, at end insert-

Housing (Northern Ireland) Order 2003 (S.I. 2003/412 (N.I. 2))

415A In Article 85(2) of the Housing (Northern Ireland) Order 2003 for “Section 416 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “Section 449 of the Corporation Tax Act 2010”.

21

Schedule 1, page 643, line 22, at end insert-

‘483A The Charities Act 2006 is amended as follows.’.

22

Schedule 1, page 643, line 23, leave out ‘of the Charities Act 2006’.

23

Schedule 1, page 643, line 26, at end insert-

‘484A In section 72(3) (disclosure of information to and by Northern Ireland regulator) leave out “(as substituted by paragraph 104 of Schedule 8 to this Act)”.’.

24

Schedule 1, page 659, line 2, at end insert-

‘Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))

575A The Charities Act (Northern Ireland) 2008 is amended as follows.

575B In section 5(4) for the words from “a club” to the end substitute “a registered club within the meaning of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs).”

575C (1) Amend section 45 as follows.

(2) In subsection (1)-

- (a) omit “section 505 of the Income and Corporation Taxes Act 1988 (c. 1) or”, and
- (b) after “2007 (c. 3)” insert “, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,”.

(3) In subsection (2)-

- (a) omit “section 505 of the Income and Corporation Taxes Act 1988 or”, and
- (b) after “2007” insert “, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,”.

(4) After subsection (2) insert-

“(3) For the purposes of this section relief under any provision of Part 11 of the Corporation Tax Act 2010 other than-

- (a) section 480 (exemption for profits of small-scale trades), and
- (b) section 481 (exemption from charges under provisions to which section 1173 applies),

is qualifying relief under that Part.”.

25

Schedule 1, page 676, line 27, at end insert-

‘703A Amend Schedule 22 (offshore funds) as follows.

703B For paragraph 11(2) substitute-

“(2) In section 1165 of the Corporation Tax Act 2010-

- (a) in subsection (1) for “section 99 of TCGA 1992 (application of that Act to unit trust schemes)” substitute “sections 99 and 103A of TCGA 1992 (application of that Act to unit trust schemes and to certain offshore funds)”, and
- (b) in subsection (3) for “section 99 of TCGA 1992” substitute “sections 99 and 103A of TCGA 1992”.

Schedule 1, page 676, line 28, leave out ‘Schedule 22 (offshore funds) in’.	26
Schedule 2, page 683, line 17, leave out ‘has effect in relation to cessations of a trade on or after’ and insert ‘does not have effect in relation to cessations of a trade before’.	27
Schedule 2, page 694, line 42, after ‘178’ insert ‘do not’.	28
Schedule 2, page 694, line 43, leave out ‘on or after’ and insert ‘before’.	29
Schedule 2, page 715, leave out lines 24 to 30 and insert-	30
‘115 If an order under paragraph 13(2) of Schedule 22 to FA 2009 relating to paragraph 11(2) of that Schedule is made before 1 April 2010 so as to come into force on or after that date, the order is to have effect as if any reference to paragraph 11(2) were a reference to that provision as substituted by this Act.’.	31
Schedule 3, page 724, line 4, at end insert-	
‘Charities Act 2006 (c. 50)	In section 72(3), the words “(as substituted by paragraph 104 of Schedule 8 to this Act)”.’.
Schedule 3, page 724, line 31, after ‘263(a),’ insert ‘272(a),’.	32
Schedule 3, page 725, line 39, at end insert-	33
‘Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))	In section 45- (a) in subsection (1) the words “section 505 of the Income and Corporation Taxes Act 1988 (c. 1) or”, and (b) in subsection (2) the words “section 505 of the Income and Corporation Taxes Act 1988 or”.’.
Schedule 3, page 726, leave out line 22.	34

Annex 2

Amendments made to the Taxation (International and Other Provisions) Bill⁵

Clause 20, page 13, line 3, leave out ‘section’ and insert ‘sections 31(4) and’.	1
Clause 20, page 13, line 3, leave out ‘taxed on remittance basis not to be increased under section’ and insert ‘not to be increased in calculations under section 31 or’.	2
Clause 24, page 15, line 23, at end insert—	3
‘(za) no credit is allowed for income arising from that source in the later year.’.	4
Clause 33, page 20, line 24, leave out ‘(2)’ and insert ‘(1)’.	5
Clause 48, page 28, line 21, leave out ‘or gain’.	6
Clause 48, page 28, line 23, leave out ‘or gain’.	7
Clause 48, page 28, line 27, leave out ‘or gains’.	8
Clause 97, page 56, line 1, after ‘under’ insert ‘this section or’.	9
Clause 162, page 98, line 9, leave out ‘paragraph’ and insert ‘section’.	10
Clause 163, page 98, line 13, after ‘159’ insert ‘and this section’.	11
Clause 165, page 99, line 38, leave out ‘paragraph’ and insert ‘section’.	12
Clause 172, page 102, line 24, leave out ‘paragraph’ and insert ‘section’.	13
Clause 187, page 110, line 30, leave out ‘payable’ and insert ‘paid’.	14
Clause 205, page 121, line 12, leave out ‘(“the actual provision”)’.	15
Schedule 2, page 226, line 18, leave out ‘alternative finance return for the purposes of section 151P’ and insert ‘amount of the excess referred to in section 151P(2) and (5)(b)’.	16
Schedule 2, page 226, line 19, after ‘151P(3)’ insert ‘and (4)’.	17
Schedule 4, page 266, line 38, leave out ‘the lessee’ and insert ‘L’.	18
Schedule 5, page 282, line 34, at end insert—	

⁵ The page and line numbers refer to the Bill as presented to the House of Commons and ordered to be printed on 19 November 2009.

‘(za) there is a type 1 finance arrangement,’.	19
Schedule 5, page 282, line 36, leave out ‘a type 1 finance’ and insert ‘the’.	20
Schedule 5, page 283, line 10, after ‘that’ insert ‘—	
(a) there is a type 1 finance arrangement, and	
(b) ’.	21
Schedule 5, page 283, line 12, leave out ‘a type 1 finance’ and insert ‘the’.	22
Schedule 7, page 307, line 14, leave out ‘non-UK resident’ and insert ‘person not resident in the United Kingdom’.	23
Schedule 7, page 338, line 12, leave out ‘Community’ and insert ‘EU’.	24
Schedule 8, page 352, line 36, at end insert—	
‘68A(1) Section 764 (application of ICTA provisions about special relationships) is amended as follows.	
(2) In subsection (1), and in the title, for “ICTA” substitute “TIOPA 2010”.	
(3) In subsection (1) for “special relationship provision” substitute “special relationship rule”.	
(4) In subsection (2) for “subsections (2) to (4) of section 808A of ICTA” substitute “section 131(3), (5) and (6) of TIOPA 2010”.	
(5) In subsection (3) for “subsections (2) to (7) and (9) of section 808B of ICTA” substitute “sections 132(3) to (5), (7) and (8) and 133 of TIOPA 2010”.’.	25
Schedule 8, page 355, line 13, at end insert—	
‘92A In section 782(1)(a) (intangible fixed assets transferred in the course of certain transfers of a business)—	
(a) for “section 807B(2)(b)(iii) of ICTA” substitute “section 116(2)(b)(iii) of TIOPA 2010”, and	
(b) for “section 807C” substitute “section 117”.’.	26
Schedule 8, page 378, line 33, at end insert—	
‘ <i>Solicitors (Northern Ireland) Order 1976 (S.I. 1976/582 (N.I. 12))</i>	

284A The Solicitors (Northern Ireland) Order 1976 is amended as follows.

284B In paragraph 38(3) of Schedule 1A for the words from the beginning to “1988” substitute “In sections 748(4), 749 and 771(5) and (6) of the Income Tax Act 2007”.

Administration of Justice Act 1985 (c. 61)

284C The Administration of Justice Act 1985 is amended as follows.

284D In paragraph 36(3) of Schedule 2 for “749,” substitute “748(4), 749 and”.

27

Schedule **9**, page **397**, leave out lines 28 to 42.

28

Schedule **10**, page **402**, line **7**, column **2**, at beginning insert ‘In section 44, the words from “Part 1” to “funds), and”.’.

Formal minutes

Monday 11 January 2010

Members present:

Mr William Bain	Lord Blackwell
Mr Colin Breed	Lord Goodhart
Mr Andy Reed	Baroness Goudie
Mr Stephen Timms	Lord Newton of Braintree
Mr Andrew Tyrie	

Mr William Bain declared his interests, in accordance with the Resolution of the House of 13 July 1992, as follows:

Sponsorships

Name of donor: Unite

Address of donor: 35 King Street, Covent Garden, London WC2E 8JG

Donor status: trade union

Mr Andrew Tyrie declared his interests, in accordance with the Resolution of the House of 13 July 1992, as follows:

Remunerated directorships

Independent director of Rugby Estates, a publicly quoted property company.

Payment of £4429.76 for three days work in May, June and July 2009. (*Registered 12 October 2009*)

Payment of £4429.76 for three days work in August, September and October 2009. (*Registered 21 October 2009*)

Remunerated employment, office, profession etc

Fees for articles in The Times. (Up to £5,000) (Registered 7 January 2009)

Payment of £585 for two articles in the Guardian. Hours: 7 hours. (*Registered 21 October 2009*)

Gifts, benefits and hospitality (UK)

Honorary membership of Goodwood Country Club.

19-22 September 2008, attendance at the Ryder Cup in the USA in my capacity as Secretary of the Parliamentary Golf Society. Travel and accommodation paid by Humana Europe, a healthcare services company. (*Registered 23 September 2008*)

Registrable shareholdings

(b) Falconland Limited; a property investment company

Veritas Asian Fund

Miscellaneous

Support for staff costs, travel, including a visit to the US in May 2009, value £1,188, and other expenses incurred as Chairman of the All-Party Parliamentary Group on Extraordinary Rendition, from registered donations made to the All-Party Parliamentary Group.

Mr Andrew Tyrie was called to the Chair.

The Committee deliberated.

Corporation Tax Bill: Miss Robina Dyal, Director, Mr Brian Jones, Team Leader, Mr John Sellers, Head Drafter, Mr David Sewell, Drafter, and Mr Adam Broke, Member of the Consultative and Steering Committees, HMRC Tax Law Rewrite Project, gave oral evidence.

Resolved, That the Corporation Tax Bill be now considered.

Clauses 1 to 29 agreed to.

Clause 30.

Amendments 1 and 2 made.

Clause, as amended, agreed to.

Clauses 31 to 52 agreed to.

Clause 53.

Amendments 3 and 4 made.

Clause, as amended, agreed to.

Clauses 54 to 104 agreed to.

Clause 105.

Amendments 5 to 7 made.

Clause, as amended, agreed to.

Clauses 106 to 518 agreed to.

Clause 519.

Amendment 8 made.

Clause, as amended, agreed to.

Clauses 520 to 597 agreed to.

Clause 598.

Amendment 9 made.

Clause, as amended, agreed to.

Clauses 599 to 690 agreed to.

Clause 691.

Amendment 10 made.

Clause, as amended, agreed to.

Clauses 692 to 760 agreed to.

Clause 761.

Amendment 11 made.

Clause, as amended, agreed to.

Clause 762.

Amendment 12 made.

Clause, as amended, agreed to.

Clauses 763 to 1164 agreed to.

Clause 1165.

Amendments 13 and 14 made.

Clause as amended agreed to.

Clauses 1166 to 1185 agreed to

Schedule 1.

Amendments 15 to 26 made.

Schedule, as amended, agreed to.

Schedule 2.

Amendments 27 to 30 made.

Schedule, as amended, agreed to.

Schedule 3.

Amendments 31 to 34 made.

Schedule, as amended, agreed to.

Schedule 4 agreed to.

Resolved, That the Taxation (International and Other Provisions) Bill be now considered.

Clauses 1 to 19 agreed to.

Clause 20.

Amendments 1 and 2 made.

Clause 20, as amended, agreed to.

Clauses 21 to 23 agreed to.

Clause 24.

Amendment 3 made.

Clause, as amended, agreed to.

Clauses 25 to 32 agreed to.

Clause 33.

Amendment 4 made.

Clause, as amended, agreed to.

Clauses 34 to 47 agreed to.

Clause 48.

Amendments 5 to 7 made.

Clause, as amended, agreed to.

Clauses 49 to 96 agreed to.

Clause 97.

Amendment 8 made.

Clause, as amended, agreed to.

Clauses 98 to 161 agreed to.

Clause 162.

Amendment 9 made.

Clause, as amended, agreed to.

Clause 163.

Amendment 10 made.

Clause, as amended, agreed to.

Clause 164 agreed to.

Clause 165.

Amendment 11 made.

Clause, as amended, agreed to.

Clauses 166 to 171 agreed to.

Clause 172.

Amendment 12 made.

Clause, as amended, agreed to.

Clauses 173 to 186 agreed to.

Clause 187.

Amendment 13 made.

Clause, as amended, agreed to.

Clauses 188 to 204 agreed to.

Clause 205.

Amendment 14 made.

Clause, as amended, agreed to.

Clauses 206 to 382 agreed to.

Schedule 1 agreed to.

Schedule 2.

Amendments 15 and 16 made.

Schedule, as amended, agreed to.

Schedule 3 agreed to.

Schedule 4.

Amendment 17 made.

Schedule, as amended, agreed to.

Schedule 5.

Amendments 18 to 21 made.

Schedule, as amended, agreed to.

Schedule 6 agreed to.

Schedule 7.

Amendments 22 and 23 made.

Schedule, as amended, agreed to.

Schedules 8 to 11 agreed to.

The Committee further deliberated.

Draft Report (*Corporation Tax Bill and Taxation (International and Other Provisions) Bill*), proposed by Mr Andrew Tyrie, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 5 read and agreed to.

Annexes agreed to.

Resolved, That the Report be the First Report of the Joint Committee to each House.

Ordered, That Mr Andrew Tyrie make the Report to the House of Commons and Lord Goodhart make the Report to the House of Lords.

Evidence was ordered to be reported to each House for printing with the Report.

Ordered, That the Corporation Tax Bill, as amended, be reported to the House of Commons.

Ordered, That the Taxation (International and Other Provisions) Bill, as amended, be reported to the House of Commons.

[Adjourned to a day and time to be fixed by the Chairman.]

Witnesses

Monday 11 January 2010

Page

Miss Robina Dyall, Director, **Mr Brian Jones**, Team Leader, **Mr John Sellers**, Head Drafter, **Mr David Sewell**, Drafter, and **Mr Adam Broke**, Member of the Consultative and Steering Committees, HMRC Tax Law Rewrite Project, gave oral evidence.

Ev 1 and 16

List of written evidence

- | | | |
|---|---|-------|
| 1 | Memorandum from the Tax Law Rewrite Project on the Corporation Tax Bill | Ev 1 |
| 2 | Memorandum from the Tax Law Rewrite Project on the Taxation (International and Other Provisions) Bill | Ev 16 |

Oral evidence

Taken before the Joint Committee on Tax Law Rewrite Bills on Monday 11 January 2010

Members present:

Mr Andrew Tyrie, in the Chair

Blackwell, L.
Goodhart, L.
Goudie, B.
Newton of Braintree, L.

Mr William Bain
Mr Colin Breed
Mr Andy Reed
Mr Stephen Timms

Memorandum submitted by the Tax Law Rewrite Project

1. This memorandum of evidence has been prepared by the Tax Law Rewrite project to assist the Joint Committee's consideration of the Corporation Tax Bill as introduced in the House of Commons on 19 November 2009.

2. The memorandum provides:

- an overview of the purpose and content of the Bill;
- an analysis of the minor changes that are proposed; and
- a discussion of some particular features of the Bill as introduced.

3. During the Second Reading, no points were raised that need to be drawn to the attention of the Joint Committee.

PURPOSE AND CONTENT OF THE BILL

General

4. The purpose of the Bill is to rewrite corporation tax legislation to make it clearer and easier for companies and their advisers to use. It contains basic corporation tax provisions about the computation of profits and small profits relief, and other provisions about losses, group relief and distributions. It also rewrites some special provisions, for example provisions related to UK real estate investment trusts. It is the second of two bills rewriting corporation tax. The first was enacted in 2009 as the Corporation Tax Act 2009. This Bill completes the work of the project on the rewrite of corporation tax legislation, except for a few provisions covering international issues. These have been rewritten in the Taxation (International and Other Provisions) Bill which is currently also before Parliament.

5. When the project rewrote the income tax legislation, the income tax and corporation tax codes were separated. This approach was adopted in the light of the views of users that it would help to make the provisions easier to understand, particularly for those concerned only with income tax, and that there were in any event many differences between the two taxes. There were, however, still many provisions in the source legislation that were common to both taxes. As a result, once the income tax legislation had been rewritten a number of corporation tax provisions remained in their original form.

6. The Corporation Tax Act 2009 started the process of bringing the income tax and corporation tax codes back into line where there were common source provisions. The present Bill continues and completes that process.

7. So, for the most part, the clauses of the Bill consist of provisions which apply for corporation tax purposes only. Part 23 of the Bill however, which relates to company distributions, applies for the purposes of the Corporation Tax Acts. The expression "the Corporation Tax Acts" is defined (by Schedule 1 to the Interpretation Act 1978) in a way which includes the income tax, as well as the corporation tax, aspects of the taxation of company distributions. Part 23, therefore, is relevant for income tax, as well as corporation tax, purposes.

8. The Bill will replace provisions in the Income and Corporation Taxes Act 1988 (ICTA) and various Finance Acts and accordingly repeals them where appropriate.

Structure and content

9. Part 1 provides an overview of the Bill.

10. Part 2 contains basic provisions about the calculation of liability.

11. Part 3 provides rules for companies with small profits.

12. Part 4 contains rules about various reliefs available for losses.

13. Part 5 contains provisions about group relief.
14. Part 6 contains provisions about relief for charitable donations
15. Part 7 deals with community investment tax relief, which takes the form of corporation tax reductions for companies which invest in community development finance institutions.
16. Part 8 provides rules relating to the corporation tax charge, including the supplementary charge, on profits from oil extraction and related activities.
17. Part 9 brings together a number of provisions relating to the leasing of plant and machinery.
18. Part 10 contains provisions about close companies.
19. Part 11 contains rules specific to charitable companies.
20. Part 12 contains rules applicable to UK Real Estate Investment Trusts.
21. Part 13 contains rules for special types of companies and situations. It includes for example provisions that apply to income of corporate beneficiaries under trusts, to authorised investment funds and to companies in liquidation or administration.
22. Parts 14 to 21 contain various anti-avoidance provisions.
23. Part 22 contains a number of miscellaneous rules about corporation tax liability. These include rules relating to transfers of a trade without a change of ownership, transfers of relief within partnerships and surrenders of tax refunds within groups.
24. Part 23 contains provisions about distributions made by companies.
25. Part 24 contains definitions and other provisions which apply for purposes of the Corporation Tax Acts.
26. Part 25 contains definitions and some final provisions such as powers to make consequential amendments and to undo unintended changes.

PROPOSED CHANGES IN THE LAW

27. The main objective of the Bill is to rewrite existing corporation tax legislation without changing its meaning, but contained within it are 66 minor changes in the law which are explained in detail in Annex 1 to the Explanatory Notes (starting on page 425 in Volume 4). In the main, these changes are intended to clarify existing provisions, to ensure consistency or to bring the law into line with well established practice.
28. All the changes have been the subject of consultation and have the support of the Tax Law Rewrite project's Consultative and Steering Committees.
29. Appendix 1 to this memorandum provides a table of the changes. Of the 66 changes, 32 replicate changes introduced in earlier rewrite Acts and these are identified in the table. The principles underlying these changes have therefore already been considered and accepted by the Joint Committee. The table indicates the potential effect of the remaining changes, both in principle and in practice.
30. All changes in law must involve some change in principle otherwise they would not be changes in law, but, in broad terms, three quarters of the total do not result in a change of the amount of tax paid in practice. This is because they align the law with practice or relate only to administrative matters.
31. Changes which have not previously been considered by the Joint Committee in connection with an earlier rewrite Bill and which result in more or less tax being due in practice fall into the following categories:
 - One change whose effect can only be to increase the amount of tax.
 - Seven changes whose effect can only be to decrease the amount of tax.
 - Three changes whose effect can be either to increase or to reduce the amount of tax due.
32. All the other changes, excluding those previously considered, either bring the law into line with generally accepted practice or are administrative changes that have no effect on the amount of tax due.
33. The effect of these changes, whether taken together or individually, is relatively small.
34. Appendix 2 to this memorandum gives further details about some of the changes focusing on those that may be of particular interest to the Committee.

PARTICULAR FEATURES OF THE BILL AS INTRODUCED

Updated structure

35. A key feature of rewrite provisions is the improved structure that results from bringing legislation together that had previously been dispersed across the legislative landscape.
36. For example, the provisions about charitable companies are currently spread across three Acts—ICTA, FA 1990 and FA 2000. In the rewritten version these provisions have been brought together to help those who need to refer to them.

37. Similarly, even though much of the legislation relating to relief for losses is in Chapters 2 and 3 of Part 10 of ICTA, some provisions that deal with specific areas of taxation are located elsewhere. To make it easier for users to find the particular loss provisions in which they are interested the approach taken in the rewritten version is to bring together all of the clauses dealing with corporation tax losses in one Part.

38. To provide further help to users of the loss relief provisions, two more steps have been taken:

- First, the order in which the reliefs are presented has been reversed so that the relief which is generally used first (relief against total profits of current or previous periods) precedes the relief against trade profits of future periods.
- Second, unlike the source legislation in Section 393A, which has many subsections, the rewritten version recognises that most of these subsections do not affect the majority of companies. They are dealt with in separate clauses and the headings of these make it clear whether the provisions are of relevance to the reader or not (for example: Terminal losses: extension of periods for which relief may be given).

Real Estate Investment Trusts (UK REITs)

39. Despite the fact that the provisions about UK REITs are recent, the rewritten clauses make some significant departures from the approach taken in the source legislation, in the interests of those who use them. In addition to the reorganisation of the legislation in a number of respects, the main departures are:

- as the majority (if not all) UK REITs operate as groups of companies, the rewritten legislation focuses on a group UK REIT rather than a company UK REIT;
- paragraph 32 of Schedule 17 to FA 2006 (which makes provision about how the REITs legislation applies to non-UK companies) has been rewritten by dealing with the case of non-UK resident companies in the context of the relevant provisions. As a result it will no longer be necessary to work out the application of those provisions to non-UK resident companies by applying them with modifications; and
- certain regulations which modify the primary legislation have been included in the rewrite of that legislation, in particular regulations dealing with joint venture companies and breach of conditions.

Powers to amend legislation etc

40. There are three powers in the Bill that were not in the source legislation. Equivalent powers have been present in some previous rewrite Bills. The powers are:

- to make consequential provision (clause 1178). This enables consequential amendments to be made without recourse to a Finance Bill. A similar power was included in the Income Tax (Trading and Other Income) Act (ITTOIA), the Income Tax Act 2007 (ITA) and the Corporation Tax Act 2009 (CTA 2009);
- to undo changes made by the Bill (clause 1179). This enables errors in the Bill to be corrected without recourse to a Finance Bill. A similar power was included in ITA and CTA 2009; and
- to make transitional or saving provision (clause 1180). This enables provisions to be made about the transition from the old to the new law where the Bill makes a minor change. A similar power was included in ITTOIA, ITA and CTA 2009.

41. The powers in clauses 1178 and 1179 can only be used until 31 March 2013. The powers will only be used with the agreement of the project's Consultative and Steering Committees (which will remain in existence for this purpose even after the project has formally come to an end). The Committees support their inclusion in the Bill.

Repealed provisions

42. Schedule 3 to the Bill contains repeals and revocations of enactments. An analysis of these shows a repeal of around 700 Sections and 24 Schedules. Around a further 200 subsections have also been repealed. In broad terms, the repeals are equivalent to approximately 800 pages of legislation.

BEFORE AND AFTER EXAMPLES

43. Appendix 3 to this memorandum gives two examples of how particular provisions look before and after the rewrite.

AMENDMENTS TO THE BILL

44. A number of amendments have been tabled. There are no special features of these which we consider need to be drawn to the Joint Committee's attention. A list of the amendments is contained in Appendix 4 to this memorandum.

APPENDIX 1
EFFECTS OF MINOR PROPOSED CHANGES IN THE LAW

Change No	Description	ITTOIA/ ITA/ CTA 2009 related	Change only in principle			Change with practical effect		
			More tax	less tax	Admin	More tax	Less tax	Admin
1	Small profits rate and marginal relief: no need for claim						✓	
2	Small profits rate and marginal relief: ignore "passive companies"			✓				
3	Small profits rate and marginal relief: relaxations in the test for being an associated company			✓				
4	Trading income: omission of references to a company carrying on a profession or vocation	✓	✓	✓				
5	References to "officer of Revenue and Customs"	✓						✓
6	Interpretation: references to Scottish and Northern Ireland legislation	✓					✓	
7	Industrial and provident societies: enactment of ESC C5			✓				
8	Trading losses: restrictions: contribution to the firm in place of contribution to the trade	✓				✓	✓	
9	Trading losses: restrictions: withdrawal of capital ignored where amounts charged to tax as profits of a trade	✓					✓	
10	Trading losses: restrictions: restrictions not to apply where an overseas property business carried on in the exercise of functions conferred by or under the law of a territory outside the United Kingdom							✓
11	Share loss relief, community investment tax relief and the corporate venturing scheme: omit the words "for full consideration"	✓		✓				
12	Share loss relief: corresponding bonus shares	✓		✓				
13	Share loss relief: restrictions on the amount of share loss relief	✓					✓	
14	Share loss relief: meaning of a mixed holding	✓	✓	✓				
15	Share loss relief: identification of which shares are disposed of	✓	✓	✓				
16	Share loss relief: identification of shares disposed of out of a mixed holding	✓					✓	✓
17	Share loss relief: shares to which section 127 of TCGA applies	✓	✓					
18	Share loss relief: nominees and bare trustees	✓	✓					
19	Share loss relief: resolution of conflicting provisions	✓		✓				
20	Share loss relief: time of issue of corresponding bonus shares	✓		✓				
21	Share loss relief: investment company: omission of reference to savings bank and bank for savings			✓			✓	
22	Share loss relief: time of disposal	✓	✓	✓				
23	Recalculation of EEA amount			✓				
24	Multiple claims for group relief		✓	✓				

Change No	Description	ITTOIA/ ITA/ CTA 2009 related	Change only in principle			Change with practical effect		
			More tax	less tax	Admin	More tax	Less tax	Admin
25	Group relief: restriction of surrender by company owned by consortium						✓	
26	Group relief: equity holder's share of profits or assets referable to UK trade					✓	✓	
27	Charitable donations relief: gifts and benefits linked to periods of less than 12 months: priority between methods of calculating annualised amounts of gifts and benefits	✓	✓	✓				
28	Community investment tax relief: permit deduction of expenses incurred by director, employee or associate						✓	
29	Oil taxation: deduction for excess of nominated proceeds		✓	✓				
30	Close companies: charge to tax on loans and advances to participators: exception for small amounts			✓				
31	Charitable companies: gifts to qualifying bodies under SA Donate: claims					✓		
32	Charitable companies: exemption for post-cessation receipts of certain trades	✓		✓				
33	Requiring an apportionment to be just and reasonable	✓	✓	✓				
34	Charitable companies: limit on exemption for profits etc of small-scale trades and certain miscellaneous income	✓		✓				
35	Charitable companies: exemption for profits from fund-raising events	✓		✓				
36	Charitable companies: exemption for income from intellectual property etc	✓		✓				
37	Charitable companies: exemption for income from estates in administration	✓		✓				
38	Charitable companies: meaning of non-charitable expenditure	✓	✓	✓				
39	Charitable companies: accounting period in which certain expenditure treated as incurred	✓	✓	✓				
40	Charitable companies: approved charitable investments	✓	✓	✓				
41	Non-UK companies						✓	
42	UK REITs: conditions as to property rental business: exclusion of non-member's interest					✓	✓	
43	Enactment of regulations							✓
44	UK REITs: notional amount charged following breach of condition: exclusion of non-member's interest						✓	
45	Corporate beneficiaries under trusts: treatment of trustees' expenses	✓	✓	✓				
46	Co-operative housing associations and self-build societies: change from tax year to accounting period					✓	✓	
47	Co-operative housing associations and self-build societies: Department for Social Development for Northern Ireland							✓
48	Receipt of club benefits by members: arm's length agreements for employment or for goods or services			✓				
49	Changes in company ownership: company with investment business: restriction on relief for non-trading loss on intangible fixed assets		✓					
50	Changes in company ownership: company with investment business: asset transferred within group: restriction on reliefs for non-trading loss on intangible fixed assets and property losses			✓				
51	Manufactured payments and repos: definition of "manufactured interest"		✓	✓				
52	Transactions in land: company chargeable: provider of opportunity to realise a gain	✓		✓				
53	Transactions in land: clearance procedure	✓				✓		
54	Transactions in land: power to obtain information: "reasonably requires"	✓				✓		
55	Sale and lease-back etc: restriction of excessive lease rentals: relationship with accounting practice		✓	✓				

Change No	Description	ITTOIA/ ITA/ CTA 2009 related	Change only in principle			Change with practical effect		
			More tax	less tax	Admin	More tax	Less tax	Admin
56	Sale and lease-back etc: exclusion of service charges etc to be on just and reasonable basis				✓			
57	Company distributions: premium paid on redemption of share capital		✓	✓				
58	Company distributions: duty to provide a tax certificate: interest that is not a qualifying distribution		✓	✓				
59	Interpretation: definition of “personal representatives” for the purposes of the Corporation Tax Acts	✓			✓			
60	Corporation Tax Acts definitions: meaning of “local authority” in relation to Northern Ireland: claims		✓					
61	Non-UK resident companies: transactions through brokers			✓				
62	Meaning of permanent establishment: substitution of reference to income for reference to chargeable profits in paragraph 4(3) of Schedule 26 to FA 2003	✓		✓				
63	Investment trusts: disposal of shares or securities from a holding			✓				
64	Procedure for making orders and regulations							✓
65	Corporation Tax Acts definitions: amendment of section 991 of ITA		✓	✓				
66	Company distributions: demergers						✓	

APPENDIX 2

EXAMPLES OF PROPOSED CHANGES IN THE LAW

All changes in the law have been the subject of consultation and have been agreed by the project's Consultative and Steering Committees. Specific mention is made in these notes of all the cases, not previously considered by the Joint Committee in connection with an earlier rewrite Bill, where in practice the change in the law either results only in an increase of the amount of tax due, or may result in either an increase or decrease of the tax due.

CHANGE 21: INVESTMENT COMPANY: OMISSION OF REFERENCE TO SAVINGS BANK AND BANK FOR SAVINGS

This change removes certain savings banks and banks for savings from the definition of “investment company” for the purposes of provisions which allow relief to investment companies against income for losses on the disposal of shares in certain circumstances (in Chapter 5 of Part 4 of this Bill and also in Chapter 6 of Part 4 of ITA). The change has two effects. The first relates to the question whether, when shares subscribed for on or after 1 April 2010 are disposed of, they are shares in a “qualifying trading company”. The second is that, as such a bank will on and after that date no longer be an investment company, it will not be entitled to relief on the disposal of shares in a qualifying trading company subscribed for on or after that date.

The first effect relates to the shares disposed of and is in principle favourable to the taxpayer, but the benefit is entirely theoretical. As described in the Change note, the change has effect if, in the limited circumstances in which clause 78(2)(b) or (3)(b) of this Bill or section 134(2)(b) or (3)(b) of ITA applies, the company which issued the shares disposed of is a savings bank or bank for savings at the times mentioned in that provision. In that case, the bank will no longer fail to be a qualifying trading company simply because it does not meet one of the requirements of that provision, namely that the company is not an investment company at those times. But another of the requirements of that provision is that the company is not a trading company at those times. A savings bank or bank for savings carries on a trade and will, therefore, continue to fail the requirements of that provision in any event.

The second effect is on a savings bank or bank for savings which subscribes for shares in a qualifying trading company on or after 1 April 2010. As the bank will not then be an investment company, it will not be eligible for share loss relief on the disposal of the shares. This is clearly an adverse effect in principle; but in practice no such banks are known to carry on business in the UK which includes the making of investments in shares in companies capable of being qualifying trading companies.

Notwithstanding the fact that this change has no practical effect, the change note, out of caution, recognises the potential for an adverse effect. The change was approved by consultees.

CHANGE 26: GROUP RELIEF: EQUITY HOLDER'S SHARE OF PROFITS OR ASSETS REFERABLE TO UK TRADE

This change concerns provisions in Chapter 6 of Part 5 of the Bill dealing with group relief. This Chapter of the Bill contains rules to establish the true economic relationship between companies, as the simple shareholding test does not always accurately reflect this. The change relates to cases involving non-resident companies and simplifies the calculation of the percentage of profits or assets to which an equity holder is entitled in such cases.

The basic rule is that the percentage of profits to which an equity holder is entitled is calculated by reference to a company's total profits. In a case where a company has no profits, the calculation is made by reference to £100 total profits. For non-resident companies there is a specific provision which caters for the possibility that the profits or assets referable to the UK trade are less than £100. The calculation is made on the same assumption as for other companies that such profits are £100. The clause rewriting the source legislation changes this so that if the profits or assets referable to the UK trade are between nil and £100, the actual amount is used in the computation. This may mean that in cases where the non-resident company's profits or assets referable to its UK trade are more than nil but less than £100 the percentage is slightly altered. However the circumstances where this happens are likely to be limited and even when it does happen the amounts involved are likely to be small whether or not they are in the taxpayer's favour. The change was approved by consultees.

CHANGE 42: UK REITS: CONDITIONS AS TO PROPERTY RENTAL BUSINESS: EXCLUSION OF NON-MEMBER'S INTEREST

This change excludes from a group's property rental business the percentage of that business held by a non-member of the group. In order for a group of companies to be a group UK REIT in relation to an accounting period certain conditions have to be met. These include a condition in clause 538 that no single property represents more than 40% of the total value of the properties involved in the property rental business. The change sets out how the interest of any minority shareholder in a group company is dealt with. The effect of the change is that, for the purposes of the calculation to determine whether the condition is met, the interest of such a shareholder in a group company is not taken into account. This change produces a consistent basis of calculation, means that the test follows the economic reality of the group relationship and makes it easier in general to pass the 40% test. It does not however mean that there will be a favourable outcome in every case. As shown by the examples provided in the change note it is possible that in some circumstances the change will result in an adverse outcome for the taxpayer. The change was approved by consultees.

CHANGE 46: CO-OPERATIVE HOUSING ASSOCIATIONS AND SELF BUILD SOCIETIES: CHANGE FROM TAX YEAR TO ACCOUNTING PERIOD

This change amends references to year of assessment in relation to co-operative housing associations and self-build societies and standardises claims to exemption in respect of rents receivable from tenants on the basis of an accounting period. This change is made because the reason for the link to years of assessment has now disappeared. Whether the change is in favour or to the disadvantage of a taxpayer in a particular case will depend on the facts in each case, but the numbers affected and the amounts involved are likely to be small. This change was approved by consultees.

APPENDIX 3**BEFORE AND AFTER EXAMPLES****EXAMPLE 1: SECTION 838(6)—(10) OF ICTA: SUBSIDIARIES REWRITTEN IN CLAUSES 1156 AND 1157 OF THE BILL**

This example shows how rewrite techniques make legislation easier to follow and use. The rewritten legislation is shorter and uses a brief formula whereas the source legislation is longer and introduces a number of labels which makes it complicated.

BEFORE*Section 838(6)—(10) of ICTA: Subsidiaries*

6. In this section—

- (a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as “a series”;
- (b) in any series—
 - (i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the “first owner”;
 - (ii) that other body corporate the ordinary share capital of which is so owned is referred to as “the last owned body corporate”;

- (iii) the remainder, if one only, is referred to as “an intermediary” and, if more than one, are referred to as “a chain of intermediaries”;
- (c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as “an owner”; and
- (d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

7. Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

8. Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

9. Where—

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

10. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

- (a) directly, or
- (b) through an intermediary or intermediaries which is not a member or are not members of that series, or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or
- (d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

AFTER

Clause 1156: Calculation of amounts owned indirectly: main rules

1. If a body corporate (“A”) directly owns the whole of the ordinary share capital of another body corporate (“B”), A is treated as indirectly owning the whole of any ordinary share capital that is owned directly or indirectly by B.

2. If a body corporate (“A”) directly owns a fraction of the ordinary share capital of another body corporate (“B”) and B directly or indirectly owns ordinary share capital of a third body corporate (“C”), A is treated as indirectly owning the amount of C’s ordinary share capital given by the formula—

$$F \times M$$

where—

F is the fraction of B’s ordinary share capital that is owned by A, and

M is the amount of the ordinary share capital of C that is owned directly or indirectly by B.

3. For the purposes of subsections (1) and (2), the amount of any ordinary share capital that is owned indirectly by B is calculated using subsection (1) or (2), or both, as appropriate.

Clause 1157: Adding fractions together

1. If A and C are bodies corporate and—

- (a) A owns, through one or more bodies corporate (“the intermediaries in the first series”), a fraction of C’s ordinary share capital, and

- (b) A also owns a further fraction of C's ordinary share capital (or further fractions of C's ordinary share capital),

all those fractions are added together to find the amount of C's ordinary share capital that is owned by A.

2. The reference in subsection (1)(b) to a further fraction of C's share capital is to a fraction of C's share capital that A owns—

- (a) directly, or
- (b) indirectly but through one or more bodies corporate which do not (together) constitute all of the intermediaries in the first series, or which include a body corporate that is not an intermediary in the first series.

Example 2: Section 116 of ICTA: Arrangements for transferring relief rewritten in clauses 958 to 962 of the Bill

This example shows the value of unpacking a dense and complicated provision. The breakdown into separate clauses provides the opportunity to flag up by means of the clause titles what the elements of the provision are. The further breakdown in clause 959, in which the relevant arrangements are described in terms of arrangements having any of the listed "Effects", flags up key conditions of the clause. The overall result is provisions that are much clearer and more accessible.

BEFORE

Section 116 of ICTA: Arrangements for transferring relief:

1. The provisions of subsection (2) below shall apply in relation to a company ("the partner company") which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—

- (a) in respect of the whole or any part of the value of, or of any portion of, the partner company's share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth; or
- (b) in respect of the whole or any part of the cost of, or of any portion of, the partner company's share in the loss of any accounting period of the partnership, the partner company or any person connected with that company receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, other than a payment in respect of group relief to the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

2. In any case where the provisions of this subsection apply in relation to the partner company—

- (a) the company's share in the loss of the relevant accounting period of the partnership and its share in any charges on income, within the meaning of section 338, paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its share in the profits of the trade carried on by the partnership; and
- (b) except in accordance with paragraph (a) above, no trading losses shall be available for set-off for the purposes of corporation tax against the company's share in the profits of the relevant accounting period of the partnership; and
- (c) except in accordance with paragraphs (a) and (b) above, no amount which, apart from this subsection, would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company's total profits as consists of its share in the profits of the relevant accounting period of the partnership.

3. In subsection (2) above "relevant accounting period of the partnership" means any accounting period of the partnership in which any such arrangements as are specified in subsection (1) above are in existence or to which any such arrangements apply.

4. If a company is a member of a partnership and corporation tax in respect of any profits of the partnership is chargeable under or by virtue of any provision to which section 834A (miscellaneous charges) applies, this section shall apply in relation to the company's share in the profits or loss of the partnership as if—

- (a) the profits or loss to which the company's share is attributable were the profits of, or the loss incurred in, a trade carried on by the partnership; and
- (b) any allowance to be given effect under Part 2 of the Capital Allowances Act in respect of a special leasing of plant or machinery were an allowance to be given effect in calculating the profits of that trade.

6. In this section "arrangements" means arrangements of any kind whether in writing or not.

7. Section 839 shall apply for the purposes of this section.

AFTER

Clause 958: Application

Section 960 (which provides for restrictions on the use of corporation tax relief) applies if—

- (a) a firm carries on a trade,
- (b) a company (referred to in this Chapter as “the partner company”) is a partner in the firm, and
- (c) arrangements within section 959 are in place.

Clause 959: Arrangements for transfer of relief

- (1) Arrangements are within this section if they have any of these effects.

Effect 1

The partner company receives a payment in respect of the cost of its share in the firm’s losses of any accounting period of the firm.

Effect 2

A person connected with the partner company receives a payment in respect of the cost of the partner company’s share in the firm’s losses of any accounting period of the firm.

Effect 3

Another partner in the firm receives a payment in respect of the value of the partner company’s share in the firm’s profits or losses of any accounting period of the firm.

Effect 4

A person connected with another partner in the firm receives a payment in respect of the value of the partner company’s share in the firm’s profits or losses of any accounting period of the firm.

2. It does not matter for the purposes of subsection (1) whether the payment is received in respect of the whole of the partner company’s share or in respect of only a part of it.

3. For the purposes of subsection (1) receiving a payment includes receiving or enjoying (whether directly or indirectly) any other benefit in money or money’s worth.

4. For the purposes of Effect 1 arrangements, payments made in respect of group relief to the partner company by a group-related company are to be ignored.

5. In subsection (4) a “group-related” company is a company that is a member of the same group of companies as the partner company for the purposes of Part 5 (group relief) (see section 152).

Clause 960: Restrictions on use of reliefs

1. The partner company’s share in the firm’s loss of a relevant accounting period may be deducted for the purposes of corporation tax relief only from its share in the profits of the trade carried on by the firm.

2. For this purpose, qualifying charitable donations made by the firm in a relevant accounting period are to be treated as a loss of that period.

3. Unless allowed under subsection (1)—

- (a) a loss made in a trade may not be deducted for the purposes of corporation tax relief from the partner company’s share in the firm’s profits of a relevant accounting period, and
- (b) if (ignoring this paragraph) any other amount could be used for the purposes of corporation tax relief, that amount may not be deducted for those purposes from the partner company’s share in the firm’s profits of a relevant accounting period.

4. In this section a “relevant accounting period” is any accounting period of the firm in which arrangements within section 959 are in existence or to which any such arrangements apply.

Clause 961: Non-trading profits and losses

1. This section applies if—

- (a) a company is a partner in a firm, and
- (b) any profits of the firm are charged to corporation tax under or by virtue of any provision to which section 1173 (miscellaneous charges) applies.

2. The profits or losses of the firm to which the company’s share is attributable are to be treated for the purposes of sections 958 to 960 as if they were profits or losses made by the firm in carrying on a trade.

3. Any allowance to be given effect under Part 2 of CAA 2001 in respect of a special leasing of plant or machinery is to be treated for those purposes as if it were an allowance to be given effect in calculating the profits of that trade.

Clause 962: Interpretation of Chapter

1. In this Chapter “arrangements” means arrangements of any kind (whether or not in writing).
2. References in this Chapter to a firm, and to an accounting period of a firm, are to be read in the same way as references to a firm, and to an accounting period of a firm, in Part 17 of CTA 2009.

APPENDIX 4

Corporation Tax Bill

NOTES ON AMENDMENTS UNDER CONSIDERATION BY JOINT COMMITTEE ON TAX LAW REWRITE BILLS

Companies with small profits

Part 3

- | | |
|--|----------|
| | 1 |
| Clause 30, page 18, leave out lines 28 to 31 | 2 |
| Clause 30, page 18, leave out lines 39 to 44 and insert— | |
| ‘(5) In subsection (3)— | |
| (a) “control” has the same meaning as in section 25(4), | |
| (b) “connection” includes a connection in the past as well as a connection in the present, and | |
| (c) the reference to a connection between A and B includes any dealings between them.’. | |

These amendments omit unnecessary provision from clause 30. Clause 30 is based on Extra-Statutory Concession C9. As a result of the enactment of the legislation now contained in section 474(1) of ITA 2007, the part of the concession on which subsections (1) and (2) of the clause are based is now redundant. Section 474(1) (which is applied for the purposes of the Corporation Tax Acts by section 832(2A) of ICTA) provides that the trustees of a settlement are, together, to be treated as if they were a single person distinct from the actual trustees. Such a person is not a company and so cannot be an associated company for the purposes of the provisions rewritten in Part 3.

Loss relief

Part 4

- | | |
|---|----------|
| | 3 |
| Clause 53, page 31, line 8, leave out ‘and’ and insert ‘or’ | 4 |
| Clause 53, page 31, line 9, leave out ‘and’ and insert ‘or’. | |
| These amendments ensure that the Bill accurately reflects the source legislation. | |

Group relief

Part 5

- | | |
|---|----------|
| | 5 |
| Clause 105, page 58, line 33, leave out ‘total’ and insert ‘gross’ | 6 |
| Clause 105, page 58, line 34, leave out second ‘total’ and insert ‘gross’ | 7 |
| Clause 105, page 59, line 4, at end insert— | |
| ‘(4A) For the purposes of this section the surrendering company’s gross profits of the surrender period are its profits for that period without any of the following— | |
| (a) a deduction in respect of any of the kinds of thing mentioned in section 99(1), | |
| (b) a deduction falling to be made in respect of losses, allowances or other amounts of any other period (whether or not in respect of a kind of thing so mentioned), and | |
| (c) a deduction falling to be made by virtue of section 63 of this Act or section 1223(3) of CTA 2009 (other amounts carried forward).’. | |

These amendments align clause 105 with the source legislation in sections 403(3) and 403ZE(1) of ICTA. They do so by providing for comparison with gross profits (as specially defined), rather than with total profits (defined by clause 4). The definition of “gross profits” includes some things which are deducted when calculating “total profits”.

*Real Estate Investment Trusts***Part 12**

8

Clause 519, page 261, line 12, at end insert—

‘(aa) section 598(3) (which provides that certain lettings of property by a joint venture company or a member of a joint venture group are not property rental business),’..

9

Clause 598, page 306, line 32, at end insert—

‘(3) References in this Part to property rental business, in relation to a joint venture company or a company which is a member of a joint venture group, do not include the letting of property by the company to (as the case may be)—

- (a) the venturing company in respect of the company, or
- (b) a member of the venturing group in respect of the company.’.

These amendments involve the rewrite of certain provisions of subordinate legislation relating to REITs. Part 12 of the Bill already contains the rewrite of much of the subordinate legislation relating to REITs but the initial view taken was that provisions to which the amendments relate did not need to be rewritten. On further consideration, it has been concluded that this view was wrong.

*Change in company ownership***Part 14**

10

Clause 691, page 348, leave out lines 27 to 34 and insert—

‘(b) the amount outstanding of any debts incurred by the company which are within section 453(2), and’.

This amendment ensures that the Bill accurately reflects the source legislation.

*Factoring of income etc***Part 16**

11

Clause 761, page 383, line 19, leave out from ‘if’ to ‘arrangement’ in line 20 and insert ‘—

- (a) there is a type 1 finance arrangement,
- (b) the borrower is a company, and
- (c) either—
 - (i) the’.

This amendment, in order to clarify the reference here to the borrower, secures that the reference is preceded by a reference to the finance arrangement concerned.

12

Clause 762, page 383, line 41, leave out from ‘if’ to ‘arrangement’ in line 42 and insert ‘—

- (a) there is a type 1 finance arrangement,
- (b) the borrower is a partnership, and
- (c) either—
 - (i) the’.

This amendment, in order to clarify the reference here to the borrower, secures that the reference is preceded by a reference to the finance arrangement concerned.

*Corporation Tax Acts definitions etc***Part 24**

13

Clause 1165, page 570, line 29, leave out from ‘with’ to end of line 30 and insert ‘section 99 of TCGA 1992 (application of that Act to unit trust schemes).’.

14

Clause 1165, page 570, line 34, leave out ‘sections 99 and 103A’ and insert ‘section 99’.

Amendments 13 and 14 amend clause 1165 so that it rewrites section 842(4) of ICTA without the prospective amendment made by paragraph 11(2) of Schedule 22 to FA 2009. Amendments 25, 26, 30 and 34 accordingly provide for paragraph 11(2) of Schedule 22 to FA 2009 to amend the rewritten provision, instead of section 842(4).

*Minor and consequential amendments***Schedule 1****15**

Schedule 1, page 591, line 4, at end insert—

‘Solicitors (Northern Ireland) Order 1976 (S.I. 1976/582 (N.I. 12))

167A In paragraph 38(3) of Schedule 1A to the Solicitors (Northern Ireland) Order 1976 before “any reference” insert “and section 832(5) and (6) of the Corporation Tax Act 2010”.

This amendment makes a consequential amendment in Northern Ireland legislation.

16

Schedule 1, page 595, line 32, at end insert—

‘Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

217A In Article 16(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989 for “section 416 of the Income and Corporation Taxes Act 1988” substitute “section 449 of the Corporation Tax Act 2010”.

This amendment makes for Northern Ireland a consequential amendment corresponding to the consequential amendment made by paragraph 192 of Schedule 1 to the Bill.

17

Schedule 1, page 605, line 2, at end insert—

‘Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))

268A In Article 62(8) of the Electricity (Northern Ireland) Order 1992 for “section 839 of the Income and Corporation Taxes Act 1988” substitute “section 1122 of the Corporation Tax Act 2010”.

‘Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15))

268B In Article 22(2)(c) of the Housing (Northern Ireland) Order 1992 for “section 488 of the Income and Corporation Taxes Act 1988” substitute “Chapter 7 of Part 13 of the Corporation Tax Act 2010”.

This amendment makes for Northern Ireland consequential amendments corresponding to the consequential amendments made by paragraphs 210 and 217 of Schedule 1 to the Bill.

18

Schedule 1, page 608, line 22, at end insert—

‘Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))

290A (1) The Gas (Northern Ireland) Order 1996 is amended as follows.

(2) In Article 39(7)—

(a) for “subsections (2) to (5) of section 416 of the Income and Corporation Taxes Act 1988” substitute “sections 450 and 451(1) to (3) of the Corporation Tax Act 2010”, and

(b) for “Part XI of that Act” substitute “Part 10 of that Act”.

(3) In Article 45(8) for “section 839 of the Income and Corporation Taxes Act 1988” substitute “section 1122 of the Corporation Tax Act 2010”.

This amendment makes consequential amendments of Northern Ireland legislation. The amendments made in Article 39(7) of the Order correspond to the amendments made by paragraph 201 of Schedule 1 to the Bill.

19

Schedule 1, page 620, line 32, at end insert—

‘Trustee Act (Northern Ireland) 2001 (c. 14 (N.I.))

361A In section 19(3) of the Trustee Act (Northern Ireland) 2001 for “section 840 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “section 1124 of the Corporation Tax Act 2010”.

This amendment makes for Northern Ireland a consequential amendment corresponding to the consequential amendment made by paragraph 314 of Schedule 1 to the Bill.

20

Schedule 1, page 627, line 31, at end insert—

‘Housing (Northern Ireland) Order 2003 (S.I. 2003/412 (N.I. 2))

415A In Article 85(2) of the Housing (Northern Ireland) Order 2003 for “Section 416 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “Section 449 of the Corporation Tax Act 2010”.

This amendment makes a consequential amendment of Northern Ireland legislation.

21

Schedule 1, page 643, line 22, at end insert—

‘483A The Charities Act 2006 is amended as follows.’

22

Schedule 1, page 643, line 23, leave out ‘of the Charities Act 2006’.

23

Schedule 1, page 643, line 26, at end insert—

‘484A In section 72(3) (disclosure of information to and by Northern Ireland regulator) leave out “(as substituted by paragraph 104 of Schedule 8 to this Act)”.’

Section 72(3) of the Charities Act 2006 provides that regulations under section 72(2) (which relates to the disclosure of information to the Northern Ireland regulator) must in some circumstances include provision corresponding to that made by section 10(2) to (4) of the Charities Act 1993. Paragraph 270 of Schedule 1 to the Bill amends section 10(2) of the 1993 Act and inserts a new subsection (2A) in that section. Amendments 21 to 23 make it clear that the requirement in section 72(3) is that the regulations should contain provision corresponding to section 10(2) to (4) of the 1993 Act as amended by the Bill.

24

Schedule 1, page 659, line 2, at end insert—

‘Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))

575A The Charities Act (Northern Ireland) 2008 is amended as follows.

575B In section 5(4) for the words from “a club” to the end substitute “a registered club within the meaning of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs)”.

575C (1) Amend section 45 as follows.

(2) In subsection (1)—

(a) omit “section 505 of the Income and Corporation Taxes Act 1988 (c. 1) or”, and

(b) after “2007 (c. 3)” insert “, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,”.

(3) In subsection (2)—

(a) omit “section 505 of the Income and Corporation Taxes Act 1988 or”, and

(b) after “2007” insert “, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010,”.

(4) After subsection (2) insert—

“(3) For the purposes of this section relief under any provision of Part 11 of the Corporation Tax Act 2010 other than—

(a) section 480 (exemption for profits of small-scale trades), and

(b) section 481 (exemption from charges under provisions to which section 1173 applies), is qualifying relief under that Part”.’

This amendment (with amendment 33) makes for Northern Ireland consequential amendments corresponding to the consequential amendments made by paragraphs 271 and 484 of Schedule 1 to the Bill.

25

Schedule 1, page 676, line 27, at end insert—

‘703A Amend Schedule 22 (offshore funds) as follows.

703B For paragraph 11(2) substitute—

“(2) In section 1165 of the Corporation Tax Act 2010—

(a) in subsection (1) for “section 99 of TCGA 1992 (application of that Act to unit trust schemes)” substitute “sections 99 and 103A of TCGA 1992 (application of that Act to unit trust schemes and to certain offshore funds)”, and

(b) in subsection (3) for “section 99 of TCGA 1992” substitute “sections 99 and 103A of TCGA 1992”.’

See the note on amendments 13 and 14.	26
Schedule 1, page 676, line 28, leave out ‘Schedule 22 (offshore funds) in’.	
See the note on amendments 13 and 14.	
<i>Transitionals and savings etc</i>	
Schedule 2	27
Schedule 2, page 683, line 17, leave out ‘has effect in relation to cessations of a trade on or after’ and insert ‘does not have effect in relation to cessations of a trade before’.	28
Schedule 2, page 694, line 42, after ‘178’ insert ‘do not’.	29
Schedule 2, page 694, line 43, leave out ‘on or after’ and insert ‘before’.	
These amendments make the way in which paragraphs 20 and 54 of Schedule 2 are expressed conform more closely to the way in which other similar rules are expressed in Schedule 2.	30
Schedule 2, page 715, leave out lines 24 to 30 and insert—	
‘115 If an order under paragraph 13(2) of Schedule 22 to FA 2009 relating to paragraph 11(2) of that Schedule is made before 1 April 2010 so as to come into force on or after that date, the order is to have effect as if any reference to paragraph 11(2) were a reference to that provision as substituted by this Act.’	
See the note on amendments 13 and 14.	
<i>Repeals and revocations</i>	
Schedule 3	31
Schedule 3, page 724, line 4, at end insert—	
‘Charities Act 2006 (c. 50)	In section 72(3), the words “(as substituted by paragraph 104 of Schedule 8 to this Act)”.
This amendment is consequential on amendment 23.	
Schedule 3, page 724, line 31, after ‘263(a),’ insert ‘272(a),’.	32
This amendment provides for a repeal that is consequential on paragraph 193(a) of Schedule 1 to the Bill.	33
Schedule 3, page 725, line 39, at end insert—	
‘Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))	In section 45— (a) in subsection (1) the words “section 505 of the Income and Corporation Taxes Act 1988 (c. 1) or”, and (b) in subsection (2) the words “section 505 of the Income and Corporation Taxes Act 1988 or”.
See the note on amendment 24.	34
Schedule 3, page 726, leave out line 22.	
See the note on amendments 13 and 14.	
<i>January 2010</i>	

Memorandum submitted by the Tax Law Rewrite Project

1. This memorandum of evidence has been prepared by the Tax Law Rewrite project to assist the Joint Committee's consideration of the Taxation (International and Other Provisions) Bill as introduced in the House of Commons on 19 November 2009.

2. The memorandum provides:

- an overview of the purpose and content of the Bill;
- an analysis of the minor changes that are proposed; and
- a discussion of some particular features of the Bill as introduced.

3. During the Second Reading, no points were raised that need to be drawn to the attention of the Joint Committee.

PURPOSE AND CONTENT OF THE BILL

General

4. The purpose of the Bill is to rewrite tax legislation to make it clearer and easier for individuals and companies and their advisers to use. It contains provisions about double taxation relief, transfer pricing, advance pricing agreements, tax arbitrage, the tax treatment of financing costs and income, and offshore funds. It also rewrites and relocates a number of provisions to assist users. This Bill completes the work of the project on the rewrite of the main direct taxes.

5. When the project rewrote the income tax legislation, the income tax and corporation tax codes were separated. This approach was adopted in the light of the views of users that it would help to make the provisions easier to understand, particularly for those concerned only with income tax. The Corporation Tax Act 2009 and the Corporation Tax Bill which is currently before Parliament complete the process of separation.

6. The present Bill departs from the approach of separating the tax codes and includes provisions which apply for different taxes. The reason for this is that, in relation to the subjects dealt with in the Bill, it is more helpful to users to maintain the approach adopted in the source legislation and not to attempt separation. Indeed, Chapters 1 and 2 of Part 2 of the Bill undertake some combining of codes: in particular, they deal with double taxation relief against capital gains tax as well as against income tax and corporation tax. This reflects the fact that double taxation arrangements dealing with income tax and corporation generally also deal with capital gains tax.

7. The Bill will replace provisions in the Income and Corporation Taxes Act 1988 (ICTA) and various Finance Acts and accordingly repeals them where appropriate.

Structure and content

8. Part 1 provides an overview of the Bill.

9. Part 2 contains provisions about double taxation relief.

10. Part 3 provides provisions about double taxation relief for special withholding tax.

11. Part 4 contains provisions about transfer pricing.

12. Part 5 contains provisions about advance pricing agreements.

13. Part 6 contains provisions about tax arbitrage.

14. Part 7 contains provisions about the tax treatment of financing costs and income.

15. Part 8 contains provisions about offshore funds.

16. Part 9 contains amendments to relocate some tax provisions.

17. Part 10 contains provisions about abbreviated references and other matters such as minor and consequential amendments.

PROPOSED CHANGES IN THE LAW

18. The main objective of the Bill is to rewrite existing tax legislation without changing its meaning, but contained within it are 15 minor changes in the law which are explained in detail in Annex 1 to the Explanatory Notes (starting on page 184). In the main, these changes are intended to clarify existing provisions, to ensure consistency or to bring the law into line with well established practice.

19. All the changes have been the subject of consultation and have the support of the Tax Law Rewrite project's Consultative and Steering Committees.

20. Appendix 1 to this memorandum provides a table of the changes, indicating the potential effect of each, both in principle and in practice. Of the 15 changes three replicate changes introduced in earlier rewrite Acts and they are identified in the table. The principles underlying these changes have therefore already been considered and accepted by the Joint Committee when examining the earlier rewrite Bills.

21. All changes in law must necessarily involve some change in principle, but none of the changes proposed in this Bill results in any change of the amount of tax paid in practice. This is because they align the law with practice or relate only to administrative matters.

22. The effect of these changes, whether taken together or individually, is very small.

23. Appendix 2 to this memorandum gives further details about some of the changes focusing on those that may be of particular interest to the Committee.

PARTICULAR FEATURES OF THE BILL AS INTRODUCED

Updated structure

24. A key feature of rewrite provisions is the improved structure that results from bringing legislation together that had previously been dispersed across the legislative landscape.

25. At a strategic level this Bill aims to do two things. First it brings together a number of provisions which are concerned with the international aspects of taxation and which were spread across a number of different taxes Acts. Second as well as rewriting a number of provisions it relocates them to new locations to help users in the future. Both of these aims were considered and approved by the project's committees, which include users and representatives of users.

26. At a subject level it brings together pieces of legislation which relate to one another but which are currently located in different Acts. For example, the provisions dealing with transfer pricing are in Schedule 28AA to ICTA, whereas those dealing with advance pricing agreements are in sections 85 to 87 of FA 1999 and those dealing with determinations requiring the sanction of the Board and notices to potential claimants are in sections 110 and 111 of FA 1998. All of these provisions have now been brought together and rewritten in two Parts of this Bill for the convenience of users.

Powers to amend legislation etc.

27. There are three powers in the Bill that were not in the source legislation. Equivalent powers have been present in some previous rewrite Bills. The powers are:

- to make consequential provision (clause 375). This enables consequential amendments to be made without recourse to a Finance Bill. A similar power was included in the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), the Income Tax Act 2007 (ITA) and the Corporation Tax Act 2009 (CTA 2009);
- to undo changes made by the Bill (clause 376). This enables errors in the Bill to be corrected without recourse to a Finance Bill. A similar power was included in ITA and CTA 2009; and
- to make transitional or saving provision (clause 377). This enables provision to be made about the transition from the old to the new law where the Bill makes a minor change. A similar power was included in ITTOIA, ITA and CTA 2009.

28. The powers in clauses 375 and 376 can only be used until 31 March 2013. The powers will only be used with the agreement of the project's Consultative and Steering Committees (which will remain in existence for this purpose even after the project has formally come to an end). The Committees support their inclusion in the Bill.

Repealed provisions

29. Schedule 10 to the Bill contains repeals and revocations of enactments. An analysis of these shows a repeal of 500 Sections and 7 Schedules. A further 150 subsections have also been repealed. In broad terms, the repeals are equivalent to approximately 530 pages of legislation.

BEFORE AND AFTER EXAMPLES

30. Appendix 3 to this memorandum gives two examples of how particular provisions look before and after the rewrite.

AMENDMENTS TO THE BILL

31. Some amendments have been tabled. There are no special features of these which we consider need to be drawn to the Joint Committee's attention. A list of the amendments is contained in Appendix 4 to this memorandum.

APPENDIX 1

EFFECTS OF MINOR PROPOSED CHANGES IN THE LAW

Change No	Description	ITTOIA/ ITA/ CTA 2009 related	Change only in principle			Change with practical effect		
			More tax	Less tax	Admin	More tax	Less tax	Admin
1	Double taxation relief: capital gains tax relief under double taxation arrangements		✓	✓				
2	References to "officer of Revenue and Customs"	✓						✓
3	Double taxation relief: unilateral relief for tax on profits of UK branch, agency or permanent establishment			✓				
4	Double taxation relief: income tax and capital gains tax: order in which credit relief is allowed			✓				
5	Requiring an apportionment, or a reduction, to be just and reasonable	✓	✓	✓				
6	Double taxation relief: limit on total credit against income tax and capital gains tax: interaction with gift aid		✓	✓				
7	Double taxation relief: corporation tax: credit relief: royalty income							✓
8	Double taxation relief: cases about being taxed otherwise than in accordance with DTAs: capital gains tax and PRT			✓				
9	Avoidance: tax arbitrage: cases where payee not treated as not liable as a result of scheme			✓				
10	Oil taxation: abandonment guarantees and expenditure under sections 63 and 65 of FA 1991		✓	✓				
11	Sale and lease-back etc: restriction of excessive lease rentals: relationship with accounting practice		✓	✓				
12	Sale and lease-back etc: exclusion of service charges etc to be on just and reasonable basis							✓
13	Trading income: omission of references to a company carrying on a profession or a vocation	✓	✓	✓				
14	Relocation of section 152 of ICTA		✓	✓				
15	Section 59(3) of ICTA		✓	✓				

APPENDIX 2

EXAMPLES OF PROPOSED CHANGES IN THE LAW

All changes in the law have been the subject of consultation and have been agreed by the project's Consultative and Steering Committees. All of the changes have an effect in principle only. There are no changes which in practice increase or decrease the amount of tax payable.

Specific mention is made in these notes of a change in the law where the need for the change became apparent late in the preparation of the Bill and, as a consequence, the consultation period was inevitably shorter than usual. Specific mention is also made of two proposed rewrite changes which could not be included in the draft Bill. They were published later, but the normal time for consultation period was available.

CHANGE 6: DOUBLE TAXATION RELIEF: LIMIT ON TOTAL CREDIT AGAINST INCOME TAX AND CAPITAL GAINS TAX: INTERACTION WITH GIFT AID

This change relates to section 796(3) of ICTA, which restricts double taxation relief by way of credit in order to ensure that tax refunded to charities on gift aid donations is covered by tax paid by the donor. Clause 41 of the Bill rewrites section 796(3) of ICTA in a way which gives statutory effect to the practice of taking the donor's income tax and capital gains tax liabilities together in applying the limit set by section 796(3).

As explained in detail in the Change Note in Annex 1 to the Explanatory Notes published with the Bill, a single disallowance of the amount treated as deducted under section 414 of ITA (relief for gifts to charity) is clearly more advantageous for taxpayers than the double disallowance of that amount that could arise under what appears to be the most likely reading of section 796(3) of ICTA. But clause 41 could also be to the taxpayer's disadvantage, as it will prevent the taxpayer arguing that credit for foreign tax charged on capital gains should be allowed against any part of the taxpayer's capital gains tax liability which covers tax reclaimed by charities on gift aid donations made by the taxpayer. The change brings the law into line with existing practice.

CHANGE 8: DOUBLE TAXATION RELIEF: CASES ABOUT BEING TAXED OTHERWISE THAN IN ACCORDANCE WITH DTAS: CAPITAL GAINS TAX AND PRT

This change extends the scope of section 815AA of ICTA (double taxation relief: mutual agreement procedure and presentation of cases under double taxation arrangements) by extending references in the section to “the Tax Acts” to include the enactments relating to capital gains tax and the enactments relating to petroleum revenue tax. It is in principle favourable to taxpayers. The change brings the law into line with existing practice.

CHANGE 15: SECTION 59(3) OF ICTA

This change concerns the repeal of section 59(3) of ICTA which provides that owners, occupiers or receivers of profits of markets, fairs, tolls, fisheries etc are answerable for income tax charged and can retain and deduct the tax from the profits. Although it is not possible to identify what purpose section 59(3) now serves it was considered necessary to identify the repeal of this very old provision as a change in the law as it could not be established beyond doubt that it had no application. No comments suggesting any possible application were received as a result of the consultation. Although the change has the potential to be favourable or adverse to taxpayers in principle, it is expected to have no practical effect as it is in line with existing practice.

APPENDIX 3

BEFORE AND AFTER EXAMPLES

EXAMPLE 1: SECTION 790(4), (5) AND (12) OF ICTA AND SECTION 277(1) OF TCGA 1992

Rewritten in Clause 9 of the Bill

This example shows how rewrite techniques can simplify the drafting and layout of complex legislation and thereby make it easier to follow. The improvements made include the following:

- the source legislation on unilateral relief uses the artificial legal fiction of a hypothetical tax treaty. The rewritten version avoids this legal fiction and is therefore conceptually simpler.
- section 790(4) is cumbersome. The rewritten version uses paragraphs and avoids the use of brackets.
- in the source legislation, section 790(4) is applied to capital gains tax by a provision in a completely different Act, section 277(1) of TCGA. In the rewritten version the capital gains tax rules sit alongside the income tax and corporation tax rules.
- the main rules in section 790(4) are subject to detailed rules in sections 790(5)(b) and (c) and 793A(2) and (3) of ICTA. These detailed rules are rewritten in clauses 11 and 12 and the rewritten section 790(4) is subject to these clauses.

BEFORE

Section 790 of ICTA

4. Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising or any chargeable gain accruing in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income or gain (profits from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory).

5. Subsection (4) above shall have effect subject to the following modifications, that is to say—

- (a) where the territory is the Isle of Man or any of the Channel Islands, the limitation to income or gains arising in the territory shall not apply;
- (b) where arrangements in relation to the territory are for the time being in force by virtue of section 788, credit for tax paid under the law of the territory shall not be allowed by virtue of subsection (4) above in the case of any income or gains if any credit for that tax is allowable under those arrangements in respect of that income or those gains; and
- (c) credit shall not be allowed by virtue of subsection (4) above for overseas tax on a dividend paid by a company resident in the territory unless—
 - (i) the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise, and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid; or
 - (ii) the dividend is paid to a company within subsection (6) below; or
 - (iii) the dividend is paid to a company to which section 802(1) applies and is a dividend of the kind described in that subsection.

12. In this section and in Chapter II of this Part in its application to unilateral relief, references to tax payable or paid under the law of a territory outside the United Kingdom include only references—

- (a) to taxes which are charged on income and which correspond to United Kingdom income tax; and
- (b) to taxes which are charged on income or chargeable gains and which correspond to United Kingdom corporation tax;

but for this purpose tax under the law of any such territory shall not be treated as not corresponding to income tax or corporation tax by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

Section 277 of TCGA 1992

1. For the purpose of giving relief from double taxation in relation to capital gains tax and tax on chargeable gains charged under the law of any territory outside the United Kingdom, in Chapters I and II of Parts XVIII of the Taxes Act, as they apply for the purposes of income tax, for references to income there shall be substituted references to capital gains and for references to income tax there shall be substituted references to capital gains tax meaning, as the context may require, tax charged under the law of the United Kingdom or tax charged under the law of a territory outside the United Kingdom.

AFTER

Clause 9: Rule 1: the unilateral entitlement to credit for non-UK tax.

1. Credit for tax—

- (a) paid under the law of the territory;
- (b) calculated by reference to income arising, or any chargeable gain accruing, in the territory; and
- (c) corresponding to UK tax,

is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.

2. Credit for tax—

- (a) paid under the law of the territory;
- (b) calculated by reference to any capital gain accruing in the territory; and
- (c) corresponding to UK tax;

is to be allowed against any capital gains tax calculated by reference to that gain.

3. For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.

4. For the purposes of subsection (1)(c), tax corresponds to UK tax if—

- (a) it is charged on income and corresponds to income tax, or
- (b) it is charged on income or chargeable gains and corresponds to corporation tax.

5. For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.

6. For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—

- (a) is payable under the law of a province, state or other part of a country; or
- (b) is levied by or on behalf of a municipality or other local body.

7. If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of “in the territory”.

8. Subsections (1) and (2) are subject to sections 11 and 12.

Example 2: Section 796(1) to (2A) of ICTA rewritten in clause 36 of the Bill

This example shows how the source legislation has been rewritten to include a formula to help users and to put on a statutory basis a practice which provides the greatest reduction in the liability to income tax or capital gains tax for the tax year.

BEFORE

Section 796 of ICTA: Limits on credit: income tax

1. The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax but allowing for the making of any other income tax reduction under the Income Tax Acts, except a reduction under section 26 of FA 2005)—

- (a) if he were charged to tax on his total income for the year, computed in accordance with section 795; and
- (b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.

2. Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.

2A. See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.

AFTER

Clause 36: Amount of limit.

1. This section is about the amount of credit allowed under section 18(2) against a person's income tax for any tax year.

2. The amount of credit in respect of income from any particular source must not exceed the difference between—

- (a) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - X$$

and

- (b) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - (X + C).$$

3. If credit is allowed (whether or not under the same tax-relief arrangements) in respect of income from more than one source, apply subsection (2) successively to the income from each source, taking the sources in the order which will result in the greatest reduction in the person's income tax liability for the tax year.

4. In subsection (2)—

TI is the person's total income for the tax year,

X is the income (if any) to which subsection (2) has already been applied, and

C is the income in respect of which the credit is to be allowed.

5. The rules for calculating an amount of income tax under subsection (2) are—

- (a) the calculation is to be made in accordance with sections 31 and 32, and
- (b) no credit is to be allowed for foreign tax, and
- (c) no reduction is to be made under section 26 of FA 2005 (trusts for the benefit of a vulnerable beneficiary), but
- (d) any other income tax reduction under the Income Tax Acts is to be made.

6. See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.

7. For the purposes of subsection (3) the following are "tax-relief arrangements"—

- (a) double taxation arrangements, and
- (b) unilateral relief arrangements for a territory outside the United Kingdom.

APPENDIX 4

NOTES ON AMENDMENTS UNDER CONSIDERATION BY JOINT COMMITTEE ON TAX LAW REWRITE BILLS

Double taxation relief

Part 2

Clause 20, page 13, line 3, leave out 'section' and insert 'sections 31(4) and'.

1

2

Clause 20, page 13, line 3, leave out 'taxed on remittance basis not to be increased under section' and insert 'not to be increased in calculations under section 31 or'.

These amendments ensure that the Bill fully reflects the reference to section 795(3) of ICTA found in section 788(5) of ICTA.

3

Clause 24, page 15, line 23, at end insert—

‘(za) no credit is allowed for income arising from that source in the later year.’

This amendment ensures that the Bill fully reflects the reference to setting-off found in section 804(5A) of ICTA.

4

Clause 33, page 20, line 24, leave out ‘(2)’ and insert ‘(1)’.

This amendment ensures that the Bill accurately reflects the source legislation.

5

Clause 48, page 28, line 21, leave out ‘or gain’.

6

Clause 48, page 28, line 23, leave out ‘or gain’.

7

Clause 48, page 28, line 27, leave out ‘or gains’.

These amendments ensure that clause 48(4) and (5) are consistent with clause 44(2) which, because it is about trade income, does not refer to gains.

8

Clause 97, page 56, line 1, after ‘under’ insert ‘this section or’.

This amendment ensures that the Bill accurately reflects the source legislation.

Transfer pricing

Part 4

9

Clause 162, page 98, line 9, leave out ‘paragraph’ and insert ‘section’.

This amendment corrects a minor drafting error.

10

Clause 163, page 98, line 13, after ‘159’ insert ‘and this section’.

This amendment ensures that the Bill accurately reflects the source legislation.

11

Clause 165, page 99, line 38, leave out ‘paragraph’ and insert ‘section’.

12

Clause 172, page 102, line 24, leave out ‘paragraph’ and insert ‘section’.

These amendments correct minor drafting errors.

13

Clause 187, page 110, line 30, leave out ‘payable’ and insert ‘paid’.

This amendment ensures that the Bill accurately reflects the source legislation.

14

Clause 205, page 121, line 12, leave out (“the actual provision”).

This amendment omits a drafting label of which no use is made.

Alternative finance arrangements

Schedule 2

15

Schedule 2, page 226, line 18, leave out ‘alternative finance return for the purposes of section 151P’ and insert ‘amount of the excess referred to in section 151P(2) and (5)(b)’.

16

Schedule 2, page 226, line 19, after ‘151P(3)’ insert ‘and (4)’.

These amendments align the provisions rewriting section 48(1) of FA 2005 for capital gains tax purposes with the new section 564J of ITA 2007 which rewrites it for income tax purposes.

*Sale and lease-back etc***Schedule 4**

17

Schedule 4, page 266, line 38, leave out ‘the lessee’ and insert ‘L’.

This amendment makes a minor drafting correction to clarify that the reference here to the lessee is to the lessee identified as “L” in the preceding new section.

*Factoring of income etc***Schedule 5**

18

Schedule 5, page 282, line 34, at end insert—

‘(za) there is a type 1 finance arrangement,’.

19

Schedule 5, page 282, line 36, leave out ‘a type 1 finance’ and insert ‘the’.

20

Schedule 5, page 283, line 10, after ‘that’ insert ‘—

(a) there is a type 1 finance arrangement, and

(b) ’.

21

Schedule 5, page 283, line 12, leave out ‘a type 1 finance’ and insert ‘the’.

These amendments, in order to clarify references to the borrower, ensure that the references are preceded by a reference to the finance arrangement concerned.

*Miscellaneous relocations***Schedule 7**

22

Schedule 7, page 307, line 14, leave out ‘non-UK resident’ and insert ‘person not resident in the United Kingdom’.

This amendment spells out the meaning of “non-UK resident” because the expression is not defined for capital gains tax purposes.

23

Schedule 7, page 338, line 12, leave out ‘Community’ and insert ‘EU’.

This amendment ensures that the Bill reflects an amendment to the source legislation which was brought into force on 1st December 2009 by an order made on 30th November 2009.

*Minor and consequential amendments***Schedule 8**

24

Schedule 8, page 352, line 36, at end insert—

‘68A (1) Section 764 (application of ICTA provisions about special relationships) is amended as follows.

(2) In subsection (1), and in the title, for “ICTA” substitute “TIOPA 2010”.

(3) In subsection (1) for “special relationship provision” substitute “special relationship rule”.

(4) In subsection (2) for “subsections (2) to (4) of section 808A of ICTA” substitute “section 131(3), (5) and (6) of TIOPA 2010”.

(5) In subsection (3) for “subsections (2) to (7) and (9) of section 808B of ICTA” substitute “sections 132(3) to (5), (7) and (8) and 133 of TIOPA 2010”.’.

25

Schedule 8, page 355, line 13, at end insert—

‘92A In section 782(1)(a) (intangible fixed assets transferred in the course of certain transfers of a business)—

(a) for “section 807B(2)(b)(iii) of ICTA” substitute “section 116(2)(b)(iii) of TIOPA 2010”, and

(b) for “section 807C” substitute “section 117”.’.

These amendments make further consequential amendments.

26

Schedule 8, page 378, line 33, at end insert—

'Solicitors (Northern Ireland) Order 1976 (S.I. 1976/582 (N.I. 12))

284A The Solicitors (Northern Ireland) Order 1976 is amended as follows.

284B In paragraph 38(3) of Schedule 1A for the words from the beginning to “1988” substitute “In sections 748(4), 749 and 771(5) and (6) of the Income Tax Act 2007”.

Administration of Justice Act 1985 (c. 61)

284C The Administration of Justice Act 1985 is amended as follows.

284D In paragraph 36(3) of Schedule 2 for “749,” substitute “748(4), 749 and”.

This amendment makes amendments consequential on the rewrite, by ITA 2007, of sections 745(3) and 778(3) of ICTA (and also removes a spent reference to Schedule 15 to ICTA).

Transitionals and savings etc

Schedule 9

27

Schedule 9, page 397, leave out lines 28 to 42.

This amendment leaves out transitional provision that is unnecessary as a result of Amendment 23.

Repeals and revocations

Schedule 10

28

Schedule 10, page 402, line 7, column 2, at beginning insert ‘In section 44, the words from “Part 1” to “funds), and”.

This amendment adds a repeal that is consequential on the repeal of Part 1 of Schedule 22 to FA 2009.

January 2010

Witnesses: **Miss Robina Dyall**, Director, HMRC Tax Law Rewrite Project, **Mr Brian Jones**, Team Leader, HMRC Tax Law Rewrite Project, **Mr John Sellers CB**, Head Drafter, HMRC Tax Law Rewrite Project, **Mr David Sewell**, Drafter, HMRC Tax Law Rewrite Project, and **Mr Adam Broke**, Member, Consultative and Steering Committees, gave evidence.

Q1 Chairman: You may be somewhat surprised to find me sitting here. I am somewhat surprised myself and will do my best to handle things this afternoon given the fact that I am the one with the least experience of how this Committee operates. My first impression is that although I have been involved in quite a few committees in my time, I have never seen anything remotely like what is piled up on the table over there, and I noticed that in one or two cases the witnesses came in bearing huge piles of papers. I have not read any of them. Before we go any further can I just thank everybody who has been involved in this process. I gather that some of you have been involved for a decade or more. It has been a huge undertaking and a very valuable one. We had a brief discussion about this before you came in and we wanted particularly to thank everybody, both those in the room and those not, for the enormous work that has gone into this. I have heard rumours of a party in March. I do not know exactly when that is going to take place. I am the least deserving person to be at that party but I am already pencilling it in and I hope to see everybody else who has been involved in the project there. While I am on the business of thanks, can I also thank Lord Newton, who has put in an enormous amount of work, Geoffrey Howe, whose project to some degree this

probably was in the first place, and also Kenneth Clarke, absent because he has gone on to the frontbench for the Conservatives. Am I right in thinking that one of you might want to make a preliminary statement?

Miss Dyall: I am the Director of the project and I wondered if it might be useful for me just to give a little bit of background for those who are less familiar with the work that the project is undertaking.

Q2 Chairman: Thank you. Do go ahead.

Miss Dyall: My name is Robina Dyall. I am the Director of the Tax Law Rewrite Project. As I said, for any of you on the Committee who are less familiar with the work of the project it may be helpful if I sketch in a little bit of the background. The project was set up in 1996 to rewrite tax law in a simpler and clearer form. This has been done by a variety of techniques, such as using more straightforward and less technical language, where that has proved possible, restructuring the legislation in a more logical and clearer way, and bringing together in one place provisions which were previously scattered in different places in the taxes acts. The remit of the project precludes changes in

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the underlying tax law, except very minor ones at the margins which tidy up loose ends or align law and practice. All the draft legislation which is produced by the project is published for public consultation and specific attention is drawn to any minor changes. The work of the project has also been greatly assisted by the input of its external committees: a Consultative Committee of tax specialists and a Steering Committee which is made up of representatives of Parliament, the tax and legal professions and business. This is the committee which is chaired by Lord Newton. The fact that the meaning of underlying tax law remains largely unchanged and the intensive consultation process which is undertaken has enabled Parliament to adopt a streamlined process for approving Tax Law Rewrite Bills, of which this Committee is a part. The two Bills which are currently before the Committee complete the work of rewriting the income tax and corporation tax codes and are the sixth and seventh rewrite Bills. Previous Bills have rewritten income tax and the capital allowances code and we have also rewritten the PAYE regulations. Last year, Parliament considered the first Bill rewriting corporation tax which subsequently became the Corporation Tax Act 2009, and one of the two Bills before you today is the second Bill which completes that process for corporation tax. The other one deals with international provisions. Earlier in the life of the project a decision was taken to separate the income tax and corporation tax codes which had previously had some common core provisions. The Corporation Tax Bill completes the process of doing that separation, but a different approach has been adopted for the Taxation (International and Other Provisions) Bill where provisions relating to both income tax and corporation tax have been brought together. Both the decision for separation and the decision to make an exception for international provisions have been approved by the committees on the basis that this was the most helpful approach for users of the legislation. The team responsible for these two Bills has been led by Brian Jones, on my left, and he will be answering any questions about the detail of the Bills. John Sellers and David Sewell, who are beyond him, are from the Office of Parliamentary Counsel and will deal with any drafting issues. On my right is Adam Broke, who is our independent witness, who is both a tax professional in his own right and familiar with the work of the project through his membership of our external committees.

Q3 Chairman: Thank you very much. I understand that some of the rewritten material includes legislation enacted very recently, including as recently as 2006, and I wonder what explanation there is for that, why it is necessary to rewrite such recent legislation.

Mr Sellers: Perhaps I could hazard an answer to that question. I think it is relevant to observe that there is more than one reason for rewriting legislation. The main reason for the rewrite project is to make tax legislation more accessible and clearer and easier to use and that does involve restating the legislation,

but another of the objects of the tax law rewrite process is to bring together in one place legislation which is related by subject matter but which at present may be scattered in a number of different places across the statute book. An example of the relocation of provisions is to be found in two of the topics which have been taken from the Finance Act 2009 and rewritten in the Corporation Tax Bill. Where you relocate provisions in this way it is not necessarily the case that they are recast, but they may actually be simply rewritten more or less as they are if it is thought that they meet existing standards of rewrite drafting. We are conscious of the fact that in these cases it is not necessarily for the benefit of users that recently enacted legislation is recast, but it is still thought to be beneficial to users to bring it together with other legislation to which it relates. Indeed, the two topics I have in mind as taken from the 2009 Act are, first of all, Part 1 of Schedule 25 to that Act, which was about transfer of income streams which has been rewritten as Chapter 1 of Part 16 of the Corporation Tax Bill, which is about the factoring of income, and these two topics are related. The second example of relocating provisions from the Finance Act 2009 is Schedule 44 of that Act which is about reducing the supplementary charge in relation to new oilfields, and that has been rewritten as Chapter 7 of Part 8 of that Act which is about oil activities. As I say, in these two cases the provisions have not been substantially recast but merely relocated and rewritten in the sense of being relocated but with minor stylistic changes to observe rewrite conventions and any other changes which may be necessary to reflect changes in the other legislation to which they are related, to which they may refer. I can give a contrasting example of the rewriting of recently enacted legislation in the legislation rewritten to Part 12 of the Corporation Tax Bill, which is the legislation relating to real estate investment trusts. There we have undertaken substantial recasting of that legislation because it was thought for a number of reasons that it would be in the interests of users to have another fundamental rethink about the way that that material was organised because the legislation had been passed, I think, at a point when policy was still being developed and in those circumstances it was difficult to achieve the optimum arrangement of the material. It was agreed with stakeholders in the area who had an interest in the property legislation field that it would be advantageous to make a number of changes to the way that the material was presented. The three main changes that we undertook in relation to the real estate investment trust legislation was, first of all, to include on the face of the legislation in the particular provisions the treatment of groups of companies as well as merely individual companies. The original legislation was simply cast in terms of individual companies and there was then a general provision about how it was to work in relation to groups, but we have set out the position for groups alongside that of individual cases to make it easier for users to see how the primary case with which they are concerned is dealt with. We have also changed the way in which non-United Kingdom

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resident companies are dealt with. Again, in the original legislation the position of those companies was dealt with by having a provision which applied the basic provisions with a number of modifications which, although a perfectly acceptable way of dealing with things from a technical point of view, does make life comparatively difficult for users because you have to keep two things in mind at the same time. So we have taken the opportunity to set out in the original provisions, where it is relevant, how the law applies to non-UK resident companies as well as in relation to the UK based resident company case. Finally, in relation to that exercise, we have promoted to primary legislation a number of rules about real estate investment trusts which were enacted in the form of subordinate legislation under powers conferred by the Finance Act 2006 because the thinking on those subjects had not been completed at the time that the main primary legislation was enacted, but they were thought to be of the same sort of level of importance as the primary legislation.

Chairman: That was an extremely thorough answer to the initial question which sweeps up a number of other questions that I might have had a go at asking. I will now go straight to Lord Goodhart, who has a question.

Q4 Lord Goodhart: In addition to being a member of this Committee I am Chairman of the House of Lords Committee on Delegated Powers, and that has inspired me to ask a question here. Under these Bills there are powers to make consequential orders or to restore in some circumstances previous legislation. Under the Corporation Tax Bill they are clauses 1171, 1178 and 1179, and under the Taxation (International and Other Provisions) Bill they are clauses 372, 375 and 376. These clauses require only negative procedure under the Bills and, of course, the Bills will not be considered by the House of Lords and, therefore, not considered by the Committee except pro forma. If it had been something that was going to be considered by the House of Lords I think it is possible—I would say no more than that—that we would have recommended the affirmative procedure rather than the negative because of the fairly significant powers that are provided under these Bills. I would just like to ask was it considered to use the affirmative procedure for these Bills and, if not, why not?

Mr Sellers: I think perhaps it would be easiest to take the power to make consequential provision first because the first rewrite Bill to include such a power was the Bill for what is called the Income Tax (Trading and Other Income) Act 2005. That Bill was considered by the Delegated Powers Scrutiny Committee. It was only after that Bill that the Committee decided that it would not look into the powers conferred by Rewrite Bills. The power in the Bill for that Act had a negative resolution procedure, so it passed muster with the thinking of the Committee at that stage. Whether the Committee's thinking has possibly moved on since then, I am not sure. I think for that particular power we probably had a clean-ish bill of health as far as the Delegated

Powers Scrutiny Committee was concerned. The power to undo changes is different because the first appearance of that power was in the Bill for the Income Tax Act 2007 and that Bill was not reported on by the Delegated Powers Scrutiny Committee, but it was the first thing that was considered by the Joint Committee on the Bill for the Income Tax Act 2007 and they were satisfied at that stage by the assurances given about the comparatively limited nature of the things that could be done in exercise of that power. You 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.

Lord Goodhart: Since my question was rather off the beaten track, I am extremely impressed by your ability to give an instant and very thorough reply.

Q5 Lord Blackwell: Referring to the Corporation Tax Bill specifically, there are two changes which are flagged that would raise corporation tax. One is to do with the amount of share loss relief that can be claimed, change 13 in your annex, and the other is to do with the removal of savings banks from the definition of an investment company, which is change 21. Could you explain, firstly, how much extra tax we are talking about under those changes? Also, can you be clear that these are rewrite proposals. They sound superficially as though they are changes in the intent and impact of the law as opposed to simply a clarification.

Mr Jones: The first point to make is to stress what was said in the opening comments: anything that a rewrite Bill does is by its nature going to be very small where it involves a change in the law because the remit of the project is not to change the underlying policy or to change the basis on which tax is levied, but simply to make changes which in the process of the rewrite are intended to help users. It is not possible to provide specific figures of what amount might be involved in relation to a particular change because obviously the position will vary depending upon the facts of the particular case and the number of cases that arise in a year. I think I can give some reassurance about the scale of the charges by referring to a number of points. As I have said,

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the remit of the project places a limit on the scope of what the project can propose, so any change by its nature will have to go through this filter. Secondly, all the changes are presented to and considered by the independent Consultative and Steering Committees which oversee the work of the project. All of the changes are published for consultation at least once and, in most cases, twice. I can provide more detail about the process here because all of the changes are flagged in the annex to the Explanatory Notes and explained in detail. As can be seen from the memorandum of evidence presented to the Joint Committee, many of the changes that have been proposed for these Bills have already been presented for earlier Bills. As part of the process of rewriting income tax and corporation tax separately some of the changes have already been made and been through a process of consultation and before the Joint Committee. The first change to which you referred is one of those. So it has already been through a process of consultation twice and the Joint Committee. It has been before the Steering and Consultative Committees again and it has been through a process of public consultation twice, so that change has had a pretty thorough airing by anybody's standards. There are a number of other changes that fall into that category too which are listed in the left-hand column of the table that was presented in the memorandum. There is really only one newly proposed change in the Bill which has a potentially solely adverse effect on taxpayers, which is change 21, and the note about this is included in the memorandum of evidence and makes clear that this change has a potential adverse effect on savings banks "which subscribe for shares in a trading company on or after 1 April 2010". In fact, as I think the note makes clear, we flagged up this change as having a practical adverse impact by way of precaution because we did check and establish that there is, in fact, no savings bank carrying on business in the UK which includes the making of investments in shares of companies capable of being qualifying trading companies. We wrote to one bank which was potentially in that category. They did reply and thanked us for the interest and expressed surprise that we had been able to pick them out, but confirmed that there was no concern on their part because they were not involved in that sort of business. As far as minor changes go, this is probably almost as minor as it gets.

Lord Newton of Braintree: The Steering Committee, I need hardly say, does usually explore this sort of point and the most normal answer is one that fits very well with what Brian has just said, which is that there is a theoretical possibility that it might affect somebody but we do not actually believe it will affect anybody.

Q6 Baroness Goudie: There are nine changes in the Corporation Tax Bill that are due to reduce the amount of corporation tax that is payable. How much less taxation will be received by the public purse as a result of this?

Mr Jones: Again, I cannot give you a precise figure, it is impossible to quantify that.

Q7 Baroness Goudie: I realise that.

Mr Jones: But I think we can provide reassurance again that any effect on the public purse will be negligible because of the process that I have explained before. The process for all changes is exactly the same, so whether they are potentially adverse to the taxpayer or in favour of the taxpayer and, therefore, potentially detrimental to the public purse, the changes are all minor. I do not think I can really say anything more than that because it would be a guess. Negligible is certainly the word to bear in mind. The consultation process makes it clear that these are considered by people who have an interest in ensuring that we do keep to our remit. There have been no concerns expressed by people outside or, indeed, within HMRC and the Treasury about the level of the impact on the public purse.

Baroness Goudie: Thank you very much.

Chairman: It is sheer chance that we have had the peers first, but we will move to the commoners now!

Q8 Mr Bain: Thank you, Chairman. Listed in Appendix 1 to the memorandum there are five changes in the Corporation Tax Bill that you expect may either increase or decrease the amount of tax which is payable depending on the individual circumstances of the taxpayer. Have you made any assessment of what net impact that will make on the public purse?

Mr Jones: As you will appreciate, it is very difficult to decide which side of the coin will come out on top because it will really depend on the facts and circumstances of particular cases as they arise. We will not know the incidences of these cases until they actually happen so we cannot say whether for most of them there will be a beneficial or adverse impact. I think in one or two of the changes we do give an indication of the way we think they are likely to go.

Q9 Mr Reed: Obviously you cannot give exact amounts, *et cetera*, but I am interested to see what assessment you make of the types of taxpayers who are going to be affected by some of these proposals, particularly the one with changes in the law, but also the significance of those changes. We keep using this word "minor", but what counts as "minor"?

Mr Jones: If I can give you an example of the sorts of changes. We have got one change, for instance, which affects only co-operative housing associations and self-build societies. By its nature, that is very circumscribed and going to be limited. Another change affects only UK real investment trusts and, again, will depend on the particular circumstances of those cases. There is another one which is concerned with group relief which changes the basis of calculation in relation to non-resident companies and there you are looking at something which changes the approach and it is based on figures between £1 and £100 in order to determine the level of group relief that will pass between companies. I think you can see from that, or at least I hope that gives a flavour, of the scale of things we are talking about. The changes are designed to make the legislation easier to understand and not have what could be an added layer of complexity for relatively

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small amounts of tax. You can have quite a lot of additional technical complexity for what are relatively small amounts at the margins, but we are not talking about really large sums of money which run into millions of pounds here. As I say, I could not predict and it would be wrong of me to try to say that this amounts to X thousands of pounds or tens of thousands of pounds and pence. That would just be a guess and I think it would mislead the Committee.

Q10 Lord Newton of Braintree: Chairman, can I suggest that Mr Broke might like to say a word, because he is a practitioner, as it were, and has been materially helpful to us?

Mr Broke: Chairman, if I may. I have been involved on the committees for quite a long time. In the early days of the committees we spent a lot of time on the structuring, on the rewriting itself; but latterly a very large part of our debates has been about these changes. We have spent a lot of time worrying about whether this really is a minor change or it is something that ought to be done by legislation and ought therefore to come before Parliament in a more formal sense. I pay tribute to the openness with which the team here have brought these to our attention and have been prepared to enter into a debate either way. Some of them—not many but some of them—have been taken back and put into legislation in the Finance Bill but for the most part we have been satisfied that these are very minor changes; that the numbers of people involved are likely to be small and the amounts of tax at stake—and those are the two tests really—are likely to be very small; but undoubtedly, as Brian says, unquantifiable at this stage.

Mr Breed: I have just a couple of questions following on from that. I think we understand that obviously you are rewriting and therefore looking at minimal or negligible—whatever the word is—change. However, have you come across a situation whereby it should have been rewritten because the intention was not clear and actually, if it were rewritten, it would be a fairly substantial change? If so, what do you do with that? What happens? Do you just consign it to the bin or do you raise it somewhere—particularly in respect of where tax might be being levied somewhat in excess of what might have been originally intended?

Q11 Lord Newton of Braintree: This is a question about rewrite versus simplification it seems to me, Brian.

Mr Jones: Because of the remit of the project, the only thing that we can do if we encounter a position that is outside the remit of the project is to refer the matter to policy colleagues. We get a number of suggestions in any event as part of the process of rewriting the legislation and all policy suggestions that come up from consultees in the course of consultation are automatically passed on to policy colleagues. Some of them have in fact found their way into law via the Finance Bill. When there are concerns, if there are concerns about any particular piece of legislation from within HMRC, we would do the same; but that is all we can do. We can only

pass it on; we cannot take action ourselves to correct something in a rewrite bill, because it is outside our remit. We are very strict in seeing—

Q12 Mr Breed: But, having looked at it in the detail that you have, it would seem appropriate at least for you to raise the issue somewhere. You say it is with policy colleagues.

Mr Jones: That would be the avenue which we would follow, yes.

Q13 Mr Breed: Can I refer you to the specific change number 33? The description here is that it requires an apportionment to be “just and reasonable”. Can we conclude from that that, prior to your looking at it, it was unjust and unreasonable?

Mr Jones: This is 33, is it?

Q14 Mr Breed: Yes.

Mr Jones: This is the Corporation Tax Bill.

Q15 Mr Breed: Most corporations think it is terribly just and reasonable!

Mr Jones: I think that this is essentially a drafting point and it is one which I think, as the change note indicates, is intended to provide this uniform expression of the basis on which apportionments are to be made; so there is no change in substance here.

Q16 Mr Breed: It is clarity.

Mr Jones: It is about clarity. I think the change note itself does philosophise a little about the nature of this sort of change.

Q17 Mr Breed: You are not expecting a lot of corporations to light upon that and say that they have been dealt with unjustly and unfairly in their apportionment?

Mr Jones: I would be extremely surprised if anything like that came out of this. Again, this is an attempt simply to provide law that is clearer but not change the substance of what was there before.

Mr Sellers: If I may say so, it is one of the project’s aims to introduce uniformity where it is reasonably proper, possible and just to do so. I think we came across a number of examples where apportionment was on a just basis or on a reasonable basis, and people might scratch their heads about whether these were intended to be different. We have rather taken the view that it is in the public’s interest to stop people scratching their heads, and so we have “just and reasonable”.

Q18 Chairman: Can I ask a question about consequential provisions? Why is the Government feeling the need to take the power to make consequential provision and to undo changes that you are making in these bills?

Mr Sellers: As far as consequential provision is concerned, I think that it is just a safety net really. We have done our best to identify all those changes which fall to be made consequentially on the rewrite and to make the amendments required in the schedule of minor and consequential amendments, which is Schedule 1 in the case of the Corporation

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Tax Bill. However, life being what it is, it is always possible to discover that you have not in fact found all the consequential changes. In the past, it has only been possible to make any consequential changes which were missed by including provision in the Finance Bill, but it is not really the sort of provision which justifies taking up space in a Finance Bill.

Q19 Chairman: You are therefore covering yourself for a mistake.

Mr Sellers: You can call it a mistake, yes. I should point out that in Schedule 2 to the Corporation Tax Bill there are, in Part 1 of the schedule, a number of general transitional provisions. They provide a safety net in relation to provisions in other legislation which refer to a provision that we are rewriting. If they refer, say, to section 401 of the Income and Corporation Taxes Act, if we are rewriting that, it is obviously in the interests of users that we amend the outlying reference to that provision and substitute a reference to the provision as rewritten in the rewrite Act. If we failed to pick it up, the effect of the law is not impaired because the general transitional provision says that you are to read the reference in the outlying Act to the old provision as a reference to the new provision, so far as it relates to the accounting periods to which the Corporation Tax Bill relates. In making consequential amendments in exercise of the power like that, we are merely, for the convenience of users, saving them the trouble of having to work through the general transitional provisions.

Q20 Chairman: You are doing this, enabling these powers to be exercisable with retrospective effect too, are you not?

Mr Sellers: Yes.

Q21 Chairman: Have you had any representations on that, such as taxpayers who are worried that they may not be protected?

Mr Sellers: I think the way to look at it is that the power to exercise these two powers to make consequential provision to undo changes retrospectively is intended to support the project's overall aim, which is to leave the law unchanged, except in so far as we have owned up to changes by listing them in Annex 1 to the explanatory notes.

Q22 Chairman: It would be subject to challenge if those powers were used for more than that, would it?

Mr Sellers: I do not think that we could use the powers in a way which took us beyond what the Rewrite Project was doing. You could only exercise the power to make consequential provision to carry further into effect the things which the bill itself is doing, in terms of rewriting the existing law. The power to undo changes can only be exercised so as to return the law to what it would have been had the change in the effect of the law produced by the rewrite not taken place. It is an unintended change in the effect of the law. In those circumstances, you are actually supporting the expectation of taxpayers that they would be neither better nor worse off as a result of the rewrite bill than they were previously. If

we did not have the power to undo the change, there would be random effects on taxpayers where we have made a mistake, which it is not really in the public interest that there should be; and they could only be corrected by promoting a change in the Finance Bill, which is subject to the problem, as I say, that there is always pressure on space in the Finance Bill. It is therefore more convenient to have the power because we can move swiftly to correct the mistake by exercise of the order-making power rather than waiting until there is space in the Finance Bill to make the relevant change.

Chairman: Thank you for that answer. Unless anybody else has questions—I know that Lord Newton wanted to make a point about the process.

Q23 Lord Newton of Braintree: Indeed, but also in support of what Mr Jones has said. If we go back to Mr Breed's question about companies flooding through the door saying, "'Just and reasonable' means you owe us millions in tax because you weren't just and reasonable", that would cause a real furore if there was no power to put it straight. Secondly, these powers are only exercised in practice, subject to anything you may tell me, John, if they have effectively been agreed by both the consultative committee and the steering committee. Frankly, if either committee thought that these powers were being misused by the Revenue to make changes outside the framework of tax law rewrite, they simply would not agree to it.

Mr Sellers: That is right.

Chairman: You had a question about the future.

Q24 Lord Newton of Braintree: Yes. I thought that Robina Dyal might like to say a word, and indeed Mr Timms might also as the responsible minister, about the future, because effectively these are the last two major rewrite bills that a committee of this kind is likely to consider; because the project, certainly in terms of operations of that scale, is now due to be wound down—although there may be relatively minor things for it to do over the period ahead, related to what we have already done or to other things that might be referred to us—and I thought that either Robina or Mr Timms might like to say a word about that.

Miss Dyal: It might be helpful to say how we have come to this position. It has always been very important to the success of the project to have the support of the tax profession and its main representative bodies, and the willing input of a lot of tax specialists into the work that we carry out. When we were doing the work on corporation tax, we felt that we detected some falling-off in that support.

Q25 Lord Newton of Braintree: "Consultation fatigue" is the phrase!

Miss Dyal: Although clearly the Corporation Tax Bill and the Taxation (International and Other Provisions) Bill have been prepared to the same standards, so we were perfectly satisfied with that. However, because of this concern we carried out some consultation with the profession about what

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we should do when the current bills were completed: whether we should close the project at that stage or whether we should go on to some other areas of the tax code and rewrite sections of those and, if so, which areas would be prime material for rewrite. The result of that consultation was that the balance of opinion in the profession was in favour of closing the project down on the completion of the current bills. There was no consensus about any other areas of taxation which might be candidates for rewrite. On the basis of that consultation, 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.

Mr Timms: Chairman, it is perhaps worth recalling that this whole exercise started with a defeat for the then Government in the Finance Bill Committee in round about 1995 I think it must have been.

Lord Newton of Braintree: 1996 is the figure in these papers, I think—while we were still around.

Mr Timms: Yes, I am sure that is right. When Tim Smith, the then Conservative MP for Beaconsfield, and the Finance Bill Committee felt very strongly

that there was a lot of work to be done in making legislation simpler, Kenneth Clarke, who was the then Chancellor, quickly realised that in that defeat there was in fact an opportunity to do something very valuable. What I want to do is to underline the thanks that have already been expressed to Lord Newton, who has led this project for quite a fair time now—and he has pointed rightly to the work of Geoffrey Howe before him—to Robina and to all those in HMRC who have worked with her, but also to a very large number of people who had no occupational duty to contribute to this process at all but have done so entirely without reward because they believed in the importance of it. I think it is right that we record our indebtedness to all of them. As Robina has said, the Tax Law Rewrite Project will wind up in March and there will be the little celebration that has been referred to; but we will be asking the two committees to continue in existence, not least to discharge the duty that we have just been talking about: that if there is a need to invoke some of these powers that you were just asking a question about, Chairman, those powers will only be used with the agreement of those two committees and so we do need the committees to continue in operation, in case we need to seek their approval for an exercise of those powers in the future. It has been a very valuable exercise, reflecting a great deal of hard work by a very large number of people and I think that we are indebted to all of them.

Chairman: You have heard the view of the whole Committee and certainly the view of the minister. Thank you very much for coming to give evidence today. I would ask the witnesses to stay, but we are now going into private session to consider the individual points.