

The following is a copy of a letter from The Chancellor of the Exchequer to Lord Howe:

Lord Howe of Aberavon CH, QC
Chairman of the Steering Committee
Tax Law Rewrite Project
c/o room 831
Inland Revenue
South West Wing
Bush House
London WC2B 4RD

12 February 1999

Thank you for your letter of 16 December enclosing your Memorandum about the Tax Law Rewrite project.

I agree with you that this is a very worthwhile project. I am pleased to learn that it is making good progress and that it continues to enjoy wide support. It is a massive exercise, but one which we are committed to doing well. I am very pleased that your stocktake confirms that the rewritten legislation is notably clearer.

I note what you say about the volume of new tax legislation. Clearly, the greater the volume, the greater the task of the project becomes. As you will appreciate, though, this Government is committed to developing a tax system that reflects a number of key principles, such as rewarding work, encouraging enterprise and promoting fairness. It is inevitable that legislation will be needed to give effect to the measures that put these principles into practice. I have no doubt that the Office of Parliamentary Counsel will continue to draft such legislation as clearly as circumstances allow.

I also note your views about the need to expand the Office of Parliamentary Counsel. In fact, we have already provided the resources for this under last year's Comprehensive Spending Review and I hope that this will go some way towards meeting your concern. But as you recognise there are no quick and easy solutions.

Finally, may I say how grateful I am to you and the members of your Committee for your invaluable contribution to the work of the Tax Law Rewrite project.

I am copying this letter to the Lord Chancellor.

GORDON BROWN

The following is a copy of a letter from Lord Howe to The Chancellor of the Exchequer:

Lord Howe of Aberavon CH, QC
Chairman of the Steering Committee
Tax Law Rewrite Project
c/o Room 831
Inland Revenue
South West Wing
Bush House
Strand
LONDON
WC2B 4RD

16th December, 1998

Dear Gordon

TAX LAW REWRITE: STOCKTAKE REPORT

I hope that, at this very busy time of the year, you will forgive me for troubling you with the enclosed Memorandum about the Tax Law Rewrite project. This is the report of the stocktake which Ministers commissioned when the project was set up.

I chair the Steering Committee which oversees this immense — and immensely worthwhile — undertaking. My committee joins with the many members of both Houses, the judiciary tax professionals and others interested in legislative reform in applauding the Government's continuing support and commitment for this important project.

We also continue to be profoundly grateful for the way in which the Inland Revenue and the Office of parliamentary Counsel can divert hard-pressed resources to carry out this work.

But, even as the existing tax code is being modernised, large quantities of old-style produce are still coming on to the market. In spite of all the complaints about the volume of new tax legislation, I am sure — from my own experience — that it will not be easy for you to stem this tide.

The Rewrite project, more complex and time-consuming than foreseen but even more welcome than expected, represents a significant, and not short-lived, extra demand on scarce resources — particularly for the Office of Parliamentary Counsel. The very specialised nature of OPC's work means that it cannot be expanded quickly. All the more reason for Government to address this problem urgently and implement a sustained programme to enhance resources in this field.

I develop this last point as crisply as I can in the last seven paragraphs of the enclosed Note (Section 5) — and should like to draw them especially to your attention. I very much hope that you will lend your weight to this worthy cause.

I am copying this letter and its enclosure to Derry Irvine.

STOCKTAKE REPORT

A memorandum from Lord Howe of Aberavon to the Chancellor of the Exchequer

Section 1: Introduction

1.1 I am sending this report to you on behalf of the Steering Committee, which I chair.

1.2 It was always intended to carry out a stocktake of the project when the first tranches of rewriting had been completed. We have now done this. Our report covers three aspects:

- the **quality** of the rewritten legislation, in terms of its accuracy and clarity;
- the **processes** for producing the rewritten legislation and for consultation; and
- the likely **costs and benefits** of the project.

1.3 This stocktake was originally planned for late 1997. But progress in rewriting was slower than originally hoped - for a number of reasons - and we therefore decided to postpone it until now.

1.4 The conclusions in our report are based on information derived from three main sources.

- a. The project team is committed to a full and continuous process of consultation. So they have much information from the main users of tax legislation - accountants, lawyers and other tax professionals.
- b. The team sought to supplement this information through a structured questionnaire to some 200 people involved in the consultative process.
- c. I wrote personally to nearly 200 distinguished people who, although not directly involved in the work of the project, are interested in tax legislation or legislative reform. These included (among others) members of Parliament, the judiciary, large legal and accountancy firms and business people.

1.5 At 17 per cent, the response rate to the questionnaire seems low, although I understand the level of response is broadly consistent with similar exercises by the Inland Revenue on other subjects. I received 81 replies to my letters: a response rate of 43 per cent.

1.6 At our suggestion, the project team also considered the possibility of some form of objective assessment of the clarity of their rewritten legislation. For the reasons given below, they concluded that the additional information which might be obtained could not be justified by the cost.

1.7 Sections 2 to 4 of this report consider in turn the three main aspects of quality, processes and costs and benefits. Section 5 summarises our conclusions and looks ahead to the key issues which need to be kept in mind as the project proceeds.

Section 2: Quality

2.1 The project aims to rewrite the UK's primary direct tax legislation so that it is clearer and easier to use, without changing or making less certain its general effect.

2.2 The two main aspects of quality are:

- *accuracy*: does the rewritten legislation accurately reproduce the effect of the existing legislation (except where a minor 'proposed rewrite change' is intended)?
- *clarity*: is the rewritten legislation clearer and easier to use than the existing legislation?

Accuracy

2.3 The project team are responsible for the overall accuracy of the rewritten legislation. The main checks on accuracy are the internal consideration of the draft clauses by the project team and by specialists in the Inland Revenue Subject Divisions, and the external consideration when these clauses are published in Exposure Drafts for formal consultation.

2.4 'Proposed rewrite changes' are minor changes in the current statute or the law which would enable further simplification. They might entail legislating an Extra Statutory Concession or relevant

case law or dropping an obsolete provision. There is general agreement that the project team should consider making such changes, provided they are clearly identified in the consultative process and provided the overall package is balanced.

2.5 Experience so far suggests that the legislation rewritten by the team is generally accurate and that, where opinions differ on a particular point, these differences can be clearly identified and addressed. The majority of those responding to the questionnaire (75 per cent) were satisfied with the way that 'proposed rewrite changes' had been dealt with so far.

Clarity

2.6 The project team is using several techniques to improve clarity. The most important of these is to establish the best structure for the rewritten legislation. This involves the detailed analysis of the existing provisions, followed by a reconstruction of the propositions in a more logical order. There is general agreement among those consulted that such restructuring is essential.

2.7 The project team will use plainer language wherever possible and they have explored a number of ways of making the legislation more accessible. They are continuing to develop ways of providing overview material, whether in legally operative clauses or in more discursive notes: over 90 per cent of respondents to the questionnaire welcomed this. Other techniques include shorter clauses, shorter sentences and, where it would be helpful, the use of method statements, formulae and (to a lesser extent) tables. Generally these were warmly welcomed, although a small number of respondents disliked one or another particular technique.

2.8 Recognising that clarity in part depends on the way in which text is presented on the page, the project team has developed a new format for its draft clauses. There is general agreement that this is a significant improvement on the current official format. The format of public bills is of course a matter for Parliament, and we are pleased to note that the possibility of a change in format is currently being considered.

2.9 Those consulted on the work of the project so far agree *nem con* that the rewritten legislation is significantly clearer than the legislation it would replace. Some have suggested ways in which particular draft clauses could be improved still further, and the project team are considering these.

2.10 At our request, the project team considered whether to supplement this evidence by using objective techniques to test the clarity of the rewritten legislation. They reviewed the experience gained by the Inland Revenue in other areas (most recently, in testing the new Self Assessment return form). They considered what has been done in Australia, which has also been rewriting its tax legislation. They consulted experts in this field and reviewed academic material on the use of objective techniques in evaluating other types of legal documents.

2.11 Product testing techniques are undoubtedly useful in identifying ways of improving the design of forms and leaflets. For this material, the cost of these exercises is often a worthwhile investment. But the project team do not believe that applying such techniques to their rewritten legislation would identify many, if any, practical ways of further improving clarity.

Section 3: Processes

3.1 In this section we consider various issues arising from the project team's work and from the approach they have adopted to consultation.

Overall project timetable

3.2 The project team's progress in 1997/98 was slower than had originally been hoped. The main reason for this was the fundamental difficulty and complexity of the task. A further factor was the need to divert two members of the project's drafting team (on loan from the Office of Parliamentary Counsel) to help in the drafting of the 1998 Finance Bill.

3.3 There is no escape from the problems posed by the inherent difficulty of this immense task. The project team has found that, whatever the subject, the work of researching and analysing the existing legislation and the related non-statutory material is very time-consuming **if it is to be done properly**. A further factor is the project's approach to consultation - see below. More rapid progress could only be achieved by cutting corners and jeopardising quality. We would oppose this and we are therefore much heartened by the support for the project from Treasury Ministers and their continuing commitment to doing it well.

3.4 The original project timetable was based on a fairly heroic assumption that the work might take about five years, starting from January 1997. That assumption has proved unrealistic and it is not yet possible to identify with any confidence a firm completion date. The project team's plans for the work currently in progress envisage an extensive series of Exposure Drafts over the next 18 months. One outcome will be a Capital Allowances Bill which they hope will be introduced in Parliament in 2000. By then, a considerable proportion of the main charging provisions for an Income Tax Bill should also have been rewritten.

3.5 Most of the replies to my letters were relatively relaxed about the timetable, preferring the work to be done well rather than quickly. But many were anxious that it should not be allowed to slip by too much. Some feared a loss of interest or momentum if the work took too long. Others were worried that the rewrite would not be able to keep pace with the considerable volume of new legislation - mostly drafted in the old style - which is added to the statute book each year. We share this concern.

Drafting resources

3.6 The project is extremely fortunate to enjoy the full support of First Parliamentary Counsel. In spite of the continuing and increasing pressure of work on his Office in recent years, two drafters were seconded full time to the project, as well as a third working part time. When one of the full time drafters resigned from the public service, she was replaced by another full time OPC drafter.

3.7 It therefore seems ungrateful to complain when, in the face of the extensive legislative programme of the new Government in May 1997, it proved necessary to call on the services of these

secondes to help out with another very long Finance Bill (over 400 pages). As far as possible, the subjects allocated to the project drafters were relevant to the areas in which the project team was already working. And - making a virtue out of a necessity - they used as many as possible of the techniques they were using on the rewrite work. This was warmly welcomed by the tax community.

3.8 Nevertheless, the impact of this unplanned diversion on a small drafting team was considerable. Since this problem is likely to recur, the project team has attempted, with some success, to augment the drafting team by looking beyond the current members of OPC. A further six drafters have now been recruited: all bring to the team experience of drafting primary or secondary legislation.

Applying rewrite techniques to new Finance Bill legislation

3.9 The successful application of rewrite techniques in the last Finance Bill has understandably strengthened the calls for more new legislation to be drafted in this way. This mainly arises from concerns that the rewrite will not be able to keep pace with the tide of new legislation enacted each year. But it also stems from the fact that people find the new approach helpful.

3.10 We have much sympathy with this point and we hope that, wherever, possible, new legislation will be drafted using the full range of techniques which the project team is deploying so effectively. But, even with a relatively self-contained subject, we do not believe it is realistic to expect an overnight change to this approach.

3.11 The object of amendments in a Finance Bill is to make the changes in the existing legislation necessary to give effect to Ministerial policy. It is not part of this process to rewrite (which, as we have explained above, involves substantially reorganising) the surrounding statutory provisions.

3.12 Exceptionally, a new policy initiative may involve the recasting of whole areas of the existing law. But even then Finance Bill drafters have to work within the existing legislative landscape. Until this has been rewritten

it is unrealistic to expect amending legislation to be simple when what it has to connect with is far from simple.

3.13 There are also resource aspects. The scarcest resource on a Finance Bill is time, even when policy is well established at the outset. The full rewriting of an area of law requires detailed research and analysis of all the surrounding legislation, and also of related non-statutory material. We appreciate that, in present circumstances, the time and other resources are simply not available to adopt the same approach to current legislation.

3.14 On the other hand, we think that rewrite techniques can and should be adopted (subject to time constraints) when an area of law has to be substantially rewritten in order to achieve new policy objectives. And, as areas of the underlying legislation are enacted in a rewritten form, we expect that amending legislation will be correspondingly easier both to draft and to understand.

The project remit on policy simplification

3.15 The project remit is to rewrite the existing legislation without changing its general effect. However, as noted above, it might sometimes be possible to make minor changes in the statute or the law if these would enable further simplification. We have encouraged the project team to err on the side of boldness in their 'proposed rewrite changes' in the expectation that any objections to a particular proposal will emerge during the consultative process. It is vital that such changes are fully aired and established as non-contentious, if the new streamlined Parliamentary procedures for enacting rewrite bills are to apply.

3.16 Many people would like the project to go further towards simplification of the underlying tax policy. The process of rewriting the legislation is highlighting many archaic or cumbersome aspects of the tax code which they believe could be improved.

3.17 In principle we have considerable sympathy with this aspiration but it will often give rise to practical difficulties. Significant policy simplification is usually expensive in Exchequer terms or entails the withdrawal of preferential tax treatment. And different people have different, often contradictory, objectives in mind: there is no consensus on what constitutes desirable tax simplification.

3.18 Even if the necessary consensus did exist, we doubt if it would be appropriate on constitutional grounds for major changes in the tax system to be enacted, without the normal degree of scrutiny.

3.19 For these reasons, we accept that substantial changes in the present tax law - particularly those which involve winners and losers - will therefore have to be made in a Finance Bill. But we wonder if - between major changes of this type and the minor changes in the detailed legislation - there is a third category. This could cover changes in the present tax code which, though not minor, could be done in a way which would not be controversial. If this category exists, we hope that Parliament would be able to enact such changes - after full consultation in the usual way - in a rewrite bill. We encourage the project team, in conjunction with other Inland Revenue colleagues, to look for such opportunities to further improve and modernise our tax legislation.

Issues arising from the consultative process

3.20 The project team is committed to a continuing process of full and open consultation with the tax community inside and outside the Inland Revenue.

- a. As draft clauses are developed, the project team involves specialists in the Inland Revenue Subject Divisions (and, where appropriate, interested parties outside the Department) and produces 'work in progress' papers for consideration by the Consultative Committee and this Committee.
- b. In the light of comments from both Committees and further work within the project, the draft clauses are refined (with further Subject Division involvement) and worked up into Exposure Drafts for public consultation. They are accompanied by a general commentary and a more detailed clause-by-clause commentary. Near-final drafts are considered by both Committees before publication.
- c. In most cases, the comments received from this formal consultation - and the project team's view on the points made - are summarised and published in a Response

Document. A near-final draft of this document is considered by both Committees before publication.

- d. When they are ready, rewrite bills will be published - with a commentary - for a final round of consultation before being introduced in Parliament for enactment.

3.21 We are very pleased to note that all those involved in this consultative process welcome the project team's approach, despite the demands which it inevitably makes on their time. For their part, the project team find it equally time-consuming - but it is enormously valuable to have the benefit of so much knowledge and experience in taking the work forward. They do not therefore propose to cut back on their present approach. We are very grateful to the many tax experts who have given so freely of their time and expertise to date. We hope that their other priorities will not prevent them from continuing to be involved in the future.

Section 4: Costs and Benefits

4.1 The project team have not been able to improve their information about the likely costs and benefits of the rewrite project. It continues to be difficult to quantify most of the costs in advance. And it is impossible to arrive at any objective measure of the benefits.

4.2 We are interested to note that, despite being further advanced in their rewrite projects, neither Australia nor New Zealand have yet been able to establish any better information on these questions.

4.3 We have partial information about the **costs** of the rewrite for the Inland Revenue. For example, we can readily establish the annual costs of the project team itself. But we still have no clear idea of what it will cost to revise the Revenue's training and guidance material. Nor can we predict what implications - if any - the rewrite will have on the Department's operations. The picture will not begin to clear until we are much nearer to having a rewrite bill ready for enactment.

4.4 We believe that the main **benefits** of the rewrite will include:

- reduced compliance costs for taxpayers and their agents;
- reduced costs for the Revenue in having to advise on obscure technical points in the legislation;
- better voluntary compliance and fewer disputes on points of interpretation; and
- easier training and preparation of guidance material.

4.5 We also expect that the benefits of clearer legislation that is easier to use will continue to accrue long after the project has ended and long after the Revenue and the private sector have fully absorbed all the implementation and transitional costs.

Section 5: The way ahead

5.1 The project raises a three-fold dilemma. First, its product is being more enthusiastically received than even an optimist could have foreseen. Second, the production process is significantly harder than even a realist could have anticipated. And finally, rather disconcertingly, even while the 'modernisation' process is going ahead, large quantities of old-style product are still coming on to the market. The project team, of whom our target audience now have high hopes, are having to tackle an agenda more difficult than expected, which is actually growing at the far end almost as fast as it is being dealt with at the beginning.

5.2 So the timetable is inevitably prolonged, the resources are stretched and expectations are at risk of being disappointed. Yet no-one can apparently be blamed for this, although almost everyone involved may be contributing to the problem - with the exception of those who are actually doing the work.

5.3 An ex-Chancellor and former Chairman of Cabinet's Legislation Committee needs no reminding of the huge pressures which permanently beset the policy makers at Somerset House and drafters at the Office of Parliamentary Counsel. In both places, and most chronically perhaps at OPC, successive governments have recurrently demanded the impossible, while declining to respond sufficiently to successive independent recommendations made over the years for human resources to be increased.

5.4 In these circumstances, we have good reason to be grateful for the way in which both organisations, Revenue and OPC, have somehow found the resources to get this project under way. We count ourselves particularly fortunate in the presence of talents eager to tackle this innovative work and of their readiness - when time and circumstances allow - to start spreading new techniques into ongoing work in successive Finance Bills. We have been encouraged too by the modest, but important, success in recruiting additional drafters to work alongside those from OPC.

5.5 We have much sympathy with those who call for more widespread adoption of rewrite techniques in new fiscal legislation. It is however noticeable that at least some of those who make this case also complain about the volume of such new legislation, while themselves putting forward extensive proposals for reform or revision of existing law. Even Ministers have been known to make such conflicting comments. For all these reasons, we are sufficiently case-hardened to realise that calls for self-restraint over the agenda for fiscal legislation (calls which we echo loudly and applaud) are unlikely to be much more successful today than in the past.

5.6 All of which points to one conclusion. The Rewrite project, more complex and time-consuming than foreseen but even more welcome than expected, does represent a significant, and not short lived, extra demand on organisations that are already hard pressed. The Office of Parliamentary Counsel in particular has long and recurrently been over-stretched. And the very specialised nature of its work means that it cannot be expanded at speed. Recruitment and training of high quality drafters is a notoriously difficult task.

5.7 All the more reason, in our clear view, for government to recognise the need to address this problem as a matter of urgency and with a view to producing and implementing a sustained

programme for enhancement of resources in this field. The Tax Law Rewrite project would not be the only beneficiary of such reform. But certainly, in our view, the project makes the strongest case for tackling this problem.

16 December 1998

[Back](#) [Forward](#) [Top](#) [Menu](#) [C](#)

[Return to Inland Revenue
Home Page](#)