

The Income Tax (Earnings and Pensions) Act 2003 – Post-implementation review

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HM Revenue and Customs

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Publication of data

As HMRC has engaged MORI to undertake an objective programme of research, it is important to protect everyone's interests by ensuring that the research findings are accurately reflected in any press release or publication. As part of our standard terms and conditions, the publication of the findings of this report is therefore subject to the advance approval of MORI. Such approval will only be refused on the grounds of inaccuracy or misrepresentation.

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Background and objectives

MORI was asked to conduct qualitative research amongst tax professionals from a range of backgrounds – accountancy, law, tax trainers, in-house tax managers, the voluntary sector, Parliamentary Counsel and HMRC staff – who interact with the Income Tax (Earnings and Pensions) Act 2003 (hereafter referred to as ITEPA).

The overall aim of the research was to collect information from tax professionals in order to establish whether the ITEPA rewrite has made the legislation clearer and easier to use and to uncover any issues which should inform future Tax Law rewrites.

The specific research objectives were as follows:

- To outline the types of experience that tax professionals have had when interacting with the ITEPA including frequency of interactions and familiarity with the rewrite;
- To explore positive and negative attitudes of tax professionals towards the ITEPA rewrite; including whether the ITEPA rewrite has made the legislation clearer and easier to use and whether it has had any unexpected consequences;
- To examine tax professionals' views on the perceived tangible and intangible benefits of ITEPA rewrite such as ease of use, ease of understanding, time and efficiency savings, confidence in the law and whether these benefits are valued;
- To attempt to quantify any time and efficiency savings reported by tax professionals as a result of the ITEPA rewrite;
- To examine attitudes of professionals towards the rewrite process in general; and
- To explore suggestions for further improvement or alternative approaches.

Methodology

In total, fifty one in-depth qualitative interviews were conducted with the following audiences.

- Fourteen accountants;
- Ten tax lawyers (five of whom were barristers);
- Ten in-house tax managers;
- Six tax trainers (three of whom were from HMRC);
- Six HMRC staff;
- Three tax advisors from the voluntary sector; and,
- Two Parliamentary Counsel staff.

It is perhaps important at this stage to include a brief explanation about why we conducted qualitative research with this audience and, furthermore, the strengths and limitations of this approach. Qualitative research provides a depth of understanding which cannot be achieved from a structured questionnaire. The free-flowing format of the discussions provides an insight into participants' views and concerns, while seeking to identify not only *what* they know and think, but also *why* they do so. It is a flexible and interactive process and, therefore, it is possible to respond to the individual circumstances of each participant and to bring to light new insights.

Qualitative research is particularly useful when exploring attitudes towards and perceptions of new developments or initiatives. It can often be the case that when talking about an issue that is relatively unfamiliar, qualitative research works much more effectively than a quantitative approach. It allows participants the freedom to express the issues that are salient to them as they are not restricted in their thoughts by a structured questionnaire.

However, it is important to make mention that qualitative research deals in *perceptions* and not *facts*. However, perceptions *are* facts to those that hold them and, as such, are important to bear in mind even if the information is, technically, incorrect. Furthermore, qualitative research does not allow for the production of statistics from the data it produces. As such, throughout this report we have used terms such as 'majority' to infer a commonly held viewpoint across all tax professionals and 'minority' to mean an opinion that was only expressed by a small number.

Fieldwork was conducted between October 17th and November 24th 2005 in London, the South East, Bristol and Manchester. The majority of these interviews were conducted face-to-face and lasted up to an hour in length. Telephone interviews were only conducted when the participants expressed a preference for this approach – they were not offered this option in the first instance.

We employed strict recruiting procedures to ensure that participants were familiar with ITEPA and, as such, were able to make comment based on actual, rather than hypothetical, experience. For example, all potential recruits took part in a screening interview over the telephone prior to being recruited for this study to allow us to check that they used ITEPA and, furthermore, were able to comment on it.

Prior to each in-depth interview, participants were asked to fill in a proforma designed to gauge a snapshot of their views and opinions, and to focus their minds on the issues under discussion. Following this, the interview was structured by a discussion guide which can be found in the appendix of this report. It is important to remember that a discussion guide is just that – it is not a list of questions to be rigidly adhered to but, moreover, is an *aide memoire* for the moderator and is designed to be flexible enough to allow new insights relevant to the participant's own experiences to come to light during the course of the interview.

It should be noted at this stage that we had intended to conduct six in-depth interviews with participants from the voluntary sector drawn from organisations such as the Citizen's Advice Bureaux. However, on recruitment, it quickly became apparent that this organisation, in particular, tends not to deal with queries about income tax. Where this is the case then, in the main, they refer the individual on to a specialist organisation such as Taxaid – or even to HMRC itself – as staff within CAB do not feel sufficiently qualified to give advice on these kinds of issues. As a result of this, staff from CAB were reluctant to participate in this programme of research as they stated that they have actually very little to do with issues regarding tax. However, we were able to draw participants from both Taxaid and the Low Incomes Tax Reform Group.

In terms of analysis of the data, all our interviews were tape-recorded digitally, and then transcribed. Once the transcripts were received, we explored issues emerging from the data, including comparisons based on, for example, tax professional type.

The project team met at the beginning of the Analysis stage to brainstorm the key themes and findings and drew up the chart or code frame for the data. The purpose of this was for the project team to decide the key themes and findings from the interviews and create a code frame for the data, so as to 'code up' the transcripts systematically and chart the key findings within each theme, using verbatim comments to illustrate important points.

We then compiled a thematic framework, summarising and synthesising the large amount of data contained in transcripts into a more coherent and practical form using Excel. Following on from this, the team met for a second brainstorming meeting to explore the links between the data and associations with it looking for patterns therein. These key issues informed both the presentation and this written report.

Executive summary

- On the whole, tax professionals refer to this part of the tax legislation directly only when strictly necessary, for example when clarifying issues which they do not tend to deal with that often and when citing points in official correspondence.
- The fact that they use this part of the tax legislation infrequently does impact on their views regarding ITEPA and the TLRP in general; as they do not tend to use the legislation that often, a few state that it does not matter how it is written. However, for others, by virtue of the fact it is not something they tend to use much, any efforts to make it more accessible are appreciated.
- Prior to ITEPA, tax professionals referred to ICTA. For many, the most positive aspect of this legislation lay in its familiarity. The long-standing history of ICTA also ensured that each aspect of it was backed up by a great deal of case law which aided interpretation and lessened the risk of ambiguity.
- However, its age also resulted in some downsides. Since it had been subject to many amendments brought about by Finance Acts and so on, ICTA had many concessions and annexes. As such, the Act had become incredibly difficult to navigate – even by those who are experienced in using it.
- The language used in ICTA was also seen as being old fashioned and out of date which, in turn, posed challenges in understanding it. A few do feel though that the language used here was part of its charm; it helped tax professionals feel like specialists as they were aware that only they would be able to interpret it.
- In spite of these negative aspects of ICTA, tax professionals did not, at the time, feel there was a need for a rewrite of the legislation. This is something that they find hard to discuss retrospectively. However, since the introduction of ITEPA they are able to see the difference that this had made.
- When discussing the TLRP in general, all tax professionals are aware of it. It is seen to have a very high profile across the industry – helped to some extent by the association with it of Lord Howe.
- The consultation process has also worked to raise the profile of the TLRP among tax professionals. Tax professionals are very keen to have their say in how legislation is rewritten; they feel this is of fundamental importance to ensure that the legislation is grounded in reality and based on actual experience.
- The current consultation process, whereby exposure drafts are released for comment, is highly praised. While tax professionals are keen to have their say, they also recognise that, at times, the demands of their role will prevent them from being able to do so which would therefore make a more formal process inconvenient.

- For those unable to comment on the exposure drafts – most typically through a lack of time, resources or expertise on that specific issue – tax professionals still feel adequately represented either by professional bodies, such as the Institute for Chartered Accountants, or by the ‘Big Four’ firms. This is of particular help for smaller firms which do not always have people spare to devote time to this.
- The consultation process also served to prepare them for the changes afoot and the impending introduction of ITEPA. However, there is no evidence that tax professionals undertook formal risk management procedures for this – their assumption that the basic content of the law would not be altered made this seem unnecessary.
- Overall tax professionals are very positive about ITEPA. The consolidation of the legislation has proved extremely beneficial; it has ensured that all related issues are grouped together and that it is easy to navigate. This is seen to be of particular use to those entering the profession.
- Likewise, the use of simpler language has also had an impact. It has served to make the legislation easier to understand for many and has, in turn, reduced the risk of errors or misinterpretations being made. Some tax professionals also point out that by making the language more accessible it has opened up the legislation to both clients and the general public. Related to this, Parliamentary Counsel perceive that the style in which ITEPA is written is a model of best practice and could, potentially, be rolled out across Government.
- Tax professionals expect that, in the future, ITEPA should make some time and efficiency savings. Given that the Act is now easier to understand and more logically structured, they envisage that it will take less time when referencing the legislation. However, currently, this particular benefit is not being felt as tax professionals are in a transitional period.
- Given the relative simplicity of ITEPA compared to ICTA, a few tax professionals state that they now find it easier to delegate work to more junior staff. In light of the way it is written and structured, they are confident that those with less experience will be able to understand the Act.
- Furthermore, the implementation of ITEPA has also affected some tax professionals’ relationship with HMRC. As they are in this initial period of transition, tax professionals find themselves more reliant on HMRC for guidance. While they do recognise this is a transitional phase, for some it has helped to strengthen the relationship by working collaboratively.
- There are, however, some challenges that have been faced by tax professionals since the implementation of ITEPA. In the main these are a result of its unfamiliarity. Tax professionals do not feel as well versed in the legislation as they once did. Furthermore, the fact that the Act is new means that it is not, currently, backed up by case law (though the clear view of HMRC is that case law continues to apply to ITEPA as it did to the previous legislation).

- Some tax professionals are unsure as to whether as a result of the rewrite, some aspects of the legislation have been changed. Participants state they are under a great deal of time pressure and, as such, are not able to cross-reference between ICTA and ITEPA to determine whether the legislation is now different. As such, the need for clearer signposting is a lesson to bear in mind on future rewrites.
- The added length of ITEPA is also an issue for a few – many make mention of the fact that the tax code now spreads over five volumes as opposed to one. Much of this added bulk is seen to be unnecessary – tax professionals speak of repetition regarding definitions of terms.
- A few tax professionals are also concerned that by changing the way the legislation is written, the door has been opened to ambiguity. While they understand that the language used in ICTA was complex and, for the most part, inaccessible the words used were seen to have very definite and strict interpretations.
- It is also important not to underestimate the impact of the introduction of the Finance Act in 2003 on tax professionals' perceptions of ITEPA. While they recognise that this is an entirely separate issue, it did shake their confidence given that it affected ITEPA so fundamentally and only days after it was introduced.
- As a general rule, tax professionals are positive towards ITEPA and the rewrite process in general. In relation to ITEPA, they are clearly in something of a transitional period. However, the majority are confident that it represents a positive step forward, and that the principle behind it is important and that it will bring time and efficiency savings when it has bedded in.

1. The context – how this legislation is used by tax professionals

Before examining views on both the Income and Corporation Taxes Act 1988 (ICTA) and the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), we should highlight the contextual information that surrounds the legislation as this underpins and explains attitudes. For example, it is necessary to discuss the extent to which tax professionals use the legislation – whether it is something they refer to frequently or not – as this helps determine their attitudes to the rewrite process in general.

1.1 Legislation as a point of reference

It is important to note, from the outset, that professionals do not refer to this part of the tax legislation frequently. Of all the sub-groups we consulted as part of this research it is only really tax lawyers who use it regularly as they regard it as their duty to be immersed in the minutiae of the legislation itself. Conversely, in-house tax managers very rarely use it as a source of primary information and prefer instead to outsource work which requires this level of legal understanding. In-house tax managers outsource work of this sort to specialists ranging from lawyers to accountants and also management consultants. They are seen to be well versed in legal issues and, as such, able to help here. At this stage, in-house tax managers do not believe that their ability to pass on work of this kind to others who are more qualified will be affected by ITEPA. In spite of the fact that they recognise that measures have been put in place to simplify the legislation, they still do not feel sufficiently qualified to deal directly with it and, as such, are more comfortable outsourcing.

For the most part, tax professionals tend to use reference books – Tolley's and Butterworth's were mentioned frequently – as their first port of call when they need to refer to a specific point in this area of tax legislation.

It would only be in quite rarer cases that we needed to actually consult the legislation at all

Accountant

On dealing with issues about which they are unsure, professionals often turn first to the legislation in order to clarify any points they may have. This is particularly pertinent here as tax professionals mention how both ICTA, and now ITEPA, are such wide-ranging Acts covering a variety of issues and it often follows that professionals working with them are not well versed in their entirety; they tend to specialise in specific areas such as shares and securities. However, it is sometimes the case that they are called on to answer a point on which they do not commonly work and, as such, the legislation is useful here.

A few tax professionals also state that they include excerpts from the legislation in official correspondence to either HMRC or their clients. This is in order to corroborate the point they are making and to add gravitas to it.

Tax professionals' tendency *not* to refer to this part of the tax legislation is not due to the fact that they cannot understand it. Moreover, they are confident in their knowledge of the law, the interpretation of it and how to apply it. It is because of this depth of understanding that they do not feel the need to use the legislation except in the circumstances as outlined above.

1.2 How use of the legislation affects opinions

It is important to remember throughout this post-implementation review that the way in which tax professionals use this part of the legislation, to a certain extent, informs their views on how it is written and presented.

A few make the point that as it is not something that they, on the whole, use that often it is of little concern to them how it is worded and laid out. However, conversely, a few also state that because it is something they use so infrequently, they welcome having the legislation rewritten in an easier style.

Irrespective of this, it is important to note that some tax professionals, – particularly in-house tax-managers and those from the voluntary sector – because of the infrequency of their use of the Acts themselves, find it hard to comment on specific sections and felt more comfortable providing a general overview of their attitudes towards the legislation.

It is also worth bearing in mind that ITEPA has not yet had time to become properly embedded. It was only introduced in 2003 and many of the tax professionals who took part in this research mention that, even still, they are working on cases which refer to ICTA. As such, it will take time before tax professionals are fully aware of the ramifications that the implementation of ITEPA may have.

2. The Income and Corporation Taxes Act

Prior to the implementation of ITEPA in 2003, tax professionals used the Income and Corporation Taxes Act – ICTA. It was necessary to gain a thorough understanding of tax professionals' attitudes towards ICTA as, only by doing this, would we be able to assess the difference that ITEPA has made to the way they work.

2.1 Some contextual information

The majority of tax professionals we engaged with as part of this programme of research are highly experienced. Indeed, the majority had been practicing in their chosen field for around twenty years. As a direct result of this, for many, ICTA was all they have ever known. It was the legislation that they were trained in when starting out in their career and because of this long history they have built up working with it, it is something they know – and understand.

I was trained in ICTA so it was the legislation I'd always known so I could quote you sections from ICTA and I'll probably be able to quote them until my dying day

Tax Trainer

2.2 The positive aspects of ICTA

For the majority, the most positive aspect of ICTA was its familiarity. As mentioned above, the majority of tax professionals interviewed as part of this study had been trained in ICTA and had worked for a long time with it. As such, they have built up a real depth of understanding as to what the terminology used within ICTA means as well as how and when to apply it.

I understood ICTA because I used it for a long, long time – I've been doing this for 27 years and I'm used to it

Accountant

Its pure familiarity was the only thing I liked about it

Tax Trainer

The long-standing history of ICTA has also ensured that it is backed up by a great deal of case law. All tax professionals – whether working in the legal industries or otherwise – are positive about this. The presence of case law ensures that there is little room for misinterpretation; they can refer to this as and when needs be, to check how the law has been applied in the past and whether they are offering their clients the correct guidance in the light of this.

Yes it's out of date, it's archaic, but those expressions have been defined and commented on and brushed out in case law for nearly 200 years and a tax lawyer at least will have a pretty good idea of what those terms mean

Tax Trainer

ICTA is also praised by a few for being particularly 'British' in its style. A few - particularly lawyers - make the point that ICTA is not codified¹. They see codification as an intrinsically European development. They reference how much of the legislation that has come out of the European Parliament is codified and this is something of an anathema in British legislation.

Related to this, a few state how, although the schedular system is not commonly used nowadays, it works effectively in ICTA. Furthermore, the point is made that the schedular system was commonly understood - even by those outside of the profession - which made ICTA accessible.

The language used in ICTA, although complex, is also favoured by a few tax professionals. In fact, it is the inherent complexity of ICTA that appeals here.

When you write things in plain English it just doesn't have the poetry

HMRC

This select number of tax professionals feel that the language used befits their profession and their experience; they recognise that not everyone can understand the content of this Act and, as such, it makes them feel specialist in what they do. This was a viewpoint that was particularly expressed by both more senior and experienced tax lawyers and, also, tax trainers.

2.3 The challenges of working with ICTA

Whilst a few praise the language used in ICTA, for the majority of tax professionals ICTA is cumbersome, over-complex and out-of-date. Nearly all of the participants interviewed referenced 'emoluments' as being a term which is simply not used in common parlance nowadays. They feel that not only does this term, and others like it, make the legislation inaccessible for the general public but it also makes understanding and interpreting the law harder work than it needs to be for the professionals themselves.

When you use ICTA you think 'bloody hell, I really don't understand what this means'

Accountant

Some bits of it were just absolutely intractable

Parliamentary Counsel

¹ In law, codification is the process of collecting and restating the law of a jurisdiction of certain areas, usually by subject.

Interestingly, a few professionals – particularly those from the voluntary sector – mention how some of the terminology is now actually offensive. References to ‘lunatics’ are cited in ICTA and this is seen as being symptomatic of the fact that this Act reflects a different age.

However, for the majority, the most frustrating aspect of ICTA lay in its disparateness. As ICTA was so old, there had been much scope for the introduction of other pieces of legislation which, in turn, altered the content of ICTA. As such, it resulted in an Act full of postscripts, concessions and annexes which made it hard to navigate.

The problem with ICTA, simply, really derives out of its age and it needed consolidating

Accountant

Tax professionals state how much time was spent when working with ICTA leafing through the whole document as not all the information on any one issue was grouped together.

The legislation was quite antique in form...and as it came to be amended and amended and amended – it just became very dense and difficult to unravel

Parliamentary Counsel

2.4 The need for a rewrite?

The majority of tax professionals find it hard to discuss this retrospectively. They state that when using ICTA they did not feel, at the time, that it needed a rewrite; they were aware of its limitations and had learnt to work with them. However, and with the benefit of hindsight, they are aware of the substantial differences – largely positive – that the rewrite has made to the way that they work.

Without exception, tax professionals state that the major benefit of the rewrite has been the consolidation exercise; the legislation is now easy to navigate and, as such, easier to use. Therefore, in this sense, they state that the rewrite was much needed and overdue. Years of subsequent Finance Acts had placed so many concessions in ICTA that the legislation had become unwieldy and unmanageable.

However, there is polarisation amongst tax professionals as to whether a rewrite *per se* was needed. On the one hand, tax professionals state that the simpler language has made the legislation more accessible. Yet some professionals question *who* the legislation was made accessible for. A few tax professionals state that they – as the people who primarily use the legislation – did not need the language to be simplified; their training ensures that they are able to understand the complex terminology.

I don't think it was in need of a rewrite – it wouldn't have been top of my shopping list for the Government agenda. I think most professions were probably fairly OK with how it was before

Accountant

While it is clear that tax professionals themselves will benefit from the rewrite, the view was put to us that the rewrite was undertaken with the general public in mind. For them, this is seen as the right thing to do; they feel the state has an obligation to make its laws accessible to everyone – especially ones which affect people in the way that these Acts do.

The most intrusive aspect of government is the way that it requires you to show all of your financial details and then it takes money from you...so I think it is important that Parliament does make some effort to try and explain to people what it's doing and how this legislation works

Tax lawyer

Again, a minority question the necessity of making the law accessible to everybody. They feel that if a member of the public has a query over the amount of tax they pay they will, in the first instance, consult a member of a professional body – most commonly either an accountant, a lawyer or HMRC itself – rather than turn to the primary material themselves and, as such, it makes little difference to the general public how the legislation is written.

However it must be stressed that this is a minority view and, for the most part, tax professionals see the aim of making Tax Law easier to understand *for everyone* as a worthwhile aim. A few even mooted the idea that HMRC wished to simplify the legislation as its own staff did not understand it.

There is a sense though, among some, that the rewrite has been something of a missed opportunity. These tax professionals state that British tax law is inherently complicated and *this* is the real issue. As such, a rewrite will only ever be able to do so much in making the legislation accessible as the underlying concepts will still be hard to grasp. As a result of this, some state that HMRC should have tried to adopt a two-pronged approach here; simplifying the legislation in terms of how it is written but, at the same time, also pushing through some changes in the law to simplify the whole structure (e.g. flat rate tax).

The real problem is the underlying outrageous complications of the tax law

Accountant

Tax professionals do realise the difficulties here and understand fully that in order to make changes to the law full support from Parliament would be necessary, and, given the radical nature of some of the changes suggested, this would have been almost impossible to achieve. As such, there is a sense that the rewrite has been something of a compromise.

It was meant to be tax simplification, but no one would buy that politically – it's too difficult – so we came up with this fudged idea of doing a tax law rewrite

Tax Trainer

3. The Tax Law Rewrite Project

3.1 Awareness of the TLRP

All of the tax professionals who participated in this programme of research are aware of the Tax Law Rewrite Project (TLRP). The status of the TLRP has, undoubtedly, been raised by the high profile political figures attached to it – many spontaneously mention Lord Howe’s leadership and the prestige that this inevitably brings with it.

Many are also aware – and positive about – the fact that it is a cross-party initiative. The buy-in from all three major political parties is seen to bring many benefits. In the first instance, it facilitates consensus on the key areas to address; it negates political in-fighting on which Acts should be tackled. It is also seen to allow the recruitment and retention of the most skilled and most appropriate people to the job in hand. However, for most, the major benefit of the cross-party buy-in is that it has allowed the TLRP to be a long-standing project. Many are aware that it is not a product of the Labour Party but was, in fact, set up in 1996 in the last months of John Major’s Conservative Government. There is a sense that it is only for the fact that all major political parties agree with this initiative that it has been ongoing for nearly a decade and, as such, has been perceived to make real progress.

As far as I am aware it was instituted on a non-party political basis because I think the Conservatives started it off and the Labour Party adopted it

Tax Trainer

Coverage of the TLRP is also seen to be fairly widespread in the professional press. Many note articles in trade journals, such as *Tax Bulletin*, which has kept the TLRP top-of-mind and ensures that professionals are up-to-date with the changes being made.

3.2 Attitudes towards the TLRP

While awareness of the TLRP is certainly high among professionals, an understanding of the project’s objectives is less clear. As stated previously, there is a common belief among tax professionals that the main aim of the TLRP is to make British tax legislation more accessible through the use of simpler language.

The intention is to restate the law in a more readily intelligible fashion without changing the substance of it

Parliamentary Counsel

However, consensus breaks down as to *whom* the TLRP is aimed; the tax profession or the general public?

There is polarisation over whether tax professionals themselves needed the legislation to be simplified. A few state that, as a result of their training, they are aware of the meaning of the terms used and are comfortable with them. And, while all agree that the general public would not typically be able to get to grips with a piece of legislation, a minority state that the likelihood of a member of the public picking up a piece of tax legislation *in the first place* is so remote that it perhaps did not to be rewritten if this was the audience it was done for. It is this lack of clarity over the objectives of the TLRP that has led a few to question its validity.

It is, presumably, to make it more comprehensive or understandable – though I'm not sure to whom it is aimed. The man in the street might find it more easy to read but I doubt that the man in the street reads it very often

Accountant

A few also feel that the TLRP has actually been in place for too long. What was once seen as a worthwhile exercise is now perceived as a drawn out affair. Furthermore, tax professionals recognise that a great deal of resources and manpower has been devoted to this project and, as such, with the length of time it has been ongoing, a few wonder whether it is providing value for money and question whether, in the time it has been running, more legislation should have been rewritten by now.

A beautiful, esoteric idea that's just turned into an absolute waste of everyone's time and effort

Tax Trainer

3.3 The consultation process

Largely without exception, tax professionals are very positive about the consultation process that has been undertaken regarding the TLRP. In fact, the majority feel that they have been given the opportunity, should they wish, to input into the process and this is appreciated.

Tax professionals state that, with an exercise such as this, there is a real need for consultation to ensure that the resultant legislation is practical and easily applicable. While there is high regard for the work of the Parliamentary Counsel draftsmen, it is seen that only by consulting those who actually work with the legislation on a practical level can it be guaranteed that the resultant product will be workable in reality. Indeed, Parliamentary Counsel concur with this viewpoint.

Some of the objections to rewriting this legislation quite drastically is that you might inadvertently change the law. One way of ensuring that you don't...is to give it as wide as possible exposure in draft so that anybody who thinks that it does change the law can say so

Parliamentary Counsel

It is encouraging to note that the majority of tax professionals feel that the consultation process has been handled in the most appropriate way possible. They state how something like this is very demanding on their time; especially as they have to fit it around their normal duties. As such, tax professionals are unwilling to actually commit to a structured programme of consultation – they prefer to dip in and out of the consultation process as and when their schedule allows.

It is for this reason that the system currently employed by HMRC – namely releasing exposure drafts of the legislation for comment – is so well received. Tax professionals do not feel under obligation to comment should they not have time or, indeed, a particular interest in that aspect of the legislation. Instead, this is something they can choose to become involved in should they have both the time and a particular interest in this aspect of tax law. This is an offer that was taken up most frequently by tax lawyers who felt they had the time and expertise to offer here. However, whether tax professionals participated in the consultation process or not has no bearing on their views towards ITEPA.

Others praise the implementation of exposure drafts as being an all-inclusive way of approaching the consultation process. While actually commenting obviously, as illustrated above, depends on both the time available and the level of interest in that given area it, at the least, provides everyone with *the opportunity* to comment even if they do not, in the end, make use of this.

However, while exposure drafts are positively received on the whole, ability to engage with this exercise does entirely depend on the resources available at that time. As such, it tends to be only the larger companies that can actually contribute to this process. Smaller firms tend not to have the manpower available to devote to exercises such as this.

However, this is not to say that smaller firms feel unrepresented in this process. They mention that professional bodies such as the Confederation of British Industry (CBI) and the Institute of Chartered Accountants (ICA) have a strong voice and smaller companies trust that these institutions will act in their interests.

Likewise, the 'Big Four' accountancy firms (KPMG, PriceWaterhouse Coopers, Ernst & Young and Deloitte & Touche) are also viewed – at least by smaller accountancy firms – as a powerful lobbying group. They are perceived to have the resources available to be properly involved in the consultation process and are, again, seen to act in the interests of the accounting profession as a whole.

4. The Income Tax (Earnings and Pensions) Act 2003

4.1 Were tax professionals ready for ITEPA? Risk assessments and compliance

In a sense, tax professionals were as ready as they could be for the introduction of ITEPA. One of the (perhaps unintended) benefits of the consultation process was that it alerted tax professionals to the changes that were afoot and, as such, they were aware of its impending implementation.

However, being aware of the arrival of ITEPA and being ready for its arrival are two very different things. There is very little evidence that tax professionals did any actual preparation for the introduction of ITEPA. This is, largely, as a result of the fact that they did not think that it would herald any major changes. As far as tax professionals understood the situation, ITEPA was simply a change in the way the law was written and not a change in the law itself. Their understanding of the rewrite process is that it exists to make the law simpler to understand and easier to use, rather than to change the content and the way in which it is applied. For this reason, tax professionals did not expect ITEPA to make substantive changes to the law.

It is because of this tacit understanding that there would be no major changes that tax professionals did not see the necessity in conducting any preparatory work for the implementation of ITEPA and that this was the appropriate stance for them to take. It also must be remembered again how tax professionals tend to use the legislation. As it is frequently not their first port of call regarding information on specific points they did not feel the need to prepare in great depth for it.

4.2 Overall attitudes towards ITEPA

On the whole, tax professionals feel that the implementation of ITEPA has been a positive step forward. It is not seen to have substantially changed the workings of the law (though some tax professionals – particularly lawyers – make note of a few minor changes, for example, regarding how office parties are taxed) yet the legislation is perceived as being much easier to use and understand.

The two main benefits cited refer to the language used and the way that ITEPA is structured. In the first instance, the way in which ITEPA is written is seen to be much more up-to-date. *Emoluments* was, again, cited as a case in point by many who feel that references to 'earnings' are much more appropriate in the 21st century.

Emoluments are very nice but, come on, it's a Victorian word

Tax Lawyer

Interestingly though, a number of tax professionals feel that the implementation of ITEPA will be of most use to those who are entering the industry now, or who will do so in the future, rather than to themselves directly.

However, there is less perceived benefit for the tax professionals that took part in this study. This is due to the fact that they are used to ICTA. Many received their professional training in ICTA and have been working with it for around twenty years and, as such, are familiar – and comfortable – with it.

Interestingly, Parliamentary Counsel perceive ITEPA is being used as a case study of best practice – an example of how legislation *should* be written. They state this is not just in terms of legislation regarding tax but also other Acts as well. The simplicity of it has been welcomed and, as such, Parliamentary Counsel perceive that is being used – and has the potential to be used more widely in the future – as a template for legislation across Government.

Other benefits as a result of the introduction of ITEPA include the increased ease of delegation and, furthermore, an improvement in tax professionals' relationship with HMRC.

However, there are some negative responses to ITEPA as well. This part of the tax legislation is seen to have increased in length which, in turn, has hampered the ease of navigation. Furthermore, there are questions among a few as to whether the introduction of simpler language has resulted in changes to interpretation. Yet for the majority of tax professionals, it was the introduction of the Finance Act 2003 that affected perceptions towards ITEPA. These issues are all discussed in more depth throughout this following section.

4.3 The impact of simpler language

The use of simpler language in ITEPA has impacted on a number of levels. It is important to remember that for the tax professionals that took part in this programme of research they, on the whole, do not feel that it will make much of a difference for them personally. This is due to the fact that as they were working with ICTA for so long, they understood the original terminology and were aware of how to interpret it. In fact, the only group for whom it may impact are in-house tax managers as this group, more than any other, tend to use the legislation the least. Therefore, having the content made more easily accessible is welcomed.

However, there is a strong feeling among the majority that the style in which ITEPA is written will be of most benefit to those just joining, or about to join, the profession. While they recognise that there is no substitute for the experience that they themselves have had over the years in applying the law, they do feel that the rewrite style will ensure that more junior tax professionals are able to get to grips with the issues and underlying concepts more quickly than they did.

I think I'd rather be a tax junior today faced with some of this than some of the gobbledygook that I had

Tax Trainer

A few tax professionals also state that the way in which ITEPA is written has impacted on their relationship with their clients. As mentioned earlier in this report, the legislation itself is sometimes cited in official correspondence between tax professionals and their clients as a way of justifying the advice being offered or the course of action being taken. However, given the language that was used in ICTA some perceived that clients felt as though the tax professionals were trying to pull the wool over their eyes by using complex terms that no one outside of the industry could understand. Now the language is simple and accessible there is greater transparency and, as such, trust.

I want to be able to advise my clients on what the law is, and what the consequences of the law are for them so, I suppose, in the long run simplicity has to help

Accountant

The use of simpler language in ITEPA is also seen to have made tax legislation more accessible to the general public as a whole. Of course, there are a few tax professionals that do question the point of this. As mentioned previously, a few state that it is unlikely that a member of the public would pick up a piece of legislation in the first place. However there is a sense that were they to do so it would be more accessible.

Joe Public's not likely to nip into the local library to have a quick look at Section 198, but in the event that they were to do that, then it would be more easy for them to understand

Tax Trainer

Furthermore, they reiterate that although the language is more 'everyday' the underlying concepts are still complex and hard to grasp without training.

However, the majority dispute this. It is mentioned that tax legislation – and in particular ITEPA – is unusual as it affects the majority of the British population; most people, at some point, will be subject to the clauses stated in it. Given that it does affect so many people and, moreover, affects them in the most fundamental manner – taking a substantial amount of their paycheck – the Government has a responsibility to ensure that the legislation that enables this is clear, accessible and understandable.

Furthermore, this is seen to be now of paramount importance in light of the driver on self-assessment. Given that so many people who are self-employed now undertake this for their tax returns it is essential that, should they need to, the legislation is easy to understand and can be used as a point of reference by anyone.

A few also perceive that the use of simpler language will also, in the long run, reduce the risk of errors being made in application of the law. Given that the legislation is now easier to understand and, moreover, there is less room for interpretation, it is felt that there is less likelihood that genuine errors will be made.

The easier the legislation is to understand, the less the risk of errors

Parliamentary Counsel

Furthermore, the clarification over the grey areas that existed in ICTA has ensured that there is also a reduced risk of intentional errors being made as well. As a result, for many, the rewrite has improved their confidence in the law.

The very process of the rewriting will have thrown up some ambiguities which they will have been able to resolve...so that must be a benefit

Parliamentary Counsel

4.4 The impact of consolidation

For the majority, the biggest benefit brought about by the implementation of ITEPA has been the consolidation of the legislation. As mentioned previously, as a result of subsequent Finance Acts, ICTA had become unmanageable in its old form – it was unwieldy, disjointed and hard to navigate.

However, the rewrite not only expressed the content of the law in a more accessible way, it also allowed for the legislation to be consolidated. Tax professionals state that it is a great reassurance to be able to turn to a section dealing with a specific issue and know that everything that relates to that point will be there rather than being scattered between a number of different sections. Again, an offshoot of this is that it improves their confidence in the law; they are certain that they are not missing anything when offering advice or recommending a course of action to a client.

Tax professionals also state how ITEPA has helped to make their professional roles slightly easier. As mentioned previously, it was only by virtue of their experience in using ICTA that they were able to navigate their way round the Act. However, they always needed to spend a certain amount of time cross-checking with the Finance Acts appended onto ICTA to ascertain whether there had been any subsequent pieces of legislation that had affected the interpretation of the law. The need for this is now negated as the Table of Contents in ITEPA actually reflects the reality of what is in the Act.

It's not scattered, it's all contained in the one place so, in that sense, it's better

HMRC

Again, this is seen as being of most benefit to those entering the profession. Tax professionals state that while, to an impartial observer, ICTA was structured illogically, due to their experience they had learnt where the various sections were within it. However, for more junior professionals, it is felt that ITEPA will be easier to learn, navigate and, consequently, apply.

*If you're a junior lawyer that doesn't have much experience you can,
I would imagine, quite easily find your way through this – it leads
you*

Tax Lawyer

4.5 Time and efficiency savings

Given that the language used is more accessible and consolidation has served to make the legislation more easily navigable, it would logically follow that one would assume that ITEPA will save tax professionals' time in their role.

Currently though, this benefit has not come to pass for the majority. The reason for this is a multitude of interplaying factors. In the first instance, ITEPA has only been in place since 2003 and – by tax professionals' own admission – only really been applied over the last 12 months. Furthermore, the majority do not use the legislation frequently. Finally, most of those that took part in this study are highly experienced in ICTA and, as such, are used to working with its structure.

In light of all of this, it is perhaps understandable that, currently, tax professionals do not feel entirely familiar with ITEPA. It is taking them time to learn the new structure and to learn how to navigate it even though, objectively, they realise that this should be easier. A few do make the point that they are, essentially, learning the legislation again from scratch – even though the content has not changed substantially – and as such, it is inevitable that it will take them time to do this initially.

Therefore, ITEPA is actually causing a *time loss* at this stage. However, tax professionals do recognise that this is just a teething problem. They state that the fundamental benefits of ITEPA are such that they will have a positive impact in the future.

*Long term, it should save me time but I wouldn't say it is at the
moment*

HMRC

Therefore, they are quite confident to predict that in a few years' time, the implementation of ITEPA will be resulting in some time and efficiency savings – especially as the new generation of tax professionals who will be much more confident in working with ITEPA will then be in place.

4.6 Ease of delegation

Another (admittedly unexpected) benefit for a few tax professionals outside of HMRC has been the fact that they find it easier to delegate when working with ITEPA than they did with ICTA. The simple fact that the language used is easier to understand and, as such, interpret, coupled with the new simpler structure means tax professionals are now more confident in delegating work to more junior professionals.

It is important to note that the majority of tax professionals that we spoke to were not in a position to delegate their work. They tend to work on such high level issues – and with high profile clients – that they do the work themselves. However, those that can delegate – and this tended to be accountants who pass on compliance work – note that this has become easier since the implementation of ITEPA.

Given that the language used in the legislation is simpler, it is easier to explain to more junior professionals how it should be interpreted and applied. Furthermore, the new structure allows for junior professionals to navigate their way around the legislation more easily. A further benefit this will bring is that it will help contribute to future time and efficiency savings.

I suppose it is possible that it does save time in the sense that one feels a little bit more confident delegating the work down

Tax lawyer

A small number of tax professionals did mention that since the implementation of ITEPA they have delegated more work because they are so familiar with ICTA that they do not feel capable of learning the new legislation. As such, they delegate to save themselves from doing this. This is, however, a minority view.

4.7 How ITEPA has affected the relationship with HMRC

A further interesting and unexpected consequence of the implementation of ITEPA has been its impact on the relationship that exists between tax professionals outside of government and HMRC itself. They fully recognise that, currently, they are on a learning curve with the new legislation and during this stage they are more reliant on HMRC.

A number of tax professionals mention how they have had to make more use of the HMRC website to check the guidance notes to ensure that what they assumed to be the case under ICTA is still so. Furthermore, some also state that they are calling up the helpline more frequently for advice and information about the new legislation.

It is encouraging to note that while this process is ongoing tax professionals have found HMRC staff to be very accommodating. They are receptive to questions from people within the industry and willing to work co-operatively to seek solutions to new issues that have been raised by the implementation of ITEPA.

However, tax professionals do very much expect for this reliance on HMRC to be a temporary situation. They anticipate that once they are familiar with the ITEPA they will

not need to contact HMRC as often as they will be confident in the new law and how to interpret it.

Only a very few express concerns about how the new legislation may adversely affect the relationship with HMRC. A few state that as there is no case law, they fear that HMRC may have license to be more dogmatic in its approach and try and insist on the interpretation they wish being used, rather than an interpretation that is technically correct.

4.8 The unfamiliarity of ITEPA

In the main, the most commonly cited drawback regarding the implementation of ITEPA lies with its unfamiliarity. As mentioned throughout this report, tax professionals are very familiar with ICTA by virtue of the fact that they worked with it for so long.

As a result, while they recognise that ITEPA is more logically structured and written in simpler language, it is still new to them and, as such, it is taking time to get used to it. For example whereas previously tax professionals were able to know, off the top of their head, which section numbers referred to specific issues in ICTA, they are now in the process of relearning this which, some admit, is taking them time.

You felt really comfortable with ICTA, you felt like an expert, you knew where everything was and then, all of a sudden, you've got this new legislation and it's as if your knowledge has been wiped and you've got to start again

HMRC

However, saying this, tax professionals do recognise that this unfamiliarity is just a transitional phase as they begin to work more consistently with ITEPA and use ICTA less.

Similarly, the lack of case law also affects how tax professionals view ITEPA. Tax professionals are aware that a lack of case law is an issue with every new piece of legislation, however, they are unsure as to whether they should interpret the Act as previously or whether this will have changed as a result of the rewrite. To help combat this, tax professionals feel there should be clearer signposting to the Explanatory Notes included in ITEPA so as to overcome this initial uncertainty.

4.9 Changes to the law?

Perhaps a more worrying concern expressed by some tax professionals is that they are unsure as to whether any actual legislative changes have been made in the rewrite. The majority of tax professionals feel that the main aim of the TLRP is to simplify the way the law is written as opposed to making changes to the law itself. However in spite of this tacit assumption, a few note that there have been some minor changes to the law and the way it is applied.

It often isn't clear what changes have been made because inevitably one's using different language

Tax Lawyer

While they do not object to this as such, what is an issue is the lack of transparency over it. Tax professionals feel that there has not been enough communication regarding the changes – it has been largely left up to them to determine what, if anything, has altered as a result of the rewrite. This could be a lesson for future rewrites; tax professionals – including those at HMRC – would appreciate being provided with an accompanying booklet highlighting what changes, if any at all, have been made.

I don't remember the Government giving any guidance. I mean, obviously, they've got a derivatives table, but unless every time I think about something I look in the Act, I won't know if there's a slight change or not

Accountant

It also must be remembered that tax professionals are under a great deal of time pressure – they state how their role is very demanding and, as a result, they do not have the time needed to cross refer between ICTA and ITEPA to check what, if anything, has changed. Therefore, they are currently working on the assumption that they should interpret the law in the same way that they always have done. This though does raise some concerns for a few; due to the nature of the work that they do they do not feel comfortable working with assumptions – they much prefer to be clear in the advice they are giving. As such, there is a real need for improved communications here to alert tax professionals as to any changes that have been made as a result of the rewrite. For completeness, the Tax Law Rewrite Project point out that all changes which are agreed during the rewrite process are noted carefully in the Explanatory notes to each Act.

This issue of potential changes to the law as a result of the rewrite has also raised the suspicions of some as they are unsure as to whether the changes are intentional, in that HMRC and Parliamentary Counsel say this as a good opportunity to close some loopholes, or whether the changes have been unintentional and are simply a by-product of different terms having different interpretations. While they accept the latter, they do feel that if it is the former, HMRC should have been more explicit that this was its intention at the time.

4.10 The length of the legislation

Another issue raised by tax professionals is that while ITEPA is now certainly much easier to understand, it is also much longer. Many make the point that ICTA existed in one volume alone but the tax code now stretches over five. This added bulk increases the time spent when referencing the legislation itself.

Much of this added length is perceived to be unnecessary. Some tax professionals state how there is much repetition in ITEPA; definitions are not listed once, but throughout the Act as and when the term is used. This, of course, does appeal to some as they state that it cuts down on the time spent searching for the meaning of any given term. However, for others, this is perceived to be unnecessary. They feel that once a definition has been included once, then that is sufficient enough. Repeating it throughout simply adds weight to an already lengthy piece of legislation.

I think there are some situations in which perhaps more of the old fashioned style of drafting can work better, simply because it's less repetitive

Tax Lawyer

There is also some criticism about the perceived over-use of formulae in ITEPA. Tax professionals feel that this is something of a new development – while there were some formulae in ICTA they were not used to the extent to which they are in ITEPA. Tax professionals do not have a problem with formulae theoretically – in fact some state that they can work to simplify legislation further by cutting down on the amount of written text. This is an attitude particularly expressed by accountants who, as you would expect, are used to working with data and, as such, do not hold any objections to concepts being expressed in this manner.

However, there is a sense among a few tax professionals that formulae are overused in ITEPA and, moreover, are used when there is no need to. A few state that concepts which are very simple to explain as text are, instead, expressed formulaically which adds complexity to the legislation.

Overdependence on formulae is just as unhelpful as a total avoidance of formulae

Accountant

This is a view held most commonly by those within the legal profession who are more comfortable with interpreting words rather than deciphering equations.

Furthermore, some tax professionals state that there is not enough explanation as to what the symbols used in the formulae actually stand for. This perceived lack of clarity here adds to confusion and to the negative feelings towards formulae.

4.11 Issues over ambiguity

There is an issue over semantics as well. Tax professionals, without exception, can objectively recognise that the language used in ITEPA is much more straightforward than that used in ICTA. However, there are question marks as to whether the replacement terms actually mean the same thing. Some feel that by simplifying the language, the door is opened to ambiguity and ITEPA may potentially contain more ambiguity and a greater number of loopholes than ICTA ever did.

Sometimes easier English is less precise and you can state things in a very simple way but you can actually not transmit all the meaning that you wanted to. I think it leaves a lot of grey areas which the more complex wording is designed to cancel out and I think we'd prefer to be definite on issues

Accountant

Everyday terms are full of ambiguity and that's the one thing we don't want

Tax Lawyer

There is a sense that the language used in ICTA, while complex, was so strictly defined that it was only possible to apply one interpretation to it. Some do perceive though that there is less definition in ITEPA. For example, the term emoluments is cited as a case in point here. While tax professionals do understand that this word is dated, some do feel that its meaning is subtly different to that of its replacement – ‘earnings’ and that it carries different connotations which, in turn, affects how the law is interpreted.

The danger would be if it replaces one set of uncertainties with another set of uncertainties

Accountant

The introduction of ITEPA has also posed challenges for some regarding cross-referencing between different pieces of legislation. They recognise that this is symptomatic of the fact that the TLRP is being staged sequentially. However, for a few, it is necessary when working on specific cases to cross reference between a piece of legislation that has been rewritten and one which has not. As such, the terminology used in each is different. This results in the fact that tax professionals again have to assume that although the language is different between any two given pieces of legislation the meaning and interpretation is the same which, in turn, leads to uncertainty when offering advice to clients.

Codification, for a few, is also a new challenge brought about by ITEPA. This is seen to drawn from European models of legislation and, as such, is unfamiliar in the British legal system. Again, it is unfamiliarity here that is causing problems.

We are now going towards the continental model of codification...it has become much more complex, much more repetitive and I find that I'm not familiar with that yet

Tax Trainer

Additionally, while tax professionals state that they like certainty, they also feel they need a certain amount of flexibility to interpret the law as they see fit for each specific case. A few feel that codification has negated their ability to do this.

As soon as it gets codified, you're reducing your room for manoeuvre. So that's always a tension between wanting certainty and confidence as to what the law is and having a degree of greyness that you can work around

Tax Trainer

4.12 The impact of the Finance Act 2003

For the majority, however, the most negative aspect regarding ITEPA is the changes that were made to it with the implementation of the Finance Act in 2003. Many do recognise that this is a result of poor timings; the delayed budget in 2003 meant that the Finance Act came into force later than anticipated. However, it is undeniable that this damaged perceptions of both ITEPA, and indeed the TLRP in general.

While tax professionals state that it is part of their role to adapt to changes in the law – and recognise that the Finance Act will bring about change each year – the problem is that fairly radical changes were brought about only days after the implementation of ITEPA. As such, tax professionals were placed in the situation whereby they had just started to make sense of the new piece of legislation only for it to change dramatically.

The real changes were felt regarding Part Seven that deals with shares and securities. By nature of the content of this section it tends to be lawyers who were most affected by this. The major disadvantage that this brought is the fact that much work had been conducted by tax professionals by this stage inasmuch as digesting ITEPA and understanding how it was different to ICTA. However, the implementation of the Finance Act meant this process had to be conducted again, only a short while after.

Many tax professionals also point out the fact that the amendments made by the Finance Act are not in rewrite style and, in fact, are written in a manner similar to ICTA. This, for some, brings into doubt the level of commitment to the TLRP. Even for those slightly more sceptical about the worth of the TLRP, they would rather see legislation that is drafted consistently than in a hybrid of styles.

A few tax professionals also express disappointment that they were not consulted as to the changes that would be brought about by the implementation of the Finance Act. Many recognise that this was impossible; as Part Seven deals with issues regarding anti-avoidance and trust they understand that the content has to be kept under wraps until implementation. However, because the changes introduced here are so wide reaching, and due to the fact that tax professionals welcomed the consultation that came about as part of TLRP, they do feel that some advanced warning would have been useful here.

Also, a few express concerns that while ITEPA is easy to navigate at the moment, if substantial changes such as this are made each year with the introduction of Finance Acts, then ITEPA will end up as ICTA did; full of concessions and amendments. As previously highlighted, one of the most frequently cited negative aspects of ICTA was the fact that it was not logically structured. The fear is that with the implementation of Finance Acts year on year, ITEPA will also end up disparate in its structure.

Furthermore, a few mention that the Pensions Act due to come into force next year will also result in fundamental changes to ITEPA. Therefore, while the changes made as part of the TLRP are welcomed, some remain unconvinced as to their permanence.

However, on balance it would seem that tax professionals are positive regarding the introduction of ITEPA. The source of most of the negative opinion stems from the introduction of the Finance Act only days after ITEPA and most recognise that this, although unfortunate, was an exceptional case. The consolidation exercise appears to have had biggest impact; ITEPA is now much easier to navigate than ICTA and, coupled with the simpler language, it is felt that this should lead to increased time and efficiency savings in the future.

5. Moving forward

While ITEPA has been, in the main, successful, there are lessons to be learned which could help with future rewrite projects.

5.1 Learning from ITEPA for future rewrites

Tax professionals stress the importance of the consultation process. It is seen as vital if the resultant legislation is workable in reality and grounded in actual, rather than hypothetical, experience. It also helps minimise risks that by rewriting the law, substantive changes to the law will be inadvertently made. Therefore, they are keen that they are involved in this process.

It is encouraging to note that they do not perceive that the consultation process could be improved. There is a strong sense among the majority of tax professionals that exposure drafts are the most appropriate vehicle for engaging them in this; it allows for them to get involved at their convenience and on aspects of the legislation that they feel able to comment on.

5.2 The importance of internal communications

It is also important to communicate the aims and progress of the TLRP more widely within HMRC itself. A few staff express concerns that not everyone within HMRC is aware of the TLRP and that it is actually something they should be proud of and make more of within the Department.

I do know that people in the network had no idea – all of a sudden ITEPA was announced and they'd had no idea that it's there and that it exists

HMRC

However, the issue also arises whereby on the implementation of a new piece of tax legislation, HMRC staff are expected to become experts overnight. As mentioned previously, when new legislation is introduced, tax professionals tend to rely slightly more on HMRC than they might usually do in the initial period when they are getting to grips with the law and how to interpret it. As such, it is imperative that HMRC staff are up to speed with the changes that have been made and can answer questions about it confidently, and correctly.

We had one eye on it all the time knowing that this was coming and knowing that as soon as it arrived, as soon as it landed on the desk, we had to be the experts in it

HMRC

For example, a few tax professionals cite instances whereby they contacted HMRC shortly after the implementation of ITEPA only for their issues to be answered with references to ICTA.

As such, there is a real need for improved internal communications. Knowledge must be shared about the TLRP more widely within the Department to ensure staff are aware of its aims and objectives – especially as, as mentioned by Parliamentary Counsel, the TLRP is being used as a model for best practice across other Government Departments.

However, more crucially, more time must be spent in the weeks leading up to the implementation of any given piece of legislation to ensure that staff who are on the front line and may come into contact with tax professionals are aware of the changes that have been made and how these should be interpreted. For many tax professionals, when they have a query relating to legislation, their first port of call is HMRC. In fact, many welcome the chance of being able to build up this kind of relationship with the Department. It is therefore imperative that HMRC seeks to build on this collaborative style of working by ensuring that its staff are aware of the changes that have been made and how these should be interpreted.

Conclusion and Implications

As mentioned earlier in this report, many tax professionals do feel that it is perhaps too early to say, just yet, whether the implementation of ITEPA has been wholly successful. The real test will come a couple of years down the line when the legislation has been properly embedded and ICTA is purely a historical document for reference purposes only, rather than one that is still actively used.

However, it is fair to say that early signs are encouraging. Tax professionals are able to objectively recognise that benefits that ITEPA has brought already; the logical structure and simpler language being the main two in this instance.

Furthermore many are able to look ahead and feel that, in the future, the full potential of ITEPA will be realised. With the entrance of new people into the tax profession, participants envisage that they will be able to understand the legislation more quickly and apply it with less risk of errors being made. Furthermore, as the generation of tax professionals who are experienced in ICTA have time to digest ITEPA, they are confident that working with it will become second nature to them and will bring about time and efficiency savings in the long run.

It is probably true to say that, currently, tax professionals are in something of a transitional period. After many years of working with ICTA they are getting to grips with a new system and, as such, it is perhaps not surprising that there are a few teething problems, and even resistance to it among a minority.

To lessen these feelings in the future, many suggestions are made regarding future Tax Law Rewrite projects. It is, in the first instance, imperative that the consultation process continues in the manner in which it is already being run. This ensures that tax professionals are confident that the resultant legislation will be applicable and rooted in practical experience. Furthermore, there is a real need for improved communications from HMRC to tax professionals regarding any changes that are made to the law as a result of a rewrite. While their perception is that the objective of the rewrite is, in the main, to make legislation easier to understand, tax professionals would appreciate the reassurance of being informed that there have no substantive alterations or that any changes that have been made are transparent.

However, in spite of the issues raised above, the majority are confident that ITEPA represents a positive step forward and believe the principle behind it – ensuring that legislation is accessible to everyone and not just those that are trained in these matters – is an important one to work towards.

Appendix

1.1 Spider charts

1.2 Discussion guide

1.3 Proforma

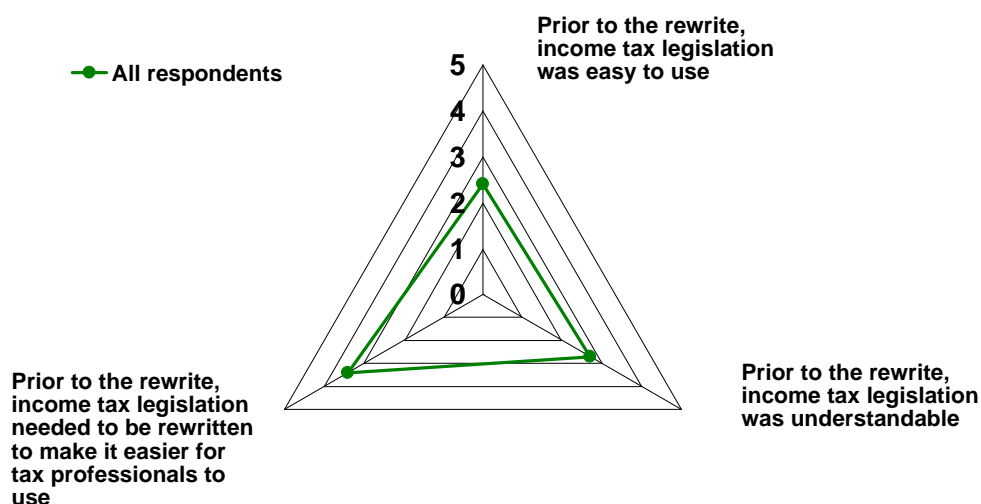
1.1 Spider charts

Prior to each interview, we asked tax professionals to complete a short proforma (which is also included later in this appendix). The purpose of this was two-fold. In the first instance, it was to gauge a snapshot of opinions and to ascertain top-of-mind perceptions regarding ITEPA and the impact of the TLRP. After all, it is often the case that the first response a participant gives is their most genuine one. Furthermore, this proforma was put in place to focus the tax professionals and to alert them to the subjects that we would be exploring so as to ensure that the discussion stayed on track.

It is important to be aware of the fact that the data generated by the proforma questionnaire are not statistically reliable or representative – they are simply to provide an *indication* as to the strength of feeling held. As such, caution should be taken when interpreting these findings.

All questions on the proforma were answered on a five-point scale ranging from strongly agree to strongly disagree. When reading these charts the value five relates to strongly agree and the value one to strongly disagree.

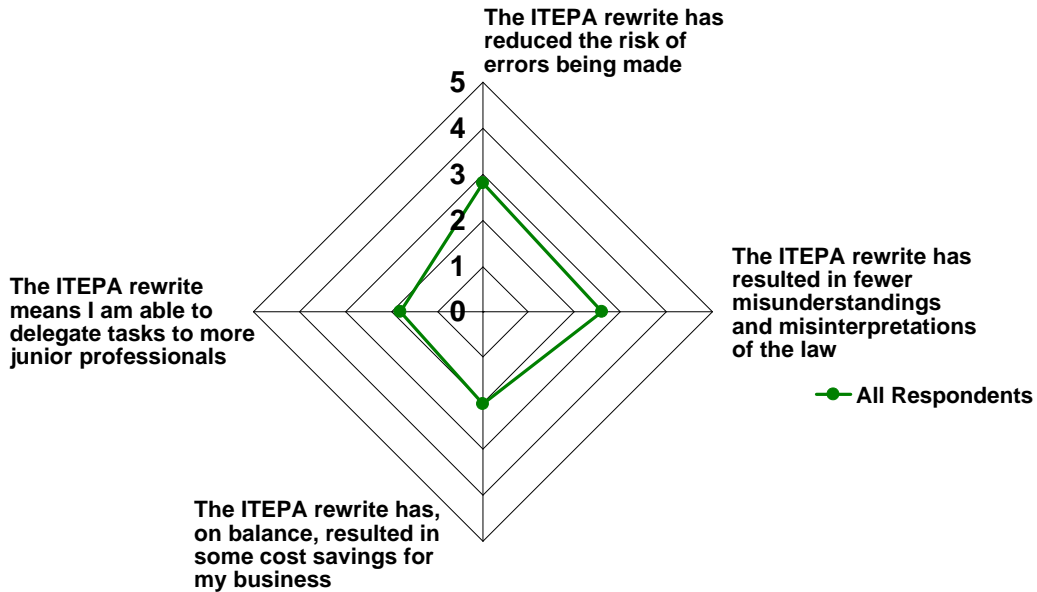
Income tax legislation before the rewrite MORI



Base: 48 tax professionals, 17 October – 24 November 2005

1

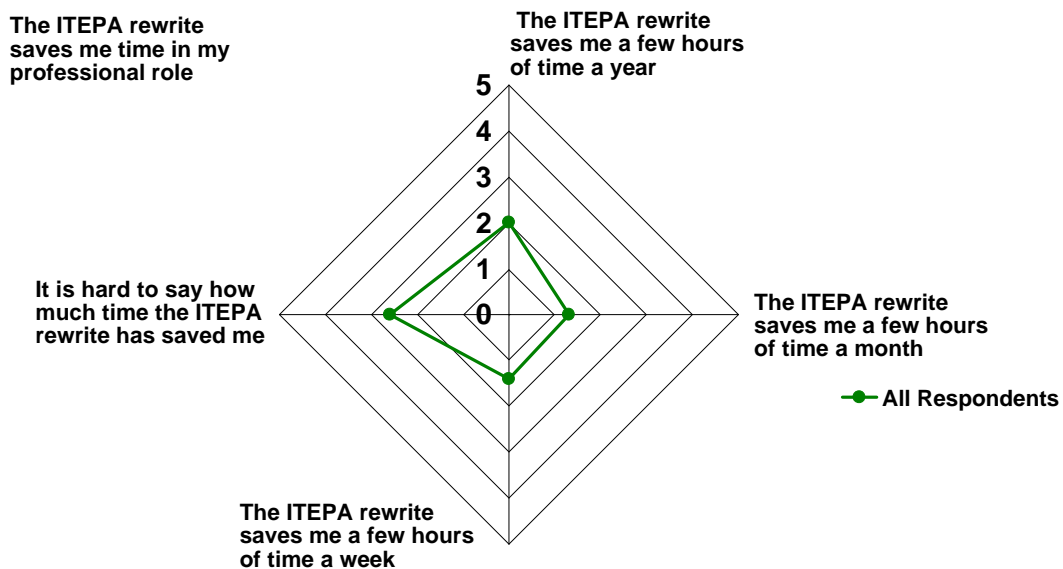
Benefits of the ITEPA rewrite MORI



Base: 48 tax professionals, 17 October – 24 November 2005

4

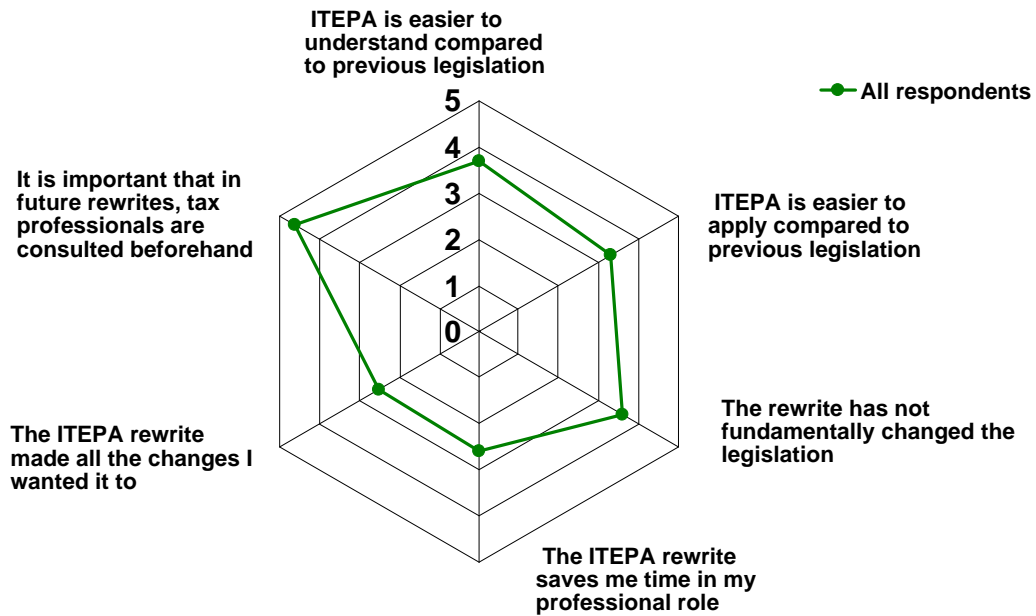
Benefits of the ITEPA rewrite MORI



Base: 48 tax professionals, 17 October – 24 November 2005

3

Post rewrite review & Looking forward



Base: 48 tax professionals, 17 October – 24 November 2005

2

1.2 Discussion Guide

HM Revenue and Customs – Post Implementation Review of the Income Tax (Earnings and Pensions) Act 2003

Core objectives:

- **Finding out whether ITEPA has made the law clearer and easier to use**
- Exploring the types of experiences tax professionals have had when interacting with ITEPA
- Ascertaining positive and negative attitudes to the ITEPA rewrite
- Understanding the benefits and drawbacks of the ITEPA rewrite
- Understanding administrative costs associated with ITEPA
- Offering suggestions for improvements to ITEPA and how the rewrite process is conducted more generally

Interview sections	Notes	Approx Timing
Setting the scene and introduction	Warm up and introduction	5 mins
Contextual information	Understanding how tax professionals use ITEPA – for what purpose, with whom and how often	5 mins
ITEPA before the rewrite	To gain an idea of what income tax legislation used to be like. Understanding this will help us to evaluate the extent to which the situation has changed for tax professionals	10 mins
Awareness of the ITEPA rewrite	Ascertaining the extent to which tax professionals were aware of the rewrite process and whether they were informed of the changes that occurred as a result	10 mins
Post rewrite review	Exploring how the rewrite has impacted on tax professionals in depth. This section will examine the benefits and drawbacks of the rewrite process including time and efficiency savings	15 mins
Looking forward	Suggestions for further improvements not only to ITEPA but to the rewrite process in general	10 mins
Conclusion	Summing up and highlighting key learnings	5 mins

Description	Aims & comments	Time
<p>Introduction</p> <ul style="list-style-type: none"> • Thank participant for agreeing to be interviewed, mention should take up to an hour. • Introduce self and MORI as an independent research company. • Research commissioned by HMRC with the aim of understanding tax professionals' attitudes to the ITEPA rewrite – whether it has made the legislation clearer and easier to use and so on. • Anonymity of participant and MRS (Market Research Society) code of conduct • Permission to audio record – only for analysis, no attribution of comments • INTRODUCTIONS: FIRST NAME, JOB TITLE, AREA OF EXPERTISE, WHAT THEY DO ON A DAY-TO-DAY BASIS 	<p>Warm-up.</p>	<p>5 mins</p>
<p>1. Contextual information</p> <ul style="list-style-type: none"> • Thinking about the work you do, can you give me some examples of how you use ITEPA? PROBE FULLY TO GET CONCRETE EXAMPLES • Can you tell me exactly how you use the legislation? PROBE TO SEE WHICH SPECIFIC SECTIONS ARE USED, WHAT KIND OF AUDIENCES IT IS USED WITH AND SO ON • And how often would you say you use the legislation? • How familiar do you feel with it? PROBE FOR WHETHER THIS IS ENOUGH IF SAY THEY ARE NOT ENTIRELY FAMILIAR WITH IT 		<p>5 mins</p>
<p>2. Before the rewrite</p> <p>I would now like to discuss with you your experiences of UK income tax legislation prior to the rewrite. As you may know the Tax Law Rewrite Project (TLRP) was set up in 1996 in order to make the UK's direct tax legislation clearer and easier to use. ITEPA was introduced as a result of this in 2003.</p> <ul style="list-style-type: none"> • Can you tell me, in broad terms, what it was like to use income tax legislation prior the rewrite? Can you give me some examples of how you used it? PROBE FULLY • How easy was the legislation to use in its original form? PROBE FOR LANGUAGE, CONTENT, CLARITY ETC • Which aspects of the legislation worked particularly well? PROBE FOR SPECIFIC SECTIONS • Why do you say this? What exactly was it that made it work well? PROBE FULLY FOR SPECIFIC FACTORS • And what aspects of it did not work as well? Why do 		<p>10 mins</p>

<p>you say this? PROBE FULLY FOR SPECIFIC FACTORS</p> <ul style="list-style-type: none"> • Did you face any challenges/problems when applying income tax legislation prior to the rewrite? Can you give me some of examples of these? • To what extent did you feel there was a need for a rewrite? Why do you say this? 		
<p>3. Awareness of the ITEPA rewrite</p> <ul style="list-style-type: none"> • How much would you say you know about the Tax Law Rewrite Project (TLRP) in general? PROBE FULLY • How much would you say you know about the ITEPA rewrite? • How did you find out about this? PROBE FULLY TO ESTABLISH SOURCES • What do you think the purpose of the rewrite was? • Has the rewrite met these expectations? • To what extent are you aware of the changes that it made? PROBE SPECIFICALLY ON ADMINISTRATIVE COSTS TO DETERMINE GAP BETWEEN EXPECTATIONS AND REALITY • Were you consulted prior to the changes being made? • IF NO Do you feel you should've been consulted? Why do you say this? What form should this take? Why would this be most effective? • IF YES What form did this consultation take? Was your feedback taken on board? How useful did you find this process • Do you feel you need to know more about the ITEPA rewrite to help you do your job properly? What else do you need to know? Why would this be useful? PROBE FOR PRIMARY LEGISLATION, SECONDARY GUIDANCE, ADMINISTRATIVE FORMS 		10 mins
<p>4. Post-rewrite review</p> <ul style="list-style-type: none"> • Thinking about the ITEPA rewrite, is it clear what changes have been made to the legislation? • In what particular ways is it different? PROBE FULLY FOR SPECIFIC EXAMPLES • And how has this affected how you use ITEPA? • How has it impacted on other staff within your organisation? PROBE FULLY • To what extent has the rewrite made it easier to delegate tasks to more junior professionals? • How far is the ITEPA easy to understand? Why do you say this? PROBE FOR FACTORS WHICH CONTRIBUTE TO THIS • How far is the ITEPA easy to apply? PROBE FOR 		15 mins

<p>DRIVERS/BARRIERS TO THIS</p> <ul style="list-style-type: none"> • To what extent has the rewrite reduced the likelihood of errors being made? What else could be done to lessen the risk? • Can you tell me the extent to which you feel the number of errors/misinterpretations made has gone up or down? • And to what extent has the time you spend resolving these errors/misinterpretations increased or decreased? • What would you say are the main benefits of the rewrite for you? PROBE FULLY FOR EXAMPLES • How far do you feel these benefits will be long lasting? Why do you say this? To what extent do you think the benefits of ITEPA will become more apparent over time? • IF DO NOT MENTION TIME AND EFFICIENCY SAVINGS ASK: • Have you noticed any time and efficiency savings as a result of the ITEPA rewrite? • IF YES – How beneficial is this to you? • IF NO – Would time and efficiency savings be beneficial to you? Why do you say this? Is there any indication this may happen as a result of the ITEPA rewrite in the future? • How has the rewrite affected your confidence in the law? Why do you say this? • And to what extent has the rewrite affected your relationship with HMRC if at all? • How has the rewrite affected your relationships with your clients? Why do you say this? PROBE ON COMMUNICATIONS IF NOT MENTIONED SPONTANEOUSLY • Do you feel your clients have noticed any benefits as a result of the rewrite? PROBE FOR IMPROVED CONFIDENCE IN THE LAW • Of all the benefits we have talked about, which would you say is most important to you? Why is this? • And what are the main drawbacks of the ITEPA rewrite? How has this impacted on how you work? • Of all of these drawbacks, which would you say is most significant? Why is this? • Have there been any unexpected consequences of the ITEPA rewrite? PROBE FULLY, ASK FOR EXAMPLES. • Why do you think this happened? And how could things like this be preventing from happening in the future? 		
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<ul style="list-style-type: none"> Looking forward, how do you think the ITEPA rewrite might affect you in the future? Why do you say this? 		
<p>5. Looking forward</p> <ul style="list-style-type: none"> Are there any other improvements that you would like to see made to ITEPA? Why do you say this? How would this impact on how you work? And why is this so important to you? Thinking ahead, if other tax laws are rewritten what are the most important things that need to be taken account of when undertaking this process? Why are these factors so important? Is it important that tax professionals are consulted in any future rewrites? Why do you say this? <p>And what other measures could be implemented to ensure that the rewrite meets tax professionals' needs?</p>		10 mins
<p>6. Conclusion</p> <ul style="list-style-type: none"> Thinking about everything we've discussed today, what would you say the main benefits of the ITEPA rewrite are? And what would the main drawbacks be? And thinking about future rewrites, what are the key factors that need to be taken account of to ensure these are a success? <p>THANK AND CLOSE</p>		5 mins

1.3 Pre-interview questionnaire

To what extent do you agree or disagree with the following statements?

PLEASE TICK ONE BOX FOR EACH STATEMENT

Strongly agree Tend to agree Neither agree nor disagree Tend to disagree Strongly disagree No opinion

A. Income tax legislation before the rewrite

1 - Prior to the rewrite, income tax legislation was easy to use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 - Prior to the rewrite, income tax legislation was understandable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 - The income tax legislation needed to be rewritten to make it easier for tax professionals to use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. Post rewrite review

4 - ITEPA is easier to understand compared to previous legislation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 - ITEPA is easier to apply compared to previous legislation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 - The rewrite has not fundamentally changed the legislation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 - The ITEPA rewrite saves me time in my professional role	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C. Benefits of the ITEPA rewrite

Answer ONE of questions 8 - 10

8 - The ITEPA rewrite saves me a few hours of time a year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 - The ITEPA rewrite saves me a few hours of time a month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 - The ITEPA rewrite saves me a few hours of time a week	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - It is hard to say how much time the ITEPA rewrite has saved me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12 - The ITEPA rewrite has reduced the risk of errors being made	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13 - The ITEPA rewrite has resulted in fewer misunderstandings and misinterpretations of the law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 - The ITEPA rewrite has, on balance, resulted in some cost savings for my business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15 - The ITEPA rewrite means I am able to delegate tasks to more junior professionals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D. Looking forward

16 - The ITEPA rewrite made all the changes I wanted it to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17 - It is important that in future rewrites, tax professionals are consulted beforehand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

