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# How Serious are South Africa and India about Rewriting their Income Tax Legislation?

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*Experiences from New Zealand, the United Kingdom and Australia show that a successful rewrite project is a collaborative exercise between stakeholders. In order to undertake the rewrite efficiently, policy makers should set goals and realistic timeframes, and should review them regularly. South Africa and India have taken measures to rewrite their income tax legislation but have not been able to replace it as at the time of writing in May 2021. This article seeks to ascertain whether they seriously intend to undertake the rewrite project. South Africa and India attempted to rewrite their income tax legislation without serious planning. At best, their approach can be regarded as unorganised tax reforms.*

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## 1.0 INTRODUCTION

A country's income tax legislation serves various economic and social goals which are usually dynamic in nature. Indeed, income tax legislation must keep up with new financial instruments, innovations in tax avoidance strategies, international transactions underpinned by transfer pricing rules and their growing sophistications, and different double tax treaties. Decisions of courts also tend to make income tax legislation progressively more complex, especially if they do not obviously reflect the intentions of its drafters. Governments amend their income tax legislation to keep pace with developments in the modern world, to close loopholes and to adapt for new changes in tax policy. These amendments, however, make income tax legislation increasingly complex.<sup>1</sup>

In a bid to simplify income tax legislation, many countries have embarked on the process of rewriting and replacing it. Countries, such as New Zealand and United Kingdom, have completed replacing their Income Tax Acts with redrafted legislation. Countries, such as Australia, have put the process on hold. Other countries, such as South Africa and India, are in the process of rewriting theirs.

This series of two articles compares the current processes of redrafting income tax legislation in South Africa and India but does not determine which country managed its process more successfully. Significant tax reform is inherently political, and each country's political environment is unique. Every country finds its own solutions to major tax reform issues. Although the solutions may be different, fundamental issues arising from tax reform are often similar. The articles examine how South Africa and India dealt with similar issues. They also examine key factors that may have driven their approaches.

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1 *A Handbook for Tax Simplification* (World Bank, Washington DC, 2009) at 7. Adrian Sawyer, Marina Bornman and Greg Smith "Simplification Lessons from New Zealand" in Chris Evans, Riël Franzsen and Elizabeth (Lilla) Stack (eds) *Tax Simplification: An African Perspective* (Pretoria University Law Press, Pretoria, 2019) 123 at 144.

The articles also refer to rewrite projects undertaken by New Zealand, the United Kingdom and Australia. A detailed analysis of these projects is beyond the scope of the articles, except to illustrate particular theories. While these jurisdictions differ from South Africa and India in terms of institutional and political context, and objectives of undertaking their projects, their experience – especially New Zealand's – offers valuable lessons for South African and Indian policymakers and pre-parliamentary consultation and parliamentary procedures. The articles, therefore, also show how the experiences of New Zealand, the United Kingdom and Australia influence rewrite projects in other jurisdictions.

This series selects South Africa and India for two reasons. First, both countries are undertaking the rewrite of their tax legislation in similar circumstances. They are both developing countries in the Commonwealth of Nations. Their Income Tax Acts are nearly the same age. After the enactment of their legislation, tax reforms in both countries were governed by similarly stated goals: raising revenue for government, achieving specific economic and social goals, and improving the mechanism for collecting taxes. Simplification of the tax system became a goal only in the mid-1980s and early 1990s;<sup>2</sup> and the process of redrafting income tax legislation in these two countries began relatively recently. Secondly, few scholars have analysed the rewrite process in India. Some have examined the Direct Taxes Code Bill, but the process of tax reform itself is still to be appraised.<sup>3</sup>

In terms of methodology, this series uses a comparative case study framework and a qualitative data analysis approach. This article analyses the rewrite of the income tax legislation in South Africa and India from an historical perspective. It provides a detailed account of events in India, as previous related literature has not yet done. The object of this article is to examine how serious South Africa and India are in their attempts to rewrite their income tax legislation.

This article begins by analysing features of a rewrite project. It presents an historical account of the rewrite process in South Africa and India and examines the effectiveness of the efforts both countries have made to replace their income tax legislation. It concludes by comparing the two countries' approaches.

## 2.0 REWRITE PROJECT: BEST PRACTICES

New Zealand, the United Kingdom and Australia attempted to rewrite their income tax legislation. New Zealand and the United Kingdom replaced theirs successfully. Although some local scholars have described their rewrite process, their descriptions are based on objectives specific to each country.<sup>4</sup> Therefore, it is hard to generalise from these descriptions. Nevertheless, New Zealand, especially, has

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2 In South Africa, reforms that also considered the simplification of the tax system as a goal only really gained momentum from 1980's onwards. Theuns Steyn and Madeleine Stiglingh "The Complexity of Tax Simplification: Experiences from South Africa" in Simon James, Adrian Sawyer and Tamer Budak (eds) *The Complexity of Tax Simplification: Experiences from Around the World* (Palgrave Macmillan, London, 2016) 157 at 164. In India, first systematic and comprehensive tax reforms that emphasised on the simplicity and efficiency of tax system were initiated in 1991. M Govinda Rao and R Kavita Rao "Trends and Issues in Tax Policy and Reform in India" (2006) *India Policy Forum* 55 at 66.

3 Sukhen Kali and Lalit Kumar Joshi "Some Conceptual Issues on Direct Taxes Code" (2011) 3 *Journal of Business and Economic Issues* 46. KS Prabhakar "Overhaul of Income Tax Law – One More Attempt" (2018) 92 *taxmann.com* 276 (Article).

4 For example, see David Salter "Towards a Parliamentary Procedure for the Tax Law Rewrite" (1998) 19 *Statute Law Review* 65. Salter defines rewrite as "The Rewrite is the name given to the programme of rewriting in a clearer form and language most of the existing primary legislation pertaining to those direct taxes which fall within the remit of the Inland Revenue, ie income tax, corporation tax, capital gains tax, inheritance tax, petroleum revenue tax and stamp duties. In pursuing this goal, the principal aim of the Rewrite is to preserve the application of the legislation but not to preserve its language, whilst acknowledging that changes in language may lead in the quest for greater clarity to some minor and inevitable changes of substance." Also see Adrian Sawyer "RAP(ing) in Taxation; A Review of New Zealand's Rewrite Advisory Panel and its Potential for Adaptation to Other Jurisdictions" (2008) 37 *Australian Tax Review* 148 at 149.

adopted practices which can potentially be useful for rewrite projects in general.<sup>5</sup> Two related, but different, features stand out from their experiences.<sup>6</sup>

First, New Zealand, the United Kingdom and Australia undertook the rewrite as a dedicated project, involving collaboration between stakeholders, especially between the government and the private sector. Further, tax authorities of these countries, rather than the government of the day, played a central and leading role in the rewrite. This meant that changes of governments did not affect the project's progress.

Secondly, each government had clearly outlined the scope of the rewrite. Further, the policy makers fixed timeframes and set goals, which were regularly observed and revised as necessary. Considering the resource intensive nature of the project, each government also took steps to act quickly.

The following two sections explain these features and provide examples of the rewrite projects in New Zealand, the United Kingdom and Australia.

### 3.0 REWRITE PROJECT: A COLLABORATIVE EXERCISE

New Zealand, the United Kingdom and Australia employed a fully consultative process involving the private sector at all stages in the rewriting process. This also included co-operation between the governing party and the opposition, and co-ordination between the government of the day and the tax authority.

In New Zealand, the rewrite project had the backing of successive National and Labour-led governments as well as the personal support of successive Ministers of Finance and Ministers of Revenue.<sup>7</sup> In its 1994 report, the Organisational Review Committee suggested establishing the Generic Tax Policy Process (GTPP).<sup>8</sup> The GTPP model had a strong consultative component that involved the private sector at various stages of policy formation.<sup>9</sup> The committee also proposed that drafting of tax bills should be moved from the Parliamentary Counsel Office to a section within the Inland Revenue Department. The government accepted the recommendations.<sup>10</sup> It also established the Review Advisory Panel (RAP), that considered and advised on issues arising during the rewrite. Its members were from the government and the private sector.<sup>11</sup> These arrangements played a significant role in ensuring that the rewrite project continued regardless of changes of government, and that governments could not use tax reform for political advantage.

In 1995, the United Kingdom initiated the Tax Law Rewrite Project (TLRP). In its report, the Working Party of the Tax Law Review Committee emphasised the importance of commitment of both government and opposition for the project's successful completion.<sup>12</sup> Following the report, the United Kingdom established tailor-made pre-parliamentary and parliamentary procedures. Further, in the Tax Simplification

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5 Adrian Sawyer "Rewriting Tax Legislation – Can Polishing Silver Really Turn it into Gold?" (2013) 15 *Journal of Australian Taxation* 1 at 5.

6 Compare, Sawyer, Bornman and Smith, above n 1, at 105.

7 Sir Ivor Richardson "Simplicity in Legislative Drafting and Rewriting Tax Legislation" (2012) 43 *Victoria University of Wellington Law Review* 528.

8 Organisational Review Committee *Organisational Review of the Inland Revenue Department: Report to the Minister of Revenue (and on Tax Policy, also to the Minister of Finance) from the Organisational Review Committee* (April 1994).

9 Struan Little, Geof D Nightingale and Ainslie Fenwick "Development of Tax Policy in New Zealand: The Generic Tax Policy Process" (2013) 16 *Canadian Tax Journal* 1043 at 1044.

10 Organisational Review Committee, above n 8. Also see, Margaret Nixon "Rewriting the Income Tax Act" (2004) 52 *Clarity* 22.

11 Sawyer, above n 4, at 149.

12 Tax Law Review Committee, *Parliamentary Procedures for the Enactment of Rewritten Tax Law* (1996) at 28 <www.ifs.org.uk>.

Report<sup>13</sup> and a consultative document,<sup>14</sup> Inland Revenue recommended that it should lead the rewrite so that its integration in the broader processes of making and changing tax law and policy could be ensured.<sup>15</sup> The government accepted the recommendation. It allowed the formal and integrated pre-parliamentary process devised for the rewrite to be managed by a project team, a consultative committee and a steering committee. The government appointed a project director from within Inland Revenue. The director was not only the leader of the project team but also the chairman of the consultative committee. The project team was responsible for drafting the rewritten Bills. Its membership included mostly individuals from Inland Revenue. Rewritten Bills were scrutinised by the steering and consultative committees. Thus, the government assigned a significant role to Inland Revenue. Membership of the steering committee included individuals from the Houses of Parliament, the judiciary, the tax and legal professions, and business. Membership of the consultative committee comprised mainly tax practitioners. The composition of the two committees shows that provision was made for the active participation of the legislation's users.<sup>16</sup> The three bodies also established a practice of facilitating mutual awareness, co-operation and exchange of information. The arrangements suggest that efforts were put to make TLRP a collaborative exercise, which in turn ensured that the project continued regardless of the political party in power.

The Australian government gave the Second Commissioner of Taxation the responsibility to head the Tax Law Improvement Project (TLIP), thus enabling the Australian Tax Office (ATO) to lead the rewrite. As with the United Kingdom, a project team drafted the legislation. In addition to full-time staff of the ATO, the project team also involved two private sector representatives. The government also set up a consultative committee to represent further interests, and various subcommittees assisted with different parts of the rewriting programme.<sup>17</sup> Thus, as with the rewrites in New Zealand and the United Kingdom, TLIP was a collaborative exercise, a feature that helped TLIP to continue unaffected by changes in the Commonwealth Government.

TLIP created the Income Tax Assessment Act 1997, which contains rewritten parts of the Income Tax Assessment Act 1936. Regrettably, the TLIP was only partly completed before it was subsumed by the 1999 Review of Business Taxation. Since 1999, Australia has attempted to transfer provisions from the 1936 Act to the 1997 Act, but at a much slower rate than that it did under TLIP itself. The last major rewrite of 1936 Act provisions was the Tax Laws Amendment (Transfer of Provisions) Act 2010.<sup>18</sup>

#### 4.0 REWRITE PROJECT: GOAL SETTING AND TIMEFRAME

Setting a realistic timeframe was a feature that New Zealand, the United Kingdom and Australia struggled to achieve; however, they revised goals and timeframe regularly, and made the minutes of their review meetings public, thus keeping stakeholders informed about progress. Further, New Zealand and the United Kingdom stopped the rewrite after completing their projects (at least with respect to the income tax legislation).<sup>19</sup>

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13 Inland Revenue, *The Path to Tax Simplification* (HMSO, London, 1995).

14 Inland Revenue, *The Tax Law Rewrite – The Way Forward: A Consultative Document* (London, 1996) at 49.

15 Inland Revenue was merged with Her Majesty's (HM) Customs and Excise to form HM Revenue and Customs (HMRC) in 2005.

16 David Salter "The Tax Law Rewrite in the United Kingdom: Plus ça Change Plus c'est la Mém Chose?" (2010) *British Tax Review* 671 at 675.

17 Simon James and Ian Wallschutzky "Tax Law Improvement in Australia and the UK: The Need for a Strategy for Simplification" (1997) 18 *Fiscal Studies* 445 at 452.

18 See Sawyer, above n 5, at 14.

19 See, Sawyer, Bornman and Smith, above n 1, at 105.

In New Zealand, the only rewritten statute was the Income Tax Act 1976. The government also determined the course of the rewrite<sup>20</sup> by dividing it into four stages. The first stage re-ordered and renumbered the Income Tax Act 1976, and enacted the Income Tax Act 1994, and the Tax Administration Act 1994. The second stage rewrote core provisions of the Income Tax Act leading to the Taxation (Core Provisions) Act 1996. The third stage redrafted major income, deduction and timing provisions, and resulted in the Income Tax Act 2004. The final step rewrote the remaining legislation and implemented the Income Tax Act 2007.<sup>21</sup> At every meeting, RAP set and monitored goals, and focused on timelines to achieve them. On the recommendation of the Organisational Review Committee, the government also accorded high priority to the project.<sup>22</sup>

New Zealand is considering reviving its rewrite project. The draft Revision Programme 2021-2023 proposes that the Parliament will revise the Tax Administration Act 1994 and enact a new legislation by 2023.<sup>23</sup>

In contrast to New Zealand, the British TLRP rewrote virtually all primary legislation for Inland Revenue. Following the recommendation of the Tax Law Review Committee, the government designed discrete pre-parliamentary and parliamentary consultative procedures to scrutinize the rewritten legislation expeditiously.<sup>24</sup> The Steering Committee and Consultative Committee held regular meetings, and, as with the RAP in New Zealand, reviewed the progress of TLRP. Minutes of their meetings were public.<sup>25</sup>

Although Inland Revenue expected the project to be completed in five years, it took them almost a decade and a half to create seven Acts, before the government ended the project in 2010 because of its resource intensive nature.<sup>26</sup>

As with the rewrite in New Zealand, the TLIP rewrote only income tax legislation, the Income Tax Assessment Act 1936. As with the governments in New Zealand and the United Kingdom, the Australian government allocated considerable resources to the project and was committed to its success.<sup>27</sup> Initially, ATO envisaged TLIP to be a three-year project; however, it eventually took them much longer, and they have not yet completed transferring all provisions of the 1936 Act to the 1997 Act.

South Africa and India have taken several measures to rewrite their tax legislation; however, they have not yet been able to replace it. Before analysing reasons for their failure, it is appropriate to examine the events related to the rewrite of tax legislation in South Africa and India.

## 5.0 EVENTS RELATED TO THE REWRITE IN SOUTH AFRICA

In the 1997 Budget Review, the South African National Treasury announced the government's intention to simplify the Income Tax Act 1962. Its objective was to make the Act accessible to all citizens while also maintaining clarity and certainty. When simplifying the Act, the government proposed to restructure the legislation, adopt a user-friendly drafting style, delete obsolete provisions, eliminate fragmentation,

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20 B Birch, and W Creech, *Rewriting the Income Tax Act 1994—Objectives, Process, Guidelines: A Discussion Document* (NZ Government, Wellington, 1994).

21 Nixon, above n 10, at 22.

22 Richardson, above n 7, at 529.

23 Parliamentary Counsel Office *Consultation on Revision Programme 2021-2023* (29 January 2021).

24 Tax Simplification Report, above n 13.

25 Salter, above n 4, at 69.

26 Salter, above n 16, at 672.

27 James and Wallschutzky, above n 17, at 452.

ensure the constitutionality of the Act, and improve accessibility of the legislation. The government acknowledged that the simplification project was far-reaching and would extend over a number of years.<sup>28</sup> The announcement did not expressly state that the government would replace the Income Tax Act 1962. Between 1997 and 2000, the government reorganised, reordered and restructured the Income Tax Act.<sup>29</sup>

In 2000, the government set out in its national budget certain new tax reform proposals which would influence the simplification process of the Income Tax Act. For this reason, it decided to put the process on hold until the new reform proposals were implemented.<sup>30</sup>

In 2005, the National Treasury in the Budget Review announced that the South African Revenue Service, or SARS, was in the process of drafting a Tax Administration Bill. Its object was to consolidate generic administrative provisions, such as objection and appeal procedures, search and seizure provisions, and provisions related to secrecy and collection processes into one piece of legislation because these provisions were duplicated in different legislation.<sup>31</sup> The government intended releasing a draft Bill at the end of 2005 but did not release a first draft until 2009.

In 2009, while working on retirement reform and the social security safety net, the government proposed the simplification of the employment income tax base. It intended to begin the project by developing a uniform definition of employment income to apply to social security, private pensions, Unemployment Insurance Fund contributions, and the skill development levy. It declared that the project represented the first step towards rewriting the Income Tax Act 1962 and intended to release a discussion document and draft legislation by the end of 2010.<sup>32</sup> However, since 2009, due to resource constraints, the project was postponed several times. According to a report of the Davis Tax Committee – released in 2018 – the government had made little significant progress.<sup>33</sup>

The government did not announce another phase of the rewriting project until 2011.<sup>34</sup> In 2011, it released a memorandum outlining the objectives of the Tax Administration Bill.<sup>35</sup> The memorandum clarified that, since 2005, the scope of the project had been extended and could be seen as a preliminary step towards the rewriting process of the Income Tax Act.<sup>36</sup> It expected that the project would assist in dividing the work of the rewrite into more manageable parts, since the administrative part of the Income Tax Act comprised about 25 per cent of the Act.<sup>37</sup> The Tax Administration Act was enacted in July 2012 and came into effect in October 2012.<sup>38</sup>

Since 2012, the South African government has not announced further steps in the rewriting process.<sup>39</sup> Further, recent allegations of corruption against SARS and the government have caused extensive damage

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28 National Treasury *Budget Review 1997* (1997) at [7.5] <www.treasury.gov.za>.

29 National Treasury *Budget Review 2000* (2000) at 73 <www.treasury.gov.za>.

30 Budget Review 2000, above n 29, at 73. See also, Davis Tax Committee, *The Efficiency of South Africa's Corporate Income Tax System* (2018) at 90 <https://www.sataxguide.co.za>. According to the Davis Tax Committee, the 2009 Budget Speech made the last reference to simplification of the wording of the Income Tax Act 1962. To date, however, the government has not made any significant progress on that front.

31 National Treasury *Budget Review 2005* (2005) at 98 <www.treasury.gov.za>.

32 National Treasury, *Budget Review 2009* (2009) at 69 <www.treasury.gov.za>.

33 Davis Tax Committee, above n 30, at 90.

34 Kyle Mandy "Rewriting SA Tax Law", *FA News* (online ed, 6 February 2013).

35 South African Revenue Services *Memorandum on the Objects of the Tax Administration Bill, 2011* (2011) <www.sars.gov.za>.

36 South African Revenue Services, above n 35, at 178.

37 South African Revenue Services, above n 35, at 178. Steyn and Stiglingh, above n 2, at 166.

38 Tax Administration Act 2011 (South Africa).

39 Davis Tax Committee, above n 30, at 90.

to their reputation.<sup>40</sup> While SARS is focused on restoring its credibility, it would not be surprising if the next reform is delayed further.

## 6.0 EVENTS RELATED TO THE REWRITE IN INDIA

The government of India first initiated the process of the rewrite of the Income-tax Act 1961 between 1986 and 1991.<sup>41</sup> In 1991, however, it prioritised tax structure reforms recommended by the Chelliah Committee and did not enact the rewritten legislation. In 1996, the government made a second attempt to redraft the legislation, and the in-house group submitted a report. However, the 12th *Lok Sabha*<sup>42</sup> – the Lower House of the Parliament of India – was dissolved and consequently the redrafted Act was not enacted.<sup>43</sup> The author could not obtain access to material related to these events.

The third attempt to replace the Income-tax Act 1961 with simplified legislation began in February 2005, when the Indian government was led by the United Progressive Alliance, or UPA. The then Finance Minister, P Chidambaram, announced that he had received suggestions to changes he had made to laws concerning certain direct taxes. He accepted the suggestions and intended to incorporate them in a separate, revised and simplified Income Tax Bill.<sup>44</sup> In September 2006, he announced that from 1 April 2008 the government intended to effect the “Direct Taxes Code” with these changes. It was intended that, at the earliest date, the Code would replace the Income-tax Act and incorporate all extant direct taxes.<sup>45</sup>

Arbind Modi, the then Joint Secretary of the Tax Policy and Legislation Division of the Central Board of Direct Taxes (CBDT), played a significant role in drafting the Direct Taxes Code Bill. In August 2009, after drafting the Bill, but before introducing it to the Lower House of the Parliament, the Ministry of Finance released the Bill<sup>46</sup> along with a discussion paper<sup>47</sup> to the public for comment. In June 2010, after the first round of consultation ended, the Ministry released a revised discussion paper.<sup>48</sup> Following the pre-parliamentary consultation process for the paper, the ministry placed the revised Bill before the Parliament for approval in August 2010.<sup>49</sup> In September 2010, the Parliament referred the Bill to the Standing Committee on Finance.<sup>50</sup> In March 2012, following a broad-based consultation with various stakeholders, the committee submitted its final report to the Parliament.<sup>51</sup>

On 31 March 2013, after considering the recommendations of the Standing Committee, the government released the revised Bill for public comment.<sup>52</sup> However, with the dissolution of the 15th *Lok Sabha*, the Bill lapsed.

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40 See Lynette Dicey “The Impact of Corruption on Tax Administration” (2019) 34 *Tax Professional* 6.

41 Income-tax Act 1961 (India).

42 When translated into English, it means the “House of the People”.

43 Task Force for Drafting the New Income Tax Law *Report on Income Tax Reforms for Building a New India* (September 2018) at (i).

44 P Chidambaram, Minister of Finance “Budget 2006-2007” (Lok Sabha, Parliament of India, 28 February 2006) at [180].

45 “New Income-tax Act likely in 2008” *The Hindu*, (online ed, Chennai, 9 September 2006).

46 The Direct Taxes Code Bill 2009 (India).

47 Ministry of Finance *Direct Taxes Code* (Government of India, New Delhi, 2009).

48 Ministry of Finance *Revised Discussion Paper* (Government of India, New Delhi, 2010).

49 The Direct Taxes Code Bill 2010 (India).

50 The Standing Committee on Finance is a Departmental Related Standing Committee. It examines matters related with Ministry of Finance, Ministry of Corporate Affairs, Ministry of Planning, and Ministry of Statistics and Programme Implementation. It is constituted under r 331C of the Rules of Procedure and Conduct of Business in Lok Sabha.

51 Standing Committee on Finance *The Direct Taxes Code Bill Forty-Ninth Report 2010 Lok Sabha Secretariat* (March 2012).

52 The Direct Taxes Code Bill 2013 (India).

In May 2014, the Bharatiya Janata Party, or BJP, formed the government. In July 2014, when presenting the Union Budget, the then Finance Minister, Arun Jaitley, observed that the government would consider existing comments from stakeholders on the Direct Taxes Code Bill 2013. It would review the Bill as it then stood, and take a view of the whole matter.<sup>53</sup> However, on 28 February 2015, Jaitley announced that most of the Bill's provisions were already included in the Income-tax Act 1961 and that there was no merit in going ahead with the Direct Taxes Code as it stood in 2015.<sup>54</sup>

On 27 October 2015, the government established the Income Tax Simplification Committee under the chairmanship of Justice RV Easwar, a retired judge of the Delhi High Court.<sup>55</sup> In 2016, the committee submitted two reports.<sup>56</sup> The government implemented certain recommendations of the committee through Union Budgets for the financial years 2016-17 and 2017-18.

At an annual conference of senior tax officers on 1 September 2017, the Prime Minister, Narendra Modi, observed that the Income-tax Act was drafted more than 50 years ago and that it needed to be redrafted in the light of changed times and new developments and demands.

Therefore, in November 2017, the government constituted a Task Force to review the Income-tax Act and to draft new direct tax legislation.<sup>57</sup> It also asked the Task Force to consider direct tax systems in various countries, international best practices, and the current economic needs of India.<sup>58</sup>

Arbind Modi, who earlier played an important role in drafting the Direct Taxes Code Bill, was again appointed the Convenor of the Task Force. When he retired, Akhilesh Ranjan, a senior Indian Revenue Services Officer, was appointed as Convenor. In August 2019, the Task Force submitted its report and a draft of new income tax legislation to the current Finance Minister, Nirmala Sitharaman.<sup>59</sup> To date, the Ministry of Finance has not yet released the report and draft to the public.

Certain news reports have speculated on the content of the report and draft observing that the draft is half the length of the Income-tax Act 1961.<sup>60</sup> The Task Force attempted to define terms clearly and simply, and to minimise provisos and explanations which dominate the legislation currently in use. It recommended major changes to tax brackets to provide individual taxpayers with major relief. It proposed changes to the corporate tax regime and suggested that the corporate tax rate be reduced, that domestic and foreign companies be taxed at the same rate, and that branch profit tax be applied to profits that foreign companies repatriate to their national headquarters. It also recommended abolishing dividend distribution tax and certain corporate tax exemptions. Further, the Task Force proposed major changes in the audit process. It suggested that the concept of an assessing officer be replaced with assessment units, and that separate units for specifically conducting transfer pricing audits be established. Moreover, it recommended improvements

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53 Arun Jaitley, Minister of Finance "Budget 2014-2015" (Lok Sabha, Parliament of India, 10 July 2014) at [208].

54 Arun Jaitley, Ministry of Finance "Budget 2015-16" (Lok Sabha, Parliament of India, 28 February) at [129].

55 "Government Sets-up a Committee to Simplify the Provisions of the Income Tax Act, 1961" (Press Information Bureau, New Delhi, 2015).

56 Income Tax Simplification Committee Report (Containing First Batch of Recommendations to be put up in Public Domain) (2016).

57 "Government of India, Constitution of Task Force for Drafting a New Direct Tax Legislation" (Press Information Bureau, New Delhi, 2017).

58 Ministry of Finance, Department of Revenue, Office Order F No 370149/230/2017 (22 November 2017).

59 "Task Force on Direct Tax Code Submits Report to FM Nirmala Sitharaman" *The Economic Times* (online ed, Mumbai, 19 August 2019).

60 "Ten Big-ticket Recommendations of Task Force on New Direct Tax Law for India" *Taxsutra* (online ed, Pune, 19 August 2019). "New Income-tax Bill: Key Recommendations in Task Force's Report" (2019) 109 *taxmann.com* 29 (article). Jayesh Kariya and Nikita Verma "Insight: Direct Tax Code – A New Era for the Indian Economy?" *Bloomberg Tax* (7 October 2019).



to the dispute resolution mechanism including the establishment of a separate litigation management unit to manage the entire litigation process, and introducing mediation and the concept of public ruling to Indian tax law.

After the Task Force submitted its report, Akhilesh Ranjan indicated that the Task Force tried to simplify the structure of the income tax law, which had become very complicated because of the frequent addition of provisions.<sup>61</sup> The Task Force simplified the provisions and revised their structure in areas such as capital gains and taxation of charities. It has recommended the reduction of tax rates for individuals and corporations. The Task Force suggested reforms for broadening the tax base, reducing litigation and easing the penalty regime.<sup>62</sup> Hints given by Ranjan confirm certain speculations in the news reports.<sup>63</sup>

Following the submission of the report and the draft of new income tax legislation by the Task Force, expectations were that in the Budget Speech for the financial year 2020-21, the Finance Minister would release the draft of the new legislation for public consultation. To date the Finance Minister has made no reference either to the report or the draft submitted by the Task Force. A recent news report states that the government is of the view that the recommendations of the Task Force are too radical and require further deliberation. For this reason, the government has delayed the release of the report and the draft.<sup>64</sup>

Although the government has decided to deliberate over the release of the draft, it has advanced tax reforms that correspond to the Task Force's recommendations. For instance, in September 2019, the government reduced corporate income tax rates and disallowed certain deductions and exemptions. It gave an option to corporations to select between the old and the new regime.<sup>65</sup> The government plans to phase in further reduced corporate tax rates.<sup>66</sup> In the Budget for the financial year 2020-21, it abolished dividend distribution tax. It also introduced a new income tax regime that disallows certain deductions. As with the corporate income tax, the government has opted to keep the existing personal income tax regime. It follows that, although the government has not announced so officially, it has begun implementing the recommendations of the Task Force.

## 7.0 ABSENCE OF COLLABORATION IN SOUTH AFRICA AND INDIA

It will be recalled from section 3, rewrite projects in New Zealand, the United Kingdom and Australia were a collaborative exercise between the government and different stakeholders, headed by their tax authority. A consequence of this approach was that changes of government did not impact on the project's progress.

This feature cannot logically be used to evaluate the effectiveness of measures that South Africa has taken so far to rewrite its tax legislation. The SARS drafted the Tax Administration Bill, and the government

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61 "Corporate Tax System Complex, Need to Make it More Streamlined, says CBDT's Akhilesh Ranjan" *The Economic Times* (online ed, Mumbai, 19 September 2019). Shreya Nandi "Compliance Key Focus in New Direct Tax Code Report: Ranjan" *Livemint* (online ed, New Delhi, 20 September 2019).

62 "Equity Taxes Need Serious Simplification, Says Former CBDT Member Akhilesh Ranjan" *CNBC TV18* (10 December 2019).

63 "Ten Big-ticket Recommendations of Task Force on New Direct Tax Law for India", above n 59. "New Income-tax Bill: Key Recommendations in Task Force's Report", above n 59. Kariya and Verma, above n 59.

64 Shrimi Choudhary "'Too Radical': Centre Likely to Implement Direct Tax Code in Parts" *Business Standard* (online ed, New Delhi, 4 February 2020).

65 Shishir Sinha "Finance Minister Unleashes Corporate 'Animal Spirits'" *The Hindu* (online ed, Chennai, 21 September 2019). Shruti Srivastava and Vrishti Beniwal "India Surprises with \$20 Billion Tax Cut Stimulus; Stocks Soar" *Bloomberg* (20 September 2019).

66 "Corporate Tax for Firms with Over Rs 4000 Crore Turnover to be Cut Gradually" *Business Standard* (online ed, New Delhi, 4 December 2019).

released its first draft for public consultation; however, in the absence of further progress, it should not be assumed that SARS has been leading the rewrite process, and that the exercise has been collaborative. Further, since South African independence, the African National Congress (ANC) has remained in power. Thus, it is not possible to evaluate whether the process would have continued had a different political party come into power

By contrast, the effectiveness of India's efforts to replace its tax legislation can be evaluated based on this standard. Unlike New Zealand, the United Kingdom and Australia, the rewrite process in India never seemed to be a collaborative exercise either between the government and other stakeholders, or between the government and the tax authority. Further, the government of the day, rather than the tax authority, led the rewrite process.

The author found no records indicating that the UPA-led government established a body which included private sector representation when drafting the Direct Taxes Code Bill. It did, however, release drafts of the Bill for public comment. By contrast, the BJP-led government established a Task Force composed of officers of the CBDT, accountants, economists and lawyers. However, it implemented the Task Force's recommendations without releasing the draft of the new legislation for public comment.

As discussed earlier, Ranjan indicated that the policy makers intended the new legislation to be implemented concurrently, whereas the BJP-led government implemented Task Force's recommendations in instalments. The BJP-led government's move undermines the Task Force's effort and planning and reduces the effectiveness of the reform.

Further, the rewrite process was executed as initiatives of finance ministers led by different political parties. A successor, regardless of his political party, did not back his predecessor's rewrite.<sup>67</sup> It is unsurprising, therefore, that the process of redrafting the Income Tax Act 1961 was abandoned and reinitiated when governments changed. Indian politicians use the rewrite for political advantage.

## **8.0 ABSENCE OF A PREDEFINED SCOPE AND TIMEFRAME IN SOUTH AFRICA AND INDIA**

As discussed in section 4, in New Zealand, the United Kingdom and Australia, policy makers set goals and a timeframe for their rewrite projects and revised them regularly.

The rewriting process seems to miss a predefined scope and timeframe. The government declared certain tax measures as steps towards rewriting the Income Tax Act 1962. However, it appears as if these were not pre-arranged to be adopted at specific stages of the process. For example, in 2005, when the government announced that it was in the process of drafting the Tax Administration Bill, it did not indicate that it considered this to be a step towards rewriting. In 2011, the memorandum of objectives of the Tax Administration Bill clarified that the scope of the project had been extended and was a preliminary step towards the process. Similarly, no official records show that, before 2009, the government intended to start the rewrite process by simplifying the employment income tax base. The government seems indecisive about the scope of the project and, up until now, its actions seem incidental.

The absence of a set timeframe is apparent. Since 2009, the government has made little significant progress in simplifying the employment income tax base; and has not announced a date to complete the project. Since 2012, the government appears to have abandoned the rewrite process. To be fair, since 2012,

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67 "P Chidambaram Unhappy with Pranab Mukherjee's Direct Tax Code Bill" *Time of India* (online ed, Mumbai, 7 June 2013).

it introduced reforms such as the adjustment to e-filing arrangements and the construction of more effective communication channels between SARS and individual taxpayers: although, it has not demonstrated how these reforms helped to advance the rewrite process.

The government's approach has resulted in uncertainty over the rewrite process. On one hand, experts and scholars consider that the need for a complete rewrite is urgent and should not be delayed.<sup>68</sup> Their opinions show that the rewriting process exists, but the government has paused it. On the other hand, the Davis Tax Committee's 2018 report considered a rewrite as a possible solution to simplify tax legislation and shows that the government has not yet initiated the rewrite process.<sup>69</sup>

Unlike New Zealand, the United Kingdom and Australia, India does not appear to have set timeframes and goals for managing the process. Although the parliament debated the Direct Taxes Code Bill for five years, the Bill failed to pass. Parliamentary debates are essential when scrutinising proposed legislation but could be managed more efficiently.<sup>70</sup> The BJP-led government has begun to implement the changes recommended by the Task Force but has neither released a timeframe for implementation of reforms, nor announced a schedule for the transition from the old law to the new.

## 9.0 CONCLUSION

Rewrite is a fundamental and major tax reform, and experiences from New Zealand, United Kingdom and Australia show that it cannot successfully be undertaken without serious planning. The author acknowledges that TLIP has not yet been completed; however, in certain aspects, it was influenced by the rewrite in New Zealand.<sup>71</sup> The rewrite attempts in these three countries had two common features. First, they undertook rewriting as a dedicated project and a collaborative exercise. This helped their projects to continue uninterrupted even through the changes of governments. Secondly, each country predefined the scopes of the projects, and set and reviewed goals and timeframes.

Although South Africa and India have taken steps to rewrite their income tax legislation, they have not been able to replace it. Their attempts lack serious planning. In India especially, attempts to rewrite the income tax legislation seem to be politically motivated ad hoc adjustments not the result of serious consideration.

South Africa and India did release drafts of new legislation for public comment. The experience of New Zealand, the United Kingdom and Australia, however, show that collaboration is more than simple public consultation. In addition to collaboration between government and private sector, a rewrite project also needs both ruling and opposition parties to co-operate, and the government and tax authority to work together. While it is difficult to comment on whether the rewrite process in South Africa has shown such collaboration, the rewrite process in India certainly lacks it. In India, changes in governments have affected the rewrite. Government does not seem to work in co-ordination with the policy makers whose significant recommendations it has disregarded.

South Africa and India undertook the rewrite without setting clear goals. In both countries, the rewrite process lacked both an overarching plan and an established timeframe. Considering the present state of

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68 Mandy, above n 34. Steyn and Stiglingh, above n 2, at 165.

69 Davis Tax Committee, above n 30, at 91.

70 The United Kingdom managed the parliamentary debates to facilitate expeditious scrutiny of rewritten Bills

71 Sawyer, above n 5, at 5.

rewrite in both countries, the process seems to be abandoned. In South Africa, it is unclear whether the government ever intended to undertake a rewrite.

The problem with the approach of the two countries, especially India's, is that regularly abandoning and reinitiating the rewrite process has led to an inefficient use of already limited policy-making and administrative resources. Each country should prepare overall plans and realistic timeframes for orderly completion of the process. Both countries are developing economies, so such an approach would utilise their constrained resources more efficiently.

Attempts made by South Africa and India lack one or both features of a rewrite project. Nevertheless, they were tax reforms, for which both countries employed monetary and institutional resources. The following article examines the process of tax reform concerning the redrafting of income tax legislation in South Africa and India.<sup>72</sup>

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<sup>72</sup> To be published in the third issue of (2021) 27 NZJTLP later this year.