

# MINUTES

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## BUSINESS TAX FORUM

16:00 hrs, Monday 16 December 2002

Inland Revenue, William Pitt Conf Rm, New Wing, Somerset House

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### ATTENDEES:

#### *Inland Revenue*

Dave Hartnett \* (Head of Revenue Policy)  
Mary Hay (Director, Business Tax)  
Stephen Jones (Director, Large Business Office)  
Richard James (Business Tax, Secretary)

*HM Treasury* Ivan Rogers

\*Co-Chairman

#### *Business*

Jon Symonds \* (100 Group)  
Patrick Chapman (100 Group)  
Philip Gillett (CBI)  
Ian Menzies-Conacher (CBI)

### 1. Minutes of previous meeting & matters arising

JS as business Chairman opened the meeting. The minutes of the previous meeting were agreed. There were no matters arising.

DH reported that the Revenue could now commit to circulating CFC guidance on the motive test by the end of January 2003. It was agreed that business would review this guidance and then provide feedback on any remaining areas where there was still confusion.

#### Action point:

Inland Revenue to circulate CFC guidance by 31 January 2003.

### 2. Review of Links with Business – performance measures

#### *Performance measures*

Business considered that this item should appear regularly on the Forum agenda in order to ensure that momentum was maintained and to allow the Forum to track progress against outcomes.

A set of “straw man” measures for recommendations 3, 9, 21, 32 and 36 had been discussed at a sub-group meeting of 11 December had been very useful. In the light of that, the LBO had pulled together further information, which Stephen Jones reported to the meeting as follows:

- **Ring-mastering**

The LBO is currently working on a written protocol to define the role. This represents a significant cultural change and it is important to ensure that the needs of colleagues in Revenue Policy and the LBO are taken into account. In the meantime, anecdotal evidence of improved co-ordination on pilot cases is encouraging.

- **Case team stability**

Case Director turnover was 21% in 1999/00, 17% in 2000/01, 19% in 2001/02 and stands at 16% in the year to date. But the figures included a substantial number of retirements. (Many Case Directors are in their fifties.) LBO Case Director is an important posting and it is regarded as desirable that tours of duty reflect the length of the learning curve, particularly in specialist areas.

It was important to recognise, however, that it is case team continuity which is critical. LBO policy is not to churn team members at the same time as Case Directors, although sometimes wholesale change is unavoidable.

- **Recommendation 21**

All sector groups now have a policy link and, in general, policy representatives will attend all sectoral meetings. It was considered desirable to have a performance measure that focussed on the contribution by business – for example, by looking at the actions undertaken by business to improve Revenue sectoral understanding.

The performance measures that had been discussed at the meeting on 11 December were illustrative and related only to the recommendations that business had identified as the most important. It is now necessary to identify which recommendations the Forum wants to monitor and to devise similar performance measures for those recommendations.

**Action point:****Secretariat to put forward proposals for consideration.**

Business advised that they regarded Treasury consents as an important area for making progress. They agreed to provide a short paper on an alternative approach including examples of where the operation of Section 765 was perceived to create problems.

***Interim evaluation of Recommendation 6***

A note of the findings of the interim evaluation of the new compliance process had been circulated with the agenda. Since then, feedback received from the Large Corporates Forum suggested that the pilot should be allowed to run its course before being adopted across the LBO. The LBO will invite more groups, who are ready to join the pilot, to do so next year, and simultaneously encourage those who are not ready to prepare themselves to join.

Business responded that it was vital to maintain the credibility of the evaluation process. Conducting a review of the pilot after 18 months, against the annual returns cycle raises reservations about the relatively short period of the review. Business commented that he had found the interim evaluation to be very encouraging. There is a need to continue gathering evidence and marketing the pilot both internally and externally.

A number of groups within the pilot have asked about bringing within its scope Schedule E and NICs issues. This might offer the Revenue benefits in the form of earlier awareness of evolving corporate remuneration strategies, and focusing Employer Compliance resources more sharply on the main risks. The Revenue would be interested to learn about strategic remuneration issues, including cost benefits analysis and balance of incentivisation versus salary.

The LBO would, over the next couple of years, be rolling out a new risk-based approach to Employer Compliance work, to replace the current cyclical system where the aim is to review all companies periodically. The LBO is also enhancing the technical support available to Employer Compliance teams.

Business welcomed the adoption of a risk-based approach to Employer Compliance. There is currently a Revenue employee on secondment within AstraZeneca who is learning a great deal about the approach that companies take to remuneration issues. He suggested that she could come and talk to the Forum about her experiences, as she would bring valuable insights from both the Revenue and business perspectives.

Ian Menzies-Conacher advised that some work had been done within Barclays' HR team on the relative merits of different remuneration strategies.

**Action point:** IR secondee with AstraZeneca and a representative from HR at Barclays to attend a future meeting of the Forum to speak about their perceptions surrounding remuneration strategies.

### 3. Revenue / business groups

The purpose of the Business Tax Forum was to function as an umbrella group rather than pursuing individual issues, more appropriately covered by existing groups. The BTF may want to commission work from other groups and establish areas where, for example, a new sub-group might be required.

**Action points:**

- Business attendees to consider if any new sub-groups should be formed. Results to be fed back at the next meeting of the Forum.
- Business and Revenue attendees to consider how the Business Tax Forum should best function as an umbrella group and how it should go about commissioning work from other groups.

Business and Revenue attendees agreed that lawyers' and accountants' groups should have links to the Business Tax Forum. There are issues on which their input would be very valuable and the Forum expressed a desire to engage with them to utilise their expertise, where appropriate.

**Action point:** JS and PC to raise with the next meeting of the 100 Group how business would like to have the lawyers' and accountants' groups aligned with the Business Tax Forum.

The BTF agreed that the Retail Sector Group should be formally recognised under the umbrella of the Business Tax Forum. More generally, the point was made, that all businesses can make representations through the BTF. BTF members attend on behalf of business as a whole (through the rep bodies) rather than their own companies or sectors.

SJ explained the way in which membership of the Large Corporates Forum was drawn. Business members were content with that, and it was agreed they would be sent the minutes of the meetings of the Large Corporates Forum.

**Action points**

- SJ to add business representatives to the circulation list for minutes of the Large Corporates Forum.
- Revenue to circulate further information on the transfer pricing group.

#### 4. Reform of Corporation Tax

A paper had been circulated to all attendees summarising the current position in respect of Corporation Tax reform consultation. A meeting had been held with consultees to discuss how they would like to see the consultation process move forward. The Revenue would be arranging sector meetings during the next tranche of consultation in order to get to grips with the sector specific issues.

Business suggested that a key consideration emerging from the consultation process is the development of International Accounting Standards. They suggested that accounting standards are likely to result in profit being nothing more than the difference in valuations between two balance sheet dates, which they suggested might not be an adequate measure of profit for taxation purposes. Business was of the opinion that the Dutch and Germans are recognising this and considering how to approach the changes in accounting standards. The Revenue team was well seized of the issues and was in contact with the Accounting Standards Board.

Business confirmed that they were happy with the way that the CT Reform consultation had been conducted, and agreed that there was no need for the Forum to consider the detailed issues which were already being covered within that process.

#### 5. Pre-Budget Report stocktake

##### *Modernisation of Stamp Duty*

Business attendees advised that property sector representatives had raised questions at the last meeting of the CBI about aspects of the Stamp Duty consultation process. Sector representatives had suggested that there was a need for greater Revenue understanding of the commercial context. Also, there was a suggestion that the issues that they most wanted to talk about were not getting sufficient airtime in the meetings.

DH responded that the property sector was very well represented on the modernisation steering group and, as a result of their involvement in the process, the Revenue has learned a lot about which issues are most important to them. The law relating to Stamp Duty is very old and has not been

consolidated for a very long time. This adds a great deal of complexity to the process and so the priority at present is to obtain a coherent picture. The members of the steering group have been very helpful in this regard, producing papers and discussing issues in order to assist the Revenue in gaining a full understanding of the issues. This does, however, take time. The message for the property sector is that the Revenue is considering all the representations that they are making but at present is also focussing on obtaining a clear and coherent picture to inform the way forward.

### **CFCs**

The Revenue advised that the new CFC measures are anti-avoidance measures and so consultation is not appropriate. Business responded that there are some practical problems emerging with the detail of these measures. Particular reference was made to the term 'habitually resident', which business attendees advised is a new term that they do not fully understand. They would appreciate this being addressed through guidance.

## **6. US Thomas Bill**

Business advised that UK companies regard this Bill as raising significant problems. UK companies are working on delivering a consistent message to the US, based on the argument that the US proposals are a breach of the fundamental arms length principle endorsed by the OECD. Business is lobbying the US Government, but requires support from the British Government. Jon Symonds advised that he has had a meeting with the DTI, at which he emphasised how seriously business viewed this subject.

The Revenue responded that both the Revenue and the Treasury are taking the proposals seriously and were aware of the concerns that business had raised. The ratification of the new US / UK Treaty also remained a top priority.

## **7. Business forecasting methods**

The Revenue is currently reviewing its CT forecasting methodology, and was interested to learn how businesses forecast future profits and tax.

They asked whether any members of the CBI or the 100 Group would be willing to talk to the Revenue's forecasting review team about their forecasting practices. Business attendees confirmed that there would be companies who would be willing to help in this area.

**Action point:**

**Business secretary to provide names of businesses willing to assist the review team.**

## **8. Avoidance – a business perspective**

Business provided views on avoidance as follows.

There is not really an avoidance industry as such. Generally speaking, schemes are devised and marketed that are compatible with the ordinary business of the company devising the scheme, and they are then 'tagged on' to the business of the provider. So for example, a company whose ordinary business involves dealing with Financial Instruments may market a scheme that uses Financial Instruments, while property lawyers would be more likely to market a Stamp Duty scheme, and human resource firms may offer NICs avoidance schemes. There are not many companies that sell schemes simply for the sake of doing so, where the schemes are not linked to the general business of the company.

When it comes to tackling schemes, there is the obvious option of litigation, however this is an endless process that simply repeats itself whenever a new scheme comes along. Another option, used in the US, with the potential for tackling avoidance was a disclosure requirement. A disclosure requirement would enable the Revenue to be fully informed about schemes and to make educated decisions based on the information made available. The US model may not be an ideal format to emulate, but the point was made that the Schedule M adjustments in the US are valuable. There is a question of timing over disclosure – if the requirement applied to returns, there would still be a long gap between a company becoming involved in a scheme and being required to disclose the fact to the Revenue. It is, however, difficult to see what else the disclosure requirement could be attached to.

In the US, auditors cannot now approve a scheme that has been marketed by their own company. So any scheme has to overcome the hurdle of approval by independent auditors. In addition, the role of auditor committees has become more rigorous.

Enhanced effectiveness in tackling avoidance is one of the Revenue's high level outcomes from the Review of Links and the topic will be scheduled for further discussion (to be led by the Revenue) at a future meeting.

## **9. Any other business**

It was agreed that performance measures for the Review of Links with Business would be an agenda item for all meetings of the Forum.

It was agreed that future BTF meetings and agenda-setting meetings should be set up as soon as possible to cover the next 18 months.

RJ advised business attendees that publication of the draft share scheme clauses was anticipated by the end of this week, although this was subject to receiving Ministerial approval. This point had been queried at the meeting of 11 December.

RJ also advised that the short delay in publishing PBR material on the IR web site, as queried at the meeting of 11 December, had been caused by temporary IT problems. The material had been published as soon as these difficulties were resolved.

**NEXT MEETING: 17 March 2003**