

# MINUTES

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## BUSINESS TAX FORUM

13:00 hrs, Monday 17 March 2003

Inland Revenue, Board's Room, 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)  
Mike Williams \* (Deputy Director, International)  
John Johnston # (Deputy Director, International)  
Richard James (Business Tax, Secretary)

*HM Treasury* Ivan Rogers

\*Co-Chairman

\*Present for items 3-6 only

#Present for items 1 & 2 only

#### *Business*

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

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

The minutes of the previous meeting were agreed without further amendment.

It was agreed that the planned discussion around remuneration strategies would take place at the June meeting of the Forum. As part of that discussion, business would cover the role of share options in remuneration and how this role might be changing to reflect market performance and other factors.

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

The Revenue advised that the **Action Plan** for the Review of Links with Business was in the process of being updated. They also confirmed that the updated version would be placed on the IR web site after the Budget.

It was agreed that the draft updated Action Plan would be circulated to Forum members for comments before being finalised.

The Revenue advised business that work on performance measures would be developed further once the Action Plan update had been completed.

John Johnston provided an update to the Forum regarding progress on **Recommendation 26**, relating to expatriates. He advised that discussion had taken place last year with representative bodies, accountancy firms, the CBI and some companies employing large numbers of expatriates. This had produced some emerging conclusions, which were themselves discussed further. Following this discussion, a draft statement of good practice was being finalised with a view to publication in the near future. The key recommendations resulting from the consultation were outlined to the Forum as follows:

1. Establish a discussion forum to continue dialogue between stakeholders on inward expatriate tax/NIC issues.
2. Internally reorganise inward expatriate work so that this is handled by a small number of specialist teams.
3. Special Compliance Office would no longer routinely enquire into inward expatriate employees of multi-nationals.
4. Rewrite and improve the guidance material on tax and NIC issues for foreign nationals working in the UK, bringing together relevant material electronically.
5. Establish a co-ordinating unit with a national remit to ensure that the specialist expatriate units achieve consistency, develop expertise, inform policy and adopt best practices.

The principal success criterion that had been determined by the team was that these recommendations should be implemented within a reasonable time.

Business agreed it is important to have success measures for the recommendation. They suggested that, in addition to implementing the recommendations in good time, at least some of these measures should relate to outputs; addressing whether or not reviews were taking less time and were more focussed on risks. These measures will be subjective and based on business' perceptions of how expat reviews are functioning, but will indicate whether the statement of best practice is having its intended effect. The Revenue would of course monitor the effectiveness of their risk assessments.

At the December meeting while considering the range of, and relationships between, joint Revenue / business groups; the informal **transfer pricing group** had been highlighted for discussion at this meeting. Business representatives commented that globalisation would continue to give rise to new operational

issues surrounding transfer pricing and the practical applications of the rules. Complexity would also increase. Typical of this was the Waterloo case (SpC301), on which the Revenue had recently discussed with business and then issued guidance. Business were of the view that without even greater clarity on 're-charging' issues, transfer pricing could result in double taxation and an increase in the number of Competent Authority claims made. In light of that, Business proposed that the informal group be given a clearer role and be brought under the umbrella of the Business Tax Forum. The Revenue agreed this proposal.

<b>Action point</b>	<b>Revenue to formalise and convene the transfer pricing group under the umbrella of the Business Tax Forum</b>
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Business suggested that it would be useful to have a discussion around pensions simplification at a future date.

<b>Action point</b>	<b>Pensions simplification to be placed on the agenda for the next meeting of the Business Tax Forum</b>
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### **3. CFC motive test and ABTA case implications for business**

Business representatives commented that the recent guidance on the CFC motive test was very clear and well written. They were of the view, however, that despite the examples, it still did not provide a substantial insight into the Revenue's view of how current policy translates into legislation and hence into operational policy. As a result, businesses were still unsure of the principles underlying the motive test.

Business accepted that a prescriptive test fully detailed in law, would be inflexible and impractical, and that it is therefore inevitable that there will be an element of subjectivity in any test. But they hoped to have greater transparency around application of that subjectivity in the guidance. The Revenue responded that the ABTA case contained some useful comments, but that there seemed to be an underlying problem in that business seemed to want a broader test than the Revenue considered compatible with current legislation. If so, then that was a policy issue, rather than a question of guidance.

Business advised that they were of the opinion that a lot of activities were caught by the CFC rules. While it was undoubtedly the case that many of those activities were those that the rules were intended to catch, business believed that the rules also caught some other activities where there was no avoidance intent, such as the use of shared service centres (for example, call centres sited in India). Business said that 17 years of commercial developments and

legislative evolution left it difficult to draw coherent policy objectives from the current legislation and practice.

Business suggested that it would be worth establishing a sub-group to the BTF, which would be tasked with looking at CFC examples (excluding those at the aggressive financing end of the CFC spectrum) and exploring issues around the application of the CFC rules. There was not considered to be any benefit to the group examining the more controversial aspects of CFCs at the current time, as this would inevitably stray into a policy debate which is outside the remit of the group. But business representatives expressed the hope that some progress could be made on non-controversial aspects of the regime.

It was agreed that business would supply examples of their difficulties with the CFC rules to provide a base from which to take forward work on the practical application of the CFC regime.

<b>Action point</b>	<b>Patrick Chapman to supply these examples to Mike Williams or Ray Casanove</b>
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#### **4. ECJ decisions impact on UK tax law**

Business had put this item on the agenda to signal the concerns they had about the issue and to offer their insights into any future consultations or other contacts the Government might want to undertake. Revenue / HMT said that this was a policy matter. They would note the BTF's views. CBI had already met with Treasury officials and would be meeting Special Advisers shortly. The Paymaster General had said to the representative groups that she would be happy to receive views from business on the European issues. Business confirmed that they would consider providing submissions summarising their stance on this subject. In the meantime, their perspectives of their European counterparts' views would be of interest.

Business suggested that a number of member states would support limiting the ECJ – either permanently or through temporary measures. Views among European member states' business organisations are mixed. The Germans' view is close to that of the CBI, in that they are not enthusiastic about a Europe-wide system of corporation tax. The Swedish are very keen on a European system, while the Dutch are somewhere in the middle. Many others are not at all sure where they stand on this question.

#### **5. US Budget proposals - developments**

While any debate on policy issues arising was outside the scope of the BTF, business suggested the BTF continued to be a useful information exchange on

the response to the US proposals. They commented that there was no evidence to support the view that non-residents pay any less tax in the US than residents. They suggested that much of the abuse could be attributed to US inverters and they commented that these proposals would not adequately address that issue, but would penalise many other companies. They commented that the existing rules are already tight.

Business commented that they are debating among themselves whether it would be more productive to oppose the proposals as a whole, or to limit their opposition to the most damaging parts of the proposals. They commented that safe harbours based on cash flow would be far less damaging than safe harbours based on balance sheets. They commented that banks lend money on a cash flow basis rather than on a balance sheet basis, and so this would be a more realistic view of the world.

Business commented that they believe the US proposals to be out of step with the arm's length principle, and so the UK should resist the proposals on these grounds. Business are still hoping that these proposals might just go away, but the majority political view in the US is currently that inward investors do not pay their share of tax. In this environment, it is difficult to see the proposals being dropped in their entirety.

The Revenue confirmed that contacts are continuing between the US and UK Governments on this subject and the potential effects of the proposals on UK businesses are being made clear to the Americans.

## 6. **Operation of Section 765**

Philip Gillett advised the Forum that he had been unable to persuade any companies to provide details of the specific problems that they had encountered with the application of Section 765.

Business representatives and the Revenue agreed that it would only be possible to make progress on business' concerns about the operation of Section 765 if specific examples of instances of difficulty were supplied.

Business conceded that, without specific examples, little progress could be made.

It was agreed that, if examples were not forthcoming by the June meeting, it would be time to lay the matter to rest as far as BTF involvement is concerned.

<b>Action point</b>	<b>IR to approach companies to see if any are willing to provide information regarding any problems with the application of Section 765</b>
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## 7. IAS impact on UK business tax

Business representatives suggested that this was an area where they could see some value in establishing a forum where operational issues relating to IAS can be explored and any potential problems identified. They suggested that it might be beneficial to establish this group under the umbrella of the Business Tax Forum.

Officials responded that the prospects of establishing such a group are currently being explored and that if Ministers are content, this can be taken forward following the Budget.

Business commented that, in their view, the group ought to involve representatives of business, Inland Revenue, the Accounting Standards Board and possibly the professions.

## 8. BTF umbrella of activity

It was agreed that the lawyers' and accountants' groups would need to be approached by the Business Tax Forum to discuss how they should interact with the Forum. As the two groups were likely to want to focus on different issues, they ought to be approached separately.

<b>Action point</b>	DH and JS to write to the lawyers' and accountants' groups after the Budget with a view to establishing groups under the umbrella of the Business Tax Forum
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Members of the Forum agreed that the role of the BTF ought to be as a steering group that monitored the activities of the sub-groups formally within its umbrella. The BTF should resolve any points of difficulty that arise within sub-groups and it should address itself to any issues that are regularly raised within sub-groups, but for which a resolution is not forthcoming. It was agreed that the sub-groups should report back to the BTF periodically, so that co-ordination of these groups could be maintained. However, the frequency of the reports needed to be balanced with the time investment that would result.

It was agreed that all relevant existing groups (identified in the paper presented to the December meeting of the Forum) should be given the opportunity to comment on what they felt they could derive from a relationship with the Business Tax Forum.

<b>Action point</b>	Revenue secretariat to request a paper from each of the existing groups summarising what they would like the BTF to do for them and what the BTF could gain from them
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Business representatives commented that they consider the key issues to have groups address specifically under the guidance of the BTF are transfer pricing, IAS, and the operation of CFC legislation. They also considered the Large Corporates' Forum to be a fundamental group within the BTF umbrella.

<b>Action point</b>	Revenue secretariat to liaise with existing or potential group members and advise on how the Business Tax Forum's objectives might be met. Revenue secretariat to bring the resulting proposals to the June meeting of the BTF.
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## 9. How business forecasts profits and CT liability

Following the discussion around forecasting at the December meeting of the Forum, business asked for more information on how exactly they could help to inform the Revenue's work in this area. Officials responded that they were interested in forecasting methodology, which could help to inform the work that the Revenue is doing on refining its own tax yield forecasting methods. The two main aspects to this are:

- Forecasting of profits themselves, and
- Forecasting of tax liabilities based on these profits.

Information provided would be treated as confidential to the Revenue's forecast project team.

<b>Action point</b>	Revenue to supply business with a paper summarising the information that would be useful to feed into this work
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Business suggested that a member of the forecasting review team attend a meeting of the 100 Group, to facilitate a discussion about forecasting. This would enable the Revenue to gain a wider perspective than that which would be obtained from just talking to one or two groups, and would complement any more detailed work that might be done with individual groups. The Revenue accepted this suggestion.

<b>Action point</b>	Revenue and 100 Group to arrange attendance at a meeting of the 100 Group by 2-3 members of the IR review team
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## 10. CT Reform update

Richard James' paper providing an update on the current state of play of the CT Reform programme had been circulated prior to the meeting. Due to the

proximity of this meeting to the Budget, there was nothing that officials could add to this paper.

11. **AOB**

Stephen Jones informed members of the Forum that he would be leaving the Large Business Office later in 2003 to take on a new role as Inland Revenue's Finance Director.

It was agreed that the draft minutes would be circulated within two weeks and that a draft agenda for the next Business Tax Forum would be issued at the same time.

**Next meeting: 17 June 2003**