

# Minutes

---

## BUSINESS TAX FORUM

12.00 – 13.50 hrs, Monday 2 July 2007  
Room 2/18, 1 Horse Guards Rd

---

<b>Chair:</b>	Dave Hartnett Jon Symonds	(DH - HMRC) (JS - AstraZeneca)	
<b>Secretariat:</b>	Judith Knott Angela Brown Ian Brimicombe	(JK - HMRC) (AB - HMRC) (IB - 100 Group)	Business Customer Unit Business Customer Unit Business Secretariat
<b>Attendees:</b>	Adam Little Eileen Haughey Joel Walters Tim Voak Ian Menzies-Conacher Mike Templeman Edward Troup Stephen Banyard Peter Wharrad Keith Cartwright Simon Woodside Roy Warden Simon Norris Edward Troup Bob Fisher Michael Devereux	(AL - BP) (EH - Marks & Spencer) (JW - Vodafone) (TV - Tesco) (IMC - Barclays) (MT - Schroders) (ET - HMT) (SB - HMRC) (PW - HMRC) (KC - HMRC) (SW - HMRC) (RW - HMRC) (SN - HMRC) (ET - HMT) (BF - Business Enterprise & Regulatory Reform) (MD - Oxford University Centre for Business Taxation)	100 Group 100 Group 100 Group CBI CBI CBI Business & Indirect Tax Business Customer Unit Business Customer Unit Local Compliance CT&VAT CT&VAT Central Policy Business & Indirect Tax Business Enterprise & Regulatory Reform Oxford University Centre for Business Taxation
<b>Apologies:</b>	Melanie Dawes Naomi Ferguson Geoff Lloyd	(HMRC) (HMRC) (HMRC)	Large Business Service Local Compliance CT&VAT

### 1. Minutes and Matters arising from previous meeting

The minutes had been agreed and published.

## **2. New Transfer Pricing group**

- 2.1. RW advised that a Transfer Pricing subgroup of the BTF had met for the first time on 14 June, with nine business representatives including IB as the co-chair. They discussed the forthcoming consultation document "*HMRC Approach to Transfer Pricing*". Terms of Reference would be drawn up and circulated for agreement. The next meeting will be in late September 2007 to evaluate responses to the consultation document.
- 2.2. Business representatives noted that there is still some uncertainty on the practicalities once a transfer pricing adjustment has been made, such as the Double Taxation implications and the interaction with non-UK tax administrations.

## **3. Business Breakfast (26 June 2007)**

- 3.1. JK reported a good representation of business perspectives, including the investment community. Business expressed a dislike for motive and morality labels, but felt there could be a business case for responsible tax. The purpose of the event had been to engage representatives of the tax community in debate, to raise the profile of responsible tax as an issue, but not necessarily to influence debate in any direction. The event had included those in the tax community with a broadly common voice, and it would be useful to widen discussion to include those who are not yet engaged in the responsible tax debate. A report of the event is being produced. Discussion had continued at the Oxford University Centre for Business Taxation Summer Conference on 28 / 29 June; the issue is not just about a Board's policy to minimise tax but could extend to policies that maximise shareholder value.
- 3.2. Business side noted that there is value in the dialogue, without needing definitive outcome, by using language that becomes normalised and that moves focus away from the extreme positions. The business breakfast had been a useful preparatory discussion and sight of the report was requested in advance of a similar CIOT event on 10 July, to inform debate. CIOT are seeking the wider engagement of their members.
- 3.4. DH was pleased with the engagement between HM Treasury, HMRC and business but noted that SustainAbility and the business analysts had kept a lower profile than expected. Business side noted that the SustainAbility are still vocal on the subject of responsible tax, but that analysts would necessarily be more interested in issues that have a short term impact (although they will be engaged on competitiveness).
- 3.5. The joint business breakfast steering group are considering their next step – DH felt another event would be useful, to widen the debate, and welcomed suggestions from BTF members.
- 3.6. DH thanked those BTF members that had supported him in Paris on 21/22 June by bringing the voice of big business to the OECD meeting with a core group of commissioners from the 35 tax administrations involved in the FTA. The business leaders and tax administrations had reached broad agreement on underlying principles, and felt that focus should continue on the nature of engagement with intermediaries.

#### 4. Litigation and settlement strategy

- 4.1. DH advised that the publication on HMRC website [<http://www.hmrc.gov.uk/practitioners/lss-intro.htm>] together with his *Tax Journal* article (both published on 11 June) will provide clarity. The highlights are:
- HMRC will no longer negotiate 'package deals' whereby a number of issues are settled simultaneously with a single value outcome. Issues will be settled individually.
  - Where HMRC is sure of its ground and 100% of the tax can't be recovered, then it will litigate. HMRC will not pursue cases that have no prospect of success, simply to arrive at a position determined through the courts.
  - 'All or nothing' cases will be decided on 'all or nothing' terms – parties will concede or litigate.
  - Where there is a cutting edge difference of opinion, then both parties should work together towards conclusion; negotiation is appropriate in some circumstances, unless the issue has a fundamental impact and should be decided by the courts.
- 4.2. The principles of the strategy had been generally understood, and engagement at Board level has resulted in a number of very significant issues being resolved in a new context. HMRC and business are beginning to concede those issues where there is little prospect of success. HMRC is restructuring its Legal and Governance Directorate to ensure the strategy is properly resourced. There have been some difficulties obtaining fair access to the bar as demand for legal advice amongst the large corporates is running high.
- 4.3. Business side commented that
- There needs to be clearer guidance on the 'all or nothing' cases: if both parties are given a high percentage of success by their barristers, there should still be a way forward without needing to commence the process of litigation. Focus should remain on the legal implications, rather than emotive judgment of underlying behaviour. DH felt that there should be more protracted engagement with the bar in these circumstances.
  - According to the strategy, those issues that are binary will be determined by the courts; but is the complexity of issues such that 'all or nothing' cases rarely exist? Is the strategy meant to be applied so rigidly? DH responded that binary cases did exist, but agreed that gaps are constantly being created by differing interpretations of the facts or the law, or simply by the pace of change in commerce, and so it is important to maintain informal engagement throughout the process.
  - The strategy needs a process that allows for planning around the timing, so that both sides can have the space to make clear decisions and eliminate elements that are not relevant.
  - It is not clear how the strategy should evolve once litigation has commenced – can issues still be resolved informally once they have begun progressing through the various courts?

- Although the Large Business Service are making progress settling their less significant historic issues pragmatically, there is concern that the strategy will be applied too rigidly and obstruct the useful work being done. DH agreed that a reasonable approach to the closure of historic issues should continue, to allow focus on the more significant issues.

## 5. Ministerial changes

ET advised that the office of Paymaster General had been abolished and the new ministers are:

Jane Kennedy MP (Financial Secretary) - takes on the brief of the previous Paymaster General and will be the Departmental Minister of HM Revenue and Customs.

Angela Eagle MP (Exchequer Secretary) will cover the previous Financial Secretary's brief

Kitty Usher MP (Economic Secretary) inherits the same brief as previous EST

- 5.1. ET left the meeting at 12.35, advising that that the foreign profits consultation was going ahead, but noting that the document requested views around the framework rather than the detail. Business side felt it would have been preferable to consult on the detail to understand the implications fully.

## 6. Review of Links Update

- 6.1. PW reported that the Programme is on track to deliver, with focus remaining on delivery across the four key themes of certainty, clarity, speed of resolution and risk management. There are still some challenges ahead, particularly around resource planning; the cultural implications are being addressed through new ways of working and by raising awareness of the Review objectives across key staff and team leaders.

### Consultation

- 6.2. Two consultation documents were published on 20 June:
  - *Giving certainty to business through clearances and advance agreements.* The challenges will be to target only those issues of commercial significance and to understand likely usage. Business side responded that HMRC could set out narrow terms, but still get inundated with claims. HMRC should operate the system with a firm hand, and not be reluctant to refuse claims where there is no genuine uncertainty.
  - *HMRC approach to transfer pricing.*
- 6.3. HMRC is committed to effective consultation, and these documents are not seeking public endorsement of a decided position, but raise a number of questions and assumptions that business can help determine. There is active consultation with lawyers, intermediaries and representative bodies, as well as with business through HMRC's regular consultative forums.

## Risk management

- 6.4. Good progress has been made in understanding and categorising risks, to avoid unnecessary interventions in the future. Further work is needed to define the advantages of being low risk, so that these businesses are able to resolve issues of uncertainty in real time and enjoy less formal intervention. Businesses would not be high risk due to their complexity – definitions of risk centre around the nature of their relationship with HMRC, so a business can engage in technical disagreements with HMRC and remain low risk overall. Business side cautioned that some Boards may not welcome being ‘badged’ by HMRC.
- 6.5. Large Business Service has made some progress settling low risk legacy issues, but there is still some way to go in determining HMRC’s position across existing higher risk cases. Local Compliance plans are less advanced due to the diversity of their large business customer base, but are nonetheless making good progress.
- 6.6. Business side commented:
- Is HMRC confident that they are making appropriate judgements on risk? It could take two or three years for the experience and judgment required to embed? HMRC responded that the commercial awareness of customer facing staff is improving, which will increase understanding around risk, but agreed it could take time to embed effectively. It will be important to maintain informal discussion with business so that the risk profile of individual issues can be continually reappraised.
  - HMRC should avoid the risk criteria becoming a check list. A risk process can be helpful but still not effect a change in attitude towards business. HMRC must be transparent with business over the risk profiles.
  - Some risks are sector wide – will HMRC determine such issues in high risk cases and subsequently revisit all groups in the sector? HMRC advised that some sectors are inherently more risky than others (financial for example), and some have sector specific risks (such as transfer pricing in the pharma sector).
  - Oxford Centre for Business Taxation have just published a report *“Moving beyond avoidance? Tax risk and the relationship between large business and HMRC”* - it is still unclear how the risk proposal is going to work in practice and the benefits to business. Could a complex large corporate ever be low risk? HMRC responded that as many as 20% of their FTSE100 businesses could be low risk: criteria include early disclosure, transparency, and previous interventions that have been settled with low value outcome.
  - A corporate can have issues that will vary widely across the risk spectrum – how will these businesses be classified? Although there should always be scope for dialogue with HMRC around the classification of risks, business need to understand HMRC’s likely approach and be able to defend their position. HMRC advised business not to see the process as too definitive too soon. Creating opportunities for transparent dialogue with business will help develop and refine the process so that resource is accurately focused on the most significant risks

## Commercial awareness

6.7. AL noted that a degree of commercial understanding underpinned success of the risk profiling, and that HMRC needed to work with business to embed the right knowledge and skills. The Large Corporates Forum had agreed that a senior group of business representatives should be convened, with HMRC representation (Judith Knott), to drive this forward proactively. Terms of Reference for the group would be drawn up and he welcomed business volunteers. It would be useful to gather experiences and anecdotes, particularly where a different way of working and changing perceptions had resulted in a positive outcome for both HMRC and business.

## 7. Admin Burdens

7.1. JK reported progress against HMRC's admin burden targets (set out in the paper published at Budget 07 *"Delivering a new relationship with business"*): £130m savings on forms and returns, £43m savings on audits and inspections and £134m in other, more general, areas. 90% of businesses had been removed from the obligation to complete form 42 on employee share schemes, payment of Working Tax Credit via employers had ceased, there had been some improvements to employer processes, a new CIS scheme and a simplified pension regime.

7.2. HMRC is working closely with the Admin Burdens Advisory Board, and is conducting a programme of internal challenge panels to identify potential areas where reductions could be achieved. Much of the work is focussing on areas of primary interest to small business, and JK welcomed views from the large business sector.

7.3. Business side commented:

- Form P11d is onerous
- Concerns around the compliance obligation of the proposed foreign profits legislation – the income and interest requirements were counterbalanced. UK-UK transfer pricing has been burdensome.
- Cumulative effect of changing legislation and processes is burdensome – for example, the recent changes to capital allowances introduces a layer of complexity. There is a need for greater consultation.
- Concerns over the impact of the new powers and penalty regime.

7.4. HMRC requested ideas and suggestions from business to tackle those administrative processes that created an unnecessary burden for them

## 8. Powers Review Update

8.1. SN reported that the Review has been built on consultation, and has a methodology for taking forward individual areas of work:

- Develop ideas with internal stakeholders

- Consider options with Consultative Committee, consisting of QCs and business representatives
- Undertake impact research
- High level consultation documents (8 so far) and meetings with key stakeholders
- Workshops with external stakeholders in the light of responses
- Further consultation with draft clauses and meetings with key stakeholders

There would be clauses in Finance Bill 08 on criminal investigation and on errors in returns.

- 8.2. Engagement had been burdensome but effective, and SN thanked those who had taken part. Serious crime had been a pragmatic place to start, to avoid jeopardising HMRC's critical multi regime activity in this area. The Paymaster General wants to see a department that looks and feels different to customers, with systems that are modern, sensible and change perceptions of compliance internally and externally. For example, a suspended penalty approach to system errors, that could be waived if the error is put right; part of HMRC's commitment to helping customers get it right. Future activity will involve a review of later filing penalties and debt management, how HMRC checks compliance across all taxes, and taking Finance Bill 07 changes to CT, VAT and PAYE to other taxes such as excise duty.
- 8.3. Business side cautioned that operational staff must be aligned culturally with these changes. SN advised that there would be guidance and training, with perhaps an independent consultative committee to oversee delivery. Business side appreciated the extent of consultation, but suggested publication of an executive summary that set out the high level messages and activity.

## **9. Any Other Business**

- 9.1. DH advised that Board member Bernadette Kenny is a non-executive director of a charity that focuses on creating an inclusive workplace for women. She wanted to write to FTSE100 companies to obtain their views on this issue. Business members did not see an issue with this.
- 9.2. DH advised that JS is standing down as Co-Chair and, on behalf of all members, thanked him for his contribution and support and wished him well in his new role. JS noted the significant progress that had been made since the forum began – there is a real desire to engage and improve the administration on both sides, and the forum had been able to make a clear contribution.