

MINUTES

BUSINESS TAX FORUM

15:00-17:00, Wednesday 3 September 2008
Room G/16, 1 Horse Guards Road

Chair:	Melanie Dawes Julian Heslop	(HMRC) (GlaxoSmithKline)	
Secretariat:	Judith Knott Jonathan Bates	(HMRC) (HMRC)	Business Customer Unit Business Customer Unit
Attendees:	Eileen Haughey Joel Walters Paul Morton Tim Voak Ian Menzies-Conacher Mike Sufrin Jamshed Malik Freda Chaloner Geoff Lloyd Edward Troup Michael Devereux	(Marks & Spencer) (Vodafone) (Reed Elsevier) (Tesco) (Barclays) (Rolls Royce) (BERR) (HMRC) (HMRC) (HMT) (Oxford University Centre for Business Taxation)	100 Group 100 Group 100 Group CBI CBI CBI Large Business Service CT&VAT Business & Indirect Tax (Oxford University Centre for Business Taxation)
Apologies:	Ian Brimicombe Naomi Ferguson Stephen Banyard	(100 Group) (HMRC) (HMRC)	Business Secretariat Local Compliance Business Customer Unit
HMRC/HMT Speakers:	Jo Pleasant Richard Thomas Alex Hardaker Jonathan Mills Stephen Hewitt Christine Roots	Treasury Consents update Principles- based Legislation CCCTB CCCTB Company Residence Transfer Pricing	

1. Minutes

The minutes were agreed. If issues were clear-cut the minutes should be kept simple, but if discussion was more detailed the minutes should reflect this. If clarification is needed it should be available.

2. Terms of Reference (ToR)

The ToR do not adequately reflect that this group was set up to have a strategic-level view, and they need updating. But they also need to recognise that there is a limit to how far

discussion can go into policy, and the agendas show that the group does deal with the implementation of policy. The membership of the BTF will always ensure anyway that discussion is at a strategic level.

3. CCCTB

Business members had a range of views on CCCTB. Optionality is an important aspect but the admin burden is not generally a great problem. Some in business would like to see the UK more involved in the debate to make sure that the detail suits UK business. HMT reassured business that they are already very engaged but that proposals from the EC are not expected this year. If proposals are issued, the review process will still extend for at least a year after that. HMRC will refer back to the BTF if the debate becomes more active.

4. Foreign Profits

Following the publication of the FST's letter in the summer [see <http://62.164.176.164/5579.htm>], HMT is engaged in further rounds of discussion with business groups both on policy and costings and it is expected this work will be largely complete by the end of September 2008. No decisions have yet been taken. There will be an update on work on foreign profits given to the next meeting of the Business-Government Forum on Tax and Globalisation which is meeting in October. Business would like an early indication if a decision is made that reform will not be introduced in 2009. It was recognised that the reform of foreign profits is only one factor in the attractiveness of the UK business environment.

5. Treasury consents

HMT have discussed a potential replacement reporting requirement with business representatives with the objective of cutting out a lot of admin for business. It is examining, at business's request, whether it would be feasible to introduce a quarterly reporting cycle and a monetary threshold over which transactions need to be reported. They will be reconvening the business representatives later this month to discuss possible proposals. Reform of Treasury consents will continue as part the rest of the foreign profits package. Business considers the key problem is the inconvenience caused by the current requirement to obtain consent in advance for some transactions. But HMT need to be careful about the scope of a replacement reporting requirement, to ensure that the rationale is driven by risk rather than being a routine disclosure requirement.

6. Principles-based legislation

HMRC will be holding two discussion workshops with business before the end of September. After that proposals will be submitted to Ministers, with the possibility of new provisions being introduced next year. A number of business representatives have contributed to discussions on this.

7. Company residence

Business outlined their concerns about the uncertainties over interpretation of the guidance and the discrepancies between views of counsel, businesses and HMRC which are largely untested in the courts. HMRC acknowledged that matters are not always black and white and agreed that certain areas could be made clearer in the guidance. It was agreed that BTF would be used as the forum to circulate drafting proposals.

8. Mandatory binding arbitration

Business supports mandatory binding arbitration between the UK and the US on certain cases for which the competent authorities cannot reach agreement. Broad precedent for such protocols has been established in the EU and more importantly between the US and certain treaty partners including Belgium, Iceland, Germany and Canada [although the latter requires ratification]. HMRC reported that there has been a recent amendment of the OECD Model Tax Convention to include a new paragraph on mandatory binding arbitration, which they fully support and are including in any double taxation negotiations where appropriate. Business emphasised that they would like to see this pushed forward very strongly.

9. Transfer Pricing

HMRC presented proposals to replace the BTF Transfer Pricing Sub-Group with a new group that would meet regularly with HMRC's new Transfer Pricing Board. This would provide a two-way forum for engagement with business and representative bodies on transfer pricing issues and would relieve pressure on the BTF agenda by dealing with TP issues separately. The proposals were accepted on the understanding that the new sub-group will still report back through BTF.

10. Controlled Foreign Companies

CFC rules were identified at the previous meeting as an area of concern for business, and an ad hoc sub-group meeting took place to explore this in more detail. Issues raised by business at that meeting included whether HMRC could be more flexible in applying the CFC rules, and whether HMRC business units could be more 'joined up' when dealing with CFC cases. It had also emerged that some business representatives were not previously aware of the clearance facilities HMRC offers in relation to CFC exemptions.

Business welcomed HMRC's confirmation that such clearances were available, and asked if figures were available for the numbers of motive test clearances applied for and given¹. It also welcomed HMRC's confirmation that CFC guidance would be being updated this autumn.

Business suggested that the administration of VAT is another area that would benefit from a similar in-depth discussion in a sub-group.

11. Customer charter

HMRC reminded attendees that they are consulting on a new Taxpayer Charter. There are two consultations – the first, "A new Charter for HMRC and its customers", closes on 11 September; the second, on "Content" will be published at the end of the year. The consultation document can be found at <http://www.hmrc.gov.uk/consultations/>.

12. Review of Links Evaluation research

HMRC is just starting a project which is designed to evaluate the effect of the changes which it has made as a result of the Review of Links, building on the research done last year. Business stressed the need for interviewers to provide robust identification and keep the interviews as short as possible.

¹ **Post-meeting update:** Since April 2007 there have been 141 applications for advance clearances under the CFC rules of which 109 have been accepted, 8 declined and 24 remain open, Although HMRC doesn't maintain a complete record to show which exemption was claimed, it is clear that the vast majority of applications received, as well as clearances given, involve consideration of the motive test.

13. Treaty clearances for withholding tax

Business drew attention to the delays in processing applications for treaty clearances. HMRC was aware of the problems and is applying additional resources and improving the processes to clear the backlog, though this may take some time. Some common errors which exacerbate the situation have been identified and it was agreed that it would be useful to publicise these.

The establishment of a discrete sub-group would also help, and the issue should be included in a future BTF agenda to review progress.