

MINUTES

BUSINESS TAX FORUM

14:00-16:00, Wednesday 2 September 2009
Room 2/39, 100 Parliament Street

Chair:	Melanie Dawes	(HMRC)	
	Julian Heslop	(GlaxoSmithKline)	
Secretariat:	Duncan Parish	(HMRC)	Business Customer Unit
	Jonathan Bates	(HMRC)	Business Customer Unit
Attendees:	John Connors	(Vodafone)	100 Group
	Paul Morton	(Reed Elsevier)	100 Group
	Abdul Nabi	(Marks & Spencer)	100 Group
	Jean Sharp	(Aviva)	100 Group
	Ian Menzies-Conacher	(Barclays)	CBI
	Mike Sufrin	(Rolls Royce)	CBI
	Tim Voak	(Tesco)	CBI
	Kirsten White	(Shell)	CBI
	Jamshed Malik	(BERR)	
	Stephen Banyard	(HMRC)	Business Customer Unit
	Keith Cartwright	(HMRC)	Local Compliance
	Freda Chaloner	(HMRC)	Large Business Service
	Jim Harra	(HMRC)	CT&VAT
	Mark Holden	(HMRC)	Business Customer Unit
	Nick Houghton	(HMRC)	Business International
	Judith Knott	(HMRC)	Business International
	Jen Little	(HMRC)	Business Customer Unit
	Mike Pettit	(HMRC)	Anti-Avoidance Group
	Hussein Saleh	(HMRC)	Anti-Avoidance Group
	Jeff Smith	(HMRC)	Business Customer Unit
	Vanessa Woodward	(HMRC)	Business Customer Unit
	Edward Troup	(HMT)	Business & Indirect Tax
Apologies:	Ian Brimicombe	(100 Group)	Business Secretariat
	Michael Devereux	(Oxford University Centre for Business Taxation)	
	Naomi Ferguson	(HMRC)	Local Compliance
	Kate Ramm	(HMRC)	Business Customer Unit

1. New members, minutes of last meeting and matters arising

Jean Sharp, of Aviva, and Kirsten White, of Shell, were welcomed to their first meeting. The minutes of the meeting held on 1 June 2009 were agreed for publication.

Matters arising:

- [a] Foreign Profits – dividend exemption and ADP - written confirmation regarding apportionment of income on a time basis regardless of type of income, and exemption of dividend, had been provided by HMRC as agreed.
- [b] Foreign Profits – worldwide debt cap – gateway for outbound groups. This policy issue has been covered in a number of meetings with business and during the passage of the relevant Finance Bill legislation through Parliament. While the original intention was to provide this Gateway, it was ruled out by the need to have rules that are compatible with EU law.
- [c] Foreign Profits – worldwide debt cap – group treasury company exemption – for the exemption to work as intended it is not possible to include dividends from all subsidiaries of the treasury company. HMRC has received further representations about this exemption and is giving the section further consideration, together with a small number of other areas, including the treatment of items of finance expense which are treated differently for the purposes of the available amount and the tested expense amount.
- [d] Membership – HMRC is in the process of contacting all members for feedback on the BTF. The consensus of views sought so far is that the BTF is still a useful forum dealing with the correct issues, and members are content to continue their membership.

2. Mandatory use of XBRL for on-line filing of CT returns

The discussion document [BTF09/09 Doc01] was introduced by the Senior Responsible Officer and the Programme Director for the Carter Programme. The approach HMRC has taken treated businesses in three groups – smaller organisations, larger businesses and the very large sector. For smaller organisations with simple tax affairs, HMRC will be providing a 'free to use' product which will be available from 23 November 2009. The requirements for the majority of medium to larger businesses will be integrated in new commercial software products which are currently being developed, and will be released in spring to autumn 2010.

For the very large sector, the challenges are greater: there are many systems and processes used to produce statutory accounts – many of which produce final output as word processor and spreadsheet documents. Conversion programmes will provide a relatively simple solution – and these are already being marketed. HMRC is running a series of seminars for Large Business customers (the first is on 9 September 2009) and is also visiting individual businesses to explore the issues in depth. General feedback from these engagement activities is that the requirements are more manageable than was feared.

The business side presented some views based on practical experience. Current practice is often to prepare return packs using spreadsheet software and submit on paper. There can be more than 100 subsidiary businesses, with group and centralised accounts and treasury activities built on different systems. It will be a major challenge for very large businesses to make the computations uniform across all the companies in a group. Manual conversion of individual accounts would be time consuming. Some members are intending to look at wholesale upgrades of systems and processes on the back of the XBRL requirements – not just bolt-on solutions. This will be costly: quotations for this between tens of thousands of pounds and millions of pounds were mentioned. Large businesses do not see any benefit to them from this cost. Other concerns included the security of the data and robustness in coping with volumes; how HMRC will use the data; and some sector specific queries. The perceived lack of coordination with Companies House was also a concern.

HMRC reassured business over data volumes and security issues: CT should be viewed in the context of the introduction of Self Assessment where far greater volumes of data were successfully and safely handled. HMRC acknowledged that there are still some sector-specific issues to be resolved: and are closely engaged with business in reaching solutions on those as soon as possible. Finally, HMRC offered to visit more large businesses to see the problems first-hand and understand them better, and this was appreciated by the business side.

3. Personal accountability of senior accounting officers

HMRC gave an update on progress with the introduction of the legislation and the guidance and thanked all who had contributed to the consultation. The majority of comments were taken on board and the legislation was simplified considerably. The final version of the guidance has been published and has addressed the main areas of concern. The next stage will be implementation. HMRC will be rolling out training internally, and would like to include agents and business representatives in the events to improve their relevance. It will be looking for volunteers to take part in this.

4. Tax Disputes Review

HMRC gave a brief oral update. The draft report has been finalised for discussion at HMRC's executive committee, but the recommendations for large business customers are largely in line with current expectations. A more detailed update will be given at the next meeting.

5. CFC Review

In July a 'policy principles' document was published on the HMT internet site, and HMT has also published an on-line questionnaire for businesses and advisers. The closing date for this is 11 September 2009 and HMRC would encourage all businesses to respond if they have not already done so. HMT is also arranging working groups to help look at the treatment of intellectual property rights and interest within a reformed CFC regime. Two workshops on each topic will be held in September. The next milestone in the timetable is an autumn update, and after that a final document will be produced at the end of the year to inform the drafting of legislation next year. The target is to publish draft legislation in 2010 to be passed in Finance Bill 2011.

The business side would like to have input at an early stage before drafting, and that it would be helpful if HMT/HMRC could set out clearly what they saw as possible models for reform. Although HMT invited business to pass views directly to them, it was also possible for comments to be passed to business members of the CFC Liaison Committee and it was agreed to circulate the membership of this Committee to BTF members.*

Members generally recognised that continuing and close consultation would be necessary if the complex issues arising from the review were to be successfully resolved.

6. International Issues Sub-group

The International Issues Sub-group is being set up. It will subsume the Transfer Pricing Group and will focus especially on operational issues. Meetings will be held roughly half-way between BTF meetings and will report back to BTF. It was agreed to circulate the membership and terms of reference to BTF members.*

* Circulated by email on 10 September 2009.

7. Residence

The business side reported that the response from business to the draft guidance on residence produced by HMRC earlier in the year has been very positive and it is seen as very helpful. Further discussions to take it forward will take place at a meeting on 7 September 2009.

8. Anti-avoidance Simplification: Consultations on Transactions in Securities and Unallowable Purpose

Transactions in Securities. HMRC provided some background on the anti-avoidance simplification review and provided an overview of the proposals for simplifying the Transaction in Securities legislation. The proposals represent a narrowing of the scope of the legislation for both CT and IT purposes. Their aim is to refocus the legislation, targeting transactions that were designed to convert income into capital whilst minimising the risks of innocent transactions having to consider this legislation.

The proposed changes should bring about greater certainty, for example by linking the definition of tax avoidance to the way in which it is calculated in practice. Business asked whether this method of quantifying tax avoidance was appropriate given the judicial decisions around the proper comparator for determining tax advantage, and questioned whether removing the escape clause was appropriate in the circumstances. HMRC explained that this had been considered, and only those cases where income is being converted into capital should be caught by the new legislation. Consequently, this is the comparator that is used in the legislation. Equally, there should be no need to retain the escape clause given the new approach that is being proposed. However, this legislation is still draft and the consultation period is being used to refine it and address any issues businesses feel need further consideration.

Purpose Test Simplification Review. HMRC explained that the objective of this review is to understand the implications of purpose tests for both HMRC and our customers fully. HMRC acknowledged that even being potentially subject to a purpose test is very onerous and wherever possible purpose tests should be targeted to specific arrangements.

A framework for policy makers is being developed. This would allow businesses to challenge policy makers about their policy objectives during consultations on purpose tests to ensure that the impact on customers had been fully appreciated. It would also encourage the understanding and standardisation of purpose tests and make HMRC's approach to such tests more uniform.

The business side asked whether the burden of extensive disclosure of documentation could be avoided in a low risk environment when assurances could be given by directors as to purpose. HMRC agreed there was often a lack of understanding, and even mistrust, as to how and when HMRC might mount a purpose challenge. The publication of guidance and the Framework document should encourage transparency and more understanding of HMRC's position and enable businesses to understand where HMRC might challenge and how they might establish their purposes to the satisfaction of HMRC.

9. Dividend exemption draft guidance

HMRC drew the business side's attention to the draft guidance. Comments have been invited but few have been received to date and businesses were encouraged to submit any comments they might have.

10. VAT rate change

The business side repeated their concerns over the difficulties that businesses would experience in implementing the change of rate due to take place on 1 January 2010. HMT explained that the date was fixed in legislation after wide consultation and it is not possible to change it at this late stage. However, HMRC is very happy to discuss the practicalities and the flexibilities which might help the implementation run as smoothly as possible. This can be done on a one-to-one basis with individual businesses or with industry groups. A number of meetings have already taken place but if any business would like to hold such discussions they should contact their CRM in the first instance.

Meeting organiser: Beverley Duncan 020 7147 3286