

MINUTES

BUSINESS TAX FORUM

15:00-17:00, Monday 10 December 2007
Room 2/39, Horse Guards Road

Chair: Melanie Dawes (HMRC)
Julian Heslop (GlaxoSmithKline)

Secretariat: Judith Knott (HMRC) Business Customer Unit
Angela Brown (HMRC) Business Customer Unit
Ian Brimicombe (100 Group) Business Secretariat

Core Attendees:

Tim Voak (Tesco) CBI
Michael Templeman (Schroders) CBI
Stephen Banyard (HMRC) Business Customer Unit
Naomi Ferguson (HMRC) Local Compliance
Geoff Lloyd (HMRC) CT&VAT
Freda Chaloner (HMRC) LBS
Jamshed Malik (BERR)

Apologies: Joel Walters (Vodafone) 100 Group
Michael Devereux (Oxford University Centre for Business Taxation)
Ian Menzies-Conacher (Barclays) CBI
Eileen Haughey (Marks & Spencer) 100 Group
Edward Troup (HMT)

HMRC / HMT Speakers:

Mark Edwards (HMT) Business & Indirect Tax
Bob Wightman (HMRC) CT&VAT
Peter Wharrad (HMRC) Business Customer Unit
Lee Corrick (HMRC) CT&VAT
David Halsey (HMRC) Central Policy
Tony Verran (HMRC) Central Policy
Ian Heron (HMT) Business & Indirect Tax
Juliet Roche (HMRC) Central Policy
Ian Valentine (HMRC) LBS

1. Minutes

Minutes were agreed for publication.

2. Review of Links with Business

Extending the non-statutory clearance process

HMRC advised that a Clearance Advisory Group has been formed, as a sub-group to the Business Tax Forum, to provide an external steer to the implementation of the new process. Following a successful trial in Substantial Shareholdings Exemption and Stamp Duty Land Tax, a pilot will be launched on 2 January in [discrete industrial and geographical areas](#) to test internal systems. Draft guidance will be published, prefaced with a 'mission statement' that sets out a statement of purpose and practice for the extended clearance process. The guidance has been endorsed by business and will be developed as the pilot progresses. Understanding the likely volume and complexity of applications is still cause for concern.

Business members commented that the new process will encourage UK investors by providing certainty on tax matters, with mutual benefits. Businesses need to understand how clearances fit alongside existing real time dialogue.

Risk management

HMRC published a risk framework at Budget 07 and, following further informal consultation, [comprehensive guidance](#) for LBS staff and customers. This will be informed and refined over the coming months through the ongoing LBS Risk Reviews. LBS will have completed these reviews by 31 December 2007, although a few businesses have deferred until 2008; HMRC are not imposing these on customers.

Risk classification is dependant on behavioural indicators and compliance history rather than complexity, with some very large multinationals being classified as low risk. Some businesses have been classified as high risk in one regime but low risk in others. Work is being done to ensure the smooth transition of some low risk businesses to the Local Compliance business unit. Internal moderation has confirmed that the Risk Framework is being applied consistently between customers. Feedback has been positive, with both sides finding the open exchange of views very helpful.

Business members welcomed HMRC's new approach and the opportunity to develop a shared understanding of issues through open dialogue around a common framework. Not all businesses want a risk label, providing HMRC deliver the spirit of proportionality, agree an action plan for resolution, and a resources timetable. The accompanying discussion can be more important than the strict application of the Risk Framework.

Transfer pricing

Transfer pricing is a major area of concern for business, and HMRC has set up a project to improve the effectiveness of its transfer pricing work. The Review of Links Proposal 5, on early resolution, is feeding in to this wider project. There are two overriding themes:

- Increase consistency across transfer pricing enquiries
- Increase specialisation.

HMRC has changed the governance of transfer pricing enquiries by centralising decision making and introducing better case management processes. Cases will be

assessed on a risk based approach, with a new operational review panel ensuring consistency. The Litigation and Settlement Strategy will be followed closely as cases evolve; a strategic review panel will consider cases that require escalation. Both panels consist of international specialists and representatives from policy and operational units.

New international specialists are being appointed in each urban location and are receiving training that includes tax law, OECD guidelines, applied economics, and commercial awareness. Some of the new training modules will have private sector input. HMRC's researchers, economists and compliance auditors will be used to provide detailed evidence and analysis. Existing case teams will stay involved in the cases. Their role will include providing context on the individual customer and the industry. The new approach will be phased in from April 2008, with the aim of cases being settled within 18 or 36 months as the norm, depending on the complexity, or moving into litigation.

Business members suggested that HMRC share the business case put before the operational review panel with the individual business, to ensure there is openness and clarity on the perceived risks. Businesses would support early discussion on their transfer pricing issues as part of the risk assessment process, with case teams that included international specialists.

Improving industry knowledge is an important part of the risk assessment process, and business side were happy to help HMRC in this respect.

3. Simplification reviews announced in the Pre-Budget Report 2007

The three reviews evolved from existing work on reducing the administrative burden for business. The Government has committed to working in partnership with business to identify potential areas, sharing its findings on the viability of simplification, and ensuring simplification is a priority when designing tax policy. The simplification agenda must fit within the framework of other Government imperatives such as raising revenue for essential services and investment, delivering a fair outcome for taxpayers, and supporting enterprise, social welfare and the environment. HMT and HMRC are analysing and prioritising areas for review and will report at Budget 2008.

Anti-avoidance legislation

The aim is to ensure that anti-avoidance legislation meets the twin aims of simplicity and revenue protection. Existing legislation is complex, although there has been a recent shift towards a developing a more generic approach to legislation and Targeted Anti-Avoidance Rules (TAARs). A [Consultation Document](#) had been issued, an on-line survey, and workshops held. There have been mixed views on TAARs from business, but a few areas suitable for simplification were being identified. HMRC invited business to submit further suggestions.

Business members noted the Consultation Document and a move towards more principles based legislation, but had yet to review the proposals themselves and would comment on them in due course.

VAT rules and administration

There had been a good response to the review, including through existing VAT forums such as the Joint VAT consultative Committee, and ad hoc meetings with

groups such as the CBI. Respondents have identified two lead areas for simplification - the option to tax regime and partial exemption (including the capital goods scheme). There had been a mixed response to prioritising simplification work on VAT retail schemes, which is not seen as being of benefit to business as a whole. Similarly with addressing the frequency of returns and payments, which would reduce the administrative burden for business, but not necessarily simplify the system. There was some support for introducing common VAT rules across the EU, e.g. streamlining VAT refunds from other member states.

Some areas identified as business priorities were outside the scope of the review, including clarifying the boundaries between certain goods that are subject to different VAT rates. But business views will inform advice to ministers on simplification options. Following further analysis and prioritisation, HMT will be writing to businesses to advise which areas will be taken forward at Budget 2008 and inviting further participation.

Business members commented that simplification around partial exemption and capital goods would provide tangible benefits.

Corporation tax rules for related companies

The four areas suitable for review are:

1. Group aspects of CT on chargeable gains
2. Associated company rules for the small companies CT rate
3. CTSA filing and payment arrangements for groups
4. Reductions in the administrative burden of transfer pricing rules

Business responses had identified 1. and 2. as the priority areas, as there is already considerable activity to improve the administration of transfer pricing, under Review of Links Proposal 5. Amongst the key issues are: the definition of a group for CG purposes within the CT rules; the treatment of assets in groups (offsetting losses and gains within a group, gains when assets leave a group and whether the tax outcome matches the economic effect); and the number of associated companies within a large partnership. HMT will be focusing on the two priority areas, and reviewing other areas in due course.

Business members were content with the two priority areas identified for urgent review, commenting

- The review needs to address parity between customer segments as well as simplification.
- Transferring assets to an EU subsidiary attracts tax under UK law, felt to be a flaw in the system
- Introducing consolidated returns for CT groups would address the group-wide issues
- The Foreign Profits review is considering strengthening exit taxes and there needs to be close coordination between both review teams.

4. Reform of Appeals Tribunals

A new First-tier Tribunal will replace existing tax tribunals from 1 April 2009. [Consultation](#) was launched at the Pre-Budget Report 2007 covering impartial reviews, administrative changes and the transitional period, with a view to legislative change within Finance Bill 2008. The proposals do not cover appellants costs, being an issue for the Ministry of Justice (their [Consultation Document](#) was published on 28 November 2007); HMRC is working closing with the MofJ. Responses are welcome on any issues relevant to the new tribunals whether or not specifically requested in the consultation. The new impartial internal reviews aim to improve the way HMRC deals with disputes by making the current system more consistent and harmonised across direct and indirect taxes and across diverse customer segments. The challenge will be to deliver meaningful impartiality. The new system will be trialled in 2008 and HMRC welcomed participation from business.

Business members supported the idea of impartial reviews and greater consistency:

- The reviews must be truly impartial; justice must be done and seen to be done to give business confidence in the implementation.
- The reviews should not become mandatory as there is an existing process for cases to go through the courts, and it could make this process much longer with the increased possibility of practical decisions being overruled. Business should have the option to proceed to tribunal, as an impartial review can provide certainty on the complex cases that should rightfully be decided through the courts.
- In the US and Canada, counsels routinely provide an impartial review to ensure that only appropriate cases are referred to the courts and speculative cases are refused. This system may be too inflexible for UK business.
- The reviews must be quick and accessible, complexity permitting, and not merely repeat the workings of the enquiry or create another barrier. Timetables should be agreed with the customer.

5. Capital Allowances consultation update

The Government is committed to creating a pro-investment environment, and this consultation provides an opportunity to build on existing reforms. The aim is to ensure fairness, enhance business competitiveness, and support investment and innovation. [Consultation](#) finished on 19 October and responses are being considered.

- Annual investment allowance - business can make one claim per year, amounting to 100% write-off for the first £50,000 of plant and machinery expenditure, excluding cars.
- Integral fixtures to a building - HMRC are still consulting on whether a purposive approach or a short list would be preferable, and the type of assets that should be included. A purposive approach must be effective and easy to operate. Some businesses have preferred the list option, as it has served well in the past and is easily understood.
- Enhanced Capital Allowances (ECA) are already available for certain “green” technologies but loss-makers don’t derive immediate benefit. It is proposed that loss-makers will have the option of surrendering their loss in return for a cash payment from the Government. This raises timing and anti-avoidance issues.

HMRC will shortly be issuing technical notes (see Annex A to the minutes) with draft legislation on payable ECAs and on the rates of other new allowances. There will be further opportunity for comment.

CBI business members would prefer a purposive approach as the short list of integral fixtures is too prescriptive, will become out of date quickly, and is not broad enough to cover some industry sectors. 100G business members are meeting shortly to discuss the purposive approach and will revert back with their views.

6. Foreign Profits update

HMT are still working through numerous consultation responses; ministerial agreement has not been sought yet. Further engagement with business will take place on discrete issues during January 2008. A discussion document will be published at Budget 2008 summarising the current proposals and the key issues, and business will be invited to participate.

Business members commented:

- HMT / HMRC should not rush this review, but find the right solution; it is the most important tax issue on the table for Boards and their Tax Teams at the moment.
- There were significant concerns on the discussion document, particularly on controlled companies.
- 100G have received responses to their questionnaire, and will revert back with summary views.
- There must be further discussion on the major issues, through small focus groups and bilateral meetings, to ensure that the next consultation document is well informed.

7. AOB

Concern was expressed about business member attendance, and it was agreed that business secretariat would revert back with a proposal for delegation should members be unable to attend, or CBI / 100G each proposing one additional member.

Business members expressed concern that some Dispensation work had been transferred from Local Compliance to the Large Business Service directorate; this was felt to be a burdensome move. HMRC advised that this had been done to improve consistency and raise expertise. The issue will revert to the appropriate employment forum.

Business members requested clarity on preferred methods of communication with HMRC in the current environment? HMRC responded that, in the light of recent events, it is urgently reviewing all its channels of communication to ensure that processes are secure and guidelines followed. Announcements can be expected shortly.

Annex A – Capital Allowances

July consultation document:

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_027779

December Technical Note:

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_028217

December Technical Note on Enhanced Capital Allowances:

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_028211