

# Minutes

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## BUSINESS TAX FORUM

14:00-16:00, Monday 25 February 2008  
Room G57, 100 Parliament St

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**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:**

Eileen Haughey	(Marks & Spencer)	100 Group
Joel Walters	(Vodafone)	100 Group
Paul Morton	(Reed Elsevier)	100 Group
Tim Voak	(Tesco)	CBI
Michael Templeman	(Schroders)	CBI
Ian Menzies-Conacher	(Barclays)	CBI
Mike Sufrin	(Rolls Royce)	CBI
Stephen Banyard	(HMRC)	Business Customer Unit
Peter Wharrad	(HMRC)	Business Customer Unit
Graham Black	(HMRC)	Local Compliance
Freda Chaloner	(HMRC)	LBS
Robin Maclachlan	(HMRC)	CT&VAT
Jamshed Malik	(BERR)	
Mark Edwards	(HMT)	

**Apologies:** Michael Devereux (Oxford University Centre for Business Taxation)

**HMRC Speakers:**

Simon Habesch	(HMRC)	Central Policy
Mike Hogan	(HMRC)	CT&VAT
Steve Hewitt	(HMRC)	CT&VAT

**1. Minutes**

Minutes were agreed for publication.

**2. Policy update**

**2.1. [Simplification reviews](#)**

CT&VAT - the associated rules for smaller companies, group aspects of CT on chargeable gains, VAT option to tax and partial exemption had been identified as priority areas. Further announcements would follow at Budget 08, with a more detailed report at PBR 08. Working groups have been set up to look at longer term issues such as VAT retail schemes and VAT rules across EU trading member states.

Anti-avoidance – a paper would be published at [Budget 08](#) with the consultation responses and the specific areas identified for further review.

## **2.2. [Consultations](#)**

Financial products avoidance – principles based legislation: consultation with business is continuing, with assurance that final decisions would not be rushed through. Business members welcomed extensive consultation on this matter given its importance and the requirement to deliver clarity on the impact of these proposals. However, there is a need for greater consistency across a number of current reviews (including foreign profits and anti-avoidance simplification) to present a clear picture of their impact on UK global groups.

## **2.3. Foreign profits review**

Consultation is continuing, with the assurance that final decisions would be measured and well communicated.. Business members confirmed that this is the priority tax issue for their Boards and indicated their continued willingness to work with the Treasury and HMRC and take whatever time was necessary to ensure the right outcome for UK business.

## **3. Review of Links with Large Business**

HMRC thanked business members for their support, advising that the Review had now delivered against all its commitments and had set in place the framework for a better relationship with business. A detailed report would be published at Budget 08.

Significant progress has been made in settling historic low risk issues and focusing resource against higher risk issues. Data security protocols were still being reconciled, but e-mail traffic and Shared Workspace would resume shortly. Business members were broadly positive about their experiences so far, and endorsed the new approach, but agreed it would take time to fully embed the principles. Business members were concerned to ensure consistency and certainty for large business between the new approach to risk management and the proposals within the [Compliance Checks](#) consultation paper.

The non-statutory clearances pilot had been inconclusive and uncertainty remained on the likely demand for the extended service. HMRC had not defined the parameters for applications, but raised awareness of the principles of materiality and genuine uncertainty. Business members welcomed the new service and advised that they would continue to discuss and resolve day to day issues in real time with their Customer Manager, reserving clearance applications for their more significant transactions.

Customer [Survey results](#) had been published, identifying 5 key areas for improvement: commercial awareness, collaborative working across HMRC, certainty, consistency, and building a more cooperative relationship with business. It also reported positive feedback on the role of the CRM and the importance of UK

competitiveness. These areas were all being taken forward through the implementation of the Review of Links. Business members commented that there are a number of aspects to competitiveness – including rates of tax, and predictability and certainty on tax treatment to help investment decisions (foreign profits, for example, is creating uncertainty), and both could shift the balance negatively. The research will be repeated in 2008, and business members suggested a survey of Customer Managers to balance the picture.

HMRC has convened a research panel of international academics which will meet for the first time in June, with a remit to compare academic research and practice from other administrations. John Tiley (Professor of Law of Taxation, Director of the Centre for Tax Law Queens College, University of Cambridge) will chair and representatives from the BTF will be invited.

A package of measures for the Review of Links will be published at Budget 08, to which HMRC will be accountable. Business members felt that qualitative measures that demonstrated senior level commitment across business units would be useful.

#### **4. Guidance on company residence**

A company that is not incorporated in the UK will still be tax resident in the UK if the central management and control of its business actually abides here. Central management and control is considered to be the highest tier of management control, normally exercised by directors acting as a board under powers given them in the company's memorandum and articles, although where, when, and by whom central management and control is exercised are questions of fact.

Case law recognises that central management and control may be divided, and a senior board meeting, held cross border by telephone conference, might well be regarded as an example of such division. If one or more participants were in the UK then it is arguable that the central management and control was in the UK too, at least at that time, and thus that it was resident here.

No case with these circumstances has been heard by the courts, and this is perhaps a testament to the absence of real problems to date, because the case law has been in its current state for over fifty years. Recent opinion from leading counsel was to the effect that the courts would look to weigh all factors relevant to the management of the business.

The UK's extensive network of tax treaties should help solve problems arising from a company being tax resident in two territories at once.

#### **5. UK stance on OECD initiatives**

The OECD is aiming to publish a consultation paper on business restructuring, covering the cross-border redeployment of assets, functions and risks, by the end of 2008. It is intended to provide benefits for both tax administrations and business, perhaps in the form of additions to the Transfer Pricing Guidelines. The UK position is that HMRC appreciates business' desire for tax certainty and that many business restructurings take place for valid commercial reasons. However, like many fiscs, it is concerned at the potential erosion of the CT base by tax driven global restructuring. The OECD have convened a working party and the UK is a leading member, with healthy debate taking place on all sides. A balanced outcome would be greater

consistency across tax administrations to reduce the incidence of double taxation and so that business can better understand the wider approaches to risk management.

HMRC will normally look critically at any restructuring as part of the risk assessment process. Issues that may require further clarification include the arm's length position, whether transactions took place in substance, whether assets have left the UK and permanent establishment issues.

There is a divergence of views and approaches across OECD member states, depending on the facts of the case. The UK's aim is to reduce the incidence of double taxation and provide certainty and consistency, taking the view that simply following a pure pricing approach does not always produce the right answer. The "would" argument has to be considered as domestic law encapsulates this in Paragraph 1(3) Sch 28AA and support for this approach is found in paras 1.37 -1.39 of the Transfer Pricing Guidance. The UK believes these paragraphs could be improved, although of more importance is arriving at a common understanding of the way they are or should be applied. At present there is some a divergence of views among OECD members with obvious potential for double taxation and contentions with business.

The working group is no longer considering the permanent establishment issues, focusing entirely on transfer pricing. However, the UK considers permanent establishment an important area, particularly in the context of stripped risk distributors, and it will want to pursue it in the context of reviewing Article 5 in the 2009/10 OECD work programme of WP1. No changes to Article 5 are planned, but possibly some revisions to the commentary.

Business members commented on the importance for global competitiveness of achieving consistent global application of OECD transfer pricing principles. Arbitration is an area that business find helpful and should not be reconsidered. Article 7, as drafted, is not thought to be helpful to business, although improved guidance could reduce the areas of dispute.

## **6. Review of Powers, Deterrents and Safeguards**

The Review is intended to modernise and align HMRC's Powers to provide a more effective regime to detect, quantify, penalise and deter non-compliance, encourage behavioural change that supports compliant attitudes and fosters trust, and provide clear and effective safeguards so that taxpayers have easy access to their rights under tax and other law.

Three current consultation documents with draft clauses, were issued 10th January (closing 6th March):

- Consultation on extending legislation on Penalties for incorrect tax returns introduced in FA2007 to penalties for incorrect returns for other taxes and to penalties for failure to notify a taxable activity.
- Second round of consultation on aligning and modernising HMRC's powers to check tax liabilities (Compliance Checking), including extensive new and clarified safeguards, this time with draft clauses.
- Second round of consultation on a small package to align and modernise HMRC's powers to collect debts and provide new ways of paying, with draft clauses (Payments, Repayments & Debt). Work on elements from the first consultation continues with a view to further consultation at a later time.

Consultation across the Powers review has been very wide; respondents have expressed support for the broad package of proposals and been able to inform the detail. HMRC is grateful for their contribution. This process is key to HMRC's modernisation and will ensure the new legislation reduces burdens on taxpayers who try to get their tax right but comes down harder on those seeking an unfair advantage.

Penalties for incorrect returns would be extended to the following taxes and duties (but not tax credits):

- environmental taxes (aggregates levy, climate change levy, landfill tax);
- excise duties (alcohols, tobacco, oils, gambling and air passenger duty);
- stamp duties (stamp duty land tax, stamp duty reserve tax);
- accounting for recovery of student loans by employers;
- inheritance tax; insurance premium tax, pension schemes and petroleum revenue tax;

and also to those who fail to notify HMRC of a new taxable activity by the required date, leading to tax not being paid. Guidance will be drafted and consulted on in due course.

Business members were concerned that the associated guidance is clear and comprehensive, is produced well in advance so business understand their position, and that there is consistency in its application across direct and indirect taxes.

On 10 January 2008 Financial Secretary to the Treasury, Jane Kennedy announced that HMRC would begin the process of working with interested parties on the development of a Taxpayers' Charter. HMRC have begun initial consultation to understand what taxpayers and claimants may want out of a Charter, with particular consideration for those who are unrepresented. There are several major issues:

- the scope of the Charter;
- the drafting and consultation;
- whether the Charter should have a foundation in law;
- whether there would be one Charter or a tiered structure;
- its relationship with the tribunal process;
- measuring its impact and ensuring it is being upheld.

Business members appreciated that the Charter is primarily aimed at individuals, but felt that good progress in building a better relationship had already been made; a bold public statement wouldn't add anything for larger businesses. HMRC should take best practice from its relationship with business and apply this across other parts of the organisation.

HMRC responded that the Charter wouldn't mirror the previous one, but it will set out service standards, timescales and tone of engagement for those agents and individuals who have no ongoing relationship with HMRC

## **7. AOB**

Business members expressed concern at the proposed changes to the non-domiciled rules. A significant proportion of businesses had non-domiciled senior

mangers and this could encourage the whole business to migrate. It also created obstacles for businesses trying to attract world-wide talent, especially foreign graduates both educated and seeking work in the UK. The timing alongside the foreign profits review and other economic difficulties is creating an unhelpful climate for potential investors.

Business members commented on the consultation document on payrolling benefits. They welcomed simplification of the P11D process but felt the payrolling of benefits should be voluntary. HMRC responded that this proposal was intended to reduce the administrative burden on employers.

Business members requested some clarity on HMRC's new structure under the Acting Chairman. HMRC confirmed that there are now three clear streams of customer focused accountability: Business Tax, Personal Tax and Benefits & Credits. The policy and operational units remain as before, but with more clearly defined responsibilities.

**Meeting Organiser: Angela Brown 07765 230304**