
BUSINESS TAX FORUM MINUTES

14:00-16:00, Monday 10 September 2007
Room 2/39, 100 Parliament Street

Chair:	Dave Hartnett Julian Heslop	(HMRC) (GlaxoSmithKline)	
Secretariat:	Judith Knott Angela Brown Ian Brimicombe	(HMRC) (HMRC) (100 Group)	Business Customer Unit Business Customer Unit Business Secretariat
Attendees:	Eileen Haughey Ian Menzies-Conacher Michael Templeman Stephen Banyard Ian Valentine Andrew Dawson Peter Wharrad Cheryl Scott Richard Steele Peter Faherty Paul Gerrard Edward Troup Jamshed Malik	(Marks & Spencer) (Barclays) (Schroders) (HMRC) (HMRC) (HMRC) (HMRC) (HMRC) (HMRC) (HMRC) (HMRC) (HMT) (BERR)	100 Group CBI CBI Business Customer Unit Large Business Service Customs & International Business Customer Unit Anti Avoidance Group Local Compliance (CT&VAT) Observer Business & Indirect Tax
Apologies:	Joel Walters Naomi Ferguson Geoff Lloyd Melanie Dawes Adam Little Tim Voak Michael Devereux	(Vodafone) (HMRC) (HMRC) (HMRC) (BP) (Tesco) (Oxford Univ'ty Centre for Business Taxation)	100 Group Local Compliance CT&VAT Large Business Service 100 Group CBI

1. Minutes and welcome

Dave Hartnett welcomed Julian Heslop as the new co-chair. Previous minutes were agreed.

2. 2006 Review of Links with Large Business

2.1. Clearances

The two consultation periods on transfer pricing and clearances & advance agreements were closing soon; responses will be published. Business views had been largely supportive and were informing the process mapping. There were differing opinions on the likely volume of clearance applications: some respondents felt the system would be used only where there were genuine commercially

significant issues of uncertainty and others felt there would be commercial pressure to use it for indemnity purposes, even where there is little uncertainty or real commercial significance. Consultation has included the tax lawyers and advisors who will use the system, with the aim of agreeing parameters that are to everyone's advantage, without being unduly restrictive. Overloading the system would be to non-one's advantage. Would a joint steering group presiding over implementation be useful?

2.2. Pre-Budget Report

HMRC will be publishing a progress report, similar to Budget 07. All proposals are on target to deliver. Focusing on the four themes as an outcome for business has helped manage the interdependencies. HMRC will report:

- Business were broadly comfortable with the new Advance Agreements Unit, and the £250m de minimis limit. Details will be published in a new Statement of Practice.
- The extension of Relationship Managers to a wider proportion of the complex or high risk businesses in its Local Compliance business unit. Contact may cover all issues or just a specific risk.
- A project management approach to the resolution of all new and historic issues is being adopted, in the form of Action Plans agreed with business; a timetable has been published which exceeds HMRC's commitment under the Review.
- A package of quantitative and qualitative measures is under development; designed to drive the right behaviours and improve performance over time.
- Two research projects have been commissioned – (i) baselining the customer experience and (ii) understanding the practical impact of implementation on business. The results of these will be published in December.

2.3. Business members commented:

- Has business made sufficient contribution? CBI and 100Group are fully engaged. HMRC welcomed further input from business to help embed greater commercial understanding across the Department.
- Relaxing the conditions for a clearance application would help manage the flow – those proposed are too stringent. It would be preferable to have a few relaxed conditions but more comprehensive guidance.
- Difficult to comment on the volume of clearance submissions without a full understanding of the final process, but a degree of unwelcome applications is possible. Likely situations include: when it is difficult to form a view from advisors on major transactions; dealing in funds with the public: the prospectus would need to contain HMRC clearance on the tax implications for the fund to be marketable. Clearances may become market practice – if one business applies, their competitors will be obliged to follow. There are currently a number of prevalent issues that have undecided tax implications – law firms may decide to submit these as soon as the system is launched. HMRC should review these issues in advance, and update its guidance.

- A joint clearances steering group would be useful – consultation should include debt/capital market players, banks, underwriters, mergers and acquisition advisors and tax lawyers.

3. Admin Burdens

100 Group has identified a number of admin burdens arising from law and practice in direct corporate tax, indirect tax and payroll tax compliance. HMRC has consulted internally and with the CBI over the summer. The list ranges from small burdens that could easily be addressed, generic burdens that could be better targeted, and burdens that would be difficult to remove. These are primarily in the smaller business sector. Edward Troup advised that HM Treasury would be interested to review suggestions where a policy change could simplify business tax compliance within the current framework and finances. HMRC will circulate the list internally, and to HMT, for action.

4. Foreign Profits Consultation

Edward Troup noted that although the joint HMRC / HMT discussion document closed for responses on 14 September, dialogue will continue internally and externally. Pre-Budget Report will update the position but not make any announcements; finer developments will be reflected at Budget 08, with introduction pending 2009. An external liaison group has been ensuring effective consultation during the discussion period. The exemption regime for foreign dividends, the removal of Treasury consents and the retention of interest relief have all been broadly welcomed by business. Concerns have been voiced about the associated new CFC regime, particularly the scope and potential compliance burden in relation to intellectual property and intangibles. HMT and HMRC are working together on this project, and there will be further discussion with business. The package of measures is intended to be revenue neutral, modernising the foreign profits regime to improve UK competitiveness.

Julian Heslop added that it is important for HMRC / HMT to work closely with business, at Board level, to allow time for discussions and not rush the outcome. The potential benefits are significant, but the consequences of getting it wrong are equally significant.

4.1. Business members commented:

- There is unease across all sectors over the CFC regime, not just pharmaceuticals.
- The package as proposed is not seen by business as revenue neutral.
- The proposed new CFC regime risks creating a huge, and largely unnecessary, admin burden for large corporates.
- Full implications had still not been clarified in some sectors; it's difficult to understand the cost / benefits and the compliance burden before all the detail has been developed.

- There is a significant gap to be bridged between business and HMRC / HMT in relation to the concept and impact of the proposed CC regime.
- There is also disagreement as to the cost of each element of the package , for example in relation to the potential implications of introducing exemption.
- UK currently has interest deductibility for foreign investment; business does not want to lose what it already has.
- The main proposals could collectively present a significant administration burden. General acceptance that the current system is untenable in the long term, but HMRC / HMT and business should be able to find an outcome that maintains the UK's competitiveness.
- Business felt sufficiently engaged in the consultation process.

5. International Tax Treaties

Over the last 2 years HMRC has been working closely with HMT to introduce a more structured and transparent process. Each year, HMRC requests views from stakeholders (including other Government departments) on which countries to negotiate with. Respondents are invited to a meeting to discuss the treaty programme and their views will be responded to individually, instead of the global response that had previously been circulated. Some fiscs are beginning to work together to understand what a treaty might look like for a non-aligned country, providing useful intelligence. A recent conference in the US brought together business and advisors from many fiscs to discuss treaties – this would be a useful debate to host in the UK. HMRC welcomed suggestions to make the process more effective and systematic.

5.1. HMRC requested:

- It is not always possible to achieve what business and HMG alike would want; other fiscs can be reluctant to give up their taxation rights unless they can see a positive effect on inward investment. Substantial Shareholding Exemption is a good example of this and business need to submit tangible evidence and examples that support their treaty requests.
- Business should avoid generalisations such as requesting lower withholding taxes in their requests – negotiations can be complex, and HMRC needs to understand the specific relevance to the business and its investments. Individual case studies help HMRC understand competing business interests. Discussions with business can be informal and will be confidential.

5.2. Business members commented:

They hadn't previously felt engaged in the negotiation process; they felt their suggestions weren't taken on board and treaties weren't always relevant to their needs. HMRC's explanation of the process had been helpful and they would explore the idea of submitting relevant examples and evidence, with the caveat that in some circumstances evidence may not exist, as investment decisions are often made on terminal value. HMRC were invited to continue the discussion at forthcoming CBI and 100G fiscal committees.

6. Anti Avoidance update

Guidance for staff on the likely indicators of avoidance had been published in the spring, which added perspective to the 2006 Review of Links Budget 07 publication "*HMRC Approach to Compliance Risk Management for Large Business*". The list included indicators, which HMRC would use to determine the risk that a transaction presented – acceptable planning could still incorporate some of the features listed, for example, if the transaction is a composite part of a wider issue. The terminology and examples are deliberately not too prescriptive, but are aimed at the more creative planning devices. HMRC welcomed ideas on refining the language to give the indicators greater clarity.

6.1. Business members commented

- It is preferable to avoid creating a checklist that auditors etc would then expect business to adhere to. However, if the wording is too general it can cause practical problems understanding what is or isn't acceptable planning.
- Ultimately, the right outcome is that HMRC focus their resource on the most significant issues. It will be useful to look back in a few months and see how effective the indicators have been in selecting the right issues.

7. Any Other Business

7.1. Dave Hartnett is speaking to the 100Group on 22 October about the Seoul Declaration to explore whether there is a role for CFOs in enhancing the relationship between HMRC and intermediaries. Members should contact him independently, with their contributions to this debate.

7.2. HMRC has been involved in recent debate with advisors on professional privilege (primarily high net worth individuals rather than corporates). HMRC cannot obtain information from lawyers about their clients, or legal advice from clients, but can obtain advice provided by an accountant. There is an asymmetry here that the accountants would like to redress. The Powers Committee will debate the issue in due course, although a change in S20 TMA 1970 is unlikely. Would members welcome a discussion on this issue at a forthcoming meeting?