

Minutes

Business Tax Forum

10.00 - 12.00 27 June 2011
Room 2/39 100 Parliament Street

Chair:	William Morris Melanie Dawes	(General Electric) (HMRC)	CBI Business Tax
Secretariat:	Vanessa Woodward Lidia Otero Ian Brimicombe	(HMRC) (HMRC) (100 Group)	HMRC Secretariat HMRC Secretariat Business Secretariat
Attendees:	John Connors Paul Morton Abdul Nabi Jean Sharp Mike Sufrin John Bartlett Freda Chaloner Ian Stewart Judith Knott Jon Sherman Linda Whewell Pete Robinson Cheryl Scott Chris Davidson Naomi Ferguson Monica Saunders Joanna Greenidge Melissa Tatton	(Vodafone) (Reed Elsevier) (Marks & Spencer) (Aviva) (Rolls Royce) (BP) (HMRC) (HMRC) (HMRC) (HMT) (HMRC) (PSN) (HMRC) (HMRC) (HMRC) (HMRC) (HMRC) (HMRC)	100 Group 100 Group 100 Group 100 Group CBI CBI Large Business Service VAT CTIAA Business & International Tax CAR Pol Tech Central Policy AAG Business Customer & Strategy Business Customer & Strategy Sols CTIAA
Apologies:	Susan Walker Tim Voak Keith Cartwright Erin Robinson	(Lloyds) (Tesco) (HMRC) (BIS)	CBI CBI Local Compliance

1. Welcome

Welcome and introductions.

John Bartlett of BP was welcomed to the group for the first time.

2. Update from International sub forum meeting

Judith Knott of HM Revenue & Customs (HMRC) reported back from the International sub-group meeting. The topics covered were impact on current law and practice of the European

Court of Justice decision, Corporate Tax Reform, tax treaties and the Common Consolidated Corporate Tax Base (CCCTB). The minutes have been circulated and will be published on the same page as these minutes.

3. Patent Box Consultation

HMRC provided an overview of the proposed Patent Box Relief and the consultation process to date. The consultation document was published on the 10 June.

[Download the 'Consultation on the Patent Box' \(PDF 573K\)](#)

There have been a number of discussions with business and agents, these will continue and an open day to discuss issues further will be held on the 7 July 2011. The aim of the Patent Box is to help to re-establish the UK as one of the top locations of choice for innovative industries. It will be a broad, inclusive regime which will encourage businesses across a wide range of sectors to invest in the UK, generating growth and creating jobs.

The main steps that a business will have to carry out to establish whether they qualify for the relief are:

- determine whether there are qualifying intellectual property rights
- satisfy ownership and active development criteria
- work out associated qualifying income

HMRC and HM Treasury (HMT) stated that the initial reaction to the consultation had been positive but that difficulties could arise when defining the details of the legislation and requested business to work with HMRC to look at practical issues. There had been some challenges but the working group has been closely involved in the work carried out. The issues highlighted so far are the scope of the qualifying intellectual property and how to calculate residual profit.

Business commented that the design was as good as it could be at this stage and that it was hoped that the Patent Box would help UK competitiveness. The research and development (R&D) tax credits consultation was published on the same day; business anticipated that work on the Patent Box would be carried out in conjunction with that of the R&D work, which HMRC confirmed.

4. Consultation on Employer Asset-backed Pension Contributions

HMRC are currently consulting on Employer Asset-backed Pension Contributions policy design with a consultation on proposed legislation to follow in the autumn. The proposals outlined are designed to ensure that the amount of tax relief given to employers accurately reflects the value of the contributions received by pension schemes, while preserving as far as possible the flexibility for both employers and pension schemes to use the arrangements to manage pension deficits. Two options were outlined in the consultation document of which the preferred Government option was Option B.

- Option A would give employers tax relief only when either cash actually changes hands between the employer and scheme, or the scheme acquires full title to an asset that can readily be converted into cash. The cash basis which is part of the current design of the pensions tax regime would be maintained.
- Option B would involve amending existing tax rules (the pensions and structured finance rules) to ensure that the tax treatment of an arrangement as a whole accurately reflects the economic substance of the transaction. So the automatic upfront tax relief would only be retained for the accounting value of the 'debt

instrument' and relief for those payments accounted for as interest. If the arrangement is not recognised as debt, there would be no upfront relief but relief for rental or other type of regular payments on the accruals basis would be available.

The legislation intends to combat situations where tax relief that is greater than the fair value of plan assets received by the pension scheme is given, for example, tax relief could effectively be given twice or be over-paid where part of an arrangement's value is conditional on the future funding position of the pension scheme.

Business raised a number of issues in discussion. They queried the extent of the problem and whether it would be possible to use principles based legislation to tackle it.

HMRC thanked business for their contributions and offered to arrange meetings to discuss any further issues with individual businesses.

5. VAT reform in light of European Union (EU) Green Paper

Business had requested a discussion to cover the UK's position on the EU Commission Green Paper on the future of VAT. The purpose of the Green Paper was to launch an EU wide debate on the current EU VAT system and prepare the way for a Commission Communication setting out the EU VAT strategy for the coming years, which is expected to be published by the end of 2011. In response the UK has written formally to the Commission, setting out the UK position, taking into account the views of UK businesses, and has also encouraged interested parties to submit their views independently.

The UK continues to attach considerable importance to the principles of subsidiarity and national sovereignty - and supports continued flexibility for Member States to apply their own choice of VAT rates in support of their domestic priorities and social objectives, provided that this does not materially affect the functioning of the single market. And the UK will continue to wholly support the principle of unanimity in taxation and will not endorse any moves away from this principle. The UK will also continue to insist on comprehensive and high quality impact assessments with legislative proposals and will expect to see EU businesses engaged as part of that process.

The UK supports the broad aims set out in the Green Paper it also supports an approach based on taxation at the place of destination, which is the effective basis for the current EU VAT system - and welcomes an examination of the current VAT system, to see if it could be made to work better, in line with those broad aims.

A challenge for tax administrations is to strike a reasonable balance between complexity and administrative burdens, on the one hand, and ensuring revenue collection and protection on the other. This is something that needs to be worked on primarily at a national level and not just an individual tax such as VAT. There are, however, areas of VAT that merit collective consideration, including EU rules covering intra-community supplies. The UK shares the Commission's concerns about the size of the VAT gap and the importance of finding effective solutions to address VAT fraud, including Missing Trader Intra-Community (MTIC) fraud.

Legislation to improve administrative cooperation was concluded last year. Ideas around enhanced use of technology in the VAT collection process are worthy of further investigation, and there may be other cost effective non-legislative ways to reduce fraud, such as continuing to improve the system of administrative cooperation between tax authorities and the exchange of best practice, for example in the use of modern technologies and in risk or compliance based assurance models. The UK also believes that work to successfully

introduce the 2015 VAT One Stop Shop should continue to be an overall key priority of the EU.

Business enquired whether HMRC had further thoughts on any of the issues (specifically insurance) that they had outlined in their response to the Green Paper. HMRC confirmed that they had nothing further. HMRC emphasised that it was helpful for business to inform them what they wanted included and excluded from the system. Business concluded by outlining a variety of issues that they considered important within the context of the VAT system changes:

- reduction of the administrative burden on European wide retailers
- cross border issues where the same product is treated differently in different territories
- the ability for large business to centralise their VAT process
- origin vs destination on taxation of goods

6. Disguised remuneration

HMRC provided an update on disguised remuneration. The disguised remuneration legislation in Clause 26 and Schedule 2 of the Finance Bill was amended at Public Bill Committee stage to give effect to a total of 90 Government Amendments.

The amendments fell into a few main themes. In particular they:

- extended the exclusions for genuine deferred remuneration arrangements involving shares and share options
- ensured that the interactions between charges and exclusions under new Part 7A and the existing rules on the taxation of paid for or taxed employment related securities operate as intended
- ensured new Part 7A applies to secured unfunded retirement benefit schemes
- expanded the definition of a group company for the purpose of Part 7A

The next stage in the Parliamentary process are the report and Third Reading which started on the 28 June. No amendments were tabled for debate. The frequently asked questions will be updated to reflect the effects of the amendments to the legislation at Public Bill Committee and there is a hope that HMRC will be in a position to publish these in early July. Comprehensive guidance on the new legislation is being drafted. The intention is to publish as soon as possible after Finance Act 2011 has been enacted and before the PAYE commencement date. The NICs Regulations are also in the process of being developed and it is intended that they will be published as soon as possible after the Finance Bill legislation is enacted.

Business commented positively on HMRC's willingness to engage and listed to concerns raised during the consultation period but expressed concern over the complexity and the resulting difficulty in applying the legislation. They were also concerned at the length of the legislation at 70 pages and the guidance at 200 pages. There was some frustration that standard remuneration structures which are not tax motivated could be caught. It was also stated that there needed to be an assurance that the gateway would work.

HMRC responded by assuring that the guidance would set out in detail how the gateway operates and that although the guidance was lengthy it would provide certainty. The guidance would provide a number of examples which should clarify whether a transaction is caught. There would also be a continuous evaluation of the policy and legislation.

7. Rule writing methodology

HMRC and business discussed the methodology used to create legislation. Business commented that in certain instances the development of legislation could be approached in a different way. The current approach of catching everything and carving out exemptions was seen to create an unnecessary administrative burden and there was a suggestion that there should be a more targeted approach. An additional suggestion was that there should be a focus on risk profiling to see whether there are better ways of targeting the minority that 'push the envelope'.

HMRC agreed that it would be preferable in some circumstances to use a more principle based approach and where possible to look at targeting specific areas rather than using a blanket based approach. In many cases both approaches were considered but on some occasions encompassing everything and then carving out exemptions was the best way of ensuring that people were able to easily get out of a regime. It was agreed by all that the aim should be for consultation to be carried out at the earliest possible stage (to include clearly setting out the problem that needs rectification and the policy intent).

Business commented that as well as the practical difficulties of applying very complex legislation there were also presentational difficulties of explaining complex tax issues to their Boards. HMRC agreed to give the issue further consideration. Business also stated that positively attracting business through straight forward tax legislation is a worthwhile objective and one that should be considered when developing policy.

In general business was content with the overall level of consultation on changes. HMRC and HM Treasury were pleased with the positive reaction on the level of consultation and assured business that the intention in the future is to start with a clear expression of policy intent of the legislation followed by further consultation on the draft.

Meeting organiser: Rita Makwana Tel: 020 7147 3566