

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE FIFTY- FIFTH COMMITTEE MEETING

Note by the Secretary

I attach the minutes of the 55th meeting of the Consultative Committee, held on 22 November 2005.

BASIL RAJAMANIE
Secretary to the Consultative Committee

MINUTES OF THE 55th MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 22 NOVEMBER 2005 IN THE JAMES PENNETHORNE ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON

Present:
Robin Martin (Chairman)
Adam Broke
Colin Campbell
Mary Fraser
Keith Gordon
Terry Hopes
Cunnie Rankin
Francis Sandison

In attendance:
Hayley Rogers
Richard Marlin
David Halsey
Brian Jones
John Morris
Steve Batterby
Colin Wolfe
Richard Davey
David Hole

Secretary: Basil Rajamanie

Apologies and Welcome

Apologies had been received from Wreford Voge, Malcolm Gammie and Taha Dharsi.

The Chairman informed the Committee that Lord Howe was leaving the Steering Committee and would be replaced as Chairman by Lord Newton of Braintree.

The Chairman introduced and welcomed Steve Batterby to the project. Steve had replaced Hazel Colclough who left the project recently.

Items 1: Minutes of 54th meeting held on 27 September 2005

1. The minutes of the meeting on 27 September had already been circulated. They were agreed.

Item 2: Matters arising

2. There were none.

Bill 4

Item 3 - Paper CC/SC (05) 33 - Transactions in Land

3. The project presented this paper and explained that it covers the rewrite of section 776 of ICTA, which is concerned with countering tax avoidance specifically involving transactions in land. The supporting provisions in sections 777 and 778 of ICTA had also been rewritten to the extent that they apply to this anti-avoidance provision.
4. The project said that they had addressed the criticism directed at the source legislation that it is too long and complex by rewriting the provisions as a number of shorter clauses and arranging them in a way which should help the reader to understand them better.
5. The Project said that they had not rewritten sections 777 and 778 as a single set of provisions applying to both section 775 and section 776 but had split them up. This had been done on the basis that it would make the provisions easier to use.

6. The project said that they had specifically drawn the attention of various industry and professional representative bodies to the publication of these draft clauses. These included the Special Commissioners, tax publishers, law firms, accounting firms and charity specialists.
7. The project said that they had received a number of responses which they were considering. Respondents agreed with the proposed approach to the rewrite of the supporting sections 777 and 778 and had offered some helpful suggestions.
8. In discussion the following main points were made:
 - The Committee agreed that the rewritten legislation was much clearer and more accessible but they had concerns about one or two clauses. Clause 7 in particular was not easy to understand.
 - A further point was made about the ordering of the clauses and it was suggested that it might help if the clause on “person liable” appeared earlier.
 - The Committee also mentioned that clause 11(2) was not easy to grasp and wondered whether this could be amplified to help the user.
4. The project thanked the Committee for their comments and agreed to give further thought to all the points made above.

Item 4 - Paper CC/SC (05) 34 - Sales of Occupation Income

9. The project presented this paper and explained that it covers the rewrite of section 775 of ICTA and the elements in sections 777 and 778 of ICTA that apply to section 775. These provisions are concerned with countering tax avoidance schemes which turn income from an occupation into capital.
10. The project said that they had rewritten the provisions as a number of shorter clauses and arranged them in a way that they hoped would be helpful to the reader. In rewriting the supporting provisions in sections 777 and 778 of ICTA, they had followed the approach adopted in the rewrite of section 776 of ICTA.
11. The project said that they had already received a number of helpful comments which they were considering but they would be interested in any further comments the Committee might have.
12. In discussion the following main points were made:
 - Some Committee members considered that the heading “sales of occupation income” was confusing and unhelpful. The project said that they would willingly consider the matter further in the light of the discussion and the specific suggestions made by members of the Committee.
 - It was suggested that, as the reference to the “going concern” condition in clause 11(2) preceded the explanation of the meaning of the phrase in clause 11(4) and 11(5), some reference to alert the user to the explanation would be helpful.
 - The Committee also thought that clause 12(3) was not easy to understand. This point had already been made in one of the responses received and it was accepted that some improvement could be made here.

13. The project thanked the Committee for their helpful comments and gave an undertaking to give further thought to the points raised.

Item 5: Paper CC/SC (05) 36 - Trusts

14. The project presented this paper and explained that it concerns the rewrite of the remaining specific income tax rules relating to trusts. The main areas of interest are accumulation and discretionary trusts and trust management expenses.

15. The project said that in rewriting these provisions they had to judge how far to go in making explicit various areas of well-accepted practice which derive partly from trust law. In the rewritten clauses they had made it explicit that trust management expenses are grossed up when being set against trust income and set out the way in which trust management expenses affect the measure of the income from interests in possession.

16. The project said that the paper also draws attention to the way in which the rewrite interacts with the wider work of HMRC Trust specialists. The project added that they had also drawn the attention of the Society of Trust and Estate Practitioners to these clauses.

17. The project said that they had given further thought to whether the provisions in FA 2005 about trusts with a vulnerable beneficiary should be included in Bill 4. Because these provisions are new and clearly written, and because the provisions provide for single elections to be made which have effect for both income tax and capital gains tax purposes, it was the intention to leave these provisions in FA 2005.

18. In discussion the following main points were made:

- The Committee said that they were in favour of spelling out what is done in practice in the legislation. This area of tax law was very complex and they felt that it would be particularly helpful to small trusts.
- In the context of having more expanded legislation, it was noted that this legislation is open to constant change and the point was made that the provisions which make practice explicit should be robust enough to cope with future changes in rates, rules, etc.
- The Committee noted that there were various discussion documents on this subject and said that it would be regrettable if the project rewrote areas that might undergo radical change soon. The project noted the Committee's concerns and confirmed that they were liaising closely with policy colleagues and would pick up any changes in FA 2006 and include them in Bill 4.
- The Committee wondered about the position of clause 4, and whether it would be better to position it closer to the sections to which it applies. The project agreed to look at this, and in particular whether greater sign-posting would help.
- The Committee asked about the definition of "trust rate income" in clause 10(4) which refers specifically to section 568 of ITTOIA, and contrasted this with the list of provisions referred to in clause 1. The project explained that this reflects the fact that section 568 (unlike the other provisions listed in

clause 1) operates by treating the income concerned as within the scope of section 686.

- The Committee said that if clause 21(3)(b) was meant to pick up interest in possession trusts that concept was not obvious from the drafting of this clause. It was suggested that some minor changes to the wording might resolve this, though concerns were also expressed about how feasible this would prove. The project agreed to look at clarifying this, in the clause if possible, or - failing that - in the Explanatory Notes.
- The Committee asked what the position was where a person was trustee of more than one trust and whether something needed to be said about such situations. It was confirmed that in such a situation a person's income tax liability would be considered separately in relation to each capacity in which the person acted as trustee.

19. The project thanked the Committee for their helpful comments.

Item 6 - Paper CC/SC (05) 30 – Income Tax Calculations

20. The project presented this paper and explained that it covers new clauses on the calculation of a person's income tax liability.

21. The project said that these clauses bring the various elements of a person's income tax calculation together. Because most of the rules are the same for individuals and other types of person liable to income tax the proposal was to provide one set of clauses which apply to all persons.

22. The project explained that the clauses contain extensive lists of other provisions. And they also cross-refer to other material, in particular to the clauses on tax rates. The project added that they would be interested in any views the Committee might have on the general approach and style, as well as on the detail.

23. In discussion the following points were made:

- The Committee said the provisions were well structured and drafted.
- It was noted that the lists of provisions would need to be amended if the legislation changed. This would ensure that the provisions continued to provide the whole picture, provided that such amendments were made.
- More widely, it was noted that it would be important to identify all the entries that needed to be included in the lists. The project confirmed that they were continuing to check this, but would welcome observations on this.
- The Committee felt that it would be desirable if more white space could be introduced into clause 2.
- One member asked why there was a proposal to drop the return of the total income provisions (section 836 ICTA). The project said that these were obsolete because they were now provided for under self-assessment.
- The Committee enquired what the reason was for having separate lists in clauses 9 and 11. Whilst it was clearly right to keep deduction of tax at source

liabilities separate, it was less clear why items such as recovery of excessive EIS relief were in the second list rather than the first. The project said that such items in the second list did not form part of the calculation of a person's income tax liability for a year as such, and are administered outside the self-assessment process.

The project thanked the Committee for their helpful comments.

Item 7 - Paper CC/SC (05) 34 – Response Documents

24. The project said that the paper highlighted the main points from the various response documents published recently.
25. The project said that the clauses on VCT had been revised in response to some of the comments they had received. This had improved the drafting further. It was hoped that revised draft clauses would be available before Christmas, but this could not be guaranteed.
26. On Transfer of Assets Abroad the project said they would be revising the clauses that deal with the calculation of the liability where the benefit is less than the “relevant income” and where more than one benefit is received because it was clear from the responses that the clauses as originally drafted were too complex and so not as accessible to users as they needed to be.
27. The project said that they had also received a number of detailed suggestions on how the draft clauses on Manufactured Payments could be improved which they are considering.
28. The project said that they had also made some changes to the clauses on gifts of shares to charities and Heritage Maintenance Settlements.

Item 8: Paper CC/SC (05) 39 - Regulatory Impact Assessment (RIA)

29. The project said that the paper explains in general terms what a RIA is. The project explained that they are required to publish the assessment with the commentary that will accompany the draft Bill.
30. The project said they would be particularly grateful to have the Committee's views on:
 - the costs/benefits to tax professionals, where the approach follows the project's recently published Plans document;
 - the costs/benefits to taxpayers generally; and
 - the impact the Bill will have on small businesses and other sectors.
31. The Committee was generally content with the RIA which they felt was a well constructed document. The general view was that the benefits from the work of the Project outweigh the costs and that intelligible legislation would benefit the tax professional. But some Committee members had reservations about the method used to quantify these benefits.
32. There was a lengthy discussion of costs and benefits. The main burden of the discussion was about paragraph 41 of the draft, in relation to the idea that a tax

agent would have a "saving" of a certain amount of money. This "saving" was calculated by reference to estimates of the agent's charge-out rate, and of the time saved as result of having clearer legislation. It was suggested that this might be better conceived as either as a saving in the cost of the resources needed to do the work, or a benefit in terms of being able to use the same resources to do additional work. The project agreed to look at this paragraph again to see if the way it is expressed could be improved.

33. Other points made were as follows:

- A view was expressed that professional indemnity insurance providers might have a view on whether rewritten legislation was beginning to lead to perceptible benefits.
- The Committee felt that the paragraph on unregistered tax advisers was a valid one and suggested that this should be built up a little more. These people will almost certainly find the rewritten legislation very helpful. It was also suggested that Age Concern should be added to the list.
- There was some discussion on the identified risks outlined in paragraphs 11 and 12. A suggestion was made that it would be useful to include something on the continuity of law provisions in the Bill in these paragraphs.
- A suggestion was made that the options shown in paragraph 19 should be numbered and these should be listed in the summary of costs and benefits table at the end of the document.

34. Subject to the points made above the Committee indicated that they were content with the RIA. The project thanked the Committee.

Item 9 - Paper CC/SC (05) 40 – Issues relating to publication of draft Bill

35. The project explained that the paper covered a number of matters connected with publication of the draft Bill.

Title of Bill

36. The project explained that unlike the previous two Bills, this Bill will contain a range of provisions, many of which will apply for the purposes of all the Income Tax Acts. This Bill will effectively draw together all the project's work on income tax and it would become the starting point for anyone wishing to find out about income tax. For these reasons they proposed that the short title of Bill 4 should be the Income Tax Bill. Once enacted, the Bill would be the Income Tax Act 2007, or ITA 2007 for short.
37. Differing views were expressed but the majority of the Committee members were content with this proposal.
38. Some members felt that it would be misleading to call this Bill the Income Tax Bill. Their concern was that this might lead users to believe that it contained all the provisions on income tax. The project said that they intend to address this by providing an introductory clause at the start of the Bill, to set it in context.
39. The project explained that ideally the title should be short unless there was good reason to have a longer title. Unlike previous Bills, this Bill does not have a

homogeneous theme. It contains the core provisions relating to the rates of income tax and the income tax calculation. It also covers various other tranches of income tax legislation including personal reliefs, deduction of tax at source and some anti-avoidance material. All these areas are equally important but it would not be practical to list everything in the title.

40. The discussion ended by the Committee indicating, with a minority of dissenters, that they were content for the Bill to be called the Income Tax Bill.

Administrative matters

41. The project said that they proposed the following:

- to include information about the origins in the Explanatory Notes and to provide a separate table of origins and destinations, as they did on Bill 3;
- not to include the origins in the paper version of the draft Bill because it would add considerably to the length of the Bill. Origins will however be included in a version of the draft Bill published on the Internet; and
- to include unique identifiers for each clause in the draft Bill (known as j-numbers within the project). The project explained that these numbers will only appear in the headings of the clauses and will not increase the length of the Bill.

42. The Committee was content with these proposals. They indicated that providing origins in the Explanatory Notes had worked well in Bill 3. The Committee agreed that the j-numbers would be helpful to them also.

Item 10: Paper CC/SC (05) 41 - Exercise of consequential amendment power

43. The project explained that this concerns Schedule 12 to FA 2002 where three minor and identical consequential amendments should have been made by ITTOIA but were overlooked. The oversight itself had no practical consequences but it would be useful to rectify this using the power in section 882 of ITTOIA.
44. The project explained that Schedule 12 to FA 2002 provides enhanced corporation tax relief for qualifying expenditure on research and development. The problem relates to one of the complex conditions for this relief. Before ITTOIA the condition applied to both income tax and corporation tax payers. A consequential amendment should have been made so that the condition clearly applies post ITTOIA to the charge under Case I or II of Schedule D for corporation tax and to the charge under the trading income Part in ITTOIA for income tax.
45. The project made the point that paragraph 5(2) of Schedule 2 to ITTOIA – the continuity of the law provision – has the effect of treating the rewritten concept as being referred to in existing legislation “so far as is required for income tax purposes”. The relief under Schedule 12 to FA 2002 applies for corporation tax purposes. But the project believes that the fact that it is necessary, in applying the test, to ascertain the income tax status of the person who contracts out the work is itself an income tax purpose. The result is that paragraph 5(2) of Schedule 2 to ITTOIA already applies to achieve the correct result.

46. The project asked the Committee whether they were content for the power in section 882 of ITTOIA to be used to correct this omission and for the correction to be retrospective to 6 April 2005.
47. The Committee considered the request and indicated that they were content with the project's proposal to exercise the power in section 882 of ITTOIA.
48. One member asked what the position was regarding the previous requests brought before this Committee. The project explained that none of the issues was causing any problems in practice so there was no urgency for making these orders.
49. The project said that their solicitor was looking at the question of retrospection and they felt that it would be better to deal with a number of examples together, especially when preparing the statement to the Joint Committee on Statutory Instruments.
50. A view was expressed that this should be done sooner rather than later. This would stop some agents wasting their time looking for things that are not currently in the consequential amendments. The project noted the Committee's concerns.

The project thanked the Committee and said that they would also put the matter to the Steering Committee to seek their approval.

Item 11 - Any other business

51. One member asked whether the project was proposing to publish a further version of the draft Bill once all the responses had been considered. The project said that they would be publishing a Response Document and a revised version of the draft Bill before introducing the Bill to Parliament.
52. The Committee said that they would like to send a message of thanks to Lord Howe for his Chairmanship of the Steering Committee and for all the support and guidance he had given the project. The Chairman agreed to pass this on to Lord Howe.
53. The next meeting of the Consultative Committee will take place on 14 February 2006 at 2.30 p.m. in the James Pennethorne Room, Somerset House.

BASIL RAJAMANIE
Secretary to the Consultative Committee