

**TAX LAW REWRITE CONSULTATIVE COMMITTEE**

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**MINUTES OF THE FIFTIETH COMMITTEE MEETING**

Note by the Secretary

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I attach the minutes of the 50th meeting of the Consultative Committee, held on 23 November 2004.

**BASIL RAJAMANIE**  
**Secretary to the Consultative Committee**

**MINUTES OF THE 50th MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 23 NOVEMBER 2004 IN THE JAMES PENNETHORNE ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON**

Present:  
Robin Martin (Chairman)  
Colin Campbell  
Mary Fraser  
Malcolm Gammie  
Keith Gordon  
Terry Hopes  
Wreford Voge

In attendance:  
David Cook  
Lucy Baines  
John Morris  
Hazel Colclough  
David Halsey  
Brian Jones  
Richard Hayes  
Satnam Singh  
Jenny Manson  
David Hole

Secretary: Basil Rajamanie

**Apologies and Welcome**

Apologies had been received from Adam Broke, Cunnie Rankin and Taha Dharsi.

**Items 1: Minutes of 49th meeting held on 12 October 2004**

1. The minutes of the meeting on 12 October had already been circulated. They were agreed.

**Item 2: Matters arising**

2. There were none.

**Bill 3**

3. The Chairman said that if everything went according to Plan the Bill will be published in Parliament on 1 December. The Chairman thanked the Committee for all the hard work the Committee had put into this Bill. The contribution of consultees was vital and invaluable to the project, and Bill 3 had involved a lot of work over a lengthy period of time. This was much appreciated.

**Item 3: Paper CC (04) 19 - Bill 3 update**

4. The Project presented paper CC (04)19 and explained that it brings the Committee up to date on Bill 3 issues. The Project said that they had identified four new changes and the paper sets out these changes and a few other issues.
5. The four new proposed changes since the last update are:
  - Interaction between the permissive and prohibitive rules in calculating the profits of a trade or property business. Exceptions for criminal payments and car hire payments have been built into the relevant clause. Where any other permissive and prohibitive rules conflict the change will allow the overlap to be resolved in favour of the rule allowing the deduction i.e. in favour of the taxpayer.

- Post cessation receipts to be treated as UK relevant earnings for pension purposes. The change gives statutory effect to the practice of treating certain sums received after cessation as relevant earnings for the purposes of making pension contributions.
  - How the devolution issues in Scotland, Wales and Northern Ireland have been dealt with in the Bill. The change concerns the effect of the devolution settlements. Where possible the clauses have been brought into line with the position following devolution.
  - A minor alteration to section 65(4) of ICTA to remove the citizenship requirement so that this provision applies to any person who is domiciled but not ordinarily resident in the UK. This will simplify the law in this area and will eliminate any suggestion of discrimination. .
6. The Committee indicated that they were content with all four proposed changes.
  7. The Project turned to the other matters covered in the Bill 3 paper. They explained that they had dropped the provision containing the reference to the Explanatory Notes in Schedule 2 (Transitionals and Savings) of the Bill. The Project explained that this provision raised more legal issues than it solved and there was a risk that it could be read as incorporating the Explanatory Notes into the Bill. The Project said that the front cover of the Bill will sign-post the existence of all the Explanatory Notes so the reader will be fully aware of their existence.
  8. The Project said that they had also refined the clause on "person liable" to meet the concerns of some Committee members when this was discussed at the meeting on 12 October. They had also added further material on this point in the Explanatory Notes.
  9. The Committee indicated that they were content with these proposals.
  10. The Project said their final point on Bill 3 was on the consequential and transitional power, which they mentioned at the last meeting and also discussed with the Steering Committee at their last meeting. The Project explained that they had concluded that it would be best to draft two separate powers; one for consequential amendments and the other for commencement and transitional provisions.
  11. The Project added that they had made a couple of changes to the commencement and transitional clause since the paper was issued. The revised clause now provides for a few orders and provisions to have effect on enactment of ITTOIA to facilitate the operation of other provisions in ITTOIA which take effect from 6 April 2005.
  12. The Project explained that the powers are extremely narrow and can only be exercised in consequence of ITTOIA. In particular they cannot therefore be exercised in a way which contradicts ITTOIA and cannot generally operate to change the law as it was immediately before the main provisions of ITTOIA came into force.
  13. The Project proposed the powers mainly because of the IT/CT split. The Project has rewritten the income tax aspect of a considerable number of provisions which currently apply to both income tax and corporation tax. Consequential amendments have been drafted to ensure that these provisions continue to

function properly for corporation tax. The Project believes that these reproduce the effect of the current law but if this is not the case the powers will allow the Project to ensure that the existing law is restored for the future.

14. The Project explained that the transitional savings power can only be exercised in a way that is compatible with the transitional and savings provisions in the Bill. This power will protect the taxpayer in the unlikely event the Bill does not receive Royal Assent before 6 April 2005.
15. The Project explained that the draft clauses had been sent to the Steering Committee and they had not received any comments on or objections to including this power in the Bill.
16. In discussion the following main points were made:
  - There was some concern that no commitment was given in the clause that the power will not be used without first consulting the Project's Committees. A suggestion was made to include something along the lines of "subject to satisfactory consultation with ..." into the clause. The Project said that it is not normal practice to put such wording in the legislation. The Project advised that the commitment was set out in this paper to the Committee and also in the minutes of the meetings which are published on the Inland Revenue's website. The Project said that they would also add the commitment to the Explanatory Notes for these clauses, so that the commitment was part of the published material accompanying the Act itself.
  - One member said that bearing in mind that changing tax legislation by Statutory Instrument is a very sensitive area, the draft clauses should have been put out for wider consultation. The Project acknowledged that no formal consultation had taken place beyond the two Committees but reassured the Committee that the matter will be fully considered by the Delegated Powers and Regulatory Reform Committee (DPRRC) when they scrutinise the Bill. The Project assured the Committee that the memorandum to the DPRRC will draw specific attention to this point.
  - It was suggested that even at this late stage a paper on these clauses could be published on the Internet for wider public consultation. The Committee felt that this would be consistent with the approach taken throughout the rewrite process. The Project agreed to publish a paper on this topic including the latest version of these clauses on its Internet site. [This was done on 24 November – see paper CC(04)(20)].
  - There was a short discussion on the wording of clause 878(5) and whether this produces the intended result. There was a suggestion that subsection (5) not only stops subsection (4)(a) from applying where there is an Annex I change but also where there is an inadvertent change as a result of a missed consequential amendment. The Project acknowledged that some ambiguity was unavoidable when using a reference to changes in the law but felt that, as a matter of construction, there should be little difficulty in reaching the right answer (by concentrating on the meaning of "in consequence of" in subsection (5), by relying on the context provided by Annex 1 to the Explanatory Notes and for other reasons).
17. The Project agreed to reflect on all the points made by the Committee. Subject to the points made, the Committee were content with the proposals.

#### **Item 4 - Paper CC (04) 17 – Community Investment Tax Relief (CITR)**

18. The Project presented this paper and explained that it covers the rewrite of the provisions of Schedule 16 FA 2002 on CITR. This is the first of a group of provisions covering reliefs to be included in Bill 4. The others are Enterprise Investment Scheme (next on the agenda), tax relief for losses on shares and Venture Capital Trusts. Draft paragraphs on CITR were published on the Internet for public consultation on 12 November along with draft paragraphs on Enterprise Investment Scheme (EIS). Comments on both sets of draft legislation have been invited by 4 February.
19. The paper consists of draft paragraphs with origins shown, draft explanatory notes and Annex 1 Change Notes. The paper also includes an illustrative sketch of the structure of the tax computation for individuals. The Sketch is a development of the one presented to the Committee in July. The same sketch also appears in the paper on Enterprise Investment Scheme.
20. The Project said that the provisions have been written as a Schedule to Bill 4, which will be introduced by a short introductory clause in Part 5 of the Bill. The draft Schedule for CITR provides an entitlement to a tax reduction but does not deal with the calculation of an individual's liability - this will be dealt with later in separate material. The Project also explained that they will consider the need for further sign-posts as the material dealing with the calculation is developed further.
21. The Project said that they had asked for comments on five specific questions, two of which relate to Proposed Rewrite Changes. The Project added that one of the proposed changes brings the provisions for withdrawal or reduction of CITR into line with the equivalent EIS provisions and they would particularly welcome comments on this as well as on any other issues.
22. In discussion the following main points were made:
  - The Committee asked why the legislation was put in a Schedule. The approach taken by the project on both CITR and EIS appeared to be inconsistent with the broad principle from the early days of the project that the use of Schedules should be avoided where possible.
  - The Project said that they had considered this point and concluded that, for the time being, because the CITR material was both substantial and self-contained it looked more appropriate to have it in a Schedule. The EIS legislation had been put in a Schedule for the same reasons. The Project also mentioned that there was use of Schedules in ITEPA (eg in relation to similar material on EMI).
  - It was pointed out by the Committee that the EIS legislation though substantial was currently in the main body of the legislation. However a point was also made about the impact on the future Act if at some stage large blocks of legislation with the main body of the legislation were substantially amended or removed. In those circumstances it would do less damage to the structure of an Act to have the relief in a Schedule.
  - The Project said that in the light of the comments made by the Committee they would look again at the use of Schedules in Bill 4. But it would be sensible not to do this immediately but rather to wait until the material in Bill 4 had been developed further and a clearer picture of the shape of the Bill had

been formed. There was support for the approach of continuing to put material of this nature in Schedules for the time being and then considering the most appropriate place for it once the Bill has taken shape.

- The Committee said that they found the layout and drafting very helpful. In particular they were pleased with the way the legislation had been tidied up, which made it clearer and more accessible.
- The attention of the Project was drawn to the use of the word "genuine" in paragraph 49 in a cross-reference to legislation in the TCGA which uses the term "bona fide". The use of simpler terminology in rewritten legislation was consistent with rewrite principles and therefore welcomed, but the Project needed to continue to bear in mind possible implications where there was any cross-reference to legislation using different terminology.

23. The Project thanked the Committee for their helpful comments and said they would await detailed comments in due course.

#### **Item 5 - Paper CC (04) 18 – Enterprise Investment Scheme (EIS)**

24. The Project presented this paper and explained that it covers the rewrite of the Enterprise Investment Scheme provisions for income tax reductions in Chapter 3 of Part VII of ICTA. The Project said that the provisions have been written as a Schedule to Bill 4, and like CITR, the Schedule will be introduced by a short introductory clause in Bill 4. The draft Schedule deals with an individual's entitlement to a tax reduction in respect of investments made under this scheme.

25. The Project said that the paper consists of draft paragraphs, draft explanatory notes, Annex 1 Change Notes, an illustrative sketch showing how EIS relief fits into the calculation, some brief background notes on EIS and a glossary of terms used.

26. The Project said that they had asked for comments on thirty-six specific questions, nineteen of which relate to Proposed Rewrite Changes.

27. The Project explained that the first Annex to the paper gives examples of unpacking the present legislation where it is dense and grouping material where it is currently separated. They have also tried to make the legislation more accessible by reorganising the way it is set out. An example of how the existing opening, section 289 of ICTA, compares with the rewritten opening in Parts 1 to 4 of the draft Schedule was summarised in a handout to illustrate the difference between the existing and rewritten legislation. .

28. The Project said that they had worked and will continue to work closely with the Venture Capital Scheme (VCS) rewrite group in the rewrite of the EIS material. The VCS group is chaired by the project and consists of specialists within the Revenue and outside VCS practitioners. The Project took the opportunity to thank the whole group, and in particular the representatives from the CBI, EISA and BVCA, for their valuable comments, suggestions and time.

29. The project recognised that it might be too early for detailed comments in view of the large amount of material and short time for consideration by Committee members but invited any observations they might have at this stage.

30. In discussion the following main points were made:

- One member asked what sort of take-up was there for these schemes. The Project said that EIS is a significant relief. The Project said that they did not have precise figures on the amount of relief given but believed the figure for EIS relief (including CGT and share loss relief) was in the order of £180 million for 2003/04. [Note: this is indeed the correct figure.]
- It was noted that the Project were right to seek the views of the people in the VCS group and other practitioners who specialise in these fields. Their input would be particularly useful on the specific questions in the paper.
- The Project said that they intended raising at the next meeting of the VCS group whether the members of the group have an interest in CITR.
- It was mentioned that the provisions giving the actual relief do not appear until paragraph 44. It was suggested that it might be helpful to have something more substantial up-front, to support what is already in paragraph 1 of the draft Schedule.

31. The Project thanked the Committee for their helpful comments and said they would await detailed comments in due course.

**Item 7: Any Other Business**

32. The next meeting of the Consultative Committee will take place on 15 February 2005 at 2.30 p.m. in the James Pennethorne Room, Somerset House.

**BASIL RAJAMANIE**  
**Secretary to the Consultative Committee**