

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE COMMITTEE MEETING HELD ON 4 NOVEMBER

Note by the Secretary

I attach the minutes of the meeting of the Consultative Committee, held on 4 November 2008.

JACKIE BARTLETT
Secretary to the Consultative Committee

MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 4 NOVEMBER 2008 IN THE BOARDROOM, 100 PARLIAMENT ST, LONDON

Present:

Robina Dyall (Chairman)
Colin Campbell
Brian Atkinson
Terry Hopes

Secretary: Jackie Bartlett

In attendance:

John Sellers
Steve Batterby
Brian Jones
David Sewell
Guy Lawrenson
Richard Hayes
Jenny Manson
Travis Morton
David Hole

Apologies and welcome

1. Apologies had been received from Russell Chaplin, Bob McInerney, Adam Broke, Keith Gordon, Lakshmi Narain, Mary Fraser, Francis Sandison and Malcolm Gammie.

Item 1: Minutes of the meeting held on 30 September

2. The minutes of the meeting on 30 September had already been circulated. There were no comments and the minutes were agreed as a true record.

Item 2: Matters arising

3. The project said that there was nothing to report at the moment on the points raised at the last meeting. Work was in hand and the intention was to include any changes to the clauses in draft Bill 6.

Item 3: ITA 2007: Paper CC/SC (08) 47: Use of power in section 1029

4. The project explained that when section 125 of ICTA was rewritten as section 904 of ITA some words were omitted on the basis that they were not needed. It had since become clear that the legislation applied for two purposes, and while there was no problem with the omission of the words in relation to one of them, there was a problem with the omission of the words as far as the other was concerned.
5. The omission of the words meant that the prohibition on deduction in section 843 of ITA went further than the prohibition in the source legislation which the project intended to replicate. The error was unfavourable to taxpayers and the project requested the Committee's approval to use the power to correct the position. It also requested that the error should be corrected with effect from 6 April 2007.

6. The Committee asked if to the project's knowledge such a situation had arisen. The project said that none had been brought to its attention.
7. The Committee said that it was content with the use of this power and for it to be retrospective. The project confirmed that the correction of this error would be included in the order covering the errors considered at the last meeting.

Item 4: Bill 5: Paper CC/SC (08) 51 – Bill 5 update

8. The project explained that this paper brought the Committee up to date with various issues on the approach to Bill 5's introduction into Parliament early in December.
9. The paper outlined two issues concerning partnerships which arose because of the move from a "source-based" to a "person-based" approach to a company's income.
10. The first came to light when the project was looking at consequential amendments for Bill 5 and realised there had been minor errors in the corresponding amendments made by ITTOIA. The precise details were set out in the Change note (379) which related to the accompanying Schedule 1 excerpt, both of which were in Appendix A. The project was correcting the errors brought about by ITTOIA.
11. The project explained that the numbers of people affected and amounts involved would be very small, but in principle and in practice, the change was both adverse and favourable to taxpayers. The Committee were content with this change and with the draft legislation.
12. The second situation concerned the way in which the change in approach affected section 114(1) of ICTA and was about partnership accounting periods. The new clause was attached at Appendix B and the paper explained the project's thinking. The explanation would form the basis for the associated Explanatory Note.
13. The project drew the Committee's attention to paragraph 13 which indicated a change of view to that aligning with the view of a correspondent. The project had found this particular point (whether or not the rule should not be restricted to companies within the charge to corporation tax) challenging and invited the Committee's observations.
14. The Committee were content with the draft clause.
15. The project explained that a change note was needed relating to estates in administration to cover the line taken in a clause which had already been agreed in consultation.
16. The project felt that there was an argument that the interpretation followed in applying the basic rate for grossing up sums paid during the administration of an estate could be challenged because of a repeal made by ITA.
17. The project believed that the Change would have no practical effect as the drafted clause was in line with generally accepted practice and asked the Committee if they were content with this. The Committee said that they were content with the Change.
18. The project drew the Committee's attention to a point on oil taxation that was not covered in the paper. It explained that the clause that set out the deemed separate trade for the oil tax ring fence was in draft Bill 5 and was put there to match ITTOIA.

19. During consultation on Bill 6, oil tax specialists had asked that this clause should be written alongside the other oil tax rules. The project agreed and the relevant provision would appear in Bill 6, not Bill 5.
20. The Committee commented that following publication of draft Bill 5 in February; only new draft legislation had been published. Unlike the procedure followed with previous TLR Bills, a further draft Bill reflecting these changes had not been published, meaning that consultees would not see the complete revised picture until early December on introduction of the Bill. By this time, it was too late to review the Bill and make any last minute observations prior to the Parliamentary process.
21. The project explained that the draft Bills published in the past had been produced to draw attention to significant changes and had not been the subject of consultation. They were, however, very resource intensive to produce. For this Bill, the project instead published all new draft clauses in specific consultation papers and, where rewritten pre-existing draft clauses had been substantially revised, the project published papers presenting the new drafts for consultation. Otherwise, the changes set out in the response document were followed.
22. This approach reduced the burden on the project's resources which instead, could be re-employed on producing Bills 6 and 7 under the accelerated process and reduced the volume of material received by consultees by focusing on significant new material.
23. The Committee agreed that in practice, there were highly unlikely to be any comments on a revised draft because there was so much material and there would be very little time to review it. But it was unfortunate that they did not have the opportunity to see how the Bill knitted together in advance of introduction.
24. The project said it would bear the comments in mind for Bills 6 and 7, but it may be even more difficult for these Bills if introduction has to be somewhat earlier in the year.
25. The project requested that if there were any comments relating to this paper, they needed to be submitted as soon as possible because the Bill was in final preparation for introduction to Parliament.

Item 5: Response documents: Paper CC/SC (08) 52 – Response documents (4) (Bills 5, 6 & 7)

26. Neither the project nor the Committee had any comments to make on the response documents detailed in the paper.

Item 6: Bills 6 & 7: Paper CC/SC (08) 50 – Bills 6 & 7 update

27. The project said that the current position on Bill 6 was encouraging as there was not a great deal more to be published. The clauses on the long funding leases of plant and machinery would be published in the next few days, leaving just a handful of topics which would be first published in the draft Bill. Of these only one was of any length and in total they were likely to amount to around 65 clauses.
28. The project was examining the need for and the nature of computational provisions. To gain an understanding of what would be most helpful to users it had engaged in

discussions with a group consisting of CT practitioners (some in practice and some working in-house, including a Consultative Committee member), and of HMRC specialists including policy and operational advisors for CTSA and TLR technical advisors.

29. It had emerged that the most helpful approach for users was for the project to focus on providing a legislative explanation of total and net profits (or some such label for profits which are chargeable to tax under paragraph 8 of Schedule 18 FA 98).
30. The project had made good progress on this but work was not yet complete. The aim was to publish, in draft Bill 6 next year, clauses based on the preferred approach.
31. The project said that as far as Bill 7 was concerned, the DTR provisions would be the most significant piece of new work. Apart from this the work on Bill 7 for consultees should not be particularly heavy.
32. The Committee asked roughly how many DTR clauses would be involved and the project estimated that this would be a little over 100 clauses on the basis of the most recent draft.
33. The project offered its thanks to the Committee, their colleagues and all consultees for the work done on these Bills. Despite concerns expressed in 2006 about the acceleration of the work on the second CT Bill and despite the later addition of Bill 7 to the same accelerated timetable, Committee members and their colleagues had provided a large number of very helpful comments on the clauses published. This was in addition to the work on Bill 5, on the correction of errors and a number of other papers issued by the project. The considerable amount of work done was very much appreciated by everyone working on the project.
34. The Committee expressed their appreciation of these comments.

Item 7: Bills 6 & 7: Paper CC/SC (08) 49: Bills 6 & 7 impact assessments

35. The project explained that these documents were based on the same approach and method adopted for the Bill 5 impact assessment. The views of the Committee were sought on the proposed costs and benefits.
36. The Committee commented that the documents were well drafted and despite the difficulty in arriving at the quantum of costs and benefits, the figures and narrative gave broadly the right result. There were, however, some specific points.
37. On page 2 of the Bill 7 document, the '£1m total' seemed to be an error. The project agreed.
38. In paragraph 7 of the Bill 6 document and paragraph 5 of the Bill 7 version, the Committee pointed out that at the time of publication 'the last Joint Committee meeting' could refer to the Bill 5 proceedings. The project said that they would look at this point.
39. The project also agreed to look at the presentation of the specific impact tests.

Item 8: Bill 6: Paper CC/SC (08) 41: Leasing plant or machinery: sales of lessors Chapters

- 40 The project said that this paper presented draft clauses which rewrite Schedule 10 to the Finance Act 2006 (Schedule 10). The Schedule contained provisions designed to deter tax avoidance arrangements by companies involved in the leasing of plant or machinery.
- 41 The provisions had been recently enacted but the opportunity had been taken to do more than simply reproduce the source legislation.
- 42 The clauses followed the basic structure of Schedule 10 and the four Chapters corresponded to the four Parts of Schedule 10.
- 43 The project had sought to assist the user further by setting out in full, in each Chapter to which they were relevant, certain provisions which in Schedule 10 appeared in one Part and were applied for the purposes of other Parts. The paper and the explanatory notes set out in more detail what had been done. The project said that it would welcome any comments.
- 44 Committee members said that comments would be made in due course.

Item 9: Bill 6: Paper CC/SC (08) 46: Leasing plant or machinery: tax avoidance

- 45 This paper presented draft clauses which rewrite two sets of recent anti-avoidance provisions relating to the leasing of plant or machinery.
- 46 The project explained that sections 785ZA and 785ZB of ICTA, which were introduced by FA 2006, restricted the availability of losses to a company which carried on a leasing business in partnership where its share in the profits and losses of the business differed from its share in the capital allowances available to the business.
- 47 Sections 785B to 785E of ICTA, which were introduced by FA 2008, treated certain capital payments received in respect of leases of plant or machinery as income of the lessor for corporation tax purposes.
- 48 No rewrite changes were proposed and only minor changes in language had been made. Some of the provisions had been restructured to improve accessibility.
- 49 The Committee said that comments would be made later.

Item 10: Bill 6: Paper CC/SC (08) 48: Avoidance: companies in partnership

- 50 This paper presented draft clauses which rewrite sections 131 to 133 of FA 2004 concerning companies in partnership.
- 51 The provisions were introduced to counter avoidance schemes entered into by certain companies. Such schemes involved a company being a member of a partnership but not being entitled to a proper measure of the partnership's profits.

- 52 The project commented that there were no proposed rewrite changes and nothing else requiring particular comment.
- 53 The Committee again said that comments would be made when there had been the opportunity to look at the legislation more closely.

Item 11: Bill 7: Paper CC/SC (08) 43: Bills 6 & 7: Sale and leaseback

- 54 The project explained that this paper presented draft clauses which rewrite sections 779 to 785 of ICTA. The clauses rewrite a group of complex anti-avoidance provisions dealing with sales and lease-backs.
- 55 The provisions applied for income tax and corporation tax purposes and the clauses split them between the two codes. For the purposes of consultation the clauses had been included in the same Committee paper and the project hoped that the Committee and consultees generally found this helpful.
- 56 The provisions had been restructured in order to help users as outlined in the explanatory notes and the project invited any comments on this.
- 57 Four rewrite changes were proposed; the four changes proposed for corporation tax purposes were replicated for income tax, subject to necessary adjustments to take account of differences between the codes.
- 58 Two of the changes replicated ones proposed and agreed in previous rewrite Acts but the other two changes were new.
- 59 One (change 603 and 703) was concerned with the interaction between section 779 of ICTA (sale and lease-back: limitation on tax reliefs) and the accounting treatment for finance lease rentals. It put on a statutory basis HMRC's practice, published in Statement of Practice 3/91. The effect of this in broad terms was that tax relief was given for finance lease rentals in the period in which they were charged in calculating the lessee's accounting profit or loss. This change was in the taxpayer's favour in principle but it was expected to have no effect as it was in line with practice.
- 60 The other (change 602 and 702) brought section 779 of ICTA into line with Self Assessment. The proposal was to secure a better fit with Self assessment by replacing the provision of section 779(6)(d) of ICTA which enabled HMRC, in determining what amount can be excluded, to override provisions contained in a lease or agreement, with a requirement to exclude so much of the payment as was just and reasonable. This had no implications for the amount or timing of tax to be paid or who paid it, but was put forward as a sensible tidying measure.
- 61 Both changes were considered to be helpful and not to disadvantage taxpayers in any way.
- 62 The Committee questioned if this legislation was still required. The project said that it had considered this point. Specialist colleagues had been consulted and their view was that the legislation should be retained.

Item 12: Any other business

- 63 The Director mentioned to the Committee that at the last Steering Committee meeting, the position regarding the future activity of the project was raised. The project wanted to take the opportunity to ask Consultative Committee members if there were any specific areas of work that they considered would benefit from a 'targeted rewrite' approach.
- 64 The Committee suggested that some areas of CGT would be appropriate; in particular the sale of shares and unit trusts which involved complex calculations.
- 65 The provisions relating to pre-entry losses (Schedule 7A to TCGA) were also suggested as ones which would benefit from being rewritten.
- 66 The Director commented that some suggestions had been received by e-mail from an absent Committee member. These again concerned CGT and included the legislation on settlements and on the disposal of private residences.
- 67 There was also a general suggestion that a TLR style 'framework' would be of benefit to some existing legislation
- 68 The Committee suggested that major law and accountancy firms could be contacted for their suggestions.
- 69 The project thanked the Committee for their suggestions and said that the issue of future rewrite activity would be raised at the next meeting of the Steering Committee taking account of the comments received.
- 70 The general point was made that it would be necessary to establish that there was widespread support for the rewrite of any proposed area of legislation in order to secure the required commitment and input from consultees.
- 71 The next meeting is on **24 February 2009**, in the Chancellor's room, 100 Parliament St.

JACKIE BARTLETT
Secretary to the Consultative Committee