

**CC (10) Minutes  
9 February 2010**

**TAX LAW REWRITE CONSULTATIVE COMMITTEE**

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**MINUTES OF THE COMMITTEE MEETING HELD ON 9 FEBRUARY 2010**

Note by the Secretary

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I attach the minutes of the meeting of the Consultative Committee, held on 9 February 2010.

**JACKIE BARTLETT**  
**Secretary to the Consultative Committee**



**MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 9 FEBRUARY 2010 IN THE JAMES PENNETHORNE ROOM, SOMERSET HOUSE, LONDON**

Present:

Robina Dyall (Chairman)  
Keith Gordon  
Mary Fraser  
Francis Sandison  
Terry Hopes  
Colin Campbell  
Adam Broke

In attendance:

Brian Jones  
Richard Hayes  
Adrian Wilsdon  
Lucy Baines  
Jenny Manson  
David Sewell

Secretary: Jackie Bartlett

**Apologies and welcome**

1. Apologies had been received from Russell Chaplin, Lakshmi Narain and David Williams.

**Item 1: Minutes of the meeting held on 29 September**

2. The minutes of the meeting on 29 September had already been circulated. There were no comments and the minutes were agreed as a true record.

**Item 2: Matters arising**

3. There were none.

**Item 3: Bills 6 and 7: Update**

4. The project said that the Commons stages of both Bills were now complete and the Lords stages had begun. Second reading in the House of Lords was likely to be in late February or early March. The Bills were on track for Royal Assent by 1<sup>st</sup> April or Budget day, whichever was the sooner.
5. The project expressed thanks to Adam Broke for his services as independent witness before Joint Committee.

**Item 4: Paper CC/SC (10) 01 – Use of the powers in sections 1028 and 1029 of the Income Tax Act 2007**

*The error in paragraph 1(c) of Schedule 2 to SSCBA 1992 and Schedule 2 to SSCB(NI)A 1992*

6. The project explained that this missed consequential amendment arose because the full implications of the IT/CT split were not picked up. As part of the rewrite of income tax the

definition of year of assessment for income tax purposes was naturally included in ITA 2007 and ICTA 1988 was suitably amended. SSCBA 1992 and SSCB (NI) A 1992 should also have been amended but were not. The proposed consequential amendment using the ITA power would correct this and would make it easier for the reader to follow the changes that had been made.

7. The project added that there would be no tax implications for anyone but considered it helpful both to make the correction and to make it effective from 6 April 2007. The Committee agreed to the amendment.

*The error in section 10(2)(c) of the Charities Act 1993*

8. The project explained that this missed consequential was similar to the previous one. HMRC may disclose information to the Charity Commission, but only in relation to certain institutions. One of the categories of institutions listed in section 10(2) (c) of the Charities Act 1993 contained a reference to a claim for exemption under s505 (1) of ICTA. The various exemptions in section 505(1) were rewritten for income tax purposes in Part 10 of ITA 2007, and section 505(1) of ICTA remained in force for CT purposes only. The general continuity of law provisions in ITA 2007 have effect to apply the reference to section 505(1) of ICTA for income tax purposes. But the making of a consequential amendment to add a specific reference to Part 10 of ITA in the Charities Act 1993 was overlooked.
9. The proposed consequential amendment using the power remedied this and would make it easier for the reader to follow the changes that had been made. Again, there were no tax implications for anyone but in the project's view it was helpful both to make this correction and to make it effective from 6 April 2007.
10. The Committee were concerned that since April 2007, HMRC may have provided information to the Charity Commission which it should not have done. The project indicated that this would not have happened and that the proposed amendment was intended only to make the legislation more helpful for users.
11. The Committee were content with the amendment.

*The error in paragraph 3(5) of Schedule 2 to SSCBA 1992 and Schedule 2 to SSCB (NI) A 1992*

12. This error concerned two repeals which should not have been made. The project wanted to correct them because they may result in increased amounts of Class 4 NICs being payable by taxpayers. It was also proposed that the correction should be made with effect from 6 April 2007 to ensure that there was no risk of anyone suffering an undue increase in their liabilities.
13. The intention was to return the law to what it was previously but putting that into practice was complicated. Full details were outlined in the paper.
14. The Committee asked if anyone outside the project had identified this problem. The project did not recall anything to indicate that.
15. The Committee asked if the project and in particular, the drafters, were as satisfied as they could be that they had restored the law to its original position. The project said that although there could never be complete certainty, it was as satisfied as it could be on this point.
16. The Committee suggested that the conclusion in paragraph 41 of the paper was not correct. It considered that it was necessary to change the reference to section 944 of ITA in the proposed correction so that it applies to amounts taxable under Chapter 4 of Part 13 of ITA 2007 as well as amounts taxable under Chapter 3 of that Part.. Apart from this the Committee was content that the power should be exercised and that the proposed amendment should take effect from 6 April 2007,

in order to remove the possibility of any adverse effect on taxpayers. It was agreed that if the amendment was changed in the way suggested there would be no need to bring the matter back to the Committee.

**Item 5: Paper CC/SC (10) 02: Use of the power in section 1324 of the Corporation Tax Act 2009**

*S1324 of CTA 2009: Power to undo unintended changes*

17. The project explained that it had identified errors relating to four provisions of CTA 2009 and one relating to a provision in the Taxation of Chargeable Gains Act 1992 (TCGA). It was seeking the agreement of the Committee to the use of the power in s1324 of CTA 2009 to correct these. It was also seeking approval for the amendments to take effect for accounting periods ending on or after 1 April 2009.

*The error in section 400(1)(a) of CTA 2009 (index-linked gilt-edged securities)*

18. This point was picked up within the project. Section 399(1) of CTA 2009 provided that amounts to be brought into account on loan relationships represented by index-linked gilt-edged securities were to be calculated by making the adjustment specified by section 400 of the Act. Section 400 then went on to provide that “the section applies if the amounts to be brought into account for the purposes of the Part “in respect of a gilt-edged security”.
19. There was a very clear implication that the reference in section 400 was meant to be to a gilt edged security that was index linked, but the point was not made explicitly, as it was in the source legislation. The project had been informally advised that the courts would be very unlikely to interpret this section in a different way, but believed it was sensible to use the power to remove any possible doubt.
20. The project explained that in the unlikely event that the provision was argued to apply to another type of gilt-edged security then it could in theory mean a reduction in a gain on that security for inflation. So making this change was in theory unfavourable to the taxpayer. In practice, making the change simply ensured that the law as rewritten unequivocally rewrote the source legislation. This in turn ensured that time was not spent on arguing the point and litigating it, assuming anyone wanted to take matters that far.
21. Following discussion of the proposal that the change should be made for accounting periods ending on or after 1 April 2009 the Committee indicated that they were content with this change

*The error in Section 459(1) of CTA 2009*

22. This point had been raised by Colin Campbell.
23. The source legislation for this provision made it possible to set off non-trading deficits on loan relationships against “any profits of the company (of whatever description)” of the accounting period in which the deficit arose or to carry them back and set them off against profits for earlier accounting periods.
24. “Any profits of the company (of whatever description)” was rewritten in section 459(1) of CTA 2009 as “total profits of the company”. In referring to “total profits” the rewrite of section 83(2) of FA 1996 had made a small and unwelcome change the law. Setting the deficit against “total profits” made it difficult to identify the particular profits against which the deficit was to be set. It was arguably taking away the choice of the taxpayer to identify the profits to be reduced if the term “total profits” was retained.

25. The view of the project was that the amendment should be made so that there was no risk of an unintended adverse impact on the taxpayer. The Committee agreed to the proposed amendment and that it should take effect for accounting periods ending on or after 1 April 2009.

*The error in Section 480 of CTA 2009*

26. The issue concerned the need for a transitional provision as a result of the rewrite of section 100(1A) and (1B) of Finance Act 1996.
27. The paper explained that in Finance (No.2) Act 2005 and Finance Act 2006 additional provisions were added to amend section 100 of FA 1996. When rewriting these, consideration was given to the need for transitional provisions. It was concluded that a transitional provision should be included in CTA 2009 for the amendment in 2005 but that no transitional provision was needed for the amendment in 2006.
28. The absence of a transitional provision for the amendment in 2006 was raised by a firm of accountants who were concerned that the benefit of the transitional provision was not available for this amendment. Without this it was considered that, contrary to the conclusion originally reached, a taxpayer could find a discount brought into tax which would have been exempt under the source provisions in FA 1996. In order to remove any possible risk of an adverse effect on the taxpayer, the project proposed the amendment set out in the Committee paper.
29. The Committee were content with the proposed amendment and for it to take effect for accounting periods ending on or after 1 April 2009.

*The error in Section 566(2) of CTA 2009*

30. This point concerned the way in which section 566(2) of CTA 2009 had rewritten the transitional rule in paragraph 6(1) of Schedule 13 to Finance Act 2008. The original drafting of the commencement rule in paragraph 6(1) was ambiguous.
31. In rewriting the commencement rule, section 566(2) of CTA 2009 resolved the problem in a particular way, but in doing so created new problems. The proposed amendment was intended to restore the original effect of the law and remove the capricious effects of the unintended change introduced by the rewrite.
32. The Committee recognised that the underlying ambiguity in the source legislation could not be addressed by use of the remedial powers in CTA 2009 and agreed the proposed amendment and for it to take effect for accounting periods ending on or after 1 April 2009.

*The error in paragraph 34 of Schedule 7AC to TCGA*

33. This point concerned the repeal by CTA 2009 of paragraph 34(2) TCGA of Schedule 7AC to TCGA on the basis that it was no longer needed.
34. In Schedule 7AC there was a provision that set out exemptions for companies with substantial shareholdings. Paragraph 34(1) provided that in certain circumstances the exemptions did not apply. Paragraph 34(2) in turn overrode paragraph 34(1) in certain circumstances.
35. In the light of points raised by a firm of accountants that paragraph 34(2) could still have effect, the project had given further consideration to the repeal and concluded that it should not have been made. Accordingly it sought to make the proposed correction and for the amendment to have effect for accounting periods ending on or after 1 April 2009. This would remove the risk of adverse effects on taxpayers.

36. The Committee were content with this.

**Item 6: Paper CC/SC (10) 03: Use of the power in section 1324 of the Corporation Tax Act 2009**

*Missed Transitional provision in relation to section 1032(2) of ICTA*

37. The need for an additional transitional provision had recently been identified in Bill 6. The project explained that it had reached the point beyond which an amendment could be made to Bill 6 which was on track to be ( but clearly had not yet been) enacted as the Corporation Tax Act 2010. Given this, he project was seeking to correct the omission as soon as possible after enactment and was asking members of the Committee to consider and approve the use of the power, on the assumption that the Bill would be enacted as expected.
38. Part 23 of the Bill concerned distributions, and Chapter 3 of Part 23 was about matters which were not distributions. Subsection (1) of clause 1032 which was in Chapter 3, provided that certain interest and other payments were not distributions and subsection (2) then disapplied subsection (1) in certain cases.
39. The source legislation on which clause 1032 was based contained a reference to a provision which was omitted from clause 1032 on the basis that it was no longer needed. The reason for this conclusion was that FA 2009 had repealed that provision. That repeal had effect in relation to distributions paid on or after 1 July 2009 but, as CTA 2010 would have effect for accounting periods ending on or after 1 April 2010, there was a need for a transitional provision to cater for cases involving distributions made in the period up to 1 July 2009. The proposed transitional provision made the small adjustment that was required.
40. The Committee asked about the process of making an order in this case. The project explained that orders under section 1180(2) of CTA 2009 are not subject to Parliamentary control. Thus, subject to enactment of Bill 6 in sufficient time, the order could be made before 1 April 2010 with prospective effect from that date. If the order were to be made under the power in section 1179 of CTA 2010, then having regard to the likely timetable for the remaining stages of Bill 6, it could not be brought into force on or before 1 April 2010 and would, therefore, have to have retrospective effect.
41. The project explained that the Order would be given an SI number and would be notified to the Statutory Publications Office. It would also be on the TLR website.
42. The Committee were content with this proposed use of the power in section 1180(2) of CTA 2009, provided Bill 6 was enacted, and agreed that, if as a result of enactment being delayed it was not possible to make the order until after 1 April 2010, it should have retrospective effect from that date.

**Item 7 – Any other business**

43. The project thanked the Committee for their hard work, commitment and support of the aims of the project since it was set up in 1996.
44. The project explained that work connected with the use of powers would probably arise in the future but the intention was to handle the majority of this by e-mail; meetings if necessary would be arranged on an ad-hoc basis. The work would be handled by the Tax Administration Policy team within HMRC with Ben Aldred in the lead.

45. The Committee congratulated the project on bringing the work to a successful conclusion. The Committee noted that Brian Jones and Richard Hayes were retiring on the conclusion of the project and wished each of them a happy retirement.
46. The project looked forward to seeing Committee members at the FST's reception on 2<sup>nd</sup> March.

**JACKIE BARTLETT**  
**Secretary to the Consultative Committee**