

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE COMMITTEE MEETING HELD ON 1 JULY

Note by the Secretary

I attach the minutes of the meeting of the Consultative Committee, held on 1 July 2008.

JACKIE BARTLETT
Secretary to the Consultative Committee

MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 1 JULY 2008 IN THE JAMES PENNETHORNE ROOM, SOMERSET HOUSE, STRAND, LONDON

Present:

Mark Nellthorp (Chairman)
Keith Gordon
Mary Fraser
Terry Hopes
Adam Broke
Brian Atkinson
Russell Chaplin
Francis Sandison

Secretary: Jackie Bartlett

In attendance:

John Sellers
Steve Batterby
Brian Jones
David Edney
Lucy Baines
Diane McKenzie-Boyle
David Hole
Trevor Lawson
Douglas Ramsay
David Sewell
Richard Spitz

Apologies and welcome

- 1 Apologies had been received from Malcolm Gammie, Colin Campbell and Lakshmi Narain.

Item 1: Minutes of the meeting held on 29 April 2008

- 2 The minutes of the meeting on 29 April had already been circulated and were accepted as a true record.

Item 2: Matters arising

- 3 The project reported that the matter referred to in paragraph 10 of the minutes regarding the term 'relevant disregarded income', was still under consideration. No suggestions had been made regarding an alternative.
- 4 The project confirmed that a timetable of forthcoming papers had been prepared and would be circulated with the next minutes.

Item 3: Bill 5: Paper CC/SC (08) 25: Relationships treated as loan relationships: OEICs, unit trusts and offshore funds

- 5 The project explained that the draft clauses presented in this paper provided the loan relationships rules where a company held an interest in an open-ended investment company (OEIC), unit trust scheme or offshore fund.
- 6 At the time the Authorised Investment Funds (Tax) Regulations 2006 were prepared it was intended that primary legislation should be modified so that holdings in OEICs were treated in the same way as holdings in unit trusts and offshore funds for the purposes of the loan relationships legislation.
- 7 The project's work caused doubts to surface as to whether this objective was achieved and this resulted in proposals to amend the legislation. The project

therefore excluded provisions relating to OEICs from the draft Bill when it was published in February this year.

- 8 The legislation giving effect to the proposals was contained in the Authorised Investment Funds (Tax) (Amendment No.2) Regulations 2008 which were laid on 9 June and came into force on 30 June. The regulations provided clarity and modified the “non-qualifying investments test” to apply to OEICs in the same way as it did to unit trusts and offshore funds.
- 9 The project could as a result, publish the draft clauses presented in this paper which made the relevant changes to the clauses published in the draft Bill.
- 10 The project drew the Committee’s attention to two changes in the law which were discussed in the paper;
 - Change 64 concerned the definition of offshore funds for the purposes of the “non-qualifying investments test”. It had already been the subject of consultation in the draft Bill and was either supported, or not commented upon.
 - Change 378 was new and brought OEICs into line with unit trust schemes and offshore funds by providing a power for the Treasury to extend or restrict investments that were qualifying investments. Under current legislation, the same end result could be achieved, so this was a “tidying up” exercise.
- 11 The project said that they would welcome responses by 19 September 2008. Responses received earlier than this would be helpful because they would provide more time to consider them prior to the Bill’s introduction into Parliament later this year.
- 12 The Committee had no comments and were content with the draft clauses.

Item 4: Bill 5: Paper CC/SC (08) 26: Intellectual property: know-how and patents

- 13 The project explained that this paper presented draft clauses that rewrite certain corporation tax provisions about intellectual property and brought the relevant income tax and corporation tax provisions into line.
- 14 These clauses had not been included in the draft Bill because assets acquired from third parties or created on or after 1 April 2002 fall within Part 9 of the Bill. But for assets acquired or created before this date, the provisions rewritten in this paper still apply and the legislation may still be relevant for some years. It was therefore appropriate to rewrite the provisions so that the income tax and corporation tax provisions were consistent.
- 15 The project brought to the Committee’s attention two changes in the law discussed in the paper;
 - Change 41 restored a previous definition of “mineral deposits” and reproduced a similar change enacted in ITTOIA. It brought the income tax and corporation tax codes back into line and the project did not expect this to be controversial as it was the subject of consultation in ITTOIA.

- Change 1 was the familiar change which replaced references to the “Board of Inland Revenue” with references to “an officer of Revenue and Customs”.
- 16 The project said that it would welcome responses by 19 September 2008 but responses received earlier than that would be helpful because they would provide more time for consideration prior to the Bill’s introduction into Parliament later this year.
 - 17 The Committee were content for the provisions to be included within the Bill and had no comments on the draft clauses.

Item 5: Bill 5: Paper CC/SC (08) 27: Loan relationships, derivative contracts and intangible fixed assets: provisions affected by the European Mergers directive

- 18 The project said that Draft Bill 5 when published for consultation in February 2008 did not contain clauses for provisions amended or supplemented by the 2006 Regulations implementing the European Mergers Directive. Subsequently, the provisions had been further amended by the 2008 Regulations laid on 17 June 2008.
- 19 The project explained that the draft clauses presented in this paper rewrite the source legislation which was amended or supplemented by both sets of regulations. It was intended that they would be contained within the loan relationships, derivative contracts and intangible fixed assets Parts of Bill 5.
- 20 Most of the draft clauses being presented were new, but some clauses that had already been exposed for consultation were included to provide context for the new material.
- 21 The project said that it would be grateful for any comments the Committee may have on the clauses. It would welcome responses by 19 September 2008 and any received earlier than that would be helpful as they would provide more time for consideration prior to the Bill’s introduction into Parliament later this year.
- 22 The Committee were content with the clauses but raised a general point regarding the republishing of clauses already released for consultation. They asked if the clauses which had been changed could be indicated by some means. The project suggested that this might be done by the use of italics and would look into the possibility of doing this in future.

Item 6: Bill 6: Paper CC/SC (08) 15: UK REITS

- 23 The project said that Committee members would recall that this paper was mentioned at the last meeting as it had just been issued. The approach to the UK REITS provisions was outlined then and the covering paper covered the same ground but in a little more detail.
- 24 The project made the point that the UK REITS legislation was very recent and so it might have been expected that the approach would be to adopt a very light touch. However, when the project looked at the legislation the view was taken that there was real scope for improvement. Two industry representatives were

consulted and were asked whether in their view it would be helpful to undertake the sort of work proposed. Their view was that it would be worthwhile and the result was the clauses now published. Initial reaction from the representatives was that the work done looked very helpful to users but detailed comments were awaited.

- 25 The project made a second point to the Committee regarding the proposed changes. As the paper indicated there were eight changes of which six were new. Five of these had no impact on the taxpayer and affected only administrative matters but one was in principle and practice adverse to some taxpayers and favourable to others. This was change 659 which was complex and with a number of strands. The project said that it would particularly welcome comments on this change. None were offered at this point.
- 26 The Committee commented that this had been the hardest paper yet to review in view of the complexity of the legislation. They also commented that that the rewrite was a significant improvement on the source legislation and was more logical and lucid.
- 27 The Committee expressed surprise, in view of the fact that this was relatively new legislation, at the number of questions and at the level of re-ordering that had been done.
- 28 The project accepted these comments which reflected the fact that this was very complex material to work with. There was a general discussion concerning the Finance Bill process and the impact of that process on the time available to drafters to deal with such difficult material.
- 29 Regarding Question 46 in the explanatory notes, the Committee considered that the word 'additional' should be retained in this context.

Item 7: Bill 6: Paper CC/SC (08) 18: Surrender of tax refund within group

- 30 The project explained that these draft clauses rewrite section 102 of FA1989.
- 31 The Committee commented that the reference in clause 1 (2) (b) to "the period beginning with the "accounting period" was unsatisfactory. . That was because an accounting period was itself a period of time rather than a particular moment. The project said that it would look at this.
- 32 The Committee pointed out that Finance Bill 2008 looks at set-offs and wondered if this mechanism would 'trump' the process outlined in these clauses. The project said that it would be undertaking an exercise after the Finance Bill had received Royal Assent to examine the implications on rewritten legislation.
- 33 The Committee questioned the use of the word 'relevant' the labels "relevant date" and relevant period" in clauses 1 and 2. . The project agreed that the general policy was to avoid the use of "relevant" in this kind of context. The aim was to use adjectives that were more informative, but this was not always possible. The project would check what the position was in relation to these labels.

Item 8: Bill 6: Paper CC/SC (08) 19: Use of different accounting practices within a group of companies

- 34 The project said that this paper rewrites section 51 of FA 2004.
- 35 The Committee had no comments on this paper and were content with the draft clauses.

Item 9: Bill 6: Paper CC/SC (08) 20: Manufactured payments and repos

- 36 The project explained that these clauses replicated part 11 of ITA 2007 and were the corporation tax counterpart to those provisions. The covering paper stated broadly how they differed from their income tax equivalents.
- 37 The project drew the Committee's attention to one proposed change which had two strands. First the change adopted the definition of manufactured interest used in the loan relationships regime in rewriting the unallowable purpose test for manufactured interest. This was in principle favourable to some taxpayers and adverse to others, but it was line with practice and was expected to have no practical effect. Secondly, it abolished the power to apply, with modifications, prescribed provisions of TMA to manufactured interest, which was considered to be unnecessary in the context of the CT self assessment regime.
- 38 The Committee were content with the draft clauses and the proposed change.

Item 10: Bill 6: Paper CC/SC (08) 21: Response documents (2)

- 39 The project presented the paper which was a record of the Bill 6 response documents issued since the last meeting.

Item 11: Bill 6: Paper CC/SC (08) 22: Changes in company ownership and recovery of corporation tax

- 40 The project drew the attention of the Committee to paragraph 3 of the covering paper. It pointed out that the source legislation in ICTA was not easy to understand and so the project had tried to make it easier for users in the way outlined in the paper.
- 41 There were three proposed rewrite changes and the project drew the attention of the Committee to two of them which were new. Both brought the law into line with generally accepted practice. In one case this was in principle favourable to taxpayers because it limited the rights of HMRC to argue for a different interpretation. In the other case it was favourable to HMRC because it limited the rights of taxpayers to argue for a different interpretation. The project said that it would particularly welcome comments on these changes. None were offered at this point.
- 42 The Committee commented that there might be a lacuna in the original legislation. Referring to clause 49(5), which was in terms of any acquisition of shares under a will or intestacy, it might be that under Scottish law, if a widow or children were left, they were entitled to a share of the moveable estate, and this could be satisfied by the transfer of shares. Such an acquisition would be on death, but not under a will or intestacy. Likewise, in relation to the law of England and Wales, it was suggested that shares acquired by means of right of survivorship on the death of a joint tenant might not be an acquisition to which

the provision applied. There may also be an implication under English law if shares were held jointly. The project said that it would look into these points, referring if necessary to the Solicitor's Office (Scotland).

- 43 The Committee agreed with the approach outlined in paragraph 255 of the explanatory notes.
- 44 The Committee particularly liked the layout of clauses 14 and 31.

Item 12: Bill 6: Paper CC/SC (08) 23: Distributions

- 45 The project explained that this paper and the clauses it presented were a follow up to the main body of the distributions clauses issued earlier in the year. The additional clauses had been issued along with the ones issued earlier so that users could see the additional clauses in context. Where they had a specific link to some aspect of a provision the new clauses had been located with the provision to which they related. Where they related to general matters about returns and information they had been located in Chapter 6.
- 46 The covering paper also explained why the clauses contained material relevant to income tax and invited the views of users on the proposals.
- 47 The project drew the Committee's attention to two new proposed changes, indicating that comments would be welcome. No comments were offered at this stage.
- 48 The Committee commented in response to question 3 that the table was a very helpful aid to navigation and that the sign-posting was first class.
- 49 The Committee said that in response to Question 6 in relation to Clause 112 it might be possible to omit s234A (6) as proposed but suggested that some areas should be carefully checked before the decision to omit was finally taken.
- 50 The Committee pointed out that there was some overlap in clauses 107 and 110 and questioned if this was needed, although the same overlap was present in the source legislation. The project said that it would look into it.

Item 13: Bill 7: Paper CC/SC (08) 24: Transfer pricing and advance pricing agreements

- 51 The project said that it had taken the opportunity to bring together the provisions on transfer pricing with those relating to advance pricing agreements. This was intended to be helpful to users and it welcomed the Committee's views
- 52 There was one proposed change which concerned an administrative matter relating to advance pricing agreements. It was not considered to be controversial. The committee had no comments.
- 53 The Committee commented that they were pleased to see how this subject had been handled.
- 54 The Committee pointed out that the parenthetical description of sections 67 and 68 in clause 12 (6) (c) was confusing and suggested that the word 'this' should be inserted before 'Part'. Alternatively, there could be separate paragraphs for

each section, with a separate parenthetical description. The project said that it would look at this.

Item 14: Any other business

- 55 The next meeting of the Consultative Committee would take place on 30 September 2008 at 2.30 pm in the Nelson Suite, Somerset House. The Chairman drew the Committee's attention to the change of venue.

JACKIE BARTLETT
Secretary to the Consultative Committee