

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE COMMITTEE MEETING HELD ON 30 SEPTEMBER

Note by the Secretary

I attach the minutes of the meeting of the Consultative Committee, held on 30 September 2008.

JACKIE BARTLETT
Secretary to the Consultative Committee

MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 30 SEPTEMBER 2008 IN THE NEW NELSON ROOM, SOMERSET HOUSE, STRAND, LONDON

Present:

Robina Dyall (Chairman)
Mary Fraser
Brian Atkinson
Francis Sandison
Colin Campbell
Kate Willis

Secretary: Jackie Bartlett

In attendance:

John Sellers
Steve Batterby
Brian Jones
David Edney
David Hole
Douglas Ramsay
David Sewell
Philip Ember
Richard Hayes
Jenny Manson
Hugh Grainger
Travis Morton
Luke Connell
James Couchman

Apologies and welcome

- 1 Apologies had been received from Keith Gordon, Terry Hopes, Russell Chaplin, David Williams, Adam Broke and Malcolm Gammie.
- 2 The Chairman welcomed Kate Willis who was attending from the Chartered Institute of Taxation as deputy for Keith Gordon.
- 3 The Chairman introduced herself to the Committee and gave a brief outline of her previous work within HMRC.

Item 1: Minutes of the meeting held on 1 July 2008

- 4 The minutes of the meeting on 1 July had already been circulated. The Committee drew attention to the fact that the agenda for the meeting had referred to the 'Tax Law Rewrite Project Consultative Committee' and commented that the word 'Project' should be omitted. This was agreed and the minutes were accepted as a true record.

Item 2: Matters arising

- 5 A document summarising progress made on action points from the last meeting was circulated and the Committee was satisfied that all matters were in hand.

Item 3: ITA 2007: Paper CC/SC(08) 40: Use of the powers in sections 1028 and 1029 of ITA 2007

6. The project said that this paper sought the Committee's approval to use the powers in sections 1028 and 1029 of the Income Tax Act 2007 (ITA) to correct a number of further minor errors that had been identified in ITA since the Committee meetings in November 2007.
7. In each case the project asked that the proposed amendments should take effect from 6 April 2007 to ensure that there was consistency of treatment for taxpayers.

Section 1028 of ITA (power to make consequential changes)

8. The project said that a consequential amendment was overlooked and so not made in ITA. Although this was unlikely to cause difficulty, the project considered that it would be helpful to users to ensure that the definition in section 519 of ITA also expressly applied to the term when used in TCGA. The proposal was a purely clarificatory two-line addition to section 256 of TCGA as detailed in the paper. The project considered that it was sensible and more helpful to users to make the effect of the amendment retrospective.
9. The Committee agreed that the paper fully explained the background to this proposal and were content that the power in section 1028 should be invoked retrospectively.

Section 1029 (power to undo changes)

a) The error in section 504 of ITA and section 469(2) of ICTA

10. The Committee accepted the reason for the proposed change and commented that the source legislation was unclear. The project agreed and said that they did not wish to make the position worse and considered that the proposal would reduce uncertainty for users.
11. The project explained that if the change was not made retrospective some taxpayers who would reasonably have expected there to be no change in the law, as none was flagged up in the rewrite, would be disadvantaged for a period of time, and others would gain an advantage unintended by the law.
12. The Committee were content for this change to be made retrospectively.

b) The error in section 821 of ITA

13. The project explained that the effect of the error might be favourable to some taxpayers and unfavourable to others and it would like to remedy this and restore the original meaning of the law. The correction of the position could again be achieved by the simple changes proposed in the paper.
14. The project considered that the proposed correction should be made retrospective. As with the previous change, if this was not done then for a period some taxpayers who could reasonably have expected there to be no change in the law, as none was flagged up in the rewrite, would be disadvantaged, and others would gain an advantage unintended by the law.

15. The Committee were content for this change to be made retrospectively and asked if the error had been identified internally or by users. The project confirmed that it had been identified within HMRC.

c) The error relating to section 1007(2) of ITA

16. The Committee were content that the proposed change should be made. The requirement for retrospection was questioned (since the unintended power had not been exercised) but the Committee agreed that this should be done for the sake of form and consistency.

New issue

17. The project said that it had within the last few days, discovered a further small error in ITA that was unfavourable to the taxpayer. The project proposed to present a further short paper to the Committees in November proposing a remedy to the problem. If the Committee were content the project would then arrange for the issue of a single order covering all the matters in this paper and the one in November.
18. The Committee were content with this approach.

Item 4: Bill 5: Paper CC/SC (08) 39: Update

19. The project explained that this paper brought the Committee up to date with recent developments on the approach to the introduction of Bill 5 to Parliament. It was anticipated that introduction would be soon after the start of the next session early in December.
20. The paper provided rewritten clauses and associated explanatory notes on two areas of legislation where Finance Act 2008 introduced a significant amount of new legislation. There were also other Finance Act provisions that affected clauses in a minor way which were listed in the Appendix.
21. The Committee had no comments on the presented clauses.
22. The project drew the Committee's attention to the withdrawal of a minor change in the law. This was necessary because advice had been received indicating that the practice that was being legislated was inconsistent with European law.
23. The Committee understood and accepted the position.
24. The project emphasised that if there were any comments to be made about any of the draft clauses they should be sent as soon as possible as the draft Bill was now in the final stages of preparation and time was very short.

Item 5: Paper CC/SC (08) 37: Response documents (3) (Bills 5 and 6)

25. The project said that it had published the response document for the consultation on draft Bill 5 and was grateful for the time and effort spent by consultees on considering what was a substantial Bill.

26. Helpful comments had been received and the project reported that the draft Bill was generally well received. In particular, the project was pleased to report that by working closely with HMRC and private sector specialists on the loan relationships and derivative contracts clauses, the revised provisions had successfully dealt with the technical concerns of consultees made during the earlier consultation process.
27. Revised clauses had been provided to take account of criticism from consultees about the Chapter dealing with the charge to corporation tax. The project had tried to present the clauses in a way that showed what the changes were.
28. The Committee said that the presentation of the new clauses was very helpful as it made clear exactly what changes had been made and asked if this approach could be used in future. The project said that it would endeavour to do this.
29. The Committee questioned if clause 2(3) added anything useful. The project thought that it did. In the case of income tax, there is no general charge to tax on income. There are separate charges imposed in relation to each head of charge. In the case of corporation tax, there was a general charge to tax on income, as part of the charge to tax on "profits". Historically, the scope of the charge to corporation tax on income had been linked to what was within the charge to income tax. This was the effect of the application by section 9 of ICTA of income tax principles for corporation tax purposes.
30. Corporation tax was now being separated from income tax. The income tax principles applying for corporation tax were being rewritten as corporation tax provisions. As a result, a different way of explaining the relationship of the general charge on income to the particular heads of charge under the rewritten provisions needed to be found. In essence, the charge to corporation tax on income is imposed by clause 2(1), but what the charge applies to is determined by the provisions that rewrite the particular heads of charge.
31. The Committee accepted that the drafting should not be amended and was helpful, but recommended that the explanatory notes should be expanded to explain the history of the clauses and how the charge works. The project agreed to do this.
32. The project drew the Committee's attention to the fact that on the R&D provisions, it had looked again at one point since the publication of the response document and would now amend a provision in a way that met the concerns of a particular respondent.
33. The project said that there were no particular points to make regarding Bill 6 other than to explain how it was proposing to handle the response document on Distributions. Following the publication of the main body of clauses earlier in the year, further clauses dealing with administrative matters had been issued in June. The intention was to issue later in the year a single response document covering both sets of clauses. The Committee agreed that the proposed approach would be helpful.

Item 6: Bill 6: Paper CC/SC (08) 28: Companies in liquidation or administration

34. The project said that broadly this paper spoke for itself but wished to draw the Committee's attention to an amendment which needed to be made to clause 14(3). A respondent had identified that the time by which the election to carry back relief had to be made was not right. The project agreed and would amend this.
35. The Committee noted that clause 2(2) referred to the 'small companies' rate' but was under the impression that agreement had been made in discussions during previous meetings to change this wording. The project agreed to look at this.

Item 7: Bill 6: Paper CC/SC (08) 32: Securitisation companies

36. The project said that there was nothing requiring particular mention in this paper other than to explain that the intention was to separate two regulation making powers to make the position clearer for users.
37. The Committee had no comments to make on the paper.

Item 8: Bill 6: Paper CC/SC (08) 33: Loss relief: Supplementary clauses

38. The project explained that this paper linked with an earlier paper and provided supplementary material rewriting ESC C5 and section 808 of ICTA.
39. The project had received one comment so far which was in support of the proposed change related to the enactment of ESC C5.
40. The Committee had no comments on this paper.

Item 9: Bill 6: Paper CC/SC (08) 34: Trade unions

41. The project explained that the legislation had been 'unpacked' to make it more accessible to users.
42. The Committee commented that the rewritten legislation was much clearer.

Item 10: Bill 6: Paper CC/SC (08) 35: Oil tax

43. The project said that this material dealt with two separate aspects of one subject area. First there were clauses rewriting Chapter 5 of Part 12 of, and Schedule 19C to ICTA, and sections 62 to 65 of FA 1991 - the rules relating to the corporation tax charge on profits from oil extraction and related activities. Second, as the source legislation related to both income tax and corporation tax, there was a Schedule which contained a rewrite of the rules that were relevant to income tax. These provisions would be inserted into ITTOIA after section 225 and the intention was that this would be achieved through Bill 7 rather than Bill 6.

44. Given the close links between the income tax and corporation tax material the project took the view that it was helpful for the purposes of consultation to publish them together in one paper even though ultimately they would appear in different Bills.
45. The clauses contained two proposed changes in the law. Both were favourable to some taxpayers and adverse to others in principle, but both were expected to have no practical effect as they were in line with current practice.
46. The first change clarified the wording of section 493(1A)(b) of ICTA so that it gave a deduction against profits of a non-ring fence trade in accordance with the intention of the provision when it was introduced. The current wording was unclear about the scope of the deduction.
47. The second change made it clear that sections 63 and 65 of FA 1991 applied for income tax as well as for corporation tax – there was some ambiguity in the current wording which suggested that whilst sections 62 and 64 clearly applied for both income tax and corporation tax, sections 63 and 65 could be interpreted as applying for corporation tax only.
48. The Committee asked if in view of the specialised nature of this subject, there had been any input from industry bodies. The project said there had been discussion with industry representatives who were co-operating with the rewrite and were working through material that had been sent to them.

Item 11: Bill 6: Paper CC/SC (08) 36: Authorised Investment Funds

49. The project said that this paper did not propose any changes but the legislation had been restructured to make it more accessible.
50. The Committee commented that the summary paper mentioned 'common court investment funds' whereas clause 1(1)(c) quotes 'court common investment funds'. The project confirmed that there was a mistake in the summary paper.
51. The Committee said the meaning of clause 6(2) was unclear and asked if it could be reviewed. The project confirmed that this would be looked at.
52. The Committee commented on the absence in clause 9(4) of any reference to Scotland. The project said that this would be reviewed.

Item 12: Bill 6: Paper CC/SC (08) 38: Close companies

53. The project explained that in this paper it had taken the opportunity to disentangle the convoluted structure of the source legislation.
54. In rewriting this legislation, two changes to the law were proposed. One of those, Change 608, was one previously proposed for income tax and which introduced the criterion of reasonableness into the area of requests for information by HMRC. The other, Change 666, was a new change, which extended the statutory exception, for small amounts. It did so by extending the exception to include not

only loans but also advances. This brought the law into line with existing practice and was in the taxpayer's favour.

55. The Committee particularly welcomed the second change but asked the project to explain if there was any difference between the terms 'advance' and 'loan'. The project took the point but considered it unwise to remove any reference to 'advance' without being certain about the effect of such a change. The project said that it would undertake further research to establish whether a clear case for the removal of the word could be established. If not it would propose that the word should remain.
56. The Committee commented that the use of the term 'involved' in the title of clause 14 might be misleading. The project said that it would consider this.

Bills 6 and 7 (Corporation tax: International and other provisions)

Item 13: Paper CC/SC (08) 42: Factoring of income

57. The project said that the corporation tax provisions would appear in Bill 6 and the income tax provisions would be inserted into ITA by Bill 7. They included some minor changes in the law; these were all changes which had been seen before as they were all proposed and agreed for the purposes of legislation rewritten in ITA.
58. In view of the date on which the consultation period on these draft provisions ends, the project proposed to comment on the representations it received when the draft Bills and draft commentaries were published for consultation in the Spring. The Committee accepted this proposal.
59. The Committee asked if in clause 3(2), the term 'borrower' could be used as this would be clearer. The project said that this would be considered.

Other matters

Any other business

60. The Chairman thanked the Committee for their attendance and very helpful comments.
61. The next meeting of the Consultative Committee would take place on **4 November 2008 at 2.30 pm in the Boardroom, 1 Horseguards Road, London.**
62. The Secretary said that a map and more information on the changed venue would be supplied to Committee members nearer the time.

JACKIE BARTLETT
Secretary to the Consultative Committee