

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE FORTY- NINTH COMMITTEE MEETING

Note by the Secretary

I attach the minutes of the 49th meeting of the Consultative Committee, held on 12 October 2004.

BASIL RAJAMANIE
Secretary to the Consultative Committee

MINUTES OF THE 49th MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 12 OCTOBER 2004 IN THE JAMES PENNETHORNE ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON

Present:
Robin Martin (Chairman)
Adam Broke
Colin Campbell
Mary Fraser
Keith Gordon
Terry Hopes
Liz Lathwood
Cunnie Rankin
Wreford Voge

Secretary: Basil Rajamanie

In attendance:
David Cook
Lucy Baines
John Morris
Hazel Colclough
David Halsey
Brian Jones
Vicki Carr
Mathew Sawyer
Russell Chaplin
Richard Hayes
Michelle Michael

Apologies and Welcome

Apologies had been received from Taha Dharsi, Malcolm Gammie and David Williams.

The Chairman welcomed Keith Gordon. Keith will be replacing Liz as the representative of the Chartered Institute of Taxation. The Chairman thanked Liz for the valuable work which she had done as a member of the Committee. The continuing support of the CIOT for the project was very welcome. The Chairman also introduced Michelle Michael and Richard Hayes who joined the Project recently.

Items 1: Minutes of 48th meeting held on 13 July 2004

1. The minutes of the meeting on 13 July had already been circulated. They were agreed.

Item 2: Matters arising

2. The Chairman said that the Project had published a Response Document on 4 October to comments received on the draft clauses on Personal Reliefs. The Chairman added that they had also received very helpful responses on the draft clauses on Interest Relief, Relief for Losses and Charges on Income and thanked all those who responded for their time and effort. The Project was now in the process of working through these and making changes to the clauses where appropriate.

Item 3: Paper CC (04) 13 - Bill 3 current issues

3. The Project presented paper CC (04)15 and explained that it brings the Committee up to date on Bill 3 issues. The Project said that the paper covered some changes that they intended dropping, some new changes, some amendments to existing clauses and some new material for inclusion in the Bill.
4. The Project said that they had also published a full Response Document to comments received on the draft Bill published earlier this year. They had received some very useful comments and had made changes to the clauses where

necessary. A revised version of the draft Bill had also been published on the Internet. The Committee commended the Project for the comprehensive document and said that they found the conversion table at the back of the document very useful.

5. The Project explained that following the consultation on the draft Bill nearly all 161 proposed changes had been accepted. Where changes have been dropped or modified as a result of responses, these have been fully explained in the Response Document. In addition, they had identified two further rewrite changes which they now intended dropping:
 - Herd basis rules - this change which started out as a drafting simplification now threatens to make the drafting more complex without actually achieving any benefit for the taxpayer.
 - Duration of leases - this change proposed minor adjustments to the rules for determining the effective duration of the lease for income tax payers. As the rules for corporation tax will remain as before, it was decided to defer the change until the rules can be applied across the board.
6. The Project said that they had also identified nine new proposed changes since the last update:
 - Contributions to local enterprise agencies and similar bodies. The change deals with anomalies in the anti-avoidance bits of these rules and merely brings the law into line with current practice.
 - Deduction for patents, etc fees incurred. The change is a step towards following the accounting treatment - using the incurred basis rather than the paid basis for allowing the deduction. One member of the Committee suggested that this gives the appearance of not being even handed but after a brief discussion the Committee were content with this change. It was acknowledged that this was a small simplification of the patent fees rules.
 - Relief for gifts of trading stock "for the purposes of" a charity. This made it consistent with the rule for educational establishments. One member enquired whether this change could be extended to section 63 of the Capital Allowances Act. The Project said that the Bill is confined to income tax and to do this would be beyond its scope.
 - Extending the treatment for expenditure on films to sound recordings. The change gives statutory effect to ESC B54.
 - Lump sums paid to personal reps - the change corrects an anomaly in ICTA.
 - Section 360A – the change corrects a small consequential amendment error in ITEPA.
 - Earned income - introduction of a definition of "patent income" for the purposes of determining what is earned income.
 - Irish pensions and annuities - these two changes give Irish pensions and annuities the same 10% deduction given to other foreign pensions and annuities.

7. The Project introduced the other matters covered in the Bill 3 paper. They explained that they proposed making an amendment to clause 30 in the draft Bill (relationship between rules prohibiting and allowing deductions) to ensure that the rule works correctly. The Project said that there could be scope for conflict between the prohibitive rules and the permissive rules and confirmed that they were looking to see whether the clause gets the right result where there is potential conflict. The Project said that they had already identified that in the case of criminal payments clause 30 could be misleading so they had decided to make such payments an exception to this clause.
8. The Project said that they had received helpful responses to their paper on rewriting parts of FA 2004(immediate needs annuities and the exemption for interest and royalties), which they published in September. They were now considering these responses and were in the process of making amendments to the clauses where appropriate.
9. The Project said that they had substantially revised the clauses on "settlements". These were included in the revised draft Bill placed on the Internet in September. The Project said they hoped that these changes made this material more accessible.
10. The Project added that they had identified a problem with clause 408 (loans to participator) which they had now corrected.
11. The Project said that they were also considering whether it would be useful to have a clause in Part 10 to mirror the clause in the trading income Part (and applied to the property income Part) that losses are calculated on the same basis as profits. This rule would be applied to certain calculations and they did not think it would be controversial. The Project would be interested in the Committee's views.
12. There was some discussion on whether one rule could be placed in Part 10 and applied to all relevant calculations. The project had considered this but thought it better to set out all of the rules relevant to trading income in Part 2 and to apply them as necessary to property income. This leaves the rules in Part 10 to apply to other income where appropriate.
13. The Committee were content with this proposed clause. One member thought that it looked very helpful.
14. The Project said that they had been asked by a Committee member to mention a couple of points concerning the "person liable" clause for the charge on UK dividends to gauge other members' views. The Project passed round copies of the clause in question and said that there were essentially two issues here. The first was whether there should be an order of priority and the second whether there is repetition between the persons liable at sub-paragraphs (a) to (c).
15. In discussion the following points emerged:
 - The Project explained that they had not set out an order of priority in this clause as there was none in the current statute and none in the other person liable clauses in Bill 3. For example in section 59 of ICTA there was no order of priority between the person receiving or the person entitled to the income.

- It was suggested the lack of an order of priority could have implications for Trusts. One member said that having worked in Trusts for a number of years she found that section 59 of ICTA, which did not specify an order of priority, worked very well.
 - One member enquired whether guidance was provided for SA taxpayers so that they would not get caught out in cases where more than one person was potentially liable for the distribution. The Project said that SA Return notes provide general guidance and if the person receiving the distribution was a trustee, guidance is available in the Trustee Return notes.
 - The Project said that as it stands they could go after one or the other but not both for the same income. The Project said that their colleagues working on Trusts had seen these clauses and they have not asked for an order of priority.
 - The Project said that they would look again at the sub-paragraphs to see if sub-paragraph (b) was covered by sub-paragraph (a) and if it was sub-paragraph (b) could be dropped. If not then it may be possible to merge sub-paragraphs (b) and (c) to follow the "person receiving or entitled to the distribution" approach that had been suggested by the Committee member.
 - Either way sub-paragraph (c) will be amended to the person entitled to the distribution. It was agreed that the second limb of the sub-paragraph was not necessary. Any provision which deems the distribution to belong to someone other than the actual owner will necessarily say for what purposes it applies.
 - Any changes to this provision will appear in the next version of the Bill.
 - The Consultative Committee were content with the Project's proposals.
16. The Committee member made a point which related to all person liable clauses - should we refer to person or persons. The Project adopted "person" in the early days of the project and used it throughout ITEPA and Bill 3 not just for the person liable clauses. The Project preferred to retain "person" to remain consistent. The Interpretation Act allows the plural to be read into the singular where necessary. The Committee were content
17. The Project said their final point on Bill 3 was whether it would be useful to have a consequential and transitional power to allow the Department to make by order any further consequential or transitional provision which might not have been dealt with in the Bill but which was needed to help to preserve the continuity of the law or to take account of changes made by the Bill. In discussion the following main points emerged:
- Any power would be limited in its scope. For example, a consequential power might permit the insertion of new consequential amendments which had not been included in the consequential amendment Schedule to the Bill or additions to existing consequential amendments in the Schedule but it would not permit the reversal of the law as set out in the Bill. Nor would it permit new changes in the law.
 - The power would apply only to this Bill and separate powers would be envisaged for future Rewrite Acts. The power in Bill 3 could not be used to make provision consequential on the CAA or ITEPA or any other Act.

- A suggestion was made that a cut off date should be specified.
 - A concern was raised that it might be better to continue to list amendments to be included in the following Finance Bill rather than make a consequential order to correct each problem as it was identified. The Project said that the purpose of including the power in Bill 3 was to keep simple corrections out of the Finance Bill. It was noted that the power would have the advantage of allowing corrections to be made earlier than in the next Finance Act.
 - The Committee thought that the power would be useful but they were concerned that this could lead to reduced scrutiny. The Project confirmed that corrections to be made under such a power would be presented to the Committees for comment in the normal way and, in the case of consequential amendments, would also come within the normal process for scrutinising Regulations.
 - It was agreed that the Project would draft a provision and circulate it to members for comment. The Project would also seek the views of specialists within the Revenue.
 - One member of the Committee felt that there was a danger that a power of this sort might subsequently be extended into areas where it was inappropriate.
 - The Project thanked the Committee for their helpful comments on the issues raised and undertook to give this matter further thought.
18. The Project said that they planned to introduce the Bill into Parliament at the end of November. Before the Bill is introduced they planned to let the Committee have a near complete copy of the draft Bill but if this proved difficult they would let them see any clauses which had been substantially changed. They would also have another update paper on Bill 3 for the November Committee meeting but if any major issues arose between now and then, they would contact members by post.

Item 4: Paper CC (04) 16 - Bill 4 Scoping: Definitions used for income and corporation tax

19. The Project presented this paper and explained that it seeks views on the key issues involved in rewriting the general definitions in Part 19 of ICTA which apply both for income tax and corporation tax purposes.
20. The Project said that the paper analyses Part 19, first setting aside provisions which are not for Bill 4, and then setting aside provisions which are for Bill 4. This left definitions which were relevant to both income and corporation tax, including definitions of subsidiary, connected person, control, bank and recognised stock exchange.
21. The Project explained that they saw Bill 4 as a natural home for many of the general provisions of the income tax code. The Project then considered three different situations. The first was where a definition applies only for Income Tax Acts purposes. Here, the proposal was to include the definition in Bill 4 unless it applied only to a particular Act or Part of an Act.
22. The next situation is where a definition was mainly concerned with one tax but it also had some application in relation to another tax. Here, the proposal was to

rewrite the definition when rewriting the tax to which it principally applies; and to provide the definition for the other tax either by duplication or by cross-reference. This approach would ensure the split of the income tax and corporation tax codes, and operate only marginally more on corporation tax than previous Bills.

23. The Project added that duplication would generally be the preferred approach in relation to shorter or simpler definitions. But where a definition is longer or more complex, for example the definition of subsidiary in section 838, the Project felt cross-reference would be preferable - as this will make it explicit that the definitions are the same and guard against unintended differences creeping in.
24. The third situation is where the definition had a significant role in relation to both codes. The Project felt that such definitions should be rewritten in Bill 4. In relation to providing the parallel definitions for corporation tax or capital gains tax, the Project felt that the arguments were in favour of duplication. The exception to this might be definitions which involve order-making powers, where the preferred option might be to use cross-referencing.
25. The Project said that their work on the detail of the provisions concerned was continuing and their thinking continues to develop at that level. To help inform that ongoing work, the Project would welcome the Committee's views on the principles involved - as set out in the final paragraph of the paper, and any specific thoughts about particular provisions.
26. In discussion the following main points were made:
 - In response to a question on how the cross-reference would work in practice, the Project explained that it would operate differently to sign-posting. For example, with cross-referencing, where there was a rewritten definition in Bill 4, this would operate only for Income Tax Acts purposes. And the ICTA definition would be amended to become a corporation tax definition, which would cross refer to the content of the rewritten IT definition. So there are two definitions, but of identical substance. However, with sign-posting, there is only one operative provision - to which the signpost draws attention.
 - The Committee acknowledged that the approach as between cross referencing and duplication was sensible, whilst expressing the desire that duplication be used wherever possible.
 - The Committee noted that the Project's proposals could in some cases effectively involve the rewrite of some definitions for both income tax and corporation tax purposes as part of Bill 4. The Project agreed that to this extent their work would need to embrace consideration of corporation tax implications.
 - In response to a question about the mechanics of duplication, the Project explained that they would be seeking to ensure that the rewrite of the definition for income tax purposes was such that it was still recognisably the same in meaning as the continuing corporation tax definition.
 - The Committee asked whether there would be any way of flagging up the linkages between definitions in different Acts where duplication had been used, so that if for whatever reason the definition is changed in the Income Tax Act the possible need to amend it in other Acts is not overlooked. The Project said that as the Acts would operate separately there would not

necessarily be an automatic read-across. But the Project acknowledged that there was a case for exploring the possibility of leaving a marker on this account in some circumstances.

27. Subject to the points made the Committee were content with the Project's proposals for dealing with definitions. The Project thanked the Committee for their helpful suggestions.

Item 8: Bill 5

28. The Project said that candidates for Bill 5 were discussed at the last meeting and also with the Steering Committee. The Project explained that the time has now come to decide on which subject to rewrite next and put this to Ministers, so that work can start as soon as Bill 3 has been completed.

29. The Project said that the discussion last time focused on CT, CGT and TMA and it was agreed that due to the merger of IR and C&E, this was not a good time to rewrite TMA. The majority of Consultative Committee members were in favour of rewriting CT although there was some support for CGT as well. The Project explained that the Steering Committee also felt that, on balance, CT was the main contender. The Project had also raised this issue with a small group of practitioners recently and again everyone felt that CT was the best choice, particularly because TCGA was largely in one place.

30. In discussion the following main points emerged:

- The committee felt that CT was the logical extension to the rewrite process because of the interaction between income tax and corporation tax.
- A view was also expressed that CT would take a long time to complete and probably require two Bills. CGT on the other hand would be easier to rewrite and be completed in a shorter time and could benefit taxpayers sooner.
- It was also noted that if the CT reform went ahead at a reasonable speed some parts of the CT legislation would already have been rewritten. The Project explained that they had been reassured by the reform team that the rewrite could work alongside the reform and tackle first areas that are not going to be materially affected by the reform.
- The Committee were concerned that such an approach might not be the ideal or logical way to tackle a rewrite and warned of the need to exercise care.
- The Project pointed out that the first CT Bill would not be completed before 2009 by which time the CT reform would have been completed. They also pointed to the advantages of working with the CT reform team - working on a joint project. The Project agreed that the rewrite could be affected by the reform but they did not think it would be a major problem.
- One member asked whether any thought had been given to how the rewrite of CT would be split between the first and second CT Bills. The Project said that they had not considered this aspect as yet.

31. The Project thanked the Committee for their helpful comments and said that they would report their findings to the Steering Committee next week.

Item 9: Any Other Business

32. The Chairman said that dates for next year's Steering Committee meetings were in the process of being finalised with Lord Howe. As soon as this is done, Consultative Committee members would be notified of the dates.
33. The next meeting of the Consultative Committee will take place on 23 November 2004 at 2.30 p.m. in the James Pennethorne Room, Somerset House.

BASIL RAJAMANIE
Secretary to the Consultative Committee