

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE FIFTY- FOURTH COMMITTEE MEETING

Note by the Secretary

I attach the minutes of the 54th meeting of the Consultative Committee, held on 27 September 2005.

BASIL RAJAMANIE
Secretary to the Consultative Committee

MINUTES OF THE 54th MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 27 SEPTEMBER 2005 IN THE JAMES PENNETHORNE ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON

Present:
Robin Martin (Chairman)
Colin Campbell
Mary Fraser
Malcolm Gammie
Keith Gordon
Terry Hopes
Francis Sandison
Wreford Voge

Secretary: Basil Rajamanie

In attendance:
Hayley Rogers
Richard Marlin
Kirsty Lewis
David Halsey
Brian Jones
Colin Wolfe
Michelle Michael
Richard Davey
Russell Chaplin
David Hole

Apologies and Welcome

Apologies had been received from Adam Broke, Cunnie Rankin and Taha Dharsi.

Items 1: Minutes of 53rd meeting held on 12 July 2005

1. The minutes of the meeting on 12 July had already been circulated. They were agreed.

Item 2: Matters arising

2. There were none.

Bill 4

Item 3 - Paper CC/SC (05) 27 – Response Documents

3. The project said that the paper highlighted the main points from the response documents published on charitable trusts, gift aid, post-cessation expenses, jointly held property and deduction of tax at source (Schedule 16). A response document had also been published more recently on the limits on liability to income tax of non-UK residents.
4. The project said that the clauses on charitable trusts and gift aid had in particular stimulated a high level of response. This was probably mainly a function of the lively nature of the charity sector, but had also been supported by our having drawn the material to the attention of relevant specialists at an early stage. The project said they were expecting a similar response to the consultation on gifts of assets to charities.
5. The project said that they had included some new draft clauses on gift aid in the response document and would consult on these formally at Draft Bill stage. In the meantime the project would be happy to receive any comments or suggestions members had.

Item 4: Paper CC/SC (05) 28 - Deduction of tax at source

6. The project presented this paper and explained that it brings the Committee up to date on deduction of income tax at source material and includes all 121 clauses so far drafted. Of these, comments were being specifically sought on the 63 new clauses and the 16 revised clauses relating to “charges on income” material.
7. The project said that they had proposed five rewrite changes and asked sixteen specific questions. The project added that they would be particularly interested in people’s views on the proposal to retain the distinction between deduction of “sums representing income tax” and the collection of “income tax which those sums represent”.
8. The project added that a number of questions relate to technical issues in the field of deposits, qualifying certificates of deposit, qualifying deposit rights, etc on which they were also consulting industry specialists directly.
9. The project explained that they had proposed to improve the rewrite of the “charges on income” provisions by aligning the approach to patent royalties with that for annual payments and repealing section 51 of ITTOIA. This would enable section 387 of ICTA to be repealed and remove the present complexities in the interaction between “charges on income” and “terminal loss relief”.
10. The project touched on the response document on Schedule 16 and said that in response to comments received they had decided not to rewrite the provisions about “interest” in section 87 of TMA in Bill 4 but to revise this section and leave it in TMA.
11. The project said that there were a few other areas on deduction of tax at source still to rewrite. These include the cross-cutting rules in sections 818-822 of ICTA, funding bonds in section 582 of ICTA and visiting performers in sections 555-558 of ICTA. The project would be considering exposing draft clauses on these topics in October.
12. In discussion the following main points were made:
 - The wording of clause 34(1), in introducing Chapter 3, was felt not to go far enough in leading the reader into the subject as it did not make clear who paid the interest. Also, it was not easy to find the Eurobond exception (in clause 37). More widely, it might be useful to bring all the exceptions in Chapter 3 together, rather than having the present split between those in clauses 37 and 38 and those in clauses 40 to 46. The project agreed to look at all these points.
 - It was also suggested that the project should consider the scope for including something in the legislation, or the explanatory notes, about the meaning of “yearly interest” (clause 34), and “arising in the UK” (clause 63). Both these terms attract a body of case law and it was recognised that, (as with “annual payment”, in relation to which similar issues were discussed in the context of the work on ITTOIA), it might only be possible to flag the issues in the explanatory notes, rather than attempt any codification. But the project agreed to look at both points.
 - The Committee asked why it was proposed to exclude “qualifying deposit right”, especially as the relevant provisions were enacted fairly recently. The project explained that it was brought in to provide for dematerialised certificates of deposit but it seems it may be redundant now as these in fact operate under other provisions (the Uncertificated Securities (Amendment) (Eligible Debt

Securities) Regulations SI 2003/1633), and enquiries to date (e.g. with Euroclear) suggest that they are not used.

13. The project thanked the Committee for their helpful comments.

Item 5 - Paper CC/SC (05) 29 – Partnerships and Film-related losses

14. The Project presented this paper and explained that it covers the rewrite of two related subjects. The first is about the restrictions of loss relief for some members of partnerships in sections 117 and 118ZA -118ZO of ICTA. The second concerns the remaining provisions in sections 119-130 of FA 2004, which charge tax to recover loss relief in various circumstances involving certain film-related expenditure, and provisions in sections 74-76 FA 2005 affecting situations where the partner's capital contribution has decreased.

15. The project explained that they had proposed two changes and had asked seven questions, most of which relate to the restriction of loss relief. The project said that one point of interest in this rewrite is the distinction between "contribution to trade" and "contribution to partnership".

16. In discussion the following main points were made:

- Committee members agreed that it was helpful to measure a person's contribution to the trade (or partnership) at the end of a basis period, rather than at the end of a tax year, as this fitted better with the times to which accounts are prepared.
- The Committee referred to the restriction on relief for non-active partners in early tax years in clause 9 and noted that the term "early tax years" had not been defined anywhere. The project said that clause 11 explains this and subsection (1)(c) of that clause actually specifies what the period is. But the project agreed to consider whether it would be useful to split this out.

The project thanked the Committee for their helpful comments.

Item 6 - Paper CC/SC (05) 30 – Income Tax Rates

17. The project presented this paper and explained that it covers the rewrite of the provisions on income tax rates in sections 1-1B of ICTA. The clauses also address questions about what income is taxed and at what rates. These clauses will feed into the tax computation clauses which the project expect to expose in October.

18. The project said that they had proposed two rewrite changes and asked five specific questions. The project added that they would be particularly interested in any views on the proposal to change the name of the "lower rate" to "savings rate" and the "rate applicable to trusts" to "trust rate".

19. In discussion the following points were made:

- There was unanimous support for changing the names to "savings rate" and "trust rate". It was agreed that this would remove some of the confusion surrounding these rates. This was particularly true of the "rate applicable to trusts" because this rate does not apply to all trusts.

- There was some discussion on whether it would be helpful to have a single term e.g. “dividend rate”, for dividend rates. But the Committee acknowledged that this would be difficult to achieve because there were currently two rates for taxing dividend income.
- The Committee pointed out that it was not clear whether the income referred to in clause 7(1) was after personal allowances or before. The project said that this would become clearer once the clauses on the tax computation are drafted. The calculation steps will tell the user at what point the different rates apply.

The project thanked the Committee for their helpful comments.

Item 7 - Paper CC/SC (05) 31 - Transactions in securities

20. The project presented this paper and explained that it covers the rewrite of sections 703 to 709 of ICTA, which are concerned with countering tax avoidance devices involving transactions in shares and other securities or the manipulation of a company’s assets and are intended to forestall the creation of such devices in future.
21. The project said that in rewriting these provisions they had tried to address the criticism directed at the source legislation that it was difficult to understand. They had changed the order of the provisions to make them easier to understand and also changed the order of the paragraphs in section 704 to reflect the extent to which they need to be considered in practice.
22. The project said that to get comments from as many people as possible they had specifically drawn the attention of a number of interested bodies to the publication of these draft clauses. These included the Revenue Bar Association, The Special Commissioners, the City of London Solicitors’ tax committee, CCH, Butterworths, the Accounting Web and the main accounting firms.
23. In discussion the following main points were made:
 - The Committee agreed that the rewritten legislation was much clearer and more accessible but they had concerns about changing the order of the prescribed circumstances in section 704 and the loss of the paragraph letters, which removed the direct links to case law. The project said that they would reflect on the comments made in conjunction with any other comments received.
 - The Committee suggested that clause 14 (preliminary notification) might be interpreted as changing the procedure for instigating counteraction in clause 14. They preferred the approach adopted in the source legislation. The project said that they had encountered this problem before when they proposed changing the “Board” to an “officer of HMRC”. The project agreed to consider this further.
 - The Committee raised a point about tribunal determinations. They said that clause 25(5) provides for the determination by a tribunal to be final and conclusive but clause 28 talks about the effect of appeals against a tribunal’s determination on rehearing. This would imply that the determination is not final and conclusive. There was some discussion on this and the project agreed to look at the point.

- The Committee asked if the cross-reference in clause 26 to clause 24 was correct because that clause provides for an appeal to be made to the Special Commissioners not the tribunal. The project agreed to look into this.
- One member asked whether there was any merit in moving these appeals provisions to the Taxes Management Act because that is where these provisions fit in naturally. It was acknowledged that the whole area of tax appeals is subject to change. The project said that they were in close touch with the Department for Constitutional Affairs regarding their proposed Courts and Tribunals Bill.
- The Committee noted that “bona fide” in clause 4 was currently enclosed in square brackets and asked the project to comment. The project explained that they were considering the best way to rewrite “bona fide” in the context of these clauses and undertook to return to the matter when they had reached a conclusion.

24. The project thanked the Committee for their helpful comments.

Item 8 - Paper CC/SC (05) 32 – Approach leading up to publication of draft Bill

25. The project explained that they were planning to publish the draft Bill in late February or early March. This has necessitated a slight change in the approach in the period leading up to publication.

26. The project said that the main proposals are:

- to expose a further set of draft clauses in October to ensure that as much of the material as possible has been consulted on before draft Bill;
- to reduce the length of the consultation period from 12 weeks to 8 weeks to spread the workload for everyone;
- not to publish response documents for clauses published in September and October but to comment as necessary in the Explanatory Notes to the Draft Bill; and
- to flag-up all clauses that appear for the first time in the Draft Bill as clauses not consulted on.

27. The project explained that the reduction in the consultation period was a necessary step to ensure the workload was spread. They added that consultees will get another opportunity to comment on these clauses at the Draft Bill stage when the consultation period will be the normal 12 weeks.

28. The Committee was concerned that the reduction in the response period would put extra pressure on their resources. They had to get contributions from various colleagues before sending comprehensive responses and eight weeks would be very stretching. The biggest fear is that people would not have enough time to look at the amount of material being sent before the deadline and decide not to contribute at all. This will inevitably result in some draft legislation not being looked at or responses being sent after the consultation period has ended.

29. The project did not want to discourage comment. They gave an undertaking that they would consider all late responses and said they would try to accommodate late comments in the Draft Bill if at all possible. It was also suggested that if there

were any major concerns on any topic it would be very helpful if members could let the project know as early as possible, with a fuller response on more detailed points coming later.

30. In response to a question from the Committee the project said that they hoped to expose draft clauses on two or three further topics in October. In total there should be no more than 75 clauses to consider.

Item 8 - Any other business

31. One member said that he had been asked to draw the project's attention to a concern expressed by the Tax Law Committee of the Law Society on the rewrite of the corporation tax legislation. Some elements of the legislation are in a state of flux and it is expected that some of it is almost certainly going to be subject to further development.
32. Concern was expressed for example on how loan relationships will be handled in a rewrite. Concern was also expressed on rewriting the material on derivatives. The project said that some of these were natural contenders for the first CT Bill but they would bear the concern very much in mind.
33. The Committee said that the particular point was to avoid exposing for comment material that might subsequently be changed. The project said that to some degree this risk was always present in the rewrite process. However, they very much recognised the point being made in the CT context.

Papers CC/SC (05) 33 and 34 – Transactions in Land and Sale of occupation income

34. There was a brief discussion on the recently published material on transactions in land and sale of occupation income. The project explained that the intention was to include these papers on the agenda for this meeting but they were not able to get the papers out in time. It was acknowledged that the Committee did not have enough time to study the material and these papers would therefore be put on the agenda for the November meeting.
35. The next meeting of the Consultative Committee will take place on 22 November 2005 at 2.30 p.m. in the James Pennethorne Room, Somerset House.

BASIL RAJAMANIE
Secretary to the Consultative Committee