

**TAX LAW REWRITE CONSULTATIVE COMMITTEE**

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**MINUTES OF THE COMMITTEE MEETING HELD ON 14 FEBRUARY**

Note by the Secretary

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I attach the minutes of the meeting of the Consultative Committee, held on 14 February 2006.

**BASIL RAJAMANIE**  
Secretary to the Consultative Committee

**MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 14 FEBRUARY 2006 IN THE JAMES PENNETHORNE ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON**

Present:  
Robin Martin (Chairman)  
Derek Allen  
Adam Broke  
Colin Campbell  
Keith Gordon  
Terry Hopes  
Francis Sandison  
Wreford Voge

Secretary: Basil Rajamanie

In attendance:  
Hayley Rogers  
Lucy Baines  
John Morris  
Steve Batterby  
David Halsey  
Brian Jones  
Richard Davey  
Richard Hayes  
Luke Connell  
Adrian Morton

**Apologies and welcome**

1. Apologies had been received from Mary Fraser and Malcolm Gammie.
2. The Chairman introduced Luke Connell and Adrian Morton who had recently joined the project team.
3. The Chairman informed the Committee that Cunnie Rankin had decided to step down from the Committee. Cunnie had served on the Committee since its inception in 1997 and the Chairman thanked him for all his support and contributions. The Chairman welcomed Derek Allen who had kindly volunteered to stand in until a replacement for Cunnie was found.

**Items 1: Minutes of the meeting held on 22 November 2005**

4. The minutes of the meeting on 22 November had already been circulated. They were agreed.

**Item 2: Matters arising**

5. There were none.

**Item 3: Paper CC/SC (06) 01: Publication of draft Income Tax Bill (Bill 4)**

6. The project presented this paper and explained that the draft Bill was a preview copy of the Income Tax Bill which they intend publishing shortly.
7. The project took the opportunity to thank Committee members and all the other respondents who had commented on the draft clauses published over the last two years. The project added that those comments and the discussions of the Committee had made a significant contribution to the development of this draft Bill.
8. The project said that they were particularly grateful for the work done on the draft clauses issued last autumn, some of which had short deadlines. The comments received had been taken into account in the draft Bill and the Explanatory Notes.

9. The project said that the Bill contains 924 clauses and 4 Schedules. About 85% of the material included in the Bill had already been consulted on. The most significant new material in the Bill was the material on interpretation in Part 15.
10. The project said that there were 143 proposed rewrite changes in the Bill. 53 of these were new and arose mainly out of comments received on previous consultation. Only 18 of the new Changes arose on draft legislation that had not been consulted on previously. The project said that they had specifically asked for comments on 84 boxed questions.
11. The project said that work on the Schedule of minor and consequential amendments was progressing well.
12. The project added that as well as carrying forward work on the draft Bill and its Schedules they will also be taking account of any relevant changes that are made in FA 2006. In this regard they will be keeping a close eye on what emerges from the trust modernisation proposals and will flag up any relevant features of this in the commentary.
13. The project said that they would be particularly interested in the Committee's view on the powers contained in clauses 919 and 920 of the draft Bill. The power in clause 919 is similar to the one found in section 882 of ITTOIA (to make additional consequential amendments).
14. The power in clause 920, which is new, would enable any inadvertent errors made in rewriting the source legislation to be corrected by order. An example of the type of error where this power could be used is where a consequential amendment was made incorrectly. As this type of error would not be consequential to the Bill the power in clause 919 could not be used to rectify it. The proposed new power in clause 920 would allow such an error to be corrected without recourse to a Finance Bill.
15. The project said that, as with the power in section 882 of ITTOIA, both powers would be exercised only with the agreement of the project's two Committees. The project said that they would also be consulting more widely on this by including a specific boxed question in the commentary.
16. In discussion the following main points were made:
  - The Committee was generally content with the consequential amendment power in clause 919.
  - In response to a question on retrospection in clause 920 the project said that subsection (4) of clause 920 enables an order under that clause to include retrospective provision.
  - There was some concern that the power in clause 920 as drafted could have wider implications. For example it could be used to reverse a conscious Change that was made in the rewrite which later transpired to be unfavourable to the department. The project agreed that the power would be wide enough to do that, but reassured the Committee that the power would be used only where its use had been agreed by both Committees.
  - Concern was expressed that this power might contradict the continuity of law provisions in Schedule 2 to the Bill. The project said that the continuity of law

provisions are clear that where there has been a change there is no continuity in the law.

- In response to a question from the Committee the project said that there is a time limit for errors to be corrected using the power in clause 920 and any errors that come to light after that would have to be rectified through a Finance Bill.
- A point was raised as to whether it would be useful to have a similar sunset clause in clause 919. The project agreed to consider this.

17. One or two other matters were also discussed:

- A point was raised on the drafting of the commentary on clause 514, and the boxed question number 28. It was suggested that the material was confusing. The project agreed to take another look at the drafting.
- It was noted that the term “bona fide” was replaced with the term “genuine” in the transactions in securities clauses. Concern was expressed that the term “genuine” might not capture every nuance caught by “bona fide”. The project said that the matter was still under consideration and agreed to give this point further thought.

18. The project thanked the Committee for their helpful comments and agreed to bear in mind the points made.

#### **Item 4: Paper CC/SC (06) 02 - Exercise of consequential amendment power**

19. The project said that the issue concerns two sections of the Taxation of Chargeable Gains Act 1992 (TCGA) where minor and straightforward consequential amendments were overlooked in ITTOIA.
20. The project explained that as with the missed consequential brought before the Committee last year the omissions had no practical consequences. But it would be helpful to make the position clear by making the necessary consequential amendments to the two sections in TCGA 1992 using the power in section 882 of ITTOIA.
21. The project asked the Committee whether they were content for the power in section 882 of ITTOIA to be used to correct these omissions and for the corrections to be retrospective to 6 April 2005.
22. The Committee indicated that they were content with the project's proposal to exercise the power in section 882 of ITTOIA in both cases and for them to apply from 6 April 2005.
23. The project said that all identified missed consequential amendments are now with their solicitor and they were hoping to lay the order making them before 5 April.
24. The project thanked the Committee and said that they would now put the matter to the Steering Committee to seek their approval.

#### **Item 5 - Paper CC (04) 03 – Companies - professions and vocations**

25. The project presented this paper and explained that it concerns references to “professions” and “vocations” in the current corporation tax legislation. The paper asks whether these references should be retained in the rewrite of the corporation tax legislation and seeks the views of the Committees.
26. The project explained that the first complication is that for tax purposes, companies include both corporate bodies and unincorporated associations, each raising their own issues. And the current corporation tax legislation is inconsistent as regards references to professions. To complicate matters further the legislation which introduced corporation tax in 1965 took the stance that it was necessary to cater for vocations but not professions.
27. The project said that “conclusions” in the paper should be regarded as mainly tentative. The paper outlines some options available in the rewrite and the arguments for and against each option.
28. The project said that they acknowledge that the issue is not a simple one and they were not hoping to reach any final decisions at this meeting. They would welcome the Committees’ considered views in writing in due course but they would also be interested in hearing any first impressions the Committee has on this matter. The project said that one member had already provided some comments which had been circulated to Committee members present today.
29. In discussion the following main points were made:
  - The practice has always been to assess companies as trading on the basis that under the corporation tax legislation they cannot carry on a profession.
  - In response to a question from the Committee the project said that there were computational differences between trades and professions, see for example paragraph 32 of the paper. These arise from the fact that it was not seen as necessary to cater for professions on the introduction of Corporation Tax. One example is loss relief, which was discussed. Concern was expressed that this might cause problems where a business providing professional services was transferred to a company.
  - It was acknowledged that in the past professional services tended to be provided mainly by sole practitioners or partnerships and that companies would not provide such services. This is changing.
  - There are a number of American practitioners and lawyers based in the UK who practice through professional corporations.
  - It was acknowledged that this is a difficult and unsatisfactory area of law and that care needs to be exercised to ensure that the rewrite does not introduce any tax disadvantages on incorporating. The project pointed out that if tax disadvantages are an existing problem they might not be something that can be addressed in a rewrite.
  - A suggestion was made that it might be better if professions and vocations were split rather than taken together as the options in the paper had done.
  - There was a suggestion that it might be safer to leave things as they are. The project said that the law is not very clear at the moment and something needs

to be done to address this. This was one of the reasons why the “do nothing” option was not considered attractive.

- The project said that the fourth option, which embraces professions and vocations, seemed a better solution. Adopting this option would also have the advantage of bringing income tax and corporation tax more into line. But it was acknowledged that embracing professions and vocations would indicate that companies can carry on professions for tax purposes. This might lead to unforeseen problems and developments in the law.
- There was some discussion of unincorporated associations. The project said that in practice such associations are not assessed to corporation tax under Case II of Schedule D on income derived from a profession or vocation.

30. The project thanked the Committee for their helpful comments and agreed to give further consideration to the points made.

#### **Item 6 - Paper CC (04) 04 - Corporation tax - conversion of ITTOIA sections**

31. The project presented this paper and explained that it concerns some 400 sections in ITTOIA, which rewrote for income tax purposes what had previously been in provisions covering both income tax and corporation tax. The paper sets out the proposed approach to rewriting the corresponding provisions for corporation tax in Bill 5.
32. The project said that they had already started rewriting these provisions and they hoped to have these clauses ready for the May and July Committee meetings. But they were conscious that this might not suit Committee members because the consultation on the draft Income Tax Bill does not end until the end of May.
33. The project said that in most cases they were drafting the clauses in full rather than relying on cross-referencing. The exception to this is where the source legislation is primarily for income tax purposes and practical application for corporation tax was very limited. In these cases they would be considering cross-referencing.
34. The project said that they also intended incorporating all the ITTOIA changes in the rewrite of the corporation tax legislation in order to bring the two codes back into line. And the clauses would follow closely the wording and structure of the ITTOIA provisions.
35. The project said that they would like the Committee’s views on the suggested approach to handling the rewrite of these clauses. In particular they would be interested in any observations or suggestions on when these clauses should be exposed, bearing in mind that most of the substantive issues had already been considered and resolved during the ITTOIA consultation. In addition the draft Bill itself will not be issued for another two years and there is no great urgency to have responses.
36. In discussion the following main points were made:
- Draft clauses should be published as and when they are ready but a longer consultation period should be given. It was agreed that a consultation period of six months would be allowed.

- The project should try to avoid publishing other Bill 5 material during this year. The project agreed not to publish further Bill 5 material in 2006 without first consulting the Committee.
- The project said that they did not expect to publish any new Bill 4 material for consultation, other than any material arising from FA 2006. They would however publish a revised Bill and a Response Document later in the year.

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

**Item 7: Any other business**

38. The Chairman said that MORI had now completed the post-implementation review on ITEPA and produced their report, a copy of which was sent to all Committee members. The report will be discussed with the Steering Committee next week.
39. The Chairman said that in the main users were generally very positive about the rewritten legislation. They found the structure and language a great improvement on the previous legislation, which is of particular help to those newly entering the profession. There was also praise for the consultation process and general agreement that given time the new Act will lead to time and efficiency savings. The report also made a number of points which the project needed to think about.
40. The Chairman said that on the whole this was a useful and valuable exercise and asked if the Committee had any comments.
41. The Committee agreed that on the whole the results were very positive apart from some comments made by practitioners about changes to the law. The Committee suggested that something needs to be done to reassure practitioners and others that the law had not been changed by the rewrite.
42. There was some concern about whether the MORI had the necessary understanding of the tax legislation to carry out such a survey. This was evident in some of the questions and responses. Some concern was also expressed on the clarity of the spider charts in the report.
43. Adam Broke noted that the Chairman would be retiring soon and, on behalf of the Committee, he expressed the Committee's appreciation of his chairmanship and wished him well. The Chairman thanked the Committee for all their work and support during his period as project Director and for making his task an enjoyable one.
44. The next meeting of the Consultative Committee will take place on 16 May 2006 at 2.30 pm in the James Pennethorne Room, Somerset House.

**BASIL RAJAMANIE**  
**Secretary to the Consultative Committee**