

TAX LAW REWRITE CONSULTATIVE COMMITTEE

MINUTES OF THE COMMITTEE MEETING HELD ON 11 JULY

Note by the Secretary

I attach the minutes of the meeting of the Consultative Committee, held on 11 July 2006.

BASIL RAJAMANIE
Secretary to the Consultative Committee

MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 11 JULY 2006 IN THE JAMES PENNETHORNE ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON

Present:
Mark Nellthorp (Chairman)
Brian Atkinson
Adam Broke
Malcolm Gammie
Keith Gordon
Terry Hopes
Francis Sandison
Wreford Voge
David Williams

In attendance:
Hayley Rogers
Lucy Baines
Richard Marlin
John Morris
Steve Batterby
David Halsey
Brian Jones
Richard Davey
Michelle Michael
Russell Chaplin
Richard Hayes
Jenny Manson
Trevor Lawson

Secretary: Basil Rajamanie

Apologies and welcome

1. Apologies had been received from Colin Campbell, Derek Allen and Simon McKie.
2. The Chairman introduced himself and said that he had taken over from Robin Martin as Director of the project.
3. The Chairman welcomed Brian Atkinson to the Committee. Brian was nominated by the 100 Group.
4. The Chairman informed the Committee that Julian Ghosh had replaced Graham Aaronson as the representative from the Revenue Bar Association.

Items 1: Minutes of the meeting held on 14 February 2006

5. The minutes of the meeting on 14 February had already been circulated. They were agreed.

Item 2: Matters arising

6. There were none.

Item 3: Paper CC/SC (06) 08: Bill 4 current issues

7. The project presented this paper and explained that it brings the Committee up to date on Bill 4 following the end of the consultation period and publication of the Finance Bill. The main issues covered are responses to the draft Bill, new proposed rewrite changes, FB 2006 material and other points for the Committee's information.

Responses to the draft Bill

8. The project said that they had received 16 responses in all and in general the responses to the overwhelming majority of the proposed rewrite changes and

questions were very positive. The project added that they had also received many valuable suggestions on how the Bill could be improved which they were considering along with other ongoing work, their work on Finance Bill material and ongoing consideration of human rights issues.

9. The project said that they planned to publish a full Response Document on the Internet in September.
10. The project said that there were three specific points raised on which they would be particularly interested in the Committee's views to assist with the ongoing work on the Bill.
11. The first was on the use of the label "unrelieved total income". One respondent had suggested that the label was not intuitively clear to users and suggested changing the label to "net total income". The project said that they did not feel strongly about this but because the term appears in a number of places in the Bill they would be grateful for the Committee's views.
12. In discussion the following main points were made:
 - The Committee agreed the term "unrelieved total income" had a certain ambiguity about it, particularly as it referred to income after relief had been given. The Committee also felt that the word "total" was not entirely accurate because it referred to an amount after some relief had been deducted.
 - A suggestion was made to replace it with "net income before personal allowances" but this was felt to be too long, although there was some support for a label that was long provided it made the legislation clearer.
 - Another suggestion was to call it "Step 2" income. This was felt to be uninformative. Other suggestions included relieved income, income before personal allowances, net income before personal allowances together with a sub-clause which states that this income will be referred to as "net income" in all other places in the Act.
 - After further discussion it was suggested that most people would be happy with "net income". The consensus was that this label accurately reflects that it is a figure from which something had been deducted and it would also work satisfactorily in other areas and in other legislation.
13. The second point was on clause 724, in particular in relation to Change 110. The project said that two respondents had expressed considerable concern about extending the provisions in section 334 of ICTA, which they felt went beyond the remit of the rewrite. One respondent had also expressed concern about expressing the clause in terms of a person being resident. But others who responded to this Change were content.
14. The project added that in practice there would not be any change. This is also consistent with James Kessler QC's comments in his book "Taxation of Foreign Domiciliaries" (Key Haven, 4th Edition, 2005). And the project's view on expressing the clause in terms of the person being resident is that it makes the law clearer but does not introduce a change as such.

15. The project explained the background to this proposed Change and said that in view of the concerns and differing views expressed, they would be particularly interested in the Committee's views on this matter.
16. In discussion the following points were made:
- One member said that his organisation felt that it was unfortunate that these clauses, and this Change, had not been consulted on before the issue of the draft Bill, and were exposed for the first time just before the Finance Bill and at a time when the Shepherd case was being heard.
 - Although there was no action on residence in FB 2006 the member said that the organisation he represented did not support Changes in the rewrite in this area, given its particular sensitivity. Their view was that such matters would be better dealt with through a Finance Bill.
 - There was support from some members for bringing everyone into line with Commonwealth citizens and citizens of the Irish Republic, and it was noted that human rights considerations were a potential consideration here. But it was acknowledged that this Change enlarged the application of this provision in principle, even though it was not thought that there would be any change in practice.
 - The project also asked whether in the light of the comments made about the sensitivity of the subject of residence, the Committee thought that the rewrite should consider dropping some or all of the residence material from the Bill entirely. This did not find favour in principle, one other member observing that he had no difficulty with the rewrite tackling the subject.
17. The project thanked the Committee for their comments and agreed to consider the matter further.
18. The third point was to do with the non-resident landlords regulation making powers in clause 865. The project explained that the source legislation provides regulation making powers capable of requiring deduction of amounts in respect of income tax on receipts which are charged to income tax under ITTOIA and corporation tax under Schedule A.
19. The project said that the rewrite makes it clear that any amounts deducted are amounts in respect of income tax. But two respondents had raised concerns saying that the powers relating to the CT side of things should be kept separate and rewritten as part of the rewrite of corporation tax.
20. The project said that they took the view that it would be helpful to have all the provisions about deduction of tax together in one place, but that in view of the concerns expressed they would be interested in the Committee's views on the issue.
21. In discussion the following main points were made:
- In response to a question from the Committee, the project confirmed that if the recipient is subject to corporation tax on the income, the existing regulations would not apply.

- The project said that even though the power has not been used in relation to income chargeable to corporation tax the power to do so exists in the source legislation.
- After giving the matter further consideration one member of the Committee noted that it was the particular reference to Schedule A which had triggered the comments and that, as there are a variety of other provisions in the deduction of tax at source Part of the Bill which relate to income chargeable to corporation tax as well as income chargeable to income tax, it would be better to keep all the powers together as they are now.

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

New Proposed Rewrite Changes

23. The Project explained that as a result of consultation responses and their own further work since publication of the draft Bill they had introduced four new rewrite changes.
24. The changes relate to the EIS and VCT clauses, deduction of tax at source by building societies, Qualifying Certificate of Deposit (QCD) and Qualifying Deposit Right (QDR) and deduction of tax from payments to visiting performers.
25. The project explained that the background to these changes is outlined in the paper and asked the Committee whether they had any comments on any of them. The Committee had no comments to make on the project's proposals.

Other points

26. The project said that the paper also sets out six further points for the information of the Committee. The more significant ones were on share loss relief, deduction of tax at source, the Agassi case and powers to make consequential amendments and correct errors.
27. The project invited comments from the Committee. The Committee confirmed that they did not have any comments.

Material from FB 2006

28. The project said that the main elements of the Finance Bill material to be incorporated in the Bill 4 have been covered in the papers on Trust Modernisation and Charitable trusts, which they had recently published on the Internet.
29. The project said that the papers include new and revised draft clauses that took account of the trust modernisation measures introduced in the Finance Bill.
30. The project explained they had proposed two changes on trust modernisation and one change on charitable trusts. The background to these changes is summarised in the papers.
31. The project said that they would be happy to deal with any comments members might have from their initial review of these clauses. The project added that they had asked for written comments on both sets of draft clauses by 25 August. The project explained that they had allowed a shorter period for this consultation so

that they could take account of the responses before they publish the revised draft of the Bill and the Response Document in September.

32. The Committee did not have any immediate comments but said that they would submit their comments in writing in due course.

Item 4: Paper CC/SC (06) 06 – ITTOIA related provisions

33. The project presented this paper and explained that it concerns draft clauses rewritten for corporation tax purposes where the source legislation originally applied to both income tax and corporation tax. Most of these clauses were rewritten for income tax purposes in ITTOIA 2005.
34. The project said that the approach and style adopted were the same as that used for ITTOIA. The draft clauses on the various subjects will be included in the appropriate place within the Bill when its structure becomes clearer.
35. The project said that most of the changes in the law made for ITTOIA had been adopted here. They did not expect any of the changes to be controversial because almost all the issues had already been dealt with during the consultation on ITTOIA.
36. The only new change proposed concerns chargeable event gains. This change is in line with current practice and they did not expect it to have any practical impact.
37. The Committee enquired whether the draft clauses on gains from contracts for life insurance were actually needed. The project said that there are still a few circumstances where this legislation could be used and gave a couple of examples of possible live situations. The Committee was content for the provisions to be rewritten.
38. A comment was made that it would better to expose the clauses on income not otherwise charged (Appendix E) at a later stage once the structure of the Bill becomes clearer and these clauses can be set in context. The project acknowledged that this might present some problems for reviewers and assured the Committee that there would be another opportunity for people to comment on these clauses when the draft Bill is published.
39. The project said that the discussion at the last meeting in February had proposed a consultation period of 6 months. The project said that on reflection they felt that there would be advantages to advancing the closing date.
40. The matter was discussed and it was agreed that the closing date for comments would be set at 30 November for both Papers (06) 06 and (06) 07. The project also confirmed that they had no plans at the moment to expose any more Bill 5 clauses this year. If this changes the project will consult the Committee before publishing new clauses.

Item 6 - Paper CC (04) 07 – Trading and property income and partnerships

41. The project presented this paper and explained that it covers the second batch of Bill 5 draft clauses. The wording and structure in this rewrite have been kept as close as possible to the corresponding ITTOIA sections.

42. The project said that of the 93 questions in the commentary only 16 raised new issues. Of these several stemmed from previous work on ITTOIA.
43. The only significant change proposed concerns the omission in the rewrite of nearly all references to professions and vocations. This was discussed at the last meeting and the project has had no further comments from anyone on this issue. The project added that they had now firmed up their thoughts on this issue and believed that drafting in terms of trade only was the right approach to take.
44. The Committee noted that the minutes of the last meeting had recorded that drafting these clauses in terms of professions and vocations might be the way forward and asked if there had been a change of mind. The project said that they had been concerned at the Consultative Committee meeting to air all the options. But discussion with the Steering Committee and further thought on this issue had persuaded them that drafting in terms of trade only was the best option.
45. One member suggested that it would be helpful to those reviewing the draft clauses if a table of corresponding ITTOIA sections could be made available. The project said that they would provide one in due course and also publish it on their website.

Item 7 – Any other business

46. The next meeting of the Consultative Committee will take place on 3 October 2006 at 2.30 pm in the James Pennethorne Room, Somerset House.

BASIL RAJAMANIE
Secretary to the Consultative Committee