

**TAX LAW REWRITE CONSULTATIVE COMMITTEE**

---

**MINUTES OF THE COMMITTEE MEETING HELD ON 27 FEBRUARY**

Note by the Secretary

---

I attach the minutes of the meeting of the Consultative Committee, held on 27 February 2007.

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



**MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 27 FEBRUARY 2007 IN THE WILLIAM PITT ROOM, NEW WING, SOMERSET HOUSE, STRAND, LONDON**

Present:

Mark Nellthorp (Chairman)  
Brian Atkinson  
Adam Broke  
Colin Campbell  
Russell Chaplin  
Keith Gordon  
Terry Hopes  
Francis Sandison  
David Williams  
Mervyn Woods

In attendance:

Hayley Rogers  
Lucy Baines  
Richard Marlin  
Steve Batterby  
David Halsey  
Brian Jones  
Richard Hayes  
Matthew Sawyer  
Adrian Wilsdon  
David Edney  
Hugh Grainger  
Diane McKenzie-Boyle  
Louise Boyle (item 3 only)

Secretary: Basil Rajamanie

**Apologies and welcome**

1. Apologies had been received from Malcolm Gammie and Wreford Voge.
2. The Chairman introduced Diane McKenzie-Boyle, David Edney and Hugh Grainger who had all recently joined the project and Louise Boyle from the Better Regulation team.

**Items 1: Minutes of the meeting held on 14 November 2006**

3. The minutes of the meeting on 14 November had already been circulated. They were agreed.

**Item 2: Matters arising**

4. There were none.

**Item 3: HMRC Consultation Framework – a brief overview**

5. Louise Boyle, the head of HMRC Better Regulation team, thanked the project for sending round the draft consultation frameworks to members of the TLR Consultative Committee for comment. She reminded those present of the background to the HMRC Consultation Frameworks and apologised for the tight deadline given for comments which was due to the desire to publish a framework by budget 2007. She thanked the Committee for the interest shown and comments received.
6. Louise circulated the amended frameworks saying these were with Directors for a decision as to which one to publish. Work would continue over the summer to monitor the effectiveness of the frameworks and she would be interested to receive comments on how well HMRC was adhering to them in future consultations.

**Item 4: Bill 4 (Income Tax Bill)**

### Report of Parliamentary progress

7. The project said that Bill 4 was introduced in Parliament on 7 December and had its Second Reading debate taken in Committee on 17 January 2007.
8. The main points raised during the Second Reading debate were the proposal to table amendments rewriting the legislation about the accrued income scheme, the impact of acceleration on the consultation process and drafting resources, and the concerns expressed in relation to two proposed Changes (103 and 116).
9. The Joint Committee met on 24 January to discuss the Bill. The project said that they had already provided the Committee with a Memorandum of Evidence covering, among other things, the more detailed points raised during the Second Reading debate. Lord Newton and Baroness Cohen from the Steering Committee were members of the Joint Committee and Adam Broke attended as a witness.
10. The Joint Committee questioned the project on the power to undo unintended changes in the law – they explored the criteria for using the procedure and the existence of safeguards to ensure the power would not be used inappropriately. They also questioned the project on the amendments rewriting the accrued income scheme, the two proposed changes that were raised in the Second Reading debate (103 and 116) and the three proposed changes that could only operate to increase the amount of tax to be paid (7, 8 and 26). The Joint Committee also considered and agreed the minor amendments tabled.
11. The report of the Joint Committee proceedings has been published on the Parliament website and an electronic version sent to all Consultative and Steering Committee members.
12. The Third Reading debate in the Commons was taken on the floor of the House on 20 February. There was continuing strong cross-party support for the work of the Project. There were two points mentioned in the debate.
13. The first related to the concerns of the CIOT about whether the work of the Project was worthwhile. Kenneth Clarke commented that having considered the position since the Joint Committee meeting he had remained of the view that the project was worthwhile and stressed in particular the value of the rewrite for newcomers to tax legislation.
14. The second related to the power to reverse unintended changes (now in clause 1029). Points were made about the importance of the assurance provided by the FST that the power would be exercised only after reference to the Consultative and Steering Committees.
15. The project said that the Bill had now been passed to the Lords.

### Paper CC/SC (07) 09 – Exercise of power in clause 1029

16. The project explained that two minor drafting errors had been identified. The errors, as outlined in the paper, affected paragraph 38 of the Schedule 2 to the Bill.
17. The project explained that the discovery had come too late for the errors to be corrected in the Bill itself. It would however be desirable to correct both errors before the Act comes into force. Accordingly the project was seeking the

Committee's approval to do this by exercising the power in clause 1029 (which will become section 1029 of the Act after Royal Assent). The intention was for the changes to take effect from 6 April 2007. The project added that the FST had indicated to Parliament during the Third Reading debate that it was the Government's intention to use clause 1029 to correct the errors.

18. The Committee considered the request and indicated that they were content with the project's proposal to exercise the power in clause 1029 to correct the errors as proposed, and welcomed the proposal to do so sooner rather than later. The project thanked the Committee.
19. The project confirmed that it was intended that a Treasury Order would be made as soon as possible after the Bill receives Royal Assent and that an announcement will be made when this is done.

#### **Item 5: Paper CC/SC (07) 02 – Bill 5: Accounting periods**

20. The project explained that the paper presents draft clauses that define a company's accounting period and they are based on section 12 of ICTA. They separate out the various elements in the source legislation to make it easier to find out when accounting periods begin or end in different circumstances.
21. The project said that they had not rewritten section 12(8) of ICTA here because it is primarily administrative in nature and they were still considering where this subsection should be rewritten. There are also certain other provisions relevant to accounting periods that are dealt with in specific regimes.
22. The project said that they would welcome the Committee's views on the draft clauses and the proposed Change. The project explained that the principle behind the Change brings the income and corporation tax codes back into line by referring to an "officer" where, originally, the source legislation had referred to "the Board of Inland Revenue".
23. In discussion the following main points were made:
  - The Committee queried where section 12(1) was going to be located. The project said that this provision relates to the basis of assessment and will be rewritten along with other similar provisions.
  - A query was raised on the accounting period of companies being wound up where the period lasts more than 12 months. The project said that they would consider this. The project confirmed that the intention was that the provisions about accounting periods of companies being wound up would be included with the other provisions about accounting periods.

#### **Item 6: Paper CC/SC (07) 03 – Bill 5: Company residence**

24. The project explained that the paper presents draft clauses which outline the rules for company residence outside double taxation conventions and added that additional background was provided in the explanatory notes.
25. In discussion the following points were made:
  - The Committee wondered whether it was necessary to have the words "treated as" in clause 1(1). The project agreed to look into this.

- The Committee asked why the rewritten legislation did not cover all aspects relating to UK residence where a company is not incorporated in the UK. The project said that the rewritten legislation reflected the source legislation, not associated case law.
- Committee members made various suggestions as to how this issue might be tackled and the project agreed to give the matter further thought. The project pointed out that they could not go beyond their remit but they would welcome any further ideas from the Committee on how this problem could be overcome.

#### **Item 7: Paper CC/SC (07) 04 – Bill 5: Non-UK resident companies**

26. The project explained that the paper presents draft clauses which set out which profits of a non-resident company are liable to corporation tax. The clauses have been reordered to make the relationship between the various provisions easier to follow.
27. The project added that they had deliberately retained terminology employed in the source legislation where it is shared with the Model Tax Convention and Commentary of the Organisation of Economic Cooperation and Development (OECD) so that the relationship between the two is protected.
28. The project said that they had proposed one Change. The Change is intended to clarify the relationship between the separate enterprise principle and the deductions provisions. In the source legislation, these appear as two separate rules to be applied in attributing profits to a permanent establishment. The rewritten legislation follows the relationship set out in Article 7 of the OECD Model Taxation Convention where the separate enterprise principle is subject to the deductions rule, and also follows current practice.
29. In discussion the following points were made:
- A Committee member was concerned that the OECD language which had been adopted in the UK legislation was capable of various interpretations.
  - The project commented that the legislation reflected the source legislation, was UK law and would be interpreted as such.

#### **Item 8: Paper CC/SC (07) 05 – Bill 5: Other relief for employee share acquisitions**

30. The project explained that the paper presents draft clauses that give relief for companies that provide their employees and others with shares. They are based on Schedule 23 to FA 2003.
31. In discussion the following main points were made:
- The Committee pointed out that there was no definition of a shareholding company in clause 5(6). The project said that the answer to this is in clause 5(5)(a).
  - The Committee asked why some parts of clause 14 were in square brackets. The project said that it was being considered whether to include this material. This is noted in paragraph 55 of the explanatory notes.

- A point was made that it was not easy to work out what a consortium was and it was suggested that the drafting could be improved. The project agreed to look into this.
- It was pointed out that there was a typographic error in Schedule 4; commerical instead of commercial.
- One member pointed out that although Schedule 23 is being repealed there are cross-references to it in some of the transitional provisions. The project agreed to look into this.

**Item 9: Paper CC/SC (07) 06 – Bill 5: Additional relief for expenditure on research and development**

32. The project explained that this paper presents draft clauses that bring together all the additional relief for expenditure by a company on research and development, including research and development into certain vaccines. The provisions are based on Schedule 20 to FA 2000 and Schedules 12 and 13 to FA 2002.
33. The project said that they had proposed two Changes. The first Change makes it clear that the additional relief for research and development applies only for corporation tax. The source legislation applies only to companies but it does not explicitly restrict the relief to companies liable to corporation tax although it provides indirect evidence showing that the relief is so restricted.
34. The second Change updates the language so that the definition can be applied more clearly from the position of the company making the payment rather than from the employee receiving it. This change is a clarification of the law and is expected to have no practical impact.
35. In response to a question about the definition of “research and development” the project said this will be rewritten later, probably in Bill 6 with the other CT definitions.

**Item 10: Paper CC/SC (07) 07 – Bill 5: Companies with investment business**

36. The project explained that the paper presents draft clauses that determine which companies are “companies with investment business” and others that provide relief for management expenses. The draft clauses bring together relevant provisions that are dispersed in the source legislation.
37. The project said that they had asked a number of questions, most of which relate to Changes agreed in ITTOIA. The project commented that they would welcome the Committee’s views on whether these should be carried across to the management expenses clauses. In addition they had also proposed five other Changes.
38. The project explained the background to five other proposed Changes which are not related to ITTOIA changes and said that they would welcome any comments that the Committee might have.
39. In discussion the following main points were made:

- There was a short discussion on expenditure listed in clause 4 (1) (a) to (g). It was noted that there was no belt and braces provision to cover any new item treated as management expenses. It was suggested that another paragraph to could be added to achieve this. The project agreed to look into this.
- It was suggested that clause 32(4) was difficult to understand and the drafting could be improved. The project agreed to look into this.

40. The project thanked the Committee for their helpful comments on the various papers.

**Item 11: Paper CC/SC (07) 08 – Proposals to improve and streamline the consultation process**

41. The project explained that with the acceleration of the pace of the Rewrite project they were anxious to ensure that it did not result in overburdening those with whom they consult. They were grateful for the continued strong support expressed by various Committee members. The ICAEW representative agreed that their recent letter of support for the project can be circulated to Committee members.

42. The project said that work on the two corporation tax rewrite Bills is progressing well and consultation was already well under way with over 400 clauses exposed last year and a further 180 exposed earlier this month.

43. The project said that they were looking at various measures and efficiencies that might reduce pressure on consultees without adversely impacting on quality.

44. The project said that the paper sets out some proposals and invited comments from the Committee.

**Draft some provisions with a “light touch”**

45. There was widespread support for this proposal but it was noted that this approach would only be suitable for some areas, some of which were mentioned at the previous meeting. The Committee stressed that the rewrite style should be retained when adopting this approach.

46. A view was expressed that some parts of the CT legislation may lend themselves to a “light touch” because they were fairly recent. A light touch approach may not be suitable for older legislation.

**Limit the amount of consultation so that some clauses are exposed only once**

47. Mixed views were expressed with some members opposing it and others in favour provided good judgement was exercised. It was noted that the approach would only be suitable for legislation that required little or no change.

48. Concerns were expressed that this approach could lead to more work during the draft Bill stage as some of the material would not have been exposed before.

49. Concern was also expressed that the approach would not be suitable for areas where there is a change of substance. In such case it would be helpful if these were flagged up early.

50. It was suggested that the position should be sufficiently flexible to give consultees the opportunity to decide how to handle the consultation. Also, it was felt that the project had nothing to lose by exposing material earlier than the draft Bill stage, especially if material earmarked for such consultation was ready early. Consultees could decide whether to comment both on earlier publication and at draft Bill stage, or simply to comment once at the latter stage.
51. It was also suggested that the advantage of earlier publication was that mistakes would be picked up and corrected sooner and this would result in a better product at the draft Bill stage.

#### Publish draft clauses when they are ready

52. The project explained that this would entail publishing draft clauses as soon as they are ready rather than waiting until two weeks before a meeting. The effect of this approach would be to extend the consultation period beyond the normal 12 weeks.
53. The Committee supported this approach provided the project continued to work to the agreed timetable.
54. Discussion moved to the timetable in Annex 2. The Committee expressed some concern about the overlap of the consultation on the draft Bill 5 and the draft Bill 6 clauses listed for February. The Committee felt that the draft Bill 6 clauses should be held back for a month or the consultation period for this should be extended to give them time to focus on the draft Bill. The project agreed to extend the consultation period by a month.

#### Be more selective about changes

55. Views were mixed on the merits of this approach but even those against the idea in principle agreed that some Changes are so minor that little would be lost if they were not made. .
56. A view was expressed that if a change was needed then it should be made, regardless of its impact, and that it would be a pity if the project backed away from proposing bold changes on occasion.
57. A suggestion was made that a list of changes that could be left out should be drawn up for consideration by the Committee. The project said that they would give the matter further thought.

#### Explanatory Notes (ENs)

58. The project explained that by excluding notes which merely repeat what the legislation says they could cut down the amount of work involved in producing and considering the documents. They confirmed that it would not affect the notes where for instance extensive restructuring of provisions needed to be explained or where there were changes.
59. The Committee said that they found the ENs very helpful. . They pointed out that the notes serve different groups with different needs and they should all get what they want. But they agreed that there was a good case for not merely paraphrasing clauses.

60. The Committee said that where the ENs give background information or provide clarification these should be retained as they were particularly useful for new users. There was also some support for the idea of ENs covering groups of straightforward clauses to avoid any paraphrasing.
61. The general consensus was that ENs are very helpful but they may be cut down where the notes merely repeat or reword the legislation or where they are excessive. They should concentrate on providing additional relevant information.

#### Response Documents (RD)

62. The project explained the proposals in paper CC (07) 08.
63. The Committee agreed that the layout of the example in the Annex 4 to the paper was good.
64. They were not entirely convinced with the idea of sending individual letters to respondents, though they agreed that not all suggestions needed to be addressed in the RD. The Committee said however that all substantive points should be addressed in the RD. They also said that all technical points, whether they were right or wrong, should be addressed in the RD.
65. The project thanked the Committee for their very helpful comments on the various proposals and said that they would reflect on the points made before taking any firm decisions.

#### Item 5 – Any other business

66. The Chairman informed the Committee that Hayley Rogers, the head drafter, will be returning to the Parliamentary Counsel Office shortly and her replacement will be John Sellers. The Chairman and the Committee thanked Hayley for her valuable contribution to the work of the project.
67. The Chairman also informed the Committee that David Halsey will shortly complete his stint in TLR and will be moving to another job. The Chairman and the Committee thanked David for his valuable contribution to the work of the project.
68. The next meeting of the Consultative Committee will take place on 15 May 2007 at 2.30 pm in the James Pennethorne Room, Somerset House.

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