

**TAX LAW REWRITE CONSULTATIVE COMMITTEE**

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**MINUTES OF THE COMMITTEE MEETING HELD ON 3 JULY**

Note by the Secretary

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I attach the minutes of the meeting of the Consultative Committee, held on 3 July 2007.

**JACKIE BARTLETT**  
**Secretary to the Consultative Committee**

**MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON  
3 JULY 2007 IN THE JAMES PENNETHORNE ROOM, SOMERSET HOUSE,  
STRAND, LONDON**

Present:

Mark Nellthorp (Chairman)  
Adam Broke  
Keith Gordon  
Terry Hopes  
Bob McInerney  
Colin Campbell  
Brian Atkinson  
Mary Fraser  
Francis Sandison  
Lakshmi Narain  
David Williams

In attendance:

John Sellers  
Steve Batterby  
Trevor Lawson  
Brian Jones  
Douglas Ramsay  
Philip Ember

Secretary: Jackie Bartlett

**Apologies and welcome**

1. Apologies had been received from Malcolm Gammie and Russell Chaplin.
2. The Chairman introduced Philip Ember who joins the project from the Office of Parliamentary Counsel and replaces Richard Marlin. Philip's main focus will be work on Bill 6.

**Item 1: Minutes of the meeting held on 15 May 2007**

3. The minutes of the meeting on 15 May had been circulated. The Committee pointed out that paragraph 10 was unclear as it stood. The project agreed to insert 'whether the' before 'judgement about'. There were no other comments and the minutes were agreed.

**Item 2: Matters arising**

4. There were none.

**Item 3: Bill5: Paper CC/SC (07) 21: Derivative contracts**

5. The project introduced the paper which presents the draft clauses on derivative contracts. It explained that most of the derivative contracts provisions are currently within Schedule 26 to FA 2002, although there are some provisions in FA 1996 that have been rewritten in these clauses. The draft clauses unpack and reorder the source legislation to provide clarity and in particular help the reader to establish:
  - whether or not a contract falls within the regime; and if it does,
  - what provisions apply.

6. The project explained that the clauses are modelled substantially on those for loan relationships, which were published in May. There is more work to do, mainly on consequential and transitionals. The project invited the Committee's comments on the clauses and, where relevant, the associated questions and changes.
7. The draft clauses were published on the Internet on 21 June and the closing date for comments is 19 October. The project asked the Committee to provide responses earlier than this if possible.
8. During discussions the following points were made:
  - Question 1: The project said that it was their intention to align the legislation on loan relationships and derivative contracts where possible. The Committee considered that the various ways of describing profits, and what the terms mean, can be significant and that care was therefore needed. The project will continue to look at this, and will take into account consultation responses on both loan relationships and derivative contracts draft clauses in their deliberations.
  - Question 2: The Committee considered that as this might be a straight forward clarification rather than change in the law, it may not be appropriate to flag it up as a change. The project said that it tries to be open about where something might be perceived as a change in the law, but often it is a question of judgement as to whether there is one.
  - Question 3: The Committee asked how the project had arrived at its decision to use the narrower definition for the scope of 'offshore fund' in this provision, because it could be argued that the policy intention was to use the definition that has wider scope. The project would consider the point.
  - Question 4: The Committee asked why the term 'or acquires' had not been used consistently in the source legislation, which was fairly recent. The project said that it had spoken to specialists but they had been unable to find a reason for the inconsistency.
  - Question 5: The Committee approved this change.
  - Question 6: The Committee said that 'impairment' had not been defined in the loan relationships legislation that the derivative contracts clauses were copying, and so it is questionable how much value the approach taken adds. The project said that it was seeking to add consistency and clarity where possible between the rewritten loan relationships and derivative contracts legislation, but it would be considering the responses to consultation on this point to see whether and to what extent this might be achieved.

The Committee referred to clauses 19 and 20 and queried the origins quoted. The project explained that a recent Statutory Instrument [SI 2006/3269] had not yet been reflected in hard copy versions of the Taxes Acts. The Committee asked how this could be reflected to help the reader and the project said that it would look into addressing this.

The Committee commented on the architecture of the clauses and asked if there was a flowchart to aid navigation. The project said that there was no flowchart as such, but the aim was to tell a clear story in the legislation. The project also put in 'signposts' where appropriate and the intention was that the rewritten legislation should be easier to navigate for someone new to it. The project had considered a flowchart when looking at loan relationships but found that it did not ease navigation in that case.

The Committee referred to material and definitions contained in secondary legislation and said that people would have to be aware of that when reading these clauses. The Committee asked the project if it was the intention to rewrite any secondary legislation. The project confirmed that its brief was to rewrite only primary legislation but it will rewrite secondary legislation in exceptional circumstances. An example was the PAYE Regulations. The Committee asked if it had been made clear in the draft clauses where current regulations would need to be taken into account. The project said that it had not, because secondary legislation may change. However, there are signposts in the explanatory notes.

The Committee asked if it was possible in the interests of clarity to detail separately how certain situations will be treated. The project said that it would welcome any written suggestions in response to consultation that will help to make the legislation clearer for users.

9. The Committee asked how much material for the first of the CT Bills was yet to be exposed. The project explained that there were three further blocks of work:
  - Intangibles, which will be published early in the autumn and be presented to the Committee in October;
  - Films, looking at the 2006 legislation, which may be done in August;
  - Contaminated land provisions, but this is the subject of current consultation.

#### **Item 4: Paper CC/SC (07) 23 – Administrative and insurance provisions**

10. The project explained that the paper and its annex were the follow up to a request made at the last Consultative Committee meeting on 15 May. At that meeting the project had explained its proposal to review some administrative provisions, following the Government's announcement that work on the New Management Act would not now proceed, and also some insurance provisions. In response the Committee had asked the project to supply some further information about what was involved.
11. The paper and its annex provided a reminder of the provisions that will not be rewritten and a current 'snapshot' of those identified for review. Paragraph 5 of the paper summarised the categories of material that it had been agreed should not be rewritten. Included here was also a reference to the annex, where certain items were specifically mentioned because, for instance, they did not readily fit into the general categories.

12. The project explained that its work on matters identified for review continued. It was not seeking comments from the Committee, but would be happy to receive any comments that they may have.
13. In discussion the following main points were made:
  - The Committee asked if the insurance provisions could be put in a separate table at some stage to make it clearer what else was outstanding. The project agreed that this could be done.
  - The Committee commented that, though it was outside the current plans of the project, there was work that could be done to improve TMA and asked for this to be raised with the Steering Committee.

#### **Item 5: Any other business**

14. The project explained that, at the Steering Committee meeting on 24 May, they were asked about the presentation of Annex 1 Change notes. The discussion had been prompted by the final phrase outlining the impact of a change, which reads:

*‘This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with current practice.’*
15. The project agreed to provide examples of how the change would affect taxpayers, because it appeared to Steering Committee members that current practice might not be in line with the law and that some taxpayers might be disadvantaged by it.
16. The project will report back to the Steering Committee at their meeting on 11 July. It will suggest that:
  - Change notes will continue to provide technical detail and an explanation of the relevance and nature of current practice if appropriate, so that the final phrase can be read in context;
  - Change notes should in future make specific reference to how the proposed change will bring about a change in tax liability where relevant;
  - The project should retain a final short phrase summarising the impact of a change without repeating the detail, so that standard similar wording can be used for different changes in similar circumstances;
  - In general discussion the Committee asked for the wording to reflect the fact that the “current practice” is widely accepted and is not solely the interpretation accepted by HMRC. The project agreed to replace “current practice” with ‘practice generally agreed’ where appropriate.
17. The project said that, at the March meeting of the Steering Committee, the question was raised whether it would be possible to combine the two proposed CT Bills into a single bill. The thinking was that there would be

advantages to users in having a single document and a single transition to the rewritten legislation. The project undertook to report back after discussing the matter with the new head drafter.

18. The project will say to the Steering Committee that, after considering the various options for the rewriting of CT, the conclusion is that the existing plan of producing two CT Bills in two years is thought to offer the best reasonably achievable outcome.
19. The project explained that the two main alternative options are to introduce a single CT Bill in November/December 2008 and to introduce a single CT Bill in November/December 2009.
20. The first of these options would involve further acceleration. The project does not have the resources to achieve this. There would also be risks to quality and a compression of the time available for consultation, both of which are thought to be unacceptable.
21. The second option would involve delaying introduction of the material planned to be included in the first of the CT Bills. The extra costs and additional risk involved make the option impracticable also. The extra costs arise from the need to be able to continue to service the material planned to be included in the first CT Bill for a further year. There is no prospect of the project's budget being increased for this purpose. The additional risk is that the material might need to be revisited in the light of changes made by FA 2009. Under the two bill approach, FA 2009 would amend the rewritten legislation in the first of the CT Bills.
22. The Committee commented that there are going to be major changes in Finance Act 2009 and asked if a situation similar to that experienced in the past with Schedule 22 was likely.
23. The project said that there was no perfect answer but as part of its normal work it kept in close touch with Treasury officials and HMRC specialists to avoid problems where legislation that was part of the rewrite programme was also subject to consultation and possibly significant policy change. The project had very recently met with HMT to discuss precisely this matter.
24. The project explained that, at the June meeting of the Steering Committee, the question was raised whether it would be possible to include origins in the text of rewrite bills. The project agreed to look into the practicalities and report back.
25. The project will say to the Steering Committee that, when the draft of the first Corporation Tax Bill is published, an electronic version showing the origins in the text will be posted on the project's website. In fact, this is what happened when the draft Income Tax Bill was published last year.
26. Once a bill has been introduced into Parliament, publication is the responsibility of the relevant House. It has been agreed with the House authorities in the Commons that following introduction, the project may post on its website a version of the bill as introduced, showing the origins in the text. The House authorities have also agreed to provide a link to this version of the bill from the relevant page of the Parliament website.

27. The Committee was reminded that it was the project's intention to begin publishing clauses for Bill 6 in the autumn of this year and through to July 2008. It was confirmed that the Committee would be happy to see clauses that replicated rewritten income tax provisions as soon as they were ready, rather than delay publication until the draft Bill – but in batches rather than a drip feed process. Given that variations in the clauses would be limited to those necessary to adapt them to apply for corporation tax, it should not take long to review them and nothing would be lost in any event if they could not be looked at until they appeared in the draft Bill. The Committee was content with this approach.
28. The project thanked the Committee for their helpful comments on the various papers.
29. The next meeting of the Consultative Committee will take place on 10 October at 2.30 pm in the James Pennethorne Room, Somerset House.

**JACKIE BARTLETT**  
**Secretary to the Consultative Committee**