

**TAX LAW REWRITE CONSULTATIVE COMMITTEE**

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**MINUTES OF THE COMMITTEE MEETING HELD ON 2 OCTOBER**

Note by the Secretary

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I attach the minutes of the meeting of the Consultative Committee, held on 2 October 2007.

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



**MINUTES OF THE MEETING OF THE CONSULTATIVE COMMITTEE HELD ON 2 OCTOBER 2007 IN THE JAMES PENNETHORNE ROOM, SOMERSET HOUSE, STRAND, LONDON**

Present:

Mark Nellthorp (Chairman)  
Keith Gordon  
Colin Campbell  
Mary Fraser  
Francis Sandison

Secretary: Jackie Bartlett

In attendance:

John Sellers  
Steve Batterby  
Brian Jones  
Jason Whiston  
Philip Ember  
Guy Lawrenson  
Richard Hayes  
Jenny Manson

**Apologies and welcome**

1. Apologies had been received from Adam Broke, Terry Hopes, Russell Chaplin, Brian Atkinson and Lakshmi Narain.

**Item 1: Minutes of the meeting held on 3 July 2007**

2. The minutes of the meeting on 3 July had already been circulated. There were no comments and the minutes were agreed.

**Item 2: Matters arising**

3. There were none.

**Item 3: Bill 6: Paper CC/SC (07) 27: Group relief**

4. This paper introduced the first batch of Bill 6 clauses along with explanatory notes and details of proposed rewrite changes. These clauses rewrite the group relief provisions in Chapter 4 of part 10 of, and schedules 18 and 18A to, ICTA which will form part of Bill 6, the second and final CT Bill.
5. The paper explained that the references in the clauses to "total profits", "income and chargeable gains" and "net profits" reflected the present state of the project's work on the corporation tax computation, but might need to change as its thinking and work on the computation developed.
6. As now rewritten, the group relief provisions had been brought together in one Part - the provisions formerly in different places in ICTA had been incorporated into the new structure of 7 chapters.
7. The project said that if at the present stage the Committee had any comments on the structure of the rewritten provisions which in line with the TLR approach was underpinned by Part and Chapter overviews, it would be happy to hear them.

8. There were two proposed rewrite changes in the clauses:
  - The first enacted a generally accepted and published practice, set out in the HMRC Company Taxation Manual, of dealing with claims in the order in which they are made. Given this, the change was considered to be both helpful and uncontroversial
  - The second was a taxpayer favourable refinement of the effect of the source legislation. In certain circumstances the source legislation may restrict, in a way not intended, the losses available for surrender. The proposed change removed this restriction.
9. The project commented that if at this stage the Committee had any comments on the changes it would be happy to hear these too.
10. During discussions the following points were made:
  - The Committee said that Change 1 could have implications if there were a dispute between companies over a claim; it was therefore rather more than an administrative change. The Committee agreed to the Change in principle but suggested that this point might be addressed in the Explanatory Notes.
  - The Committee said that the diagrams included in the notes were helpful and asked if they would be carried forward to publication, or if the Parliamentary authorities would object. The project said that as far as they were aware, there were no technical problems with doing so.

**Item 4: Bill 6: Paper CC/SC (07) 28 – Transactions in securities**

11. The draft clauses completed the rewrite of the transactions in securities material started in Bill 4/ITA 2007. They replicated Chapter 1 of Part 13 of ITA 2007 as far as possible. Also the proposed changes replicated those proposed and approved for the purposes of income tax.
12. The differences between the earlier income tax version and the current corporation tax version of the source legislation were broadly described in the covering paper. The project did not consider that further comment was necessary and asked the Committee if they had any comments.
13. In discussion the following main points were made:
  - The Committee's view was that that the draft legislation was clear and logical.
  - The Committee asked, referring to clause 16(3), how a company would know when HMRC proposed to take no further action in the absence of any requirement in the legislation for HMRC to say what had been decided. The project said that no legislation was required to cover this point as it was HMRC's organisational practice to ensure that the company was notified.

- A point was raised about the notes which referred to action being taken by 'an Officer of Revenue and Customs'. The Committee asked if this could mean anyone in the Department. The project explained that this point was covered by HMRC's internal practices.

#### **Item 5: Bill 6: Paper CC/SC (07) 29 – Transactions in land**

14. The project explained that the draft clauses completed the rewrite of the transactions in land material started in Bill 4/ITA 2007. They replicated Chapter 3 of Part 13 of ITA 2007 as far as possible. Also the proposed changes replicated those proposed and approved for the purposes of income tax.
15. The differences between the earlier income tax version and the current corporation tax version of the source legislation were broadly described in the covering paper. The project did not consider that further comment was necessary and asked the Committee if they had any comments.
16. In discussion the following points were made:
  - The Committee commented that the Notes were very clear, and the table was very well received.
  - The Committee asked about the reference to land being partly in the UK and partly outside. It was thought a similar point had been raised in connection with the Income tax version of the clauses. After a brief discussion it was suggested that it would be helpful to send a short note to those present.

#### **Item 6: Bill 6: Paper CC/SC (07) 30 – Corporate beneficiaries under trusts**

17. The paper presented clauses rewriting provisions relating to corporate beneficiaries under trusts.
18. There were just two clauses.
  - The first clause provides essentially that discretionary payments by trustees (other than those received by charitable and similar bodies) are ignored in calculating the beneficiary's liability to CT. It also restricts the availability for set off or repayment of the income tax for which the trustees are liable and which the company is treated as suffering.
  - The second clause applies the rules in s500 and s503 of ITA which concern the treatment of trustees' expenses in cases where the beneficiary is entitled to trust income as it arises. These sections were partly based on s689B of ICTA and partly based on established practice and case law. As they made explicit and enacted rules which were previously followed as accepted and established practice, a rewrite change was proposed when the income tax clauses were presented for consultation and for consideration by Parliament.

19. As the present clause for consultation also applied s500 and s503, the same change was being proposed. This proposed change was essentially a rerun of change 91 proposed and approved in relation to Bill 4 ITA.
20. In discussion the following points were made:
  - The Committee commented that the draft legislation was very clear.
  - The Committee recommended that the project approached the Society of Trust and Estate Practitioners (STEP) to review the paper. The project said that they would do so.

**Item 7: ITA 2007: Paper CC/SC (07)31: Use of powers under sections 1028, 1029 and 1030**

21. The Committee considered seven further instances where the project was proposing to make use of the powers in the Income Tax Act (ITA). In each instance it was proposed that the powers should be used to make amendments with effect from 6 April 2007.

The Committee agreed to the use of the power under section 1028 of ITA to correct an error involving the missed consequential amendments described in the paper and agreed also that the proposed amendments should take effect from 6 April 2007.
22. The Committee also agreed to the use of the power under section 1029 of ITA to correct the 5 unintended changes described in the paper and agreed that the proposed amendments should take effect from 6 April 2007.
23. In connection with the error relating to section 816 the Committee were concerned with the proposed use of 'the' business, rather than the original 'his' business. The project confirmed that this was to exclude any reference to gender but agreed to look at whether the draft could be improved.
24. The Committee commented that the words 'in the course of that company's trade' in the proposed new subsections (2) and (3) appeared to give rise to a similar problem to that intended to be addressed by the amendments. The project confirmed that those words were in the source legislation but said it would consider the point raised.
25. The Committee also observed that, in relation generally to the exercise of the power in section 1029, it would have some concerns about retrospective amendment where there was a clear and unambiguous unintended change in the law that was favourable to taxpayers. But that was not the case in instances under review here.
26. In connection with the final amendment proposed in the paper, the Committee questioned the use of the power in s1030 of ITA. The Committee said that it was content with what the project was trying to achieve but was concerned in two respects with the way that the project were approaching this.

27. The first concern was that the use of the power in s1030 was not appropriate and would not help the user. It was thought that in the revised versions of the legislation users would find it difficult to see what had happened.
28. The second concern was that the use of the power in section 1030 of ICTA would mean that there would be no Parliamentary scrutiny of the proposed change.
29. Accordingly the Committee asked if the project could look at this again with particular reference to how it will appear in published sources. The project agreed to do so and it was agreed that Committee members would be informed of the project's considered views and their approval sought to the detail of any proposed order. It was also agreed that approval could be sought before the next meeting by using e-mail if helpful.

#### **Item 8: Any other business**

30. The project commented that paper CC/SC (07) 08 (Proposals to improve and streamline the consultation process) was discussed last February and one of the proposals was that source legislation which was already in rewrite style would be rewritten and presented for consultation only in the draft Bill to reduce the pressure on consultees. However, some Committee members requested early sight of such draft clauses to give them the opportunity to comment informally in time to have changes made to the draft Bill if appropriate.
31. In line with this request, the draft clauses on intangible fixed assets and on films had therefore been published in papers CC/SC (07) 32 and 33. Both sets of draft clauses had been rewritten with a "light touch" although there have been structural and other changes to align these provisions with the approach taken elsewhere within the Bill.
32. None of the draft clauses were in their final form, but the project did not anticipate major changes.
33. The project invited any comments consultees cared to make in time to make appropriate amendments prior to publication of the draft Bill for consultation in February 2008.
34. The Committee were grateful for the adoption of their suggestion in publishing this additional material for informal consultation. If changes were not extensive, they asked the project to consider issuing a 'track changes' version of the clauses showing any revisions, although they accepted that this may not be possible.
35. The project said that the closing date for comments on the draft Derivative Contract clauses was 19 October. It hoped to produce the related response document before the three month deadline and it therefore asked if any comments on the material could be made as soon as possible.

36. The project thanked the Committee for their helpful comments on the various papers.
37. The next meeting of the Consultative Committee will take place on 20 November at 2.30 pm in the James Pennethorne Room, Somerset House.

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