Office of Tax Simplification

Minutes of partnership taxation Consultative Committee
14:30 – 16.30 on Monday 23 September 2013 at
1 Horse Guards Road

Committee	Organisation	OTS
Andrew Disley	Allen & Overy	Rt. Hon. Michael Jack
Chas Roy-Chowdhury	ACCA	John Whiting
Gary Richards	Berwin Leighton Paisner	Jeremy Sherwood
Will Silsby	Bishop Fleming/ATT	Gareth Jones
Wendy Bradley	Construction Industry	Roger Jones
Alan Hartley	Mactaggart & Mickel	Martin Gunson
Michael Parker	National Farmers' Union	
Rosemary Danielian	HMRC	
Matthew Henty	HMT	
Apologies	**Organisation**	
Martyn Ingles	Ingles Tax and Training	
Liz Bridge	Construction Industry	
Sue Cave	Federation of Small Businesses	

1. **Welcome and introductions**

   Michael Jack welcomed the members to the first Consultative Committee meeting for the partnership review.

2. **Summary of OTS and Committee responsibilities**

   Michael Jack summarised the background to the OTS. The remit of the OTS was to make simplification recommendations to the Chancellor who would make the final decision on which changes to take forward. The OTS could make proposals for both administrative and legislative changes. All taxes administered by HMRC were in scope. The current anti-avoidance consultations were not part of the OTS review, as there was a separate consultation exercise in this area.

   John Whiting outlined the role of the Consultative Committee and how the OTS carried out its reviews. One feature was the desire to consult as widely as possible, holding meetings with tax practitioners and businesses and HMRC staff around the country. He also noted the OTS remit to be broadly revenue neutral in making recommendations. The current plan was to publish an interim report by the end of the year listing areas of complexity identified during the evidence gathering process, followed by a final report a few months later, with specific recommendations. The

Committee discussed the difficulties of consulting small, unrepresented partnerships. Suggestions for reaching this group included engaging trade bodies, small business organisations or trade publications. The use of surveys was also discussed. There was a general consensus that the needs of small partnerships were very different than those of big professional partnerships.
Jeremy Sherwood then talked through the Committee terms of reference, as well as the need to observe the Civil Service Code principles of impartiality, objectivity, integrity, and honesty. Guidance on data sharing and confidentiality was also shared.

3. Main areas of complexity for review

Michael Jack asked the Committee for their thoughts on the main areas of complexity in the taxation of partnerships, to create an initial list of areas of complexity for review.

Committee members mentioned the following areas:

- HMRC administration, especially practical difficulties caused by the need to have a "nominated partner" to deal with tax issues. This approach ran into difficulties when partners fell out with each other.
- Stamp Duty Land Tax, specifically the need for more flexibility on changes of partner, and partners' shares of assets being confused with shares of profits, for example where land is transferred with associated debt. SDLT legislation was complex, having been amended piecemeal since it was introduced in 2003. Some wondered whether the anti-avoidance legislation was still needed following the introduction of the Genral Anti-Abuse Rule recently.
- Accounting periods for partnerships – it was a lot simpler if the partnership drew up accounts to 5 April (or 31 March), but some businesses preferred the flexibility of choosing a different accounting date. One suggestion was to encourage people to move to a 5 April date over a period of 10 years.
- Overlap relief – this relief is generated when a business starts, and is given when it ceases. There can be a long period in between, and the amount of overlap relief can be forgotten. It also loses its value over time as it is not indexed. This is an issue for all traders, not just partnerships.
- Recording partnership expenses – it is complicated to adjust partners' profit shares when a partner incurs partnership expenses themselves, for example on travel expenses or use of home. It can delay the submission of a partnership return. Why can't the partner claim the expenses in their own return, as they could before self assessment?
- Separation of partner and partnership return processing. There was a discussion about whether the partnership return was necessary. HMRC had carried out research in 2008, which concluded that if the partnership return was abolished, most of the information on it would still be needed. One suggestion from the Committee was for smaller partnerships to enter the partnership return details on the partners' returns, without the need for a separate partnership return. One concern was the interaction with Universal Credit, where monthly profit returns were needed. Another question raised

was whether HMRC should centralise all partners' tax affairs in the same office which dealt with the partnership tax affairs. However, this would not work where someone was a partner of several partnerships.

- Partnership interest income: if it is received gross, it cannot be entered in the short partnership return. If it is received under deduction of tax, it can.
- Charges on income– can this category of expenses (eg patent royalties) be simplified for partnerships, as it was for companies? They can be deductible in a different year to when the partnership profits are taxed.
- Capital gains tax and SPD12 – some people were uncomfortable with such a major area of tax being governed by an old Inland Revenue Statement of Practice from the 1970s instead of specific legislation. However, in practice there seemed to be few problems. This might be because most partnerships don't own property, but rent it, and partners joining a partnership don't normally have to pay for a share of the partnership goodwill. One member thought there were misunderstandings about how SPD12 operated with respect to base costs for partnership assets when partners changed. However, they thought it made sense that there wasn't a tax charge when partners changed but no money changed hands for partnership assets.
- Class 2 National Insurance – this was seen as an unnecessary burden for the small amounts involved, but is the subject of a separate HMRC consultation.
- Loans to participators – there are some problems in Scotland where a close company loans money to a partnership that is a participator in the company. HMRC had recently revised its guidance in this area.
- Partnership agreements – many partnerships had no formal written partnership agreement. One suggestion was for HMRC to provide a simple model agreement, similar to the one provided for companies (or charities).
- International issues surrounding double taxation – as UK partnerships have no legal status, a residence certificate cannot be issued for a partnership, just for the individual partners. This can cause difficulties when international partnerships claim relief from withholding tax from foreign tax authorities.
- Loan interest relief can be a problem. If a partner borrows money to invest in a partnership business, he or she will get relief, but if the partnership pays some of the money back it reduces the amount on which relief is due – so a new loan needs to be taken out to restore the value of the relief.
- Small partnerships often got confused with having to pay tax on shares of profit rather than the money they took out of the partnership. One suggestion was to tax small partnerships on drawings rather than profit.

Michael Jack suggested that looking at the historical context for the current taxation could provide further opportunities for simplification. For example, was the 1890 Partnership Act considered fit for purpose still?

Several Committee members pointed out that the suggested areas for review seemed divided into two areas- some were relevant to smaller, less complex partnerships, while others to large and complex partnerships.

4. External Meetings

John Whiting asked members for groups who the OTS team should meet with. Committee members made some immediate suggestions and were asked to write in with further ideas. Several Committee members suggested that a survey could also be designed for their organisation's members.

5. AOB

The next Committee meeting would be arranged for the second week of November, when the subject areas for the review have been explored and the OTS will have initial feedback on meetings.