



**The Hundred Group**  
of Finance Directors

**The Hundred Group of Finance Directors, Tax Committee**

**Evidence to the House of Lords Select Committee on Economic Affairs  
Finance Bill Sub-Committee – The Finance Bill 2011**

**20 May 2011**

**Introduction**

1. The Hundred Group is a non-political, not-for-profit organisation representing the finance directors of the UK's largest companies. Membership is drawn mainly, but not entirely, from the constituents of the FTSE100 Index. Our aim is to contribute positively to the development of UK and international policy and practice on matters that affect our businesses, including taxation, financial reporting, corporate governance and capital market regulation. Whilst this letter expresses the views of The Hundred Group of Finance Directors as a whole, they are not necessarily those of our individual members or their respective employers.
2. The Hundred Group welcomes the opportunity to give written evidence to the House of Lords on aspects of the Finance Bill 2011. As requested we have also addressed a number of the additional specific questions raised by the Sub-Committee.
3. In preparing this submission, we have had the advantage of reading the evidence given by previous witnesses, as published on the Parliament website. Where appropriate, we will refer to that previous evidence.

**The Government's new approach to tax policy-making**

4. The new approach to tax policy making, if implemented, will be welcomed. The stated focus on predictability, stability and simplicity will help to facilitate a fiscal environment which we believe is essential to encourage investment in the UK. However, it will be appreciated that this is not the first time that business has heard these messages. As already acknowledged by the Exchequer Secretary to the Treasury<sup>1</sup>, the key to the success of the new approach will be (i) its delivery, and (ii) the extent to which it becomes firmly embedded as standard practice.
5. In relation to the Finance Bill 2011, we note that there was no consultation on the significant increase in the Supplementary Charge applicable to the UK oil and gas industry. We believe that significant increases in taxation which are introduced without consultation act to undermine business confidence in the UK tax regime.
6. Apart from the increases in UK oil and gas taxation, we have been encouraged by recent consultation - for example the publication of the corporate tax "road map" setting out not only a direction of travel but also the landmarks along the way and

---

<sup>1</sup> Foreword to "*The new approach to tax policy making: a response to the consultation*", HM Treasury/HMRC, December 2010

when they will be reached. We would welcome the continuation of this approach in other areas. Other witnesses have noted historic and ongoing difficulties with HMRC and HM Treasury working together on tax policy. In the area of the CT road map, the two departments have worked well as an integrated team and we would like to see this practice reflected in all areas of policy and practice.

7. In our view, better consultation is starting to show through in the quality of the reforms. While there is much work still to be done, reductions in the headline tax rate, commitment to the introduction of a patent box and the promising first step of the interim CFC reforms are all positive developments. In order to continue to build confidence in the UK as an investment and employment destination, it is vital that HMT and HMRC adopt a consistent and high quality approach to consultation on all significant changes to taxes that impact businesses in the UK.

8. **Specific Questions raised by the Sub-Committee:**

(Numbering follows the transcript of evidence session number 3, 11<sup>th</sup> May 2011).

- a. (Q159) The CBI suggests that the new policymaking framework could be improved by removing most corporate tax legislation from the normal Finance Bill cycle; establishing a joint committee to examine such legislation; and introducing independent post-implementation reviews of tax law. Could the CBI explain how these proposals might work and what benefits they might bring? Do the others agree? Would you add any further changes?

We would support measures permitting increased parliamentary scrutiny of tax legislation – and the most obvious current constraint on effective scrutiny is the short timetable of the annual Finance Bill. We hope, however, that the move to announcing policies at one Budget for inclusion in the Finance Bill the following year<sup>2</sup> will go some way to lengthening the time available for debate.

Initiatives such as the establishment of the Office of Budget Responsibility (OBR) and the Office of Tax Simplification (OTS) give a degree of independent scrutiny which is also to be welcomed. The work of the OTS on a limited budget has been well received. We echo the views expressed by other witnesses that an expanded and well-resourced OTS could play a valuable role in reviewing not only the details of reliefs and allowances but also the structure of taxation more broadly.

- b. (Q166) Previous witnesses have emphasised the need for greater continuity and higher levels of technical knowledge in HMRC/HMT teams working on policy reforms. This echoes evidence from some other bodies. Do you share these concerns and could you outline some examples of where policy development and implementation has been adversely affected by a lack of continuity and technical skills?

Successful implementation of the new approach will require well resourced and highly skilled teams. We agree with those witnesses who observed that the policy making process would be improved if the same HMRC/HMT staff were able to start and finish any particular project, and that specialism should be recognised and encouraged.

We would add to that the observation that it is important that those HMRC staff with responsibility for implementing new and often complex legislation should be equally

---

<sup>2</sup> Para 1.3 of “*The new approach to tax policy making: a response to the consultation*”, HM Treasury/HMRC, December 2010.

well resourced and skilled. It is encouraging that implementation and monitoring is set out as a separate stage (stage 4) in the tax consultation framework; even the best policies and legislation cannot succeed unless properly understood by those responsible for implementation.

- c. (Q169) The current Finance Bill is the first to be produced under the new tax policymaking process. How well do you consider that the new process worked and where has it led to better draft legislation? The IoD has suggested that, in addition to Tax Impact Notes, the Government should publish the analysis underlying policy advice from its officials. How might this improve the current process?

The changes in tax policymaking process are generally positive as they provide a sensible timeframe for consultation leading to improved tax law. Critically, they will also lead to better compliance given the additional time for business to prepare. Our answers elsewhere in this submission cover specific successes in the area of corporate tax reform.

Regarding the publication of the analysis underlying policy advice, we believe there would be benefits in helping businesses and advisors to understand in greater detail the underlying aims of particular policies. However, we would also sound a note of caution. It would be counter-productive if officials were unwilling to propose bold or controversial solutions due to a concern that even ideas rejected at a very early stage might be published. There would also be a possibility that nearly as much time would be spent sanitising internal documentation for publication as writing it, diverting resource from where it is required.

### **Corporate tax reform and its implications for growth and tax competitiveness**

9. The reductions in the corporation tax headline rate are a welcome indication and application of the Government's intention to improve the competitiveness of the UK. CFC reform also seems to be going in the right direction, though there is substantially more work to be done, and there will be a need for determined implementation to ensure the good policy intentions are not undermined by a disproportionate approach to avoidance concerns. Taken together with the patent box, this package should restore some confidence to the corporate sector in the UK as a base in which and from which to do business, apart from the oil and gas sector for the reasons previously mentioned. Our members remain concerned that employment taxes are too high and are therefore a bar to the competitiveness of UK business.

#### **10. Specific Questions raised by the Sub-Committee:**

(Numbering follows the transcript of evidence session number 3, 11<sup>th</sup> May 2011)

- a. (Q127) You all seem reasonably comfortable with the roadmap for CT reform and, in particular, the move towards a territorial system. How do you respond to criticism, both in the press and indeed from one of our previous witnesses, that this is a big and unjustified give-away to large business which will cost much more than the official estimates?

We do not consider that the package constitutes a 'giveaway'. Rather, it is a simplification of the tax system which aims to provide both a principled and pragmatic approach to corporate taxation. A more territorial system will focus on taxing UK

economic activity rather than assuming that activities and profits generated overseas should be treated as if they were generated in the UK, simply because the parent company is located in the UK. The package of proposals will also achieve greater consistency of tax treatment between foreign branches and subsidiaries of UK companies and this will enhance the competitiveness of the UK corporate tax regime. The proposed opt in branch exemption regime will be attractive to certain sectors without disadvantaging other sectors.

The UK has to compete with other countries for business, investment and employment. The UK's fiscal regime is one significant aspect of the UK economic environment which makes it more or less attractive as a location for business. We believe that the recent progress will attract a greater proportion of global investment to the UK (both by domestic companies and foreign inward investment) for the benefit of the UK economy.

Regarding costings, business does not have access to detailed Treasury economic models. However, we welcome independent oversight by the OBR of the anticipated impact of tax changes.

- b. (Q129) What views do you have on the interim changes made to the rules for controlled foreign companies (CFCs) and the proposals for wider-ranging reform next year?

Overall, we feel that the general tone of the interim and proposed wider CFC reforms is very positive, in particular the introduction of exemptions for "foreign to foreign" intra-group transactions and for the exploitation of intellectual property (IP) with no UK connection. Taken together, these proposed exemptions evidence the Government's commitment to target the CFC rules only at the artificial diversion of UK profits, and provide a welcome indication of the direction of travel towards full reform.

As a general point, we do feel that the exemptions themselves are too narrow at present, in particular in the definition of what constitutes IP with no UK connection, and in themselves they will make little difference to the UK tax environment. However, we note the acknowledgement by Government in the November 2010 consultation document that these interim reforms are a first step, and that the conditions may be relaxed on full reform. We also recognise that, particularly in the area of IP, Government does not wish to anticipate the conclusions of the ongoing consultation.

It will be important that next year's reforms deliver real change and there is much work to be done on the details – particularly on the tax treatment of IP. It will also be important to clarify the scope of the proposed partial exemption for overseas financing companies including the 1:3 debt:equity ratio.

- c. (Q130) What about the new rules for taxing intellectual property? The EEF doubts whether the proposals on the patent box are internationally competitive and sees the reforms to R&D tax credits as limited, a product of not adopting a holistic approach. Do others agree?

We consider that the patent box is a bold first step towards an internationally competitive regime in which to locate high added-value technical activity and the commercial exploitation of valuable IP. While acknowledging the constraints of the current economic climate, we hope that over time it can expand to include intellectual property more widely.

Regarding R&D credits, the extension for small and medium companies appears to be a sensible measure in the context of trying to boost innovation and related

economic activity. We would support the recommendations of the Dyson review to go further when economic conditions allow.

- d. (Q134) In one of its supporting papers, the CBI comments on the existing distortion of differing effective tax rates across business sectors. Do you see the impacts of the reduction in CT rates and in the rates of capital allowances as exacerbating this? Do you, and perhaps the EEF in particular, have a concern about the balance of the CT package and therefore its impact? Given that the CT rate and the capital allowances system are applied uniformly to all businesses, how would you seek to mitigate these sectoral variations?

UK Governments have always utilised levers within the tax base to incentivise certain types of economic activity. Effective tax rate differentials between business sectors simply reflect governments' intentions and preferences for sectors they believe will generate relatively greater UK economic wealth.

However, it is important when costing tax policy proposals (particularly those where some measures effectively pay for others) that the impact on all business sectors is properly understood. It is of little comfort to a business sector that is worse off to hear that they are paying for measures that will help others. This is an important part of why we support the views expressed by other witnesses that consultation should begin as early as possible in the policy development process, to prevent inadvertent imbalances being introduced.

- e. (Q158) Both the CBI and the IoD welcome the reduction in the headline CT rate but argue that it needs to be reduced beyond the Government's present plans and have a long-term objective of a rate in the mid-teens. On the other hand, the EEF sees the benefits to growth and competitiveness from the reduction in rate as being "more than offset by lower investment and capital allowances and rises in carbon taxes". It has been argued by one of our previous witnesses that there is no evidence to link lower CT rates with growth. Rates of tax are outside our remit. But there is an interesting range of views here. What evidence can you each offer to support your take on this?

Business is unanimous that lower CT rates – both the headline rate and the effective rate - relative to global competition attract a greater proportion of investment; however there are a number of other important elements of a tax regime that make it competitive. It needs to provide certainty, be stable over the long term and supported by a well resourced tax authority prepared to engage with business on administrative developments and where necessary to support UK business opposite overseas tax authorities. The UK is moving towards a more competitive regime and is fortunate to have HMRC to administer and support business better than most other countries.

### **Anti-avoidance measures with special reference to disguised remuneration**

11. On the whole, we have welcomed HMRC's open debate with advisors, businesses and professional bodies on disguised remuneration which has evolved since last December. HMRC has been pragmatic in its approach to the introduction of this legislation, the frequently asked questions (FAQ's) have been a helpful point of reference and employers have been given time to review the arrangements they currently have in place to determine the impact of this legislation, prior to it coming into force on 6 April 2011. The legislation itself, whilst lengthy (60 pages in total) and complex to the reader in some parts (hopefully further regulations/updates to FAQs will provide greater clarity), does provide the carve-out for the most common bona

fide remuneration arrangements, which employers were seeking from HMRC back in December.

12. However, we note that the original formulation of these rules was quite defective in that there was considerable doubt as to their scope and they appeared to impact on arrangements which ought not to have been caught. This is a very complex area and we tentatively question whether all of the relevant specialists were sufficiently involved in the formulation of the proposal. It is our understanding that specialists in these areas remain concerned that the carve outs are overly complex and hence uncertainty remains.
13. Having said that, HMT and HMRC engaged in a very constructive and well executed consultation on both a formal and an informal basis to address these concerns. However, this could end in another example of companies being taxed by FAQ's on the HMRC website rather than by clear legislation.
14. **Specific Questions raised by the Sub-Committee:**

(Numbering follows the transcript of evidence session number 3, 11<sup>th</sup> May 2011).

Anti Avoidance generally

- a. (Q147) Whilst you are supportive of a more strategic approach to tackling tax avoidance, you appear concerned that the implementation leaves much to be desired. The CBI says that "it is much better for UK competitiveness if anti-avoidance rules are carefully targeted at the undesirable behaviour and based on clear principles". Which are you arguing for: a detailed targeted approach or a principles-based approach which does not seek to cover detailed situations?

Generally business' preference is for detailed, targeted anti-avoidance rules focused on the specific abusive practice Government intends to prevent, supported by guidance that sets out examples or hallmarks of the targeted abuse. Such an approach is more effective in providing business with the clarity and confidence to invest. The broader statements around anti-avoidance are less effective in providing the certainty of tax treatment business desires.

Disguised remuneration

- b. (Q151) The CBI's written submission welcomed the opportunity to comment on draft legislation published in December and to influence subsequent drafts which seem to have met your main concerns. Nonetheless, your submission concludes that Schedule 2 of the Finance Bill is likely to "have even more unintended consequences than previously feared". Could you clarify your concerns here? Has the new policymaking process not worked as intended in this case? What are the views of the others on this measure?

The general concern is the broad scope of the rules, which catches everything and then, through an extensive process of elimination, excuses very basic and inoffensive arrangements – in short a sledgehammer to crack a nut. A better approach would be to target the specific abuse and to be explicit as to the characteristics of arrangements that the Government has determined to be abusive. The end result, though complex, appears to get to the right result in most cases – but concern remains that the complexity itself may introduce uncertainty in interpretation.

- c. (Q156) We have heard from previous witnesses that the type of avoidance this legislation is directed at had become endemic, with wide-spread marketing of schemes, and this is supported by the estimated yield from this measure. Do you accept that this abuse was taking place on an unacceptable scale covering a wide range of employers and employees, not just high net-worth individuals? If so, what can be done to change the culture so that such behaviour is no longer regarded as acceptable?

We do not accept that the practice is endemic across all business, however, there is no doubt that those less concerned with reputation and faced with a 52% marginal tax rate will tend to explore ways to save tax. For large business, and certainly in the non-financial services sector, the culture has changed but clearly there is more to do to stem the cat and mouse approach to tax law abuse and change. The emphasis on incremental penalties for wilful illegal avoidance is contributing to improving the culture.

### **Contact**

Ashley Almanza  
Chairman, Tax Committee  
The Hundred Group of Finance Directors