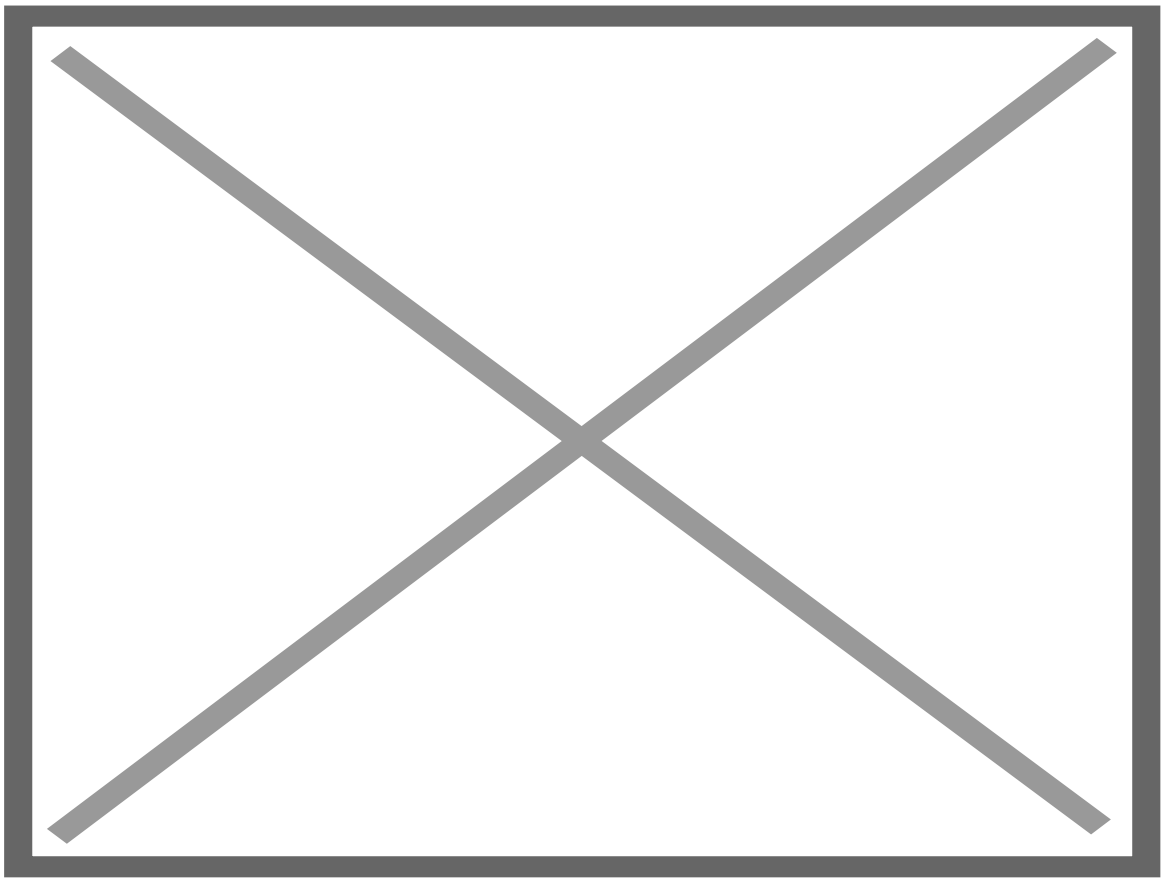
Finance Bill 2013: how it responded to consultation

General Features



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Will Silsby, Joanne Walker and Sacha Dalton report on some ‘wins’ for CIOT, ATT and LITRG reflected in the Finance Bill 2013

Key Points

The revised draft on disincorporation relief is a definite ‘win’ for ATT A modest relaxation in the cash basis provisions is welcome, despite CIOT’s call for a broader review Pleas for reconsideration of cap on income tax relief fell on deaf ears The lack of adequate consultation on major changes is a long-standing issue

In last month’s *Tax Adviser*, we summarised the responses that CIOT, ATT and LITRG had made on the draft **Finance Bill 2013** clauses, published in December 2012. This month, we report on some of the changes recommended in those responses which are reflected in the full Finance Bill as published on 28 March, and also comment on some which are not.

Before considering the detail, we would like to take this opportunity to congratulate HMRC on the much improved presentation of the Budget material on their website. The list of documents with links to each tax

information and impact note (TIIN) and other documents was something we had been suggesting to them and made it much easier to locate information about specific measures.

The ‘cash basis’ – simpler income tax

The notable successes are the withdrawal of the mandatory use of fixed-rate mileage adjustments and the replacement of the ***Sharkey v Wernher* [1956] AC 58** principle (as found in **ITTOIA 2005 s 172B**) by a ‘just and reasonable’ adjustment. Unfortunately, CIOT’s plea for reconsideration of the whole package and ATT’s for a simpler presentation of the relevant legislation have not had any instant effect. Neither has their joint challenge to the denial of sideways and carryback loss relief. LITRG notes that it will be essential to provide clear and detailed guidance for businesses to ensure that they only choose to use the cash basis if it is best for them (see the HMRC response at **www.gov.uk/simpler-income-tax-cash-basis**). A trader can now only leave the cash basis if there is a ‘commercial reason’ for doing so.

Also, LITRG’s request for alignment of the HMRC and DWP cash accounting bases has not been acted on, meaning that Universal Credit claimants will have to prepare monthly cash accounting calculations for their Universal Credit and a different cash basis calculation for their annual tax return. This is a serious business burden on small business, which many will struggle to cope with.

IHT non-domiciled spouse or civil partner exemption

CIOT and ATT had drawn attention to the need for the effective date of the election to accommodate the situation of a failed potentially exempt transfer. The revised draft provisions allow an election to cover a lifetime potentially exempt transfer to be made retrospectively for up to seven years. The only time restriction is that the earliest permissible effective date is 6 April 2013.

Both bodies had also questioned the fixed two-year time period for a death election. The revised provision permits a death election within two years of the death of the UK spouse or civil partner ‘or such longer period as an officer of Revenue and Customs may in the particular case allow’. This time limit is more generous than in the original draft.

Somewhat unhelpfully, however, the published explanatory notes supporting the Finance Bill itself are less detailed than the notes that accompanied the December version.

Securing compliance with Real Time Information

There are no major successes to report within the Finance Bill. Nevertheless, the legislation now ensures there will be no late filing penalties in an ‘initial period’, which commences on the day an employer is first required to make an RTI return in their first tax year within RTI. The length of the initial period will be specified in regulations. As expected, there will also be no penalty for the first failure in a year. The concerns raised by LITRG and CIOT about the speed of introduction of the penalties remain. Other developments with regard to RTI are covered elsewhere in the magazine.

Statutory residence test (SRT), reforms to ordinary residence and overseas workday relief (OWR)

There have been some minor changes to the draft Finance Bill. The term ‘full-time work’ has been replaced by a test for sufficient work within or outside the UK as appropriate. This increases the complexity. A useful additional automatic overseas test is included, which may apply to someone who dies in the tax year and who has previously met the third automatic overseas test relating to overseas work. The exclusions for international transportation workers have been amended, so that they now apply only to those transportation workers whose journeys start or end in the UK at least six times in the tax year. The number of cases when split year treatment applies has been increased from five to eight. LITRG remains concerned that the legislation is overly complex and not easy to use.

Seed Enterprise Investment Scheme (SEIS)

We were pleased to see the technical change to the SEIS rules around ‘off-the-shelf’ companies, which the CIOT had pointed out as a problem soon after SEIS’s introduction. It is just disappointing that the change – to correct an unintended trap – could not be backdated to the start of SEIS and so enable some SEIS users to climb out of the trap they may have inadvertently fallen into. It only applies to shares issued on or after 6 April 2013.

Simplification of SDLT lease code

The more widely publicised SDLT measures are largely concerned with anti-avoidance. The CIOT has been heavily involved with the consultation process for both the package of measures aimed at the ‘enveloping’ of high value residential property in a corporate or other wrapper and the changes to the SDLT transfer of rights (most commonly sub-sales) provisions. However, the CIOT (represented by Lakshmi Narain) has also been part of a small HMRC SDLT deregulation sub-group looking at simplification of elements of the SDLT lease code. This work has extended over a number of years and has led to valuable reforms provided for in this year’s Finance Bill. These are the total abolition of a SDLT charge on an ‘abnormal’ increase in rent after the fifth year of a lease (we have long argued that this provision was unnecessary); amendments aimed at simplifying the filing of returns when a SDLT lease is held over under Part II of the **Landlord and Tenant Act 1954** (although further representations may be needed on this aspect); and similarly a simplification of the compliance process and a correction of an anomaly in the case of an agreement for lease that is followed by the grant of a lease.

Exemption for employee shareholder shares

The provisions remain largely unchanged, and the trade-off of tax reliefs for employment rights is still heavily weighted against the employee. We remain unconvinced by the ‘shares for rights’ proposal but welcome the Budget confirmation of an income tax/NIC exemption for the first £2,000 of shares value received. Overall, we think the scheme is worth trying but it needs to be viewed as an experiment and evaluated after a suitable period.

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Trusts with vulnerable beneficiary

The draft proposals to what has become Schedule 42 (Vulnerable Beneficiaries) originally contained provisions to remove the statutory disregards for the **Trustee Act 1925 s 32** power of advancement. As requested by CIOT and LITRG, those proposals have been omitted so that gifts by parents in their wills to their own children will

still fall within the favoured IHT regimes for a bereaved minors trust (BMT) or an ‘18–25 trust’, despite the will containing the flexibility of a statutory or extended power to advance capital. Had the original proposals not been withdrawn, such gifts would have become subject to the IHT relevant property regime applicable to most trusts since the **FA 2006** changes.
Unfortunately, the Finance Bill also confirms the proposed limit on the extent to which trust capital and income can be used for the benefit of anyone other than the vulnerable beneficiary, which LITRG criticised as being too inflexible.

Income tax rules on interest

There has been an improvement in the legislation on disguised interest for individuals, with the inclusion of a new exemption for returns from certain types of share, in particular those that are traded on a regulated market, where there are no arrangements for the shares to provide an amount economically equivalent to interest. However, LITRG is disappointed that there have been no changes in the provisions for the treatment of ‘interest’ which is received as part of a one-off payment of compensation.

Withdrawal by HMRC of the requirement for a tax return

LITRG broadly welcomes the new statutory power allowing HMRC to withdraw a previously issued notice to file a return, but is disappointed that its suggestions to improve these proposals have not been incorporated into the Finance Bill. These were that the deadline should refer back to the date of issue of the return, rather than the end of the relevant tax year, and that HMRC’s discretion should relate to the taxpayer having a ‘reasonable excuse’, rather than there being ‘exceptional circumstances’. On the latter point, there has been no material amendment to the draft provision.

Temporary increase in annual investment allowance (AIA)

Unsurprisingly, there has been no movement here. Sometimes a representation is made not with any realistic hope of achieving an amendment to the particular draft, but to register the fact that earlier consultation would have been mutually helpful.

The decision to announce a major change in the AIA limit in the Autumn Statement and to introduce that change from 1 January 2013 meant that businesses had to know the mechanics of the proposal in December. Had there been prior consultation, the legislation might well have enabled businesses with higher levels of capital expenditure to get the benefit of the AIA uplift, without imposing pointless and complex calculations on businesses with more modest expenditure. The ATT and CIOT submissions on this draft were accordingly of the ‘if only you had told us earlier’ variety. In addition, we registered a plea for stability in this area.

Disincorporation relief

ATT had voiced two main concerns in relation to the draft disincorporation relief. The first was the presentation of the provisions and focused on the confusing cross-referencing between (what will be) the FA 2013 provisions and **CTA 2009**. The revised draft adopts the ATT recommendations so this is a definite win.

ATT’s other point was the introduction of an arbitrary value cap of £100,000. There was no prior consultation on the basis or level of the cap. The concern is that without any advance clearance procedure, the relief will only be

used in practice where the value of the qualifying assets (goodwill or an interest in land) is comfortably less than £100,000. This point falls into the ‘if only you had told us earlier’ category. Predictably, there has been no movement here.

Cap on income tax reliefs

All pleas for reconsideration of the capping appear to have fallen on deaf ears. The draft provisions are essentially as published in December. ATT and CIOT had argued strongly that losses were already subject to a commerciality test which meant that capping necessarily hit only genuine commercial losses. We were equally unsuccessful in our argument that all subscriber-loss claims should enjoy the same exemption from capping as EIS and SEIS shares.

Rate of corporation tax

The Budget also announced the continuing reduction in the main rate of corporation tax to 20% for the financial year 2015 (from, as previously announced, 21% for financial year 2014). This is to be welcomed, along with the resultant simplification arising from the effective abolition of the small profits rate. However, it should be noted that, in a departure from previous years, these future reduced rates are to be legislated for in the **Finance Bill 2013** and will, therefore, become enshrined in law this summer. This will mean that the reduced rates will be reflected in accounting provisions for deferred tax liabilities and assets of companies at an earlier date, and will also result in some sharper adjustments to those provisions due to the reflecting the future rates from a current rate of 23%.

Conclusion

The overall result of the submissions by our three organisations has been useful rather than dramatic. Whether the modest relaxations achieved in the cash basis provisions will be sufficient to salvage something which will assist very small businesses remains to be seen. Time will also tell whether HM Treasury and HMRC get the subliminal message that involving us at the earliest opportunity can improve the quality of draft legislation – a message we have also made more overtly to the Treasury Committee. Where our responses to the December drafts appear to have been ignored, we will continue to advocate relevant amendments in order to influence Parliamentary debate where possible.