Finance (No.2) Bill 2023: corporate taxes

Large Corporate OMB

24 May 2023

The CIOT and ATT sent briefings to MPs on the corporate tax provisions in the Finance Bill that were selected for debate by the Committee of the Whole House. The provisions debated related to capital allowances, R&D tax relief and the new multinational top-up taxes (Pillar 2).

The Finance (No.2) Bill 2023 is currently going through Parliament (Royal Assent is expected sometime towards the end of June/early July). MPs began committee stage consideration of the Bill on 18 April with the first of two days of the Committee of Whole House debate focusing on corporate tax changes, including capital allowances full expensing, the annual investment allowance, R&D tax relief and the implementation of Pillar 2 of the OECD/G20 Inclusive Framework.

Capital allowances

The Budget announced ‘full expensing’, which is in essence an unlimited annual investment allowance (AIA) for all companies. It is a generous relief for the largest companies whose capital expenditure on plant and machinery is in excess of the limit for the AIA (now set at a permanent level of £1 million). The Finance Bill introduces this new temporary first year allowance which will have effect for expenditure incurred on or after 1 April 2023 but before 1 April 2026.

The CIOT welcomed this measure, but said that it is not as beneficial as it might at first appear due to it being time limited, only applying to expenditure on plant and machinery, and only applying to corporates. The ATT noted that it will provide no benefit to 99% of businesses, and said that more focus is required on the needs of smaller businesses, including how the capital allowances rules could be simplified.

Both agreed that the scope of full expensing should be extended so that large, unincorporated businesses (such as farming partnerships or professional service firms) can benefit from it.

The CIOT said that it was unfortunate that the changes to the capital allowances regime in the Finance Bill do not deliver stability for all businesses, which is a missed opportunity because businesses require consistent levels of relief to help them plan and grow. The overwhelming feedback that the CIOT and ATT receive in relation to encouraging investment and ensuring that the UK is a more attractive place for business, is that stability and certainty is more important to businesses than any particular rate of relief.

R&D tax reliefs

The Finance Bill introduces changes to the R&D tax relief for small or medium sized companies (‘SME tax relief’), and to R&D Expenditure Credit (‘RDEC’), which is mainly claimed by larger companies, to widen qualifying expenditure to include data licences and cloud computing services. It also introduces new compliance measures.

The main compliance changes are:

- the requirement to make a claim notification of an intention to make an R&D claim in a shorter time frame than the period allowed for the making of the R&D claim itself; and
- a new requirement for claimants of SME R&D tax relief or RDEC to provide additional information to support their claims.

The changes generally have effect for accounting periods beginning on or after 1 April 2023, but the requirement to provide additional information with a claim has effect for claims made on or after 1 August 2023.

We understand that these measures are aimed at tackling error and fraud. Both the CIOT and ATT are supportive of the government taking action to do this, but we are doubtful that the measures will be successful in this regard. Rather, we believe that claim notification is likely to affect the ability of companies undertaking genuine R&D to access the relief to which they are otherwise entitled, whilst doing little to reduce abuse. The House of Lords Economic Affairs Finance Bill Sub-Committee report 'Research and development tax relief and expenditure credit', published in January this year, supported this view (tinyurl.com/mryj4zs2).

The ATT said that small and new companies in particular, which are often most in need of the support offered by R&D relief, are the most likely to miss the six month deadline for claim notification. Such businesses often lack dedicated in-house tax or R&D expertise, and may be focused on shorter term goals, getting products to market, etc. They might not appreciate the opportunity for R&D relief sufficiently far in advance to meet the claim notification deadline, and may not be able to afford timely professional advice.

The CIOT agreed and said that the real solutions to the issue of abuse in relation to the R&D tax reliefs lie in more graduated HMRC compliance responses in the R&D tax credits area, and in reviving the government's largely stalled agenda on raising standards in the tax services market.

Noting that the commencement date of the requirement for additional information to be submitted in support of R&D relief claims has been brought forward significantly from the date originally proposed, the ATT said that a concerted education and information campaign is required to ensure that genuine claimants are not prevented from claiming relief due to a lack of awareness of this change.

In addition, the CIOT said that if the requirements of the additional information are not carefully communicated by HMRC, this new compliance measure could cause confusion and may result in a lower standard of behaviour. This is because although the additional information form will only require details of a proportion of R&D projects undertaken, HMRC will be entitled to request further information in respect of all the projects a company has undertaken under their enquiry powers. HMRC need to make it very clear that the requirement to provide additional information in respect of some projects does not negate the obligation on a company to ensure that it has sufficient information in respect of all its R&D projects to support its claim for tax relief.

The CIOT suggested a change to the legislation in relation to the wording of a new power for HMRC to remove a claim for R&D relief from a corporation tax return when an officer of HMRC ‘reasonably believes that the claimant company failed to comply with a requirement for making a claim’. Although we understand that this new power is only intended to be available to HMRC in relation to failure to comply with the new compliance measures, it is too widely and ambiguously drafted. Labour tabled an amendment responding to the concern that the provision may enable HMRC to reject claims without taxpayers having the normal rights of appeal, and raised this in the debate, but did not move the amendment to require a vote on it.

Finally, both the CIOT and ATT noted that the changes to the R&D regime are just a selection of the changes being made to R&D relief this year, which also include a reduction in the rate of relief available under the SME scheme and the introduction of enhanced relief for ‘R&D intensive’ SMEs announced at the Spring Budget. In addition, these changes sit alongside the ongoing consultation on whether to merge the two R&D tax reliefs into a single scheme.

Both organisations think that the pace and scale of change is too fast. ATT said that, taken together, this is a large volume of change for businesses and advisers to adapt to within a short period of time. It creates an overall feeling of uncertainty and makes it hard to plan. Businesses and advisers are concerned about making changes to their processes to accommodate administrative updates when the whole R&D regime could be replaced in under a year.

The CIOT said that most of the changes in the Finance Bill do not support the government’s stated policy aim of encouraging innovation and achieving the ambitious target of total investment in R&D rising to 2.4% of UK GDP.

Multinational top-up tax and domestic top-up tax (Pillar 2)

The multinational top-up tax and domestic top-up tax introduced by Parts 3 and 4 of the Finance Bill are the first tranche of implementation by the UK of the agreed G20-OECD Pillar 2 framework. The principle behind the Pillar 2 rules is that where a group company in jurisdiction A has paid less than 15% tax on its profits, then jurisdiction B where there is another group company, higher up the ownership chain in the corporate structure, is expected to impose a 'top-up tax'.

The CIOT re-iterated that it is not opposed to the introduction of a global minimum tax in principle. The CIOT has long advocated a multilateral solution to the tax challenges arising from the digitalisation of the economy in the light of the increasing unilateral measures (and retaliatory actions) being taken by countries. Against that alternative, the CIOT has supported the work towards a multilateral solution and the two-pillar approach. However, it must be recognised that the scope and detail of the Pillar 2 rules – and, as a result, the multinational top-up tax that is the UK version of it – is vastly complicated and will create an enormous administrative burden for tax administrations and multinational businesses alike.

Throughout the process of developing the rules, the CIOT has been concerned that the desire to reach an apparently positive outcome to a timetable ran ahead of real resolution of the technical issues, casting doubt on whether we will achieve a workable set of rules that will result in a genuinely stable, reformed international tax system.

Our full briefings can be found at:

Finance (No.2) Bill 2023 Corporate Taxes (all measures):
www.tax.org.uk/ref1121

Finance (No.2) Bill 2023 Clause 7 Temporary full expensing:
www.att.org.uk/ref425

Finance (No.2) Bill 2023 Clause 10 and Schedule 1 Relief for research and development: www.att.org.uk/ref424

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