BUDGET 2013/14

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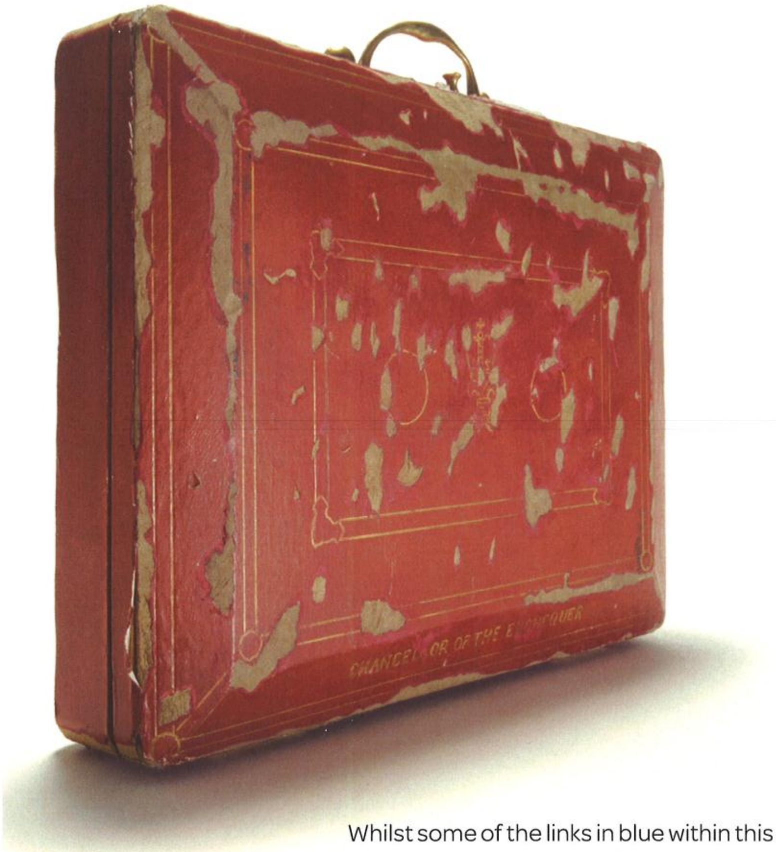

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Budget 2013 — corporate tax overview

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The highlights

The Chancellor, George Osborne, delivered his Budget on 20 March 2013 in advance of the official publication of the Finance Bill 2013 on 28 March, which was issued in draft format on 11 December 2012. This news item outlines the key announcements relating to larger companies and groups.

The Government is keen to establish the UK tax system as the most competitive in the G20. In the Chancellor's own words, "Britain is open for business". Various measures have been introduced recently which are aimed at encouraging investment and growth in the UK. The introduction of the patent box and above the line R&D credit, plus reductions in the rate of corporation tax demonstrate the Government's desire in this regard. Some of the provisions announced in the Budget compliment this.

The key corporate highlights from the Budget are:

- a reduction in the main rate of corporation tax
- amendments to rate of the above the line R&D tax credit
- the introduction of various targeted anti-avoidance measures
- minor amendments to legislation contained in the draft Finance Bill 2013

The documents relating to the Budget are available on the HM Treasury website .

Corporation tax rates

Reductions in the main rate of corporation tax for non ring-fenced profits have been announced in previous Budgets. An additional 1% reduction was confirmed in the Autumn Statement 2012, reducing the rate from 24% to 23% in April 2013 and then to 21% in April 2014. In an effort to become the most competitive tax regime of any major economy, the Chancellor has confirmed that the main rate of corporation tax will be reduced to 20% from 1 April 2015. The main rate and small profits rate of corporation tax are therefore being unified, such that marginal relief calculations will no longer be required.

The rates of corporation tax since 1 April 2010 are summarised in the following table:

Year commencing 1 April	2010	2011	2012	2013	2014	2015
Small Profits Rate	21%	20%	20%	20%	20%	-
Marginal Relief Lower Limit	£300,000	£300,000	£300,000	£300,000	£300,000	-
Marginal Relief Upper Limit	£1,500,000	£1,500,000	£1,500,000	£1,500,000	£1,500,000	-
Standard Fraction	7/400	3/200	1/100	3/400	1/400	-
Main Rate of Corporation Tax	28%	26%	24%	23%	21%	20%
Marginal rate of corporation tax	29.75%	27.5%	25%	23.75%	21.25%	-

Bank levy amendments

The bank levy is payable by UK banks, banking groups and building societies, and foreign banking groups operating in the UK through a permanent establishment. The tax is levied on the total chargeable equity and liabilities reported in the relevant balance sheets of affected banks at the end of the chargeable period. The rate of the bank levy has been increased to 0.142%, with effect from 1 January 2014. A proportionate increase from 0.065% to 0.071% will be made to the half rate, also with effect from 1 January 2014. The increase offsets the benefit banks would otherwise obtain following the reduction in the rate of corporation tax.

See the Tax Information and Impact Note (TIIN) for further details.

Above the line R&D tax credit

The introduction of an above the line R&D credit was announced at Autumn Statement 2011 and is available for qualifying expenditure incurred on or after 1 April 2013. Following a period of consultation, legislation was published in the draft Finance Bill 2013. Please refer to the Above the line R&D credit guidance note for details of the regime. The draft legislation states that the rate of the credit is equal to 9.1% of the total qualifying R&D expenditure incurred in the accounting period. However, the Chancellor confirmed in the Budget that the rate of the credit will be increased to 10%, which will be reflected in the updated version of the Finance Bill 2013.

Targeted anti-avoidance measures
Deductions for employee acquisitions of shares

Legislation will be introduced in Finance Bill 2013 to clarify the availability of the corporation tax deductions for companies granting share options or issuing shares to employees. The new legislation will have effect for accounting periods ending on or after 20 March 2013 and has not been the subject of previous consultation.

Under the current legislation set out in CTA 2009, Part 12, the value of the corporation tax deduction available is equivalent to the amount which is chargeable on the employee at the time the option is exercised or shares are acquired. No other deduction is available for expenses directly related to the provision of shares. Please refer to the Relief for employee share acquisitions guidance note for further details of the relief available.

The new provisions clarify that where relief is claimed under CTA 2009, Part 12, no deduction is available for any other expenses relating to the provision of shares, or for any connected matter. In addition, a deduction will not be available in respect of the grant of share options, unless the employee actually acquires shares under the option.
Please refer to the TIIN for full details.

Corporation tax loss relief

Three new anti-avoidance measures relating to loss relief have been announced, which will be introduced in Finance Bill 2013. These rules close loopholes which enable companies to pass on the benefit of losses to third parties, or to access greater amounts of group relief than would otherwise be available.

The first measure relates to the availability of group loss relief in the context of Controlled Foreign Companies (CFCs) and applies to surrender periods ending on or after 20 March 2013. Under current legislation, UK property business losses, management expenses, and non-trading losses on intangible fixed assets can only be surrendered if the aggregate amount exceeds the surrendering company's gross profits for the surrender period (CTA 2010, s 105). Apportioned CFC profits are not currently included in the computation of gross profits for this purpose. These profits will be included as gross profits under the new legislation.

The second measure relates to the treatment of losses in the event of a company re-organisation resulting in a change of ownership and applies to transactions that occur on or after 20 March 2013. Under current legislation set out in CTA 2010, Part 14, Chapter 2, the use of losses is restricted where a trade is transferred between unconnected companies and there is a major change in the nature or conduct of the trade within three years following the change in ownership, or where trading activities become small or negligible before any significant revival. However, a loophole exists where the restriction does not apply in the case of a transfer of trade which occurs after the re-organisation. This loophole will be closed under the new legislation, such that trading losses will not be available where the trade, or part of the trade, is transferred within the new group either before or after the change in ownership.

The third measure restricts the availability of non-trading debits, non-trading loan relationship deficits and non-trading losses on intangible fixed assets following the change in ownership of a dormant company, in order to target loss buying. This amendment will have effect in relation to surrender periods ending on or after 20 March 2013.
Full details including draft legislation can be found inHMRC's technical note .

Corporate loss-buying

Targeted anti-avoidance rules will be introduced with immediate effect in order to prevent 'loss buying'. Under current legislation, companies are able to acquire unrealised losses from unconnected companies and subsequently relieve them against profits which arose from unconnected activities. Three new provisions will be introduced to combat such loss buying arrangements. The first extends the application of CAA 2001, Part 2, Chapter 16A, such that relief for allowances in respect of expenditure in new pools (which arise where the tax written down value of the assets exceeds the balance sheet value), or losses attributable to such allowances, is restricted.

The two other rules will amend CTA 2010 to counter tax motivated re-organisations between unconnected parties and to counter arrangements that aim to transfer profits to companies so that the relevant deductions can be used.

Please see HMRC's technical note for more information.

Capital allowances

Legislation will be introduced in Finance Bill 2015 to extend the 100% first year allowance (FYA) for expenditure incurred on cars with low carbon dioxide emissions and electrically propelled cars for an additional three years to 31 March 2018.

Expenditure on railway assets and ships as defined in CAA 2001 is currently excluded from access to 100% FYAs for new energy saving plant and machinery. This exclusion will be removed in respect of qualifying expenditure on railway assets or ships incurred on or after 1 April 2013.

Review of loan relationships and derivative contracts legislation

A consultation will be launched setting out a number of proposals to modernise the corporation tax treatment of corporate debt. It is anticipated that legislation will be included in Finance Bill 2014 and Finance Bill 2015. Details of the consultation are expected to be available in the summer of 2013.

Other minor amendments to draft legislation

Amendments have been made to some of the legislation included in the draft Finance Bill 2013, following a period of consultation which closed on 6 February 2013. The Finance Bill 2013 is due to be published on 28 March 2013 and will contain the changes summarised below.

Controlled foreign companies (CFCs)

In addition to the measures relating to the new CFCs regime contained in the draft Finance Bill 2013, the Government has announced that three further provisions will be included in the Finance Bill 2013.

These are:
- the definition of a group treasury company will be aligned for both the CFC and worldwide debt cap regimes
- a relaxation on the limitation or qualifying resources funded from UK debt
- application of the matched interest rules to left-over profits

A new Tax Information and Impact Note (TIIN) has been issued by HMRC, replacing that issued in December 2012. The new regime applies to CFCs with accounting periods beginning on or after 1 January 2013.

Foreign currency assets and chargeable gains

The provisions set out in the draft Finance Bill 2013 require companies with a non-sterling functional currency to use their functional currency to calculate any chargeable gains and losses on disposals of shares not covered by the substantial shareholdings exemption. At Budget 2013, the Government extended the measure to include disposals of ships and aircraft. These provisions will have effect for relevant disposals on or after the date that Finance Bill 2013 receives Royal Assent.
Please refer to HMRC's TIIN for further details.

Deferral of payment of exit charges

An exit charge arises when a UK company changes its place of effective management and control to another EU territory or European Economic Area (EEA) member state, and is based upon the market value of the company's assets at the time of migration. See the Outbound migration guidance note for further background information.

Legislation contained in the draft Finance Bill 2013, which seeks to minimise the impact on the EU concept of freedom of establishment, has been amended following consultation. In addition to the existing rules requiring payment of the charge within nine months and one day following the end of the accounting period, two additional payment options will now be included in the Finance Bill 2013, rather than the single additional option proposed in the draft Bill. These are as follows:

- staged payments made in six equal annual instalments, the first payment being due within nine months and one day following the end of the accounting period
- computation of the tax due at the time of exit, allocated on an asset by asset basis. The tax will become due as and when assets are realised. An annual statement must be provided to HMRC setting out which assets have been realised. The tax may be deferred for a maximum period of 10 years, or until disposal if sooner.

Full details can be found in the TIIN published by HMRC.

General anti-abuse rule

The Chancellor first announced his intention to introduce a UK GAAR in Budget 2012. Following a period of consultation during 2012, responses to the consultation and draft Finance Bill 2013 clauses were published on 11 December 2012. Please refer to the General anti-abuse rule (GAAR) — draft Finance Bill 2013 version news item for more information.

The GAAR legislation will come into force on the date of Royal Assent to the Finance Act 2013. There is an exception for NICs as it was confirmed in the Budget that separate NICs legislation will be introduced after Royal Assent to Finance Bill 2013 when parliamentary time allows.

Please refer to the TIIN issued by HMRC.

Confirmation of measures announced previously

A number of measures have been announced previously, and the draft legislation introducing these provisions was published for consultation in the draft Finance Bill 2013 . The legislation relating to the following corporate matters remains unchanged now that consultation period has closed, as confirmed in the Overview of Tax Legislation and Rates published by HMRC (page 16):

- corporation tax reliefs for the creative sector. For detailed commentary on the draft legislation (which is still subject to EU State Aid approval), please refer to the following guidance notes:
  - Television tax relief — key provisions
  - Television tax relief — the separate programme trade
  - Video games tax relief — key provisions
  - Video games tax relief — the separate video game trade
  - Creative sector tax reliefs — the cultural test
- the annual investment allowance. See the Plant and machinery allowances — the annual investment allowance guidance note.
- the worldwide debt cap. See the Draft Finance Bill 2013 published — key proposals for companies news item.
- removing the inadvertent restriction on group loss relief. See the Draft Finance Bill 2013 published — key proposals for companies news item.
- avoidance schemes involving loan relationships and derivatives. See the Autumn statement 2012 — corporate tax overview news item.
- income from a UK REIT investing in a UK REIT to be treated as tax exempt. See the Autumn statement 2012 — corporate tax overview news item.