Written evidence submitted by the Chartered Institute of Taxation (FB10)

for Finance Bill Committee considering Finance Bill 2020

Reliefs for business
Clauses 27 to 30

Executive Summary

These clauses introduce changes to some of the existing reliefs available to businesses – research and development expenditure credit, structures and buildings allowances and the tax treatment of intangible fixed assets.

The increase in the rate of the research and development expenditure credit will be welcomed by large companies investing in research and development. We are not aware of any particular rationale for the increase, other than to give more support, and it is hoped, incentive, to such large companies.

Whilst the increase in the rate of relief for the structures and buildings allowances may bring the period over which the relief is given more in line with the time over which financial models for long term investment projects are run, we are of the view that the frequent tinkering with the rules and rates of capital allowances tends to brings complexity and uncertainty which add to compliance costs and militate against effectively incentivising desired categories of expenditure. It is equitable that the increase is being made available to businesses that have incurred expenditure since the relief's introduction in 2018, so that all businesses will be entitled to the higher rate going forward, although of course the expenditure decision in such cases has already been made.

We welcome the proposed change to the tax treatment of intangible fixed assets which will remove an artificial boundary in tax law that does not exist in commerce. Removal of this boundary will simplify the tax code and result in the taxation of more intangible assets being aligned with the accounts.

1 Clause 27: Research and development expenditure credit

1.1 Clause 27 increases the rate of relief provided by the research and development expenditure credit (RDEC). The RDEC (also known as the 'Above the Line' credit) is a standalone credit that is brought into account as a receipt in calculating trading profits. The current general rate is set as 12% of qualifying research and development (R&D) expenditure. This measure increases that rate to 13%.

1.2 R&D tax credits are intended to encourage business investment in R&D by allowing companies to claim an enhanced corporation tax deduction or payable credit on their R&D costs. This increase in the rate of RDEC is intended to help drive innovation in the economy by increasing the incentive to undertake R&D as qualifying companies will receive more support for investing in R&D.

1.3 This measure increases the tax relief available to large companies (and some small and medium sized businesses) that carry out qualifying R&D and claim RDEC. However most small businesses which undertake R&D use the separate SME R&D regime. There has been no increase in the rate of relief for the SME regime.

2 Clause 28: Structures and buildings allowances: rate of relief

2.1 Clause 28 of the Finance Bill increases the rate of the structures and buildings allowances (SBA). This tax relief was introduced into the UK tax code with effect from Budget Day 2018 (29 October 2018) as a new relief within the capital allowances regime. Capital allowances are the mechanism by which businesses are able to get tax relief for capital expenditure. This is done by allowing a proportion of the capital expenditure to be expensed against annual pre-tax income. Capital allowances are given for specified items of capital expenditure, and the expensing is usually spread over a period of years. Capital allowances are a tax approximation of the accounting depreciation which is taken in a set of accounts in respect of capital expenditure to arrive at accounting profits, but which is ignored for tax purposes.

2.2 The government announced at Budget 2018 that it would introduce the SBA, making it available for expenditure on new non-residential structures and buildings from 29 October 2018. The provisions for this relief are now included in Part 2A Capital Allowances Act 2001 (CAA 2001), inserted by Finance Act 2019 and Statutory Instrument 2019 No 1087. The SBA was introduced at a rate of 2% per year – effectively spreading the tax relief for the capital expenditure on qualifying structures and buildings over 50 years. At Budget 2020, the Chancellor announced an increased annual allowance of 3% in respect of SBAs.

2.3 The SBA was intended to improve the UK's international competitiveness and to stimulate business investment. Previously, capital expenditure on structures and buildings that could not be classified as 'plant and machinery' went totally without relief. We accept that these are reasonable objectives and that SBA is aimed at a gap in the UK's competitiveness offering. We also note that the proposed increase in the rate of the SBA will mean that the SBA effectively provides relief for the capital expenditure over a period of just over 30 years. We understand that this is more in line with the time over which financial models for long term investment projects are run than the period of over 50 years that applied before this rate increase. It may, therefore, ensure that the SBA is more helpful for businesses than previously, as they will be able to base their project calculations on the full amount of relief available.

2.4 Any increase in a rate of a relief is generally welcomed by taxpayers. However, as we commented on many previous occasions, regular tinkering with rules and rates of capital allowances brings complexity and uncertainty; and undermines investor understanding of, and confidence in, what is on offer at any one time. Most businesses cite certainty as more important than the precise amount of relief available. When the SBA was introduced in 2018[1], it took an approach of introducing another type of asset classification required only for tax purposes - something previously identified by the Office of Tax Simplification (OTS) as a source of compliance costs in its review of capital allowances.

[1] https://www.tax.org.uk/sites/default/files/FB18-19%20CIOT%20Briefing%20Clauses%2029-34%20%28capital%20allowances%29%20PBC%20FINAL.pdf

2.5 Further, for most property investors, as there is a clawback on disposal of a structure or building, the main benefit of the SBA is one of cash flow. As financial accounts will have to provide for a deferred tax liability we question how much this tax measure will act as a significant incentive to invest or bring a significant impact on the UK's competitive advantage.

2.6 In addition to the higher rate being available for expenditure incurred after 31 March 2020 (for corporation tax), or 5 April 2020 (for income tax), it is intended that taxpayers who have already incurred expenditure before those dates, and have begun claiming the SBA at the original lower rate of 2%, will also be entitled to claim the SBA at the higher rate of the relief going forward. This is proposed in order not to disadvantage those businesses that had already invested and claimed SBA for an earlier period. Therefore, instead of allowing the new 3% rate only for qualifying expenditure incurred on or after the operative dates, the legislation extends it to existing claimants. Further, an additional amount of relief, referable to the increase in rate for the period prior to 2020, will be available to those taxpayers who have already claimed SBAs at the original lower rate. This additional amount will be available in the last chargeable period in which SBAs are claimed, providing that that person has not disposed of the relevant structure or building in the meantime (new section 270GD to CAA 2001). The additional amount of allowance is the difference between the allowance already given at 2% and what it would have been if given at 3%.

2.7 It is equitable that the increase in the rate of the relief has been structured so that everyone becomes entitled to the full benefit of the rate change, although the expenditure in question in the case of existing structures has already been incurred, so can no longer be incentivised. This reflects a confusion of thought that runs throughout the capital allowances system: is it intended to give relief over time for capital expenditure, as this expenditure is a cost that is incurred in earning profits (we suggest that this could be done more simply without multiple categories of expenditure each with their own special rules), or is it, as is sometimes claimed, and forming part of the policy for introducing the SBA, there to incentivise particular types of expenditure which are considered to be desirable?

3 Clause 29: Structures and buildings allowances: miscellaneous amendments

3.1 This clause introduces Schedule 4 of the Finance Bill which makes technical amendments to Part 2A CAA 2001 to ensure that the legislation allows simplified calculations for all qualifying non-residential structures or buildings, prevents double relief where research and development allowances are available, includes oral construction contracts, clarifies apportionment of allowances and allowances on contributions towards another person's costs.

3.2 Broadly these changes can be described as making the SBA work as it was intended to. This is a relatively new relief, having only been introduced in October 2018. The need for these corrections may reflect the fact that this relief was introduced as a 'done deal' for immediate implementation, with no prior consultation. We understand that the Treasury considered this important to avoid businesses planning expenditure immediately after the 2018 Budget from deferring it until a later date of introduction. This was an understandable reason, but creates further doubt on the merits of a system that apparently requires constant fine-tuning.

4 Clause 30: Intangible fixed assets: pre-FA 2002 assets etc

4.1 The measure amends the corporate intangible fixed assets regime (the "IFA regime") to allow companies to claim corporation tax relief for pre-Finance Act 2002 intangible fixed assets acquired from related parties outside of the UK from 1 July 2020.

4.2 Intangible fixed assets include intellectual property such as trademarks, patents and design rights. A pre-FA2002 intangible fixed asset is an intangible fixed asset that was created before 1 April 2002. The IFA regime only applies to companies.

4.3 As a result of this change most corporate intangible assets will now be relieved and taxed under a single regime for acquisitions from 1 July 2020. This is welcome. The current distinction between pre-FA 2002 intangible fixed assets and those arising after the date the IFA regime was first introduced is an artificial boundary in tax law that does not exist in commerce. Removal of this boundary will simplify the tax code, results in the taxation of more intangible assets being aligned with the accounts, and makes the UK a more attractive place to do business.

4.4 Removing the distinction for all pre-FA 2002 intangible fixed assets had previously been considered, however it was concluded that this would be too expensive for the Exchequer and also unattractive for some companies where the pre-FA 2002 assets were already in the UK (for example, taxpayers that have capital losses or non-trading deficits and who would have anticipated using them against any gain on pre-2002 intangible assets). Therefore for taxpayers which already have the IP in the UK and who, having been through the transition to the new rules in 2002, are now quite happily running the two regimes side by side and for whom a compulsory change to the system would be more disruptive than maintaining the status quo, it is welcome that this change only applies to IP being brought into the UK.

5 The Chartered Institute of Taxation

5.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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