Budget 2013

Overview

There were few changes specifically relevant to technology and biotechnology companies announced in the 2013 Budget. Many measures are now announced as intentions for future fiscal years, with details provided just prior to introduction. This note therefore comments on key measures announced today, as well as measures announced previously but only just coming into effect.

Employee Share Incentives

EMI options

The EMI share option scheme change, to allow for a 10% rate of capital gains tax to apply, will be introduced with effect for share disposals on or after 6 April 2013, provided the option was granted at least 12 months prior to sale of the shares. As a result the time of exercise of the option (whether immediately before share sale or not) will be irrelevant to obtaining the 10% rate. In addition, there will be no minimum shareholder percentage requirement.

Employee Shareholders

The concept of an Employee Shareholder will be introduced from 6 April 2013, as an employee who gives up certain of their employment rights (chiefly relating to unfair dismissal and redundancy payments) in exchange for shares in their employer company which are worth between £2,000 and £50,000 at acquisition. The first £2,000 of value can be received without an income tax or NI charge. All of the shares can then be sold in the future without capital gains tax. It will be worth waiting for the Finance Bill 2013 to see what anti-avoidance changes have been made, as there are currently very few restrictions.

For VC backed companies in particular, this would appear to be a viable alternative as a management incentive tool to EIS relief (which provides for zero capital gains tax but is legally complex to achieve) or EMI options (which provide for 10% capital gains tax but require full time employment). As Employee Shareholders, employees could obtain ordinary shares with low value, suffer little or no income tax on acquisition and have no capital gains liability on exit.

Capital Gains Tax

The new Seed Enterprise Investment Scheme currently provides for a capital gains tax deferral where gains are reinvested in SEIS shares. This deferral relief has now been extended into the coming tax year beginning on 6 April 2013, so that half of the reinvested gain is not subject to capital gains tax.

R&D Tax Credits

The SME R&D tax credit scheme is unchanged.

The large company scheme will change from 1 April 2013. This scheme applies to non-SMEs, but also to the expenditure of SMEs where the R&D costs are met by another party e.g. on subcontractor or collaboration arrangements. Under current rules, the large company scheme provides an additional 30% tax deduction on R&D costs. This will change to an 'Above The Line' payable credit, so called because it should be recognised above the tax line in the P&L account. The credit has been set at 10%, but will be net of corporation tax, so will be worth a net amount of 8% in the future. This compares to an effective 25% cash credit under the SME scheme.

Corporation Tax Rates

The large company corporation tax rate will fall from 23% for the financial year from April 2013, to 21% for the financial year from April 2014 and to 20% from April 2015. It will then match the small company corporation tax rate.

As previously announced, the patent box will be introduced, effectively for income arising after 1 April 2013, providing for a 10% rate of corporation tax on patent related profits. HMRC guidance is available, but for many companies specific issues will emerge as forecast calculations are prepared.

Stamp Duty

A consultation will be carried out on the removal of stamp duty on AIM listed shares, with the intention of introduction in Finance Bill 2014.

Anti-Avoidance

A GAAR, or General Anti-Avoidance Rule, will be introduced applying to 'abusive' schemes from the date of Royal Assent of Finance Bill 2013. In addition there is the possibility of a 'name and shame' of high-risk tax scheme promoters.

The new Controlled Foreign Company, or anti-tax haven, rules are already in force for UK parent companies with accounting periods beginning on or after 1 January 2013. A number of specific measures on corporation tax loss buying, the use of partnerships to avoid employment income liabilities and other measures tightening existing anti-avoidance rules have been introduced, effective from 20 March 2013.

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20 March 2013