In stark contrast to the Budgets of recent years, last week’s Budget contained quite a few new developments.

**CORPORATION TAX RATE**

Perhaps the most significant change in terms of headlines were the further reductions in the rate of corporation tax to 21% from 1st April 2014 and 20% from 1st April 2015. This change follows similar reductions in previous years and emphasises the Chancellor’s determination to make the UK an attractive jurisdiction for businesses. Whilst it is possible to discourage multinationals from shifting their profits to other jurisdictions by engaging in protracted transfer pricing disputes, another way to crack that particular nut is to entice the multinationals to leave their profits here by reducing the corporation tax rate. Of course, it does have the incidental effect of reducing the deferred tax assets of those entities with significant carried forward losses.

**ANTI-AVOIDANCE**

In relation to losses, there were a number of provisions in the Budget which were aimed at dampening activity in the loss sale market. Those provisions fall into two broad categories – ones which extend the circumstances in which the change of ownership rules can apply and ones which seek to prevent the sale of companies that are pregnant with anticipated future deductions. An interesting change in the former category is the closing off of the loophole which allowed the change of ownership rules to be avoided by the simple expedient of implementing an onward transfer of the relevant trade within the purchasing group following the change of ownership.

Also within the category of avoidance changes were the announcement of consultations in relation to the use of limited liability partnerships to disguise employment relationships and the artificial allocation of profits and losses within partnerships to secure tax advantages. The former will be of particular interest to those in the fund management industry where limited liability partnerships are customary.

Of course, the main change in the area of avoidance is the introduction of the GAAR, which will apply with effect from Royal Assent to the Finance Act 2013. It will be interesting to see what effect the GAAR will have on taxpayer behaviour. It would be nice to think that the hope expressed by Graham Aaronson QC to the effect that a GAAR would enable the Government to simplify the legislation and remove many of the specific anti-avoidance provisions will be realised but, from the evidence of this Budget, that appears to be unlikely.
On a similar theme, the Government announced that legislation will be included in the Finance Bill 2014 which will provide for HMRC to publish an annual report, from 2015, on the operation of the Banking Code of Practice. This report will include the naming of any bank that HMRC considers not to be complying with the code. There is clearly scope for this legislation to give disproportionate powers to HMRC.

FUND MANAGEMENT

On the positive side, the Budget included a much-needed boost for the fund management industry. First, with effect from the 2014/15 tax year, the SDRT charge on surrenders of units in UK funds will be abolished. Secondly, there will be a consultation on proposals to provide greater certainty that management in the UK of non-UCITS foreign domiciled funds will not give rise to UK tax residency. Thirdly, there is to be consultation on a proposal to allow UK bond funds to make interest distributions to foreign investors without withholding tax. Finally, the existing white list which sets out HMRC’s views on the dividing line between trading and investment transactions is to be updated. The benefit of remaining on the investment side of the line is that it is not necessary for the fund to rely on the investment management exemption in order to avoid UK tax on the relevant transaction.

NON-STERLING CHARGEABLE GAINS

Another positive change was the extension to ships and aircraft, in addition to shares, of the new rules requiring companies with a non-sterling functional currency to calculate their chargeable gains in the relevant non-sterling currency. The requirement to calculate chargeable gains in sterling has for a long time been an irritant for businesses with a non-sterling functional currency and it is sensible for the types of asset which fall within the new regime to be as broad as possible.

EXIT CHARGES

Of course, not all of the positive changes included in the Budget were voluntary. As announced in December 2012, the UK is required to amend its rules in relation to exit charges in view of recent EU case law. The Government has elected to do this by offering taxpayers two options, the first of which provides for staged payments of the exit charge tax in six equal annual instalments starting 9 months and 1 day from the end of the accounting period of exit and the second of which involves a complex allocation of the global exit charge tax between the various assets and the payment of that tax either on realisation of the relevant asset or, in the case of intangibles, derivatives and loan relationships, in equal annual instalments over the useful life of the asset (for up to a maximum of 10 years) or until disposal. The sting in the tail is that, in either case, amounts deferred will carry interest. Although this is permitted under the terms of the relevant case law, it does beg the question of what benefit the taxpayer is deriving from this change. Taxpayers may prefer to pay all of the tax up front and avoid the complexity and ongoing compliance costs of managing the new regime.

It is worth noting in this context that the new regime still does not allow for subsequent reductions in the value of the relevant asset to be taken into account in reducing the exit charge (even if the relevant reduction in value is not tax-effected in the new host jurisdiction) so that the company may ultimately pay tax on a profit that is never realised. However, it is clear from the relevant case law that this is not required in order for the legislation to be EU-compliant.
INVESTMENT TRUSTS

There are also two positive changes for investment trusts.

When the new investment trust regime was introduced in the FA 2011, the first of its new conditions required the business of the company to “consist” of investing its funds in shares, land or other assets with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds. As so worded, any other activity of the relevant company, no matter how small, would prevent it from qualifying as an investment trust. As a result, the legislation is to be amended retrospectively to allow the company to carry on a de minimis amount of other activity without prejudicing its investment trust status.

Another problem with the new investment trust regime relates to the requirement in the regulations that a company cannot retain more than 15% of its income in any accounting period in which it wishes to qualify as an investment trust. This poses particular problems for those investment trusts with accumulated revenue losses because many of them are precluded by their articles from distributing their capital profits by way of dividend. The solution which has been adopted is to allow a company which has accumulated revenue losses in excess of income in an accounting period to remain compliant even if it does not make any distribution in respect of that accounting period.

TAX AND PROCUREMENT

Finally, and also on a positive note, the results of the consultation in relation to tax and procurement were announced. The details of the announcement will doubtless be covered elsewhere in the Tax Journal but it is worth noting that the Government has responded positively to many of the comments made during the consultation period. In particular, the original “look-back period” of ten years has been shortened considerably, the broad definition of “occasions of non-compliance” has been restricted (most notably by removing references to the TAARs from the definition) and the number of related entities to be taken into account in the self-certification process has been limited. However, the Government has rejected the suggestion that the introduction of the new regime should be deferred because of the brevity of the consultation process and the proximity of the consultation to the implementation date.

This article was originally published in the 29 March 2013 edition of Tax Journal.