Draft FB 2015: a welcome new relief but with scope for improvement

Technical

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The Chancellor's autumn statement included a commitment to public funding of flood defence projects. Significantly, he added: '[We] expand tax relief on business investment in those flood defences too.'

The new relief came into effect from 1 January 2015. A draft version of the relevant legislation was published on 10 December 2014. The final version is expected to be included in what will become the first Finance Act of 2015.

The provisions for the new relief will become ITTOIA 2005 ss 86A and 86B for income tax purposes and (with the same numbering) of CTA 2009 for corporation tax purposes. In concept, the provisions are similar to those in s 82 of each Act for contributions to local enterprise organisations or urban regeneration companies. This has the effect of granting full tax relief on any contribution to a qualifying flood or coastal erosion risk management projects made by any trading or property income business. In relation to the s 82 relief, HMRC's BIM47610 states:

'Such donations are allowable deductions in calculating the profits of a trade (subject to the anti-avoidance provision described below). This rule applies even if the donation would ordinarily be disallowed, for example because it was made for benevolent reasons rather than wholly and exclusively for the purposes of the trade.'

Applying the same principle to the new relief (and subject to its anti-avoidance provisions), it means that a contribution to a flood defence project does not have to satisfy a business purpose test to qualify for the relief. It follows that that any contributor with a trading or property income business can claim the relief on their contribution to a qualifying project regardless of the geographical remoteness of their business premises from the land that is likely to be protected by the particular

project. The relief will therefore be equally available to a contributor who farms coastal land that would be protected by a particular project and a self-employed contributor who commutes 20 miles to their workplace from their pleasant coastal home which would be similarly protected.

In its submission to HMRC on the draft legislation, the ATT has questioned why relief should only be available to a taxpayer with a trading or property income business (or, under the corporation tax version of the provisions, an investment business). It has recommended that consideration be given to extending relief to individuals who are not self-employed, for example by some adaptation of the gift aid provisions.

The ATT response to the draft legislation can be viewed at www.tinyurl.com/mg8po6h