



Corporation Tax Act 2009

2009 CHAPTER 4

PART 13

ADDITIONAL RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

CHAPTER 2

RELIEF FOR SMES: COST OF R&D INCURRED BY SME

Introductory

1043 Overview of Chapter

- (1) This Chapter provides for relief for companies which are small or medium-sized enterprises for expenditure on—
 - (a) in-house direct research and development, or
 - (b) contracted out research and development,where the cost of the research and development is incurred by the company.
- (2) The reliefs available are—
 - (a) an additional deduction under section 1044, or
 - (b) a deemed trading loss under section 1045.
- (3) Sections 1046 to 1053 contain provision relevant to the reliefs available under this Chapter, namely—
 - (a) provision preventing a company from making a claim or election for relief if it is not a going concern (see section 1046),
 - (b) information about elections under section 1045 for a deemed trading loss (see section 1047),
 - (c) information about the treatment of a deemed trading loss (see section 1048),
 - (d) a restriction on consortium relief where relief is obtained (see section 1049),

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- ^{F1}(e)and
- (f) provision about when a company's expenditure is “qualifying Chapter 2 expenditure” for those purposes (see sections 1051 to 1053).
- (4) Sections 1054 to 1062 deal with R&D tax credits which can be claimed if a company—
- (a) obtains relief under this Chapter, and
 - (b) makes, or is treated as making, a trading loss.

Textual Amendments

- F1** S. 1043(3)(e) omitted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 3 para. 3(2)**

Reliefs

1044 Additional deduction in calculating profits of trade

- (1) A company is entitled to corporation tax relief for an accounting period if it meets each of conditions A to D.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- ^{F2}(3)
- (4) Condition C is that the company carries on a trade in the period.
- (5) Condition D is that the company has qualifying Chapter 2 expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.
- (6) For the company to obtain the relief it must make a claim.
 See section 1046 (which prevents a company from making a claim if it is not a going concern).
- (7) The relief is an additional deduction in calculating the profits of the trade for the period.
- (8) The amount of the additional deduction is [^{F3}125%] of the qualifying Chapter 2 expenditure.
- (9) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (10) For the meaning of “qualifying Chapter 2 expenditure” see section 1051.

Textual Amendments

- F2** S. 1044(3) omitted (with effect in accordance with Sch. 3 para. 39 of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 3 para. 3(3)**
- F3** Word in s. 1044(8) substituted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 3 para. 2(2)**

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1045 Alternative treatment for pre-trading expenditure: deemed trading loss

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A^{F4}... and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- ^{F5}(3)
- (4) Condition C is that the company has incurred qualifying Chapter 2 expenditure in the period which—
 - (a) is not allowable as a deduction in calculating for corporation tax purposes the profits of a trade carried on by it at the time the expenditure was incurred, but
 - (b) would have been so allowable had it, at that time, been carrying on a trade consisting of the activities in respect of which the expenditure was incurred.
- (5) For the company to obtain the relief it must make an election.

See section 1046 (which prevents a company from making an election if it is not a going concern).
- (6) The relief is that the company is treated as if it had made a trading loss in the period.
- (7) The trading loss is equal to [^{F6}225%] of the qualifying Chapter 2 expenditure.
- (8) If a company makes an election under this section in respect of qualifying Chapter 2 expenditure, section 61 (pre-trading expenses) does not apply to the expenditure.
- (9) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (10) For the meaning of “qualifying Chapter 2 expenditure” see section 1051.
- (11) See also section 1137, which makes provision about the accounting periods of a company which is not within the charge to corporation tax.

Textual Amendments

- F4** Word in s. 1045(1) omitted (with effect in accordance with Sch. 3 para. 39 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 3\(4\)\(a\)](#)
- F5** S. 1045(3) omitted (with effect in accordance with Sch. 3 para. 39 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 3\(4\)\(b\)](#)
- F6** Word in s. 1045(7) substituted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 2\(3\)](#)

Reliefs: further provision

1046 Relief only available where company is going concern

- (1) A company may only make—
 - (a) a claim under section 1044, or
 - (b) an election under section 1045, at a time when it is a going concern.
- (2) For the purposes of this section a company is a going concern if—

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- (a) its latest published accounts were prepared on a going concern basis, and
- (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive relief or R&D tax credits under this Chapter ^{F7}....

[^{F8}This is subject to subsection (2A).]

[^{F9}(2A) A company is not a going concern at any time if it is in administration or liquidation at that time.

(2B) For the purposes of this section a company is in administration if—

- (a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
- (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(2C) For the purposes of this section a company is in liquidation if—

- (a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or
- (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.]

(3) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

Textual Amendments

- F7** Words in s. 1046(2)(b) omitted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 18](#)
- F8** Words in s. 1046(2) inserted (with effect in accordance with Sch. 3 para. 40 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 10\(2\)](#)
- F9** S. 1046(2A)-(2C) inserted (with effect in accordance with Sch. 3 para. 40 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 10\(3\)](#)

1047 Elections under section 1045

- (1) An election under section 1045 must specify the accounting period in respect of which it is made.
- (2) The election must be made by notice in writing to an officer of Revenue and Customs.
- (3) The notice must be given before the end of the period of two years beginning immediately after the end of the accounting period to which the election relates.

1048 Treatment of deemed trading loss under section 1045

- (1) This section applies if under section 1045 a company is treated as making a trading loss in an accounting period.
- (2) The trading loss may not be [^{F10}deducted from] profits of a preceding accounting period under [^{F11}section 37(3)(b) or 42 of CTA 2010] unless the company is entitled to relief under section 1045 for the earlier period.
- (3) Subsection (4) applies if—

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- (a) the company begins, in the accounting period or a later period, to carry on a trade, and
 - (b) the trade is derived from the research and development in relation to which the relief mentioned in subsection (1) was obtained.
- (4) In that case, so far as—
- (a) the company has not obtained relief in respect of the trading loss under any other provision, and
 - (b) the loss has not been surrendered under [^{F12}Part 5 of CTA 2010 (group relief)], the trading loss is to be treated as if it were a loss of that trade brought forward under [^{F13}section 45 of CTA 2010] (relief of trading losses against future trading profits).
- (5) Subsection (4) is subject to section 1062 (restriction on losses carried forward where tax credit claimed).

Textual Amendments

- F10** Words in s. 1048(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 667\(2\)\(a\)](#) (with [Sch. 2](#))
- F11** Words in s. 1048(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 667\(2\)\(b\)](#) (with [Sch. 2](#))
- F12** Words in s. 1048(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 667\(3\)\(a\)](#) (with [Sch. 2](#))
- F13** Words in s. 1048(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 667\(3\)\(b\)](#) (with [Sch. 2](#))

1049 Restriction on consortium relief

- (1) This section applies if—
- (a) a company claims relief under section 1044 or elects to obtain relief under section 1045 in respect of an accounting period,
 - (b) at any time during the period the company is owned by a consortium, and
 - (c) at least one of the members of the consortium is a large company.
- (2) The amount of the relief obtained in respect of the accounting period may not be surrendered by the company to another company, for the purposes of a consortium group relief claim, unless the other company is a small or medium-sized enterprise.
- (3) A “consortium group relief claim” means a claim to group relief [^{F14}based on consortium condition 1, 2 or 3 in sections 132 and 133 of CTA 2010] (group relief available between members of consortia).

Textual Amendments

- F14** Words in s. 1049(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 668](#) (with [Sch. 2](#))

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Threshold

F15 1050 R&D threshold

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Textual Amendments

F15 S. 1050 omitted (with effect in accordance with Sch. 3 para. 39 of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 3 para. 3(5)**

Qualifying expenditure

1051 Qualifying Chapter 2 expenditure

For the purposes of this Part a company's “qualifying Chapter 2 expenditure” means—

- (a) its qualifying expenditure on in-house direct research and development (see section 1052), and
- (b) its qualifying expenditure on contracted out research and development (see section 1053).

1052 Qualifying expenditure on in-house direct R&D

(1) A company's “qualifying expenditure on in-house direct research and development” means expenditure incurred by it in relation to which each of [F16 conditions A, B, D and E] is met.

(2) Condition A is that the expenditure is—

- (a) incurred on staffing costs (see section 1123),
- (b) incurred on software or consumable items (see section 1125),
- (c) qualifying expenditure on externally provided workers (see section 1127), or
- (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

(3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.

^{F17}(4)

(5) Condition D is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.

(6) Condition E is that the expenditure is not subsidised (see section 1138).

(7) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (2)(a), (b) or (c) is attributable to relevant research and development.

Textual Amendments

F16 Words in s. 1052(1) substituted (with effect in accordance with s. 13(8) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **s. 13(2)(a)**

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F17 S. 1052(4) omitted (with effect in accordance with s. 13(8) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), s. 13\(2\)\(b\)](#)

1053 Qualifying expenditure on contracted out R&D

- (1) A company's “qualifying expenditure on contracted out research and development” means expenditure—
 - (a) which is incurred by it in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136), and
 - (b) in relation to which each of [^{F18}conditions A, C and D] is met.

- (2) Condition A is that the expenditure is attributable to relevant research and development undertaken on behalf of the company.

^{F19}(3)

- (4) Condition C is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (5) Condition D is that the expenditure is not subsidised (see section 1138).
- (6) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

Textual Amendments

F18 Words in s. 1053(1)(b) substituted (with effect in accordance with s. 13(8) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 13\(3\)\(a\)](#)

F19 S. 1053(3) omitted (with effect in accordance with s. 13(8) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), s. 13\(3\)\(b\)](#)

Tax credit: entitlement and payment

1054 Entitlement to and payment of tax credit

- (1) A company is entitled to an R&D tax credit for an accounting period if it has a Chapter 2 surrenderable loss in the period (see section 1055).
- (2) For the company to obtain an R&D tax credit in respect of all or part of the Chapter 2 surrenderable loss it must make a claim.

See section 1057 (which prevents a company from making a claim if it is not a going concern).
- (3) The amount of an R&D tax credit to which the company is entitled is determined in accordance with section 1058.
- (4) If a company makes a claim for an R&D tax credit to which it is entitled for an accounting period, an officer of Revenue and Customs must pay to the company the amount of the credit.

This is subject to section 1060.

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- (5) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (6) See also section 1062, which restricts the carry forward of losses where a company claims an R&D tax credit.

1055 Meaning of “Chapter 2 surrenderable loss”

- (1) For the purposes of this Chapter a company has a “Chapter 2 surrenderable loss” if in an accounting period—
 - (a) it obtains an additional deduction under section 1044 in calculating the profits of a trade and it makes a trading loss in that period in the trade, or
 - (b) it is treated as making a trading loss under section 1045.
- (2) If relief is obtained under section 1044 the amount of the Chapter 2 surrenderable loss is—
 - (a) so much of the trading loss as is unrelieved, or
 - (b) if less, [^{F20}225%] of the qualifying Chapter 2 expenditure in respect of which the relief was obtained.
- (3) If relief is obtained under section 1045 the amount of the Chapter 2 surrenderable loss is so much of the trading loss as is unrelieved.

Textual Amendments

F20 Word in s. 1055(2)(b) substituted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 2\(4\)](#)

1056 Amount of trading loss which is “unrelieved”

- (1) This section applies for the purposes of section 1055.
- (2) The amount of a trading loss that is “unrelieved” is the amount of the loss reduced by—
 - (a) any relief that was or could have been obtained by the company making a claim under [^{F21}section 37(3)(a) of CTA 2010 to deduct the loss from total] profits of the same accounting period,
 - (b) any other relief obtained by the company in respect of the loss, including relief under [^{F22}section 37(3)(b) or 42 of CTA 2010 (losses deducted from] profits of an earlier accounting period), and
 - (c) any loss surrendered under [^{F23}Part 5 of CTA 2010] (surrender of relief to group or consortium members).
- (3) No account is to be taken for this purpose of any losses—
 - (a) brought forward from an earlier accounting period under [^{F24}section 45 of CTA 2010], or
 - (b) carried back from a later accounting period under [^{F25}section 37(3)(b) or 42] of that Act.

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Textual Amendments

- F21** Words in s. 1056(2)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 669\(2\)\(a\)](#) (with [Sch. 2](#))
- F22** Words in s. 1056(2)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 669\(2\)\(b\)](#) (with [Sch. 2](#))
- F23** Words in s. 1056(2)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 669\(2\)\(c\)](#) (with [Sch. 2](#))
- F24** Words in s. 1056(3)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 669\(3\)\(a\)](#) (with [Sch. 2](#))
- F25** Words in s. 1056(3)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 669\(3\)\(b\)](#) (with [Sch. 2](#))

1057 Tax credit only available where company is going concern

- (1) A company may only make a claim under section 1054 at a time when it is a going concern.
- (2) If a company ceases to be a going concern after making a claim under section 1054, it is treated as if it had not made the claim (and accordingly there is treated as having been no payment of R&D tax credit to carry interest under section 826 of ICTA).
- (3) Subsection (2) does not apply so far as the claim relates to an amount that was paid or applied before the company ceased to be a going concern.
- (4) For the purposes of this section a company is a going concern if—
 - (a) its latest published accounts were prepared on a going concern basis, and
 - (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive relief or R&D tax credits under this Chapter ^{F26}....

[^{F27}This is subject to subsection (4A).]

[^{F28}(4A) A company is not a going concern at any time if it is in administration or liquidation at that time.

- (4B) For the purposes of this section a company is in administration if—
 - (a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.
- (4C) For the purposes of this section a company is in liquidation if—
 - (a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or
 - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.]
 - (5) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

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Textual Amendments

- F26** Words in s. 1057(4)(b) omitted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 19](#)
- F27** Words in s. 1057(4) inserted (with effect in accordance with Sch. 3 para. 40 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 11\(2\)](#)
- F28** S. 1057(4A)-(4C) inserted (with effect in accordance with Sch. 3 para. 40 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 11\(3\)](#)

Amount of tax credit

1058 Amount of tax credit

- (1) The amount of the R&D tax credit to which a company is entitled for an accounting period is—
 - (a) [^{F29}11%] of the amount of the Chapter 2 surrenderable loss for the period, ^{F30}...
 - ^{F30}(b)
- (2) The Treasury may by order replace the percentage for the time being specified in subsection (1)(a) with a different percentage.
- (3) An order under subsection (2) may contain incidental, supplemental, consequential and transitional provision and savings.

Textual Amendments

- F29** Word in s. 1058(1)(a) substituted (with effect in accordance with Sch. 3 para. 38 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 2\(5\)](#)
- F30** S. 1058(1)(b) and the word immediately preceding it omitted (with effect in accordance with Sch. 3 para. 39 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 15\(2\)](#)

^{F31}1059 Total amount of company's PAYE and NIC liabilities

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Textual Amendments

- F31** S. 1059 omitted (with effect in accordance with Sch. 3 para. 39 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 3 para. 15\(3\)](#)

Supplementary

1060 Payment of tax credit

- (1) This section applies if an R&D tax credit for an accounting period is payable to a company under this Chapter.
- (2) The amount payable in respect of—
 - (a) the R&D tax credit, or

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- (b) interest on the credit payable under section 826 of ICTA, may be applied in discharging any liability of the company to pay corporation tax.
- (3) So far as the amount is so applied, the duty of the officer of Revenue and Customs to pay the credit under section 1054(4) is discharged.
- (4) Subsection (5) applies if the company's tax return for the accounting period is enquired into by an officer of Revenue and Customs.
- (5) In that case—
 - (a) no payment in respect of the R&D tax credit for the period need be made before the officer's enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998), but
 - (b) the officer may make a payment on a provisional basis of such amount as the officer thinks fit.
- (6) No payment need be made in respect of the R&D tax credit if the company has outstanding PAYE and NIC liabilities for the period.
- (7) A company has outstanding PAYE and NIC liabilities for an accounting period if it has not paid to an officer of Revenue and Customs any amount that it is required to pay—
 - (a) under PAYE regulations, or
 - (b) in respect of Class 1 national insurance contributions, for payment periods ending in the accounting period.

1061 Tax credit payment not income of company

A payment in respect of an R&D tax credit under this Chapter is not income of the company for any tax purposes.

1062 Restriction on losses carried forward where tax credit claimed

- (1) This section applies if a company claims an R&D tax credit to which it is entitled for an accounting period.
- (2) For the purposes of [^{F32}section 45 of CTA 2010] (relief of trading losses against future trading profits) the company's trading loss for the period is treated as reduced by the amount of the surrendered loss for the period.
- (3) The “amount of the surrendered loss” for the period means the amount of the Chapter 2 surrenderable loss in respect of which the company claims an R&D tax credit for the period.

Textual Amendments

F32 Words in s. 1062(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 670** (with Sch. 2)

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