



Corporation Tax Act 2009

2009 CHAPTER 4

PART 13

ADDITIONAL RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

CHAPTER 1

INTRODUCTION

Introductory

1039 Overview of Part

- (1) This Part provides for corporation tax relief for expenditure on research and development.
- (2) Relief under this Part is in addition to any deduction given under section 87 for the expenditure.
- (3) Relief under Chapters 2 to 4 is available to a company which is a small or medium-sized enterprise, in particular—
 - (a) Chapter 2 provides for relief where the cost of in-house direct research and development or contracted out research and development is incurred by the company,
 - (b) Chapter 3 provides for relief where research and development is contracted out to the company, and
 - (c) Chapter 4 provides for relief for research and development expenditure which is subsidised or in respect of which the company is prevented from obtaining relief under Chapter 2 by the cap on aid imposed by section 1113.
- (4) Relief under Chapter 5 is available to large companies (and insurance companies treated as large companies).

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- (5) Chapter 6 contains further provision in relation to relief under Chapters 2 to 5, in particular—
 - (a) section 1081 provides for certain insurance companies to be treated as large companies,
 - (b) section 1082 contains provision about expenditure of group companies,
 - (c) section 1083 contains provision in relation to refunds of certain expenditure on which relief has been obtained (treating part of those refunds as income chargeable to tax), and
 - (d) section 1084 contains an anti-avoidance provision dealing with artificially inflated claims for relief or R&D tax credits (as to which, see subsection (7) below).
- (6) Relief under Chapter 7 is available to companies (whether they are small or medium-sized enterprises or large companies) where expenditure is incurred on vaccine or medicine research.
- (7) Chapters 2 and 7 also provide for the payment of tax credits (“R&D tax credits”) where a company which is a small or medium-sized enterprise—
 - (a) obtains relief under Chapter 2 or 7, and
 - (b) makes, or is treated as making, a trading loss.
- (8) Chapter 8 contains provision limiting the amount of relief available under Chapter 2 or 7 in relation to expenditure on a particular research and development project.
- (9) Chapter 9 contains supplementary provision, including definitions.
- (10) For information about the procedure for making claims under this Part see Schedule 18 to FA 1998, in particular Part 9A of that Schedule (claims for R&D tax reliefs).

1040 Relief may be available under more than one Chapter of Part

Expenditure may be eligible for relief under more than one Chapter of this Part.

Interpretation

1041 “Research and development”

In this Part “research and development” has the meaning given by section 837A of ICTA.

1042 “Relevant research and development”

- (1) In this Part “relevant research and development”, in relation to a company, means research and development—
 - (a) related to a trade carried on by the company, or
 - (b) from which it is intended that a trade to be carried on by the company will be derived.
- (2) Research and development related to a trade carried on by a company includes—
 - (a) research and development which may lead to or facilitate an extension of the trade, and

- (b) research and development of a medical nature which has a special relation to the welfare of workers employed in the trade.
- (3) But any reference to “relevant research and development” which applies for the purposes of Chapter 7 (relief for SMEs and large companies: vaccine research etc) is to be read as if subsection (2)(b) were omitted.

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),
 - (e) provision about when a company meets the R&D threshold for the purposes of obtaining relief (see section 1050), 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.

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.

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- (3) Condition B is that the company meets the R&D threshold in the period (see section 1050).
- (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 75% 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.

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, B and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1050).
- (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 175% 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.

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—
- (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 or Chapter 7.
- (3) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

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 set off against profits of a preceding accounting period under section 393A(1)(b) or 393B(3) of ICTA unless the company is entitled to relief under section 1045 for the earlier period.
- (3) Subsection (4) applies if—
- (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 section 403(1) of ICTA (surrender of relief to group or consortium members),

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the trading loss is to be treated as if it were a loss of that trade brought forward under section 393 of ICTA (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).

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 under section 402(3) of ICTA (group relief available between members of consortia).

Threshold

1050 R&D threshold

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its total qualifying R&D expenditure for the period is at least—
- (a) £10,000, if the accounting period is a period of 12 months, or
 - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.

- (2) The amount referred to in subsection (1)(b) is—

$$\frac{X}{365} \times £10,000$$

where X is the number of days in the accounting period.

- (3) A company’s “total qualifying R&D expenditure” for an accounting period is the sum of—
- (a) its qualifying Chapter 2 expenditure (see section 1051),
 - (b) its qualifying Chapter 3 expenditure (see section 1065), and
 - (c) its qualifying Chapter 4 expenditure (see section 1070),
- that is deductible in the period.
- (4) Subsections (5) to (7) apply for the purpose of determining whether expenditure is deductible in an accounting period.
- (5) A company’s qualifying Chapter 2 expenditure is deductible in an accounting period if—
- (a) it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company, or

- (b) it would have been allowable as such a deduction had the company, at the time the expenditure was incurred, been carrying on a trade consisting of the activities in respect of which it was incurred.
- (6) For the purposes of subsection (5)(a), section 61 (pre-trading expenses treated as incurred when trading begins) is to be ignored.
- (7) Each of the following—
 - (a) a company's qualifying Chapter 3 expenditure, and
 - (b) a company's qualifying Chapter 4 expenditure,is deductible in an accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (8) Expenditure allowable as a deduction for the purposes of subsection (7) includes expenditure so allowable because of section 61 (pre-trading expenses).

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 conditions A to 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.
- (4) Condition C is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (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.

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 conditions A to D is met.
- (2) Condition A is that the expenditure is attributable to relevant research and development undertaken on behalf of the company.
- (3) Condition B is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (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.

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.
- (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, 175% 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.

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 section 393A(1)(a) of ICTA to set the loss against profits of the same accounting period,
 - (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) or 393B(3) of that Act (losses set against profits of an earlier accounting period), and
 - (c) any loss surrendered under section 403(1) of that Act (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 section 393(1) of ICTA, or
 - (b) carried back from a later accounting period under section 393A(1)(b) or 393B(3) of that Act.

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 or Chapter 7.
- (5) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

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) 14% of the amount of the Chapter 2 surrenderable loss for the period, or
 - (b) if less, the total amount of the company's PAYE and NIC liabilities for payment periods ending in the accounting period.
- (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.

1059 Total amount of company's PAYE and NIC liabilities

- (1) The total amount of the company's PAYE and NIC liabilities for a payment period is the sum of—
 - (a) amount A, and
 - (b) amount B.
- (2) Amount A is the amount of income tax for which the company is required to account to an officer of Revenue and Customs for the payment period under PAYE regulations.
- (3) In calculating amount A disregard any deduction the company is authorised to make in respect of child tax credit or working tax credit.
- (4) Amount B is the amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the payment period.
- (5) In calculating amount B disregard any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, child tax credit or working tax credit.

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
 - (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 section 393 of ICTA (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.

CHAPTER 3

RELIEF FOR SMES: R&D SUB-CONTRACTED TO SME

Relief

1063 Additional deduction in calculating profits of trade

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1064).

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- (4) Condition C is that the company has qualifying Chapter 3 expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is an additional deduction in calculating the profits of the trade for the period.
- (7) The amount of the additional deduction is 30% of the qualifying Chapter 3 expenditure.
- (8) For the meaning of “qualifying Chapter 3 expenditure” see section 1065.
- (9) See also—
 - (a) section 1082 for provision about research and development expenditure of group companies, and
 - (b) section 1083 for provision about refunds of qualifying Chapter 3 expenditure.

Threshold

1064 R&D threshold

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its total qualifying R&D expenditure for the period is at least—
 - (a) £10,000, if the accounting period is a period of 12 months, or
 - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.
- (2) The amount referred to in subsection (1)(b) is—

$$\frac{X}{365} \times £10,000$$

where X is the number of days in the accounting period.

- (3) A company’s “total qualifying R&D expenditure” for an accounting period is the sum of—
 - (a) its qualifying Chapter 2 expenditure (see section 1051),
 - (b) its qualifying Chapter 3 expenditure (see section 1065), and
 - (c) its qualifying Chapter 4 expenditure (see section 1070),
 that is deductible in the period.
- (4) A company’s expenditure is deductible in an accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (5) Expenditure allowable as a deduction for the purposes of subsection (4) includes expenditure so allowable because of section 61 (pre-trading expenses).

Qualifying expenditure

1065 Qualifying Chapter 3 expenditure

- (1) For the purposes of this Part a company's "qualifying Chapter 3 expenditure" means expenditure incurred by it that meets conditions A and B.
- (2) Condition A is that the expenditure is incurred on research and development contracted out to the company by—
 - (a) a large company, or
 - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (3) A "chargeable trade" is—
 - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
 - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of this Act.
- (4) Condition B is that the expenditure is expenditure to which section 1066 or 1067 applies.

1066 Expenditure on sub-contracted R&D undertaken in-house

- (1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.
- (2) Condition A is that the research and development is undertaken by the company itself.
- (3) Condition B 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).
- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

1067 Expenditure on sub-contracted R&D not undertaken in-house

- (1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.
- (2) Condition A is that the expenditure is incurred in making payments to—
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual,in respect of research and development contracted out by the company to the body, individual or firm.

- (3) Condition B is that the research and development is undertaken by the body, individual or firm itself.
- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

CHAPTER 4

RELIEF FOR SMEs: SUBSIDISED AND CAPPED EXPENDITURE ON R&D

Relief

1068 Additional deduction in calculating profits of trade

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1069).
- (4) Condition C is that the company has expenditure within subsection (5) which is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (5) The expenditure within this subsection is—
 - (a) qualifying Chapter 4 expenditure (see section 1070), and
 - (b) capped R&D expenditure (see section 1073).
- (6) For the company to obtain the relief it must make a claim.
- (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 30% of the expenditure mentioned in subsection (4).
- (9) See section 1083 for provision about refunds of qualifying Chapter 4 expenditure and capped R&D expenditure.

Threshold

1069 R&D threshold

If a company meets the R&D threshold in an accounting period for the purposes of Chapter 3 (see section 1064) it also meets the R&D threshold in the period for the purposes of this Chapter.

Qualifying expenditure

1070 Qualifying Chapter 4 expenditure

For the purposes of this Part a company's "qualifying Chapter 4 expenditure" means—

- (a) its subsidised qualifying expenditure on in-house direct research and development (see section 1071), and
- (b) its subsidised qualifying expenditure on contracted out research and development (see section 1072).

1071 Subsidised qualifying expenditure on in-house direct R&D

- (1) A company's "subsidised qualifying expenditure on in-house direct research and development" means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is subsidised (see section 1138).
- (3) Condition B 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).
- (4) Condition C is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (5) Condition D is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (6) Condition E is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (7) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

1072 Subsidised qualifying expenditure on contracted out R&D

- (1) A company's "subsidised 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 conditions A to F is met.
- (2) Condition A is that the expenditure is subsidised (see section 1138).
- (3) Condition B is that the sub-contractor is—
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual.

Status: This is the original version (as it was originally enacted).

- (4) Condition C is that the body, individual or firm concerned undertakes the contracted out research and development itself.
- (5) Condition D is that the expenditure is attributable to relevant research and development in relation to the company.
- (6) Condition E is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (7) Condition F is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (8) Sections 1124, 1126 and 1132 contain provision about when particular kinds of expenditure are attributable to relevant research and development.

1073 Capped R&D expenditure

For the purposes of this Part a company's "capped R&D expenditure" is any expenditure—

- (a) in respect of which the company is not entitled to relief under Chapter 2 merely because of section 1113 (cap on R&D aid),
- (b) which is not qualifying Chapter 3 expenditure, and
- (c) which would have been qualifying Chapter 5 expenditure had the company been a large company throughout the accounting period in question.

CHAPTER 5

RELIEF FOR LARGE COMPANIES

Relief

1074 Additional deduction in calculating profits of trade

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a large company throughout the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1075).
- (4) Condition C is that the company carries on a trade in the period.
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is an additional deduction in calculating the profits of the trade for the period.
- (7) The amount of the additional deduction is 30% of the qualifying Chapter 5 expenditure which—
 - (a) is incurred by the company, and
 - (b) is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.

- (8) For the meaning of “qualifying Chapter 5 expenditure” see section 1076.
- (9) See also—
- (a) section 1080 for special provision about insurance companies,
 - (b) section 1082 for provision about research and development expenditure of group companies, and
 - (c) section 1083 for provision about refunds of qualifying Chapter 5 expenditure.

Threshold

1075 R&D threshold

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its qualifying Chapter 5 expenditure for the period is at least—
- (a) £10,000, if the accounting period is a period of 12 months, or
 - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.
- (2) The amount referred to in subsection (1)(b) is—

$$\frac{X}{365} \times £10,000$$

where X is the number of days in the accounting period.

- (3) A company’s qualifying Chapter 5 expenditure is “for” the accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (4) Expenditure allowable as a deduction for the purposes of subsection (3) includes expenditure so allowable because of section 61 (pre-trading expenses).
- (5) For the meaning of “qualifying Chapter 5 expenditure” see section 1076.

Qualifying expenditure

1076 Qualifying Chapter 5 expenditure

For the purposes of this Part a company’s “qualifying Chapter 5 expenditure” means—

- (a) its qualifying expenditure on in-house direct research and development (see section 1077),
- (b) its qualifying expenditure on contracted out research and development (see section 1078), and
- (c) its qualifying expenditure on contributions to independent research and development (see section 1079).

1077 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 conditions A, B and C are met.
- (2) Condition A is that the expenditure is—

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- (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.
- (4) Condition C is that, if the expenditure is incurred in carrying on activities contracted out to the company, the activities are contracted out by—
 - (a) a large company, or
 - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (5) A “chargeable trade” is—
 - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
 - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of this Act.
- (6) 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.

1078 Qualifying expenditure on contracted out R&D

- (1) A company’s “qualifying expenditure on contracted out research and development” means expenditure incurred by it in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is incurred in making payments to—
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual,
 in respect of research and development contracted out by the company to the body, individual or firm concerned (“the contracted out R&D”).
- (3) Condition B is that the body, individual or firm concerned undertakes the contracted out R&D itself.
- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) Condition D is that, if the contracted out R&D is itself contracted out to the company, it is contracted out by—
 - (a) a large company, or
 - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (6) A “chargeable trade” is—
 - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
 - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of this Act.

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- (7) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

1079 Qualifying expenditure on contributions to independent R&D

- (1) A company's "qualifying expenditure on contributions to independent research and development" means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual,
- for the purpose of funding research and development carried on by the body, individual or firm concerned ("the funded R&D").
- (3) Condition B is that the funded R&D is relevant research and development in relation to the company.
- (4) Condition C is that the funded R&D is not contracted out to the qualifying body, individual or firm concerned by another person.
- (5) Condition D is that, if the payment is made to an individual, the company is not connected with the individual when the payment is made.
- (6) Condition E is that, if the payment is made to a firm (other than a qualifying body), the company is not connected with any member of the firm when the payment is made.

Insurance companies

1080 Entitlement to relief: I minus E basis

- (1) This section applies if, for an accounting period, an insurance company is charged to tax under the I minus E basis in respect of its life assurance business.
- (2) Any additional deduction to which the company would otherwise be entitled under section 1074 is to be treated as expenses payable falling to be brought into account at Step 3 of section 76(7) of ICTA (insurance companies: amount of expenses deduction).
- (3) Section 1074 does not apply to allow any deduction in any calculation of the profits of the company's life assurance business made in accordance with the provisions applicable for the purposes of section 35 (charge on trade profits).
- But this is subject to subsection (4).
- (4) Section 1074 has effect in relation to any gross roll-up business of the company as if the references to the trade carried on by the company were references to the gross roll-up business (and subsection (2) does not apply in relation to that business).

CHAPTER 6

CHAPTERS 2 TO 5: FURTHER PROVISION

1081 Insurance companies treated as large companies

- (1) This section applies if an insurance company—
 - (a) carries on life assurance business in an accounting period, and
 - (b) is a small or medium-sized enterprise in the period.
- (2) For the purposes of Chapters 2 to 5 the company is to be treated as if it were not such an enterprise in the period.
- (3) Accordingly the company is to be treated as a large company for the purposes of Chapter 5.

1082 R&D expenditure of group companies

- (1) This section applies if—
 - (a) a company (“A”) incurs expenditure on making a payment to another company (“B”) in respect of activities contracted out by A to B,
 - (b) the activities would, if carried out by A, be research and development of A (taken together with A’s other activities), and
 - (c) A and B are members of the same group at the time the payment is made.
- (2) If the activities are undertaken by B itself, they are to be treated for the purposes of Chapters 3 and 5 (so far as it would not otherwise be the case) as research and development undertaken by B itself.
- (3) If B makes a payment to a third party (“C”), any of the activities—
 - (a) contracted out by B to C, and
 - (b) undertaken by C itself,
 are to be treated for the purposes of Chapters 3 and 5 (so far as it would not otherwise be the case) as research and development contracted out by B to C.
- (4) For the purposes of this section A and B are members of the same group if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief).

1083 Refunds of expenditure treated as income chargeable to tax

- (1) This section applies if a company receives a payment (“the refund”) refunding the whole or any part of expenditure—
 - (a) to which subsection (2) applies, and
 - (b) in respect of which the company obtains relief under Chapter 3, 4 or 5.
- (2) This subsection applies to—
 - (a) qualifying Chapter 3 expenditure to which section 1067 applies (expenditure on sub-contracted R&D not undertaken in-house),
 - (b) qualifying Chapter 4 expenditure (subsidised expenditure on R&D),
 - (c) capped R&D expenditure, and
 - (d) qualifying Chapter 5 expenditure which is—

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- (i) qualifying expenditure on contracted out research and development under section 1078, or
 - (ii) qualifying expenditure on contributions to independent research and development under section 1079.
- (3) 30% of the refund is to be treated as income of the company chargeable to tax under Chapter 2 of Part 3 for the accounting period in which the refund is made.
- (4) But subsection (3) does not apply if, because of section 1080(4) (gross roll-up business), the relief obtained in respect of the expenditure concerned is an additional deduction in calculating for corporation tax purposes the profits of gross roll-up business of the company.
- (5) In that case 30% of the refund is to be treated as income which is—
 - (a) referable to the gross roll-up business, and
 - (b) chargeable, for the accounting period in which the refund is made, under the charge to corporation tax on income.

1084 Artificially inflated claims for relief or tax credit

- (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purposes mentioned in subsection (2).
- (2) Those purposes are—
 - (a) determining for an accounting period relief to which a company is entitled under Chapters 2 to 5, and
 - (b) determining for an accounting period R&D tax credits to which a company is entitled under Chapter 2.
- (3) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain—
 - (a) relief under Chapters 2 to 5 to which it would not otherwise be entitled,
 - (b) relief under Chapters 2 to 5 of a greater amount than that to which it would otherwise be entitled,
 - (c) an R&D tax credit under Chapter 2 to which it would not otherwise be entitled, or
 - (d) an R&D tax credit under Chapter 2 of a greater amount than that to which it would otherwise be entitled.
- (4) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

CHAPTER 7

RELIEF FOR SMES AND LARGE COMPANIES: VACCINE RESEARCH ETC

Introductory

1085 Overview of Chapter

- (1) This Chapter provides for relief for expenditure incurred by companies (whether they are small or medium-sized enterprises or large companies) on research and development relating to vaccine or medicine research.
- (2) Section 1086 defines “qualifying R&D activity” (that is, the research and development in relation to which relief under this Chapter is available).
- (3) The reliefs available are—
 - (a) a deduction under section 1087 (the amount of which is determined under section 1089 or 1091), or
 - (b) if the company is a small or medium-sized enterprise, a deemed trading loss under section 1092.
- (4) Section 1094 prevents a company which is a small or medium-sized enterprise from making a claim or election for relief if it is not a going concern.
- (5) Sections 1095 to 1102 contain provision relevant to the reliefs available under this Chapter, namely—
 - (a) information about elections under section 1092 of a deemed trading loss (see section 1095),
 - (b) information about the treatment of a deemed trading loss (see section 1096),
 - (c) provision about when a company meets the R&D threshold for the purposes of obtaining relief (see section 1097),
 - (d) provision about when a company’s expenditure is “qualifying Chapter 7 expenditure” for those purposes and when such expenditure is “for” an accounting period (see sections 1098 to 1102).
- (6) Sections 1103 to 1111 deal with R&D tax credits which can be claimed if a company—
 - (a) is a small or medium-sized enterprise,
 - (b) obtains relief under this Chapter, and
 - (c) makes, or is treated as making, a trading loss.
- (7) Section 1112 contains an anti-avoidance provision dealing with artificially inflated claims for relief or R&D tax credits under this Chapter.
- (8) See also section 1137 for provision about the accounting periods of a company which is not within the charge to corporation tax.

1086 Meaning of “qualifying R&D activity”

- (1) For the purposes of this Chapter “qualifying R&D activity” means research and development relating to—
 - (a) vaccines or medicines for the prevention or treatment of tuberculosis,
 - (b) vaccines or medicines for the prevention or treatment of malaria,

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- (c) vaccines for the prevention of infection by human immunodeficiency virus, or
 - (d) vaccines or medicines for the prevention of the onset, or for the treatment, of acquired immune deficiency syndrome resulting from infection by human immunodeficiency virus in prescribed clades only.
- (2) For the purposes of subsection (1) “prescribed clade” means clade A, C, D or E or such other clade or clades as the Treasury may by regulations prescribe.
- (3) The Treasury may make provision by regulations further defining the purposes referred to in subsection (1).
- (4) In subsection (1) references to vaccines or medicines are to vaccines or medicines for use in humans.

Reliefs

1087 Deduction in calculating profits of trade

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company has incurred expenditure which is qualifying Chapter 7 expenditure for the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1097).
- (4) Condition C is that the company is carrying on a trade in the period.
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is a deduction in calculating the profits of the trade for the period.
- (7) For the amount of the deduction see—
- (a) section 1089 if the company is a small or medium-sized enterprise in the period, and
 - (b) section 1091 if the company is a large company throughout the period.
- (8) This section is subject to section 1113 (cap on total R&D aid in relation to a particular research and development project).
- (9) See also—
- (a) section 1088 for the declaration that a large company is required to make in a claim under this section,
 - (b) section 1094, which prevents a company which is a small or medium-sized enterprise from making a claim if it is not a going concern,
 - (c) section 1098 for the meaning of “qualifying Chapter 7 expenditure”, and
 - (d) sections 1099 and 1100 for the meaning of qualifying Chapter 7 expenditure “for” an accounting period.

1088 Large companies: declaration about effect of relief

- (1) This section applies if a large company claims relief under section 1087.

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- (2) The claim must include a declaration that the availability of the relief claimed has resulted in an increase in—
- (a) the amount, scope or speed of the research and development undertaken by the company, or
 - (b) the company's expenditure on research and development.

1089 SMEs: amount of deduction

- (1) This section applies if—
- (a) a company makes a claim under section 1087 for relief to which it is entitled for an accounting period, and
 - (b) the company is a small or medium-sized enterprise in the period.
- (2) The amount of the deduction under that section is 40% of the company's qualifying Chapter 7 expenditure for the period (see sections 1098 and 1099).
- (3) The deduction is in addition to any other deduction in respect of the expenditure.
- (4) Subsection (2) is subject to the modification contained in section 1090 for larger SMEs.
- (5) Expenditure taken into account for the purpose of determining the amount of the deduction may include expenditure which is qualifying Chapter 7 expenditure for the accounting period because of section 1099(1)(b) (pre-trading expenditure).
- (6) This is despite the fact that the expenditure is unrelated to the trade mentioned in section 1087(4).

1090 Modification of section 1089 for larger SMEs

- (1) Subsection (2) applies if a company which makes a claim under section 1087 for relief to which it is entitled for an accounting period—
- (a) is a larger SME in the period, and
 - (b) obtains an R&D tax credit for the period under Chapter 2.
- (2) Section 1089 has effect in relation to the company as if for subsection (2) there were substituted—
- “(2) The amount of the deduction under that section is 40% of so much of the company's qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2.”

1091 Large companies: amount of deduction

- (1) This section applies if—
- (a) a company makes a claim under section 1087 for relief to which it is entitled for an accounting period, and
 - (b) the company is a large company throughout the period.
- (2) The amount of the deduction under that section is the sum of—
- (a) amount A, and
 - (b) amount B.

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- (3) Amount A is 40% of so much of the company's qualifying Chapter 7 expenditure for the period as is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (4) Amount B is 140% of so much of the company's qualifying Chapter 7 expenditure for the period that is not so allowable.
- (5) The deduction is in addition to any other deduction in respect of the expenditure.
- (6) See sections 1098 and 1100 for the meaning of "qualifying Chapter 7 expenditure" and provision about when such expenditure is "for" an accounting period.

1092 SMEs: deemed trading loss for pre-trading expenditure

- (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.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1097).
- (4) Condition C is that the company has incurred expenditure which is qualifying Chapter 7 expenditure for the period as a result of section 1099(1)(b) ("pre-trading qualifying Chapter 7 expenditure").
- (5) Condition D is that the company is not carrying on a trade in the period.
- (6) For the company to obtain the relief it must make an election.

See section 1094 (which prevents a company from making an election if it is not a going concern).

- (7) The relief is that the company is treated as if it had made a trading loss in the period.
- (8) The amount of the trading loss is—
 - (a) 40% of so much of the pre-trading qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is also entitled to relief under Chapter 2, and
 - (b) 140% of so much of the pre-trading qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2,but this is subject to section 1093.
- (9) If a company makes an election under this section in respect of pre-trading qualifying expenditure, section 61 (pre-trading expenses) does not apply to the expenditure.
- (10) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (11) See also section 1137 for provision about the accounting periods of a company which is not within the charge to corporation tax.
- (12) See sections 1098 and 1099 for the meaning of "qualifying Chapter 7 expenditure" and provision about when such expenditure is "for" an accounting period.

1093 Modification of section 1092 for larger SMEs

- (1) Subsection (2) applies if a company which makes a claim under section 1087 for relief to which it is entitled for an accounting period—
 - (a) is a larger SME in the period, and
 - (b) obtains an R&D tax credit for the period under Chapter 2.
- (2) Section 1092 has effect in relation to the company as if subsection (8)(a) were omitted.

1094 Relief only available to SME where company is going concern

- (1) A company which is a small or medium-sized enterprise may only make—
 - (a) a claim under section 1087, or
 - (b) an election under section 1092,at a time when it is a going concern.
- (2) 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 Chapter 2 or this Chapter.
- (3) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

Deemed trading loss: further provision

1095 Elections under section 1092

- (1) An election under section 1092 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.

1096 Treatment of deemed trading loss under section 1092

- (1) This section applies if under section 1092 a company is treated as making a trading loss in an accounting period.
- (2) The trading loss may not be set off against profits of a preceding accounting period under section 393A(1)(b) of ICTA unless the company is entitled to relief under section 1092 for the earlier period.
- (3) Subsection (4) applies if—
 - (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—

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- (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 section 403(1) of ICTA (surrender of relief to group or consortium members),
- the trading loss is to be treated as if it were a loss of that trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits).
- (5) Subsection (4) is subject to section 1111 (restriction on losses carried forward where tax credit claimed).

Threshold

1097 R&D threshold

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its qualifying Chapter 7 expenditure for the period is at least—
- (a) £10,000, if the accounting period is a period of 12 months, or
 - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.

- (2) The amount referred to in subsection (1)(b) is—

$$\frac{X}{365} \times £10,000$$

where X is the number of days in the accounting period.

- (3) See sections 1098, 1099 and 1100 for the meaning of “qualifying Chapter 7 expenditure” and provision about when such expenditure is “for” an accounting period.

Qualifying expenditure

1098 Meaning of “qualifying Chapter 7 expenditure”

For the purposes of this Part a company’s “qualifying Chapter 7 expenditure” means—

- (a) its qualifying expenditure on in-house direct research and development (see section 1101), and
- (b) its qualifying expenditure on contracted out research and development (see section 1102).

1099 SMEs: qualifying expenditure “for” an accounting period

- (1) If a company is a small or medium-sized enterprise in an accounting period, its qualifying Chapter 7 expenditure is “for” the period if—
- (a) it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company, or
 - (b) it would have been so allowable had the company, at the time the expenditure was incurred, been carrying on a trade consisting of the activities in respect of which it was incurred.

- (2) For the purposes of subsection (1)(a) section 61 (pre-trading expenses treated as incurred when trading begins) is to be ignored.

1100 Large companies: qualifying expenditure “for” an accounting period

- (1) If a company is a large company throughout an accounting period, its qualifying Chapter 7 expenditure is “for” the period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (2) Expenditure allowable as a deduction for the purposes of subsection (1) includes expenditure so allowable because of section 61 (pre-trading expenses).

1101 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 conditions A to E is met.
- (2) Condition A is that the expenditure is attributable to qualifying R&D activity (see section 1086) undertaken by the company itself.
- (3) Condition B is that the qualifying R&D activity to which the expenditure is attributable is relevant research and development in relation to the company.
- (4) Condition C 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).
- (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 (4)(a), (b) or (c) is attributable to relevant research and development.

1102 Qualifying expenditure on contracted out R&D

- (1) A company’s “qualifying expenditure on contracted out research and development” means expenditure in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136) to a sub-contractor.
- (3) Condition B is that the expenditure is attributable to qualifying R&D activity (see section 1086) undertaken by the sub-contractor itself.
- (4) Condition C is that the R&D activity to which the expenditure is attributable is relevant research and development in relation to the company.
- (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.

Tax credit: entitlement and payment

1103 Entitlement to and payment of tax credit

- (1) A company is entitled to an R&D tax credit for an accounting period if—
- (a) it is a small or medium-sized enterprise in the period, and
 - (b) it has a Chapter 7 surrenderable loss in the period (see section 1104).
- (2) For a company to obtain an R&D tax credit in respect of all or part of the Chapter 7 surrenderable loss it must make a claim.

See section 1106 (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 1107.
- (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 1109.

- (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 1111, which restricts the carry forward of losses where a company claims an R&D tax credit.

1104 Meaning of “Chapter 7 surrenderable loss”

- (1) For the purposes of this Chapter a company has a “Chapter 7 surrenderable loss” if in an accounting period—
- (a) it obtains a deduction under section 1087 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 1092.
- (2) If relief is obtained under section 1087 the amount of the Chapter 7 surrenderable loss is—
- (a) amount A, or
 - (b) if less, amount B.
- (3) Amount A is so much of the trading loss as is unrelieved.
- (4) Amount B is the sum of—
- (a) the total amount deductible under section 1087, and
 - (b) so much of the company’s qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2,
- but this is subject to subsection (5).

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- (5) If the company is a larger SME, amount B is 140% of so much of the company's qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2.
- (6) If relief is obtained under section 1092 the amount of the Chapter 7 surrenderable loss is so much of the trading loss as is unrelieved.

1105 Amount of trading loss which is “unrelieved”

- (1) This section applies for the purposes of section 1104.
- (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 section 393A(1)(a) of ICTA to set the loss against profits of the same accounting period,
 - (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) of that Act (losses set against profits of an earlier accounting period),
 - (c) any loss surrendered under section 403(1) of that Act (surrender of relief to group or consortium members), and
 - (d) the amount of any Chapter 2 surrenderable loss (as defined by section 1055) in respect of which an R&D tax credit is claimed under Chapter 2.
- (3) No account is to be taken for this purpose of any losses—
 - (a) brought forward from an earlier accounting period under section 393(1) of ICTA, or
 - (b) carried back from a later accounting period under section 393A(1)(b) of that Act.

1106 Tax credit only available where company is going concern

- (1) A company may only make a claim under section 1103 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 1103, 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 Chapter 2 or this Chapter.
- (5) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

Amount of tax credit

1107 Amount of tax credit

- (1) The amount of the R&D tax credit to which a company is entitled for an accounting period is 16% of the amount of the Chapter 7 surrenderable loss for the period.
- (2) Subsection (1) is subject to the limit set out in subsection (3).
- (3) The limit is that the total of the R&D tax credits to which the company is entitled for the accounting period under Chapter 2 and this Chapter is not to exceed the total amount of the company's PAYE and NIC liabilities for payment periods ending in the accounting period (see section 1108).
- (4) The Treasury may by order replace the percentage for the time being specified in subsection (1) with a different percentage.
- (5) An order under subsection (4) may contain incidental, supplemental, consequential and transitional provision and savings.

1108 Total amount of company's PAYE and NIC liabilities

- (1) The total amount of the company's PAYE and NIC liabilities for a payment period is the sum of—
 - (a) amount A, and
 - (b) amount B.
- (2) Amount A is the amount of income tax for which the company is required to account to an officer of Revenue and Customs for the payment period under PAYE regulations.
- (3) In calculating amount A disregard any deduction the company is authorised to make in respect of child tax credit or working tax credit.
- (4) Amount B is the amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the payment period.
- (5) In calculating amount B disregard any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, child tax credit or working tax credit.

Supplementary

1109 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
 - (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.

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- (3) So far as the amount is so applied, the duty of the officer of Revenue and Customs to pay the credit under section 1103(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.

1110 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.

1111 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 section 393 of ICTA (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 7 surrenderable loss in respect of which the company claims an R&D tax credit for the period.

Tax avoidance

1112 Artificially inflated claims for relief or tax credit

- (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purposes mentioned in subsection (2).
- (2) Those purposes are—
 - (a) determining for an accounting period relief to which a company is entitled under this Chapter, and

- (b) determining for an accounting period R&D tax credits to which a company is entitled under this Chapter.
- (3) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain—
 - (a) relief under this Chapter to which it would not otherwise be entitled,
 - (b) relief under this Chapter of a greater amount than that to which it would otherwise be entitled,
 - (c) an R&D tax credit under this Chapter to which it would not otherwise be entitled, or
 - (d) an R&D tax credit under this Chapter of a greater amount than that to which it would otherwise be entitled.
- (4) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

CHAPTER 8

CAP ON AID FOR R&D

1113 Cap on R&D aid under Chapter 2 or 7

- (1) A company is only entitled to qualifying R&D relief in respect of expenditure attributable to a research and development project if, or so far as, the condition in subsection (2) is met at that time.
- (2) The condition is that the total R&D aid in respect of expenditure by the company attributable to the project would not exceed 7.5 million euros.
- (3) In subsection (2) “total R&D aid” means the total R&D aid calculated—
 - (a) in accordance with section 1114, and
 - (b) as if a claim or election had been made for the R&D relief mentioned in subsection (1).
- (4) In this Chapter “qualifying R&D relief” means any relief or R&D tax credit under—
 - (a) Chapter 2 (relief for SMEs: cost of R&D incurred by SME), or
 - (b) Chapter 7 (relief for SMEs and large companies: expenditure on vaccine research etc).
- (5) The Treasury may by regulations—
 - (a) increase the amount specified in subsection (2), and
 - (b) amend this Chapter (apart from this section).

1114 Total R&D aid

For the purposes of section 1113 the total R&D aid, in respect of expenditure by a company (“the claimant”) attributable to a research and development project, is calculated as follows—

$$A = (TC + R + (P \times CT)) - (N \times CT)$$

where—

Status: This is the original version (as it was originally enacted).

A is the total R&D aid,
 TC is the tax credits (see section 1115),
 R is the actual reduction in tax liability (see section 1116),
 P is the potential relief (see section 1117),
 CT is the main rate of corporation tax at the time when the total R&D aid is calculated, and
 N is the notional relief (see section 1118).

1115 “The tax credits”

- (1) In section 1114 “the tax credits” means the total R&D tax credits that have been paid to the claimant under Chapter 2 or 7 in respect of expenditure attributable to the research and development project.
- (2) An R&D tax credit that has been claimed but not paid or applied is treated for the purposes of subsection (1) as if it had been paid.
- (3) Subsection (2) does not apply if the claimant has been informed by Her Majesty’s Revenue and Customs that the R&D tax credit will not be paid or applied.

1116 “The actual reduction in tax liability”

- (1) In section 1114 “the actual reduction in tax liability” means the sum of—
 - (a) amounts within subsection (2), and
 - (b) amounts within subsection (3).
- (2) The amounts within this subsection are those by which the liability of the claimant to pay corporation tax has been reduced in any accounting period in consequence of qualifying R&D relief in respect of expenditure attributable to the research and development project.
- (3) The amounts within this subsection are those by which the liability of any other company (“C”) to pay corporation tax has been reduced in any accounting period in consequence of a surrendered loss.
- (4) A “surrendered loss” means a loss which—
 - (a) is surrendered to C by the claimant under section 402 of ICTA (surrender of relief between members of groups and consortia), and
 - (b) arises in consequence of qualifying R&D relief in respect of expenditure attributable to the project.

1117 “The potential relief”

- (1) In section 1114 “the potential relief” means the total amount of any qualifying R&D relief (other than an R&D tax credit)—
 - (a) in respect of which the claimant has made a claim or election, but
 - (b) which, as at the day on which the total R&D aid is calculated in accordance with section 1114, has not been brought into account by the claimant or by any other company.

- (2) Qualifying R&D relief is not to be counted for the purposes of subsection (1) if the claimant has been informed by Her Majesty's Revenue and Customs that it is not entitled to the relief.

1118 “The notional relief”

- (1) In section 1114 “the notional relief” means the total amount of relief that the claimant could have claimed under Chapter 5 (relief for large companies) in any accounting period in respect of qualifying expenditure attributable to the research and development project if the claimant had been a large company throughout the period.
- (2) “Qualifying expenditure” means expenditure that, in the accounting period in question, was—
- (a) qualifying Chapter 2 expenditure (see section 1051), or
 - (b) qualifying Chapter 7 expenditure (see section 1098).

CHAPTER 9

SUPPLEMENTARY

SMEs and large companies

1119 “Small or medium-sized enterprise”

- (1) In this Part “small or medium-sized enterprise” means a micro, small or medium-sized enterprise as defined in Commission Recommendation (EC) No 2003/361, but subject to the qualifications in section 1120.
- (2) The Treasury may by order amend this section or section 1120 to substitute a different definition of “small or medium-sized enterprise” for the purposes of this Part.
- (3) This section is subject to section 1081 (insurance companies to be treated as large companies for purposes of Chapters 2 to 5).

1120 Qualifications to section 1119

- (1) This section contains qualifications to the definition of small or medium-sized enterprise in section 1119.
- (2) The qualifications are—

Qualification 1

In Article 2(1) of the Annex, the references to 250 persons, 50 million euros and 43 million euros are to be read as references to 500 persons, 100 million euros and 86 millions euros (respectively).

Qualification 2

If each of conditions A to D is met, Article 4(2) of the Annex is to be disregarded in determining whether a company (“C”) is within the definition of small or medium-sized enterprise in section 1119 for an accounting period in which C exceeds the employee limit or the financial limits.

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- (3) Condition A is that C is a micro, small or medium-sized enterprise as defined in the Recommendation (or would be if the Annex were read as set out in qualification 1), disregarding any partner enterprise or linked enterprise.
- (4) Condition B is that a partner enterprise or linked enterprise to which C is related exceeds the employee limit or both of the financial limits, disregarding the number of employees, the annual turnover and the annual balance sheet totals of C.
- (5) Condition C is that the number of employees, annual turnover or annual balance sheet total (as the case may be) of the partner enterprise or linked enterprise to which C is related has been taken into account in determining whether C exceeded the employee limit or the financial limits.
- (6) Condition D is that, taken alone, C satisfies the employee limit and at least one of the financial limits.
- (7) In this section—
 - (a) references to the Recommendation are to the Commission Recommendation mentioned in section 1119(1),
 - (b) references to the Annex are to the Annex to the Recommendation,
 - (c) references to the employee limit are to the limit on the number of employees contained in Article 2(1) of the Annex (read as set out in qualification 1), and
 - (d) references to the financial limits are to the limits on the annual turnover and balance sheet totals contained in Article 2(1) of the Annex (read as set out in qualification 1).

1121 “Larger SME”

References in this Part to a “larger SME” are to a company which is a small or medium-sized enterprise by virtue of qualification 1 in section 1120.

1122 “Large company”

In this Part “large company” means a company that is not a small or medium-sized enterprise.

Staffing costs

1123 “Staffing costs”

- (1) For the purposes of this Part the staffing costs of a company are amounts to which subsection (2), (3), (4), (5) or (7) applies.
- (2) This subsection applies to an amount paid by the company to a director or an employee of the company which—
 - (a) is earnings consisting of money, and
 - (b) is paid because of the director’s or employee’s employment.
- (3) This subsection applies to an amount paid by the company to a director or an employee of the company, other than an amount paid in respect of benefits in kind, if—
 - (a) the amount is paid in respect of expenses paid by the director or employee, and
 - (b) the amount is paid because of the director’s or employee’s employment.

- (4) This subsection applies to secondary Class 1 national insurance contributions paid by the company.
- (5) This subsection applies to compulsory contributions paid by the company in respect of benefits for directors or employees of the company under the social security legislation of an EEA State (other than the United Kingdom) or Switzerland.
- (6) In subsection (5) “social security legislation” means legislation relating to any of the branches of social security listed in Article 3(1) of Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the co-ordination of social security systems (as amended from time to time).
- (7) This subsection applies to contributions paid by the company to a pension fund operated for the benefit of directors or employees of the company.
- (8) In subsection (7) “pension fund” means a scheme, fund or other arrangement established and maintained (whether in the United Kingdom or elsewhere) for the purpose of providing pension benefits.

For this purpose “scheme” includes a deed, agreement or series of agreements.
- (9) In subsection (8) “pension benefits” means pensions, retirement annuities, allowances, lump sums, gratuities or other superannuation benefits (with or without subsidiary benefits).

1124 Staffing costs: attributable expenditure

- (1) This section applies for the purposes of this Part to identify when staffing costs are attributable to relevant research and development.
- (2) The costs which are so attributable are those paid to, or in respect of, directors or employees who are directly and actively engaged in relevant research and development.
- (3) Subsection (4) applies if a director or employee is partly engaged directly and actively in relevant research and development.
- (4) The appropriate proportion of the staffing costs relating to the director or employee is treated as attributable to relevant research and development.
- (5) Subsection (6) applies if persons provide services, such as secretarial or administrative services, in support of activities carried on by others.
- (6) Those persons are not, as a result of providing those services, to be treated as themselves directly and actively engaged in those activities.

Software or consumable items

1125 “Software or consumable items”

- (1) For the purposes of this Part expenditure on software or consumable items means expenditure on—
 - (a) computer software, or
 - (b) consumable or transformable materials.

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- (2) For the purposes of subsection (1)(b) consumable or transformable materials include water, fuel and power.

1126 Software or consumable items: attributable expenditure

- (1) This section applies for the purposes of this Part to identify when expenditure on software or consumable items is attributable to relevant research and development.
- (2) Expenditure on software or consumable items is so attributable if the software or consumable items are employed directly in relevant research and development.
- (3) Subsection (4) applies if software or consumable items are partly employed directly in relevant research and development.
- (4) The appropriate proportion of the expenditure on the software or consumable items is treated as attributable to relevant research and development.
- (5) Subsection (6) applies if software or consumable items are employed in the provision of services, such as secretarial or administrative services, in support of other activities.
- (6) The software or consumable items are not, as a result of their employment in the provision of those services, to be treated as themselves directly employed in those activities.

Qualifying expenditure on externally provided workers

1127 “Qualifying expenditure on externally provided workers”

- (1) For the purposes of this Part a company incurs expenditure on externally provided workers if—
- (a) it makes a payment (a “staff provision payment”) to another person (the “staff provider”), and
 - (b) the payment is in respect of the supply to the company, by or through the staff provider, of the services of any externally provided workers.
- (2) The company’s qualifying expenditure on externally provided workers is determined in accordance with section 1129 or 1131.
- (3) In sections 1128 to 1131 references to “staff provider” and “staff provision payment” are to be read in accordance with subsection (1).

1128 “Externally provided worker”

- (1) For the purposes of this Part a person is an “externally provided worker” in relation to a company if each of conditions A to G is met.
- (2) Condition A is that the worker is an individual.
- (3) Condition B is that the worker is not a director or employee of the company.
- (4) Condition C is that the worker personally provides, or is under an obligation personally to provide, services to the company.

- (5) Condition D is that the worker is subject to (or to the right of) supervision, direction or control by the company as to the manner in which those services are provided.
- (6) Condition E is that the worker's services are supplied to the company through a staff provider (whether or not the worker is a director or employee of the staff provider or any other person).
- (7) Condition F is that the worker provides, or is under an obligation to provide, those services personally to the company under the terms of a contract between the worker and the staff provider.
- (8) Condition G is that the provision of those services does not constitute the carrying on of activities contracted out by the company.

1129 Qualifying expenditure on externally provided workers: connected persons

- (1) This section applies if—
 - (a) a company makes a staff provision payment,
 - (b) the company and the staff provider are connected, and
 - (c) in accordance with generally accepted accounting practice, the whole of the staff provision payment and all of the staff provider's relevant expenditure have been brought into account in determining the staff provider's profit or loss for a relevant period.
- (2) The company's qualifying expenditure on externally provided workers is—
 - (a) the entire staff provision payment, or
 - (b) if less, an amount equal to the staff provider's relevant expenditure.
- (3) "Relevant expenditure" of the staff provider means expenditure that—
 - (a) is incurred by the staff provider in providing for the company the externally provided workers to whom the staff provision payment relates,
 - (b) is not of a capital nature, and
 - (c) is incurred on staffing costs or agency workers' remuneration.
- (4) "Relevant period" means a period—
 - (a) for which accounts are drawn up for the staff provider, and
 - (b) that ends not more than 12 months after the end of the company's period of account in which the staff provision payment is, in accordance with generally accepted accounting practice, brought into account in determining the company's profit or loss.
- (5) In section 1123 (meaning of "staffing costs"), which applies for the purpose of determining whether the staff provider's expenditure meets the requirements of subsection (3)(c), references to a company are to be read as references to the staff provider.
- (6) "Agency workers' remuneration", in the case of any person who is an externally provided worker in relation to the company, means remuneration that—
 - (a) is receivable by the worker under or in consequence of the contract mentioned in section 1128(7), but
 - (b) does not constitute employment income of the worker apart from Chapter 7 of Part 2 of ITEPA 2003 (application of provisions to agency workers).

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- (7) Any apportionment of expenditure of the company or staff provider necessary for the purposes of this section is to be made on a just and reasonable basis.

1130 Election for connected persons treatment

- (1) A company and a staff provider who are not connected may jointly elect that section 1129 is to apply to them as if they were connected.
- (2) Any such election must be made in relation to all staff provision payments paid under the same contract or other arrangement.
- (3) The election must be made by notice in writing to an officer of Revenue and Customs.
- (4) The notice must be given before the end of the period of two years beginning immediately after the end of the company's accounting period in which the contract or other arrangement is entered into.
- (5) An election under this section is irrevocable.

1131 Qualifying expenditure on externally provided workers: other cases

- (1) This section applies if—
 - (a) a company makes a staff provision payment,
 - (b) the company and the staff provider are not connected persons, and
 - (c) no election is made under section 1130.
- (2) The company's qualifying expenditure on externally provided workers is 65% of the staff provision payment.

1132 External workers: attributable expenditure

- (1) This section applies for the purposes of this Part to identify when qualifying expenditure on externally provided workers is attributable to relevant research and development.
- (2) Qualifying expenditure on externally provided workers is so attributable if the workers are directly and actively engaged in relevant research and development.
- (3) Subsection (4) applies if an externally provided worker is partly engaged directly and actively in relevant research and development.
- (4) The appropriate proportion of the qualifying expenditure relating to the worker is treated as attributable to relevant research and development.
- (5) Subsection (6) applies if persons provide services (such as secretarial or administrative services) in support of activities carried on by others.
- (6) Those persons are not, as a result of providing those services, to be treated as themselves directly and actively engaged in those activities.

Sub-contractor payments

1133 “Sub-contractor” and “sub-contractor payment”

- (1) In this Part a “sub-contractor payment” means a payment made by a company to another person (“the sub-contractor”) in respect of research and development contracted out by the company to that person.
- (2) Sections 1134 to 1136 apply if a company makes a sub-contractor payment.
- (3) They apply for the purpose of determining the qualifying element of the payment for the purposes of—
 - section 1053(1)(a),
 - section 1072(1)(a), and
 - section 1102(2).

1134 Qualifying element of sub-contractor payment: connected persons

- (1) This section applies if—
 - (a) a company makes a sub-contractor payment,
 - (b) the company and the sub-contractor are connected, and
 - (c) in accordance with generally accepted accounting practice, the whole of the sub-contractor payment and all of the sub-contractor’s relevant expenditure have been brought into account in determining the sub-contractor’s profit or loss for a relevant period.
- (2) The qualifying element of the sub-contractor payment is—
 - (a) the entire payment, or
 - (b) if less, an amount equal to the sub-contractor’s relevant expenditure.
- (3) “Relevant expenditure” of the sub-contractor means expenditure that—
 - (a) is incurred by the sub-contractor in carrying on, on behalf of the company, the activities to which the sub-contractor payment relates,
 - (b) is not of a capital nature,
 - (c) is incurred on staffing costs, software or consumable items or relevant payments to the subjects of a clinical trial or is qualifying expenditure on externally provided workers, and
 - (d) is not subsidised.
- (4) “Relevant period” means a period—
 - (a) for which accounts are drawn up for the sub-contractor, and
 - (b) that ends not more than 12 months after the end of the company’s period of account in which the sub-contractor payment is, in accordance with generally accepted accounting practice, brought into account in determining the company’s profit or loss.
- (5) In the following sections, which apply for the purpose of determining whether a sub-contractor’s expenditure meets the requirements of subsection (3)(c) and (d)—
 - (a) section 1123 (staffing costs),
 - (b) sections 1127 to 1131 (qualifying expenditure on externally provided workers), and
 - (c) section 1138 (subsidised expenditure),

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references to a company are to be read as references to the sub-contractor.

- (6) Any apportionment of expenditure of the company or the sub-contractor necessary for the purposes of this section is to be made on a just and reasonable basis.

1135 Election for connected persons treatment

- (1) A company and a sub-contractor who are not connected may jointly elect that section 1134 is to apply to them as if they were connected.
- (2) Any such election must be made in relation to all sub-contractor payments paid under the same contract or other arrangement.
- (3) The election must be made by notice in writing to an officer of Revenue and Customs.
- (4) The notice must be given before the end of the period of two years beginning immediately after the end of the company's accounting period in which the contract or other arrangement is entered into.
- (5) An election under this section is irrevocable.

1136 Qualifying element of sub-contractor payment: other cases

- (1) This section applies if—
 - (a) a company makes a sub-contractor payment,
 - (b) the company and the sub-contractor are not connected persons, and
 - (c) no election is made under section 1135.
- (2) The qualifying element of the sub-contractor payment is 65% of the sub-contractor payment.

Miscellaneous

1137 Accounting periods: company not within charge to corporation tax

- (1) This section applies to a company if—
 - (a) it is not within the charge to corporation tax, and
 - (b) it incurs qualifying Chapter 2 expenditure or qualifying Chapter 7 expenditure.
- (2) For the purposes of this Part the company is treated as having the accounting periods it would have if—
 - (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
 - (b) it had started to carry on that trade when it started to carry on relevant research and development.

1138 “Subsidised expenditure”

- (1) For the purposes of this Part a company's expenditure is treated as subsidised—
 - (a) if a notified State aid is, or has been, obtained in respect of—
 - (i) the whole or part of the expenditure, or

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- (ii) any other expenditure (whenever incurred) attributable to the same research and development project,
 - (b) to the extent that a grant or subsidy (other than a notified State aid) is obtained in respect of the expenditure,
 - (c) to the extent that it is otherwise met directly or indirectly by a person other than the company.
- (2) In this section “notified State aid” means a State aid notified to and approved by the European Commission.
- (3) For this purpose the following are not State aids—
- (a) relief under this Part, and
 - (b) R&D tax credits under this Part.
- (4) For the purposes of this Part a notified State aid, grant, subsidy or payment that is not allocated to particular expenditure is to be allocated to expenditure of the recipient on a just and reasonable basis.

1139 “Intellectual property”

In this Part “intellectual property” means—

- (a) industrial information or techniques likely to assist in—
 - (i) the manufacture or processing of goods or materials, or
 - (ii) the working of a mine, oil well or other source of mineral deposits or the winning of access to them, or
 - (iii) the carrying out of any agricultural, forestry or fishing operations,
- (b) a patent, trade mark, registered design, copyright, design right or plant breeder’s right, and
- (c) a right under the law of a country outside the United Kingdom which corresponds or is similar to any of those falling within paragraph (b).

1140 “Relevant payments to the subjects of a clinical trial”

- (1) For the purposes of this Part “relevant payment”, in relation to a subject of a clinical trial, means a payment made to the subject for participating in the trial.
- (2) For the purposes of this Part “clinical trial” means an investigation in human subjects undertaken in connection with the development of a health care treatment or procedure.

1141 “Payment period”

In this Part a “payment period” means a period—

- (a) which ends on the fifth day of a month, and
- (b) for which the company is liable to account for income tax and national insurance contributions to an officer of Revenue and Customs.

1142 “Qualifying body”

- (1) For the purposes of this Part “qualifying body” means—
- (a) a charity,

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- (b) an institution of higher education,
 - (c) an association of a description specified in section 508 of ICTA (scientific research organisation),
 - (d) a health service body within the meaning of section 519A(2) of that Act, or
 - (e) any other body prescribed, or of a description prescribed, by the Treasury, by order, for the purposes of this Part.
- (2) In subsection (1)(b) “institution of higher education” means—
- (a) an institution within the higher education sector within the meaning of the Further and Higher Education Act 1992 (c. 13),
 - (b) an institution within the higher education sector within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 (c. 37) or a central institution within the meaning of the Education (Scotland) Act 1980 (c. 44), or
 - (c) a higher education institution within the meaning of Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993 (S.I. 1993/2810 (N.I. 12)).
- (3) An order under this section is to have effect in relation to the accounting periods or expenditure specified in the order.
- (4) The order may specify accounting periods beginning, or expenditure incurred, before the time the order is made.