SCHEDULES

SCHEDULE 3

Section 19

R&D TAX CREDITS FOR SMEs

Introductory

1 Chapter 2 of Part 13 of CTA 2009 (relief for cost of research and development incurred by small and medium-sized enterprises) is amended as follows.

Cap on amount of tax credit

2 (1) Section 1058 (amount of tax credit) is amended as follows.

(2) In subsection (1)—

(a) in the words before paragraph (a), after "period is" insert "the lesser of";

(b) at the end of paragraph (a) insert "and

(aa) the amount given by subsection (1A)."

(3) After subsection (1), insert—

"(1A) The amount given by this subsection is the sum of—

(a) £20,000, and

(b) the amount produced by multiplying by three ("the multiplier") the company's relevant expenditure on workers for payment periods ending in the accounting period (see section 1058A).

(1B) If the accounting period is less than 12 months, the amount specified in subsection (1A)(a) is proportionately reduced.

(1C) Subsection (1)(aa) does not apply if section 1058D (exceptions to tax credit cap) applies in relation to the company for the accounting period."

(4) For subsection (2) substitute—

"(2) The Treasury may by regulations—

(a) replace the percentage for the time being specified in subsection (1)(a) with a different percentage;

(b) replace the amount for the time being specified in subsection (1A)(a) with a different amount;

(c) replace the multiplier for the time being specified in subsection (1A)(b) with a different multiplier."

3 After section 1058 insert—

"**1058A Relevant expenditure on workers**

(1) For the purposes of section 1058, the amount of a company's relevant expenditure on workers for a payment period is the sum of—

(a) the total amount of the company's PAYE and NIC liabilities for the payment period (see section 1058B) less any amount deducted in accordance with section 1058C (avoiding double counting of PAYE and NIC liabilities),

(b) if the company is connected with another company and has incurred qualifying expenditure on externally provided workers (see section 1127), the relevant portion of any staffing costs for the payment period incurred by the connected company in providing any of those workers for the company (see subsection (2)), and

(c) if the company is connected with another company and has incurred qualifying expenditure on contracted out research and development (see section 1053), any staffing costs for the payment period incurred by the connected company in undertaking any of that contracted out research and development on behalf of the company (see subsection (3)).

(2) The relevant portion of any staffing costs for a payment period incurred by a connected company in providing externally provided workers for a company is the sum of the amounts to be determined in the case of each of those workers as follows—

Step 1

Calculate the amount of expenditure that—

(a) has been incurred by the connected company in providing the externally provided worker for the company,

(b) has been incurred on staffing costs (see section 1123), and

(c) forms part of the total amount of the connected company's PAYE and NIC liabilities for the payment period.

Step 2

Calculate the percentage ("the appropriate percentage") given by—

$$\frac{R}{T} \times 100$$

where—

R is the amount of the company's qualifying expenditure on the externally provided worker that has been taken into account in calculating the amount of the company's qualifying Chapter 2 expenditure (see section 1051) for the payment period, and

T is the total amount of the company's qualifying expenditure on the externally provided worker (see section 1127) for the payment period.

Step 3

The amount to be determined in the case of the externally provided worker is the appropriate percentage of the amount given by step 1.

(3) The staffing costs for a payment period incurred by a connected company in undertaking contracted out research and development on behalf of a company is the amount of expenditure that—

(a) has been incurred by the connected company in undertaking relevant research and development on behalf of the company,

(b) has been incurred on staffing costs (see section 1123), and

(c) forms part of the total amount of the connected company's PAYE and NIC liabilities for the payment period.

(4) If, for the purposes of step 1(c) of subsection (2) or paragraph (c) of subsection (3), it is necessary to calculate the amount of a connected company's PAYE and NIC liabilities for a payment period that falls within (but is shorter than) the connected company's payment period, the total amount for the connected company's payment period is proportionately reduced.

1058B Total amount of company's PAYE and NIC liabilities

(1) For the purposes of section 1058A, the total amount of a 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—

(a) child tax credit;

(b) 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—

(a) statutory maternity pay;

(b) statutory adoption pay;

(c) statutory paternity pay;

(d) statutory shared parental pay;

(e) statutory parental bereavement pay;

(f) child tax credit;

(g) working tax credit.

1058C Avoiding double counting of PAYE and NIC liabilities

When determining for the purposes of section 1058 a company's relevant expenditure on workers for a payment period (see section 1058A), deduct the

following from the total amount of the company's PAYE and NIC liabilities for the payment period—

(a) the relevant portion of any staffing costs for the payment period incurred by the company in providing externally provided workers for a connected company (within the meaning given by section 1058A(2));

(b) any staffing costs for the payment period incurred by the company in undertaking contracted out research and development on behalf of a connected company (within the meaning given by section 1058A(3)).

1058D Exceptions to tax credit cap

(1) This section applies (and accordingly, section 1058(1)(aa) does not apply) in relation to a company for an accounting period if the company meets conditions A and B.

(2) A company meets condition A for an accounting period if, during the period, the company is engaged in—

(a) taking, or preparing to take, steps in order that relevant intellectual property will be created by it,

(b) creating relevant intellectual property, or

(c) performing a significant amount of management activity in relation to relevant intellectual property it holds.

(3) For the purposes of subsection (2)—

(a) a company is only engaged in an activity mentioned in paragraph (a), (b) or (c) of subsection (2) if the activity is wholly or mainly undertaken by employees of the company;

(b) intellectual property is "relevant" intellectual property in relation to a company if the whole or the greater part (in terms of value) of it is created by the company;

(c) intellectual property is created by a company if it is created in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(4) For the purposes of this section—

"intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right or plant breeder's right,

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a), or

(c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value;

"management activity", in relation to intellectual property, means formulating plans and making decisions in relation to the development or exploitation of the intellectual property.

(5) A company meets condition B for an accounting period if the amount given by subsection (6) (if any) does not exceed 15% of the company's qualifying Chapter 2 expenditure (see section 1051) for the period.

(6) The amount given by this subsection is the sum of the following incurred by the company in the period—

(a) qualifying expenditure on externally provided workers (see section 1127), where the company, the staff provider and (if different) the staff controller (or staff controllers)—

(i) are all connected (see section 1129), or

(ii) have jointly elected (under section 1130) that section 1129 is to apply to them as if they were all connected;

(b) qualifying expenditure on contracted out research and development (see section 1053) where the company and the sub-contractor—

(i) are connected (see section 1134), or

(ii) have jointly elected (under section 1135) that section 1134 is to apply to them as if they were connected.

(7) The Treasury may by regulations replace the percentage for the time being specified in subsection (5) with a different percentage."

Commencement

4 The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2021.