



Corporation Tax Act 2009

2009 CHAPTER 4

PART 13

ADDITIONAL RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

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),

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- (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,
 - (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.

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- (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.
- (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).

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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.
- (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.

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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.

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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—
 - (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),

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- (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).

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- (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).
- (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.

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- (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.
- (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.

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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.