

## SCHEDULE 1

### CORPORATION TAX: RESEARCH AND DEVELOPMENT

#### PART 1

##### MAIN AMENDMENTS OF CTA 2009

- 1 This Part of this Schedule amends CTA 2009.
- 2 In Part 3, omit Chapter 6A (R&D expenditure credit).
- 3 In the heading of Part 13, omit “Additional relief for”.
- 4 (1) Chapter 1 of Part 13 is amended as follows.  
(2) For section 1039 (overview of Part) substitute –

**“1039 Overview of Part**

- (1) This Part provides aids within the corporation tax system for companies that invest in research and development.
- (2) Chapter 1A makes aid available to most companies, in the form of a payable credit calculated by reference to expenditure on research and development.
- (3) Chapter 2 makes aid available to small or medium-sized enterprises that invest heavily in research and development, in the form of –
  - (a) an adjustment of profits or losses for corporation tax purposes, calculated by reference to expenditure on research and development, and
  - (b) where that adjustment produces or contributes to a trading loss, a payable credit calculated by reference to that loss.
- (4) Chapter 8 limits the aids provided by Chapters 1A and 2.
- (5) Chapter 9 contains definitions and other supplementary provision.”
- (3) For section 1040 (relief to be available under more than one Chapter of Part 13) substitute –

**“1040 No overlapping entitlement under Chapters 1A and 2**

A company may not, in respect of the same expenditure, claim both an R&D expenditure credit under Chapter 1A and aid under Chapter 2.”

- (4) Omit section 1040A (which refers to the existing R&D expenditure credit scheme).

5 After Chapter 1 of Part 13 insert –

**“CHAPTER 1A**

**R&D EXPENDITURE CREDIT**

*Introductory*

**1042A Overview of Chapter**

- (1) This Chapter provides an entitlement to a credit (called an “R&D expenditure credit”) in respect of certain expenditure on research and development.
- (2) Section 1042B makes the main provision conferring and defining the entitlement.
- (3) Sections 1042C to 1042E describe the expenditure by reference to which the entitlement arises.
- (4) Section 1042F sets the percentage of that expenditure that is translated into the credit.
- (5) Sections 1042G to 1042M make provision what happens when a company obtains the credit (in particular, about how the credit is to be accounted for and applied or paid).
- (6) Section 1042N makes provision about research and development activities contracted out between members of the same group.
- (7) Section 1042O makes provision about how the expenditure credit operates in the context of a basic life assurance and general annuity business carried on by an insurance company.
- (8) This Chapter has to be read with Chapter 8, which limits the entitlement given by this Chapter in various respects.

*The entitlement*

**1042B Entitlement to credit**

- (1) A company is (subject to subsection (4)) entitled to an R&D expenditure credit for an accounting period if –
  - (a) it carries on a trade in the period, and
  - (b) it incurs expenditure that is both –
    - (i) allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period, and
    - (ii) qualifying Chapter 1A expenditure (see section 1042C).

- (2) The amount of the credit is the relevant percentage (see section 1042F) of the expenditure within subsection (1)(b).
- (3) To obtain the credit the company must make a claim (see Part 9A of Schedule 18 to the FA 1998).
- (4) A company is not entitled to an R&D expenditure credit if it is—
  - (a) an institution of higher education, within the meaning given by section 1142(1)(b),
  - (b) a charity, or
  - (c) a company of a description prescribed by the Treasury by regulations.
- (5) In subsection (4)(a), “institution of higher education” means—
  - (a) an institution within the higher education sector within the meaning of the Further and Higher Education Act 1992,
  - (b) an institution within the higher education sector within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 or a central institution within the meaning of the Education (Scotland) Act 1980, 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)).

*Qualifying expenditure*

**1042C Qualifying expenditure: general**

- (1) Expenditure is qualifying Chapter 1A expenditure if—
  - (a) it is either eligible in-house expenditure (see section 1042D) or eligible sub-contractor expenditure (see section 1042E), and
  - (b) it satisfies conditions A[, B] and C in this section.
- (2) Condition A is that the activities in the course of which the expenditure is incurred are not contracted out to the company by another person in the course of a chargeable trade carried on by that person.
- (3) For that purpose 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.
- (4) [Condition B is that the expenditure is not subsidised (see section 1138).]

- (5) Condition C is that the expenditure is not attributable to an exempt foreign permanent establishment (see section 1138B).

**1042D Qualifying expenditure: in-house R&D**

- (1) Expenditure is “eligible in-house expenditure” if it meets conditions A and B in this section.
- (2) Condition A is that the expenditure is—
- (a) incurred on staffing costs (see section 1123),
  - (b) incurred on software, data licences, cloud computing services 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) See sections 1124, 1126 to 1126B and 1132 for provision about when expenditure within subsection (2)(a), (b) or (c) is attributable to relevant research and development.

**1042E Qualifying expenditure: contracted out R&D**

- (1) Expenditure is “eligible sub-contractor expenditure” if it meets conditions A, B and C in this section.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment (see sections 1133 to 1136).
- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken on behalf of the company.
- (4) Condition C is that the expenditure is UK expenditure or qualifying overseas expenditure (see section 1138A).
- (5) See sections 1124, 1126 to 1126B and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

*Rate of credit*

**1042F Percentage of qualifying expenditure translated into credit**

- (1) The relevant percentage for the purposes of section 1042B(2) is—
- (a) 49%, in the case of a ring fence trade within the meaning given by section 277 of CTA 2010, or

- (b) 20%, in any other case.
- (2) The Treasury may by regulations replace the percentage for the time being specified in subsection (1)(a) or (b) with a different percentage.

*Treatment of credit: main provisions*

**1042G Expenditure credit to count as taxable receipt**

If a company is entitled to, and claims, an R&D expenditure credit for an accounting period, it must bring the amount of the credit into account as a receipt in calculating for corporation tax purposes the profits or losses for the period of the trade concerned.

**1042H Redemption of value of expenditure credit**

If a company is entitled to, and claims, an R&D expenditure credit for an accounting period, the credit is to be dealt with as follows.

*Step 1*

The amount of the credit is to be applied in discharging any liability of the company to pay corporation tax for the accounting period.

*Step 2*

The notional tax deduction (see section 1042J) is to be applied to any amount remaining after step 1.

*Step 3*

If the amount remaining after step 2 exceeds the cap by reference to the company's PAYE and NIC liabilities for the accounting period (see section 1112B), the excess is to be deducted.

*Step 4*

Any amount remaining after step 3 is to be applied in discharging any liability of the company to pay corporation tax for any other accounting period.

*Step 5*

If the company is a member of a group, it may surrender the whole or part of any amount remaining after step 4 to any other member of the group (as to which see section 1042M).

*Step 6*

Any amount remaining after step 5 is to be applied in discharging any other liability of the company to pay a sum to the Commissioners of Her Majesty's Revenue and Customs –

- (a) under or by virtue of an enactment, or

- (b) under an agreement made in connection with any person's liability to make a payment to the Commissioners under or by virtue of an enactment.

*Step 7*

Any amount remaining after step 6 is (subject to sections 1112F and 1112H) to be paid to the company by an officer of Revenue and Customs.

**1042I Treatment of deduction to comply with PAYE and NIC limit**

- (1) This section applies if an amount is deducted under step 3 in section 1042H.
- (2) The amount is to be added to the amount of expenditure credit to which the company is entitled for its next accounting period (including where that amount would otherwise be nil).

*Notional tax deduction*

**1042J Amount of notional tax deduction**

- (1) This section determines the amount of the notional tax deduction for the purposes of step 2 in section 1042H.
- (2) Subsection (3) applies if the trade concerned is not a ring fence trade.
- (3) The amount of the deduction is the amount of corporation tax that would be chargeable on the initial amount of the expenditure credit if it were an amount of profits for the accounting period on which corporation tax was chargeable at the main rate.
- (4) Subsection (5) applies if the trade concerned is a ring fence trade.
- (5) The amount of the deduction is the sum of—
  - (a) the amount of corporation tax that would be chargeable on the initial amount of the expenditure credit if it were an amount of ring fence profits for the accounting period on which corporation tax was chargeable at the main ring fence profits rate, and
  - (b) the amount of the supplementary charge that would be chargeable on the initial amount of the expenditure credit if it were an amount of adjusted ring fence profits for the accounting period.
- (6) For the purposes of this section, the initial amount of an expenditure credit is to be treated as not including any amount added under section 1042I.
- (7) In this section—

“adjusted ring fence profits” has the meaning given by section 330(2) of CTA 2010;

“ring fence profits” has the meaning given by section 276 of CTA 2010;

“ring fence trade” has the meaning given by section 277 of CTA 2010.

#### **1042K Treatment of notional tax deduction**

- (1) This section applies if an amount is deducted under step 2 in section 1042H.
- (2) If the company is a member of a group, it may, as respects the accounting period in which the expenditure credit arises, surrender the whole or part of the deducted amount to any other member of the group (as to which see section 1042M).
- (3) To the extent that the deducted amount is not surrendered under subsection (2), it is to be applied in discharging any liability of the company to pay corporation tax for any subsequent accounting period.

#### **1042L Priority of discharge**

- (1) An amount within subsection (2) is to be applied as described in that subsection before any amount within subsection (3) is applied as described in that subsection.
- (2) An amount is within this subsection if it is to be applied under –
  - (a) section 1042K(3), or
  - (b) section 1042M(3) as it applies in relation to an amount surrendered under section 1042K(2),in discharging the liability of a company to pay corporation tax for an accounting period.
- (3) An amount is within this subsection if it is to be (or would but for subsection (1) be) applied under –
  - (a) step 4 in section 1042H, or
  - (b) section 1042M(3) as it applies in relation to an amount surrendered under step 5 in section 1042H,in discharging the same liability as an amount within subsection (2).

*Intra-group surrenders*

**1042M Amounts surrendered to other group companies**

- (1) Subsection (3) applies if an amount of expenditure credit is surrendered by the qualifying company to another member of its group under step 5 in section 1042H or under section 1042K(2).
- (2) For the purposes of that subsection—
  - (a) the accounting period as respects which the surrender is made is “the surrender AP”;
  - (b) an accounting period of the other group member is an “overlapping AP” if it overlaps to any extent with the surrender AP.
- (3) The surrendered amount is to be dealt with as follows.

*Step 1*

Select an overlapping AP.

*Step 2*

Calculate the proportion of the overlapping AP that overlaps with the surrender AP, and apply that proportion to the amount of corporation tax payable by the other group member for that overlapping AP.

*Step 3*

Calculate the proportion of the surrender AP that overlaps with the overlapping AP, and apply that proportion to the surrendered amount.

*Step 4*

The amount given by step 3 is to be applied in discharging the liability of the other group member to pay the corporation tax mentioned in step 2 (up to the amount given by step 2).

*Step 5*

Select another overlapping AP, if there is one, and repeat steps 2 to 4.

*Step 6*

If any of the surrendered amount remains after steps 2 to 4 have been taken in relation to each overlapping AP, the remainder is to be treated for the purposes of section 1042H or (as the case may be) section 1042K(2) as if it had not been surrendered as mentioned in subsection (1).

- (4) A surrender to which subsection (3) applies is not to be—
  - (a) taken into account in determining, for corporation tax purposes, the profits or losses of the qualifying company or the other group member, or



- (b) regarded for corporation tax purposes as the making of a distribution.

*Miscellaneous provision*

**1042N 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 this Chapter (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 this Chapter (so far as it would not otherwise be the case) as research and development contracted out by B to C.

**1042O Adaptation of entitlement for certain insurance businesses**

- (1) This section applies if –
  - (a) for an accounting period, an insurance company is charged to tax in respect of its basic life assurance and general annuity business in accordance with the I-E rules, and
  - (b) the calculation of the company’s charge to tax for the period in respect of that business does not involve the calculation of any BLAGAB trade profit or loss of the company.
- (2) The reference in section 1042B(1)(b) to expenditure that is allowable as a deduction in calculating the profits of the trade for an accounting period is to be read as a reference to expenditure that would be so allowable if the company were to calculate its BLAGAB trade profit or loss for the period.
- (3) The reference in section 1042G to calculating the profits of the trade is to be read as a reference to calculating the I-E profit of the basic life assurance and general annuity business carried on by the company.

- (4) Any receipt to be brought into account by virtue of this section is to be treated for the purposes of section 92 of FA 2012 (certain BLAGAB trading receipts to count as deemed I-E receipts) as if it had been taken into account in calculating the company's BLAGAB trade profit or loss for the period.
  - (5) In this section, "BLAGAB trade profit" and "BLAGAB trade loss" have the meanings given by section 136 of FA 2012."
- 6 (1) Chapter 2 of Part 13 (relief for SMEs on the cost of R&D) is amended as follows.
- (2) For the heading substitute "Relief for R&D-intensive SMEs".
  - (3) In section 1043 (overview of Chapter) –
    - (a) in subsection (1), at the end insert "and where those costs amount to a certain proportion of the company's total expenditure relevant for corporation tax purposes";
    - (b) in subsection (3) –
      - (i) in the words before paragraph (a), for "1046" substitute "1047";
      - (ii) omit paragraph (a);
    - (c) after subsection (4) insert –
      - "(5) This Chapter has to be read with Chapter 8, which limits the entitlements given by this Chapter in various respects."
  - (4) In section 1044 (additional deduction for trading companies)
    - (a) after subsection (2) insert –
      - "(2A) Condition B is that the company meets the R&D intensity condition in the period.";
    - (b) in subsection (6), for "1046" substitute "1112F";
    - (c) in subsection (7), at the end insert –
      - "The deduction is, in particular, additional to any given under section 87."
  - (5) In section 1045 (deemed trading loss for non-trading companies) –
    - (a) after subsection (2) insert –
      - "(2A) Condition B is that the company meets the R&D intensity condition in the period.";
    - (b) in subsection (5), for "1046" substitute "1112F".
  - (6) After section 1045 insert –
    - "1045ZA R&D intensity condition**
    - (1) This section determines whether a company meets the R&D intensity condition in an accounting period for the purposes of sections 1044 and 1045.

- (2) If the company is not connected with another company, the company meets the condition if its relevant R&D expenditure for the period amounts to at least 40% of its total relevant expenditure for the period.
- (3) If the company is connected with at least one other company, the company meets the condition if the connected companies' relevant R&D expenditure for the period amounts to at least 40% of the connected companies' total relevant expenditure for the period.
- (4) In subsection (3), "the connected companies" refers to the company to which this section is being applied and each company with which it is connected; and the references to their expenditure are to the aggregate of each of their expenditures.
- (5) Expenditure forms part of a company's total relevant expenditure for an accounting period if it is brought into account in calculating for corporation tax purposes the profits for the period of any trade carried on by the company.
- (6) Expenditure also forms part of a company's total relevant expenditure for an accounting period if it is expenditure in respect of which the company is, for the period, entitled to relief under section 1045.
- (7) Expenditure forms part of a company's relevant R&D expenditure for an accounting period if—
  - (a) it forms part of the company's total relevant expenditure for the period, and
  - (b) it is expenditure in respect of which the company is, for the period, entitled to—
    - (i) an R&D expenditure credit under Chapter 1A,
    - (ii) relief under section 1044, or
    - (iii) relief under section 1045.
- (8) For the purposes of this section in its application to an accounting period, a company is to be treated as connected with another company if it is connected with that company on any day within the period."
- (7) Omit section 1046 (relief only available to going concerns).
- (8) In section 1054 (entitlement to R&D tax credit)—
  - (a) in subsection (2), for "1057" substitute "1112F";
  - (b) in subsection (4), for "1060" substitute "1112H".
- (9) Omit section 1057 (R&D tax credit only available to going concerns).
- (10) In section 1058 (amount of R&D tax credit)—
  - (a) in subsection (1)—
    - (i) in paragraph (a), for "10%" substitute "14.5%";

(ii) for paragraph (aa) substitute –

“(aa) the amount of the cap by reference to the company’s PAYE and NIC liabilities for the accounting period (see section 1112B).”;

- (b) omit subsections (1A) to (1C);
- (c) in subsection (2), omit paragraphs (b) and (c);
- (d) omit subsection (3).

- (11) Omit sections 1058A to 1058D (provision in relation to PAYE and NIC liabilities).
- (12) In section 1060 (payment of R&D tax credit) –
  - (a) for the heading substitute “Use of credit to pay corporation tax”;
  - (b) omit subsections (4) to (7).
- (13) After section 1062 insert –

**“1062A Insurance company to be treated as large company**

An insurance company that carries on life assurance business in an accounting period is not to be treated for the purposes of this Chapter as a small or medium-sized enterprise in relation to that period.”

- 7 Omit Chapter 6 of Part 13 (further provision about Chapters 2 to 5).
- 8 (1) Chapter 8 of Part 13 (cap on aid for R&D) is amended as follows.
  - (2) For the heading substitute “Restrictions on credits and relief under this Part”.
  - (3) Before section 1113 insert –

*“Introductory*

**1112A Overview of Chapter**

- (1) This Chapter limits the entitlements given by Chapters 1A and 2.
- (2) Sections 1112B to 1112E provide for the amount payable to a company as R&D expenditure credit or R&D tax credit to be capped by reference to certain liabilities of the company in connection with PAYE and national insurance, except in certain cases.
- (3) Sections 1112F and 1112G provide that payment of an R&D expenditure credit, and the entitlements under Chapter 2, are available only to companies that are going concerns.
- (4) Section 1112H provides that an R&D expenditure credit or R&D tax credit does not have to be paid if a tax enquiry into the company is open or the company has outstanding PAYE or national insurance liabilities.

- (5) Section 1112I provides for transactions aimed at obtaining or increasing an entitlement under Chapter 1A or 2 not to succeed in doing so.
- (6) Sections 1113 to 1118 limit the amount of aid available under Chapter 2 for individual research and development projects.

#### *PAYE and NIC*

#### **1112B Cap by reference to PAYE and NIC liabilities**

- (1) This section determines, for the purposes of sections 1042H and 1058(1), the amount of the cap by reference to a company's PAYE and NIC liabilities for an accounting period.  
But see section 1112E (which provides for there to be no cap in certain cases).
- (2) The amount of the cap is the sum of –
  - (a) £20,000, and
  - (b) the amount produced by multiplying by three (“the multiplier”) the amount of the company's relevant PAYE and NIC liabilities for payment periods ending in the accounting period (see section 1112C).
- (3) If the accounting period is less than 12 months, the amount specified in subsection (2)(a) is proportionately reduced.
- (4) The Treasury may by regulations –
  - (a) replace the amount for the time being specified in subsection (2)(a) with a different amount;
  - (b) replace the multiplier for the time being specified in subsection (2)(b) with a different multiplier.

#### **1112C Calculation of relevant PAYE and NIC liabilities**

- (1) This section determines the amount of a company's relevant PAYE and NIC liabilities for a payment period for the purposes of section 1112B.
- (2) The amount is to be calculated as follows.

##### *Step 1*

Take the total amount of the company's PAYE and NIC liabilities for the payment period (see section 1112D).

##### *Step 2*

Add any amount produced by the application of subsection (4) or (6) to the company as company A.

##### *Step 3*

Deduct any amount produced by the application of subsection (4) or (6) to the company as company B.

- (3) An amount is produced by subsection (4) where –
- (a) two companies (“company A” and “company B”) are connected,
  - (b) company A incurs expenditure in the payment period on externally provided workers (see sections 1127 and 1128), and
  - (c) company B incurs staffing costs in the payment period in providing any of those workers for company A.
- (4) The amount produced is the sum of the amounts given, in relation to each worker in respect of whom subsection (3)(c) is satisfied, by –

$$A \times \frac{B}{C}$$

where –

A is the amount of expenditure that –

- (a) has been incurred on staffing costs by company B in providing the worker for company A, and
- (b) forms part of the total amount of company B’s PAYE and NIC liabilities for the payment period (see section 1112D),

B is the amount of company A’s qualifying expenditure on the externally provided worker that has been taken into account in calculating the amount of company A’s general qualifying expenditure for the payment period, and

C is the total amount of company A’s qualifying expenditure on the externally provided worker for the payment period.

- (5) Subsection (6) produces an amount where –
- (a) two companies (“company A” and “company B”) are connected,
  - (b) company A incurs qualifying sub-contractor expenditure in the payment period, and
  - (c) company B incurs staffing costs in the payment period in undertaking on behalf of company A any of the research and development to which that expenditure is attributable.
- (6) That amount is such amount of those staffing costs as forms part of the total amount of company B’s PAYE and NIC liabilities for the payment period (see section 1112D).
- (7) In this section as it applies for the purposes of section 1042H –  
“general qualifying expenditure” means qualifying Chapter 1A expenditure (see section 1042C);

“qualifying sub-contractor expenditure” means qualifying Chapter 1A expenditure that is eligible sub-contractor expenditure (see section 1042E).

- (8) In this section as it applies for the purposes of section 1058(1)–
- “general qualifying expenditure” means qualifying Chapter 2 expenditure (see section 1051);
- “qualifying sub-contractor expenditure” means qualifying expenditure on contracted out research and development (see section 1052).

#### **1112D Total PAYE and NIC liabilities**

- (1) For the purposes of section 1112C, the total amount of a company’s PAYE and NIC liabilities for a payment period is the sum of amount A and amount B.
- (2) Amount A is the total amount of income tax for which the company is required to account to an officer of Revenue and Customs under PAYE regulations for the period.
- (3) In calculating amount A, any deduction the company is authorised to make in respect of child tax credit or working tax credit is to be disregarded.
- (4) Amount B is the total amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the accounting period.
- (5) In calculating amount B, any deduction the company is authorised to make in respect of any of the following is to be disregarded –
- (a) statutory sick pay,
  - (b) statutory maternity pay,
  - (c) statutory adoption pay,
  - (d) statutory paternity pay,
  - (e) statutory shared parental pay,
  - (f) child tax credit, or
  - (g) working tax credit.
- (6) Subsection (7) applies if –
- (a) in determining under section 1112C the amount of a company’s relevant PAYE and NIC liabilities for a payment period, it is necessary to determine the total amount of another company’s PAYE and NIC liabilities for that period, and
  - (b) that period falls within, but is shorter than, a payment period of that other company.
- (7) The amount produced by subsection (1) in its application to that other company is to be proportionately reduced.

**1112E Exception for companies creating or managing intellectual property**

- (1) There is no cap by reference to a company's PAYE and NIC liabilities 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 (if any) given by subsection (6) does not exceed 15% of the company's qualifying expenditure 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 sub-contractor expenditure, 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) In subsection (6)(b), “qualifying sub-contractor expenditure” has whichever of the meanings given by 1112C(7) as corresponds to the purpose for which this section is being applied.
- (8) The Treasury may by regulations replace the percentage for the time being specified in subsection (5) with a different percentage.

*Going concerns*

**1112F Restriction of credit and relief to companies that are going concerns**

- (1) Subsection (2) applies if a company makes a claim under section 1042B (entitlement to R&D expenditure credit) at a time when it is not a going concern.
- (2) No amount is to be paid to the company at step 7 in section 1042H as a result of the claim.
- (3) Subsection (2) ceases to apply (and the company accordingly becomes entitled to be paid) if the company becomes a going concern on or before the last day on which an amendment of the company’s tax return for the accounting period in question could be made under paragraph 15 of Schedule 18 to FA 1998.
- (4) A company may not make –
  - (a) a claim under section 1044 (R&D relief by way of additional deduction),
  - (b) an election under section 1045 (R&D relief by way of deemed trading loss), or
  - (c) a claim under section 1054 (R&D tax credit),at a time when it is not a going concern.
- (5) 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).

- (6) Subsection (5) 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.

**1112G Meaning of “going concern”**

- (1) For the purposes of section 1112F, 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 prepared on that basis only because of an entitlement or expected entitlement to a credit or relief under this Part.
- (2) But a company is not a going concern if it is in administration or liquidation.
- (3) For the purposes of this section, a company is in administration if—
- (a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.
- (4) For the purposes of this section, a company is in liquidation if—
- (a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or
  - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.
- (5) If—
- (a) a company transfers its trade and research and development to another company that is a member of the same group, and
  - (b) only by reason of that transfer, the company’s accounts are not prepared on a going concern basis,
- the accounts are to be treated for the purposes of this section as if they were prepared on a going concern basis.
- (6) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

*Outstanding tax matters*

**1112H No credit payable if certain tax matters outstanding**

- (1) This section applies in relation to an amount that a company would, but for this section, be entitled to be paid –
  - (a) at step 7 in section 1042H (payment of R&D expenditure credit not applied for other purposes), or
  - (b) under section 1054 (payment of R&D tax credit).
- (2) If the company’s tax return for the accounting period in question is enquired into by an officer of Revenue or Customs –
  - (a) the amount does not have to be paid to the company, but
  - (b) an officer of Revenue and Customs may make a payment on a provisional basis of such amount as the officer thinks fit.
- (3) If the company has outstanding PAYE or NIC liabilities for the accounting period in question, the amount does not have to be paid to the company.
- (4) For the purposes of subsection (3), a company has outstanding PAYE or 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.

*Artificially inflated claims*

**1112I Transactions aimed at obtaining credit or relief to be disregarded**

- (1) To the extent that a transaction is attributable to arrangements entered into for a disqualifying purpose, it is to be disregarded in ascertaining the existence or amount of an R&D aid.
- (2) Arrangements are entered into for a disqualifying purpose if their main purpose, or one of their main purposes, is to enable a company to obtain an R&D aid –
  - (a) to which it would not otherwise be entitled, or
  - (b) of greater amount than that to which it would otherwise be entitled.
- (3) In this section, “an R&D aid” means an R&D expenditure credit, relief under section 1044 or 1045 or an R&D tax credit.

*Chapter 2 aid not to exceed certain limit”.*

- (4) In section 1113 (cap on R&D aid under Chapter 2), in subsection (4)(a), for the words from “relief” to “SME” substitute “relief for R&D-intensive SMEs”.
  - (5) In section 1118(1) (notional R&D expenditure credit when calculating total aid) –
    - (a) for “Chapter 6A of Part 3 (trade profits: R&D expenditure credits)” substitute “Chapter 1A”;
    - (b) for “been a large company throughout the period” substitute “not claimed qualifying R&D relief in respect of that expenditure”.
- 9 (1) Chapter 9 of Part 13 (supplementary provision) is amended as follows.
- (2) In section 1126B (regulations about consumable items and research and development), omit subsection (3)(b).
  - (3) In section 1127 (“qualifying expenditure on externally provided workers”), in subsection (3), for “1131” substitute “1132A”.
  - (4) In section 1128 (“externally provided worker”), in subsection (9), for “1131” substitute “1132A”.
  - (5) In section 1129 (qualifying expenditure on externally provided workers: connected persons) –
    - (a) in subsection (3) omit the “and” at the end of paragraph (b);
    - (b) in that subsection, at the end of paragraph (c) insert “, and
      - (d) is incurred in respect of qualifying earnings of externally provided workers.”
  - (6) In section 1131 (qualifying expenditure on externally provided workers: other cases) –
    - (a) in subsection (2), for “65% of the staff provision payment” substitute “65% of so much of the staff provision payment as is incurred in respect of qualifying earnings of externally provided workers”;
    - (b) after subsection (3) insert –
      - “(4) Any apportionment of expenditure of the company necessary for the purposes of this section is to be made on a just and reasonable basis.”
  - (7) After section 1132 insert –
 

**“1132A “Qualifying earnings”**

    - (1) For the purposes of this Part, “qualifying earnings”, in relation to an externally provided worker, means any amount of the worker’s earnings under the contract mentioned in section 1128(7) that is within subsection (2) or (3).
    - (2) An amount is within this subsection if it is an amount in respect of which the staff controller or the company is required to account to

an officer of Revenue and Customs for income tax under PAYE regulations and Class 1 national insurance contributions.

- (3) An amount is within this subsection if it is an amount that is attributable to relevant research and development undertaken outside the United Kingdom in circumstances within section 1138A(2).”
- (8) In section 1133(3) (application of sections 1134 to 1136), before the entry for section 1053(1)(a) insert –
- “section 1042E(2), and”.
- (9) In section 1134 (qualifying element of sub-contractor payment: connected persons) in subsection (3) –
- (a) omit the “and” at the end of paragraph (c);
- (b) at the end of paragraph (d) insert “, and
- (e) is UK expenditure or qualifying overseas expenditure.”
- (10) In section 1136 (qualifying element of sub-contractor payment: other cases) –
- (a) in subsection (2), for “65% of the sub-contractor payment” substitute “65% of so much of the sub-contractor payment as comprises UK expenditure or qualifying overseas expenditure”;
- (b) after subsection (2) insert –
- “(3) Any apportionment of expenditure of the company necessary for the purposes of this section is to be made on a just and reasonable basis.”
- (11) [In section 1138 (meaning of “subsidised expenditure”) –
- (a) before subsection (1) insert –
- “(A1) For the purposes of Chapter 1A a company’s expenditure is treated as subsidised to the extent that –
- (a) a grant or subsidy is obtained in respect of the expenditure, or
- (b) the expenditure is otherwise met directly or indirectly by a person other than the company.”;
- (b) in subsection (1), in the words before paragraph (a), for “Part” substitute “Chapter 2”.]
- (12) After section 1138 insert –
- “1138A “UK expenditure” and “qualifying overseas expenditure”**
- (1) For the purposes of this Part, expenditure is –
- (a) UK expenditure, if it is in respect of research and development undertaken in the United Kingdom;
- (b) qualifying overseas expenditure, if it is in respect of research and development undertaken outside the United Kingdom in circumstances mentioned in subsection (2).

- (2) The circumstances are that there are conditions necessary for the purposes of the research and development –
  - (a) that are not present in the United Kingdom,
  - (b) that are present in the location in which the research and development is undertaken, and
  - (c) that it would be wholly unreasonable for the company to replicate in the United Kingdom.
- (3) In subsection (2) “conditions” –
  - (a) includes –
    - (i) geographical, environmental or social conditions;
    - (ii) legal or regulatory requirements as a result of which the research and development may not be undertaken in the United Kingdom, but
  - (b) does not include conditions so far as relating to –
    - (i) the cost of the research and development;
    - (ii) the availability of workers to carry out the research and development.
- (4) The Treasury may by regulations make provision specifying things that are not conditions for the purposes of subsection (2).

**1138B Exempt foreign permanent establishments**

For the purposes of this Part in its application to an accounting period, a company’s expenditure is “attributable to an exempt foreign permanent establishment” if –

- (a) an election by the company under section 18A applies to the period, and
- (b) the expenditure is brought into account in calculating a relevant profits amount or a relevant losses amount for the purposes of that section as it applies in relation to the period.”

- (13) After section 1140 insert –

**“1140A Groups**

For the purposes of this Part, a company is in the same group as another company if those companies are in the same group for the purposes of Part 5 of CTA 2010.”

- (14) Omit section 1142 (meaning of “qualifying body”).
- (15) In section 1142B (meaning of “R&D claim”), in paragraph (a), for “104A” substitute “1042B”.

(16) After section 1142B insert –

**“1142C Orders and regulations: ancillary provision**

Any order or regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.”

**PART 2**

CONSEQUENTIAL AMENDMENTS

*Finance Act 1998 (c. 36)*

- 10 In the following provisions of Schedule 18 to FA 1998 (company tax returns), for “Chapter 6A of Part 3” substitute “Chapter 1A of Part 13” –
- (a) paragraph 52(2A)(b) (application of provisions about discovery assessments to amounts paid by way of R&D expenditure credit);
  - (b) paragraph 83A(a) (application of Part 9A of the Schedule to claims for R&D expenditure credit);
  - (c) paragraph 83E(3) (ability to claim R&D expenditure credit out of time where claim for R&D tax credit rejected).

*Finance Act 2007 (c. 11)*

- 11 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa)(ii) (“corporation tax credit” includes R&D expenditure credit), for “Chapter 6A of Part 3” substitute “Chapter 1A of Part 13”.

*Corporation Tax Act 2009 (c. 4)*

- 12 (1) CTA 2009 is amended as follows.
- (2) In the following provisions, for “Chapter 6A of Part 3” substitute “Chapter 1A of Part 13” –
- (a) section 1217JA(2)(a) (expenditure eligible for R&D expenditure credit not eligible for theatre tax relief);
  - (b) section 1218ZCG(2)(a) (expenditure eligible for R&D expenditure credit not eligible for museums and galleries exhibition tax relief).
- (3) In section 1310(4) (orders and regulations subject to affirmative procedure) –
- (a) omit paragraph (zzza);
  - (b) after paragraph (za) insert –
    - “(zaa) section 1042B(4)(c) (companies ineligible for R&D expenditure credit),”.
- (4) [Amendments of Schedule 4 will be added.]

*Corporation Tax Act 2010 (c. 4)*

- 13 (1) CTA 2010 is amended as follows.

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- (2) In section 269DA(2) (meaning of banking company’s “surcharge profits”), in the definition of “RDEC”, for “Chapter 6A of Part 3 of CTA 2009 (trade profits: R&D expenditure credits)” substitute “Chapter 1A of Part 13 of CTA 2009 (R&D expenditure credit)”.
- (3) In section 357BJB(3) (R&D expenditure not to be routine deduction in calculating IP profits), in paragraph (a)(ii), for “Chapter 6A of Part 3 of CTA 2009” substitute “Chapter 1A of that Part”.
- (4) In section 357CG(4)(a) (R&D expenditure credit to be deducted in calculating IP profits), for “Chapter 6A of Part 3” substitute “Chapter 1A of Part 13”.
- (5) In Chapter 9 of Part 8B (treatment of R&D credits and relief for purposes of Northern Ireland rate) –
- (a) in section 357P(1) (overview of Chapter), for paragraphs (a) and (b) substitute –
- “(a) Chapter 1A of Part 13 (R&D expenditure credit), and  
 (b) Chapter 2 of that Part (relief for R&D-intensive SMEs).”;
- (b) in the italic heading before section 357PA, omit “under Chapter 6A of Part 3 of CTA 2009”;
- (c) in section 357PA (R&D expenditure credit to form part of mainstream profits or losses), in –
- (i) the heading, and  
 (ii) subsection (1)(a),
- for “Chapter 6A of Part 3” substitute “Chapter 1A of Part 13”;
- (d) in section 357PD (amount of R&D tax credit for Northern Ireland company) –
- (i) in subsections (2)(b), (3)(b) and (4)(b), for “given by section 1058(1A) of CTA 2009” substitute “of the cap by reference to the company’s PAYE and NIC liabilities for the accounting period”;
- (ii) omit subsections (2A), (3A) and (4A);
- (iii) after subsection (5) insert –
- “(6) Sections 1112B to 1112E of CTA 2009 (determination of cap by reference to PAYE and NIC liabilities) apply for the purposes of subsections (2)(b), (3)(b) and (4)(b) as they apply for the purposes of section 1058(1) of CTA 2009.”

*Taxation (International and Other Provisions) Act 2010 (c. 8)*

- 14 In the following provisions of TIOPA 2010, for “within the meaning of section 104A” substitute “under Chapter 1A of Part 13” –
- (a) section 407(3)(a) (R&D expenditure credit not to be taken into account in determining tax-EBITDA);



- (b) section 416(2A) (R&D expenditure credit not to be taken into account in determining worldwide group's profit before tax).

*Finance Act 2013 (c. 29)*

- 15 In Schedule 43C to FA 2013 (penalties in connection with the general anti-abuse rule), in paragraph 11(3)(ii) (“corporation tax credit” includes R&D expenditure credit), for “Chapter 6A of Part 3” substitute “Chapter 1A of Part 13”.

**PART 3**

COMMENCEMENT AND TRANSITION

*General commencement of Parts 1 and 2*

- 16 The amendments made by this Schedule have effect in relation to expenditure incurred on or after 1 April 2024.

*Higher rate of payable credit for R&D-intensive SMEs from 1 April 2023*

- 17 (1) Sub-paragraph (2) applies if, in an accounting period beginning before 1 April 2023 and ending on or after that date, a company –
  - (a) has a Chapter 2 surrenderable loss, and
  - (b) meets the R&D intensity condition.
- (2) The amount of R&D tax credit to which the company is entitled for the period is to be determined as if the amendment made by section 4(3)(d) of the Finance Act 2023 (reduction in rate of credit from 14.5% to 10%) had not been made.
- (3) Subsections (2) to (7) of section 1045ZA of CTA 2009, as inserted by paragraph 6(6), determine whether a company meets the R&D intensity condition in an accounting period for the purposes of sub-paragraph (1)(b).
- (4) In this paragraph, “Chapter 2 surrenderable loss” and “R&D tax credit” have the same meanings as in Chapter 2 of Part 13 of CTA 2009 (see sections 1054 and 1055 of that Act).

*Transitional provision about Chapter 2 aid cap*

- 18 (1) Sub-paragraph (2) applies for the purposes of section 1114 of CTA 2009 as that section applies in relation to a project in respect of which expenditure was incurred in an accounting period beginning before 1 April 2024.
- (2) The notional R&D expenditure credit is the total of the amount (if any) given by section 1118 of CTA 2009 as it would apply without the amendment made by paragraph 8(5) and the amount (if any) given by that section as it applies with that amendment.