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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 13 **U.K.**

#### TAX RELIEF FOR EXPENDITURE ON VACCINE RESEARCH ETC

##### **Modifications etc. (not altering text)**

- C1** Sch. 13 modified (with effect as specified in art. 2 of the commencing S.I. of the commencing S.I.) by [Finance Act 2004 \(c. 12\)](#), s. 53(2)(6); S.I. 2004/3268, art. 2

##### **Commencement Information**

- II** Sch. 13 has effect in relation to expenditure incurred on or after 22.4.2003 by The Finance Act 2002, Schedule 13 (Appointed Day) Order 2003 ([S.I. 2003/1472](#)), art. 2 (with para. 28(1))

### **PART 1** **U.K.**

#### ENTITLEMENT TO RELIEF

##### *Entitlement to relief under this Schedule*

- 1 (1) A company is entitled to relief under this Schedule for an accounting period if the company's qualifying expenditure for that period (see paragraph 2) is not less than—
- (a) [<sup>F1</sup>£10,000], if the accounting period is a period of 12 months, or
  - (b) such amount as bears to [<sup>F2</sup>£10,000] the same proportion as the accounting period bears to 12 months.
- (2) Relief under this Schedule in respect of any expenditure is in addition to any relief in respect of that expenditure under Schedule 20 to the Finance Act 2000 (c. 17) or Schedule 12 to this Act (tax relief for expenditure on research and development).

##### **Textual Amendments**

- F1** Word in Sch. 13 para. 1(1)(a) substituted (with effect in accordance with s. 168(4)(e) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 31 para. 21(2)**
- F2** Word in Sch. 13 para. 1(1)(b) substituted (with effect in accordance with s. 168(4)(e) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 31 para. 21(2)**

##### *Qualifying expenditure*

- 2 (1) For the purposes of this Schedule “qualifying expenditure” means—
- (a) qualifying expenditure on direct research and development (see paragraphs 3 to 5),

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- (b) qualifying expenditure on sub-contracted research and development (see paragraphs 6 to 11), or
  - (c) qualifying expenditure on contributions to independent research and development (see paragraph 12).
- (2) The qualifying expenditure of a company “for an accounting period” is determined as follows.
- (3) The qualifying expenditure on direct or sub-contracted research and development for an accounting period is—
- (a) in the case of company that qualifies as a small or medium-sized enterprise in that period, qualifying expenditure that—
    - (i) is deductible in computing for tax purposes the profits for that period of a trade carried on by the company, or
    - (ii) would have been so deductible 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,
 (disregarding for this purpose section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins));
  - (b) in the case of a company that does not qualify as a small or medium-sized enterprise in that period, qualifying expenditure that is deductible in computing for tax purposes the profits for that period of a trade carried on by the company (including expenditure that is so deductible by virtue of section 401 of the Taxes Act 1988).
- (4) The qualifying expenditure on contributions to independent research and development for an accounting period is the expenditure that is incurred on contributions paid in that period.

*Qualifying expenditure on direct research and development*

- 3 (1) Qualifying expenditure of a company on direct research and development is expenditure incurred by the company that satisfies the following conditions.
- (2) The first condition is that the expenditure is on qualifying R&D activity (see paragraph 4) directly undertaken by the company.
- (3) The second condition is that the qualifying R&D activity on which the expenditure is incurred is relevant research and development in relation to the company.
- (4) The third condition is that the expenditure is not of a capital nature.
- [<sup>F3</sup>(5) The fourth condition is that the expenditure—
- (a) is incurred on staffing costs,
  - (b) is incurred on [<sup>F4</sup>software or consumable items] , or
  - (c) is qualifying expenditure on externally provided workers.]
- (6) The fifth condition is that the expenditure is not incurred by the company in carrying on activities the carrying on of which is contracted out to the company by any person.
- (7) The sixth condition is that the expenditure is not subsidised.

*Status: Point in time view as at 01/04/2006.*

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### Textual Amendments

- F3** Sch. 13 para. 3(5) substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 22](#)
- F4** Words in Sch. 13 substituted (with effect in accordance with s. 141(3)-(7)) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(c\)](#); [S.I. 2005/123](#), [art. 2](#)

### Qualifying R&D activity

- 4 (1) For the purposes of this Schedule “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 sub-paragraph (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 sub-paragraph (1)(a), (b), (c) or (d).
- (4) In sub-paragraph (1) references to vaccines or medicines are to vaccines or medicines for use in humans.

*[<sup>F5</sup>Meaning of “relevant R&D”, “small or medium-sized enterprise”, “staffing costs”, “<sup>F4</sup>software or consumable items”, “subsidised” and “qualifying expenditure on externally provided workers.]*

- 5 (1) For the purposes of this Schedule “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) For the purposes of this Schedule research and development related to a trade carried on by the company includes research and development which may lead to or facilitate an extension of that trade.
- (3) The following provisions of Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for R&D expenditure of small and medium-sized companies) apply for the purposes of this Schedule as they apply for the purposes of that Schedule—
- (a) paragraph 2 (meaning of “small or medium-sized enterprise”);
  - (b) paragraph 5 (staffing costs);
  - (c) paragraph 6 (expenditure on [<sup>F4</sup>software or consumable items]); <sup>F6</sup>...
  - (d) paragraph 8 [<sup>F7</sup>(subsidised expenditure); and]
  - [<sup>F8</sup>(e) paragraphs 8A to 8E (qualifying expenditure on externally provided workers).]

*Status: Point in time view as at 01/04/2006.*

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except that in their application for the purposes of this Schedule, references in that Schedule to relevant research and development shall be construed in accordance with sub-paragraphs (1) and (2) above.

#### Textual Amendments

- F4** Words in Sch. 13 substituted (with effect in accordance with s. 141(3)-(7)) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(c\)](#); S.I. 2005/123, [art. 2](#)
- F5** Sch. 13 para. 5 heading substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 23\(5\)](#)
- F6** Word in Sch. 13 para. 5(3) repealed (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 23\(2\)](#), [Sch. 43 Pt. 3\(10\)](#)
- F7** Words in Sch. 13 para. 5(3)(d) substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 23\(3\)](#)
- F8** Sch. 13 para. 5(3)(e) inserted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 23\(4\)](#)

#### *Qualifying expenditure on sub-contracted research and development*

- 6 (1) Paragraphs 7 to 11 make provision for determining the qualifying expenditure of a company on sub-contracted research and development.

This is subject to sub-paragraph (3).

- (2) For the purposes of those paragraphs a company (“the principal”) incurs expenditure on sub-contracted research and development if it makes a payment (a “sub-contractor payment”) to another person (“the sub-contractor”) in respect of research and development contracted out by the company to that person.
- (3) Where the sub-contractor is—
- (a) a charity (within the meaning of section 506(1) of the Taxes Act 1988),
  - (b) a university, or
  - (c) an Association of a description specified in section 508 of that Act (scientific research organisations),

paragraphs 7(1) and 8 to 11 do not apply and expenditure of the principal on sub-contracted expenditure is qualifying expenditure if it satisfies the conditions of paragraph 7(2) to (6).

#### *Conditions that must be satisfied by qualifying expenditure on sub-contracted research and development*

- 7 (1) Expenditure of a company on sub-contracted research and development is not qualifying expenditure unless it satisfies the following conditions.
- (2) The first condition is that the expenditure is on research and development directly undertaken on behalf of the company by the sub-contractor.
- (3) The second condition is that the expenditure is on qualifying R&D activity (see paragraph 4).
- (4) The third condition is that the R&D activity in respect of which the expenditure is incurred is relevant research and development in relation to the company.

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(5) The fourth condition is that the expenditure is not of a capital nature.

(6) The fifth condition is that the expenditure is not subsidised.

*Treatment of sub-contractor payment where principal and sub-contractor are connected persons*

8 (1) Where the principal and the sub-contractor are connected persons and in accordance with generally accepted accounting practice—

- (a) the whole of the sub-contractor payment has been brought into account in determining the sub-contractor's profit or loss for a relevant period, and
- (b) all of the sub-contractor's relevant expenditure has been so brought into account,

the whole of the payment (up to the amount of the sub-contractor's relevant expenditure) is qualifying expenditure on sub-contracted research and development.

This is subject to paragraph 7 (conditions that must be satisfied by qualifying expenditure on sub-contracted R&D).

(2) In sub-paragraph (1)—

- (a) "relevant expenditure" has the meaning given by paragraph 9, and
- (b) "relevant period" means a period—
  - (i) for which accounts are drawn up by the sub-contractor, and
  - (ii) that ends not more than twelve months after the end of the principal's period of account in which the sub-contractor payment is, in accordance with generally accepted accounting practice, brought into account in determining the principal's profit or loss.

(3) Any apportionment of expenditure of the principal or the sub-contractor necessary for the purposes of this paragraph shall be made on a just and reasonable basis.

*Relevant expenditure of the sub-contractor*

9 (1) For the purposes of paragraph 8 the "relevant expenditure" of the sub-contractor is expenditure that—

- (a) is incurred by the sub-contractor in carrying on, on behalf of the principal, the activities to which the sub-contractor payment relates, and
- (b) satisfies the following conditions.

(2) The first condition is that the expenditure is not of a capital nature as regards the sub-contractor.

[<sup>F9</sup>(3) The second condition is that the expenditure—

- (a) is incurred on staffing costs,
- (b) is incurred on [<sup>F4</sup>software or consumable items] , or
- (c) is qualifying expenditure on externally provided workers.

In applying for the purposes of this sub-paragraph (by virtue of paragraph 5 above)— paragraph 5 of Schedule 20 to the Finance Act 2000 (meaning of "staffing costs"), or paragraphs 8A to 8E of that Schedule (qualifying expenditure on externally provided workers), the references to the company shall be read as references to the sub-contractor.]

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- (4) The third condition is that the expenditure is not subsidised.

In applying (by virtue of paragraph 5 above) paragraph 8 of that Schedule (subsidised expenditure) for the purposes of this paragraph, the references to the company shall be read as references to the sub-contractor.

#### **Textual Amendments**

- F4** Words in Sch. 13 substituted (with effect in accordance with s. 141(3)-(7)) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(c\)](#); [S.I. 2005/123](#), [art. 2](#)
- F9** Sch. 13 para. 9(3) substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 24](#)

#### *Election for connected persons treatment*

- 10 (1) The principal and the sub-contractor may in any case jointly elect that paragraph 8 (treatment of sub-contractor payment where principal and sub-contractor are connected) shall apply to sub-contractor payments made by the principal to the sub-contractor.
- (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 given to the Inland Revenue.
- (4) The notice must be given not later than two years after the end of the company's accounting period in which the contract or other arrangement is entered into.
- (5) An election under this paragraph, once made, is irrevocable.

#### *Treatment of sub-contractor payment in other cases*

- 11 Where the principal makes a sub-contractor payment and—
- (a) the principal and the sub-contractor are not connected persons, and
  - (b) no election is made under paragraph 10 (election for connected persons treatment),
- 65% of the amount of the sub-contractor payment is treated as qualifying expenditure on sub-contracted research and development.
- This is subject to paragraph 7 (conditions that must be satisfied by qualifying expenditure on sub-contracted R&D).

#### *Qualifying expenditure on contributions to independent research and development*

- 12 (1) Expenditure of a company on contributions to independent research and development is qualifying expenditure where the following conditions are satisfied.
- (2) The first condition is that the expenditure must be incurred on payments made to—
- (a) a charity (within the meaning of section 506(1) of the Taxes Act 1988),
  - (b) a university, or
  - (c) an Association of a description specified in section 508 of that Act (scientific research organisations),

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for the purpose of funding qualifying R&D activity carried on by the body in question.

- (3) The second condition is that the R&D activity must be research and development related to a trade carried on by the company.

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