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SCHEDULES

SCHEDULE 1

RESEARCH AND DEVELOPMENT

PART 1

MAIN AMENDMENTS OF CTA 2009

8 For Chapter 8 of Part 13 (cap on aid for R&D) substitute—

“CHAPTER 8

RESTRICTIONS ON RELIEF UNDER THIS PART

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 of R&D expenditure credit or R&D tax credit payable to a company 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 relief 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) Section [1112J](#) allows the Treasury to place additional limits on the amount of relief available under Chapter 2.

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PAYE and NIC liabilities

1112B Cap by reference to PAYE and NIC liabilities

- (1) This section determines, for the purposes of sections 1042I 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 to be proportionately reduced.
- (4) If the company claims relief under both Chapters 1A and 2 for the period, the amount of the cap for the purposes of section 1042I is to be reduced by the amount of any R&D tax credit obtained by the company under Chapter 2.
- (5) 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

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- (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—

$$X \times \frac{Y}{Z}$$

where—

X 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),

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

Z is the total amount of company A's qualifying expenditure on the externally provided worker (see section 1127) 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 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 1042I—
- “qualifying expenditure” (except in the expression “qualifying expenditure on the externally provided worker”) means expenditure that is qualifying Chapter 1A expenditure by virtue of section 1042D, 1042E or 1042F;
- “qualifying contractor expenditure” means expenditure that is qualifying Chapter 1A expenditure by virtue of—
- (a) section 1042E, or
- (b) section 1042F as it applies by reference to section 1042E.
- (8) In this section as it applies for the purposes of section 1058(1)—
- “qualifying expenditure” (except in the expression “qualifying expenditure on the externally provided worker”) means qualifying Chapter 2 expenditure (see section 1051);
- “qualifying contractor expenditure” means qualifying expenditure that is qualifying Chapter 2 expenditure by virtue of—
- (a) section 1053, or

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(b) section 1053A as it applies by reference to section 1053.

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 maternity pay,
 - (b) statutory adoption pay,
 - (c) statutory paternity pay,
 - (d) statutory shared parental pay,
 - (e) statutory parental bereavement 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.

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- (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, or
 - (ii) have jointly elected (under section 1130) that section 1129 is to apply to them as if they were all connected;
 - (b) qualifying contractor expenditure, where the company and the contractor—
 - (i) are connected, 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 contractor expenditure” has whichever of the meanings given by 1112C(7) 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.

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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 1042C (claims for 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 1042I 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 it would be entitled to amend the claim in accordance with paragraph 83E 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

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- (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 for the period of account in which the transfer took place 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 1042I (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 a company’s entitlement to relief under this Part.
- (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 relief under this Part—

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- (a) to which it would not otherwise be entitled, or
- (b) of greater amount than that to which it would otherwise be entitled.

Additional limits

1112J Power to further limit Chapter 2 relief

The Treasury may, by regulations, limit the availability of relief under Chapter 2 in respect of—

- (a) companies (or groups of companies) of a prescribed description,
- (b) research and development projects of a prescribed description, or
- (c) expenditure of a prescribed description.”

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