

Status: Point in time view as at 22/02/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Schedule 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 10

RELIEF FOR RESEARCH AND DEVELOPMENT

PART 1

CLAIM NOTIFICATIONS

Requirement to make claim notifications in relation to certain R&D claims

- 1 (1) Chapter 6A of Part 3 of CTA 2009 (trade profits: R&D expenditure credits) is amended as follows.
- (2) In section 104A (R&D expenditure credits), after subsection (5) insert—
- “(5A) This section is subject to [section 104AA](#).”
- (3) After that section insert—

“104AA Requirement to make a claim notification

- (1) A company may not make a claim under section 104A(1) (an “RDEC claim”) after the end of the claim notification period unless—
- the company has made an R&D claim during the period of three years ending with the last day of the claim notification period,
 - the company makes a claim notification in respect of the RDEC claim within the claim notification period, or
 - the accounting period in respect of which the RDEC claim is made falls within the same period of account as another accounting period in respect of which the company has made an R&D claim or a claim notification.
- (2) For the purposes of [subsection \(1\)](#)(a) ignore any R&D claim for an accounting period beginning before 1 April 2023 that is included in the company’s company tax return only by virtue of an amendment made on or after that date (see paragraph 83B(2) of Schedule 18 to FA 1998).”
- (4) In section 104Y (interpretation), in subsection (1)—
- before the entry for “large company” insert—
““claim notification” (see [section 1142A](#)),
“claim notification period” (see [section 1142A](#)),”;
 - after the entry for “research and development” insert—
““R&D claim” (see [section 1142B](#)),”.
- 2 (1) Part 13 of CTA 2009 (additional relief for expenditure on R&D) is amended as follows.

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- (2) In section 1044 (additional deduction in calculating profits of trade), in subsection (9), after “subject to” insert “—
- (a) [section 1045A](#) (requirement to make a claim notification);
 - (b)”.
- (3) Before section 1046 (relief only available where company is going concern) but after the preceding italic heading insert—

“1045A Requirement to make a claim notification

- (1) A company may not make a claim under section 1044(6) (an “additional deduction claim”) after the end of the claim notification period unless—
 - (a) the company has made an R&D claim during the period of three years ending with the last day of the claim notification period,
 - (b) the company makes a claim notification in respect of the additional deduction claim within the claim notification period, or
 - (c) the accounting period in respect of which the additional deduction claim is made falls within the same period of account as another accounting period in respect of which the company has made an R&D claim or a claim notification.
 - (2) For the purposes of [subsection \(1\)\(a\)](#) ignore any R&D claim for an accounting period beginning before 1 April 2023 that is included in the company’s company tax return only by virtue of an amendment made on or after that date (see paragraph 83B(2) of Schedule 18 to FA 1998).”
- (4) In section 1054 (entitlement to and payment of tax credit), in subsection (5), after “subject to” insert “—
- (a) [section 1054A](#) (requirement to make a claim notification);
 - (b)”.
- (5) After that section insert—

“1054A Requirement to make a claim notification

- (1) A company may not make a claim under section 1054(2) (an “R&D tax credit claim”) after the end of the claim notification period unless—
 - (a) the company has made an R&D claim during the period of three years ending with the last day of the claim notification period,
 - (b) the company makes a claim notification in respect of the R&D tax credit claim within the claim notification period, or
 - (c) the accounting period in respect of which the R&D tax credit claim is made falls within the same period of account as another accounting period in respect of which the company has made an R&D claim or a claim notification.
 - (2) For the purposes of [subsection \(1\)\(a\)](#) ignore any R&D claim for an accounting period beginning before 1 April 2023 that is included in the company’s company tax return only by virtue of an amendment made on or after that date (see paragraph 83B(2) of Schedule 18 to FA 1998).”
- (6) After section 1142 (“qualifying body”) insert—

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“1142A “Claim notification” and “claim notification period”

(1) For the purposes of this Part—

“claim notification” means, in relation to an R&D claim, a notification made by the company to an officer of His Majesty’s Revenue and Customs in accordance with regulations under [subsection \(2\)](#);

“claim notification period” means, in relation to an R&D claim, the period—

- (a) beginning with the first day of the period of account which is the same as the accounting period in respect of which the claim is made, or within which that accounting period falls, and
- (b) ending with the last day of the period of six months beginning with the first day after that period of account.

(2) The Commissioners for His Majesty’s Revenue and Customs may by regulations specify, in relation to a claim notification—

- (a) information to be provided with the notification;
- (b) the form and manner in which the notification is to be made.

1142B “R&D claim”

For the purposes of this Part an “R&D claim” means a claim under—

- (a) section 104A (R&D expenditure credits),
- (b) section 1044 (relief for SMEs: additional deduction), or
- (c) section 1054 (entitlement to R&D tax credit).”

PART 2

R&D EXPENDITURE ON DATA AND CLOUD COMPUTING

Relief for R&D expenditure on data and cloud computing

- 3 (1) Chapter 9 of Part 13 of CTA 2009 (additional relief for expenditure on R&D: supplementary) is amended as follows.
- (2) In the italic heading before section 1125 (“software or consumable items”), after “Software” insert “, data licences, cloud computing services”.
- (3) In that section—
- (a) in the heading, after “Software” insert “, data licences, cloud computing services”;
 - (b) in subsection (1)—
 - (i) in the words before paragraph (a), for “or consumable items means expenditure on” substitute “, data licences, cloud computing services or consumable items means an amount paid by the company in respect of”;
 - (ii) omit the “or” at the end of that paragraph;
 - (iii) after that paragraph insert—

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- “(aa) data licences,
(ab) cloud computing services, or”;
- (c) after subsection (1) insert—
- “(1A) For the purposes of subsection (1)(aa) a data licence is a licence to access and use a collection of digital data.
- (1B) For the purposes of subsection (1)(ab) cloud computing services include the provision of access to, and maintenance of, remote—
- (a) data storage and hardware facilities;
(b) operating systems and software platforms.”
- (4) In section 1126 (software or consumable items: attributable expenditure)—
- (a) in the heading, after “Software” insert “, data licences, cloud computing services”;
- (b) in subsections (1), (2), (3), (4), (5) and (6), in each place it appears, after “software” insert “, data licences, cloud computing services”.
- (5) After section 1126 insert—

“1126ZA Attributable expenditure: special rules for data and cloud computing

- (1) Expenditure on data licences or cloud computing services is not to be treated as attributable to relevant research and development if, in connection with the grant of a licence or the provision of a service, a relevant person obtains—
- (a) a right to sell data in respect of which the licence is granted or the service is provided (as the case may be);
- (b) a right to publish, share or otherwise communicate data in respect of which the licence is granted or the service is provided (as the case may be) to a third party, other than for the purposes of communications reasonably necessary for, or incidental to, the purposes of the relevant research and development.
- (2) Expenditure on data licences or cloud computing services is not to be treated as attributable to relevant research and development so far as it is attributable to a qualifying indirect activity.
- (3) In this section—
- “qualifying indirect activity” means an activity mentioned in paragraph 31 of the Guidelines on the Meaning of Research and Development for Tax Purposes issued on 7 March 2023 and as amended from time to time;
- “relevant person” has the meaning given in section 1126A(10).”
- (6) In section 1126A (attributable expenditure: special rules), in the heading, after “special rules” insert “for consumable items”.
- (7) In section 1126B (attributable expenditure: further provision)—
- (a) in subsection (1)—
- (i) after “expenditure on” insert “data licences, cloud computing services or”;
- (ii) after “1126” insert “, 1126ZA”;

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- (b) in subsection (2)—
 - (i) in paragraph (a), after “expenditure on” insert “data licences, cloud computing services or”;
 - (ii) in paragraph (b), after “in which” insert “data licences, cloud computing services or”;
- (c) in subsection (4), after paragraph (a) insert—
 - “(aa) [section 1126ZA](#).”

Relief for R&D expenditure on data and cloud computing: consequential amendments

- 4 CTA 2009 is amended as follows.
- 5 In Chapter 6A of Part 3 (trade profits: R&D expenditure credits)—
 - (a) in section 104D (expenditure on sub-contracted R&D undertaken in-house), in subsection (3)(b), after “software” insert “, data licences, cloud computing services”;
 - (b) in section 104G (subsidised qualifying expenditure on in-house direct R&D), in subsection (3)(b), after “software” insert “, data licences, cloud computing services”;
 - (c) in section 104J (qualifying expenditure on in-house direct R&D), in subsection (2)(b), after “software” insert “, data licences, cloud computing services”;
 - (d) in section 104Y (interpretation), in subsection (2), in the description of sections 1125 to 1126B, after “software” insert “, data licences, cloud computing services”.
- 6 In Part 13 (additional relief for expenditure on R&D)—
 - (a) in Chapter 2 (relief for SMEs: cost of R&D incurred by SME), in section 1052 (qualifying expenditure on in-house direct R&D), in subsection (2)(b), after “software” insert “, data licences, cloud computing services”;
 - (b) in Chapter 9 (supplementary), in section 1134 (qualifying element of sub-contractor payment: connected persons), in subsection (3)(c), after “software” insert “, data licences, cloud computing services”.
- 7 In Schedule 2 (transitionals and savings), in Part 15 (research and development)—
 - (a) in the italic heading before paragraph 122, after “software” insert “, data licences, cloud computing services”;
 - (b) in paragraph 122(2), after “software” insert “, data licences, cloud computing services”.
- 8 In Schedule 4 (index of defined expressions), in both places it occurs, after “software” insert “, data licences, cloud computing services”.
- 9 In section 357BLB of CTA 2010 (qualifying expenditure on relevant R&D undertaken in-house)—
 - (a) in subsection (2), in paragraph (b), after “software” insert “, data licences, cloud computing services”;
 - (b) in subsection (7)—
 - (i) in paragraph (c), after “software” insert “, data licences, cloud computing services”;

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- (ii) in paragraph (d), after “software” insert “, data licences, cloud computing services”.

PART 3

AMENDMENTS TO SCHEDULE 18 TO FA 1998

Introduction

- 10 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.

Power of HMRC to collect overpaid R&D tax relief or expenditure credit

- 11 In paragraph 52 (recovery of excessive repayments etc)—
- (a) in sub-paragraph (2) omit paragraphs (bza) and (ba);
 - (b) for sub-paragraph (2A) substitute—

“(2A) The provisions of paragraphs 41 and 45 to 48 relating to discovery assessments apply to an amount paid to a company by way of—

 - (a) first-year tax credit under Schedule A1 to the Capital Allowances Act;
 - (b) R&D expenditure credit under Chapter 6A of Part 3 of the Corporation Tax Act 2009;
 - (c) R&D tax credit under Chapter 2 or 7 of Part 13 of that Act,

but only to the extent that the company was not, or is no longer, entitled to the credit.”

Time limits for R&D claims

- 12 For paragraph 83E (time limit for claims) substitute—
- “83E (1) Except where [sub-paragraph \(3\)](#) applies, a claim to which this Part of this Schedule applies may be made, amended or withdrawn at any time up to the last day of the period of—
- (a) two years beginning with the last day of the period of account, in a case where the period of account to which the claim relates is not longer than 18 months, or
 - (b) 42 months beginning with the first day of the period of account, in any other case.
- (2) [Sub-paragraph \(3\)](#) applies where—
- (a) a company makes a claim for R&D tax relief under Part 13 of the Corporation Tax Act 2009,
 - (b) the company is not entitled to the relief, and
 - (c) an officer of Revenue and Customs exercises the power under paragraph 34(2)(b) or (2A) to make an amendment by removing the claim from the company tax return in which it is made.

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- (3) The company may make, amend or withdraw a claim for R&D expenditure credit under Chapter 6A of Part 3 of the Corporation Tax Act 2009 in respect of eligible expenditure at any time up to whichever is the last of the following dates—
- (a) 30 days after notice of the amendment mentioned in [sub-paragraph \(2\)\(c\)](#) is issued;
 - (b) if an appeal is brought against that amendment, 30 days after the date on which the appeal is finally determined.
- (4) In this paragraph “eligible expenditure” means expenditure—
- (a) to which the claim mentioned in [sub-paragraph \(2\)\(a\)](#) relates, and
 - (b) in respect of which the company is entitled to R&D expenditure credit.
- (5) A claim to which this Part of this Schedule applies may be made, amended or withdrawn after the end of the period mentioned in [sub-paragraph \(1\)](#) or [\(3\)](#) (as the case may be) if an officer of Revenue and Customs allows it.”

Requirement to provide additional information in relation to R&D claims

- 13 In Part 9A (company tax returns etc: claims for R&D expenditure credits or R&D tax relief), after paragraph 83E (substituted by [paragraph 12](#)) insert—

“Additional information to be provided in relation to claim

- 83EA (1) A claim to which this Part of this Schedule applies is invalid unless the claimant company has provided information to an officer of Revenue and Customs in accordance with regulations under [sub-paragraph \(2\)](#) not later than the date on which the claim is made or amended by the company in accordance with paragraph 83E.
- (2) The Commissioners for Revenue and Customs may by regulations specify, in relation to a claim to which this Part of this Schedule applies—
- (a) information to be provided by the claimant company;
 - (b) the form and manner in which the information is to be provided.”

Power of HMRC to remove R&D claims made in error from return

- 14 In Part 9A (claims for R&D expenditure credits or R&D tax relief), after paragraph 83EA (inserted by [paragraph 13](#)) insert—

“Removal from return of claims made in error

- 83EB (1) This paragraph applies, in relation to a claim to which this Part of this Schedule applies (the “original claim”), where an officer of Revenue and Customs—

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- (a) reasonably believes that a claimant company has failed to comply with a requirement relating to the making of the claim (and accordingly that the claim has been made in error), and
 - (b) exercises the power under paragraph 16(1) to make a correction by removing the claim from the company tax return in which it is made.
- (2) Sub-paragraphs (4) and (5) of paragraph 16 do not apply in relation to the correction (and accordingly the claimant company may not reject the correction).
- (3) The claimant company may, within 90 days beginning with the date of the notice issued under paragraph 16(3), send written representations to an officer of Revenue and Customs objecting to the notice on the grounds that a matter stated in the notice was incorrect.
- (4) An officer of Revenue and Customs must consider any representations made under [sub-paragraph \(3\)](#).
- (5) Having considered the representations, the officer must determine whether to—
- (a) confirm the notice, or
 - (b) withdraw the notice,
- and must notify the claimant company accordingly.
- (6) Nothing in [sub-paragraph \(2\)](#) prevents the claimant company from amending its company tax return to make a new claim to which this Part of this Schedule would apply in respect of the expenditure to which the original claim related (but see [sub-paragraph \(7\)](#)).
- (7) Where, in relation to the original claim—
- (a) a claim notification (within the meaning of [section 1142A](#) of the Corporation Tax Act 2009) was required to be made, and
 - (b) no claim notification was made,
- the company may not make a new claim to which this Part of this Schedule would apply in respect of the expenditure to which the original claim related.”

PART 4

MISCELLANEOUS AMENDMENTS

Amendment of CTA 2009

15 CTA 2009 is amended as follows.

R&D tax relief: circumstances in which enterprises are treated as SMEs

- 16 (1) In section 1119—
- (a) in subsection (1), at the end insert “(and see [sections 1120A](#) and [1120B](#))”;
 - (b) in subsection (2), for “section 1120” substitute “sections 1120 to [1120B](#)”.

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- (2) In section 1120 (qualifications to section 1119)—
- (a) after subsection (6) insert—
- “(6A) This section is subject to [sections 1120A and 1120B](#).”;
- (b) in subsection (7), in the words before paragraph (a), after “section” insert “and in [sections 1120A and 1120B](#)”.
- (3) After that section insert—

“1120A Enterprise treated as an SME where related enterprise becomes large

- (1) This section applies, in relation to an accounting period, where the following conditions are met.
- (2) The first condition is that, for the duration of the accounting period, an enterprise (“E”) is related to a partner enterprise or linked enterprise (“F”).
- (3) The second condition is that, at the start of the accounting period, both E and F are small or medium-sized enterprises.
- (4) The third condition is that, at the end of the accounting period, E is not a small or medium-sized enterprise by reason only that F has, during the accounting period, exceeded the employee limit or either of the financial limits.
- (5) Both E and F are to be treated as if they were small or medium-sized enterprises for the accounting period.

1120B Enterprise treated as an SME where acquired by an SME

- (1) This section applies, in relation to an accounting period, where the following conditions are met.
- (2) The first condition is that, at the start of the accounting period, an enterprise (“E”) was not a small or medium-sized enterprise by reason only that a partner enterprise or linked enterprise to which E was related exceeded the employee limit or either of the financial limits.
- (3) The second condition is that, during the accounting period, control of E was acquired by a company that, at the time of the acquisition, was a small or medium-sized enterprise.
- (4) E is to be treated as if it were a small or medium-sized enterprise for the accounting period.
- (5) In [subsection \(3\)](#) “control” has the same meaning as in section 1124 of CTA 2010.”

Accounts treated as prepared on going concern basis

- 17 (1) In section 104T (R&D expenditure credits: “going concern”), after subsection (4) insert—
- “(4A) For the purposes of this section, where a company (“A”) is a member of the same group as another company (“B”) and A’s latest published accounts were not prepared on a going concern basis by reason only of a relevant

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group transfer, the accounts are to be treated as if they were prepared on a going concern basis.

(4B) For the purposes of this section a “relevant group transfer” is a transfer within the accounting period to which the latest published accounts relate by A of its trade and research and development to another member of the group mentioned in [subsection \(4A\)](#).”

(2) In section 1046 (R&D relief for SMEs: relief only available where company is going concern), after subsection (2C) insert—

“(2D) For the purposes of this section, where a company (“A”) is a member of the same group as another company (“B”) and A’s latest published accounts were not prepared on a going concern basis by reason only of a relevant group transfer, the accounts are to be treated as if they were prepared on a going concern basis.

(2E) For the purposes of this section—

- (a) a “relevant group transfer” is a transfer, within the accounting period to which the latest published accounts relate, by A of its trade and research and development to another member of the group mentioned in [subsection \(2D\)](#);
- (b) A and B are members of the same group if they are members of the same group of companies for the purposes of Part 5 of CTA 2010 (group relief).”

(3) In section 1057 (R&D relief for SMEs: tax credit only available where company is a going concern), after subsection (4C) insert—

“(4D) For the purposes of this section, where a company (“A”) is a member of the same group as another company (“B”) and A’s latest published accounts were not prepared on a going concern basis by reason only of a relevant group transfer, the accounts are to be treated as if they were prepared on a going concern basis.

(4E) For the purposes of this section—

- (a) a “relevant group transfer” is a transfer, within the accounting period to which the latest published accounts relate, by A of its trade and research and development to another member of the group mentioned in [subsection \(4D\)](#);
- (b) A and B are members of the same group if they are members of the same group of companies for the purposes of Part 5 of CTA 2010 (group relief).”

Meaning of expenditure incurred on payments

18 (1) In section 104Y (R&D expenditure credits: interpretation), at the end insert—

“(4) References in this Chapter to expenditure incurred on payments (however expressed) are references to expenditure incurred on payments made before the making of a claim under this Chapter in relation to that expenditure.”

(2) Before section 1140 insert—

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“1139A Expenditure incurred on payments

- (1) References in this Part to expenditure incurred on payments (however expressed) are references to expenditure incurred on payments made before the making of a claim under this Part in relation to that expenditure.”

PART 5

COMMENCEMENT

- 19 The amendment made by [paragraph 13](#) of this Schedule has effect in relation to claims made on or after 1 August 2023.
- 20 The amendments made by the remaining provisions of this Schedule have effect in relation to accounting periods beginning on or after 1 April 2023.

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