

2004 No. 712

INCOME TAX

**The Research and Development (Prescribed Activities)
Regulations 2004**

Made - - - - - *11th March 2004*

Laid before the House of Commons *11th March 2004*

Coming into force - - - *1st April 2004*

The Treasury, in exercise of the powers conferred upon them by section 837A(3) of the Income and Corporation Taxes Act 1988 (a) hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Research and Development (Prescribed Activities) Regulations 2004, come into force on 1st April 2004, and subject to paragraphs (2) to (9) have effect —

- (a) for the purposes of corporation tax, for accounting periods ending on or after 1st April 2004, and
- (b) for the purposes of income tax and capital gains tax, in relation to the year 2004-05 and subsequent years of assessment.

(2) These Regulations have effect in relation to shares issued on or after 6th April 2004 in relation to Chapter 3 of Part 7(b) of the Income and Corporation Taxes Act 1988 (enterprise investment scheme).

(3) Nothing in these Regulations affects the operation of the following provisions in relation to shares issued before 6th April 2004 —

- (a) Chapter 3 of Part 7 of the Income and Corporation Taxes Act 1988 (enterprise investment scheme);
- (b) sections 573 (c) and 574 (d) of that Act (relief for losses on unlisted shares in trading companies); and

(a) 1988 (c. 1) Section 837A was inserted by section 68 of, and paragraph 1 of Schedule 19 to, the Finance Act 2000 (c. 17).
(b) Chapter 3 of Part 7 has been amended by section 53 of the Finance Act 1988 (c. 39); sections 149 and 170 of the Finance Act 1989 (c. 26); S.I. 1989/2405; Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12); section 111 of the Finance Act 1993 (c. 34); section 137 of, and Schedules 15 and 26 to, the Finance Act 1994 (c. 9); section 134 of, and Schedules 18, 20 and 21 to, the Finance Act 1996 (c. 8); Schedules 8 and 18 to the Finance Act 1997 (c. 16); sections 70 and 71 of, and Schedules 7, 12 and 13 to, the Finance Act 1998 (c. 36); section 71 of the Finance Act 1999 (c. 16); sections 63, 64 and 156 of, and Schedules 17 and 40 to, the Finance Act 2000; sections 63 and 110 of, and Schedules 15 and 33 to the Finance Act 2001(c. 9); sections 45, 57, 103 and 141 of, and Schedules 9, 17 and 40 to, the Finance Act 2002 (c. 23); and section 722 of, and Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003 (c. 1).
(c) Section 573 was amended by section 63 of, and Schedule 16 to, the Finance Act 2000.
(d) Section 574 was amended by section 210 of, and Schedule 20 to, the Finance Act 1994.

(c) Schedule 5B to the Taxation of Chargeable Gains Act 1992 (enterprise investment scheme: re-investment) (a).

(4) These Regulations have effect for the purpose of determining whether shares or securities issued on or after 6th April 2004 are, for the purposes of section 842AA of the Income and Corporation Taxes Act 1988 (venture capital trusts) (b), to be regarded as comprised in a company's qualifying holdings.

(5) Nothing in these Regulations affects the operation of Schedule 28B to the Income and Corporation Taxes Act 1988 (c) as it has effect for the purpose of determining whether shares or securities issued before 6th April 2004 are, for the purposes of section 842AA of the Income and Corporation Taxes Act 1988, to be regarded as comprised in a company's qualifying holdings.

(6) These Regulations have effect in relation to shares issued on or after 6th April 2004 in relation to Schedule 15 to the Finance Act 2000 (corporate venturing scheme) (d).

(7) Nothing in these Regulations affects the operation of the Schedule specified in paragraph (6) in relation to shares issued before 6th April 2004.

(8) In relation to —

(a) Chapter 9 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) (e), and

(b) Part 4 of Schedule 7D to the Taxation of Chargeable Gains Act 1992 (enterprise management incentives) (f),

these Regulations have effect in relation to share options granted on or after 6th April 2004.

(9) Nothing in these Regulations affects the operation of the provisions specified in paragraph (8) in relation to share options granted before 6th April 2004.

Activities prescribed as research and development

2. For the purposes of section 837A of the Income and Corporation Taxes Act 1988 —

(a) activities that fall to be treated as research and development in accordance with the “Guidelines on the Meaning of Research and Development for Tax Purposes” issued by the Secretary of State for Trade and Industry on 5 March 2004, are research and development; and

(b) activities that do not fall to be treated as such in accordance with those guidelines are not research and development.

(a) Schedule 5B was inserted by section 67 of, and paragraph 4 of Schedule 13 to, the Finance Act 1995 (c. 4). It was amended by Schedule 13 to the Finance Act 1998; section 73 of, and Schedules 8 and 20 to, the Finance Act 1999; sections 63, 64 and 156 of, and Schedules 16, 17 and 40 to, the Finance Act 2000; and sections 63 and 110 of, and Schedules 15 and 33 to, the Finance Act 2001.

(b) Section 842AA was inserted by section 70(1) of the Finance Act 1995. It was amended by Schedule 38 to the Finance Act 1996; section 75 of the Finance Act 1997; section 73 of the Finance Act 1998; section 69 of the Finance Act 1999; Schedule 18 to the Finance Act 2000; and sections 82 and 109 of, and Schedules 25 and 33 to, the Finance Act 2002.

(c) Schedule 28B was inserted by section 70(2) of, and Schedule 14 to, the Finance Act 1995. It was amended by section 161 of, and Schedule 41 to, the Finance Act 1996; Schedules 9 and 18 to the Finance Act 1997; section 25 of, and Schedule 8 to, the Finance (No. 2) Act 1997 (c. 58); sections 70, 72 and 73 of, and Schedule 12 to, the Finance Act 1998; section 69 of the Finance Act 1999; section 65 of, and Schedule 18 to, the Finance Act 2000; section 64 of, and Schedule 16 to, the Finance Act 2001; and sections 103 and 141 of, and Schedule 40 to, the Finance Act 2002.

(d) Schedule 15 was amended by section 64 of, and Schedule 16 to, the Finance Act 2001; sections 44, 45, 103 and 141 of, and Schedules 8, 9 and 40 to, the Finance Act 2002; and section 155 of, and Schedule 27 to, the Finance Act 2003 (c. 14).

(e) Chapter 9 was amended by sections 140 and 216 of, and Schedules 22 and 43 to, the Finance Act 2003.

(f) Schedule 7D was inserted by section 722 of, and paragraphs 207 and 221 of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003.

Revocation of the Research and Development (Prescribed Activities) Regulations 2000

3. The Research and Development (Prescribed Activities) Regulations 2000 (a) are revoked.

Nick Ainger

Jim Murphy

11th March 2004

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2000/2081

EXPLANATORY NOTE

(This note is not part of the Regulations)

Subsection (2) of section 837A of the Income and Corporation Taxes Act 1988 (c. 1) provides that “research and development” means activities that fall to be treated as research and development in accordance with generally accepted accounting practice.

Under subsection (3) of that section, the Treasury may prescribe by regulations activities which are or are not, as the case may be, “research and development” for the purposes of that section.

These Regulations make provision under subsection (3) by reference to the “Guidelines on the Meaning of Research and Development for Tax Purposes” issued by the Secretary of State for Trade and Industry on 5 March 2004. These Regulations also revoke the Regulations previously made under subsection (3).

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