

## EXPLANATORY MEMORANDUM TO

### THE RESEARCH AND DEVELOPMENT (QUALIFYING BODIES) (TAX) (AMENDMENT AND FURTHER PRESCRIBED BODIES) ORDER 2022

2022 No. 690

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This order amends the Research and Development (Qualifying Bodies) (Tax) Order 2018 (S.I. 2018/217) to remove one body from the list of bodies prescribed for the purposes of Chapter 6A, Part 3 of the Corporation Tax Act 2009 and Part 13 of the Corporation Tax Act 2009. The other bodies prescribed in S.I. 2018/217 retain their status of “qualifying bodies”.

This order also provides that a further list of bodies is prescribed for the purposes of Chapter 6A, Part 3 of the Corporation Tax Act 2009 and Part 13 of the Corporation Tax Act 2009. As a result, where companies make payments to the bodies listed in relation to research and development (R&D) the company making the payment can benefit from either a tax credit or, in some cases, a tax relief.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 Article 3 of this order provides that the order has effect for the bodies specified in column (1) of the schedule and for expenditure incurred on or after the date set out in column (4) of the schedule. Authority for this retrospective effect is given by section 1142(3) and (4) of the Corporation Tax Act 2009 which provides that any order made under section 1142 may have effect in relation to accounting periods beginning, or expenditure incurred, before the time the order is made.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is United Kingdom.
- 4.2 The territorial application of this instrument is United Kingdom.

#### 5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

#### 6. Legislative Context

- 6.1 Chapter 6A of Part 3 of the Corporation Tax Act 2009 and Part 13 of the Corporation Tax Act 2009 provide tax credits and reliefs respectively to a company in respect of

qualifying expenditure incurred on research and development where the expenditure meets certain conditions. Sections 104E, 1067 (expenditure on sub-contracted R&D not undertaken in-house), 104H, 1072 (subsidised qualifying expenditure on contracted out R&D), 104K, 1078 (qualifying expenditure on contracted out R&D), 104L and 1079 (qualifying expenditure on contributions to independent R&D) of that Act provide that in order to be qualifying expenditure the expenditure must be incurred in making payments to a qualifying body, an individual or a firm. Qualifying bodies are defined by section 1142. Under section 1142(1)(e) the Treasury may, by order, prescribe qualifying bodies for the purposes of Part 13 of the Act. Section 1142 is applied to Chapter 6A of Part 3 of the Corporation Tax Act 2009 by section 104Y(1) of the Corporation Tax Act 2009.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Research and Development Expenditure Credit (RDEC) is a taxable credit which is given (mainly) to large companies based on their R&D expenditure. Under the RDEC scheme credit cannot usually be claimed for the costs of work subcontracted to other entities. There are however some exceptions, including expenditure incurred in respect of R&D work subcontracted to a “qualifying body”, an individual or a firm made up of individuals.

RDEC can also be claimed by small or medium-sized enterprises (SMEs) in respect of expenditure on R&D work subcontracted to them by a large company, or which is subsidised (for example, by a grant).

RDEC replaced a previous tax relief, the “Large Company Scheme”, claims to which may still be possible (for example, where expenditure is amortised or impaired from the balance sheet).

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.2 Corporation Tax Act 2009 section 1142(1), paragraphs (a) to (d) set out classifications for United Kingdom (UK) bodies that are deemed to be “qualifying”. These include institutions of higher education, health service bodies, charities and scientific research associations. Beyond these classifications, the Treasury has the powers to prescribe other qualifying bodies. The bodies listed in the schedule are overseas bodies which are sufficiently similar in character to the UK classifications set out in section 1142(1) for prescription to be appropriate.

#### Why is it being changed?

- 7.3 The Lomonosov University has been delisted in pursuance of the Government’s Russian sanctions policy.
- 7.4 The new bodies have been prescribed on the basis that they are considered to be equivalent in character to the prescribed UK classifications as set out in section 1142(1).

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 There are no plans to consolidate the amended order in the immediate future.

## **10. Consultation outcome**

10.1 No consultation on this instrument has been undertaken as its main impact is on those who have already requested that particular institutions be included.

## **11. Guidance**

11.1 Guidance in relation to this change will be incorporated into HM Revenue and Customs Corporate Intangibles Research and Development Manual in due course.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

## **13. Regulating small business**

13.1 The legislation may apply to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to make information on bodies which have been prescribed readily available on page 82250 of the Corporate Research and Development Manual, which can be found on the HM Revenue and Customs' website.

13.3 The basis for the final decision on what action to take to assist small businesses is that small businesses need to know which bodies are prescribed in order to include them in their claims for Research and Development Expenditure Credits.

## **14. Monitoring & review**

14.1 The numbers and types of organisations designated will be monitored by HM Revenue and Customs.

## **15. Contact**

15.1 Yasmin Achha at HM Revenue and Customs Telephone: 03000592504 or email: [Yasmin.achha@hmrc.gov.uk](mailto:Yasmin.achha@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tessa Robins, Deputy Director for Innovation & Growth, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.