

## Finance Bill 2023 – R&D administration (Lecture B1373 – 13.12 minutes)

Clause 10 and Schedule 1 introduce various changes for the purposes of the relief available for companies incurring qualifying research and development. Unless otherwise noted, the changes apply to both the SME enhanced expenditure scheme (including a claim for tax credits) and RDEC.

All changes apply in relation to accounting periods beginning on or after 1 April 2023 with the exception of the additional information requirements, which apply in relation to claims made on or after 1 August 2023.

### *Claim notification*

A claim to relief is only valid if a prior notification has been made of the intention to claim, 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' or the claim is in respect of an accounting period which falls within the same period of account as another accounting period where a claim or claim notification has been made. For the purposes of whether a claim has been made in the previous three years, a claim for an accounting period beginning before 1 April 2023 would not be taken into account if the claim is made on or after 1 April 2023 by amendment to a previous company tax return.

The claim notification period begins with the first day of the period of account in which the accounting period falls and ends six months after the end of the relevant period of account. The claim must be in a format specified by HMRC.

### Example

Company has a 12-month accounting period beginning 1 July 2023. The claim notification period would be 1 July 2023 to 31 December 2024. It previously made a claim for the period to 31 December 2021 (its accounting date has changed in the meantime) – with the actual claim being made on 15 October 2022. There is no need to notify the current claim.

If there had (instead) been a claim for the year to 30 June 2022 which was made by amendment of the return on 1 July 2023, this would not be a previous claim

### *Additional qualifying costs*

Relief is only available in relation to qualifying costs. One category of such qualifying costs is 'software or consumable items' and that is being expanded to include data licences and cloud computing services.

A data licence is a licence to access and use a collection of digital data. Cloud computing services include the provision of access to, and maintenance of, remote data storage and hardware facilities or operating systems and software platforms.

There is an exclusion for expenditure connected with the grant of a licence or provision of a service giving:

- A right to sell data
- A right to publish, share or otherwise communicate data.

The guidance notes state that this is intended to limit relief to the extent that the commercial use of the licence or service is restricted to the particular R&D activity to which the claim relates.

There is also a restriction on expenditure attributable to a qualifying indirect activity (as specified in paragraph 31 of the Guidelines on the Meaning of Research and Development for Tax Purposes issued on 7 March 2023).

#### *Administrative provisions*

Various amendments are made to the general corporation tax administrative provisions as far as they relate to R&D:

- A new power is introduced which will allow HMRC to recover excessive or overpaid amounts of R&D tax credits (SME companies) or RDEC.
- A new time limit is clearly set out so that companies must make R&D tax relief claims within two years of the end of the period of account on which the return is based, unless the period of account is longer than 18 months, in which case the time limit is 42 months from the start of the period. If a claim to SME R&D relief is made and then it is found that the company was not eligible to make the claim, the company can submit an RDEC claim (or an amended RDEC claim as relevant) within 30 days of an amendment being issued to withdraw the initial R&D relief (or 30 days from the date on which any appeal against the amendment is finally determined).
- A new provision is introduced which specifies that any claim must include specified information (with that information to be determined via secondary legislation). This must be completed by a representative of the company or an agent acting on behalf of the company and will include:
  - Company details, including UTR, PAYE reference number, VAT registration number and business type;
  - Contact details of main senior internal R&D contact who is responsible for the claim and the agent involved in the claim;
  - Accounting period for which relief is claimed;
  - Full details of qualifying expenditure;
  - Amount of qualifying expenditure, for each project, of qualifying indirect activities;
  - Project details including
    - What is the main field of science and technology?
    - What was the baseline level of science or technology that the company planned to advance?
    - What advance did the company aim to achieve?
    - The scientific or technological uncertainty that the company faced.
    - How the project sought to overcome the uncertainty.
    - For 1 – 3 projects, all projects must be covered; for 4 – 10 projects, details of projects that account for at least 50% of total expenditure with a minimum

of 3 being described; for 11 or more, projects that account for at least 50% of total expenditure with a minimum of 3 of the 10 largest.

- Which tax relief is being claimed and the amount.
- A new power is provided to HMRC so that they can remove a claim from a return where the company has failed to meet the requirements for making a claim, either as no claim notification has been made or insufficient additional information is supplied. Where such a notice of correction is given, the claimant may make representations if they believe it has been incorrectly provided. Such representations must be made within 90 days. The company cannot reject the correction as they would be able to do if HMRC made a correction in relation to anything else. If, following representations, HMRC continue to refuse the claim, then the company may make a new claim unless the claim has been rejected due to failure to make a claim notification.

#### *Miscellaneous amendments*

The following amendments have also been made:

- Changes are made regarding the SME status of a company:
  - An enterprise is treated as an SME throughout the accounting period even where a related partner or linked enterprise becomes large through exceeding any of the threshold conditions;
  - An enterprise is treated as an SME throughout the accounting period during which it had a related enterprise that exceeded any of the threshold conditions and in which it was acquired by another company which was an SME
- Relief is available where a company has not prepared accounts on a going concern basis because it has transferred its trade to another member of the group
- Amendment is made to the payments condition to make it clear that conditions for relief must be met when the claim is made, rather than in the accounting period the claim relates to.

#### *Reminder of FA2023 provisions*

A short Finance Bill was published after the Autumn Statement, which has been enacted as Finance Act 2023. One of the provisions included was an amendment to the relief available for R&D purposes as follows:

- The RDEC rate increases from 13% to 20%;
- The R&D enhancement reduces from 130% to 86%;
- The repayable tax credit reduces from 14.5% to 10%.

All of these take effect **for expenditure** on or after 1 April 2023.

It should be noted that it was announced at the Budget on 15 March 2023 that the reduction in the tax credit percentage will not apply to 'R&D intensive companies'. To be such a company, at least 40% of the total expenditure must relate to R&D. The change will be legislated in Finance Bill 2024 and claims will be able to be made once the legislation is in place.

It will apply from 1 April 2023 but a claim will have to be made at the 10% rate and then amended once the legislation is in place, as far as we are currently aware.

*Example of impact of the reduction in rates*

Company incurs £100,000 on qualifying R&D and is eligible to claim under the SME scheme.

The previous additional deduction would be £130,000 giving corporation tax relief of £24,700 at current rate of 19% (this is the amount that is gained on the additional deduction only as the allowable costs would still get tax relief even if no additional relief was available).

From 1 April 2023, the additional deduction would be £86,000.

This will give relief at £16,340 if the company is paying tax at the small profits rate (which is unlikely given the level of the relief) or £21,500 if paying at main rate. The benefit if you are paying marginal rates of tax (normally 26.5%) on profits between the marginal relief limits will be higher.

If this was eligible for tax credit, then previously the company would get £33,350, based on the 130% increment plus the original expenditure. From 1 April 2023, the company will get £18,600, based on a lower deduction and lower repayment rate. This clearly represents a significant reduction in relief (56% of the previous figure).

If this company had been claiming under the RDEC scheme (assuming that they are in a net loss position), the RDEC would be £20,000 and the net repayable amount would be £15,000 (if paying at the main rate of CT) or £16,200 (if paying at the small profits rate), as you have to net off the corporation tax on the RDEC when calculating the repayment. So the company would be even worse off.