

Research and development tax credits reform: Above the Line

Who is likely to be affected?

Companies claiming research and development (R&D) tax relief.

General description of the measure

The introduction of an 'Above the Line' (ATL) Credit to further encourage R&D investment by large companies.

Policy objective

The measure will increase the attractiveness of the UK as a location for large company R&D investment by introducing a more visible, more certain, and more effective form of R&D relief.

Background to the measure

Announced changes follow the Government's consideration of responses to:

- *Corporate Tax reform: delivering a more competitive tax system* – a consultation document, including a consultation on R&D tax relief, published on 29 November 2010 on the HM Treasury website.
- *Research and Development Tax Credits: response and further consultation* – a response document published on 10 June 2011 on the HM Treasury website.
- *Consultation on an 'Above the Line' credit for Research and Development* – a consultation document published on March 2012 on the HM Treasury website.

The Government announced at Autumn Statement 2011 that it would introduce an 'Above the Line' credit for large-company R&D investment in April 2013.

The Government announced at Budget 2012 that the ATL credit would be taxable, paid at a minimum pre-tax rate of 9.1 per cent, and be payable to companies with no corporation tax liability.

Detailed proposal

Operative date

Companies will be able to claim the ATL credit for their qualifying expenditure incurred on or after 1 April 2013.

The ATL credit scheme will initially be optional and companies will be required to elect to claim R&D relief under this scheme. Companies that do not elect to claim the ATL credit will be able to continue claiming R&D relief under the current large company scheme until 31 March 2016. The ATL credit will become mandatory on 1 April 2016.

Current law

R&D Relief for large companies is currently given under Part 13 Chapter 5 of Corporation Tax Act 2009. Relief is given as an additional deduction in calculating the profits or losses of an enterprise within the charge to corporation tax.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to allow large companies to claim R&D relief as a taxable ATL credit to the value of 9.1 per cent of their qualifying R&D expenditure. The credit will be fully payable to companies with no corporation tax liability.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	-5	-205	-	-	-
	<p>These figures were set out in Table 2.1 of the Budget 2012 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Budget 2012.</p> <p>The impact of further revisions will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2013.</p>					
Economic impact	<p>The ATL credit is designed to increase the aggregate level of R&D in the UK economy by increasing the visibility of UK R&D relief and reducing the cost of R&D investment for companies with no corporation tax liability. This is expected to benefit the wider economy through the positive spillover of new processes, technologies, skills and innovations.</p>					
Impact on individuals and households	<p>There is no impact on individuals, partnerships or households. This change only affects enterprises within the charge to corporation tax.</p>					
Equalities impacts	<p>This change only affects enterprises within the charge to corporation tax and is considered to have no differential impact on any protected equality group.</p>					
Impact on business including civil society organisations	<p>This measure is expected to have a negligible impact on businesses in terms of administrative and one-off costs.</p> <p>Around 2,500 companies currently claim under the large-company R&D tax credit scheme each year. These companies will benefit from a more visible and more certain form of R&D relief that is payable in the absence of corporation tax liability.</p> <p>These changes have been consulted on. The changes will only affect how R&D relief is delivered, and therefore it estimated that there will be no change overall in ongoing administrative burdens between the old and new schemes. There will be negligible one-off costs associated with the introduction of the measure as businesses familiarise themselves with the new legislation, processes and requirements.</p> <p>The measure will have no impact on civil society organisations.</p>					
Operational impact (£m) (HMRC or other)	<p>There will be some additional costs in terms of revised guidance and business support. Due to the nature of this particular change, the Company Tax return CT600 will also require some design alteration.</p>					

Other impacts	<u>Small firms impact test</u> : the impact should be minimal. Small firms will be able to claim the credit in specific circumstances and will be supported in doing so by the specialist R&D units. Other impacts have been considered and none have been identified.
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Monitoring and evaluation

The measure will be kept under review through regular communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Carol Johnson on 020 7147 3252 (email:carol.johnson4@hmrc.gsi.gov.uk) or contact Neil Smillie on 020 7147 0864 (email:neil.smillie@hmrc.gsi.gov.uk).

1 R&D expenditure credits

Schedule 1 contains provision about R&D expenditure credits.

SCHEDULE 1

Section 1

R&D EXPENDITURE CREDITS

PART 1

MAIN PROVISIONS

1 In Part 3 of CTA 2009 (trading income), after Chapter 6 insert –

“CHAPTER 6A

TRADE PROFITS: R&D EXPENDITURE CREDITS

*Claims for credits***104A R&D expenditure credits**

- (1) A company carrying on a trade may make a claim for an amount (an “R&D expenditure credit”) to be brought into account as a receipt in calculating the profits of the trade for an accounting period.
- (2) The company is entitled to an R&D expenditure credit for the accounting period if the company has qualifying R&D expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the accounting period.
- (3) In the case of a company that is a small or medium-sized enterprise in the accounting period, the company’s “qualifying R&D expenditure” means –
 - (a) its qualifying expenditure on sub-contracted R&D (see section 104C),
 - (b) its subsidised qualifying expenditure (see section 104F), and
 - (c) its capped R&D expenditure (see section 104I).
- (4) In the case of a company that is a large company throughout the accounting period, the company’s “qualifying R&D expenditure” means –
 - (a) its qualifying expenditure on in-house direct research and development (see section 104J),
 - (b) its qualifying expenditure on contracted out research and development (see section 104K), and
 - (c) its qualifying expenditure on contributions to independent research and development (see section 104L).
- (5) The amount of an R&D expenditure credit to which a company is entitled is determined in accordance with section 104M.
- (6) Section 104N contains provision about the effect of a successful claim for an R&D expenditure credit.

- (7) Sections 104T and 104U contain supplementary provision.
- (8) Section 104V contains anti-avoidance provision.
- (9) Section 104W contains definitions.
- (10) For information about the procedure for making claims under this Chapter, see Schedule 18 to FA 1998, in particular Part 9A of that Schedule.

104B Restriction on claiming credit and relief in respect of same expenditure

A company may not make a claim for an R&D expenditure credit and for relief under Part 13 (additional relief for expenditure on research and development) in respect of the same expenditure.

SMEs: qualifying expenditure on sub-contracted R&D

104C Qualifying expenditure on sub-contracted R&D

- (1) For the purposes of this Chapter a company’s “qualifying expenditure on sub-contracted R&D” means expenditure incurred by it that meets conditions A and B.
- (2) Condition A is that the expenditure is incurred on research and development contracted out to the company by –
 - (a) a large company, or
 - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (3) A “chargeable trade” is –
 - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
 - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of this Part.
- (4) Condition B is that the expenditure is expenditure to which section 104D or 104E applies.

104D Expenditure on sub-contracted R&D undertaken in-house

- (1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.
- (2) Condition A is that the research and development is undertaken by the company itself.
- (3) Condition B is that the expenditure is –
 - (a) incurred on staffing costs (see section 1123),
 - (b) incurred on software or consumable items (see section 1125),
 - (c) qualifying expenditure on externally provided workers (see section 1127), or
 - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

104E Expenditure on sub-contracted R&D not undertaken in-house

- (1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.
- (2) Condition A is that the expenditure is incurred in making payments to –
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual,in respect of research and development contracted out by the company to the body, individual or firm.
- (3) Condition B is that the research and development is undertaken by the body, individual or firm itself.
- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

SMEs: subsidised qualifying expenditure

104F Subsidised qualifying expenditure

For the purposes of this Chapter a company’s “subsidised qualifying expenditure” means –

- (a) its subsidised qualifying expenditure on in-house direct research and development (see section 104G), and
- (b) its subsidised qualifying expenditure on contracted out research and development (see section 104H).

104G Subsidised qualifying expenditure on in-house direct R&D

- (1) A company’s “subsidised qualifying expenditure on in-house direct research and development” means expenditure incurred by it in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is subsidised.
- (3) Condition B is that the expenditure is –
 - (a) incurred on staffing costs (see section 1123),
 - (b) incurred on software or consumable items (see section 1125),
 - (c) qualifying expenditure on externally provided workers (see section 1127), or
 - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

- (4) Condition C is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (5) Condition D is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (6) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

104H Subsidised qualifying expenditure on contracted out R&D

- (1) A company’s “subsidised qualifying expenditure on contracted out research and development” means expenditure –
 - (a) which is incurred by it in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136), and
 - (b) in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is subsidised.
- (3) Condition B is that the sub-contractor is –
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual.
- (4) Condition C is that the body, individual or firm concerned undertakes the contracted out research and development itself.
- (5) Condition D is that the expenditure is attributable to relevant research and development in relation to the company.
- (6) Condition E is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (7) Sections 1124, 1126 and 1132 contain provision about when particular kinds of expenditure are attributable to relevant research and development.

SMEs: capped R&D expenditure

104I Capped R&D expenditure

For the purposes of this Chapter a company’s “capped R&D expenditure” means any expenditure –

- (a) in respect of which the company is not entitled to relief under Chapter 2 of Part 13 merely because of section 1113 (cap on R&D aid),
- (b) which is not qualifying expenditure on sub-contracted R&D, and
- (c) which would have been qualifying R&D expenditure had the company been a large company throughout the accounting period in question.

*Large companies: qualifying R&D expenditure***104J Qualifying expenditure on in-house direct R&D**

- (1) A company's "qualifying expenditure on in-house direct research and development" means expenditure incurred by it in relation to which conditions A, B and C are met.
- (2) Condition A is that the expenditure is –
 - (a) incurred on staffing costs (see section 1123),
 - (b) incurred on software or consumable items (see section 1125),
 - (c) qualifying expenditure on externally provided workers (see section 1127), or
 - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).
- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (4) Condition C is that, if the expenditure is incurred in carrying on activities contracted out to the company, the activities are contracted out by –
 - (a) a large company, or
 - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (5) A "chargeable trade" is –
 - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
 - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of this Part.
- (6) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (2)(a), (b) or (c) is attributable to relevant research and development.

104K Qualifying expenditure on contracted out R&D

- (1) A company's "qualifying expenditure on contracted out research and development" means expenditure incurred by it in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is incurred in making payments to –
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual,in respect of research and development contracted out by the company to the body, individual or firm concerned ("the contracted out R&D").
- (3) Condition B is that the body, individual or firm concerned undertakes the contracted out R&D itself.

- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) Condition D is that, if the contracted out R&D is itself contracted out to the company, it is contracted out by –
 - (a) a large company, or
 - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (6) A “chargeable trade” is –
 - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
 - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of this Part.
- (7) Sections 1124, 1126 and 1132 contain provision about when particular kinds of expenditure are attributable to relevant research and development.

104L Qualifying expenditure on contributions to independent R&D

- (1) A company’s “qualifying expenditure on contributions to independent research and development” means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is incurred in making payments to –
 - (a) a qualifying body,
 - (b) an individual, or
 - (c) a firm, each member of which is an individual,for the purpose of funding research and development carried on by the body, individual or firm concerned (“the funded R&D”).
- (3) Condition B is that the funded R&D is relevant research and development in relation to the company.
- (4) Condition C is that the funded R&D is not contracted out to the qualifying body, individual or firm concerned by another person.
- (5) Condition D is that, if the payment is made to an individual, the company is not connected with the individual when the payment is made.
- (6) Condition E is that, if the payment is made to a firm (other than a qualifying body), the company is not connected with any member of the firm when the payment is made.

Amount of credit

104M Amount of R&D expenditure credit

- (1) The amount of the R&D expenditure credit to which a company is entitled for an accounting period is the relevant percentage of the amount of the qualifying R&D expenditure for the period.

- (2) In the case of a company carrying on a ring fence trade, the relevant percentage is 49%.
 In this subsection “ring fence trade” has the meaning given by section 277 of CTA 2010.
- (3) In any other case, the relevant percentage is 9.1%.
- (4) The Treasury may by order replace the percentage for the time being specified in subsection (2) or (3) with a different percentage.
- (5) An order under subsection (4) may contain incidental, supplemental, consequential and transitional provision and savings.

Payment of credit

104N Payment of R&D expenditure credit

- (1) This section applies if a company is entitled to an R&D expenditure credit for an accounting period under this Chapter.
- (2) The amount to which the company is entitled in respect of the R&D expenditure credit (“the set-off amount”) is to be treated in the following way –

Step 1

The set-off amount is to be applied in discharging any liability of the company to pay corporation tax for the accounting period.

If any of the set-off amount is remaining, go to step 2.

Step 2

If the amount remaining after step 1 is greater than the relevant portion of the company’s staffing costs for the accounting period (see subsection (3)) –

- (a) that amount is to be reduced to the amount of the relevant portion of those costs (which may be nil), and
- (b) so much of the amount remaining after step 1 as is greater than the relevant portion of those costs is to be treated as an amount of R&D expenditure credit to which the company is entitled for its next accounting period.

If any of the set-off amount is remaining, go to step 3.

Step 3

The amount remaining after step 2 is to be applied in discharging any liability of the company to pay corporation tax for any other accounting period.

If any of the set-off amount is remaining, go to step 4.

Step 4

If the company is a member of a group, it may surrender the whole or any part of the amount remaining after step 3 to any other member of the group (see section 104O).

If no such surrender is made, or any of the set-off amount is otherwise remaining, go to step 5.

Step 5

Deduct from the amount remaining after step 4 the following amounts –

- (a) an amount equal to the corporation tax that would be chargeable on the amount if it was an amount of profits of the company for the accounting period and corporation tax on such profits was chargeable at the main rate, and
- (b) in the case of a company carrying on a ring fence trade, an amount equal to the supplementary charge that would be chargeable on the amount if it was an amount of adjusted ring fence profits for the accounting period.

For provision about the treatment of any amount so deducted, see section 104P.

Step 6

The amount remaining after step 5 is to be applied in discharging any other liability of the company to pay a sum to the Commissioners under or by virtue of an enactment or under a contract settlement.

If any of the set-off amount is remaining, go to step 7.

Step 7

The amount remaining after step 6 is payable to the company by an officer of Revenue and Customs.

But this is subject to section 104Q (restrictions on payment of R&D expenditure credit).

- (3) The “relevant portion” of the company’s staffing costs for an accounting period is the amount of staffing costs of the company that –
 - (a) are taken into account in calculating the amount of the qualifying R&D expenditure for the period, and
 - (b) form part of the total amount of the company’s PAYE and NIC liabilities for payment periods ending in the accounting period (see section 104S).
- (4) In this section –
 - “adjusted ring fence profits” has the meaning given by section 330(2) of CTA 2010,
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
 - “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment, and
 - “ring fence trade” has the meaning given by section 277 of CTA 2010.

104O Surrender of credit to other group companies

- (1) This section applies if –
 - (a) a company is entitled to an R&D expenditure credit under this Chapter for an accounting period (“the surrender period”), and

- (b) the company surrenders the whole or any part of the credit to another member of the group (the “relevant group member”) under step 4 in section 104N(2).
- (2) In this section an accounting period of a relevant group member is a “relevant accounting period” if there is a period (“the overlapping period”) that is common to the accounting period and the surrender period.
- (3) The amount surrendered is to be applied in discharging any liability of the relevant group member to pay corporation tax for any relevant accounting period as follows –
- Step 1*
Take the proportion of the relevant accounting period included in the overlapping period.
Apply that proportion to the amount of corporation tax payable by the relevant group member for the relevant accounting period.
- Step 2*
Take the proportion of the surrender period included in the overlapping period.
Apply that proportion to the amount surrendered to the relevant group member.
- Step 3*
The amount given by step 2 is to be applied in discharging the amount given by step 1.
- (4) If any of the amount surrendered is remaining after the operation of step 3 in subsection (3), it is to be treated for the purposes of section 104N as if it had not been surrendered to the relevant group member.

104P Payment of credit net of tax

- (1) This section applies if –
- (a) a company is entitled to an R&D expenditure credit for an accounting period under this Chapter, and
- (b) an amount (“the step 5 amount”) is deducted in respect of the credit under step 5 in section 104N(2).
- (2) The step 5 amount is to be applied in discharging any liability of the company to pay corporation tax for any subsequent accounting period.
This is subject to subsection (3).
- (3) If the company is a member of a group, it may surrender the whole or any part of the step 5 amount to any other member of the group.
In such a case, section 104O(3) applies to the amount surrendered as it applies to an amount of R&D expenditure credit surrendered under step 4 in section 104N(2).
- (4) If any of the amount surrendered under subsection (3) is remaining after the operation of step 3 in section 104O(3), it is to be treated for the purposes of this section as if it had not been surrendered to the relevant group member.

- (5) Any amounts to be applied under subsection (2) or (3) in discharging any liability of a company to pay corporation tax for an accounting period are to be so applied before any amounts that may be so applied under step 1, 3 or 4 in section 104N(2).

104Q Restrictions on payment of R&D expenditure credit

- (1) This section applies if –
 - (a) a company is entitled to an R&D expenditure credit for an accounting period under this Chapter, and
 - (b) an amount of the R&D expenditure credit is payable to the company under step 7 of section 104N(2).
- (2) If at the time of claiming the credit the company was not a going concern (see section 104R) –
 - (a) the company is not entitled to be paid that amount, and
 - (b) that amount is extinguished.
- (3) But if the company becomes a going concern on or before the last day on which an amendment of the company’s tax return for the accounting period could be made under paragraph 15 of Schedule 18 to FA 1998, the company is entitled to be paid that amount.
- (4) If the company’s tax return for the accounting period is enquired into by an officer of Revenue and Customs –
 - (a) no payment of that amount need be made before the officer’s enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998), but
 - (b) the officer may make a payment on a provisional basis of such amount as the officer thinks fit.
- (5) No payment of that amount need be made if the company has outstanding PAYE and NIC liabilities for the period.
- (6) A company has outstanding PAYE and 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.

104R “Going concern”

- (1) For the purposes of section 104Q(2) and (3) 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 only prepared on that basis because of an expectation that the company would receive R&D expenditure credits under this Chapter.

This is subject to subsection (2).

- (2) A company is not a going concern at any time if it is in administration or liquidation at that time.
- (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
 - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.
- (5) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

104S Total amount of company’s PAYE and NIC liabilities

- (1) For the purposes of section 104N(3) the total amount of the company’s PAYE and NIC liabilities for a payment period is the sum of –
- (a) amount A, and
 - (b) amount B.
- (2) Amount A is the amount of income tax for which the company is required to account to an officer of Revenue and Customs for the payment period under PAYE regulations.
- (3) In calculating amount A disregard any deduction the company is authorised to make in respect of child tax credit or working tax credit.
- (4) Amount B is the amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the payment period.
- (5) In calculating amount B disregard any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, child tax credit or working tax credit.

Supplementary

104T Insurance companies treated as large companies

- (1) This section applies if an insurance company –
- (a) carries on life assurance business in an accounting period, and
 - (b) is a small or medium-sized enterprise in the period.
- (2) For the purposes of this Chapter the company is to be treated as if it were not such an enterprise in the period (and accordingly is to be treated as a large company for the purposes of this Chapter).
- (3) Section 1119 (meaning of “small or medium-sized enterprise”), as it has effect for the purposes of this Chapter (see section 104W), is to be read subject to this section.

104U R&D expenditure of group companies

- (1) This section applies if –
 - (a) a company (“A”) incurs expenditure on making a payment to another company (“B”) in respect of activities contracted out by A to B,
 - (b) the activities would, if carried out by A, be research and development of A (taken together with A’s other activities), and
 - (c) A and B are members of the same group at the time the payment is made.
- (2) If the activities are undertaken by B itself, they are to be treated for the purposes of this Chapter (so far as it would not otherwise be the case) as research and development undertaken by B itself.
- (3) If B makes a payment to a third party (“C”), any of the activities –
 - (a) contracted out by B to C, and
 - (b) undertaken by C itself,are to be treated for the purposes of this Chapter (so far as it would not otherwise be the case) as research and development contracted out by B to C.

Tax avoidance

104V Artificially inflated claims for credit

- (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purpose of determining for an accounting period R&D expenditure credits to which a company is entitled under this Chapter.
- (2) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain –
 - (a) an R&D expenditure credit under this Chapter to which it would not otherwise be entitled, or
 - (b) an R&D expenditure credit under this Chapter of a greater amount than that to which it would otherwise be entitled.
- (3) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

Interpretation

104W Interpretation

- (1) In this Chapter the following terms have the same meaning as they have in Part 13 (additional relief for expenditure on R&D) –
 - “large company” (see section 1122),
 - “payment period” (see section 1141),
 - “qualifying body” (see section 1142),
 - “relevant research and development” (see section 1042),
 - “research and development” (see section 1041),

“small or medium-sized enterprise” (see section 1119).

- (2) The following sections apply for the purposes of this Chapter as they apply for the purposes of Part 13 –
- sections 1123 and 1124 (staffing costs),
 - sections 1125 and 1126 (software or consumable items),
 - sections 1127 to 1132 (qualifying expenditure on externally provided workers),
 - sections 1133 to 1136 (sub-contractor payments),
 - section 1138 (“subsidised expenditure”),
 - section 1140 (relevant payments to the subjects of a clinical trial).
- (3) For the purposes of this Chapter two companies 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).”

PART 2

CONSEQUENTIAL AMENDMENTS

FA 1998

- 2 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- 3 In paragraph 10(2) (other claims and elections to be included in return), after “first-year tax credits” insert “, R&D expenditure credits”.
- 4 (1) Paragraph 52 (recovery of excessive repayments etc) is amended as follows.
- (2) In sub-paragraph (2), after paragraph (b) insert –
- “(bza) R&D expenditure credit under Chapter 6A of Part 3 of the Corporation Tax Act 2009,”.
- (3) In sub-paragraph (5) –
- (a) after paragraph (a) insert –
 - “(aa) an amount of R&D expenditure credit paid to a company for an accounting period,”;
 - (b) after “paragraph (a),” insert “(aa),”.
- 5 (1) Part 9A (claims for R&D tax relief) is amended as follows.
- (2) In paragraph 83A (introduction), for the words after “applies” substitute “to –
- (a) claims for R&D expenditure credits under Chapter 6A of Part 3 of the Corporation Tax Act 2009, and
 - (b) claims for R&D tax relief under Part 13 of that Act.”
- (3) In paragraph 83C (content of claim), before “relief” insert “credit or”.
- (4) Accordingly, the heading of the Part becomes “CLAIMS FOR R&D EXPENDITURE CREDITS OR R&D TAX RELIEF”.

FA 2007

- 6 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (definition of “corporation tax credit”), after sub-paragraph (i) insert –
- “(ia) an R&D expenditure credit under Chapter 6A of Part 3 of CTA 2009.”

CTA 2009

- 7 (1) Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.
- (2) After section 1040 insert –
- “1040A R&D expenditure credits**
- (1) For provision enabling a company carrying on a trade to make a claim for an amount in respect of expenditure on research and development (an “R&D expenditure credit”) to be brought into account as a receipt in calculating the profits of the trade for an accounting period, see Chapter 6A of Part 3.
- (2) For provision prohibiting a company from making a claim for an R&D expenditure credit and for relief under this Part in respect of the same expenditure, see section 104B.”
- (3) In section 1138 (meaning of “subsidised expenditure”), in subsection (3), omit the “and” at the end of paragraph (a) and after paragraph (b) insert –
- “(c) R&D expenditure credits under Chapter 6A of Part 3.”
- 8 In Schedule 4 to CTA 2009 (index of defined expressions), at the appropriate place insert –

“capped R&D expenditure (in Chapter 6A of Part 3)		section 104I”;
“large company (in Chapter 6A of Part 3)		section 1122 (as applied by section 104W)”;
“payment period (in Chapter 6A of Part 3)		section 1141 (as applied by section 104W)”;
“qualifying body (in Chapter 6A of Part 3)		section 1142 (as applied by section 104W)”;
“qualifying expenditure on sub-contracted R&D (in Chapter 6A of Part 3)		section 104C”;
“qualifying R&D expenditure (in Chapter 6A of Part 3)		section 104A”;
“relevant payment to the subject of a clinical trial (in Chapter 6A of Part 3)		section 1140 (as applied by section 104W)”;

“relevant research and development (in Chapter 6A of Part 3)	section 1042 (as applied by section 104W)”;
“research and development (in Chapter 6A of Part 3)	section 1041 (as applied by section 104W)”;
“small or medium-sized enterprise (in Chapter 6A of Part 3)	section 1119 (as applied by section 104W)”;
“software or consumable items (in Chapter 6A of Part 3)	section 1125 (as applied by section 104W)”;
“staffing costs (in Chapter 6A of Part 3)	section 1123 (as applied by section 104W)”;
“subsidised qualifying expenditure (in Chapter 6A of Part 3)	section 104F”.

CTA 2010

- 9 Part 8A of CTA 2010 (profits arising from the exploitation of patents etc) is amended as follows.
- 10 (1) Section 357CG (adjustments in calculating profits of trade) is amended as follows.
- (2) In subsection (4), after “amounts to be deducted are” insert “—
- (a) the amount of any R&D expenditure credits (within the meaning of Chapter 6A of Part 3 of CTA 2009) brought into account in calculating the profits of the trade for the accounting period, and
- (b) ”.
- 11 (1) Section 357CK (deductions that are not routine deductions) is amended as follows.
- (2) In subsection (3) —
- (a) in paragraph (a), the words from “for which” to the end become sub-paragraph (i);
- (b) after that sub-paragraph insert “, or
- (ii) in respect of which the company is entitled to an R&D expenditure credit for the accounting period under Chapter 6A of Part 3 of CTA 2009;”;
- (c) at the beginning of paragraph (b) insert “where the company obtains an additional deduction as mentioned in paragraph (a)(i);”.

PART 3

ABOLITION OF CERTAIN RELIEF UNDER PART 13 OF CTA 2009

- 12 Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.
- 13 (1) Section 1039 (overview of Part) is amended as follows.
- (2) In subsection (3) –
- (a) for “Chapters 2 to 4” substitute “Chapter 2”;
- (b) omit paragraphs (b) and (c).
- (3) Omit subsection (4).
- (4) In subsection (5) –
- (a) for “Chapters 2 to 5” substitute “Chapter 2”;
- (b) omit paragraphs (b) and (c).
- 14 Omit Chapter 3 (relief for SMEs: R&D sub-contracted to SME).
- 15 Omit Chapter 4 (relief for SMEs: subsidised and capped expenditure on R&D).
- 16 Omit Chapter 5 (relief for large companies).
- 17 (1) Section 1081 (insurance companies treated as large companies) is amended as follows.
- (2) In subsection (2), for “Chapters 2 to 5” substitute “Chapter 2”.
- (3) Omit subsection (3).
- 18 Omit section 1082 (R&D expenditure of group companies).
- 19 Omit section 1083 (refunds of expenditure treated as income chargeable to tax).
- 20 (1) Section 1084 (artificially inflated claims for relief or tax credit) is amended as follows.
- (2) In subsection (2)(a), for “Chapters 2 to 5” substitute “Chapter 2”.
- (3) In subsection (3)(a) and (b), for “Chapters 2 to 5” substitute “Chapter 2”.
- 21 In section 1119 (meaning of “small or medium-sized enterprise”), in subsection (3), for “Chapters 2 to 5” substitute “Chapter 2”.

PART 4

COMMENCEMENT AND TRANSITIONAL PROVISION

- 22 The amendments made by Parts 1 and 2 of this Schedule have effect in relation to expenditure incurred on or after 1 April 2013.
- 23 Subject to paragraph 24, the amendments made by Part 3 of this Schedule have effect in relation to expenditure incurred on or after 1 April 2016.
- 24 (1) If a company claims an R&D expenditure credit under section 104A of CTA 2009 for an accounting period beginning before 1 April 2016, the

amendments made by Part 3 of this Schedule are treated as having effect in relation to expenditure incurred by the company on or after the first day of that accounting period.

- (2) But in a case where the accounting period includes 1 April 2013, those amendments are treated as having effect in relation to expenditure incurred by the company on or after that day.

EXPLANATORY NOTE

'ABOVE THE LINE' (ATL) CREDIT FOR RESEARCH AND DEVELOPMENT (R&D)

SUMMARY

1. This clause introduces an 'Above the Line' (ATL) credit for research and development expenditure incurred on or after 1 April 2013. The ATL credit is introduced alongside the existing additional relief for expenditure on research and development under Part 13 of CTA 2009 (known as the super-deduction) but will replace the super-deduction from 1 April 2016.

DETAILS OF THE CLAUSE

2. Part 1 and paragraph 1 introduce a new Chapter 6A of Part 3 CTA 2009 (trading income).
3. Section 104A signposts various definitions and provisions relating to claims and confirms that the credit is a taxable profit of the trade.
4. Section 104B provides that a company cannot make a claim under Chapter 6A and Part 13 of CTA 2009 in relation to the same expenditure.
5. Section 104C sets out the meaning of "qualifying expenditure on sub-contracted R&D" for SME companies.
6. Section 104D applies to SME companies and sets out what is qualifying expenditure on R&D contracted out to a company.
7. Section 104E applies to SME companies and defines the conditions applying to expenditure on R&D contracted out to a company.
8. Section 104F defines the meaning of "subsidised qualifying expenditure" for SME companies.
9. Section 104G defines the meaning of "subsidised qualifying expenditure on in-house direct research and development" for SME companies.
10. Section 104H defines the meaning of "subsidised qualifying expenditure on contracted out research and development" for SME companies.
11. Section 104I defines the meaning of "capped R&D expenditure" for SME companies.
12. Section 104J defines the meaning of "qualifying expenditure on in-house direct research and development" for large companies.

13. Section 104K defines the meaning of “qualifying expenditure on contracted out research and development” for large companies.
14. Section 104L defines the meaning of “qualifying expenditure on contributions to independent research and development” for large companies.
15. Section 104M sets out the amount of the credit as a percentage of qualifying expenditure and that the percentage may be replaced by Treasury Order. It also provides for a different percentage for companies carrying on a “ring fence trade”.
16. Section 104N outlines how the payment of credit is calculated and the order in which the various set-offs and restrictions should be applied. It also sets out how the payment of the credit will be taxed.
17. Section 104O outlines how a credit can be surrendered to other group companies.
18. Section 104P outlines how tax deducted on the payment of a credit can be utilised including the order of set off.
19. Section 104Q sets out restrictions to the payment of a credit if the company is not a “going concern”, has outstanding PAYE or NIC liabilities or where the company’s tax return is being enquired into. It also sets out that a company will become entitled to the credit where it becomes a going concern again within the time limits for amending the tax return.
20. Section 104R defines the meaning of “going concern”.
21. Section 104S defines the meaning of the total amount of a company’s PAYE and NIC liabilities.
22. Section 104T applies so as to treat SME insurance companies as large companies for the purposes of Chapter 6A.
23. Section 104U relates to inter group payments made for research and development activities carried out.
24. Section 104V is an anti-avoidance provision which prevents artificially inflated claims for credit.
25. Section 104W provides for various definitions.
26. Part 2 provides for consequential amendments.
27. Part 3 of the Schedule provides for the abolition of R&D relief given by way of a super-deduction from April 2016.

28. Part 4 and paragraphs 22 to 23 provide that amendments made by Parts 1 and 2 have effect in relation to expenditure incurred on or after 1 April 2013 and amendments made by Part 3 have effect in relation to expenditure incurred on or after 1 April 2016.
29. Paragraph 24 provides that where a company elects to claim an R&D expenditure credit for accounting periods beginning before 1 April 2016 (or for expenditure incurred on or after 1 April 2013 where the accounting period straddles that date), then that company will no longer be able to claim relief by way of a super-deduction under the large company scheme.

BACKGROUND

30. Additional relief for expenditure by a large company on research and development is currently given as a super-deduction against corporation tax profits reducing the amount of tax payable.
31. To encourage more research and development by large companies it is proposed to replace the current deduction system with a payable credit (the ATL credit) to all large companies including those who have no liability to corporation tax. This will make the benefits more visible and certain.
32. The ATL credit applies for qualifying expenditure incurred on or after 1 April 2013 and will be introduced along side the existing super-deduction and will replace it in April 2016.
33. The underlying rules for identifying qualifying activity and calculating qualifying expenditure remain unchanged and the new credit will be calculated as a percentage by reference to the amount of qualifying expenditure on R&D.
34. The ATL credit will be a taxable receipt and will be paid net of tax to companies with no corporation tax liability.
35. The ATL credit will be paid at a higher percentage rate to companies in the ring fence to reflect the higher rate of tax paid by those companies and to reflect the current levels received under the super-deduction.
36. In calculating the payable element, the credit will be used firstly to reduce the corporation tax liability of the claimant company for the same accounting period.
37. Any payable element will then be limited by the PAYE/NIC liabilities of the company's R&D staff. Any amount above the cap may be carried forward to be treated as a credit for the following year.
38. If a claim is made, the payable element (after the PAYE/NIC cap has been applied) will be available to discharge any corporation tax

liabilities of other accounting periods of the claimant company or the corporation tax liability of other group companies.

39. The balance after the cap and discharging of liability will be payable but under deduction of an amount equal to corporation tax at the full company rate applying for the accounting period (including the supplementary charge for ring fence trades) but subject to discharging any other liability of the company to the Commissioners.
40. Any notional tax retained will be carried forward and be available to discharge the claimant company's liability in preference to any ATL credit for the following year.
41. If you have any questions about this change or comments on the legislation please contact Carol Johnson on 020 7147 3252 (email: carol.johnson4@hmrc.gsi.gov.uk) or Neil Smillie on 020 7147 0864 (email: neil.smillie@hmrc.gsi.gov.uk).