COVID-19: Research and development tax credits and state aid

Large Corporate

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HMRC have provided further details of developments in relation to COVID-19 measures and how these apply in respect of research and development tax relief.

On 28 May 2020, HMRC sent out an email which provided an update in respect of developments in relation to COVID-19 measures and how these apply in respect of research and development (R&D) tax relief. The areas covered in the email were state aid, and how that applies in respect of the various grant and support schemes being provided by the government to businesses; and the set off of R&D credits against outstanding tax liabilities.

HMRC confirmed that the Bounce Back Loans (BBL), Coronavirus Business Interruption Loan Scheme (CBILS) and Coronavirus Large Business Interruption Loan Scheme (CLBILS) are all notified state aid, meaning that Corporation Tax Act 2009 (CTA 2009) s 1138(1) (a) could potentially prevent a claim for SME relief. Helpfully, HMRC has confirmed that they would only expect this to happen where the loan relates specifically to the company's expenditure incurred on an R&D project, rather than providing general support for the company. But HMRC also notes that this will depend on the facts, and, for example, a loan used entirely for R&D might lead to s 1138(1) (a) applying.

HMRC have also confirmed that the Future Fund, which provides convertible loans that are commercial, are not state aid. Therefore, they are not caught by CTA 2009 s 1138 and need not be considered when looking at the state aid cumulation rules.

HMRC also said that further loans and grants and other support measures are still under development. These will be state aid, and CTA 2009 s 1138(1)(a) will apply to all of those which are provided through the EU Temporary Framework relating to state aid or through the Grant Block Exemption Regulations.

HMRC also expanded on the information previously given in relation to the set off of R&D credits against outstanding tax liabilities. HMRC have now confirmed the following:

- Where ministers have agreed that tax can be deferred for a specific regime to support businesses in the COVID-19 period, in relation to corporation tax, this means that the VAT quarterly payment deferrals, RDEC or R&D payable tax credit will not be set against any of those amounts before the revised due date.
- Where tax has been deferred as part of a Time to Pay (TTP) arrangement, HMRC will follow existing policy and set any R&D tax credit off against any TTP liability, not just the amount owing at the point in time the credit is paid. This would include informal deferrals offered in advance of TTP arrangements being put in place.

HMRC also point out that it is a legislative requirement that any RDEC remaining at Step 6 (CTA 2009 s 104N(2)) is set-off against any liability owed to the Commissioners for HMRC. HMRC does not have the power to provide for a temporary relaxation of this rule and there are no plans at present to legislate to provide a temporary relaxation of this rule.

In addition, HMRC says that credits under FA 2008 s 130, including credits under the R&D SME scheme, will continue to be applied on a discretionary basis. HMRC will consider the particular circumstances of a customer on a case by case basis if they have objections to the credit being set off against other liabilities.

Further details can be found on the Business Tax page of our COVID-19 pages on our website.

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