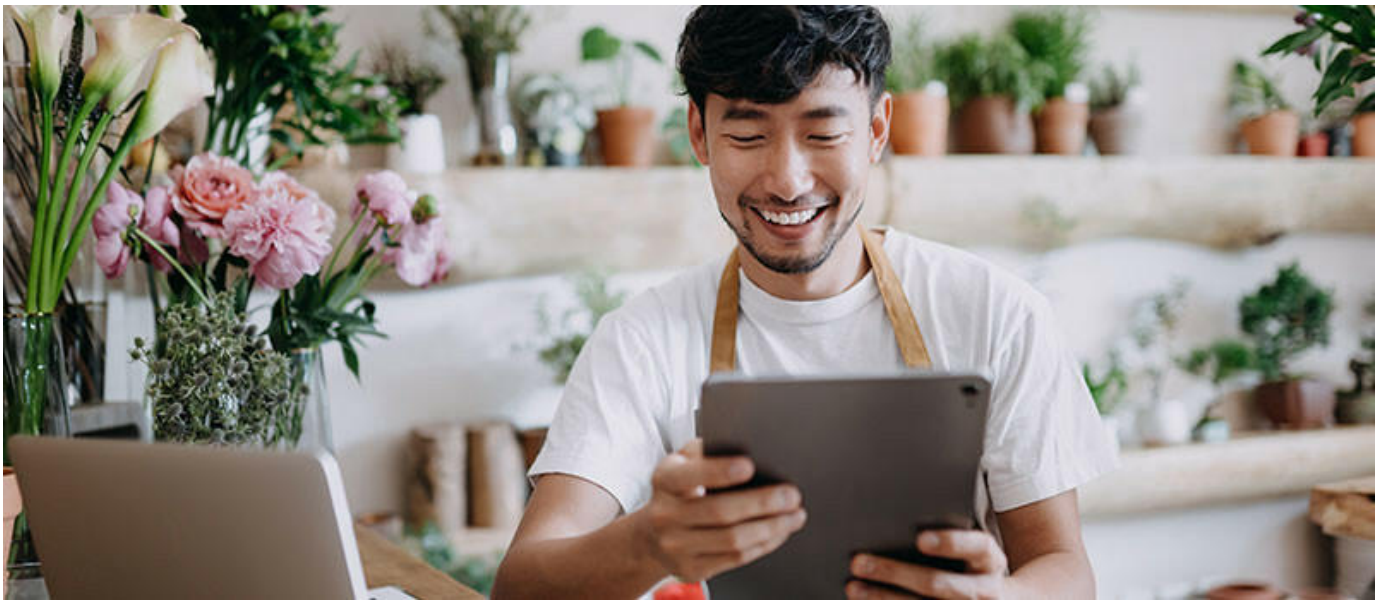
R&D new merged scheme: CIOT and ATT comment on draft guidance

OMB Large Corporate



19 March 2024

The new merged research and development scheme will apply for accounting periods beginning on or after 1 April 2024. It will mean significant changes for companies claiming this tax relief. Although some draft guidance has been published by HMRC, full guidance on all aspects of the new rules will not come until later in 2024, after the implementation date of the new scheme.

The start date for the new merged research and development (R&D) scheme was confirmed early in March: the new scheme will apply for accounting periods beginning on or after 1 April 2024. This means that companies with a March year-end will be subject to the new rules by the time you are reading this. The changes in the R&D tax relief available to them will depend on whether the company was previously claiming relief under the R&D expenditure credit (RDEC) or small or medium sized enterprise (SME) scheme, and whether or not it is a loss-making SME.

Whilst the fundamental definition of R&D remains the same, there are other differences to get to grips with, regardless of which ‘old’ R&D scheme the company was using. Broadly, the new merged scheme follows the existing RDEC regime in terms of the way the relief operates. However, elements of the existing SME scheme (such as the PAYE cap) have been incorporated. In addition, the new restrictions in relation to overseas activity take effect, and there are also new rules for contracted out R&D.

Draft guidance

HMRC published draft guidance ahead of the implementation of the reforms on these last two aspects of the new merged scheme:

- contracted out R&D activities; and
- the overseas rules.

In commenting on this draft guidance, CIOT said that while draft guidance on these two potentially difficult areas of R&D tax relief was welcome, the full guidance for the new scheme will only be available later in 2024, which is after the time at which many companies will be subject to the new rules.

Therefore, we urged an acceleration of this timetable, commenting that full guidance is much needed for certainty, consistency and to enable people to get the application of the new rules right.

ATT echoed these comments, saying that whilst the new guidance was helpful in addressing what are relatively complex areas of the new regime, it was a shame that it was only being published so close to that regime coming into force.

Overseas rules

CIOT and ATT said that the sections in the draft guidance on the overseas restrictions, particularly on contractor payments and externally provided workers, are clear, with good examples. We recognised that this will always be an area of judgement, and said that the discussion in the draft guidance is helpful in recognising that many factors may be taken into account.

CIOT also said that, while it is disappointing that HMRC have not been able to provide any detail or clarity around what documentation needs to be maintained to justify the claim, we understand the reasons given for not doing so. However, we cautioned that, if HMRC are taking an approach that deciding on what documentation is required to evidence the claim is a matter of judgement for the company and for the company's tax team, HMRC must ensure that their approach in the future is not prescriptive as to the evidence that is required.

Contracted out R&D

The guidance is helpful in so far as it clarifies HMRC's interpretation of new legislation at CTA 2009 s 1133 (contracted out R&D), but CIOT said that it is disappointing that the legislation has been drafted very broadly and guidance is relied on to reduce its scope. In particular, the emphasis the guidance places on allowing the decision-maker to claim contrasts sharply with the legislation, which does not introduce this concept.

CIOT remains of the view that the legislation should be amended in a subsequent Finance Bill to provide clarity. The current position, whereby a company's ability to claim R&D tax relief could change in the event that HMRC changes its interpretation, or a court finds HMRC's interpretation to be incorrect, creates uncertainty.

The full CIOT response can be read at: www.tax.org.uk/ref1291.

The full ATT response can be read at: www.att.org.uk/ref452.

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