EXPLANATORY MEMORANDUM TO

THE RESEARCH AND DEVELOPMENT RELIEF (INFORMATION REQUIREMENTS ETC.) REGULATIONS 2024

2024 No. 950

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Laura Cunningham, Deputy Director for Corporation Tax Innovation and Growth at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Research and Development (R&D) Policy Team at HMRC can be contacted by email at randd.policy@hmrc.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Regulations amend the Relief for Research and Development (Content of Claim Notifications, Additional Information Requirements and Miscellaneous Amendments) Regulations 2023.

4.2 They make changes to the specified information to be provided by companies in support of their claims for Research and Development tax reliefs (R&D tax reliefs) to reflect significant reforms to the R&D tax regime.

4.3 The Regulations also: make a small technical amendment to the Regulations relating to R&D claim notifications; and require notifications under regulation 2(3)(b) of the Research and Development (Chapter 2 Relief) Regulations 2024 (which enable certain companies to opt out of the special rules laid down by those Regulations) to be made electronically.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Finance Act 2024 (the Act) brought in R&D tax relief reforms by (i) merging the previous two schemes and (ii) introducing an enhanced relief for loss-making, R&D intensive small and medium sized enterprises (SMEs). The Act also removed relief for expenditure on contracted out R&D done overseas, and on externally provided workers based overseas, except in certain defined circumstances.

5.2 As the name suggests, the new merged R&D expenditure credit (RDEC) brings together elements from both schemes it replaced.

5.3 As a result, the information requirements for the merged RDEC scheme and the new enhanced relief have changed. Information is required so that HMRC can check claims under the new rules. The Regulations implement these changes.

5.4 There will be some additional information requirements for R&D intensive SMEs which have a registered office in Northern Ireland to take account of the specific market conditions in Northern Ireland.

5.5 These requirements will have effect from 2 October 2024.

What was the previous policy, how is this different?

5.6 Since R&D tax relief became available to all companies in 2002, the form and rate of relief available have been largely determined by the size of the claimant business. SMEs received one rate of relief, and large businesses (and certain SMEs who were excluded from the SME scheme) received another rate.

5.7 The changes made by the Act mean that most companies will be eligible for a single form and rate of R&D relief, with an enhanced rate of relief only available to loss-making R&D intensive SMEs.

5.8 The expenditure which qualifies for the relief has been aligned across both the merged RDEC scheme and the enhanced support for R&D intensive SMEs, which makes it simpler to know whether expenditure is relievable. For example, where R&D is contracted out by one company (the customer) to another (the contractor) it will generally be the customer that can claim relief for it, not the contractor. Expenditure on contracted R&D which is done overseas, and on overseas externally provided workers, will not be eligible for relief unless it meets certain limited exceptions.

5.9 There will be some differences for businesses which are R&D intensive SMEs with a registered office in Northern Ireland, as they will still be able to claim for overseas R&D expenditure; however, the overall value of relief available to them will be capped over a three-year period.

6. Legislative and Legal Context

How has the law changed?

6.1 The Regulations amend the Relief for Research and Development (Content of Claim Notifications, Additional Information Requirements and Miscellaneous Amendments) Regulations 2023 to require the provision of additional information which must be completed to ensure that a valid additional information form is submitted alongside a claim for R&D relief.

6.2 There are sections of the additional information form which are mandatory for all claims, and some sections which will only apply to businesses claiming the enhanced rate of relief for R&D intensive SMEs.

Why was this approach taken to change the law?

6.3 These are detailed changes relating to the additional information form. To maintain future flexibility and ensure they meet their purpose, these amendments are being made by regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation on this instrument has been undertaken.

7.2 A review of the R&D reliefs was launched at Spring Budget 2021, which included a consultation on proposals to merge the outgoing RDEC and SME schemes.

7.3 A further consultation specifically on merging the schemes ran from 13 January to 13 March 2023[1].

7.4 A technical document, outlining the enhanced support, was published on 15 March 2023[2]. Consultation on the enhanced support took place following its announcement at Spring Budget 2023.

7.5 Draft legislation for the primary powers to merge the schemes was published on 18 July 2023. Follow up technical consultation with key stakeholders explored the practicalities of merging the two schemes and worked through some of the more complex areas of policy design where the rules, for one or other type of claimant, would change most.

7.6 The Regulations give effect to the changes announced at Autumn Statement 2023 and ensure that the information required from businesses to substantiate a claim reflects the rules of the schemes now available.

8. Applicable Guidance

8.1 Guidance about these changes was published on gov.uk ahead of the changes to the regime which came into force on 1 April 2024.

8.2 More detailed guidance in relation to these changes will be incorporated into the HMRC Corporate Intangibles Research and Development (CIRD) Manual.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

[1] Consultation on merging schemes: https://assets.publishing.service.gov.uk/media/63c51fc08fa8f572a9a36f33/20230113_R_D_Consultation.pdf

[2] Technical document for enhanced support: https://www.gov.uk/government/publications/additional-tax-relief-for-research-and-development-intensive-small-and-medium-sized-enterprises/technical-note-additional-tax-relief-for-research-and-development-intensive-small-and-medium-enterprise

Impact on businesses, charities and voluntary bodies

9.2 This measure is expected to have negligible impact on the administrative burden of businesses (covering SMEs up to large businesses) claiming R&D tax reliefs. One-off costs would include familiarisation with the changes and updating systems to reflect them.

9.3 Continuing costs for business could be incurred as a result of the requirement to provide additional information to HMRC alongside the company tax return.

9.4 This measure is not expected to impact on civil society organisations.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No specific monitoring or review is proposed for this measure.

10.2 The instrument does not include a statutory review clause in line with the requirements of the Small Business, Enterprise and Employment Act 2015 because the legislation relates to tax, and so there is no obligation to include such a clause in accordance with section 28(3) of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).