



TAX INSIGHT UK

Covid 19 – RD tax relief considerations

Tax for Innovative Companies January 2021

HM Treasury Covid 19 Support measures– effects on R & D tax relief & tax credits

HM Treasury introduced a variety of immediate support measures for all types of businesses in response to the pandemic outbreak. These are set out at www.gov.uk and are subject to rapid change and detailed administration. **These can impact the payment of RDEC and SME tax credits & relief going forward but not retrospectively.** Just to recap the measures impacting RDTR are

- CBIL & other loan finance and grants
- Job Retention Scheme payments
- Furloughed staff even if no JRS claimed or later repaid
- Deferral of VAT & tax liabilities

- Time to pay agreements made at any time (popular since March 2020).

To quickly navigate these points the considerations are:

CBIL and other loan / grant finance [SME companies only]– RD relief will not be impacted where this has been applied for ordinary operating costs or general crisis funding. Relief will not be available for any project work where CBIL etc finance has been directly applied to it. **However there is no change to the ‘Going concern’ requirement for SME companies to claim RD tax credits.**

Furlough & JRS payments – will reduce the eligible staff costs, but are not usually regarded as a ‘subsidy’ which would trigger cancellation of SME relief.

Furlough non JRS – this will reduce the availability of staff to perform RD and cost reduction, but sick and annual leave absences are ignored. Relief will correlatingly reduce.

Debt management agreements - Deferral of VAT and tax beyond due dates – HMRC will adhere to the revised due dates for payments of officially deferred duty - any RD tax credits will be paid in full.

Time to pay agreements - HMRC require tax payers to continually review their finances and notify them of material change. A tax credit is a ‘material change’ and will be set off entirely against TTP debt. The TTP agreement will be revised from there.

For detail please read on.

CBIL, Loan and grant finance

RD relief for UK SME companies is notifiable State Aid and subject to rules and limits specified within SA law. CBIL and certain other finance support is notifiable State Aid. To the extent that this funding has

been specifically applied to an RD project it will impede the eligibility for tax relief. Where this funding has been applied to overhead or general operating costs it will not.

Furlough & Job Retention Scheme payments – Staff cost accounting for furlough:

For companies claiming JRS, the calculations within Ss 1123 / 1124 for staffing costs need to be adjusted to reflect time not spent upon RD by furloughed staff. HMRC expects companies to deal with staffing costs when calculating their Research and Development Relief (R&D) and/or Research and Development Expenditure Credit (RDEC) claims to reflect periods in which they had furloughed staff.

The staffing cost rules (s1123 and s1124 CTA 2009) Looking first at the payments made to staff where all or a part of those payments have been met by the Government through the CJRS scheme. Details about the CJRS scheme can be found here <https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>.

Under the CJRS one of the key conditions for an employee to be furloughed is that they have been instructed by their employer to cease all work in relation to their employment. From 1 July 2020 it has been possible to be a flexibly-furloughed employee, which allows businesses to bring back employees part-time, but requires the employee to do no work in relation to their employment during a CJRS claim period. Furloughed staff are permitted to undertake study and training. As the furloughed employees have **ceased all work** during the CJRS claim period HMRC consider that those employees cannot be regarded as being directly or actively engaged in relevant research and development



during those times. This means that during those times the conditions in s1124(2) CTA 2009 are not met in respect of their costs. HMRC therefore expect to see these costs excluded from R&D and RDEC claims. This applies equally to furlough payments met under the CJRS and to any 'top-up' from the company itself.

For furlough payments made to staff where none of those payments have been met by the Government through the CJRS scheme. As with payments within the CJRS scheme, where furloughed employees have ceased all work HMRC consider that those employees cannot be regarded as being directly or actively engaged in relevant research and development. If some qualifying activity has been carried out then HMRC would expect companies to claim in the usual way and draw their attention to the appropriate proportion rules found in s1124(3) and (4) CTA 2009.

Employee absence from work for sickness or annual leave

HMRC consider that paying holiday pay and sick pay is a necessary cost of the employees undertaking R&D work and is, in effect, part of the cost of their working time. This means that HMRC allows claimants to apply the same apportionment between qualifying and non-qualifying activities to holidays and sickness as they do to working time. HMRC consider that any period during furlough which is taken as annual leave or is recorded as sick leave can be included in the staffing cost calculation. However, for the reasons outlined above, the staffing costs incurred on leave and sickness during furlough are subsidised to the extent that they are met under the CJRS. Whilst this will not affect companies which only claim RDEC it will prevent this element of the staffing cost from

qualifying where a company is making a claim in the small and medium size enterprises scheme (chapter 2 of part 13 CTA 2009). The company would however be able to include these staffing costs in a claim for RDEC (s104F to s104H CTA 2009). HMRC will accept a fair and reasonable apportionment when calculating the element of subsidised staffing costs in these circumstances.

Debt management and debt deferral impact upon RDEC and SME tax credits

HMRC's position on tax arrears is set by legislation affecting debt management which has not changed during the pandemic. Duty deferred under the Covid measures remains payable at the due date set out in the special measure and will not impede tax credit payments.

Time to pay arrangement (TTP)s

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 **gross 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.

TTP is an agreement by HMRC to delay enforcement proceedings for a given debt to a specified future date. It doesn't alter the fact that the debt is owed to HMRC or change the due date. When HMRC agrees to set up a TTP HMRC review the current and future financial position. TTP is a payment plan based on their ability to pay. Anticipated tax credits are built into the TTP. When HMRC set up a TTP arrangement it is subject to obtaining full information and letting HMRC know if this changes.

It is therefore important that companies advise potential RD claims filed when TTP apply.

Large & subsidised companies - Research and Development Expenditure Credit set offs

It is a legislative requirement that any RDEC [remaining at Step 6 (CTA09/S104N(2))] is set-off against any liability owed to the Commissioners for HMRC. HMRC does not have the power to override this and there are no plans at present to legislate to provide a temporary relaxation of this rule.

Credits under s130 Finance Act 2008

Credits under s130 Finance Act 2008, including credits under the R&D SME scheme, will continue to be applied on a discretionary basis. HMRC has a duty to protect public revenue and therefore would always look to offset any credit against tax liabilities before paying a credit. HMRC will consider the particular circumstances on a case by case basis if they have objections to the credit being set off against other liabilities.

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