

Budget 2021

R&D Tax Claims SME Repayment Cap April 2021



Following the Budget Update on the 3rd of March, it is confirmed that a cap on the amount of cash payable to loss-making companies under the SME scheme is being introduced to prevent potentially fraudulent claims and abuse of the scheme by rogue companies. HMRC has identified entities specifically set up to access the scheme despite having no clear R&D and no prior legitimate activity in the UK. As such action is being taken to ensure that only genuine companies remain able to claim and benefit.

R&D cash credit cap

In a change from previous guidance, the cap will now apply to accounting periods starting on or after 1 April 2021, giving companies time to prepare for the changes.

- The cash credit is limited to £20,000 + 3x total PAYE & NIC liability of the company for the year. (Related party PAYE & NIC liabilities attributed to the R&D can be included within the cap.)

From the definition of the cap above, it follows that if the repayment is below £20,000, then the claim is unaffected. In addition, there are further conditions that influence the applicability of the cap, as noted below:

Cap exemption

The claim can remain uncapped if both of the following two tests are met:

- The company's employees are creating, preparing to create or actively managing intellectual property arising from the R&D project.
- The Company's R&D related expenditure on work subcontracted to, or externally provided workers provided by, a related party is less than 15% of its overall R&D expenditure.

Although this will allow greater flexibility and ensure that many claimants are still able to claim in full, there will remain a substantial proportion of companies limited by the cap, particularly larger companies who utilise

smaller entities conducting R&D activities within the group. The new rules will particularly affect start-ups with little or no PAYE + NIC contributions, and who place significant reliance on subcontractors to carry out their R&D activities. Such entities often have limited budgets for IP investment, and involve large R&D claims to enhance already substantial losses, in the hopes of surrendering these for a large cash credit. This form of the R&D incentive forms a lifeline for businesses that seek to shore up cashflow through this mechanism.

HMRC has issued further guidance in respect of point a) clarifying that know-how and trade secrets are included in their definition of Intellectual Property, meaning the time consuming and expensive process of obtaining formal IP need not be undertaken. This will cover cases where companies are not able, or do not wish, to protect the results of their R&D. How this will be monitored remains to be seen so it is recommended that companies maintain good records of their work and any relevant contracts.

Conclusion

Although many claimants aware of this incoming cap will not be constrained by the new rules or can begin to make arrangements to accommodate it, there remains a large proportion who may not be aware of the nuances involved. It is important to ensure that anyone who may be affected is notified about the possibility of a restriction in the potential relief available.

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