

Deduction for certain expenditure on research and development. FA95 s59(1) to (4); FA96 s57(1) 766.—(1) (a)
In this section—

“appropriate inspector” has the same meaning as in section 950;

“base period” means the period of 12 months ending immediately before the commencement of the first relevant period;

“expenditure on research and development” means non-capital expenditure incurred by a company, being—

(i) an amount equal to 115 per cent of the aggregate of the amounts of—

(I) such part of the emoluments paid by the company to employees of the company engaged in the carrying out of research and development activities related to the company's trade as is laid out for the purposes of those activities, and

(II) expenditure incurred by the company on materials or goods used solely by the company in the carrying out of research and development activities related to the company's trade,

but where expenditure referred to in clauses (I) and (II) is incurred by a company (in this definition referred to as “the first-mentioned company”) which is a member of a group on behalf of another company which is a member of the group, the other company shall be treated for the purposes of the Corporation Tax Acts as having incurred the expenditure and the first-mentioned company shall be treated for those purposes as not having incurred the expenditure, and

(ii) a sum paid to another person, not being a person connected with the company, in order that such person may carry out research and development activities related to the company's trade;

“group base expenditure on research and development” means the aggregate of the amounts of expenditure on research and development incurred in the base period by qualified companies which throughout that period are members of the group;

“group expenditure on research and development”, in relation to a relevant period, means the aggregate of the amounts of expenditure on research and development—

(i) incurred, or treated as incurred, in the relevant period by qualified companies which throughout the relevant period are members of the group, and

(ii) certified as having been incurred by those companies in certificates given to the companies by persons who are auditors of the companies appointed under section 160 of the Companies Act, 1963 , or under the law of any territory where any such company is duly incorporated and which corresponds to that section;

“qualified company”, in relation to a relevant period, means a company which—

(i) throughout the relevant period carries on a trade which consists wholly or mainly of the manufacture of goods in the State, but trading operations of a company shall not be treated for the purposes of this section as the manufacture of goods in the State by virtue of any section of the Tax Acts other than section 443,

(ii) holds a certificate given to it by Forbairt which certifies that in the opinion of Forbairt the research and development activities which are proposed to be carried on by or on behalf of the company have the potential to achieve the purposes set out in paragraph (iii) of the definition of “research and development activities”,

(iii) notifies the appropriate inspector before the commencement of the research and development activities of its intention to carry out such activities or to have such activities carried out on its behalf,

(iv) maintains a record of expenditure incurred in the carrying on by it or on its behalf of research and development activities in accordance with a system approved by Forbairt of recording such expenditure, and

(v) does not, at any time during the period commencing on the 10th day of May, 1995, and ending 3 years after the commencement of the first relevant period, raise any amount through the issue of eligible shares within the meaning of section 488;

“qualifying expenditure on research and development attributable to a qualified company”, in relation to a relevant period, means so much of the amount of qualifying group expenditure on research and development in the relevant period as bears to that amount the same proportion as the amount of expenditure on research and development incurred by the company in the relevant period bears to the group expenditure on research and development in the relevant period;

“qualifying group expenditure on research and development”, in relation to a relevant period, means an amount determined by the formula—

$$E - (D + £25,000)$$

where—

E is the amount of group expenditure on research and development in the relevant period, and

D is—

(i) where the relevant period commences before the 1st day of June, 1996, the greater of—

(I) the amount of group base expenditure on research and development, and

(II) the amount of group expenditure on research and development in any relevant period preceding that relevant period,

and

(ii) where the relevant period commences on or after the 1st day of June, 1996, the amount of group base expenditure on research and development,

but—

(A) the qualifying group expenditure on research and development in relation to a relevant period shall not in any case exceed £150,000, and

(B) the aggregate of the amounts of qualifying group expenditure on research and development in all relevant periods shall not exceed the aggregate of the amounts specified in certificates given by Forbairt to companies which are members of the group;

“relevant period” means—

(i) in the case of a company which is a member of a group the end of the accounting periods of the members of which coincide, the period of 12 months throughout which one or more members of the group carried on a trade and ending at the end of the first accounting period of the company which commences on or after the 1st day of June, 1995,

(ii) in the case of a company which is a member of a group the end of the accounting periods of which do not coincide, the period specified in a notice in writing made jointly by companies which are members of the group and given to the appropriate inspector within a period of 9 months after the end of the period so specified, being a period of 12 months throughout which one or more members of the group carries on a trade and ending at the end of the first accounting period of a company which is a member of the group which accounting period commences on or after the 1st day of June, 1995, and

(iii) in any other case, the period of 12 months commencing on the 1st day of June, 1995,

and each subsequent period of 12 months, commencing immediately after the end of the preceding relevant period, which falls wholly in the period of 3 years commencing at the beginning of the first relevant period, but a period shall not be a relevant period if it commences on or after the 1st day of June, 1999;

“research and development activities” means systematic, investigative or experimental activities which—

(i) are carried on wholly or mainly in the State,

(ii) involve innovation or technical risk, and

(iii) are carried on for the purpose of—

(I) acquiring new knowledge with a view to that knowledge having a specific commercial application, or

(II) creating new or improved materials, products, devices, processes or services,

and other activities carried on wholly or mainly in the State for a purpose directly related to the carrying on of activities of the kind referred to in paragraph (iii), but activities that are carried on by means of—

(A) market research, market testing, market development, sales promotion or consumer surveys,

(B) quality control,

(C) the making of cosmetic modifications or stylistic changes to products, processes or production methods,

(D) management studies or efficiency surveys, or

(E) research in social sciences, arts or humanities,

shall not be research and development activities.

(b) For the purposes of this section—

(i) 2 companies shall be deemed to be members of a group if one company is an associated company) of the other company;

(ii) a company and all its associated companies shall form a group; but a company which is not a member of a group shall be treated as if it were a member of a group which consists of that company, and accordingly references to group expenditure on research and development, group base expenditure and qualifying group expenditure on research and development shall be construed as if they were respectively references to expenditure on research and development, base expenditure and qualifying expenditure on research and development;

(iii) systematic, investigative or experimental activities, or other activities, shall be regarded as carried on wholly or mainly in the State only if not less than 75 per cent of the total amount expended in the course of such activities is expended in the State;

(iv) as respects any relevant period commencing before the 1st day of June, 1996, expenditure on research and development shall not be regarded as having been incurred by a company which is a member of a group if any expenditure on research and development incurred in a relevant period or in the base period by a company which is a member of the group has been or is to be met directly or indirectly by the State or any person other than a company which is a member of the group;

(v) as respects any relevant period commencing on or after the 1st day of June, 1996, expenditure on research and development shall not be regarded as having been incurred in a relevant period by a company which is a member of a group if—

(I) in the relevant period the aggregate of amounts received by companies which are members of the group, being amounts paid directly or indirectly to the companies by the State or a person, other than a

company which is a member of the group, to enable the company to meet the cost of such expenditure, exceeds £50,000, or

(II) it is expenditure—

(A) approved by Forbairt under any scheme administered by it, and

(B) which has been or is to be met to any extent directly or indirectly by the State or any person other than a company which is a member of the group.

(2) (a) In this subsection—

“income from the sale of goods” has the same meaning as in section 454;

“a loss from the sale of goods” has the same meaning as in section 455.

(b) On making a claim in that behalf, a qualified company shall be entitled, in computing the trading income for an accounting period of a trade carried on by it, to deduct an amount equal to treble the qualifying expenditure on research and development attributable to the qualified company as is referable to the accounting period and, subject to paragraph (c), the company shall be entitled to such a deduction in addition to any deduction to which the qualified company may otherwise be entitled in respect of expenditure incurred on research and development.

(c) Where the amount referred to in paragraph (b) exceeds an amount which apart from this subsection would be the income from the sale of goods of the trade so referred to for the accounting period, then, the excess—

(i) shall not be deductible by virtue of paragraph (b), and

(ii) shall be treated as a loss incurred in that trade, which is a loss from the sale of goods, for the purposes of relief under—

(I) section 455 or 456, or

(II) to the extent that such relief does not exceed the income from the sale of goods in the course of that trade in the accounting period for which that relief is given, section 396 (1).

(3) For the purposes of subsection (2)—

(a) where a relevant period coincides with an accounting period of a qualified company, the amount of qualifying expenditure on research and development attributable to the qualified company which relates to the accounting period of the company shall be the amount of that qualifying expenditure attributable to the qualified company, and

(b) where the relevant period does not coincide with an accounting period of the company—

(i) the qualifying expenditure on research and development attributable to the qualified company shall be apportioned to the accounting periods which fall wholly or partly in the relevant period, and

(ii) the amount so apportioned to an accounting period shall be treated as the amount of qualifying expenditure on research and development attributable to the qualified company which relates to that accounting period of the company.

(4) Where a company makes a claim under this section, the company shall be treated for the purpose of Part 16 as not being a qualifying company in respect of any amount raised, at any time during the period commencing on the 10th day of May, 1995, and ending 3 years after the commencement of the first relevant period, by the issue of eligible shares within the meaning of section 488.