

R&D Tax Relief and Overlap With Patents

What is R&D tax relief?

The UK Government recognises that innovation and creativity are vital components for improving the UK's performance, productivity, and competitiveness in the global market. In order to encourage and reward greater innovation in the UK, the Government offer research and development (R&D) incentives for both large companies and small and medium size enterprises .

R&D tax relief is a Corporation Tax relief that may reduce a company's tax bill if the company is liable for Corporation Tax or, in some circumstances, may offer payable tax credits.

There are different types of R&D relief depending on the size of the company, the company's R&D activities, and whether those activities have been subcontracted.

What qualifies as R&D?

For tax purposes, R&D takes place when a project seeks to achieve an advance in science or technology – for all, not just for the business.

The activities that directly contribute to achieving this advance through the resolution of scientific or technological uncertainty qualify as direct R&D activities. Certain qualifying indirect activities related to the project are also R&D.

Activities (other than qualifying indirect activities) that do not directly contribute to the resolution of the project's scientific or technological uncertainty are *not* R&D.

R&D Examples

Examples of R&D activities include, but are not limited to:

- Activities to create or adapt software, materials or equipment needed to resolve the scientific or technological uncertainty, provided that the software, material, or equipment is created or adapted solely for use in R&D;
- Scientific or technological planning activities;
- Scientific or technological design, testing and analysis undertaken to resolve the scientific or technological uncertainty.

Examples of qualifying indirect R&D activity include, but are not limited to:

- Scientific and technical information services, insofar as they are conducted for the purpose of R&D support (such as the preparation of the original report of R&D findings);
- Training required to directly support an R&D project;
- Research by students and researchers carried out at universities.

For HMRC's specific definition of R&D and guidance on what is and what is not R&D, see [here](#).

What tax relief is available?

Small and medium-sized enterprise (SME) R&D tax relief allows companies to:

- Deduct an extra 130% of their qualifying R&D expenditure from their yearly profit, as well as the normal 100% deduction, to make a total **230% deduction**;
- Claim a tax credit if the company is loss making, worth **up to 14.5%** of the surrenderable loss.

Large companies can claim R&D expenditure credit (RDEC), which is currently calculated at **13%** of the company's qualifying R&D expenditure.

SMEs and large companies who have been subcontracted to do R&D work by a large company can also claim RDEC.

Are patent costs eligible?

The costs of preparing and registering a patent are not R&D — they are the costs of protecting the *completed* R&D. However, while you cannot receive R&D tax relief for the use and preparation of patents, patent protection is still important to consider when performing R&D.

For **tax purposes**, R&D must aim to create an advance in the overall field. For R&D tax relief, it is also necessary to show that a professional in the field could not easily work out the advance (for example, by showing that other attempts to find a solution had failed).

For **patent purposes**, it is necessary for an invention to be new and also that the invention involves an inventive step.

Definition of an SME

For R&D tax relief purposes, an SME has:

- Fewer than **500 staff**; and
- A turnover of under **100 million euros** or a balance sheet total under **86 million euros**.

It may be also necessary to consider linked companies and partnerships when determining if a company qualifies as an SME.

HMRC's detailed guidance on linked and partner companies can be found [here](#).

There are therefore clear parallels between what R&D qualifies for tax relief and what qualifies for patent protection. If making an R&D tax relief claim, companies should also consider applying for patent protection for any invention devised during the R&D. For patenting purposes, it is important to keep enabling details of inventions confidential before applying for patent protection: if you are in the early stages of R&D, HLK can advise on the best way to ensure that any disclosures are kept confidential.

Additionally, companies might also consider the **Patent Box**, which enables companies to apply a **10%** rate of Corporation Tax to profits from patented inventions. See our guide to the Patent Box [here](#).

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