

PREVENTING ABUSE OF THE R&D TAX RELIEF FOR SMEs

CAP ON SME R&D CLAIMS

From 1st April 2021, the amount of payable R&D tax credits a company can receive through the SME R&D Tax Relief scheme will be capped at 3 x the company's total Pay As You Earn (PAYE) and National Insurance Contributions (NIC) plus £20,000 unless one of three exceptions apply.

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HMRC has recently identified (and prevented) fraudulent attempts to claim the SME scheme payable tax credit totalling over **£300 million**. In these cases, companies were set up to claim the cash available through the payable credit even though they had no R&D activity. HMRC has also identified structures set up specifically to claim the payable tax credit despite there being little or no employment or activity in the UK.

GENUINE COMPANIES

The government is aware that applying a cap on the amount of payable tax credit a company can claim could have an impact on some genuine businesses. Therefore, the following three 'features' have been created and where the criteria are met, the cap is mitigated or not applied:

Payable tax credit claims under £20,000

For payable tax credit claims below £20,000 the PAYE cap will not apply.

This will protect companies with the smallest claims, whilst also ensuring the PAYE cap remains effective at targeting abusive behaviour.

For claims over £20,000 a company's maximum claim is calculated as follows:

**£20,000 + 3 x company's PAYE
& NIC liability**

Attributable related party PAYE and NIC liability

Where R&D has been subcontracted out to a related party, the amount of the related party's PAYE and NICs contributions which are attributable to the R&D project will count towards the claimant party's calculation of the cap.

In this instance, a company's maximum claim is calculated as follows:

**£20,000 + 3 x own plus related
party PAYE & NIC attributable
to R&D projects**

Intellectual Property (IP)

A company's claim will not be capped, if it meets two tests:

1. The company's employees are creating, preparing to create or actively managing intellectual property;

AND

2. Its expenditure on work subcontracted to, or EPWs provided by, a related party is less than **15%** of the company's overall R&D expenditure.