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RESEARCH AND DEVELOPMENT TAX RELIEFS – DRAFT GUIDANCE

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the ‘Research and Development (R&D) tax reliefs – draft guidance (‘the Draft Guidance’) published on 20 December 2022¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Overall, we have found it difficult to comment comprehensively on the Draft Guidance without sight of a final, or even updated, version of the underlying legislation.
- 1.4 We also consider that the pace of change in the R&D relief regime in recent and coming years is causing difficulties for businesses and their advisers. Consideration should therefore be given to pausing the administrative reforms set out in the Draft Guidance, especially given recent proposals to introduce a new, combined relief scheme as early as 2024.
- 1.5 We have expanded on the above general comments in Section 2 below, before going on in sections 3 to 6 to set out our more detailed comments on specific areas of the draft guidance.
- 1.6 We would be pleased to discuss any aspect of this submission further. Relevant contact details can be found in Section 7.

2 General comments

- 2.1 The Draft Guidance covers changes to the R&D relief regime which were originally included in draft legislation published on 20 July 2022 for what was intended to be Finance Bill 2022-23². (the ‘Draft Legislation’). However, this legislation was never finalised, and no updated draft has been provided since it was originally published.

¹ <https://www.gov.uk/government/consultations/draft-guidance-research-and-development-rd-tax-reliefs>

² <https://www.gov.uk/government/collections/finance-bill-2022-23>

- 2.2 Whilst we always welcome the opportunity to comment on guidance before changes come into effect, the absence of final (or even updated) legislation does make reviewing the Draft Guidance difficult. In particular, it is not possible to say whether the Draft Guidance accurately reflects the underlying law. For example, it is not clear whether inconsistencies between the Draft Guidance and Draft Legislation are a reflection of policy changes, or unintended errors. This situation is made even more difficult when it comes to areas such as the required content of the additional information submission, as the Draft Legislation states this will be included in regulations, which have not even been published in draft yet.
- 2.3 We appreciate that wider political events meant it was not possible to finalise and pass the Draft Legislation as a Finance Bill last year, as was originally planned. However, we would have liked to see updated Draft Legislation, and drafts of any required regulations, published alongside the Draft Guidance.
- 2.4 We note that the changes set out in the Draft Guidance are due to take effect for accounting periods beginning on or after 1 April 2023. Alongside these, the rate of relief available under the small or medium-sized enterprise (SME) regime is set to drop from 1 April 2023, and a recently released HM Treasury and HMRC consultation³ proposes replacing the current R&D relief schemes completely with a new, single scheme from 1 April 2024. This represents a large amount of change for businesses and advisers to adapt to within a short period of time, as well as creating an overall feeling of uncertainty. Businesses and advisers are, naturally, concerned about making changes to their processes to accommodate the administrative changes set out in the Draft Guidance, when the whole R&D regime could be replaced in a little over a year.
- 2.5 We would therefore encourage the Government to consider pausing the reforms relating to advance notification and additional information set out in the Draft Guidance until there is a clearer picture on the future of the R&D relief regime. To give businesses certainty, and allow them to plan and budget accordingly, a clear roadmap for reform should also be published.

3 Overseas expenditure

- 3.1 In section 1 of the Draft Guidance it is stated that “... *externally provided workers (EPWs) must be subject to PAYE and National Insurance contributions...*” It would be helpful to clarify here that this can be either by the staff controller or the claimant company, as set out in the Draft Legislation.
- 3.2 The discussion in section 1.2 of the Draft Guidance regarding what is meant by ‘*wholly unreasonable*’ in the context of the definition of Qualifying Overseas Expenditure (QOE) is very helpful, as this term is not defined in the Draft Legislation. However, we would query the statement that “*If on the other hand the company or a third-party already operates similar facilities in the UK which could be easily adapted, it would be reasonable to expect it to do so, and the condition would not apply*”. We consider that this should only apply to facilities operated by the claimant company and its connected parties, and not those operated by third-parties. Claimants will not always be aware of whether or not such third party facilities exist and, even if they do, they will have no power over whether or not the third party makes the necessary adaptations. It does not seem fair to deny a company relief as a result of what a third party, over whom they may have no influence, does or does not choose to do. It would also be very difficult for HMRC to test compliance with this requirement, as HMRC staff are even less likely to be aware of what facilities third parties might have available.

³ <https://www.gov.uk/government/consultations/rd-tax-reliefs-review-consultation-on-a-single-scheme>

- 3.3 We would also recommend that, in the interests of clarity, the final sentence in section 1.2 (starting “*It may be that there is time pressure...*”) should be extended to confirm that, in these cases the condition would apply.

4 Data licences and cloud computing services

- 4.1 Our only comments on this section of the Draft Guidance relate to section 2.4 (‘Points to note’):

- There is a typo in the opening sentence, which should read “*As data licence and cloud computing...*”.
- It would be helpful to include an example showing how the tax rules applicable to work in progress expenditure might operate in practice.

5 Claim notification

- 5.1 The time period to consider when deciding whether a claim notification is required appears to differ between the Draft Guidance and the Draft Legislation:

- Section 3.1 of the Draft Guidance indicates that no notification is required if a claim has been made in any of the previous three calendar years, with Example 1 going on to reinforce that this period is based on the date any previous claim was submitted, and not the accounting period it related to.
- The Draft Legislation instead refers in new s104AA of CTA 2009 to whether or not a claim has been made in respect of any of the three accounting periods immediately preceding the claim period.

- 5.2 It needs to be confirmed which approach is correct, and the Draft Guidance or Draft Legislation updated accordingly. Our preference would be to follow the Draft Legislation and consider the past three accounting periods. Otherwise, the period to consider will vary depending on exactly when returns for previous years were submitted. This could cause confusion, and it also seems odd that a company being either late or early in filing its return in the past should affect whether or not a notification is required in the future.

- 5.3 Section 3.1 of the Draft Guidance states that the claim notification form will be accessible from GOV.UK. We understand from attending a meeting of the Agent Digital Design Advisory Group (ADDAG) on 17 January 2023 that it will be possible for both agents and taxpayers to complete this form, and that it will require them to either log in with a Government Gateway ID or supply an email address. As both taxpayers and agents may have multiple Government Gateway IDs, it will be important for guidance to make it clear which credentials should be used by agents and taxpayers. For example, should agents use their Agent Services Account (ASA) log in details? Or can they use other Gateway accounts which they may currently use for corporation tax filings, or to manage their own tax affairs?

- 5.4 Under ‘Time limits’, the Draft Guidance indicates that the latest date for submitting a claim notification is six months after the end of the period of account that includes the relevant accounting period. We note that this differs from the Draft Legislation, which states at the new s1054A CTA 2009 that the deadline is ‘*six months beginning with the last day of the claim period*’ (the claim period being the specific accounting period, and not the overall period of account). It needs to be clarified which deadline is correct, and the Draft Guidance or Draft Legislation updated accordingly. In our view, the position in the Draft Guidance is likely to be the most pragmatic approach where there is a long period of account, as there would only be a single deadline for both accounting periods.

5.5 The claim notification screens shared at the ADDAG meeting on 17 January indicated that notifications will need to include an overview of the relevant project. This requirement is not included in the Draft Guidance, and is a clear departure from the otherwise relatively straightforward factual information that is listed there. We understand that this overview will be used by HMRC for compliance purposes, as well as general information gathering. Given this, and the fact this is likely to be the most complicated piece of information required as part of the claim notification process, detailed guidance should be provided as to the level of information required and the areas which should be covered.

6 Additional information

6.1 We understand that the additional information form will, similar to the claim notification form, be accessible from GOV.UK and require either a Government Gateway log-in or the provision of an email address. As discussed above at section [5.3], it will be important for guidance to make it clear which Government Gateway credentials should be used by agents and taxpayers to access the form.

6.2 In our experience, the majority of the required additional information listed in the Draft Guidance is likely to already be provided by reputable R&D advisers as part of their R&D report. However, even where this is the case, the requirement to complete the form and get the information into the correct format will represent an additional administrative burden for businesses and their advisers. We would therefore encourage HMRC to consider whether this burden could be reduced by, for example, allowing PDF documents to be uploaded to the form or an API provided to enable pre-population.

6.3 We anticipate that the biggest challenge faced in completing the additional information form is likely to be the descriptions of the relevant projects. Businesses in particular may be concerned as to what exact information is being sought here, the level of detail required etc. The Draft Guidance indicates that large businesses should contact their Customer Compliance Manager (CCM) to agree the level of information required, but this is of no use to the majority of businesses who do not have a CCM. Whilst we appreciate HMRC do not wish to be too prescriptive as to the information required, it would be extremely helpful if they could provide further guidance and examples to indicate the typical level and range of information they would expect to see submitted, especially by smaller companies.

6.4 The requirement to split out qualifying expenditure by project may increase administrative burdens for advisers and businesses, but should be possible. However, to allow the required changes to workflows and systems to be put in place in time for commencement, the exact requirements need to be confirmed as soon as possible and the relevant secondary legislation published (even if in draft).

6.5 One other area of practical complexity may be the requirement to split out Qualifying Indirect Activities (QIAs). Staff members may spend time working both directly and indirectly on a project. For example, an employee may produce CAD drawings, but also attend meetings to discuss progress of the project. Splitting out the QIA element of that employee's staff costs should be possible, but may be time consuming in practice and will again require changes to systems and workflows.

6.6 Finally, we are concerned that the Draft Guidance does not address what taxpayers and agents are expected to do if they submit additional information and then subsequently spot an error in it, or amend the related corporation tax return. We understand from the ADDAG meeting on 17 January that it will be possible to save and return to draft submissions, and print off a draft for review prior to submission. However, it is still possible that errors will be spotted after the additional information form is submitted but before the claim is made in

the corporation tax return. It is also entirely possible that an original claim is amended at a later date. Thought needs to be given to what happens when, as a result, the additional information no longer matches the claim itself, and appropriate guidance and support put in place.

7 Contact details

- 7.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson on 07773 087111 or erawson@att.org.uk.

The Association of Taxation Technicians

8 Note

- 8.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.