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R&D TAX RELIEF ADVANCE CLEARANCES

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HM Revenue & Customs (HMRC) consultation document '*R&D tax relief advance clearances*' ('the Consultation') issued on 26 March 2025¹.
- 1.2 The primary charitable objective of the ATT is to promote the education and 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 We welcome the fact that this Consultation is taking place at Stage 1 of the consultation process. Should a decision be made to take any of the proposals forward, we look forward to engaging at Stage 2, where we can consider the available options and comment on the detailed policy design.
- 1.4 An executive summary is provided in Section 2, outlining our key points at a high level. We have responded to the specific questions posed by the Consultation in Sections 3 to 6. Please note that we have only responded to questions relevant to our remit as a professional body and have not commented on those directed primarily at claimant companies or agents.
- 1.5 We would be pleased to discuss any aspect of this submission further. Relevant contact details can be found in Section 7.

¹ <https://www.gov.uk/government/consultations/research-and-development-tax-relief-advance-clearances>

2 Executive summary

- 2.1 The current advance assurance regime is not widely used for a number of reasons. In particular, many claimants and advisers feel the time and cost of seeking advance assurance outweighs the benefits (see para 4.4).
- 2.2 There are a number of ways in which advance assurance could be made more attractive. These include allocating additional resources and improving flexibility (see para 4.4). Consideration should also be given to the skills and expertise of those who administer assurances, especially if HMRC wishes to charge taxpayers (see para 5.2).
- 2.3 Claimants continue to face significant uncertainty around key aspects of the R&D tax relief regime — particularly in determining whether an activity qualifies as R&D and who is entitled to claim for contracted-out activities. The provision of advance assurance on these areas of uncertainty is essential to support genuine innovation and investment (see para 4.8).
- 2.4 We do not believe advance assurance should be restricted to certain industries or company types. It should be available to any business seeking reassurance (see para 5.4).
- 2.5 We do not believe that a Minimum Expenditure Threshold (MET) should be set for R&D relief claims. Whether or not an activity is R&D depends on the nature and purpose of the work undertaken, not the amount spent on it. Perfectly good R&D work can, and indeed is, undertaken for relatively small amounts of money (see para 5.6).
- 2.6 In principle, we do not believe that clearances should be mandatory only for certain claimants as this risks creating a two tier system. However, given the level of fraud within the R&D tax relief regime, we can see an argument for mandatory clearances in high risk sectors. Ensuring the right companies are brought into any mandatory scheme could be challenging in practice (see paras 5.8 and 5.10).
- 2.7 We do not believe that any of the three options set out in the Consultation would be particularly useful or attractive (see paras 6.8 and 6.10). Instead of introducing additional compliance burdens for claimants, we believe the government should take a wider look at how to reduce error and fraud (see para 6.12).

3 About you

- 3.1 **Question 1: Are you responding to this survey as: a company, an agent, a professional body, an academic, or other (please provide details).**
- 3.2 A professional body.
- 3.3 **Question 5: Where does your business operate?**
- 3.4 England, Scotland, Wales, Northern Ireland.
- 3.5 **Question 6: Please provide your company's or organisation's name unless you are responding on your own behalf.**

The Association of Taxation Technicians (ATT).

3.6 **Question 7: Please provide the best email address we can use to contact you.**

atttechnical@att.org.uk.

3.7 **Question 8: To help us monitor the demographic of respondents, please provide the postcode for your company or organisation.**

3.8 SW1P 2AP

4 **Current approach**

4.1 **Question 9: Were you aware of the advance assurance scheme before this consultation?**

4.2 Yes, though our members report that it is not widely used.

4.3 **Question 13: For those who are aware of the current advance assurances, but chose not to use them, what were the reasons for this?**

4.4 Our members report a number of reasons why the current advance assurance service is not widely used, including:

- The strict criteria (see our answer to Question 16 below).
- The labour-intensive nature of seeking assurance, which requires too much effort on behalf of claimants for limited benefit.
- HMRC's inflexible approach to advance assurance applications.
- HMRC's lack of sector-specific expertise.

Overall, the effort and cost involved in seeking advance assurance is felt to be similar to that of being selected for a compliance check. As a result, claimant companies often choose to 'take their chances' and simply submit their claim. If they are not selected for enquiry, they have effectively saved themselves the time and expense that would have been involved in obtaining advance assurance.

Another factor is that claimants, especially the smallest and newest companies, often do not have a clear picture of their R&D plans for the next three years. As such, there are often concerns about going through the advance assurance process, and providing significant amounts of detailed information up front, when changes to project plans, expenses etc. could prevent assurance from being valid.

Members also report that HMRC's compliance approach to R&D claims over the last five years has damaged trust. This can make claimants reluctant to voluntarily share more information with HMRC than is strictly required.

Our members have raised concerns about HMRC's limited industry-specific expertise. Currently, HMRC is, in effect, the sole arbiter in determining whether an activity constitutes R&D. However, their caseworkers often do not have experience in the relevant fields. We welcome the recent announcement regarding the recruitment of the expert advisory panel and look forward to seeing how it will enhance HMRC's approach to R&D tax relief. However, while the panel's guidance on general principles is a positive step, we have concerns about its limitations. Given the restricted time commitment of just 40 hours per individual (6 positions in total), we worry that this may not be sufficient.

Key improvements which could increase the attractiveness of advance assurance include:

- Ensuring HMRC has adequate resources to allow for greater interaction throughout the process.
- Setting realistic expectations for what advance assurance can achieve.
- Making the assurance process (and how it is applied once granted) more flexible to reflect the fast-moving nature of R&D activities.
- HMRC ensuring it has sufficient sector-specific expertise by working with industry specialists to effectively support advance assurance applications.
- It may be more useful for HMRC to assess the key components of a company's eligibility to make a claim by considering;
 - Whether the potential claimant has competent professionals — i.e., individuals with the requisite skills, expertise and/or educational background in the relevant area of science or technology. This is ultimately the person or people who can define the existing baseline and any advance beyond it, as opposed to HMRC.
 - Whether the company understands the DSIT Guidelines definition of R&D and how to apply it to their activities.
 - The contractual and commercial arrangements surrounding the work, which can impact the relief available.
 - The potential costs to be incurred and which would fall within the eligible categories.

The output of this approach would be to introduce an element of trust into the system, with HMRC having assessed the key components of a company's ability to make a valid claim — but not going so far as to try to assess the more subjective technical aspects without the requisite scientific or technological expertise. Bringing in independent experts only if and when required could make the process more cost- and time-effective. HMRC could still make use of enquiries, and could consider introducing a secondary, more detailed clearance process for higher-risk companies or agents.

4.5 **Question 14: Is the current focus in advance assurances on treatment of a whole claim right, or should it focus on a particular issue or number of issues in a claim?**

4.6 We believe advance assurance should focus on the whole claim. If not, claimant companies will not have certainty as to the validity of their claim, as it could (presumably) still be challenged by HMRC in those areas not covered by the assurance.

4.7 **Question 15: Which issues in R&D claims are of the most concern?**

4.8 The main issue which causes concern is whether the proposed activity meets the definition of R&D for tax purposes. In particular, whether it constitutes a true advance in science or technology.

Another key area of concern is identifying who is able to claim for R&D activity in subcontractor scenarios. For accounting periods beginning before 1 April 2024, there was no legislative definition of 'contracted out' or 'sub-contracted' R&D. The interpretation of what constituted 'contracted out' expenditure has been subject to much litigation. HMRC has revised its guidance multiple times, causing some companies to miss out on relief and creating significant uncertainty.

For accounting periods beginning on or after 1 April 2024, Finance Act 2024 introduces a definition of 'contracted out'. This definition focuses on identifying the party responsible for the decision to undertake the R&D—broadly, the entity making that decision should be entitled to claim relief. HMRC has acknowledged the

subjectivity of this definition and consulted on draft guidance in 2024² and has subsequently issued guidance in its Corporate Intangibles Research and Development (CIRD) Manual³.

However, given the historic approach under the SME and previous RDEC regimes, claimants still lack the certainty needed to confidently make a claim. The definition of 'contracted out' is subjective, and this ambiguity creates challenges for businesses, potentially hindering genuine R&D activities. For example, for start-ups seeking venture capital, the uncertainty over whether a valid R&D claim can be made could be the difference between securing the funding they need or not. Investors may be hesitant to engage with companies facing such unpredictability in their tax relief claims.

Additionally, for expenditure incurred in accounting periods beginning on or after 1 April 2024, claimants must determine whether contracted out R&D is carried out overseas. If so, to claim relief, they must assess whether the work is conducted under conditions:

- that are not present in the United Kingdom,
- that are present in the location in which the research and development is undertaken, and
- that it would be 'wholly unreasonable' for the company to replicate in the United Kingdom.

This, again, involves a degree of subjectivity.

Providing advance assurance on whether or not contracted out expenditure qualifies for relief would offer the much-needed certainty that businesses require.

Other areas include identifying the point at which R&D activity starts and ceases within a project, and the allocation of costs and overheads where these span both R&D and non-R&D activities.

4.9 **Question 16: Do you have any views on the current criteria for eligibility for advance assurances?**

4.10 We believe the current criteria are too narrow.

Restricting assurance to businesses with turnover below £2m and fewer than 50 employees prevents larger businesses, even those that have not previously claimed R&D tax relief, from being eligible to apply. Whilst the very largest businesses may be able to discuss matters with their Customer Compliance Manager (CCM), there are a significant number of claimants who are too small to have a CCM, but too large for advance assurance.

Limiting advance assurance to companies that have not previously claimed R&D relief before is too strict. Companies may have claimed for projects several years before, or in very different areas, and still have genuine uncertainty as to whether a planned activity would meet the requirements to be eligible for relief.

Advance Assurance should be available to all companies without a CCM, as well as to those starting significant new projects, regardless of whether they have previously carried out R&D.

5 **Voluntary and mandatory assurances**

5.1 **Question 17: Can you foresee circumstances in which paid-for voluntary assurances might be attractive?**

² <https://www.gov.uk/government/consultations/draft-guidance-research-and-development-rd-tax-reliefs-new-contracting-out-rules-and-overseas-restrictions/8177de5e-fe41-42f8-aec1-695dc9b4a5f8>

³ <https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird161000>

- 5.2 We do not believe that paid-for voluntary assurances would be attractive, at least not without significant changes to scope, criteria, flexibility and ease of applying. As noted above, our members report that advance assurance is very rarely taken up, despite it being free. Major changes would be required before companies would be willing to consider paying for such a service.

At 4.4 above we set out some suggestions for how the advance assurance scheme could be improved, however for a paid model to be attractive, HMRC would need to go beyond this.

One key change would be to ensure that sufficient resources were available to make the process quick and easy to navigate. Careful consideration would also need to be given as to the skills and experience of the staff involved in administering the scheme.

As noted in our answer to question 15 above, a key area of uncertainty for claimants is whether a proposed activity meets the definition of R&D for tax purposes. To answer this question correctly, both tax and technical specialists need to be involved. We note that in the 'international context' section of the Consultation, for many of the countries mentioned it is the Ministry of Science, Technology or Innovation, or a similar body (and not the tax authority) who administers the clearance processes. We believe a similar approach should be taken in the UK, with trade and industry specialists involved in administering the scheme, and not just HMRC.

- 5.3 **Question 18: Do you agree that a voluntary service could be focused on growing and high-potential companies as well as sectors set out in the government's Industrial Strategy?**

- 5.4 We do not believe voluntary advance assurance should be restricted to specific industries, sectors or types of company. Instead, it should be available to any company seeking reassurance.

All companies undertaking eligible R&D activities should have equal access to advance assurance, regardless of industry. Creating a system where certain sectors benefit from advance assurance over others risks an uneven playing field and undermines the principle that the relief is intended to support innovation across the economy.

- 5.5 **Question 20: Do you agree there is a minimum expenditure below which significant R&D does not take place?**

- 5.6 No. We do not believe there is a Minimum Expenditure Threshold (MET) below which significant R&D cannot occur. Whether an activity qualifies as R&D depends on its nature and purpose — not the amount spent. Significant R&D can, and often does, take place for relatively small amounts of investment.

The introduction of a MET for R&D claims was considered during the 2023 consultation on the introduction of a single R&D tax relief scheme.⁴ In our response⁵ to that consultation, we stated that an MET would create an additional barrier for genuine claimants in the name of attacking fraud. We also highlighted the risk that such a measure could lead small companies and start-ups to feel that their contribution to the UK economy is not as highly valued as that of larger companies.

We stand by those comments. However, we note that the increase in administrative burdens in recent years — such as the introduction of the Additional Information Form (AIF) and Claim Notification Form (CNF), coupled with HMRC's approach to compliance - has led to many companies to decide that submitting small claims is no longer cost-effective. In effect, this has resulted in a de facto MET being introduced.

The consultation suggests that an MET could free up HMRC resources to carry out more advance assurances. We do not believe this is a valid reason to introduce a MET. If the Government wishes to exclude small claims

⁴ [R&D Tax Reliefs Review: Consultation on a single scheme - GOV.UK](#)

⁵ [230309 R&D Tax Reliefs Review - Consultation on a single scheme - ATT response.pdf](#)

to tackle error and fraud, or to refocus relief on larger companies, then this objective should be clearly stated. The potential to free up resources for more assurances, particularly when the level of demand is uncertain, does not provide sufficient justification.

In addition, introducing a MET risks adding further complexity to R&D relief, which goes against the government's aim of making the system simpler by merging the schemes. Careful consideration of how the threshold is set — i.e. over a project, an accounting period, or a set timeframe — would be required and could open up opportunities for those abusing the relief to manipulate their claims to stay above the threshold. This would likely result in additional enquiry work for HMRC rather than reducing its case load.

5.7 **Question 22: Do you agree that the assurances should be mandatory for some?**

5.8 In principle, we do not believe that assurance should be mandatory for certain claimants, as this risks creating a two-tier system, and may be perceived as excluding certain industries or types of company 'by the back door'.

However, given the level of fraud within the R&D tax relief regime, we acknowledge the argument for mandatory assurance in high-risk sectors. These measures would need to be carefully targeted, with the assurance process properly resourced.

We believe that assurance should not be delivered solely by HMRC. Trade and industry specialists should also be involved, particularly if assurance becomes mandatory, as sector specific knowledge will be essential.

If mandatory assurances were to be introduced, careful consideration would be needed regarding the interaction with the existing requirements for submitting a CNF and/or AIF. Will companies be required to submit a CNF when seeking advance assurance? There is a risk that mandatory advance assurance will simply impose additional administrative burdens on companies genuinely carrying out R&D and this could deter genuine claimants from seeking relief.

Other key questions that would need to be addressed include:

- What will the process entail?
- Can an R&D tax relief claim still be made after rejection of advance assurance?
- Is there an option to appeal against a decision?

5.9 **Question 23: If so, what factors should be considered in determining who must seek assurance?**

5.10 If this policy is taken forward, the criteria for determining which claimants are subject to compulsory advance assurance would need to be carefully defined. The parameters should be drawn tightly to avoid manipulation and overwhelming HMRC with applications. The focus should be on those sectors where genuine R&D is unlikely to take place.

Industry sector could be a sensible factor to consider. However, correctly identifying which specific industry sector a claimant operates in could be difficult in practice.

One approach could be to rely on Standard Industrial Classification (SIC) codes. However, there is a risk that companies may avoid certain SIC codes as a result, and it is not clear what (if any) steps HMRC and Companies House take to monitor and enforce the use of appropriate SIC codes. An alternative would be to have a strict drop down menu with claimants required to identify their industry sector. However, this would still be open to manipulation and difficult to police.

Information reported in the AIF and CNF (where required) could help identify higher-risk claims. However, waiting for this information to be received and processed by HMRC would delay the timing of any assurance process.

5.11 **Question 24: How can HMRC best recognise the role of agents in designing a clearance service?**

5.12 Agents should be allowed to fully engage in all aspects of the clearance process on behalf of their clients.

The Consultation suggests that the advance assurance/clearance service could be limited to claimants whose agents are registered with HMRC or are a member of a recognised professional body. We do not support this approach, as taxpayers without such agents may arguably require more support and would benefit the most from advance assurance. Instead, we would encourage HMRC to consider the issue from the opposite perspective, exempting clients of agents from any mandatory clearance requirement. For example, an exemption could apply where an agent who has advised on the claim is a member of a recognised professional body.

6 Options under consideration

6.1 **Question 25: Do you see value in pre-activity advance assurance?**

6.2 Most companies carrying out R&D are looking to make a return on investment, so early-stage interaction with HMRC (e.g. a short phone call) could provide comfort at project initiation. However, it is difficult to provide significant information at this stage, and plans can change due to the pace and evolving nature of R&D work.

As a result, any pre-activity assurance must be light touch and flexible to accommodate changes during the project. The downside of such an approach is that it is likely to reduce certainty for claimants. In particular, it would need to be determined whether, once advance clearance is given:

- Is HMRC checking the R&D claim for the full three-year period?
- What happens if circumstances change?

6.3 **Question 26: If so, what sorts of issue might be raised with HMRC?**

6.4 We envisage the main issue would be whether the planned activity is likely to constitute R&D for tax purposes. Which company is able to claim in subcontracting scenarios could also be considered at an early stage.

6.5 **Question 27: What sort of information might companies be able to provide to HMRC at this stage?**

6.6 Only very limited information is likely to be available pre-activity. This should however include information on the aims and background to the project, which might be sufficient to say whether or not it is likely to constitute R&D.

6.7 **Question 28: Which of the options A to C do you think would be most useful? (please rate all options: not useful, somewhat useful, useful)**

- 6.8
- Option A (voluntary, pre-activity assurance for growing and high potential companies, subject to size condition): not useful
 - Option B (mandatory, pre-claim assurance for specific sectors): somewhat useful

- Option C (voluntary, post-claim but pre-repayment assurance for growing and high potential companies, subject to size condition): somewhat useful.

6.9 Question 29: Please give reasons

- 6.10 Option A – we do not believe this option would be useful as it is too similar to the existing advance assurance scheme. As set out in our answer to question 25 above, we do not think that pre-activity clearance would give sufficient certainty to claimants. As per our answer to question 18 above, we think that voluntary assurances should be available to all companies, not just growing and high potential claimants. It would also be difficult to define what is meant by ‘growing and high potential’ in practice.

Option B – as set out in our answer to question 22 above, mandatory clearances could reduce error and fraud, but they would need to be effectively targeted and properly resourced. It is also unclear how a mandatory pre-claim assurance would interact with the CNF – presumably the latter could be dropped?

Option C – this option could be helpful, but we are doubtful as to whether it would be attractive enough. This is especially the case as those opting for this type of assurance would be delaying their repayment compared with those who do not choose to. As per our comments on Option A, we are also unsure about the practicality of restricting assurance to ‘growing and high potential’ companies.

6.11 Question 30: Please give any other suggestions you have for useful changes to R&D relief administration, particularly those that would address error and fraud

- 6.12 Rather than introducing additional compliance burdens for claimants, we believe the government should take a wider look at how to reduce error and fraud. This should include assessing the pros and cons of moving away from the current ‘pay now, check later’ model.

Moving to a system where all claims are checked before being paid out would prevent fraud and provide certainty to claimants. It would have resource implications for HMRC, but the Exchequer gains made from reduction in fraud could compensate for this.

From a claimant’s perspective, the main problem of a move away from ‘pay now, check later’ would be the inevitable delay in repayments. However, we note those claiming R&D tax relief are supposed to be going concerns – cash flow is not the purpose of giving R&D relief. Set against the delay in payment would also be the certainty that the claimant company can keep the money it receives, and will not be pursued for repayment, interest and even penalties at a later date.

Whilst this move away from pay now, check later would be fairly radical, we believe there is merit in considering it further.

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 technical team via atttechnical@att.org.uk.

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 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively