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R&D TAX RELIEFS

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC and HM Treasury consultation document *R&D Tax Reliefs* ('the Consultation') issued on 3 March 2021¹.
- 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 We have set out our response to the specific questions posed by the Consultation in Sections 2 and 3 below.
- 1.4 We note that many of the questions in the Consultation are targeted at claimants of R&D tax reliefs. Our responses to these questions are based on the experience of our members in advising such claimants.
- 1.5 We anticipate that the majority of the responses which HMRC will receive to the Consultation will come from professional bodies such as the ATT, industry groups or large businesses. By contrast, small and medium sized businesses are very much less likely to be aware of the Consultation in the first place and, even where they are, may lack the time or resources to respond to it directly. In order to ensure that the views of claimants under the SME scheme are adequately represented in the consultation process, we would recommend that HMRC carry out specific, targeted research within that claimant population.
- 1.6 We would be pleased to discuss any aspect of this response further. Relevant contact details can be found in Section 4.

2 Structure and administration of reliefs

Question 1: Do you consider your company to be a research-intensive firm? How does your business benefit from the R&D reliefs (e.g. cashflow, reduced tax liability)? If your company is an SME that claims under both the SME tax relief and RDEC, what is your experience of using each scheme and how do they compare?

- 2.1 In general, our members report that the SME scheme is simpler to explain to clients, and that it is easier to demonstrate the benefits of an SME scheme claim than an RDEC claim. For example, it is relatively simple to

¹ <https://www.gov.uk/government/consultations/rd-tax-reliefs-consultation>

demonstrate to a client that an enhanced deduction of £X under the SME scheme will result in a tax saving (or repayable credit) of £Y. By contrast, demonstrating the tangible benefit of a claim under the RDEC scheme can be difficult without preparing detailed calculations. Even where claimants are given full tax computations including the benefit of RDEC, members report that they often struggle to see where the benefit is without further explanation. Claimants in particular find it counter-intuitive that an RDEC credit comes 'above the line' and is therefore subject to tax before credit is given.

- 2.2 Where a small or medium sized company would otherwise be eligible for the SME scheme but is excluded due to (for example) receiving grant funding which is classed as State Aid, they are able to use the RDEC scheme instead. However, the RDEC scheme is more complex than the SME scheme and generally provides less generous relief. Members have reported anecdotal evidence of start-up companies in this position choosing not to claim R&D relief at all, as they do not wish to go to the extra expense and trouble of claiming under RDEC. As the UK has now left the EU, and is reviewing the State Aid framework more widely, we believe the opportunity should be taken to introduce more flexibility into the SME scheme, such that eligible businesses are not automatically excluded due to receiving grant funding.

Question 2: Is there a case for consolidating the two schemes into one? What do you value about the design of the current schemes that might be lost if they were unified?

- 2.3 We do not believe there is any case for consolidating the two schemes into one.
- 2.4 The current differences between the two schemes reflect the very different natures and needs of SMEs and larger companies. The simple to understand enhanced deduction and repayable credit offered by the SME scheme is of real value to SMEs who, by contrast, would benefit less from an 'above the line' credit under the RDEC scheme.
- 2.5 The two current schemes are well established, and the distinctions between them are generally well understood by advisers. Claimants themselves are also often familiar with the scheme they currently use, and in our members' experience it is relatively uncommon for businesses to move between the two schemes. Merging the two schemes would require claimants and their advisers to adapt to new rules, potentially causing confusion and increasing the risk of errors without, in our view, delivering any particular benefit.
- 2.6 Even if the two schemes were to be merged, the new combined relief may still need to be adjusted so as to apply differently to SMEs and larger companies. For example, it may be desirable to offer a higher level of relief for SMEs, or reflect current differences in the treatment of subcontracting between the two schemes. In the extreme this could lead to two different schemes existing anyway.

Question 3: What do you think explains the difference in additionality between the two schemes? How could the schemes be improved to incentivise the R&D your business does or might consider doing? Can you give evidence to support your suggestions?

- 2.7 We do not believe that it is appropriate to directly compare the additionality of the SME and RDEC schemes, as the nature of the R&D work undertaken by SMEs and larger companies, and the related decision making processes, are very different.
- 2.8 R&D is inherent in what some small companies, especially start-ups, do on a day to day basis. In some cases, these companies effectively exist to carry out R&D so that the business can move on to launch their product, open up a market etc. By contrast, large companies will have established activities, though may be influenced as to whether they choose to explore a new product line or idea by the availability (or not) of R&D relief.

- 2.9 However, that's not to say that SME relief does not incentivise R&D activity. Whilst some entrepreneurs will be concentrating on devising new products and processes, and may be unaware of the support available through the SME scheme, others will only spend time and money as they know they can get relief to help fund their research. Even where SMEs don't at first realise they can claim, once in the system availability of relief does influence decision making. For example, members have reported examples of staff using the availability of relief as leverage to their directors to allow them to spend time and money on new ideas.
- 2.10 Finally, we do not believe that the benefits of the SME scheme can be measured solely using a monetary measure such as additionality. Instead, the wider impact on UK plc of creating an environment which supports and encourages smaller innovative businesses needs to be considered.

Question 4: To what extent do the rates of relief available to you impact your investment decisions and/or your choice of location? Is the balance of relief between the two schemes appropriate? Is there any evidence of significant deadweight where investment decisions would proceed without relief?

- 2.11 Our response to question 3 above addresses the impact of the two schemes on investment decisions. We have no further comments on the other issues addressed in this question.

Question 5: Would a departure from the ordinary Corporation Tax self-assessment system be justified? Should more information and assurance be required from companies at the point of claiming? Should a company providing more information upfront be treated differently?

- 2.12 In response to the first part of this question, we believe that such a departure may be welcome by some, especially where this would speed up processing of claims and result in cash flow benefits for claimants. However, we believe that this needs to be balanced against the risk of any such change having a negative impact on the quality of claims submitted.
- 2.13 Integrating the R&D claim process into corporation tax self-assessment (CTSA) processes ensures that a company's 'regular' agent (i.e. the agent who completes the CT600 and accompanying computations) will be aware of any claim being made. The involvement of this regular agent can act as an extra line of defence against spurious or inappropriate claims being made on the advice of specialist firms, as the agent will often sense check the work of the specialists based on their knowledge of the claimant before reflecting the claim in the return.
- 2.14 Allowing R&D claims to be made on a standalone basis would weaken this 'sense checking' role, and could also lead to rushed claims being submitted which are not subject to the full scrutiny of the CTSA process.
- 2.15 In response to the latter part of this question, we can see there are potential benefits to both HMRC and claimants of more detailed information being submitted at the point of claiming relief. However, to limit compliance burdens and avoid deterring claimants, providing this information should be optional (as it is now). Provision of extra information could be incentivised, for example, through a commitment from HMRC to process claims more quickly where it is provided, or a reduction in the window in which claims can be queried. Alternatively, a wider application of something akin to the existing Advance Assurance programme for the SME scheme could be considered.

Question 6: When did you first claim, and what prompted you to do so? Do you use an agent? If so, why? What is your experience of how agents' fees are structured? How could the expertise and specialist knowledge of agents assisting with R&D claims be improved?

- 2.16 In our experience, whilst a company may be alerted to the possibility of an R&D claim by their regular agent, they will often turn to a specialist firm to assist with preparing and quantifying that claim. These specialist firms typically charge a fee based on a percentage of the actual claim.
- 2.17 Whilst the vast majority of specialist R&D advisers submit accurate and appropriate claims for relief, we are aware that there is a minority of ‘rogue’ advisers who will seek to inappropriately maximise claims, especially where their fee is calculated as a percentage of that claim.
- 2.18 Members of the ATT are required to adhere to the requirements of the Professional Conduct in Relation to Taxation (PCRT). The PCRT bodies have recently published specific topical guidance for members on the application of PCRT to the provision of R&D tax credit services.² This makes it clear that members should, amongst other things, not undertake R&D work where they do not have the required knowledge and experience, and must not make misleading or inaccurate claims in their promotional material. If an ATT member fails to adhere to the principles set out in PCRT, they are liable to be subject to disciplinary processes.
- 2.19 However, ‘rogue’ advisers may not be members of a PCRT body. HMRC should consider how best to target these advisers to ensure they are held to the same standards. As set out in our response to question 8 below, this could include education campaigns, or the introduction of a route for concerned individuals to report suspicions regarding inappropriate claims, advice or promotional material.

Question 7: How can the responsibilities of HMRC, agents and the company be better reflected in the claims process?

- 2.20 The Consultation states at paragraph 3.16 that:

“The government would like to explore how the integrity of the reliefs process could be enhanced. In some countries, such as the US, a company can expect to be audited by the tax authorities on nearly any tax credit claim. Another possibility could be to require a senior person at each company making a claim to take responsibility for its content”

- 2.21 We do not believe that the US approach would be feasible in the UK, as it is doubtful HMRC would have the resources to audit such a large number of claims without departing markedly from their current service levels.
- 2.22 We do however believe that more could be done to encourage companies to take responsibility for the contents of R&D claims. Whilst the CT600 already requires approval by a senior person at the company prior to submission, the potential for a more robust sign off on R&D claims specifically should be explored. For example, a specific declaration could be included in the recently introduced CT600L to the effect that the company representative signing off on the R&D claim has read the supporting R&D report and is confident that it accurately reflects the activities of the company. This could be accompanied by a specific declaration from the adviser preparing the R&D claim to the effect that the claim is honest, with penalties potentially applying for both the claimant and adviser if a claim is later found to be careless or spurious.
- 2.23 HMRC could also consider some form of education campaign to raise awareness amongst claimants and their agents. For example, highlighting what companies should look for when selecting a specialist R&D adviser, common mistakes or indicators of inappropriate claims etc.

Question 8: What other changes might help claims to be dealt with more smoothly, while ensuring better compliance? Is there a way HMRC and advisers can work more effectively to improve the quality of external

² [Attachment 4 R&D Topical Guidance - ATT Final.pdf](#)

advice available to companies? If you claim R&D tax reliefs in other countries, how does the claim process differ and what are your views on this.

- 2.24 We note that this question appears to overlap slightly with the issues addressed in questions 6 and 7, and our comments in response to those questions apply equally here.
- 2.25 We would encourage HMRC to continue to work closely with the professional bodies, including through the R&D Consultative Committee (RDCC). Outside of formal engagement, the professional bodies can also play a role in working with HMRC to improve the quality of claims and speed up processing, for example, by sharing best practice information, top tips etc.
- 2.26 As noted above in our response to question 5 above, the involvement of a company's regular agent in preparing and submitting corporation tax computations and returns can act as an extra line of defence when it comes to sense checking claims produced by specialists. Consideration should be given to introducing a route for concerned advisers to report suspicions regarding inappropriate claims, advice or promotional material. This already happens in an ad hoc manner through the RDCC, though non-members may not be aware of the existence of that body and we are not aware of any route for such concerns to be raised with HMRC outside of the group.

3 Qualifying expenditures and R&D definition

Question 9: Is there evidence to suggest areas of activity other than those currently covered by the R&D definition drive positive externalities which should be recognised by the tax system?

- 3.1 We are not aware of any specific areas of activity not currently covered by the R&D definition which we strongly believe should be. However, we would encourage more consideration to be given to including academic research in fields such as mathematics and social sciences within the definition of R&D, as some other countries (including the US and Australia) currently do. Whilst this work may be academic in nature, it can feed into more applied research and therefore drive positive externalities in the longer term.
- 3.2 The UK definition of R&D was introduced some time ago; however, we do not believe there is a strong argument to update it at this time. The current definition is well known and understood by those working in this area. Any attempt to redefine it, or introduce a new statutory definition, would have to proceed carefully to ensure that it was broad enough to encompass the current scope of qualifying activities, whilst also ensuring only genuine R&D is covered. A strict legislative definition of R&D would also be difficult to introduce given the range of R&D activity which exists across different industries and sizes of claimant.

Question 10: Do you think R&D tax reliefs could better incentivise R&D with specific social value, for example developing green technology? Could R&D tax reliefs be used to disincentivise R&D in certain fields?

- 3.3 Whilst we support the aim of incentivising the development of green technology, we do not believe that the R&D tax relief system is the best route to do this.
- 3.4 Introducing enhanced reliefs for 'green' technology (or reducing / removing reliefs for 'non-green' technology) would introduce complexity into the existing schemes. Careful thought would also have to be given to the exact scope of any such changes to ensure they are correctly targeted and achieve the policy intent whilst not being open to manipulation.

- 3.5 For example, if a company works in the motor racing industry, would R&D activity qualify as 'green' if it was in respect of electric cars or focused on improving the efficiency of existing diesel / petrol engines? Whilst motor racing itself may not be seen as having a special social value in itself, there could be potential for great social value if the technology were to cross into the mainstream (as has happened in the past).

Question 11: What is your experience of conducting R&D in different regions across the UK? How do R&D tax reliefs benefit these activities, and how could the offer be improved to better support these activities?

- 3.6 Our members represent a number of industries and geographic locations. Other than noting the existence of well-known R&D centres in Oxford, Cambridge and South East England, we do not have any specific comments in response to this question.

Question 12: Are there any other areas of qualifying expenditure that should be included within the reliefs? How would this influence your investment decisions?

- 3.7 Broadly, we believe that the main areas of direct R&D expenditure (namely staff costs, energy, software and materials) are already included within the reliefs.

Question 13: What proportion of your R&D expenditure is treated as capital for the purposes of corporation tax? What would be the impact on your R&D activities of increased relief for capital expenditure?

- 3.8 Whilst the majority of R&D spend will be generally be revenue in nature, it is not uncommon for companies to incur capital expenditure specifically for R&D purposes. For example, a company developing new building materials may purchase a separate small concrete mixer to do small batch samples as their existing mixing machines are too large.

- 3.9 However, for all but the largest claimants, the majority of these costs will be covered by the Annual Investment Allowance (AIA) or recently introduced temporary super-deduction. We therefore believe that increased relief for capital expenditure through R&D relief is likely to have a limited impact on incentivising R&D activity.

Question 14: Do you currently claim RDAs? If not, why not? What do you like and/or dislike about RDAs?

- 3.10 Our members report that they only encounter RDA claims very rarely.

- 3.11 A main reason for this, as noted in response to question 13 above, is that the capital expenditure of all but the largest claimants will already be covered by the AIA or temporary super-deduction. Companies are generally happy to stick with claiming well known established reliefs (such as the AIA) rather than considering the more complicated RDAs. However, we note that RDAs may have more of a role to play in the future once the super deduction has expired and the level of the AIA dropped back to £200,000 per annum.

Question 15: How much of the activity in respect of which you claim R&D in the UK is undertaken outside of the company, and how much of that is not undertaken in the UK? What are the benefits and drawbacks of subcontracting, whether overseas or domestically? What are your commercial/other reasons for carrying out work overseas rather than in the UK?

- 3.12 In our members' experience, subcontracting of R&D work is relatively common and takes place mainly within the UK.

- 3.13 There are a number of reasons why a company may subcontract R&D work, but a key reason is to access an existing pool of expertise in a specialist area. Subcontracting is more common in some sectors than others. For example, it is quite common in the IT industry to sub-contract code writing – there is an established large

talent pool of code writers in the UK and it is both easier and cheaper to tap into their expertise than seek to hire someone to take on the work, especially where this forms only part of a wider project.

Question 16: How could the government distinguish between work that needs to take place abroad and which benefits the UK, and that which doesn't?

3.14 We have no specific comments in response to this question.

Question 17: How can we identify the supporting activities which are most valuable for R&D, while providing a clear boundary to assist companies in claiming and HMRC in administering?

3.15 We have no specific recommendations in response to this question, and are not aware of any supporting activities not already within the scope of R&D reliefs which we believe should be brought in.

4 Contact details

4.1 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 07392 824718 or erawson@att.org.uk.

The Association of Taxation Technicians

5 Note

5.1 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 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.