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# R&D TAX RELIEFS REPORT

## 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 HM Treasury R&D Tax Reliefs Report<sup>1</sup> ('the Report') published on 30 November 2021.
- 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 submission is written with that background.
- 1.3 We note that the Report covers a number of reforms to R&D tax relief announced at the Autumn Budget 2021, including expanding the definition of qualifying expenditure to include data and cloud computing costs and refocusing of relief towards UK activity. However, we have restricted our comments below to those proposals in the Report which seek to target abuse and improve compliance, as this is the area which is of most direct relevance and interest to our members and the companies they act for.
- 1.4 Overall we share the Government's concern over abuse of the R&D relief schemes and strongly support efforts to crack down on such abuse and improve compliance. However, we are concerned that the proposed requirement for companies to notify HMRC in advance that they plan to make a claim may affect the ability of companies undertaking genuine R&D (in particular smaller and newer companies) to access the relief to which they are entitled.
- 1.5 We have set out in Section 2 below some high level comments regarding HMRC's proposed approach to tackling abuse and improving compliance. In Section 3 we have then detailed our specific concerns regarding advance notification, before setting out our recommendations with regard to this proposal in Section 4.
- 1.6 We would be pleased to discuss any aspect of this submission further. Relevant contact details can be found in Section 5.

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<sup>1</sup> <https://www.gov.uk/government/publications/rd-tax-reliefs-report>

## 2 HMRC approach to tackling abuse and improving compliance

- 2.1 Paragraphs 2.31 and 2.32 of the Report highlight the Government's concerns regarding the rise in specialist R&D agents, who are typically not members of the professional bodies, that aggressively target small and medium sized companies ('SMEs') encouraging them to engage in spurious or dubious claims. We share HMRC's concerns regarding this matter, but feel that efforts would be better targeted at cracking down on this minority of 'rogue agents' directly, rather than introducing new compliance measures which may prevent genuine claimants from accessing relief.
- 2.2 As set out in paragraphs 2.23 and 2.26 of our response to the Spring 2021 consultation *R&D Tax Reliefs*<sup>2</sup>, measures to directly target rogue agents could include introducing a route for concerned advisers to report suspicions regarding inappropriate claims, advice or promotional material, as well as educational campaigns to improve awareness amongst claimants and their agents.
- 2.3 We agree with the statement in paragraph 2.35 of the Report that *'In responding, the government needs to address the root of the problem, designing out abuse and boundary-pushing, while – so far as possible – limiting the impact on compliant businesses.'* However, we are not sure that the appropriate balance has been struck when it comes to some of the proposals set out in paragraph 2.36 of the Report.
- 2.4 Looking at those proposals, we support requirements for claims to be made digitally (with a suitable alternative for those companies exempt from online filing) and for claims to be endorsed by a named senior officer in the company and include the details of any agent(s) advising on the claim (on the assumption that this will extend to those who have prepared the claim, and not just the agent submitting the return). These appear to be simple and relatively effective measures, and are in line with our previous response to Question 7 of the Spring 2021 *R&D Tax Reliefs* consultation (see paragraphs 2.20 to 2.23).
- 2.5 We would also support a requirement for claims to include more detail (for example what expenditure covers, the nature of the advance sought etc.) as this is important information in determining whether a claim is genuine. In our experience, many legitimate R&D specialists already include much of it in the report submitted alongside any claim. We note that clear guidance will be needed so that companies and their agents can easily identify what information is required by HMRC, and in what format.
- 2.6 We do however have serious concerns about the proposal that *'companies will need to inform HMRC, in advance, that they plan to make a claim'*.

## 3 Advance notification of intention to claim – ATT concerns

- 3.1 Whilst we can, to a certain extent, understand the motivation for requiring advanced notification (presumably to counter the 'hard selling' approach of some advisers outlined in paragraphs 2.31 and 2.32 of the Report), we are very concerned that it will not be practicable due to a number of factors and could prevent genuine claims being made.
- 3.2 We understand from discussions at the R&D Communication Forum meeting of 8 December 2021 that no decision has yet been taken as to the details as to the content and timing of any such notification. However, there appeared to be a suggestion that notification could be required before the start of an accounting period – something which would altogether prevent new companies from claiming, and could also (depending on the

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<sup>2</sup> <https://www.att.org.uk/sites/default/files/210601%20R%26D%20Tax%20Reliefs%20-%20ATT%20response.pdf>

level of detail needed) affect those who decide to embark on an R&D project part way through an accounting period.

- 3.3 The smallest and newest companies, which are often most in need of the support offered by R&D relief, are less likely than a larger or more established company to plan their expenditure far in advance. They are therefore less likely to be able to supply details of a potential claim in advance of the start of an accounting period. Such businesses also often lack dedicated in house tax or R&D expertise, and may be focused on shorter term goals, getting products to market etc. They might not appreciate the opportunity for R&D relief sufficiently far in advance to give the required pre-claim notification.
- 3.4 A requirement for a detailed advance notification could also impact those companies whose R&D activities are carried out in an agile fashion, being changed or shaped by emerging issues – for example in response to the coronavirus pandemic.
- 3.5 It does not seem at all equitable that a company carrying out genuine R&D activity and incurring qualifying expenditure should be excluded from relief solely on the grounds of whether they are practically able to notify HMRC of the intent to embark on that activity by a certain time.
- 3.6 If advance notification was indeed required before the start of an accounting period in respect of which a claim for relief was otherwise competent, it would have the odd effect of meaning that companies whose R&D expenditure was incurred early in an accounting period had a more manageable obligation than a company whose potential eligibility for R&D relief did not arise until later in an accounting period.

#### **4 Advance notification of intention to claim - ATT recommendations**

- 4.1 For the reasons set out in section 3 above, we believe the Government should reconsider the need for advance notification of intention to claim R&D reliefs.
- 4.2 We note that advanced notification is not required for other corporation tax reliefs, such as capital allowances and creative industry relief. Although the patent box regime does require companies to ‘elect in’, this regime cannot be compared directly with R&D relief, as the potential existence of a patent is often known relatively early on, whereas the decision to undertake R&D activity can take place ‘in year’. Despite the Government’s understandable concerns about the level of abuse of the R&D schemes, we do not consider that the case has been adequately made for introducing such a potentially damaging and unusual restriction. Instead, as set out in Section 2 above, we believe efforts would be better directed at targeting those ‘rogue agents’ who are behind many incorrect or spurious claims. We would be very happy to assist in this work.
- 4.3 If the proposal for advance notification were to proceed, in order to limit the impact on genuine claimants, we would strongly urge that:
  - Companies not be required to notify their intention to claim before the end of the accounting period in question; and
  - Notification should be relatively simple, with a mere declaration that the company may make a claim in respect of a specific line of work or product, without requiring details of expected spend, project aims etc.
- 4.4 For simplicity, we would also encourage HMRC to consider providing a dedicated online portal for making any such notification, with the alternative of writing to a dedicated team for those companies who are exempt from the requirement to file online.

## 5 Contact details

- 5.1 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](mailto:erawson@att.org.uk).

## The Association of Taxation Technicians

### 6 Note

- 6.1 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.