

Date of this topical guidance issue: 1 June 2020

Topical Guidance covering the application of professional standards to the provision of R&D tax credit services.

Who is this guidance relevant for?

This guidance is relevant to a member who is in a firm providing any service or is an employee of a claimant company who undertakes work, that contributes directly or indirectly to the preparation, submission, agreement of, and advice on any or all aspects of a company's research & development claim. It includes advice for firms where members of PCRT bodies are amongst the principals and advice for employees of firms.

Introduction

Members providing R&D tax advice have identified a number of areas where they would welcome clarity on the application of PCRT to their work. This is provided in the attached document in the form of a series of frequently asked questions (FAQ).

Members have a responsibility at all times to adhere to the Fundamental Principles and the Standards for Tax Planning set out in PCRT and for ATT members [the Professional Rules and Practice Guidelines](#). Tax advisers have a responsibility to serve their clients' interest whilst upholding the profession's reputation and the need to take account of the wider public interest. Adhering to the principles and standards set out in PCRT will ensure that this is achieved.

If a member fails to adhere to the principles set out in PCRT they are liable to be subject to the disciplinary process.

Further Assistance

If in doubt about the ethical or legal considerations of a particular case, a member should refer to PCRT and the associated Help Sheets on the [website](#). They can also seek advice from the Professional Standard team by emailing standards@att.org.uk. Where appropriate guidance may be required from their legal advisers.

Table of Contents

Advice for firms where PCRT body members are amongst the principals	3
Q1. PCRT applies to members who practise in tax. Does R&D related tax work fall within this definition?	3
Q2. Do the Standards for Tax Planning apply to R&D advisers? Our understanding was these only apply to advice on tax planning “schemes”	3
Q3. We come across firms who do not consider that R&D advisers need to be registered for AML Supervision. Is this correct?	3
Q4. What are we allowed to state on our website in relation to the services we provide on R&D claims?	3
Q5. Can all accountancy and tax adviser firms provide R&D tax advice? What are the requirements?	3
Q6. Is the PCRT Help Sheet A on tax filings only relevant to the accountant submitting a tax return or does it also apply to a specialist who contributes directly or indirectly to the preparation, agreement of and advice on any or all aspects of a company’s research & development claim calculation (but not the actual filing of the return)?	5
Q7. If we use a specialist to prepare R&D claims for our clients but we submit the return can we just accept the claim provided by the specialist?	5
Q8. As an R&D adviser how should I approach any HMRC enquiries in a way which is acceptable under PCRT?	6
Advice for employees of firms/companies claiming R&D tax credits	6
Q9. I am an employee of a firm or company making an R&D claim. Although I am a PCRT Body member the principals in the firm are not members of a PCRT body. Does PCRT still apply to me?	6
Q10. What action do I take if I consider that the firm employing me is not acting in accordance with PCRT?	6
Other Professional Conduct Issues	7
AML Supervision	7
Q11. Where should R&D advisers refer for additional guidance regarding AML registration requirements?	7
Q12. What should we do if we come across a firm providing R&D tax credit advice which is not registered for AML Supervision or does not appear to be meeting the requirements under the AML legislation?	7
Continuing Professional Development	7
Q13. Is there any guidance on how much continuing professional development (CPD) a member should be doing to be assessed as competent to work on R&D claims?	7

Advice for firms where PCRT body members are amongst the principals

Q1. PCRT applies to members who practise in tax. Does R&D related tax work fall within this definition?

To the extent that there is any element of tax related work, for example but not exclusively, tax compliance, tax advice or tax claims the member is regarded as practising tax. Members may not be submitting a tax return including a claim for R&D tax credit relief but they are applying their tax knowledge where they provide any service that contributes directly or indirectly to the preparation, submission, agreement of and advice on any or all aspects of a company's research & development claim. For the avoidance of doubt, this includes any services regarding assessing which activities meet the definition of research & development for the purpose of a company's research & development claim even where quantification of the claim is not in scope.

Members should be aware that they are obliged to observe the PCRT Fundamental Principles irrespective of the nature of their work.

Q2. Do the Standards for Tax Planning apply to R&D advisers? Our understanding was these only apply to advice on tax planning "schemes".

The Standards for Tax Planning supplement the Fundamental Principles set out in PCRT. They set out principles which R&D tax advisers should adhere to when undertaking their work and the PCRT bodies expect these principles to be applied throughout the range of work which members undertake. For example, advice on R&D tax credits should be specific to a particular client's facts and circumstances and any disclosure in support of the claim submitted to fairly represent all relevant facts.

Q3. We come across firms who do not consider that R&D advisers need to be registered for AML Supervision. Is this correct?

All members are required to comply with relevant laws and regulations and fulfil their obligations under the anti-money laundering legislation (see paragraph 1.5 of PCRT). Advice on R&D tax credit claims is considered by the PCRT Bodies as the provision of advice in the area of taxation and therefore subject to AML supervision.

(See Other Professional Conduct Issues at the end of this document for further guidance on AML supervision requirements and whistleblowing where members come across firms not meeting AML requirements).

Q4. What are we allowed to state on our website in relation to the services we provide on R&D claims?

Members report to us that they see misleading claims included on the websites of R&D advisers including phrases such as "100% of claims agreed" or "HMRC approved methodology" used in calculating claims. PCRT makes it clear that "a member should ensure that their internal and external communications including those using social media are consistent with the principles in this guidance" (paragraph 2.27). Misleading or inaccurate claims should not be included on websites.

Members often list their areas of expertise on their websites. If they have limited experience in dealing with R&D claims they should consider carefully how they refer to the advice which can be provided. For further dos and don'ts on website material members may want to refer to guidance on the ATT website [here](#).

Q5. Can all accountancy and tax adviser firms provide R&D tax advice? What are the requirements?

PCRT sets out the requirements for professional competence and due care when dealing with a client's tax affairs. "A member must carry out their work **with a proper regard for the technical and professional standards expected**" and "must not undertake professional work which they are not competent to perform unless they obtain appropriate assistance from a suitably qualified specialist" (see paragraph 2.11). Members must not provide R&D tax advice unless they are competent to do so.

Members must also maintain their professional knowledge and skill at the required level to ensure that a client (or employer) receives competent professional service.

If the following issues were to be identified in work undertaken by members it would be an indication that they may not be meeting the appropriate PCRT standards for professional competence and due care in relation to R&D work:

- An adviser indicating to a client that they can prepare a claim without having sufficient expertise or experience in this area. This can result in poor quality/inaccurate R&D claims including (but not limited to):
 - **Assessment of eligibility** - not assessing eligibility to claim correctly, for example claims being made for non-qualifying companies, incorrect analysis of SME (small or medium sized enterprises) status, incorrect treatment of R&D expenditure where the company has received grant funding.
 - **Identification of R&D activity** - not identifying R&D activities in accordance with the BEIS guidelines on the meaning of R&D for tax purposes, including preparation of inaccurate descriptions of projects or embellishment of project aims and activities.
 - **Identification of eligible expenditure** - not assessing qualifying expenditure in accordance with relevant legislation, for example non-qualifying cost categories being included, claims being made for capital expenditure, or revenue expenditure being excluded as 'capital' simply because it has been included on the balance sheet, inaccurate analysis of externally provided workers, subcontractors and support staff, inaccurate calculation of staff costs category, e.g. not including employer NI contribution or employer pension contributions, or including benefits in kind.
 - **Calculation of the claim benefit** - incorrectly calculating the claim benefit, and /or inaccurate disclosures in the CT600, for example incorrectly preparing RDEC claims instead of SME deduction claims for an SME, surrendering losses for a payable credit on which loss reliefs have already been claimed, claiming expenditure which has been included in a capital allowances claim.
 - **Supporting the analysis** - insufficient supporting analysis or records, for example poor analysis of staff time to show where allocations have come from, making a claim based on a rolled forward claim from the year before without checking changes for the new year.

- Insufficient CPD being undertaken to ensure those individuals in specialist or general practice firms maintain the appropriate levels of technical knowledge.

- Inadequate descriptions or explanations of R&D activity included in a claim. This may arise where advisers have insufficient quality interaction with the client resulting in an inadequate understanding of the business. It is unlikely an adviser would obtain sufficient information just from an exchange of written information.

- Claims preparation based only on the accounts without any further interaction with competent professionals at the company.

- Failure to advise a client on potential consequential impacts of the claim. For example, making sure the client is aware that losses will not be available to carry forward if they are surrendered for a credit, or pointing out that a group relief claim that involved the claimant company will fall away and need updating once the return is made.

Note that a member must never knowingly be involved in tax evasion and should never be pressurised by a client to make an incorrect or inaccurate claim. Where necessary members should refer to the PCRT Help Sheet C: Dealing with errors.

[Q6. Is the PCRT Help Sheet A on tax filings only relevant to the accountant submitting a tax return or does it also apply to a specialist who contributes directly or indirectly to the preparation, agreement of and advice on any or all aspects of a company's research & development claim calculation \(but not the actual filing of the return\)?](#)

The guidance set out in the PCRT help sheets is of relevance to all members irrespective of whether they are submitting a whole tax return or advising on one aspect of it.

For example, a member working solely on the R&D claim is still required to consider the following:

- They are responsible to the client for the accuracy of the filing based on the information provided (Help Sheet A paragraph 10)
- They should act in good faith in dealings with HMRC and take reasonable care and exercise appropriate professional scepticism when making statements or asserting facts on behalf of the client (Help Sheet A paragraph 12)
- They should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, nor to assert tax positions in a tax filing which they consider have no sustainable basis. (Help Sheet A paragraph 13)
- Appropriate disclosure to HMRC must be considered. Where there is uncertainty on the level of disclosure required they should use their best endeavours to understand the issues, implications and the proposed course of action. The member's files should include evidence in support of the position taken (Help Sheet A paragraph 24)
- The client's attention should be drawn to any judgemental areas or positions reflected in the filing to ensure the client is aware of these and their implications before they approve the filing (Help Sheet A paragraph 30).
- The client should be advised to review their tax return and any attachments provided alongside it before it is submitted and they should obtain evidence of the client's approval of the claim (Help Sheet A paragraphs 29 and 31)

Members should be aware that "tax advice must not rely for its effectiveness on HMRC having less than the relevant facts. Any disclosure must fairly represent all relevant facts" (PCRT paragraph 3.2).

[Q7. If we use a specialist to prepare R&D claims for our clients but we submit the return can we just accept the claim provided by the specialist?](#)

Members should be aware of the guidance provided in PCRT Help Sheet A: Submission of tax information and 'tax filings'. It is entirely appropriate for members without the requisite skills to refer the client to another member who is a specialist. Advice should be obtained from a suitably qualified and experienced professional who is subject to the requirements of PCRT or its equivalent (Help Sheet A paragraph 35).

Note that "a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, nor to assert tax positions in a tax filing which they consider to have no sustainable basis" (Help Sheet A paragraph 13). Where a specialist has been used who adheres to PCRT you would expect them to provide:

- Clear instructions in relation to entries to be included on the corporation tax returns
- Be willing to provide explanations and assistance to the client's main accountant/tax adviser so they understand the return entries
- Be willing to demonstrate that the client has approved the R&D element of the tax filing and understands any areas of risk
- Provide guidance on additional disclosures which require submission with the return

The member submitting the return should take note of the sections in Help Sheet A relating to disclosure, supporting documents and third party advice involving tax planning arrangements.

Q8. As an R&D adviser how should I approach any HMRC enquiries in a way which is acceptable under PCRT?

Members are reminded that:

- They “must behave with courtesy and consideration towards all with whom they come into contact in a professional capacity” (PCRT paragraph 2.22).
- “Serving the interests of their clients will, on occasion, bring a member into disagreement or conflict with HMRC. A member should manage such disagreements or conflicts in an open, constructive and professional manner. However, a member should serve their clients’ interests as robustly as circumstances warrant whilst applying these principles” (PCRT paragraph 2.24).

Members should be in a position to defend and explain the approach taken in R&D tax credit computations should an enquiry be raised by HMRC. When corresponding with HMRC any response should be courteous and considerate.

Advice for employees of firms/companies claiming R&D tax credits

Q9. I am an employee of a firm or company making an R&D claim. Although I am a PCRT Body member the principals in the firm are not members of a PCRT body. Does PCRT still apply to me?

PCRT makes it clear in paragraph 1.7 that it applies to all members who practise in tax including “employees attending to the tax affairs of their employer or of a client”.

Q10. What action do I take if I consider that the firm employing me is not acting in accordance with PCRT?

Help sheet C2 provides advice to employees attending to the tax affairs of their employer, in particular where they find an error in the business's tax affairs.

Where an employee disagrees with the tax technical position being adopted by a colleague the flowchart in help sheet C2 may be used to assist decision making. Whilst the matter of concern may be technical or relating to other professional standards the principles set out in FAQs 2 and 3 of the [Commerce and Industry FAQ](#) are of assistance here.

Other Professional Conduct Issues

AML Supervision

Q11. Where should R&D advisers refer for additional guidance regarding AML registration requirements?

Members should also refer to the AML FAQ set out on the ATT website [here](#) and in particular Q3 which is copied below for ease of reference. Advice on R&D tax credit claims would be considered by ATT as the provision of overall advice in the area of taxation.

“Q3. Does my firm need to be supervised by a supervisory authority for AML compliance purposes?”

If your firm provides 'advice about the tax affairs of other persons', the firm will need to be supervised by a supervisory authority. The meaning of 'advice' is widely interpreted and it is generally accepted that for these purposes tax advice includes tax compliance work. The CIOT and ATT set out in the AML scheme rules that: “advice about the tax affairs of other persons means the preparation and submission of tax returns, advice on tax planning, representation and defence of taxpayers before authorities and courts and the provision of overall advice in the area of taxation and complementary accounting and legal services.”

Q12. What should we do if we come across a firm providing R&D tax credit advice which is not registered for AML Supervision or does not appear to be meeting the requirements under the AML legislation?

If you come across firms involving members or non-members who are not registered for AML Supervision or who you consider are not meeting the requirements of the legislation please refer to the [ATT whistleblowing policy](#).

Continuing Professional Development

Q13. Is there any guidance on how much continuing professional development (CPD) a member should be doing to be assessed as competent to work on R&D claims?

A member must not undertake work which they are not competent to perform. If they or colleagues doubt they have the technical competence in a particular area of tax advice then they should not undertake that work without appropriate supervision or the use of specialists. It is impossible to confirm the amount of CPD which is adequate and this is a matter for consideration by each member. Members should also refer to the CPD regulations and guidance on the [website](#). It would be unusual for a member to not to have undertaken specialist CPD in relation to R&D during a year if they contribute directly or indirectly to the preparation, submission, agreement of and advice on any or all aspects of a company's research & development claim.

Members are required to perform such CPD as is appropriate to their duties.

While every care has been taken in the preparation of this guidance the PCRT Bodies do not undertake a duty of care or otherwise for any loss or damage occasioned by reliance on this guidance. Practical guidance cannot and should not be taken to substitute appropriate legal advice.