Preventing abuse of the R&D tax relief for SMEs: ATT response

Large Corporate OMB

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The ATT has responded to the latest HMRC consultation regarding the cap on the repayable credit available under the SME R&D scheme, which is due to come into effect from April 2021.

It was announced at the Budget in March this year that the introduction of a cap on the repayable credit available under the R&D scheme for SMEs would be delayed by one year to April 2021 to allow more time for consultation.

A further consultation (tinyurl.com/vsnywhq) on the design of this cap was subsequently released on 19 March 2020.

This proposed a number of measures to reduce the impact of the cap on genuine businesses, including:

- a £20,000 threshold below which claims will be allowed in full; and
- an exemption from the cap where the claimant company:
    - can provide proof that they are actively managing (or will actively manage) the intellectual property arising from the R&D; and
    - has no more than 10% of their overall expenditure paid to a related party or for externally provided workers.

The ATT response (www.att.org.uk/ref358) to this consultation focuses on the second of these proposals, and in particular the practicality of asking SMEs to provide proof of active management of intellectual property. The ATT's main concern is that the smallest and newest SMEs (which are most likely to be in need of the support offered by the payable credit) are unlikely to have considered intellectual property management activities at any length. Even where they have, it is unlikely that these considerations will have been documented in much detail.

The consultation lists examples of possible intellectual property management activities, and evidence SMEs may be able to provide for these. The ATT response notes that whilst these may seem reasonable for established or larger companies, they are likely to be less reasonable for a start-up or very small company. The ATT is therefore concerned that such companies may struggle to provide the required evidence to qualify for this exemption from the cap.

As an alternative to requesting evidence of intellectual property management, the ATT response suggests the introduction of a statutory declaration that the claimant company will actively manage the intellectual property arising from, or expected to arise from, the R&D project. Companies which make this declaration would then benefit from the exemption from the cap. This could be backed up by targeted compliance activities, as well as powers to allow HMRC to clawback amounts paid where a declaration is made incorrectly and to apply penalties in the case of fraudulent declarations.

If the proposal for claimants to provide proof of active intellectual property management in order to be exempt from the cap is adopted, the ATT response stresses that it will be important for HMRC to issue clear and practically focused guidance, including for smaller businesses.