R&D tax relief – a consultation: CIOT and ATT responses

Large Corporate **OMB**

01 July 2021

The CIOT and ATT have responded to the government's wide ranging consultation on R&D tax reliefs.

Earlier this year, the government published a wide ranging consultation on R&D tax relief (tinyurl.com/9awxr83r). This consultation sought views on the nature of private sector R&D investment in the UK, how that is supported or otherwise impacted by the small and medium-sized enterprise (SME) and large company R&D relief schemes, and where changes may be appropriate.

CIOT response

The CIOT welcomed the wide review of the UK's R&D relief schemes and agreed that it is important to review these schemes to ensure that the reliefs remain 'fit-for purpose' and to consider their effectiveness. We noted that R&D relief is a long-standing form of government intervention into economic activity that is supported throughout the business world. We welcomed the continued government focus on encouraging innovation and the importance of R&D tax relief in the context of the UK's international competitiveness. The CIOT's response also reflected our understanding of the matters under consideration in the consultation document following a discussion with HMT and HMRC about the consultation on R&D tax reliefs in May 2021.

Our response confirmed that CIOT supports the policy aim of ensuring that R&D tax relief delivers 'additionality', as this has obvious attractions from the perspective of getting best value for public money spent. We also said that certainty for businesses has a large part to play in delivering additionality. A number of factors pay a part in establishing certainty: consistent and preferably simple legislation; clear, consistent and developed guidance; and a consistent approach to auditing and enforcement. A

lack of these factors can undermine certainty, however. This concept ran through our responses to the detailed questions, pointing out that if it is hard to design rules to require ‘additionality’, it is unfortunately easy to discourage it. The more uncertainty there is about what types of activity qualify for relief (and in which contexts), the less likelihood there will be of the relief actually stimulating expenditure on R&D. We said that such uncertainty can arise for a number of reasons: from changing and uncertain interpretations of statutory terms, to difficulties in interpreting the facts on the ground even against clear statutory criteria.

We welcomed this review of the R&D tax relief regimes in the round, which offers an opportunity to clarify the policy intentions of the reliefs and, to the extent necessary, make legislative changes to ensure that the law clearly delivers those policy aims, including ensuring additionality. Our response referred, in particular, to ongoing discussions with HMRC about the application of the rules relating to contracted out R&D and subsidised expenditure, where there is currently disagreement around the interpretation of the rules. We said that legislative change could avoid what may otherwise turn out to be a long period of market adaptation to a less favourable regime that arises from HMRC’s current interpretation, and considerable uncertainty (and perhaps litigation) over what will qualify for SME relief. We noted that, overall, HMRC’s current approach to what is contracted out R&D and subsidised expenditure will have the effect of greatly reducing the circumstances in which SME R&D relief is available, limiting it to circumstances of ‘blue sky’ R&D – that is to say, when a company undertakes R&D completely independently and before any customer is involved. We said that this consultation offers an opportunity for the government to consider whether as a matter of policy the SME scheme should operate on a more limited basis than we had previously understood to be the case, and if so, to be clear as to the economic and Exchequer impact from this policy approach.

Finally, our response also welcomed a general focus on improving the quality of R&D advice. The CIOT has done a lot of work in this area, including the addition of the topical guidance section on R&D in the professional conduct in relation to taxation (PCRT) rules that the CIOT has developed alongside the ATT and other representative bodies. We suggested that continued focus on professional conduct is the best way to address any concerns around fee arrangements, such as contingent fees, which, in our view, can in some circumstances be appropriate within a proper professional relationship.

The CIOT's full response can be read at: www.tax.org.uk/ref769.

ATT response

The ATT response sets out that, in general, members find the SME scheme simple to explain to clients, and that it is easier to demonstrate the benefits of an SME scheme claim than a Research and Development Expenditure Credit (RDEC) claim. The ATT does not believe that there is a case for consolidating the two schemes into one – the current differences between the two schemes reflect the very different natures and needs of SMEs and larger companies. 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.

The ATT response raises concerns over the possibility of decoupling R&D claims from the ordinary corporation tax self-assessment (CTSA) system. Whilst this could be welcome
if it sped up the processing of claims, the ATT is concerned that allowing R&D claims to made on a standalone basis could weaken the 'sense checking' which comes from involving a company's regular agent in making a claim, and could also lead to rushed claims being submitted which are not subject to the full scrutiny of the CTSA process.
With respect to improving standards of claims, the ATT response highlights that members are required to adhere to the requirements of the PCRT, including recently published specific guidance on R&D services (tinyurl.com/fcpa8xzy). However, 'rogue' advisers may not be members of a PCRT body, and HMRC should consider how best to target these advisers to ensure they are held to the same standards.

Other suggestions in the ATT response include introducing a more robust sign off for claims (with specific declarations by both the claimant and the adviser preparing the claim), education campaigns to raise awareness amongst claimants and their agents, and introducing a route for concerned advisers to report suspicions regarding inappropriate claims, advice or promotional material.

The ATT's full response can be read at: www.att.org.uk/ref370.