# R&D: update and recent developments

Large Corporate OMB



21 March 2023

There is a lot going on in relation to R&D. There are new compliance measures due to come into effect from April 2023 and the CIOT and ATT have commented on the draft guidance for those. We have also met with HMRC to discuss R&D operational issues and responded to the consultation on a single scheme for R&D for the future.

## April 2023 compliance measures

A number of changes to R&D reliefs are due with effect from April 2023. These were outlined in an article by David O'Keeffe in the November edition of *Tax Adviser* ( tinyurl.com/mr33rapj).

In December 2022, HMRC published some draft guidance on these new measures. CIOT and ATT submitted comments. Both welcomed the draft guidance, but also said that it was difficult to comment as only the draft legislation for these measures, published in July 2022, was available. The consultation on the guidance was

predicated on the fact that the final form legislation may differ from the draft legislation. Indeed, recently HMRC have confirmed that some aspects of the rules will change from what had previously been published. Significant changes include:

- The additional information form will be required for all R&D claims submitted on or after 1 August 2023 (regardless of the accounting period to which they relate).
- A claims notification (the advance notification of R&D tax relief claim) will not be required if the actual R&D tax relief claim is made within six months of the end of the accounting period.

Our full comments on the draft guidance can be read at: www.att.org.uk/ref412 and www.tax.org.uk/ref1066.

It is also frustrating for taxpayers that, as well as waiting for the final legislation that will implement these new compliance measures, the final additional information form has not yet been published (although HMRC gave some demonstrations of drafts of the form in development in December and January to give some idea of what will be expected). It is clear that the earlier date of 1 August 2023 will be challenging for advisers. They will have to ensure that their systems are able to deal with this new compliance measure and that tax compliance teams are properly trained. Previously the form would have been required in respect of claims made for accounting periods beginning on or after 1 April 2023, so would not have been required until claims were made after the end of those accounting periods, in most cases from 31 March 2024 onwards.

The CIOT is continuing to raise with HMRC points of detail around how the form will work in practice, such as:

- Who should complete the form where the tax agent and the R&D advisor are not the same? Is it the tax agent (using their Agent Services Account) or the R&D advisor (using their Agent Services Account)?
- How will the Additional Information Form interact with the CT600, and will it be possible to file an Additional Information Form without filing the CT600? And what will happen if either is amended?

If you have any practical questions around these new compliance measures, please do let us know.

We will write more about these compliance measures and how the Professional Conduct in Relation to Taxation rules apply in relation to them in future publications.

## HMRC/CIOT/ICAEW R&D Workshop

In February, CIOT representatives attended a workshop with HMRC to discuss operational matters relating to the delivery of R&D.

**The processing times of R&D tax relief credits:** Following the attack on the tax system last year, which resulted in a temporary suspension of payments of R&D tax relief credits, HMRC's aim continues to be to either pay the payable tax credit or contact the taxpayer regarding the claim within 40 days. This remains longer than the previous period of 28 days. HMRC confirmed their ambition to return to the standard 28-day processing time. The workshop welcomed this, but also noted that the most important thing to taxpayers is certainty around when the payment will be made (assuming that there is no enquiry).

It was suggested that it would be helpful for taxpayers to understand what HMRC meant by the 'process' in this context, as there seemed to be two stages: firstly, a review or consideration of the claim itself, after which the decision whether or not the tax credit should be paid was taken; and secondly, the security steps around actually making the payment. There was also some debate around whether a longer period was preferable if HMRC could deliver greater certainty as a result.

**Tackling rogue agents:** HMRC said that they had begun a project looking at the advertising claims made by some agents in relation to their services in undertaking R&D claims. Where agents are making claims that are demonstrably false, HMRC intend to take steps to report this to the Advertising Standards Authority.

**Enquiries into R&D claims:** Those at the meeting raised concerns with HMRC about the approach they were currently taking in relation to enquiries into R&D claims. The general view of those present was that HMRC were opening many more enquiries into SME R&D claims and that these were being conducted by teams at HMRC who lacked the necessary expertise around R&D. The enquiries are being conducted in a confrontational manner and with a lack of willingness to engage with the taxpayer to discuss or understand the technical issues.

HMRC confirmed that there was a new team undertaking R&D enquiries and that they were being conducted with a 'volume', formulaic approach in order to increase the number of enquiries. HMRC said that they did recognise some of the issues facing taxpayers and that were raised by their advisers, and that training of the relevant people was ongoing. Representatives said that perhaps a volume, process-driven compliance approach was not suitable for R&D, which required subjective analysis and engagement with the taxpayer, etc.

HMRC said that they were identifying many errors through this approach and they were being encouraged to be more transparent about these errors and to share them with taxpayers and advisers.

We would like to hear about your recent experience of R&D tax relief enquiries and whether you consider these are generally being handled well or badly by HMRC. Please send examples or brief details of your cases to us at technical@tax.org.uk or technical@att.org.uk

## A single scheme for R&D tax relief?

Finally, both the CIOT and ATT have responded to the consultation ( tinyurl.com/2mkc62ut) on whether or not there should be a single scheme for R&D tax relief. Our responses can be found at: www.tax.org.uk/ref1076 and www.att.org.uk/ref413. We will write more about this in next month's Technical Newsdesk.

The Spring Budget announced that the government is 'considering the responses and no decision has been made'. But the Red Book (at paragraph 4.52) also says that draft legislation will be published in the summer alongside the Finance Bill, which suggests that this may be a done deal?

The Spring Budget also announced additional tax relief for 'R&D intensive SMEs', which suggests that further debate will be required around the trade-off between the potential simplification of a merged scheme and policy decisions to provide additional support to SMEs (or some of them) through different rates of relief.

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