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Philippa Madelin
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HMRC

Via email: philippa.madelin@hmrc.gov.uk

Dear Philippa

R&D tax relief enquiries by ISBC Campaigns and Projects teams

We refer to our exchange of letters over the summer regarding HMRC's approach to compliance in relation to R&D and, in particular, the 'volume compliance' approach that has been adopted by HMRC[1].

We welcome HMRC's acknowledgement that their handling of some R&D claims has not met their own standards and commitments under the Charter, and that HMRC are taking steps in response to improve their training and assurance processes. However, despite some progress and changes, the volume compliance approach to R&D enquiries means that legitimate claims are still being rejected, and the underlying policy objectives of R&D tax relief, to encourage investment in innovation and economic growth, continue to be undermined as businesses are put off claiming relief to which they are entitled.

We appreciate the open dialogue that we have had, and continue to have, with HMRC about compliance. But we remain of the view that the fundamental issue is that the volume compliance approach does not work well for R&D tax relief claims. This is to a large extent due to the scale of the approach, which results in the use of undertrained caseworkers; and the complex nature of the relief, which requires technical consideration to ascertain whether or not there has been qualifying R&D. The examples we have seen demonstrate a strong caseworker bias towards rejecting

[1] CIOT letter to HMRC dated 3 July 2023 and HMRC's response dated 29 August 2023.

claims and disregarding the testimony of competent professionals, despite those caseworkers having little or no specialism in the areas under consideration.

We understand that the government's aim is for businesses conducting R&D to have confidence that they will receive the support to which they are entitled, and that HMRC are striving to build an effective scheme where genuine claims are allowed. Unfortunately, currently, the system continues to fail to deliver a fair enquiry process for a significant number of genuine claims. Aggressive positions continue to be taken by the compliance team, some of which are, in our view, incorrect interpretations of what constitutes R&D. This, along with ongoing refusals to have conversations (in person or virtual meetings, or telephone conversations) make it very difficult for genuine claimants to defend their claim. We continue to hear about mixed messages being given to claimants and advisers who wish to speak to the ISBC teams about their case and how they should go about doing this.

We recognise that HMRC have decided on the volume compliance approach in order to address the significant error and fraud identified in relation to R&D. While we cannot validate HMRC's numbers, HMRC are right to be taking action to tackle these issues, but we would like HMRC to take further into account the impact of their compliance approach (which we believe is rejecting genuine claims) in validating the levels of error. We support HMRC in their compliance efforts and are committed to our own role in upholding professional standards in the tax service industry. But HMRC's actions must lead by example and be in accordance with their own professional standards and Charter commitments, as well as, of course, the law.

HMRC may consider the approach to be a success in many respects, because it is stopping a large number of claims. Many of those claims may be incorrect but there are a large number of valid claims, and some that are more nuanced and require specialist consideration, that are being rejected or withdrawn (or subject to uncertainty, and frustrating and burdensome enquiry processes) because of the approach. This 'collateral damage' may come to undermine the perceived success in due course. In our view, the balance between tackling the problems of error and fraud and the impact on compliant claimants is currently tilted too far towards the former. Genuine claimants and compliant taxpayers should not suffer because of the bad behaviour of others, especially in an area where the policy objective is to encourage the activity resulting in genuine claims. HMRC's current approach is prioritising the need to deal with error and fraud over ensuring a fair and effective enquiry process for all and this is not conducive to good operating of the tax system, trust in HMRC, HMRC's endeavour to build a professional service (generally) or policy of encouraging R&D (specifically).

A better approach would be for HMRC to reduce the volume compliance approach until caseworkers are properly trained, with an appropriate understanding of R&D. However, we understand that HMRC are committed to continuing with it. Therefore, we will remain engaged with HMRC and continue to work to improve and adapt the volume compliance approach so that it better delivers a proportionate, fair and consistent treatment of taxpayers and agents. The 'bespoke one-to-one service' referred to in your letter is not what the vast majority are asking for – our members just want a fair hearing where evidence is given, and for HMRC to correctly apply the Guidelines[2] around what is R&D. We welcome HMRC's commitment to their Compliance Professional Standards, which reflect the commitments in the HMRC Charter, and their willingness to work with CIOT, and others, to identify areas where improvements can be made. It is in this spirit that we comment below on areas of difficulties still being encountered by our members.

[2] We are using Guidelines throughout this letter (accept where the context otherwise requires) to refer to the Department for Business, Innovation & Skills (BEIS) (2004) guidelines (BEIS guidelines), which are applicable for claims for accounting periods beginning before 1 April 2023, and/or the guidelines issued by the Secretary of State for the Department for Science, Innovation & Technology on 7 March 2023 for accounting periods beginning on or after 1 April 2023, which replaced the BEIS guidelines and are referred to as the DSIT guidelines.

The key issue is that while some cases will be obviously wrong, and can be weeded out very quickly by an initial review, caseworkers need training and confidence to more frequently recognise that some cases are poorly selected for the volume compliance process or the issues are more nuanced and warrant a more specialist and detailed enquiry. An effective mechanism to move these cases away from the ISBC teams once identified would greatly improve the position. Alternatively, the addition of more experienced colleagues to the ISBC teams, who could take ownership of specific cases once identified might help. These cases would preferably then have a single named person dealing with them, who would be able to build the depth of understanding warranted, and who is contactable by the claimant or their advisor. It is unfortunate that, as discussed below, the proposed escalation route does not seem to deliver this. We would like to work with HMRC in this area to improve things.

On a more positive note, we raised in our last letter that HMRC were incorrectly imposing penalties. We are pleased to note that, so far as we are aware, this has largely been corrected and that, in most cases, HMRC's approach to penalties is now more closely in accordance with the law and HMRC's published guidance.

However, there are two additional specific issues that have arisen since we wrote to HMRC in July which are causing us concern. These are firstly the use of paragraph 16 of Schedule 18 of Finance Act 1998 to 'correct' corporation tax returns by removing R&D claims, and secondly the involvement of HMRC's debt collection teams unreasonably early in the process, and before the taxpayer has had an opportunity to signal an intention to challenge an enquiry conclusion. These are discussed below.

Paragraph 16 of Schedule 18 to FA 1998

Over the summer, we became aware that HMRC are using paragraph 16 of schedule 18 to FA 1998 to correct corporation tax returns by removing the claim for R&D tax relief. We understand that HMRC have been using this power, on a trial basis, to correct claims where HMRC believes there is clearly not R&D, based on the information provided to HMRC.

This is a very concerning development that considerably broadens the understood scope of paragraph 16, which is to correct 'obvious errors'.

Paragraph 16 sets out:

16(1) An officer of Revenue and Customs may amend a company tax return so as to correct–
(a) obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise), and
(b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.

Whilst paragraph 16(1)(b) is arguably broader than the 'obvious errors' referred to in paragraph 16(1)(a), the paragraph has to be construed within the meaning of the paragraph as a whole and, indeed, the whole scheme of corporation tax, including its interaction with the enquiry process. It does not seem right to us that HMRC can circumvent the need for an enquiry by simply denying the claim for R&D tax relief outright.

In any event, challenging R&D claims in this way does not accord with HMRC's guidance on paragraph 16: https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm93330. This expressly says that '*the process of correction does not involve any judgement as to the accuracy of the figures ….*' and continues '*The process is only for correcting an obvious error or omission …*', finally concluding that '*You will deal with any question relating to the accuracy of the information contained in the return by opening an enquiry into it*.'.

Our view is that the determination of whether or not a claim for R&D relief is valid, that is to say whether or not there is R&D, is not within the intended scope of paragraph 16, and particularly not where an R&D report or other details of

the R&D projects claimed for are submitted. We have seen an extract from a letter from HMRC in response to a question by a company that received a paragraph 16 correction notice. The initial correction notice simply said the Guidelines had not been met, so the company asked why HMRC think they have not been met, and what the obvious error was. HMRC responded:

'*This is because the report states that these projects focused on appreciably improving the company's bespoke internal software systems and processes, and the related functionality contained within, and that R&D activities are essential to assist the company's continued development of its internal platform and systems. This means the projects were not started with the intention of seeking an advance in overall knowledge or capability in a field of science or technology, but with the aim of advancing the company's own state of knowledge or capability alone. This is prohibited by paragraphs 6 and 24 of the Department for Business, Innovation & Skills (BEIS) (2004) guidelines*.'

This response from HMRC confirms that HMRC have received and read the R&D report, and taken some not insignificant effort to consider it and reach a judgement that it does not meet the Guidelines. HMRC have said that they are using paragraph 16 in respect of claims where HMRC 'believe it to clearly not be a valid claim' – after considering the information provided, adding that 'where there is uncertainty an enquiry will remain the best option'. In our view, using paragraph 16 in these circumstances is not appropriate. HMRC should not undertake this level of work or exercise judgement in this way without opening an enquiry and giving the company the ability to respond and explain.

We consider that using paragraph 16 in relation to R&D claims in this way amounts to an abuse of power because it circumvents the enquiry process. We are pleased to note that, having shared these concerns with HMRC, they are considering the outcomes of the use of paragraph 16 with respect to R&D, taking these into account.

If HMRC intends to continue to use paragraph 16 more broadly than it has done previously, and specifically in order to remove R&D claims from corporation tax returns, they need to explain clearly their view as to where the boundary lies between a case where a correction is appropriate and one in which an enquiry should be opened. This should be based on more than HMRC's subjective assessment of the R&D claim, without seeking further information from the taxpayer. In addition, HMRC should acknowledge the change in practice and understanding of the scope of paragraph 16 and update their guidance.

We recognise that unless the company has failed to submit an additional information form (and, if appropriate a claims notification), then it can reject the correction, re-insert the R&D claim in the return and resubmit it (subject to legislative time limits). We understand that HMRC's usual practice if this happens is to open an enquiry. However, the fact that a company need not accept the correction does not excuse HMRC's inappropriate use of this power, which will, at the very least, give rise to unnecessary costs for the company. It may also mean that the company is dissuaded from resubmitting their R&D claim because of HMRC's actions – for the same reasons as those who do not contest an enquiry decision to deny the claim: because of the costs of defending the claim (compared to the credit due) and HMRC's approach. We have been told about at least one instance where a company took this decision after receiving a paragraph 16 correction.

Incorrect statutory references etc

We have previously raised with HMRC the statutory reference in the paragraph 16 letters to 'section 1006 Income Tax Act 2007'. We do not think that this is the correct statutory reference in these circumstances. While that section is a definition of R&D for tax purposes, in our view the relevant legislative reference for R&D tax reliefs (which are corporate tax reliefs) is CTA 2010 s1138 (see CTA 2009 s1041).

We have seen an example of these letters which also incorrectly describes the legislative force of the definition of R&D, saying that: 'The accountancy definition is modified for tax purposes by the guidelines in our Corporate Intangibles Research and Development (CIRD) manual. These guidelines are given legal force by Parliamentary Regulations.'

This is not correct. We assume that what is intended is a reference to the 'Meaning of research and development for tax purposes: guidelines' published by DSIT (and previously the BEIS (2004) guidelines). These are reproduced in the CIRD manual. In addition, we think that it would be more correct to say that the Guidelines are given quasi-statutory effect by virtue of section 1006 (3) and (4) ITA 2007, rather than parliamentary regulations.

These may seem like small points, but they nonetheless add to the frustration around the conduct of R&D enquiries, contributing to views that HMRC are acting unprofessionally, and without sufficient expertise. More problematic, the description of the 'guidelines' having legal force in this way could suggest to some that the whole CIRD has 'legal force'.

Debt management

We understand that some taxpayers were receiving an approach (by letter, telephone call, or in one instance a visit) from HMRC's debt management team, telling taxpayers that they need to pay the tax that has now become due, very shortly after ISBC issue of the enquiry closure notice, and before the 30-day appeal window has expired.

There is also some lack of clarity around what mechanism HMRC is using to recover the 'debt', for example, referring to the tax credit as 'duty repaid in error'.

We discussed this with HMRC at our meeting in early October, and raised with HMRC a further example from a member that their client received a debt collection call from HMRC in mid-October, in relation to a claim for R&D tax relief that has been referred for internal review. We welcomed HMRC's agreement that the debt management teams should not be involved whilst there were appeals etc. against the enquiry conclusion. HMRC have advised these approaches were a result of systems' errors that have been looked at and rectified. This is welcome and we will monitor the position with our members.

Training and expertise of caseworkers

We welcome assurances from HMRC that training of caseworkers is ongoing and that they are committed to their Compliance Professional Standards. We also welcomed the opportunity to provide some training to HMRC around our standards - how tax agents work and our professional standards in PCRT. The aim of this training was to explain how agents work in practice in compliance with PCRT and the similarities between the standards to which agents are held and the standards introduced by HMRC. We continue to work with HMRC and other professional bodies to roll this out more widely across operational teams.

We understand that HMRC are considering the standard wording in letters that are being used in the volume compliance processes. We hope to see improvements to the standards of responses by the ISBC caseworkers coming through in the near future as we are still receiving reports of poor and incorrect communications from HMRC. These continue to reflect badly on HMRC and result in ongoing feelings of frustration and dissatisfaction with the process across the agent community and for taxpayers. We continue to hear reports of SMEs giving up on R&D claims or trying to meet their development objectives without applying for R&D tax relief because the stress and hassle of dealing with an enquiry is not worth it.

We have also discussed with HMRC that our members have seen procedural errors indicating that the caseworkers have not had sufficient training, or are lacking supervision in relation to conducting enquiries in accordance with the

legislation. For example, there is often a lack of clarity around whether communications from HMRC constitute 'appealable decisions', and closure notices that HMRC thinks have been issued are not always received by taxpayers/agents. This leads to complications around the next steps that taxpayers can take to challenge enquiry decisions and is another area of training that HMRC should address. We welcome assurances from HMRC that they have looked at their processes in this area and that they expect that the problems that have been experienced should not occur going forward.

One point that we raised in our previous letter and which continues to be the case, is that caseworkers often state in letters to agents that there is no requirement for them to be 'subject matter experts' in relation to R&D. In our opinion, in most cases some expertise is required in relation to R&D to enquire properly and effectively into a claim for R&D tax relief. The Charter says that 'we'll make sure that the people you deal with have the right level of expertise'. We do not think that HMRC are currently meeting this commitment.

Whilst we would agree that the caseworkers do not need to be scientists or experts in the actual subject matter of the R&D, they do have to have a proper understanding of the legislative framework and of the definition of R&D set out in the Guidelines. As we say at the start of this letter, in our view, the problems with the volume compliance approach arise to a large extent because the caseworkers do not have sufficient training in relation to R&D tax relief.

Criticisms also remain that while HMRC say that their role is to ask questions and challenge the evidence (which we do not disagree with), we are seeing cases where caseworkers do not engage with the information given. Information requests from HMRC have covered the same ground as that contained in R&D reports already submitted to HMRC and our members' experience is that there is little or no enquiry into the facts of the R&D presented. Rather caseworkers respond with statements as to why they consider there is no R&D, often incorrectly citing the Guidelines. We included examples in our last letter of caseworkers HMRC misquoting, or selectively quoting, or misapplying the Guidelines.

While we welcome the ongoing training, we are still receiving reports that these errors continue.

Common errors/reasons for claim being discounted

We note in your letter the list of 'Common reasons why R&D relief is overclaimed or the wrong scheme being used'. We do not disagree with these reasons (setting aside the ongoing debate about what constitutes subcontracted or subsidised R&D), and these are no doubt relevant in R&D enquiries. However, from our discussions with members about the volume compliance approach and the enquiries by the ISBC teams, a notable perception is that claims are routinely rejected in full, on the basis that there is no R&D project. In example cases raised with us, there is no discussion around quantum of the claim or which scheme has been used, because the claim is rejected in full.

We have discussed their R&D enquiry case load with several firms and all report on different outcomes experienced in relation to cases selected for enquiry by the ISBC teams compared to the WMBC teams. In nearly all cases the enquiries by WMBC result in an R&D tax relief claim being agreed, albeit in some cases with some agreed changes to quantum. In contrast, the vast majority of the enquiries by ISBC teams result in a rejection of the whole R&D tax relief claim. This is surprising since it is the same, experienced R&D practitioners at these firms that are submitting the R&D claims in all cases. In our view this could indicate a predisposition/bias in the ISBC teams to reject claims. We could surmise that this may be due to their training being on the basis that the cases before them have been 'risk assessed' as dubious and against the background of the error and fraud that HMRC are seeking to address, something which caseworkers may also feel pressure to be seen to reduce. However it is not clear to the firms we have spoken to why the cases that have gone to ISBC, and have been refused, are inherently less genuine claims than those which have been accepted by WMBC.

We understand from HMRC that routinely rejecting claims in full is not HMRC's compliance approach. We hope that the increased focus on the triaging process will better ensure that claims selected for enquiry are directed to teams with the appropriate skills and experience to deal with them, and the ongoing training of caseworkers more generally, will produce outcomes in the future to counter the current perception and experience of some of our members.

Meetings with HMRC

We set out in our last letter to HMRC the reasons why in-person engagement has historically been part of R&D enquiries and why, in our view, it is an important mechanism through which R&D can be explained to HMRC. We understand that meetings are expensive for HMRC and taxpayer and it is necessary for taxpayers to first set out the facts in writing, and present appropriate written evidence to HMRC of the R&D - meetings should not be sought to replace the giving of written evidence.

However, because R&D is technical, it is often difficult to 'dumb down' the language and put it in 'layman's terms'. Indeed, this dumbing down can in itself make it difficult to demonstrate the advancement and qualifying R&D. That is why in the past, meetings were generally considered to be the most effective and efficient way to review the projects, discuss and agree the nature of the projects claimed, or identify any areas of disagreement.

There continue to be mixed messages around whether and when it is possible to speak to HMRC about R&D projects (in person or videoconferences, or on the telephone). There is some 'disconnect' between what we are being told should be possible through our engagement with HMRC and what is being experienced by our members dealing with the ISBC teams. In our discussions, HMRC have said that in-person engagement, meaning at least telephone conversations, is available through the ISBC number and/or mailbox. HMRC have said that caseworkers should be willing to speak to agents to discuss cases and, if the person who answers the telephone cannot deal with the query, they will be able to find someone who can help.

This does not reflect our members' experience. Although we understand that it is the case that the central number is answered a high proportion of the time, and voicemails are responded to, the engagement by the ISBC caseworkers is only at the level of a 'help desk' function. That is to say, they will answer questions as to the status of an enquiry etc, but it is still not possible to have a substantive conversation with HMRC about whether or not there is R&D.

This lack of engagement in relation to technical issues is borne out by recent correspondence from ISBC (extract from a letter dated 16 October):

'*You requested a face-to-face meeting or a video call to discuss the projects. Due to the complex nature of 'Research and Development' compliance cases, we have been asking that the relevant information is submitted by post or e mail for audit purposes and to allow the information to be comprehensively reviewed. Whist we are not currently offering face-to-face meetings or conferences calls to discuss cases at present, we have noted your request*.'

This letter confirms that substantive meetings/conversations are still generally not possible. In our view this remains a short sighted approach by HMRC. HMRC have given complexity as a reason for not having calls or meetings; we strongly believe that complexity is exactly why calls (or other in-person engagement) are needed. Meetings are not necessarily time intensive if properly run, and can be more efficient than a lengthy exchange of written communications. In addition, in our view, HMRC's professional standards and Charter commitments mean that if HMRC opens an enquiry, the taxpayer should be given a fair hearing and treated professionally and, as per the CIRD manual, Enquiry manual and HMRC's Litigation and Settlement Strategy cited in our previous letter, this in many cases should include a meeting. It would be helpful to understand the circumstances when HMRC would see value in a meeting and the extent to which HMRC offer meetings in these circumstances, rather than relying on taxpayers and agents requesting them.

In addition, if the meeting does not occur during the enquiry and the taxpayer wishes to challenge the outcome of it, this may increase the chances of HMRC spending more time dealing with a challenge to their decision, via statutory review, ADR or a tribunal hearing. So refusing to hold a meeting during the enquiry will not necessarily save HMRC time overall.

Escalation process

As we say above, we recognise that there is error and fraud in relation to R&D and recognise that HMRC must challenge this. We have consistently welcomed HMRC opening enquiries where there are concerns, but the volume compliance approach is undermining confidence in R&D tax relief, because there is no confidence that HMRC will accept or properly consider legitimate claims.

The key to improving the situation and addressing the collateral damage is better triaging of the enquiries and significantly improved training of the caseworkers.

Your letter refers to an 'escalation process' and we have discussed this with HMRC. We understand that this consists of ensuring that HMRC caseworkers are aware that they are able to 'refer up' cases and that additional support is required should a caseworker need it. Unfortunately, as this escalation process leaves the decision with the caseworker, it relies on the caseworker being able to recognise that the claim is one where assistance is required. We are not confident that this is happening appropriately, especially given our concerns around the current level of training, and the limited knowledge and expertise of caseworkers about what R&D is. It is disappointing that the escalation process does not at the moment envisage any mechanism for the taxpayer/agent to trigger a referral to a more experienced caseworker or team within HMRC.

We were also disappointed that you say in your letter that the escalation process could include a meeting if 'required'. Already this is a higher bar than a meeting being helpful, and the decision as to whether will be a meeting seems to be solely within the discretion of HMRC. We have also seen correspondence from ISBC that says that '*unless there is a compelling reason we do not see the necessity for meetings*'. This puts the threshold even higher. We would welcome some clarity form HMRC around the circumstances where they think meetings would be 'required' or what 'compelling' reasons might be. In any event, a threshold as high as this will undermine the efficacy of the escalation process.

There is currently a lack of clarity around how the escalation process is operating. To aid our understanding, are you able to share with us how many cases have been escalated under the process currently in place since your last letter (29 August 2023), and how many meetings/conversations have been arranged?

We would like to work with HMRC to further develop the escalation process, for example, to develop 'flags' that would mean that the caseworker would refer the claim for specialist input. Such flags could include large claims and where the R&D activity is in an area different to the SIC code, the latter suggesting that the case selection, if this was based on the SIC code, is not appropriately targeted. We also suggest that HMRC should triage cases and put more emphasis on considering whether substantive and reasonable responses to HMRC's initial enquiry letters warrant a more considered, technical judgement than can be given by inexperienced ISBC caseworkers, and be passed to more experienced R&D teams in WMBC or more experienced ISBC staff.

Recourse for the taxpayer

It is unhelpful that taxpayers cannot trigger more engagement with HMRC as part of the enquiry process, where appropriate and conducive to reaching the right outcome. As agents' experience of the ISBC teams' approach

increases, and more enquiries reach their conclusion, we have discussed with HMRC the ways that taxpayers are challenging HMRC's volume compliance approach and the decisions reached:

- Statutory review
- Complaints process
- Appeals to tribunal
- Alternative dispute resolution (ADR)

Of course, ADR can be requested before HMRC reaches a final decision, as well as after and we understand that agents are increasingly considering ADR. We also understand that agents are starting to try to move more quickly to a decision by the ISBC teams – so that this can be challenged and taken to another forum within HMRC where there will be a fuller and fairer hearing given to the R&D tax relief claim.

We have raised with HMRC, and mention above, that in some cases a lack of clarity around how an enquiry process should be conducted means that closure notices have not been received and/or it is not clear whether a communication from HMRC is an appealable decision. We welcome that HMRC have focussed on this area to ensure that, going forward, closure notices are correctly issued, and that claimants should receive clearer communications around steps available to challenge decisions. We have also sought clarity from HMRC about how HMRC will handle the next stages for those enquiries where the conclusion by HMRC that there is no R&D is not accepted by the taxpayer. This was also raised at the R&D Workshop in early September, with delegates concerned about how HMRC would resource these next stages.

We are starting to see taxpayers challenging HMRC's decisions reached via the volume compliance approach through statutory review, the complaints process and requests for ADR. We have not yet seen cases progress to appeals to tribunal, although appeals have been formally lodged. In most cases, the agent has appealed HMRC's decisions and asked for a statutory review at the same time.

We are concerned that when the decisions that have been reached in error in relation to many genuine claims are considered by tribunals – and the poor quality process examined – it may call into question HMRC's judgement and fair process in relation to many of the enquiries undertaken under the volume compliance approach for R&D. This could open the door back up on those claims that have been correctly rejected by HMRC.

Data and assumptions made by HMRC about non-compliance

We have set out in the appendix a number of questions in relation to some of the statements made in your letter dated 29 August 2023. These have been raised with HMRC during our ongoing discussions, and we look forward to receiving a response in due course.

Going forward – working with HMRC

Your letter references several areas where we should be able to jointly work together:

- Compliance approach, processes, escalations, closure of enquires and penalties
- Guidance and communications
- Agent standards

In relation to the first of these, as we say at the beginning of this letter, our comments in this letter are intended to help HMRC improve things for taxpayers, while supporting HMRC in their effort to tackle the error and fraud and we look forward to continuing our conversations with HMRC around this. We note the announcement at the Autumn Statement that HMRC will be publishing a compliance action plan in due course. We would welcome an opportunity to discuss this with HMRC as it is developed to help ensure that it is as effective as possible in tackling error and fraud, while redressing the balance towards a fairer and more effective enquiry process.

We have doubts about the effectiveness of the escalation process that has been put in place by HMRC and would like to work with you to further develop this so that HMRC can more effectively triage enquiries.

We look forward to discussing further the issue of closure notices and the next stages where taxpayers and agents challenge decisions made through the volume compliance approach. We would like to hear from HMRC more detail on the management of processes such as statutory reviews and ADR.

We welcome the new Guidelines for Compliance (GfC) on the meaning of R&D for tax purposes recently published by HMRC and think that these will be very helpful for taxpayers and agents going forward. We suggest that they would be excellent training material for the ISBC caseworkers and we assume that the caseworkers will have access to them when reviewing the R&D tax relief claims. The GfC set out some very good summaries around the interpretation of key points within the Guidelines, that are not being followed by the ISBC teams in all cases. One example is around the meaning of 'readily deducible', in relation to which agents report that HMRC often seems to interpret this as meaning 'not possible' to work it out from existing knowledge, a bar that is unrealistically high (often asserting that it is 'readily deducible' despite testimony from competent professionals in the field to the contrary). Agents that we have spoken to intend to use the new GfC quite extensively when responding to ISBC enquiries.

We recognise that not all claims for R&D tax relief are as good as they could be. Whilst we cannot validate HMRC's numbers – and question some of them – there is no doubt that there is still too much error and too many poor quality claims. As a member organisation and signatory of PCRT, we have to recognise this and remind our members of their obligations in relation to making R&D tax relief claims. We will be publishing an update to members.

We have always encouraged HMRC to tackle 'bad' agents. If some of our members are involved in 'unacceptable levels of non-compliance', then HMRC should refer them to the Tax Disciplinary Board under the Memorandum of Understanding. We encourage HMRC to use these agreed procedures to the greatest extent possible, and share information where possible, so that we can work together to raise standards.

Conclusion

We recognise that the amount of abuse of R&D relief is a significant problem, and HMRC are right to be prioritising action to tackle it. We support them in their efforts to do this and are committed to our own role in upholding professional standards in the tax service industry. But, while HMRC may be seeing some success from the volume compliance approach, the current outcomes overall are not good. The volume compliance approach is eroding trust in R&D tax relief.

The compliance processes should support the policy objective of encouraging R&D and deliver a proportionate, fair and consistent treatment of taxpayers and agents. The current situation does not achieve this.

We look forward to continuing the good engagement with HMRC, in order to try to improve things. To this end we encourage HMRC to be open about the issues that are currently present in the system and work with us to address them.

Yours sincerely

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The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

Appendix

Facts and figures in HMRC's response letter

'Around 90% of R&D claims involve an agent.'

Does HMRC mean that the claim has been prepared by an 'agent', or simply that the company uses a tax agent – for example, the company prepares the claim in-house and an agent files the CT600?

'We believe half of all claims are non-compliant - rising to 75 per cent of all claims for amounts under £10,000'.

'We believe', in other words it is HMRC's view that the claim is non-compliant. But the taxpayer and their agent's view may be that the claim is compliant but are faced with a refusal by HMRC to accept the explanations, and, probably, also a refusal to engage by way of a meeting. In addition, what does HMRC mean by 'non-compliant'? Does this mean the claim was rejected in full, or would even a small adjustment (that the taxpayer may still genuinely feel is wrong) lead to a claim being classed as 'non-compliant'? We recognise that any genuine errors are a problem, but the implication from the way these statistics are used is unhelpful.

'As 90 per cent of R&D claimants are represented by an agent, we firmly believe that this is a problem that requires collective action across the tax profession.'

As above, what does HMRC mean by 'represented by an agent'?

Can HMRC provide more granular data on how many of these 'agents' are tax qualified and how many are not? What do they mean by 'national representative bodies'? More details could help us get a better understanding of the scale of the problem as it relates to tax professionals (those that we can try to do something about) compared to those who are not (who we have no control over).