

CIOT update for members on R&D compliance activity and HMRC engagement

Recent articles in the press ([BBC News](#) in March and an article in the Financial Times on 1 April) have highlighted the ongoing challenges faced by taxpayers and their agents in navigating enquiries by HMRC into R&D tax relief claims.

As you may be aware, HMRC have adopted a 'volume compliance' approach for enquiries into R&D tax relief claims since the latter part of 2022 to tackle abuse and error in this area. The CIOT has been raising concerns about this approach since early 2023, as it became clear that it does not work well for R&D tax relief claims, due to the complex nature of the relief and the technical consideration required in ascertaining whether or not there has been a qualifying R&D project.

Our letters to HMRC in [July](#) and [December](#) 2023 more formally set out our concerns that HMRC's handling of some R&D tax relief claims was not meeting HMRC's standards and commitments under their Charter, and was undermining the policy objectives of R&D tax relief to encourage investment.

Following our December letter, we met with HMRC in January 2024 and had a constructive discussion about the concerns we raised, HMRC's response and their plans for improvements.

The CIOT fully supports HMRC's focus on tackling error and fraud relating to R&D claims. It was clear from speaking to HMRC that some of what they were seeing was far from what any of us want to see in the system – poor quality and in some cases, abusive claims. However, it was also clear that, although HMRC try to target risk, there is a full range of claims under enquiry and we reiterated the need for all claims to have fair review.

At our meeting with HMRC we focussed on how we can work together to achieve the objectives of reducing non-compliance in the R&D tax relief regime, while minimising the 'collateral damage' and impact on genuine claims from HMRC's compliance activity. We welcome this ongoing engagement with HMRC and continue to build on this collaborative relationship as we work through the challenges.

We agreed with HMRC that the key objectives of our engagement are:

- To reduce non-compliance in the regime, supporting the government in ensuring R&D relief goes to those it is designed to support.
- Reduce and minimise 'collateral damage' and impact on genuine claims from HMRC's compliance activity.
- Rebuild trust between HMRC and the agent community.
- Improvement needed in some agent behaviour.
- Develop HMRC understanding of issues businesses face.
- Improve standards of compliance work by some HMRC staff (and CIOT to continue to share examples of where we see work not meeting expected standards).

We met again with HMRC in April to continue our discussions.

HMRC training and escalation

HMRC have said that they continue to work internally on improving escalation routes, so that the right cases end up at the right level. We agreed that this is a key issue. While some cases will be obviously wrong, and can be weeded out very quickly by an initial review, caseworkers need training and confidence to recognise more frequently 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 out of the volume compliance approach once identified would greatly improve the position.

We remain of the view that the key to improving the situation and addressing the collateral damage is better triaging of the enquiries and significantly improved training of the caseworkers. We will continue to challenge HMRC to improve the 'escalation process' and ensure that caseworkers are aware that they are able to 'refer up' cases and that additional support is available should a caseworker need it. We will continue to suggest that the escalation process would work better with a mechanism for the taxpayer/agent to be able to trigger a referral to a more experienced caseworker or team within HMRC.

HMRC continue to consider the standard wording in letters that are being used in the volume compliance processes and we are assured that the training of caseworkers is ongoing to address the concerns that we have raised around both process and technical issues experienced by taxpayers and advisers that are subject to an enquiry.

HMRC compliance action plan

HMRC have said that they will be publishing their compliance action plan in due course. We understand that many of the themes from our letters will be addressed in this plan, in the context of proposed HMRC actions, such as operational and policy measures, to tackle error and fraud.

We understand that the compliance plan will include reporting intentions alongside and in addition to HMRC's Annual Report and Accounts. We discussed with HMRC some suitable milestones in HMRC's work - for example a review in, say, August 2024, once all claims within enquiry window have submitted additional information forms (the new compliance measure introduced to allow better risk profiling of claims) and data points are available in relation to a full cycle of compliance activity.

Data

We discussed with HMRC the importance of data: what data is available and what would be helpful for HMRC to consider the effectiveness of their compliance strategy and the amount of collateral damage arising. We suggested to HMRC that sharing of data, where possible, would be useful in terms of agents and other stakeholders understanding better what HMRC is seeing.

For example, we suggested that data around the volume compliance cases that HMRC are agreeing would be useful, as well as data around statutory reviews by SOLS, which are increasing in number, (including whether an HMRC decision has been upheld on review simply because of time limit expiry) and ADR cases, and how these are resolved. Also, the outcomes of statutory reviews and ADR cases could be informative about the decision-making within the volume compliance processes and identify key training requirements.

Improving agent standards

We discussed with HMRC that another important aspect is improving standards amongst some agents. We recognise that not all claims for R&D tax relief are as good as they could be, and accept that there is too much error and there are too many poor quality R&D tax relief claims.

We agreed at our meeting with HMRC that both CIOT and HMRC should consider how agents and taxpayers can be educated to raise the standard of R&D claims.

We welcome the Guidelines for Compliance (GfC) on the meaning of R&D for tax purposes published by HMRC last year. HMRC is now working on improving its guidance, including developing interactive guidance that will be published in due course.

We remind our members of their obligations in relation to making R&D tax relief claims arising from our [Professional Conduct in Relation to Taxation \(PCRT\)](#). We are currently looking at our PCRT and the [topical note on R&D](#) (alongside other PCRT bodies) to see how these should be updated to reflect the new compliance requirements for making R&D tax relief claims – the claims notification and additional information form. We are aware that these requirements are posing challenges for agents in practice, for example, around who is best placed to file them.

In this regard, we have always encouraged HMRC to tackle ‘bad’ agents. We encourage HMRC to use agreed procedures, such as referral to the Tax Disciplinary Board under the Memorandum of Understanding, to the greatest extent possible, and to share information and thematic problems, where possible, so that we can work together to raise standards.

HMRC said in December 2023 that they intended to open a ‘professional bodies’ mailbox’ as a route for members of professional bodies to contact HMRC about any breaches in standards relating to R&D. The mailbox is now available and the address is wmbciandrprofessionalbodies@hmrc.gov.uk. Further details are on gov.uk [here](#). This mailbox is for members of the CIOT or other tax or accountancy professional bodies. It should only be used to contact HMRC to report a breach in standards relating to R&D.

Whilst we welcome this opportunity in principle, and have been asking for something along these lines for a little while, we also caution members to be mindful of professional obligations around confidentiality and have discussed with HMRC the potential limitations on our members to freely share information with HMRC.

R&D disclosure facility

HMRC have also announced the development of a dedicated R&D disclosure facility. HMRC are anticipating the R&D Disclosure Facility will go live by the end of June.

We welcome the concept of voluntary disclosure by taxpayers as a principle, and welcome HMRC ensuring that there are clear processes for taxpayers to do this. We also welcome efforts by HMRC to publicise the options for companies to tell them about incorrect R&D claims.

However, there are multiple ways, including dedicated disclosure facilities, through which companies can make R&D claim disclosures. We have said to HMRC that it is important that taxpayers are made aware of all the options for disclosure. The new R&D disclosure facility may not be the most appropriate method by which to make disclosures about R&D tax relief claims, depending on all the issues that may need to be corrected and the reasons why the error(s) occurred. In this regard, please refer to our recently published guidance on [assisting clients with making disclosures to HMRC](#).

Paragraph 16 letters

We were pleased to [report in March](#) that HMRC have listened on the statutory reference point we raised with them, alongside concerns about the appropriateness of HMRC using their power under paragraph 16 schedule 18 FA 1998 to correct/remove R&D claims from tax returns.

We explained to HMRC that while the previous incorrect statutory reference may seem like a small point, it added to the frustration around the conduct of R&D enquiries, and contributed to views that HMRC are acting unprofessionally, and without sufficient expertise.

Any of these notices that you see going forward, should, for the definition of R&D for tax purposes in paragraph 16 letters, now refer to s1138 of the Corporation Taxes Act 2010. Please do let us know if you receive any letters that still refer to s1006 of the Income Tax Act 2007. We would like to thank those who have already shared examples and their thoughts on this with us.

Going forward

We are working with HMRC to build on our constructive engagement to date with a timetable and regular schedule of meetings with the CIOT and other professional bodies.

CIOT has agreed to continue to share examples and concerns with HMRC, and HMRC have said that they will use constructive feedback from CIOT to improve HMRC processes and practice.

Therefore, please continue to get in touch about issues that you are encountering in practice this calendar year. We would also like to hear any good news: please let us know if you are experiencing any positive changes with the enquiry process and/or have noticed improvements. We understand that many cases are now moving forward after the closure of enquiries to review, Alternative Dispute Resolution, statutory review and/or appeals. We would also be interested to hear about your experience with these processes.

We would also like to understand the impact of HMRC's compliance activities on broader behaviour around R&D tax relief claims that we understand members are starting to see affected by HMRC's compliance approach. For example:

- businesses withdrawing claims – at what stage?; or not making R&D claims
- the impact on insurance premiums for PII; and
- willingness to provide R&D advice/ submit R&D claims.

We will continue to engage with HMRC and welcome your thoughts and feedback to help inform and focus this work. We will provide further updates in due course.

The Chartered Institute of Taxation

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