

Research and Development tax relief advance clearances

Comments by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity, and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.
- 1.2 We are submitting these comments in response to the consultation on Research and Development (R&D) tax relief advance clearances published on 26 March 2025. These comments build on our responses to the specific questions submitted via the online response form, and our discussions with HMRC about these proposals at a meeting on 19 May 2025.
- 1.3 We welcome the policy aims of the consultation. This is a welcome consultation given the importance of certainty in for R&D tax relief, which has eroded in recent times. However, we have some concerns that not all the competing policy aims will be easily achievable through a single new system of clearances. Our concern is that a clearance system which conflates the various policy aims could result in something that is an unsatisfactory compromise and underdeliver on some or all of them.
- 1.4 Recent experience of the volume compliance approach has caused significant collateral damage which has discouraged legitimate claims for R&D tax relief, undermining the overall policy intentions of encouraging R&D. It has left trust in HMRC at a very low point. The proposals around improving advance assurances (noting the recognised limitations in the current advance assurance system) present an opportunity to continue to improve trust and rebuild the relationship between taxpayers and agents. But whether this is achieved will depend on the success of the approach taken by HMRC in the implementation of a clearance system.
- 1.5 The policy aims of providing certainty and improved customer experience would require a voluntary advance clearance system that is enabling and helpful for customers; whereas a system focussed on tackling error and fraud may better suit a different approach. It is not clear that a mandatory advance clearance system would better enable HMRC to tackle error and fraud in most cases. We would prefer that the relatively recent

additions to the compliance requirements for claiming R&D tax relief are given an opportunity to work and are more effectively used to achieve this specific policy aim.

- 1.6 Achieving the policy aims will also depend to a very large extent on HMRC's capacity and available resource to deliver a clearance system that is conducted by staff with sufficient training to deal with the complex nature of R&D tax relief.

2 About us

- 2.1 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 to achieve this aim; we are a non-party-political organisation.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 The consultation seeks views on advance clearances for the R&D tax reliefs, with policy aims of reducing error and fraud, increasing certainty for customers and improving customer experience. We have provided answers to the specific questions asked in the consultation document – intended to help the government to understand whether a system of clearances would deliver these policy aims, and the best way to design and operate a service to best achieve this – via the online consultation response form, and these are replicated in the Appendix. We also met with HMRC on 19 May 2025 to discuss the proposals. This paper takes the opportunity to build on our comments made through those routes and make some more general comments about the proposals and challenges in delivering on the policy aims.
- 3.2 Our stated objectives are for a tax system that includes:
- 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.

3.3 We welcome the policy aims of the consultation for R&D tax relief advance clearances which fit well with several of these objectives. However, we have some concerns that not all the competing policy aims will be easily achievable through a single new system of clearances.

4 Policy aims

- 4.1 While there will be some overlap, the policy aim of reducing error and fraud will require a different approach to the aims of delivering certainty and an improved customer experience, and, in our view different types of services and approaches to deliver them. The consultation notes that there are many different possibilities for the design and operation of a clearance service, and some of the options will more clearly help with the policy aim of reducing error and fraud, and some will be better able to provide increased certainty for taxpayers and improve customer experience. We would encourage HMRC to recognise that the different policy aims may require fundamentally different approaches.
- 4.2 Recent experience of the volume compliance approach¹ means that trust in HMRC is currently at a very low point. As CIOT has highlighted in our letters to HMRC² about this approach to enquiries, the result has been a breakdown of goodwill and trust between HMRC and taxpayers and their agents and a lack of faith in the R&D tax relief regime being able to deliver for SMEs. There has been significant collateral damage which has discouraged legitimate claims for R&D tax relief, undermining the policy intentions of encouraging R&D.
- 4.3 An open recognition by HMRC of the difficulties faced by taxpayers, improved training and a commitment to seek to improve the compliance processes, as well as more recently more collaborative and open engagement with HMRC are together beginning to rebuild some trust. The proposals around advance assurance or clearances (we understand that these terms are used somewhat interchangeably, and the nature of the certainty provided will depend on the final design outcomes) present an opportunity to continue to improve trust and improve the relationship between taxpayers and agents. But whether this is achieved will depend both on its design and on the approach by HMRC in the implementation of a clearance system.
- 4.4 Our concern is that designing a clearance system which conflates the various policy aims could result in something that is unsatisfactory and will underdeliver on all of them.
- 4.5 To achieve the policy aims of providing certainty and improved customer experience, the tone with which HMRC approaches the clearances will be key. HMRC will need to approach voluntary clearance applications from a perspective that what is being offered is something that is enabling and helpful for customers. The consultation explores which taxpayers a voluntary advance clearance service might be offered to, with suggestions being that this could be growing and high-potential companies – that is, those that the government wishes to encourage in their R&D endeavours. We suggest that success will be measured by a good take up of a voluntary clearance offering, and taxpayers reporting that they receive certainty in a timely and constructive manner through their dealings with HMRC. This will depend on HMRC's approach to the clearance applications, whether there is engagement with the detail of the information provided, the ability

¹ HMRC instigated a 'volume compliance approach' to R&D enquiries to tackle error and fraud in 2022.

² CIOT [letter](#) dated 11 December 2023; CIOT [letter](#) to HMRC dated 3 July 2023 and HMRC's [response](#) dated 29 August 2023

to have meetings to discuss aspects of the R&D projects and a reasonable timeframe in which a decision is made. Ultimately, businesses and agents will undertake a cost v benefit analysis of whether a voluntary advance clearance system is worth engaging with. This is discussed in more detail in our responses to the questions around the existing advance assurance scheme for R&D in our online consultation response.

- 4.6 The policy aim of reducing error and fraud has very different target companies, based on HMRC's risk profiling and data as to where the error and fraud within R&D tax reliefs predominantly arises. The approach to these companies brought within the advance clearance system, probably by mandating them, is more likely to be one of checking, rather than enabling. Our concern is that this could lead to a similar situation that arose from the volume compliance approach to enquiries, which was a notable perception amongst advisers that claims were presumed invalid from the outset and routinely rejected in full, on the basis that there is no R&D project. We surmised that a predisposition/bias to reject claims may be due to the training of caseworkers 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 and seen as successful/doing a good job when they do so. In a similar way, a focus on reducing error and fraud within an advance clearance system could give rise to the same problems and result in similar collateral damage for companies undertaking genuine R&D that happen to fall within the mandatory groups. Further, if there is one clearance system that is dealing with both voluntary and mandatory applications, the risk-based approach aimed at tackling error and fraud could taint the experience for voluntary applicants, resulting very quickly in a low take up of the voluntary offering.
- 4.7 It is not clear to us that a mandatory advance clearance system is necessary given the relatively recent additions to the compliance requirements for claiming R&D tax relief of the claims notification (CN) form and the additional information form (AIF). We suggest that these measures should be given more time to assess their effectiveness at tackling error and fraud before introducing additional mandatory compliance steps for an R&D tax relief claim. Consideration should be given to better utilising these measures, or whether small changes to them, such as to the information provided to HMRC, or which companies must complete a CN form, could provide a similar function to mandatory advance clearances, in terms of giving HMRC early sight of risky claims, so that any error or fraud in these can be tackled. We note in this regard that the government is considering whether an advance assurance should satisfy the claims notification requirement, saying that it is likely that the two things would require the same information. Our suggestion is to do this the other way around, and use the information already being provided in the CN form, rather than introduce a new process.
- 4.8 That said, consideration could be given to a system whereby HMRC calls in, or mandates an application for assurance or review of a potential claim if an assessment of the CN form indicates that the claim may be dubious. This could provide a mechanism for HMRC to engage with a company and consider its R&D claim before the claim is made.
- 4.9 In relation to this, we do not agree with the order of the flow diagram in the consultation document describing the steps in a normal R&D tax relief claims process. This shows the CN form being submitted as a second step after considering undertaking R&D. We suggest that ordinarily the CN form would be submitted much later than this. The deadline is six months after the end of the accounting period in which the R&D has taken place. This means that the CN form will generally be prepared and submitted after the company has drawn up plans and begun to undertake R&D – and much closer to the time of preparing a claim. This would sit much closer to the time the pre-claim assurance is envisaged, that HMRC says is likely to be the focus of mandatory assurances.

- 4.10 Achieving the policy aims will also depend to a very large extent on HMRC's capacity and available resource to deliver a clearance system. This means sufficient resource to deal with advance clearance applications in a timely manner. It is not currently clear to what extent a timetable for clearances would be set out in legislation, but to be effective, it would be necessary to avoid the long delays currently seen in the enquiry process, and the inequitable differences in the time permitted for taxpayer responses as compared to the time HMRC is able to take between communications.
- 4.11 Resource also means that it will be imperative that those at HMRC dealing with advance clearances have sufficient training to be able to assess whether there is R&D (and other technical questions), due to the complex nature of R&D tax relief. A key issue arising from the volume compliance approach to enquiries was the lack of any engagement by HMRC with taxpayers or their agents via meetings/calls (in person or virtually), demonstrating the importance of the necessary training and upskilling of HMRC staff to deal with advance clearance applications.
- 4.12 In this regard we also note the brief discussion of international comparators and the use of other jurisdictions of Ministries of Science, Technology or Innovation or similar agencies. The consultation document cites the Australian model, which requires companies to register with AusIndustry each year. We would urge the government to consider utilising the UK's Department of Science, Innovation and Technology in the task of determining whether there is R&D. CIOT members routinely report frustrations that HMRC lacks industry-specific knowledge and is not the best arbiter of whether there is R&D. In this regard we welcome the recent announcement of recruitment for the expert advisory panel, but are concerned that this may not be sufficient to address the understandable skills gap in HMRC.

5 Further detail around new measures

- 5.1 We welcome that this consultation is taking place during stage 1 of the policy development process and note that there will be further consultation on any specific proposals for reform that the government decides to adopt. At this later stage it will be necessary to address a host of more detailed questions around how a new advance clearance process would fit into the process of claiming R&D tax relief and the corporation tax compliance landscape.
- 5.2 For example, it will be necessary to address the extent to which decisions and clearances will be binding and in respect of what. As noted above, both the term 'clearance' and 'assurance' is used in the consultation document, but little detail is given as to the nature of decision or outcome of an assurance process at each possible stage. It is not clear whether decisions would be made based on projects (which could be over several accounting periods, as per the current advance assurance scheme) or in respect of claims (which we envisage would be limited to the relevant claim/accounting period).
- 5.3 In addition, timetables around the clearance processes will need to be set out. These may be in legislation or could be given by service level aims for HMRC.
- 5.4 Importantly, it will be necessary to decide whether there is an ability to appeal against clearance decisions by HMRC, or whether, as under the current advance assurance scheme, companies which are refused an assurance are free to proceed and claim if they believe their project does qualify for relief. There will also have to be careful consideration of the impact of the HMRC ruling on errors in returns and penalties etc.
- 5.5 We would also urge caution around the timetable for delivering a reform involving a new compliance process. We mention in paragraph 4.7 above the complexities of the new rules relating to the CN requirement. HMRC

is committed to improving signposting and guidance on R&D reliefs, and it will be important to ensure that there is sufficient time to develop the guidance around any new processes to avoid the errors and misunderstandings that arose around the introduction of the CN requirement and the transition rule.

6 Acknowledgement of submission

- 6.1 We would be grateful if you could acknowledge safe receipt of these comments and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

27 May 2025

Appendix

Responses to consultation document questions

7 About you

7.1 Questions 1 to 8 – about the applicant.

8 Current claims process

8.1 Question 9: Were you aware of the advance assurance scheme before this consultation?

8.2 Yes; we understand that it is not widely used.

8.3 Question 10: Have you or your clients used the current advance assurance scheme?

8.4 Not applicable.

8.5 Question 11: If you or your clients have used the current advance assurance scheme, please tell us if and how this met your needs.

8.6 Not applicable.

8.7 Question 12: If you or your clients have used the current advance assurance scheme, please tell us about what worked less well in the process.

8.8 Not applicable.

8.9 Question 13: For those who are aware of the current advance assurances, but chose not to use them, what were the reasons for this?

8.10 CIOT members have said to us that the additional work required for the current advance assurance scheme is not perceived to be worthwhile. There is little benefit in undertaking the work for this, rather than for the claim itself. This was particularly the case historically when HMRC enquiry activity into R&D claims was low. However, even in recent years, when there is more likelihood of an enquiry, for most taxpayers, who are confident in their R&D claim, there is a perception that the cost and work required for the current advance assurance scheme is not worth it. Other reasons are that it is difficult to be certain about the details of an R&D project at the time a company might consider making an application for an advance assurance, as plans change and uncertainties arise as a project is undertaken. Further down the road, when the R&D project is well underway or completed, it makes more sense to do the work once and simply claim the tax relief.

The criteria of those who can apply for an advance assurance is limited, ruling out potential applicants.

Another factor reducing the attractiveness of the advance assurances is that (understandably) the guarantee around R&D tax relief claims being accepted is only given on the basis what the company does is in line with what was discussed and agreed in the application. Often it is not possible for companies, and particularly companies undertaking R&D for the first time, to have sufficiently certain plans for the next three years to obtain the full value of the advance assurance.

- 8.11 Question 14: Is the current focus in advance assurances on treatment of a whole claim right or should it focus on a particular issue or number of issues in a claim? (please select)

focus on the whole claim

focus on one particular issue in the claim

focus on more than one particular issue in the claim

other (please specify):

- 8.12 Question 15: Which issues in R&D claims are of the most concern?
- 8.13 On balance CIOT thinks that it will often be problematic to focus on just one aspect of an R&D claim because the whole picture is important in assessing eligibility. Also, focussing on one aspect will reduce the certainty – because the R&D claim could fail for another reason in a subsequent enquiry, or, indeed, a subsequent analysis by an adviser of whether there is a valid claim. This risk will reduce the value of any advance clearance received.

Issues that will cause concern will vary from taxpayer to taxpayer and project to project. However, an area that remains difficult in practice is the rules around contracted out R&D. The definition of contracted out R&D is subjective, and the lack of clarity continues to present challenges for companies considering whether they are entitled to claim R&D tax relief.

There may be more scope to focus on particular, difficult questions, rather than the whole claim, as part of a pre-activity assurance that is more informal in nature.

- 8.14 Question 16: Do you have any views on the current criteria for eligibility for advance assurances?
- 8.15 The criteria for eligibility for current advance assurances is very limited.

The size criteria leaves companies that are larger than the level of 50 employees or less, but are not large enough to have a Customer Compliance Manager (CCM), without any avenue to seek assurance from HMRC. Large businesses may have sound reasons for seeking advance assurances as well as small ones.

In addition, the criteria of only allowing first time claimants to seek advance assurance is too strict. Companies that have previously claimed R&D may still have concerns about new projects that would benefit from discussion with HMRC.

9 Voluntary assurances and deliverability

- 9.1 Question 17: Can you foresee circumstances in which paid-for voluntary assurances might be attractive?
- 9.2 It is difficult to see circumstances in which it would be attractive to pay for an assurance, and this would be a clear departure for HMRC in its approach to tax compliance. It is difficult to argue that it would be appropriate for HMRC to charge for a service that it is obliged by statute or stated policy to provide. Therefore, the payment would probably need to be for something beyond this. But ultimately this would be a cost v benefit analysis for taxpayers. Therefore, it would depend upon what is being offered by HMRC as to whether it has real value to the taxpayer, over and above the current statutory framework and compliance burdens; for example, if a clearance provides certainty, earlier payment of the tax relief and reduces the compliance burden (for

example, it removes the requirement to also file a claims notification (CN) form or an additional information form (AIF), as the information has been provided for the advance assurance, and HMRC provide certainty that there will be no enquiry). If an advance clearance was able to negate other compliance measures, this would be particularly attractive if an advance clearance permitted a company to submit an application for its whole group, thus significantly reducing the compliance burden of multiple AIFs.

Paying for a clearance is probably likely to be more attractive to larger businesses, particularly those who are not within the large business unit, so do not have a CCM. Currently some in this population are seeing long delays in receiving RDEC, coupled with a lack of information from HMRC as to their position. It may be attractive to these companies to be able to pay for certainty and a quicker resolution of their R&D claim.

Providing paid for services does, however, give rise to questions about equity and fairness to taxpayers who are less able to pay. We suggest that HMRC would have to have a dedicated resource that is paid for which should not be at the detriment of other services in order to ensure that those that can't or choose not to pay are not put at a disadvantage.

It would also be necessary to consider how payment for the clearance from HMRC would be structured and the extent to which a paid for clearance service could be perceived as being an alternative to paying an adviser if, in its simplest terms, a ruling by HMRC is considered to be the most cost effective way for a company to receive an opinion on whether or not its project qualifies for R&D tax relief. This could place HMRC in a position akin to providing advice and in conflict with advisers.

9.3 Question 18: Do you agree that a voluntary service could be focused on growing and high-potential companies as well as sectors set out in the government's Industrial Strategy?

9.4 As a matter of principle all companies should have access to the same level of certainty and assurance that HMRC is offering to ensure a level playing field. However, we recognise that thresholds or other parameters for who can utilise an assurance or clearance system may be needed to manage HMRC resource.

While we understand the rationale for focussing a voluntary service on growing and high-potential companies, identifying them with clarity will be difficult. As discussed in our meeting with HMRC, SIC codes are a very poor way of identifying types of business or sectors, and can easily be manipulated. Definitions of eligible groups of companies in legislation would also make it difficult for the government to be agile as new areas and sectors that should be brought within scope are identified.

9.5 Question 19: If not, at which companies should a voluntary service be focused?

9.6 We would prefer to see a voluntary service available to all potential R&D claimants, although companies with a CCM may be one group that could most fairly be excluded on the basis that they have an ongoing relationship with HMRC through which to raise concerns and questions.

Focussing a voluntary service on a specific and limited set of taxpayers is predominantly a question of available resource for HMRC. It will be important for the service to be properly resourced by HRMC staff who are well trained and have the necessary expertise in R&D, and the necessary skill set to engage collaboratively (including holding meetings) with taxpayers and agents to deliver a positive service. However, given the low take up of the current advance assurance scheme, take up of a voluntary service may be self-limiting, especially

at the beginning while companies and advisers assess its value and HMRC's approach. Thus, it would be better to initially offer the voluntary service as widely as possible.

Whatever is decided, we suggest that objective criteria are used.

As per question 29, Option A (pre-activity) may be more attractive for smaller companies who do not so easily have access to advisers). Option C (Post Claim, pre-payment) would be attractive to large and small businesses, for whom certainty would be equally important. Therefore, it is not clear that size of company has any rationale, other than to manage HMRC's resource.

Inevitably having thresholds for who can use a voluntary service will introduce complexity and cliff edges into the compliance landscape for R&D.

HMRC may wish to consider a pilot voluntary service for a smaller population initially to test the process and get it right.

9.7 Question 20: Do you agree there is a minimum expenditure below which significant R&D does not take place?
Question 21: If yes, please give that level (in thousands)

9.8 We do not agree that there is a minimum expenditure below which R&D does not take place. The question around 'significance' is misleading. Depending on how the term 'significant' is used, the R&D that takes place may or may not be significant. Although it will not be significant in terms of quantum/cost at lower levels, it may be significant in terms of importance of output.

There are strong views both in favour of and against a minimum expenditure threshold. The arguments for a threshold are broadly practical in nature, rather than ideological.

It is probably true that having a de minimis spend for an R&D claim would remove a significant amount of error and fraud. It would also reduce the administrative burden on HMRC, freeing up resource.

However, there are complications around how a de minimis level would be framed. For example, would it be possible for the spend to accumulate over several accounting periods? Also, for the smallest start-ups, often spend is very low due to there being little or no staff costs, as the work is being undertaken by the owner-managers. Should a notional amount for these labour costs be permitted in determining whether the minimum spend is met?

Also, a threshold for a minimum spend would drive poor behaviour, as companies sought to reach the threshold to permit them to claim.

A de minimis threshold would be discouraging to the smallest start-up companies undertaking R&D that the government wishes to encourage to drive growth. As a practical matter, it is probably true to say that in most circumstances below a certain level of spend the costs incurred in making an R&D claim (including the costs of a reputable R&D adviser) mean that making a claim is uneconomical, thus there is a de facto economic threshold. But, as a matter of principle, if R&D is being undertaken, tax relief should be available for it, whatever the level of the spend.

One suggestion would be to have a de minimis, but for there to be an exceptions process for those below the threshold, so that these companies have an opportunity to request an advance assurance if they are below the threshold and demonstrate that they are undertaking R&D.

9.9 Question 22: Do you agree that the assurances should be mandatory for some?

- 9.10 We can see that a mandatory assurance requirement for some could tackle error and fraud if well targeted (see also response to question 29 re Option B).

In our view if it were mandatory to seek an advance assurance before submitting an R&D claim, there would need to be an appeals process if HMRC decides there is not R&D and/or the ability to go ahead and claim anyway (like the current advance assurance scheme).

- 9.11 We challenge HMRC to consider what a mandatory assurance/clearance requirement would add to the existing compliance measures, particularly the claims notification (CN) requirement. The CN form alerts HMRC to a new claimant. The requirement to file a CN form could be extended to other categories of taxpayer that HMRC considers to be most at risk of error and fraud. Also, the CN form could be adapted to ensure that HMRC is provided with the necessary detail to effectively to risk assess the CN forms, so that HMRC can contact the potential claimant and/or open an enquiry if a claim has been made (depending on the timing), and HMRC has doubts as to the veracity of the claim. We suggest that this would be less resource intensive than considering an advance assurance application from all the same population.

CIOT would prefer to see the existing compliance measures better and more fully utilised by HMRC before layering on additional compliance burdens in every case.

We do not agree with the order of the flow diagram in the consultation document describing the steps in a normal R&D tax relief claims process. This shows the CN form being submitted as a second step after considering undertaking R&D. We suggest that ordinarily the CN form would be submitted much later than this. The deadline is six months after the end of the accounting period in which the R&D has taken place. This means that the CN form will generally be prepared and submitted after the company has drawn up plans and begun to undertake R&D – and much closer to the time of preparing a claim. This would sit much closer to the time of the pre-claim assurance is envisaged, that HMRC says is likely to be the focus of mandatory assurances.

- 9.12 Question 23: If so, what factors should be considered in determining who must seek assurance?
- 9.13 We suggest that consideration could be given to a system whereby HMRC calls in, or mandates an application for assurance or review of a potential claim if an assessment of the CN form by HMRC indicates that the claim may be dubious. This could provide a mechanism for HMRC to engage with a company and consider its R&D claim before the claim is made.

In addition to the current population who must submit CN forms, those making smaller claims could also be considered for 'mandation', so that they are given an opportunity to demonstrate that they are undertaking R&D relief even though they are below a minimum expenditure level.

It will be difficult to define rules which mean that certain sectors would have to get an assurance. Also, as with positively identifying companies that might be able to apply voluntarily (see question 18), it will be difficult to identify appropriate sectors in a timely way. The sectors at risk of abusive claims only become apparent once they have been targeted by unscrupulous agents for some time.

We would also note the complexities that have arisen because of rules relating to who must complete a CN form, particularly the transitional rule. It will be important for any rules and guidance around who is within scope of mandatory advance clearances to be clearer and better introduced than the CN compliance requirements.

10 Agents

- 10.1 Question 24: How can HMRC best recognise the role of agents in designing a clearance service?
- 10.2 The system should allow agents to submit requests for advance assurances on behalf of their clients, just as agents can submit tax returns etc.
- 10.3 We encourage HMRC to use the information it has regarding agents in focussing its compliance activity. However, the information currently gathered by HMRC is not as clear as it could be. The question on the AIF around what agent(s) is/are involved gives options of 'R&D Agent' or 'R&D Agent and Main Agent'. There is no (just) 'Main Agent' option. HMRC's guidance says that they view any agent involved in an R&D claim (including those that merely submit a claim or AIF) as an 'R&D Agent'. However, we suggest that the term 'R&D Agent' infers that there is involvement in the preparation and review of the claim, over and above the mere submission of it (after due consideration of the agent's obligations under PCRT). We recognise HMRC want to identify all agents involved but suggest it would be preferable to determine through the AIF who actually prepared/reviewed the claim, and if relevant, separately, who filed it. The current limited options will not give HMRC this clarity.

11 Options under consideration

- 11.1 Question 25: Do you see value in pre-activity advance assurance?
- 11.2 We do see a value in this. While it may not be possible for a pre-activity advance assurance to provide much in the way of certainty, it may nonetheless be helpful to provide a company with some insight into what is required for an R&D claim.

It would be preferable for a pre-activity assurance to be an informal resource rather than a statutory process. If this was staffed by those with sufficient expertise and knowledge to provide guidance to a company in the early stages of an R&D project, it could deliver on the aim of improving the customer journey. An informal process would also reduce the costs that would have to be incurred by a company to access the help offered by HMRC. The availability of a conversation with HMRC would help to reduce error, and, through, general awareness of the resource, educate taxpayers around R&D so to some extent reduce fraud.

- 11.3 Question 26: If so, what sorts of issue might be raised with HMRC?
- 11.4 The issues that a company may wish to explore with HMRC would vary depending on the nature of the project and the precise timing of when the assurance is sought. However, a system around this option could provide assurance around key questions such as identification of the baseline and discuss whether other aspects such as the proposed advance being sought are ticking the right boxes. HMRC could give this assurance with guidance about scientific or technological uncertainties that also need to be established for a valid claim for R&D tax relief. CIOT believes this would be very helpful for companies to understand the likelihood of success of a claim in a proposed area of R&D, and at the same time could help HMRC to identify or filter out clearly ineligible areas early on.

It may also be able to address questions specific questions about the application of some of the rules to a particular project or situation or questions around sample projects where a company has a lot of similar ones or carry-forward of approval (for example from another assurance route, or outcome of an enquiry) over several years.

11.5 Question 27: What sort of information might companies be able to provide to HMRC at this stage?

11.6 This will be case by case dependent.

11.7 Question 28: Which of the options A to C do you think would be most useful? (please rate all options: not useful, somewhat useful, useful). Question 29: Please give reasons.

11.8 Option A – pre activity – voluntary – somewhat useful

This could encourage R&D and be useful for companies that cannot afford to pay an adviser at an early stage. It would also be attractive if, for example, it removed a company from the de minimis threshold, operating as part of the exceptions to that, assuming that HMRC agreed that there would be R&D.

11.9 Option B – pre-claim – binding – mandatory for some – somewhat useful

Although a mandatory assurance system for specified sectors/target populations of companies could be useful for reducing error and fraud, it will present difficulties around identifying who it should apply to. It also carries a significant risk of causing collateral damage for genuine claimants that fall within any designated sectors and undermining the overall policy objectives of R&D tax reliefs, in the same way as the volume compliance approach to enquiries has done.

A mandatory assurance system would further complicate an already complicated and overly burdensome compliance landscape for R&D tax relief. It would require a robust appeal process, or the ability to claim R&D even in the event of HMRC ruling that the activities are not R&D.

CIOT's view is that the approach to voluntary and mandatory assurances should and would necessarily be different because of the different primary policy aims for each. The policy aims of providing certainty and improved customer experience would require a voluntary advance clearance system that is enabling and helpful for customers; whereas a system focussed on tackling error and fraud would have a different approach.

The danger with having one advance assurance system that is voluntary for some and mandatory for others seeking to address all the policy aims, is that it does not deliver any benefit for taxpayers, particularly around improved customer experience. The current situation of low trust in HMRC's consideration of R&D tax relief claims through the volume compliance enquiry process means that there is likely to be a very low take up of a voluntary assurance system unless it is clearly seen as delivering a fair, properly considered outcome that helps companies that wish to invest. We fear that a system that has a mandatory aspect built into it, which necessarily focusses on error and fraud, will make a positive experience and outcome less likely for voluntary applicants.

We would prefer to see the existing compliance measures of the CN form and AIF better utilised to combat error and fraud, and for the advance assurance proposals to focus on the other policy aims providing certainty and improving the customer experience through a well-designed voluntary advance assurance system.

11.10 Option C – Post-claim, pre-payment – voluntary – somewhat useful.

Take up of this option will depend on its design and how it is implemented by HMRC. It will effectively be a company volunteering for an enquiry (or at least consideration of whether there should be an enquiry) in exchange for knowing that if, following consideration of the assurance application, HMRC is happy with the R&D claim, the payment of the tax relief is certain. Whether or not this is an attractive trade off will depend on the faith that companies and agents have in the assurance/review process. Will HMRC be able to conduct a review of the R&D tax relief claim in a timely manner and, in appropriate circumstances, be able to move to

payment and confirm that the claim will not be selected for enquiry? Or will the default position of request for pre-payment assurance under Option C be an enquiry?

What information would have to be provided to HMRC over and above the AIF and a report that is usually submitted with an R&D tax relief claim?

Would there be an 'enquiry lite' period of engagement to help HMRC reach a conclusion? Initially, expectations will be strongly tempered by the recent experience of the volume compliance approach. If Option C is experienced by agents and companies as an automatic move to a full enquiry, with no engagement with the information provided to HMRC, nor the possibility of meetings etc., then any initial take up will quickly dwindle.

12 Other suggestions

- 12.1 Question 30: Please give any other suggestions you have for useful changes to R&D relief administration, particularly those that would address error and fraud.
- 12.2 We suggest that the information being received by HMRC on both the CN forms and AIFs could be better utilised to help HMRC target their compliance resources, particularly the CN forms. A further period of time should be allowed to give HMRC time to assess the efficacy of both of these compliance measures and form a view as to whether the information being asked for is the most relevant and helpful. To the extent that information is not being used by HMRC, requests for it could be removed to reduce the compliance burden.
- 12.3 As noted in our responses about a mandatory clearance system, consideration could be given to a system whereby HMRC calls in, or mandates an application for assurance or review of a potential claim if an assessment of the CN form indicates that the claim may be dubious. This could provide a mechanism for HMRC to engage with a company and consider its R&D claim before the claim is made.