



## R&D TAX RELIEF ADVANCE CLEARANCE CONSULTATION

Issued 21 May 2025

ICAEW welcomes the opportunity to comment on the R&D Tax Relief Advance Clearance Consultation published by the government on 26 March 2025, a copy of which is available from [this link](#).

For questions on this response please contact our Tax team at [taxfac@icaew.com](mailto:taxfac@icaew.com) quoting REP 40/25.

This response of 21 May 2025 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 172,000 chartered accountant members in over 150 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

## KEY POINTS

1. ICAEW members were of the view that there are significant barriers for even compliant taxpayers to get R&D claims agreed to by HMRC. Because of this, many members thought that claimants may choose to deal with HMRC questions as and when they were selected for an enquiry. As such, members were unanimous in the view that take-up of any advanced assurance may be small-scale, especially with smaller claimants.
2. Members stressed the need for any revised voluntary assurance scheme to have a clear policy intent to expedite investment, guaranteeing quick and efficient turnaround times and a reduced compliance burden going forward for those businesses found to have robust R&D claims.
3. Many members were concerned as to whether HMRC had capacity in the appropriate resources to manage an advanced assurance scheme. Thought will therefore need to be given as to how any initiative will be staffed and this will need to be communicated effectively to incentivise take-up.
4. Regarding the timing of any assurance, members were concerned that early assurance may be challenging due to the limited information available and it would be important that those who gain clearance (especially voluntary participants) have certainty over the tax treatment and some form of incentive (eg, a reduced compliance burden going forward). This may be difficult to achieve with an early application for assurance.

## BACKGROUND AND CURRENT ENVIRONMENT

5. The lack of confidence in the existing compliance process for R&D is exacerbated because of the extra compliance and associated costs already placed on taxpayers in recent years by measures such as the additional information form (AIF) and pre-notification claim form (PNF). Members suggested that there had been so much change and increased work for claimants that this would also likely reduce take-up of any advanced assurance scheme.
6. Furthermore, many claimants are still facing opening enquiry letters containing standard and generic questions which indicate that the AIF has not been reviewed, nor the claim risk assessed. While members are largely very positive about claims being managed out of Wealthy and Mid-sized Business Compliance (WMBC), the environment for claims managed out of HMRC's Individual Small Business Compliance Unit (ISBC) is still very difficult. Members were keen to understand how any new team would be resourced. Members are sceptical as to whether HMRC has the appropriate resources to deliver an effective advanced assurance scheme.
7. Many members suggested that HMRC look to leverage mechanisms already in place (like the AIF) more effectively to manage error and fraud as well as expedite compliant claims rather than introducing new initiatives. A new advanced assurance system simply represents more change in a regime which is already regarded as relatively unstable with onerous compliance requirements. For example the AIF could be adapted to gather better information. Many enquiries open with a standard set of questions that are identical across large numbers of taxpayers. Members have queried why these are not included in the AIF? Adapting the AIF and other existing processes such as the PNF would appear a much less complex way to achieve some of the aims of this consultation.

**EXISTING ADVANCE ASSURANCE SCHEME (QUESTIONS 10—13 & 16)**

8. The existing scheme is aimed at relatively small companies which many members indicated ruled out a significant proportion of their R&D client base.
9. However, a lack of confidence in the benefit of seeking assurance (over and above 'waiting' for a standard enquiry) was also cited as the main reason clients were deterred. There was a sense that assurance would simply bring forward an enquiry, which are notoriously difficult to bring to a conclusion in the current environment, particularly at ISBC.
10. Other members also stated that, as previously there were not many R&D enquiries, advanced assurance was not regarded as necessary.
11. There is limited confidence that HMRC will seek to work objectively with business to establish whether a project is eligible for R&D relief, in particular working with individuals/competent professionals to close any gaps in HMRC's technical knowledge.
12. Members have limited confidence that the advanced assurance would be honoured, citing examples of where assurances have been given only to have a subsequent enquiry opened by a new caseworker who interprets the project details differently and seeks to reject the claim.
13. Sometimes there isn't the time to go through advanced assurance before any advance claim notification is due. Some newly establishing SMEs may only seek support to make an R&D claim close to the filing deadline because resources are so stretched with founder/directors managing a breadth of business and compliance matters.

**FOCUS OF NEW ASSURANCE SCHEME (QUESTIONS 14—15)**

14. Please see further comments under header below 'voluntary assurance service' for more information on this re voluntary applications.
15. Members thought that it would be helpful to be able to gain assurance over a specific issue or several specific issues, especially regarding larger, more complex cases. It would likely make any clearance process more accessible and efficient, enabling both taxpayers and HMRC to focus resources on the riskier areas of any claim.
16. However, some suggested that for smaller claimants, it was likely they would want assurance over the whole claim.
17. Again, see further comments below around the benefits of a voluntary assurance scheme which sought to reduce the administrative burden for businesses.
18. Subcontracting and identifying who is eligible to make the claim can be complex in some supply chains. Clarity and assurance over this would be helpful, though HMRC would need to consider how it will ensure clearance is not given to more than one company for the same R&D spend/project.

**VOLUNTARY ASSURANCE SERVICE (QUESTIONS 17—19)**

19. Members felt a voluntary service could be attractive if managed in the right way and the way HMRC approach implementation would be key to incentivising taxpayers to use this avenue. Confidence is low so that any new clearance process will need to run effectively and efficiently from the outset, otherwise uptake will rapidly reduce or not gain momentum. Design and management, as well as knowledgeable HMRC staff on the technical aspects of R&D will be paramount. Businesses will need to be absolutely clear on what is the upside of

gaining assurance and, conversely, what are the associated risks and costs of any application.

20. Being clear on the policy intent will also be very important. A voluntary service should have a commercial and pragmatic focus, aimed at attracting inward investment into the UK and incentivising investment domestically. HMRC teams will need to work at pace to come to a decision so that businesses can make commercial investment choices in a timely manner. If HMRC's approach appears to be centred solely around identifying error and fraud, this is unlikely to be attractive as taxpayers (even the most compliant) may feel it simpler to wait for a standard enquiry.
21. In terms of whether taxpayers would be prepared to pay for clearance applications, members confirmed that no clients have suggested that they would pay for a clearance, but they could envisage certain circumstances where clients *may* be prepared to invest in certainty. Anecdotally members spoke of clients paying for clearances when investing in big projects overseas to gain clarity over the tax treatment (eg, one member indicated a client had paid USD \$10k to gain tax certainty over a large capital investment into the US). However, taxpayers would need to be clear what assurances the clearance gave them and what would the consequences be in the event HMRC declined the application? Given the increased compliance costs of R&D more widely, this type of cost is only likely to be borne by larger businesses with higher value claims. HMRC would therefore need to consider the impact on smaller claimants.
22. Eligibility for R&D often relies on a deep understanding of the advancement in science and technology. Some members suggested that many of the existing clearances offered by HMRC are in areas where arguably HMRC staff understand the application of the tax rules far better than many taxpayers. Taxpayers and relevant competent professionals are likely to be in a better position to understand advancement in science and technology than HMRC. Any advanced assurance system needs to consider this and provide a process that manages this imbalance such that claimants receive certainty in an efficient timescale. For example, HMRC's work could consider the credibility of the competent professional and the robustness of the processes involved in making the R&D claim where the relevant scientific uncertainty is unfamiliar.
23. Some members suggested that certain clients may be prepared to pay for certainty over complex aspects of the claim rather than the entire claim. This would likely reduce the cost and time involved in gaining assurance. For example, enquiries can often become protracted and detailed around methodology regarding sampling and/or cost apportionment. Similarly, use of overseas employees can be another challenging area.
24. To conclude, taxpayers would expect a high degree of certainty and confidence that the specific aspects of the assurance would not be revisited unnecessarily soon. There would need to be a clear benefit in achieving advanced assurance. How would their position change from those that didn't seek voluntary clearance? For example, guarantees around minimal or no compliance activity for a specific period (eg, three years) could be attractive.
25. Members also suggested that an optional/voluntary clearance process to try to reduce the administrative burden of claims might also be attractive. One example that could reduce the compliance burden for some taxpayers is HMRC agreement that one AIF could be submitted for the whole group.

## DE MINIMIS THRESHOLD (QUESTIONS 20—21)

26. While there was no clear consensus from ICAEW members concerning a de minimis, there were notably more members in favour of this with many suggesting that, in effect, there was

already a de minimis given the compliance costs involved in getting a claim agreed by HMRC that had made smaller claims uncommercial.

27. In terms of what quantum at which a de minimis should be set, again there was no clear answer, although figures of £50,000–£100,000 were suggested. Members did also stress that an R&D project might not fit squarely within one accounting period but straddle two with expenditure split across both periods and therefore this needed to be considered when setting a de minimis.
28. As for whether genuine R&D activity can exist at lower expenditure levels, members suggested that it could. Genuine projects can start as research in a university with minimal professor and academic cost. By introducing a de minimis, government would have to accept that otherwise eligible smaller enterprises would be precluded from benefitting from R&D tax relief. The potential upside of this may be an improved compliance environment and a freeing up of HMRC resources.
29. However, many members queried what HMRC resources a de-minimis would free up, concerned that the greater problem was lack of training and experience of HMRC staff in managing R&D enquiries. Should ISBC resource simply be re-deployed into managing clearances, this is unlikely to improve the situation and may even deter claimants from seeking advanced assurance.
30. ICAEW members were also at pains to reiterate that the figures around non-compliance at the smaller end of the market are likely to be skewed by those ‘withdrawing’ claims due to the prohibitive and disproportionate costs of defence for smaller claims. Many members stated that they had clients who had withdrawn claims for these reasons.
31. Some members were against a de minimis, believing that it could create a cliff-edge, even indicating that it could encourage dubious claimants to ‘inflate’ costs to meet the de minimis threshold.

## **MANDATORY ASSURANCES (QUESTIONS 22—23)**

32. It was noted that if the clearance procedure has a mandatory angle to it (eg, for certain industries), it may be difficult perception-wise to convince taxpayers that the voluntary route is anything other than an advance on an enquiry, especially if the same HMRC team is managing mandatory and voluntary clearances. A different skill set will be required for voluntary applications and a very different focus. Taxpayers may need to be convinced that this is operationally achievable by HMRC.
33. Members were not against making the assurance process mandatory for some but had strong views that the criteria for this needed to be managed with the utmost care so as not to unduly affect compliant businesses.
34. While members could see why HMRC may suggest specific industries and sectors, there was concern as to how these would be effectively identified. The use of SIC codes has been done historically and often does not result in the correct businesses being selected for scrutiny.
35. Some members suggested that one option to identify suitable businesses for mandatory clearances might be to include first-time claimants and those businesses who had filed incorrect claims, resulting in significant/material adjustments.

**ROLE OF AGENTS (QUESTION 24)**

36. While members could see the benefit of restricting the advanced assurance scheme to those represented by affiliated agents, there was general concern around how this would be policed effectively.
37. Furthermore, those businesses who do not have an agent may seek to use the HMRC clearance system in the first instance, which could be beneficial in incentivising R&D and improving compliance. However, this is also why it is important that HMRC staff are appropriately trained as new, unrepresented claimants (possibly start-ups) will likely take HMRC's word for their eligibility, and new innovative projects may not receive the R&D relief they are entitled to if they are inaccurately refused.
38. Some members mentioned that agents could 'apply' to HMRC for authorisation to submit clearances, effectively demonstrating their credentials as an agent/adviser, with a view to HMRC allocating the agent an HMRC contact (similar to a Customer Compliance Manager). This would also improve confidence that the clearance system would be run smoothly and more effectively than the current enquiry process.

**TIMING OF ASSURANCE (QUESTIONS 25—29)**

39. Members were relatively relaxed around the timing of assurance with no strong views on this. However, there was general concern that with early-stage clearances (such as during pre-activity) it may be difficult to provide HMRC with sufficient information to give comfort concerning the claim and there may be a disparity in expectations from HMRC about what information is likely to be available at this point from businesses. For the clearance process to be effective it would be important for both HMRC and the taxpayer to gain certainty from the process and this may not be achieved if the clearance application is made too early.

**OTHER POINTS (QUESTION 30)**

40. For voluntary clearances, it will be important that this process offers businesses something over and above a standard enquiry. Many members inform us that parts of HMRC are still unwilling to hold meetings to help resolve open enquiries. The opportunity to have meetings with HMRC (even a Teams call) would be a positive step forward and an incentive for many businesses to consider voluntary clearance. It would also be a clear signal from HMRC that it is prepared to invest time and resources into the new system which would be managed more collaboratively than a standard enquiry.
41. Some have suggested that the advanced claim notification process is unhelpful, especially for smaller, growing businesses where founders may have a diverse role with limited professional support. They may not even turn their mind to R&D tax relief until it is too late, with genuine claimants missing out on the relief. One option could be to remove the advanced notification requirements and replace with a more targeted mandatory advanced clearance requirement in certain circumstances.



## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).