

## Are they really listening?

Richard Edwards highlights the human cost of HMRC tightening access to R&D tax relief

Over the past 18 months, much has been written about HMRC's tough new approach to compliance within R&D tax relief. Although, at this point, it's only 'new' in the context of the past two decades, in which HMRC generally seemed content to assume that the scheme was ticking along just fine and that claimants and their advisors could be trusted to stick to the letter and spirit of the programme.

As we all know now with hindsight, the problems within R&D tax relief went deep. Things were emphatically not fine. A worrying number of claims were clearly wide of the mark – some of which ended up featured in the national press. The pressure on HMRC to act spiked, and this led directly to where we are today – with the [FIS, WMBC, ISBC, SOLS](#) and ADR teams all involved to trying to rein in, chastise or negotiate with claimants and advisors.

Unfortunately, while most advisors would agree that 'something needed to be done', those same advisors would probably also agree that HMRC's recent interventions are having serious and presumably unintended consequences on both claimants and their advisors. Some of these changes could have a significant impact on who will be using the R&D scheme in the future.

### Impact of HMRC's tactics

Let's take stock of the tactics that HMRC has been using to improve compliance – and the impact of these on the claimants and advisors who've been exposed to them.

### Template driven processes

Given the sheer volume of R&D claims made each year (around 65,000 in '22/'23), HMRC didn't have the resources to lavish each enquiry with time and attention. Instead, many enquiries (from ISBC, at least) followed a template-based process. The steps involved seemed to be:

Letter 1 – "Your work doesn't appear to be R&D. Please answer this long list of generic questions about your claim."

Letter 2 – "Please provide a long list of further information to evidence your claim."

Letter 3 – "We don't think that any of your work is R&D."

For claimants and advisors who'd taken the time to prepare and submit detailed information via the Additional Information Form (AIF) and an accompanying report, this was deeply frustrating. HMRC didn't appear to be reading and considering the information sent to them, which led advisors to wonder why they'd bothered to prepare the detailed report in the first place.

### Denied by default

Advisors also quickly realised that these new enquiries were not like the ones of old. Rather than being a two-way exchange of information that led to negotiation, agreement and settlement, HMRC seemed to be taking the view that if a claim had been flagged for enquiry

this meant that *none* of the work qualified. Many advisors felt that HMRC had effectively decided to deny the claim *right at the start of the process*, and that it was close to impossible to change their minds, irrespective of how much information or testimony was provided or offered. While the claimant was usually frustrated to be told that none of their work qualified, advisors were hit even harder. Not only did they have to deal with a 'No' for this particular client, they had to prepare to fight the same battle for their other clients, too.

### Hiding behind anonymity

Another tactic HMRC adopted was one of anonymity. If an enquiry was opened by WMBC, the claimant and their advisor generally had a named individual that they could deal with over email, and even by phone! However, if you got an enquiry from ISBC there was no named caseworker; letters were signed off by the department rather than a person. This allowed HMRC's staff to jump into enquiries as and when action was required, rather than having one person manage them from start to end. Operationally that made sense, as it prevented long delays to an enquiry when an individual staff member moved on. However, this task-based approach often made it difficult for a company to convey the nuances of its work, and it was clear that HMRC's staff weren't doing a great job of passing on information. This meant that companies frequently had to explain the same things multiple times, leading to feelings of resentment that HMRC was wasting valuable time.

In terms of how all of this has affected the R&D advisory market, there have been some pretty significant impacts. Yes, some less reputable advisors have shut up shop or moved on to other opportunities, few will mourn that. However, there has *also* been a marked trend of regulated accountants stepping away from R&D and moving back to outsourcing the service to external, specialist consultants. It's not hard to see why – HMRC has introduced so much complexity, and has taken such an aggressive stance towards smaller claimants that many accountants have simply decided that the work involved is no longer worth the effort, risk or stress.

The reason this trend is remarkable is because it's exactly what HMRC *didn't* want. In last year's consultation on raising standards in tax, it was clear that HMRC's strong preference was for everyone offering an R&D service to be regulated by the professional bodies. And yet the way they've approached compliance is driving business *away* from regulated accountants towards (largely) unregulated consultants.

The pain is also being felt by claimants, many of which have been claiming for several years. Some have been taken by surprise by the marked change in HMRC's attitude, complaining that the tax body is hard to work with and doesn't understand their work or technology. When coupled with hefty fines for claim 'errors' (which are often subjective), it's not hard to see why some companies are now wondering whether the reward is worth the risk. They see HMRC creating a 'hostile environment,' especially for smaller companies. They do not feel trusted or listened to, and feel insulted to be told (often by people with few technical qualifications of their own) that their work doesn't qualify. This exasperation will surely result in fewer companies trusting HMRC, and some making the move to more business-friendly climes abroad.

### How do things get better?

In an ideal world, HMRC would start to listen more carefully to the people working in this area and the companies they represent.

Ideally, they'd go back to treating each enquiry as unique. Rather than dogmatically following templates and checklists they'd review and consider the information provided, then ask specific questions about the client's work. This would show the claimant that HMRC was genuinely seeking to understand their claim, rather than rushing to judgement.

Secondly, HMRC would offer companies a chance to discuss their work face to face, rather than relying entirely on written communication (in which misunderstandings can arise all too easily.) This could also work well for HMRC, as it would be easy for them to identify situations in which the claimant doesn't have the necessary competent professionals to support their claim.

Third, many of the frustrations of claimants and advisors would be reduced if they had a clear picture of the status of their claim or enquiry at every stage. This would give advisors and their clients a much better idea of when the claim was going to be processed, and HMRC would waste less time sending updates in response to email enquiries.

Of course, for this to work, HMRC would need to have more staff, and those staff would need to be trained to a sufficiently high standard to handle the R&D scheme's many complexities. This would involve HMRC investing in better systems, both for training and to share the progress of a claim.

Finally, and most importantly, decisions about R&D claims should be impartial, and based on evidence and objective standards rather than the assumptions of people with limited experience of technology who are under political pressure to reduce claim numbers. This could involve input from other government departments with more knowledge of technology, or from HMRC's soon-to-be-formed R&D advisory panel.

Of course, this is just a wish list and the reality is that HMRC has neither the resources nor the inclination to implement most of these in the immediate future. So what can advisors do in the here and now?

### Surviving the R&D purge

With the HMRC juggernaut unlikely to change its approach any time soon, it can be easy for advisors to feel despondent. After all, why take clients through a careful and thorough process if the answer's going to be 'no'? What's the point of painstakingly answering HMRC's questions if the answers aren't going to be acknowledged or factored into their decision? And why is it so hard for HMRC to differentiate between completely baseless claims and those that have at least an element of qualifying work – why are they all treated with the same broad brush?

Surely if HMRC is going to administer a complex scheme, and 'improve' it by gradually making it even more complicated, it should have the ability to handle nuance much better than it's currently doing?

However, there is at least some light in an otherwise gloomy situation. Realising that there is strength in numbers, R&D professionals (both regulated and not) have been pooling their experience in online communities that form around training and support services.

This allows people to put questions to their peers, and to share their own perspectives and experience. The benefits of doing so are not only the information exchanged, but also on the emotional and human side.

When people are working alone, or as part of small teams, it's very common to feel a sense of isolation and unease. Are we really doing the right thing? Is everyone else experiencing these problems? Are we missing something? All of these questions are very natural to ask – and being part of a community of peers goes a long way to getting answers.

Some have questioned by advisors would voluntarily help their competition, but to me this misses the point. Most people like to help other people because they feel that they are 'paying things forward'. If you help someone today, it's very likely that they or someone else will help you tomorrow when you need something.

In an age of rapidly advancing technology and social media that seems designed to drive us apart by stoking outrage and confrontation, community-based co-operation stands out as an effective and very human-oriented way to deal with anxiety, isolation and imposter syndrome. Its success lies in human nature and our collective desire to help and look out for others with interests common to our own. And when you're faced with what can feel like overwhelming complexity and HMRC-induced frustration, that can be reassuring and valuable in both practical and emotional ways.

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