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R&D Tax Reliefs: Consultation  
Submitted by email to:  
[RDTaxReliefs@hmtreasury.gov.uk](mailto:RDTaxReliefs@hmtreasury.gov.uk)

2 June 2021

Dear Sir or Madam,

### **R&D Tax Reliefs: Consultation**

This is MMP Tax's formal response to the "R&D Tax Reliefs" consultation. We have surveyed research intensive firms and provided a summary of their responses.

### **About MMP Tax**

MMP Tax provides specialist technology-based tax consultancy for corporate clients. Specific areas of our expertise include tax reliefs for research and development, patents and the creative sectors,

At MMP Tax we combine specialist knowledge of technology tax reliefs with practical experience in engineering and scientific disciplines. We apply these skills in a client-centric way to ensure our clients submit robust and verifiable claims respecting government policy and intent.

The directors of MMP Tax have decades of direct experience in technology tax relief from a technical and consulting perspective, in addition to wide-ranging experience in industry. MMP Tax currently has representation on the HMT-HMRC consultative committee for R&D Tax Relief and has participated in many previous consultations with HMT-HMRC.

Further feedback from MMP is available on any and all aspects of this consultation response. We would be more than happy to have a discussion to clarify or add to any of the points.

Yours sincerely,

Alexis Marz  
Director  
MMP Tax Limited

### **Enclosures:**

Appendix I - Our Response to the Consultation Questions

## Appendix I - Our Response to the Consultation Questions

**Question 1: “Do you consider yourself to be a research-intensive firm? How does your business benefit from the R&D reliefs (e.g. cashflow, reduced tax liability)? If your company is an SME that claims under both the SME tax relief and RDEC, what is your experience of using each scheme and how do they compare?”**

We are a consulting firm that has been specialising in helping companies to claim the R&D reliefs for the last nine years. We polled our clients and other research intensive firms. We have provided a summary of their responses along with our feedback below.

**Question 2: “Is there a case for consolidating the two schemes into one? What do you value about the design of the current schemes that might be lost if they were unified?”**

We believe that the two schemes should not be combined but that there is a case for simplifying the SME scheme with some aspects of the RDEC scheme.

SMEs do not need credit above the line (as in the RDEC scheme), from an accounting perspective, it makes it more complex for them. In addition, most small companies’ finances are usually simpler and so the impact of the R&D reliefs is felt by the decision makers without the need to allocate an above the line credit to the departments carrying out R&D.

We believe that one of the best things about the RDEC scheme is that it offers all companies a consistent rate of support. This is fair to loss-making, breakeven and profit making companies alike and allows them to accurately plan how much support they will receive. This is not the case for the SME scheme.

Currently, under the SME scheme, profitable companies with carry forward losses should be able to benefit but cannot. The R&D Tax Reliefs are intended to support and encourage R&D, but in this instance, it does not do that and it punishes profitable companies.

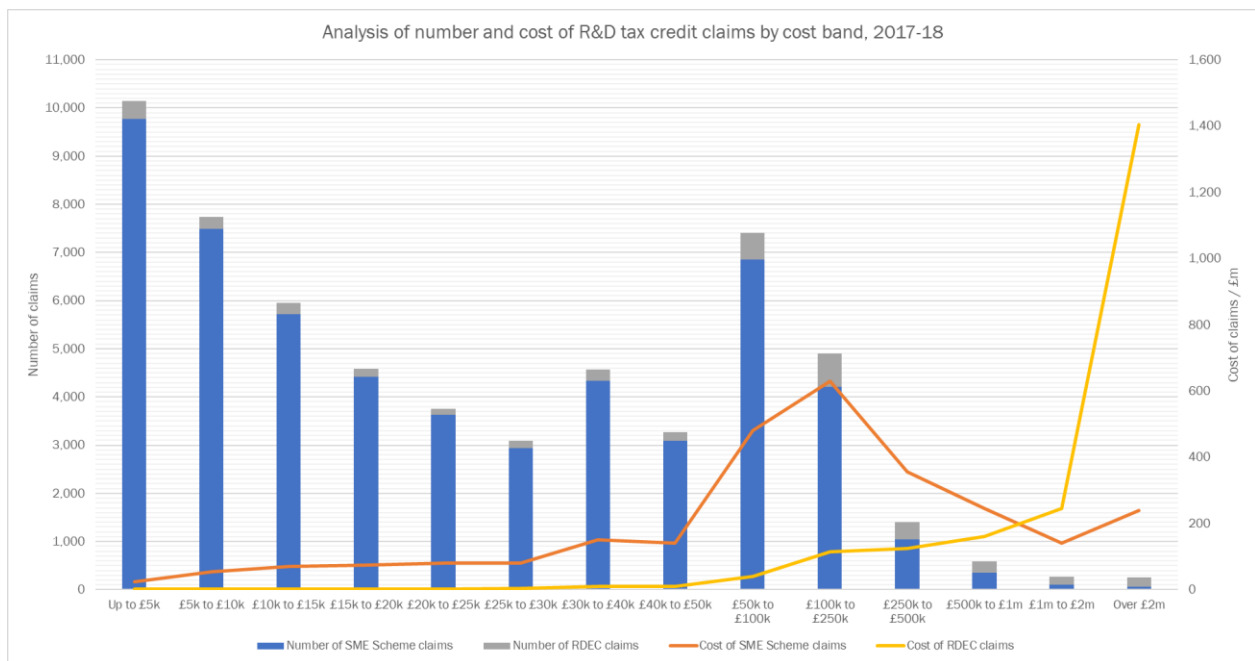
We believe the SME scheme should have a consistent rate of support that does not change as the company’s profitability approaches breakeven. This would encourage R&D, support companies through financial troubles and better allow companies to plan how much benefit they will receive.

However, there should still be different rules for different sizes of companies – particularly around subcontracting. This enables the smaller company to claim the incentive and does not result in double counting, which would be lost if the schemes were combined. It is important that subcontracted expenditure is still allowed in the scheme because it does not always make commercial or economic sense to carry out all the work in house. Also, subsidised expenditure (for example, grant funded expenditure) should not benefit from the higher rate of relief, which would happen if there was only one scheme and one set of rules.

We carried out a poll of our clients and London Business School alumni to gather a response to this question. We asked: “Do you think the two schemes (SME tax relief and RDEC) should be combined into one scheme?”. All of the respondents said “Not sure” in reply to this question. We think that individual research intensive companies are not best placed to answer this question, but it is only expert consultancies, such as ourselves, who have the deep knowledge of the schemes and are able to answer this question properly.

**Question 3: “What do you think explains the difference in additionality between the two schemes? How could the schemes be improved to incentivise the R&D your business does or might consider doing? Can you give evidence to support your suggestions?”**

We believe it is because the SME scheme is more widely abused. There are a large number of small claims that are not eligible. HMRC does not open enquiries on these and they are waved through. ONS has only recently made data available<sup>1</sup> breaking down R&D Tax Relief claim sizes and numbers into different bands. This is hugely illuminating.

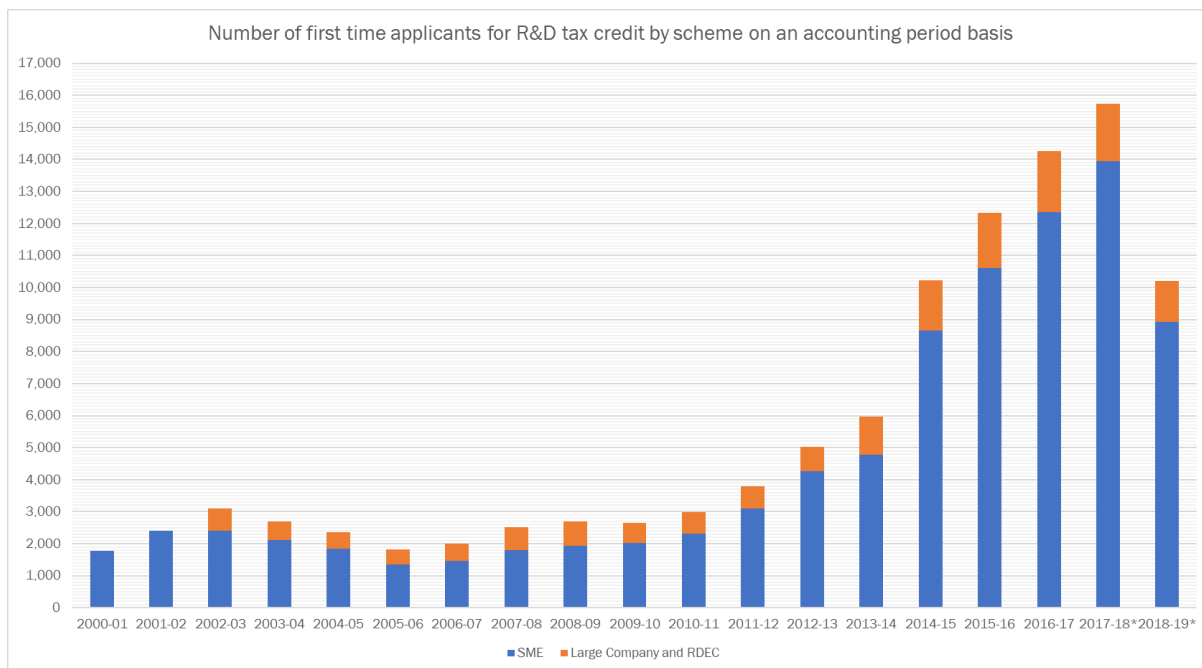


\* Includes incomplete data related to claims still being processed.

The two largest cost bands in terms of number are claims up to £5k and claims between £5k and £10k. However, these represent the two smallest bands in terms of claim size. The removal of the minimum R&D expenditure of £10,000 made these small claims allowable from 1 April 2012.

Given the need for an eligible R&D project to be seeking to achieve an advance in science or technology and facing a scientific or technological uncertainty, it is difficult to see how the entirety of a company’s claim for the year of less than £5k, would meet these requirements.

<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/921791/R\\_D\\_Tax\\_Credits\\_Combined\\_Tables\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921791/R_D_Tax_Credits_Combined_Tables_2020.ods)



\* Indicates incomplete data related to claims still being processed.

We believe that the huge growth in the number of small SME claims in the last 10 years has been largely driven by aggressive R&D Tax Relief Claim consultants. These firms operate in a similar fashion to PPI chasers employing a shotgun, robocall approach to win potential clients and who then have little regard for the true R&D eligibility of the work carried out. This has resulted in a flood of small R&D Tax Relief claims by new claimants.

We have seen evidence of this in our discussions with potential clients:

- From an architect telling us they were successfully claiming the R&D Tax Relief and when pressed to describe their eligible R&D it became clear they were doing absolutely no work which would meet the BEIS requirements.
- To a different company who had not done **any** R&D or incurred **any** expenditure on R&D but had accrued expenditure against potential work, who had claimed the R&D Tax Relief and had been told by their accountant that HMRC would never look because it was such a small claim.

The additionality ratio is likely worse for the SME scheme because there are many more ineligible claims that are not associated with real R&D spend, and thus there is no additionality to report in these cases.

In contrast, the RDEC scheme is better policed by HMRC. There are also more incentives and motivations to ensure claims fully meet the CIRDS requirements. For example:

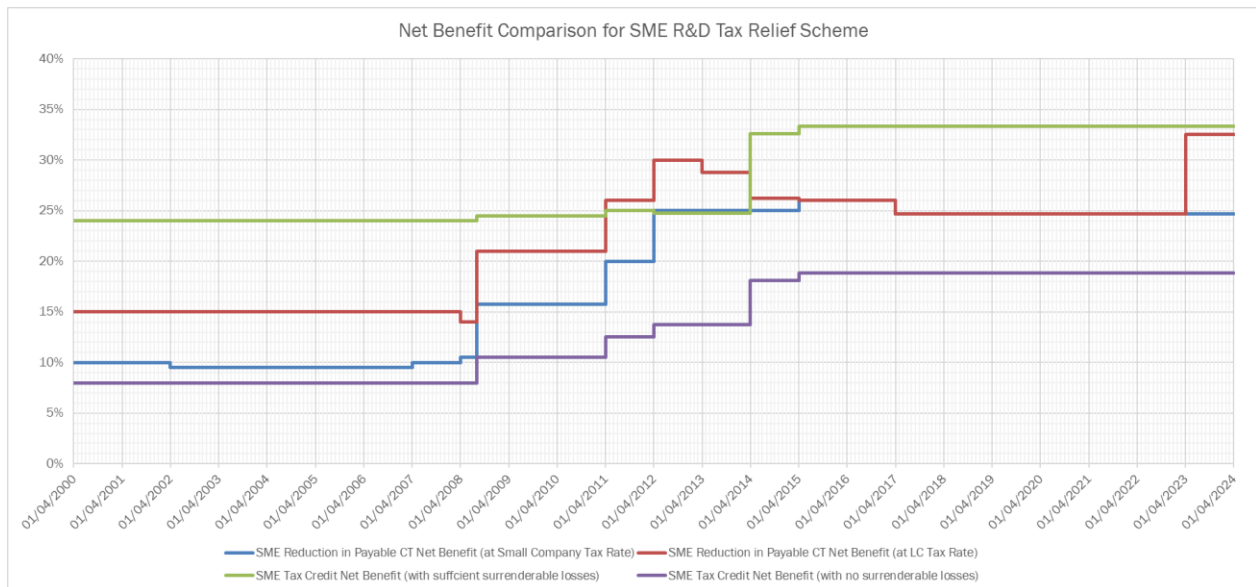
- RDEC claimed is shown publicly in company’s statutory accounts, increasing accountability;
- Large companies must appoint a Senior Accounting Officer who must take reasonable steps to ensure that the company has appropriate tax accounting arrangements in place, increasing accountability;
- Public opinion is much more impactful to larger companies who are more in the limelight, increasing accountability;

These factors ensure that the support is better targeted, which in turns results in better additionality of the RDEC scheme.

The main takeaway here is that most RDEC claims are made by larger companies that have increased accountability compared to SMEs. Therefore, one can assume that more RDEC claims are indeed legitimate. The same accountability does not exist for most of the SMEs that claim under the SME scheme. In combination with HMRC’s lack of appetite for opening enquiries on smaller claims, the SME scheme is ripe for exploitation in comparison to the RDEC scheme, as indicated by the significantly lower additionality ratio.

**Question 4: “To what extent do the rates of relief available to you impact your investment decisions and/or your choice of location? Is the balance of relief between the two schemes appropriate? Is there any evidence of significant deadweight where investment decisions would proceed without relief?”**

The band of benefit for the SME scheme is very wide and as such there is not a constant balance between the SME and RDEC schemes. The historical and future looking chart below shows how wide this benefit band is across the SME Tax Credit, SME Tax Relief and different profit/loss making positions. There is currently a net benefit band of 18.85% to 33.35% for the SME scheme. This is a huge disparity and is unfair most of all to breakeven SMEs with no losses to surrender. Many SMEs cannot predict their profit/loss position in advance of finalising their tax returns, therefore it is difficult to predict the amount of support they will receive from the SME scheme, creating financial uncertainty.



Simplifying the SME scheme so there is a consistent generosity irrespective of a company’s profit/loss making position would make the scheme fairer. It would ensure companies are able to accurately predict the support they will receive from the scheme, thus increasing certainty and ensuring they can perform better, long term R&D planning.

We carried out a poll of our clients and London Business School alumni to gather a response to this question. We asked them: “On a scale of 1 to 10, to what extent do the rates of R&D tax relief available to you impact your investment decisions and/or choice of location?”. The mean response was 6.5 and the median response was 7.

We also asked: “*What do the R&D tax schemes result in you doing more of?*”. To which all the respondents said that the R&D schemes result in them doing more R&D.

***Question 5: “Would a departure from the ordinary Corporation Tax self-assessment system be justified? Should more information and assurance be required from companies at the point of claiming? Should a company providing more information upfront be treated differently?”***

We believe that the claim should still be made within the CT600. This makes it part of the corporation tax submission, which encompasses all of the legal declarations and accuracy.

A report covering the eligible projects/activities, costs and how the costs were calculated should be required at the time of claiming. All companies should need to provide this information for a claim to be considered valid and if they do not, then an enquiry should be opened, or rejection letter should be sent.

***Question 6: “When did you first claim, and what prompted you to do so? Do you use an agent? If so, why? What is your experience of how agents’ fees are structured? How could the expertise and specialist knowledge of agents assisting with R&D claims be improved?”***

We carried out a poll of our clients and London Business School alumni to gather a response to this question. We asked them: “*How do you claim the R&D tax relief scheme?*” to which they responded with the following answers:

- Accountant/general tax advisor
- R&D tax specialist

None of the respondents submitted their own claims.

We asked: “*If you’ve used an agent/specialist/accountant for the R&D Tax Relief how have their fees been structured?*”, to which the respondents replied with the following:

- Fixed fee
- Success fee

We asked: “*How could the expertise and specialist knowledge of agents assisting with R&D claims be improved?*” and the respondents returned the following answers:

- Agents should hold technical qualifications to assess project eligibility;
- Agents should be required to have professional indemnity insurance;
- Agents should be required to sign up to code of conduct/standards;
- Agents should be required to have a professional accounting/tax qualification (like ACA, CTA, ATT, etc);
- Agents should be required to undergo basic online training with a simple approval.

As we responded in “*Raising standards in the tax advice market: call for evidence – March 2020*”, MMP feels it is important that Tax Agent standards are enhanced.

***Question 7: “How can the responsibilities of HMRC, agents and the company be better reflected in the claims process?”***

The CT600 and tax computations in which R&D Tax Relief figures are stated are a self-assessment. The company directors are responsible for checking the figures and ensuring they are correct. However, HMRC, as a protector of the Government’s treasuries, has a responsibility to check that R&D Tax Relief claims are eligible. Considering there were 62,095 claims made in 2017-18 (a 17%

rise from the previous year), HMRC cannot thoroughly review each of these claims. Therefore, a judgement call is made by HMRC’s systems to flag certain claims for enquiry.

In 2017-18, HMRC processed 17,255 SME claims up to £10k in value. This represents 27.8% of the total number of claims processed in the year. However, these 17,255 claims up to £10k only relate to £80 million claim value. In comparison, this relates to only 1.6% of the total amount claimed in the year.

In comparison, in 2017-18, there were just 55 SME claims over £2m in value. This represents 0.1% of the total number of claims in the year. However, these 55 SME claims over £2m in value relate to 4.7% of the total amount claimed in the year.

If HMRC wants good value for money in terms of protecting taxpayer’s money then, plainly, it must target high value, risky claims. Therefore, it means that HMRC is much less likely to carry out a detailed review of those smaller claims.

We know from experience in relation to many potential clients we have turned down, that smaller firms with less established R&D processes carry out a lower propensity of R&D compared to larger, more established companies. We believe it is unlikely that the vast majority of the small SME claims meet the eligibility requirements for the scheme.

R&D Tax Relief has become something that *all* SMEs are being told they can claim for. The R&D Tax Relief scheme should not be a general small business support measure that anyone can claim, despite not having any eligible R&D. The current situation does not fulfil the Government’s aim of increasing the percentage of GDP spent on R&D in the UK. We believe that the scheme has lost its way and that the scheme is no longer just supporting technology, but instead SMEs generally.

We think HMRC should consider the following measures:

- Bring back minimum R&D expenditure of £10,000. This would cut over a quarter of the total number of claims which likely cover little to no eligible R&D and allow HMRC to focus on reviewing larger claims.
- HMRC needs to make a public example of small ineligible R&D Tax Relief claims. It should perform a wave of rejections or enquiries into the 17,255 SME claims up to £10k in value and review historic claims.
- Demand a report is submitted alongside any R&D Tax Relief CT600 submission. No report, no repayment.
- Require companies to appoint a technical contact who is responsible for reviewing, signing off and defending R&D claims, this measure would significantly increase accountability.
- Require tax advisors to have a technological background. Requiring tax qualification for R&D advisors is not the right route; lots of accountants do not have R&D Tax Relief or technological expertise and resultantly submit ineligible claims.

***Question 8: “What other changes might help claims to be dealt with more smoothly, while ensuring better compliance? Is there a way HMRC and advisers can work more effectively to improve the quality of external advice available to companies? If you claim R&D tax reliefs in other countries, how does the claim process differ and what are your views on this?”***

In France, Canada and the USA there are more enquiries, and penalties are applied more broadly. This helps to ensure that only eligible claims are submitted.

HMRC has become a black box in terms of communication with regards to checking the progress of R&D Tax Relief claims.

Five years ago, it was possible to email HMRC’s specialist R&D units and receive a response about a particular claim, where the inspector would reply or ring agents directly. Now, it is impossible to receive any information except general information from the General Corporation Tax Helpline.

Where there is an issue with a R&D Tax Relief claim, for instance it has been lost in the system, or the incorrect amount was paid, it is nearly impossible to get timely assistance or a response. The General Corporation Tax Helpline is usually unable to provide any assistance and they just submit a support ticket. We have had instances where this has continued for months with no progress and as a result innovative companies are not getting the support they need.

We understand that HMRC has had to process the huge increased number of claims in a more efficient manner (in 2017-18 the total number of claims for R&D tax credits rose to 62,095, an increase of 17% from 2016-17) but the complete lack of communication is unacceptable. There must be open channels through which agents can readily communicate with inspectors about R&D Tax Relief claims.

HMRC did a good job of providing additional guidance in relation to the eligibility of software claims in CIR81960<sup>2</sup>. This section is particularly useful:

*“Further examples of technological uncertainties could be:*

- *Developing new or improved data architectures that cannot be achieved with readily deductible solutions, e.g. pushing beyond the boundaries of existing readily available database engines.*
- *Extending software frameworks (e.g. software development kits, or software libraries) beyond their original design, where knowledge how to extend these was not available or readily deductible at the time.*
- *Attempting to partially or fully solve a technological uncertainty that is documented as a known subject of research by computer scientists (e.g. there are relevant and contemporaneous research papers on that specific scientific or technological issue).”*

We think this is a good example of HMRC providing further guidance which assists companies in claiming for eligible R&D resulting in better compliance.

We propose that HMRC offers more examples of project eligibility to assist companies in claiming for eligible R&D. HMRC should focus on the sectors of R&D where there are already the highest numbers of claims. The ONS Corporate tax: Research and Development Tax Credits statistics<sup>3</sup> seems like a good start to decide what areas to provide further guidance on. HMRC could provide an example of eligible/ineligible projects for the following sectors which is reviewed and updated at least annually.

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<sup>2</sup><https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird81960>

<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/921791/R\\_D\\_Tax\\_Credits\\_Combined\\_Tables\\_2020.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921791/R_D_Tax_Credits_Combined_Tables_2020.ods)



Two level SIC sector	Total number of claims 2017-18 (sorted by highest)
J: 62 - Computer programming, consultancy and related activities	10,445
G: 46 - Wholesale trade, except of motor vehicles and motorcycles	4,030
M: 71 - Architectural and engineering activities; technical testing and analysis	3,870
M: 70 - Activities of head offices; management consultancy activities	2,595
C: 25 - Manufacture of fabricated metal products, except machinery and equipment	2,565
F: 43 - Specialised construction activities	2,210
G: 47 - Retail trade, except of motor vehicles and motorcycles	2,005
N: 82 - Office administrative, office support and other business support activities	1,915
M: 74 - Other professional, scientific and technical activities	1,860
M: 72 - Scientific research and development	1,715

In addition, HMRC could help companies and inspectors to understand what the existing state of technology is. For example, successful, eligible claimants could give webinars on their eligible R&D projects. We think that transparency is key here to help companies better understand what sort of activities are likely to be eligible in their business and better understand the existing state of knowledge for their industry.

**Question 9: “Is there evidence to suggest areas of activity other than those currently covered by the R&D definition drive positive externalities which should be recognised by the tax system?”**

The UK has set an aim of achieving 2.4% of its GDP on R&D by 2027. In 2018, the total expenditure on R&D was £37.1 billion, or the equivalent of 1.7% of GDP<sup>4</sup>. In 2018 standards, £260 million extra spend on R&D would be needed to reach this 2.4% aim.

The ONS breaks out the product groups with the largest R&D expenditure for 2018<sup>5</sup>:

- pharmaceuticals (£4.5 billion)
- motor vehicles and parts (£3.8 billion)
- computer programming and information service activities (excluding software development) (£1.9 billion)
- aerospace (£1.7 billion)
- miscellaneous business activities; technical testing and analysis (£1.7 billion)
- software development (£1.5 billion)

Focusing on the support of the UK’s most successful areas of R&D will be integral in meeting this 2.4% GDP aim.

Focusing on the software development product group above, we believe that an integral part of most successful software R&D projects is the Data Science work, which we have been told by an HMRC inspector is not recognised by HMRC as eligible R&D. We believe that Data Science is a field of science or technology and should be openly recognised as such by HMRC as an area of eligible R&D. This would allow for costs associated with R&D critical Data Science work to be included.

<sup>4</sup><https://commonslibrary.parliament.uk/research-briefings/sn04223/>

<sup>5</sup><https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/researchanddevelopmentexpenditure/bulletins/ukgrossdomesticexpenditureonresearchanddevelopment/2018>

The result of this would be further additionality of R&D spending on software development projects, helping the Government to meet the 2.4% GDP aim.

**Question 10: “Do you think R&D tax reliefs could better incentivise R&D with specific social value, for example developing green technology? Could R&D tax reliefs be used to disincentivise R&D in certain fields?”**

The Government has set the world's most ambitious climate change target into law to reduce emissions by 78% by 2035 compared to 1990 levels. To help achieve this target, a higher rate of R&D Tax Relief could be awarded to projects that classify as eco, green or decarbonisation. This could be done in line with global efforts and regulatory body standards such as EU F-Gas and the EU Ambient Air Quality Directive.

There is precedent to ring fence or exclude R&D Tax Reliefs related to certain activities or types of cost, such as gas exploration.

**Question 11: “What is your experience of conducting R&D in different regions across the UK? How do R&D tax reliefs benefit these activities, and how could the offer be improved to better support these activities?”**

N/A

**Question 12: “Are there any other areas of qualifying expenditure that should be included within the reliefs? How would this influence your investment decisions?”**

We carried out a poll of our clients and London Business School alumni to gather a response to this question. We asked them: “What costs not currently covered by the R&D Tax scheme should be?”

The responses included:

- Travel/Accommodation/Training/Conference costs for R&D projects not borne by expenses;
- Subcontracting costs for RDEC;
- Data;
- Cloud computing;
- Recruitment;
- Office/service charge rent apportioned by R&D intensity;
- Shipping costs for R&D projects

We also asked, “Thinking about the R&D within your company, what other activities support the R&D which are not currently eligible under the scheme?”. The respondents provided the following replies:

- Patent preparations;
- Data processing for R&D;
- Data migration for R&D;
- HR activities associated with R&D staff;
- Competitor/market research;
- R&D strategy planning.

**Question 13: What proportion of your R&D expenditure is treated as capital for the purposes of corporation tax? What would be the impact on your R&D activities of increased relief for capital expenditure?**

It is important any increased relief for capital expenditure should be carefully aligned to the benefit from the RDA and the R&D Tax Reliefs so there is not an incentive to game the accounting standards.

**Question 14: “Do you currently claim RDAs? If not, why not? What do you like and/or dislike about RDAs?”**

The super-deduction scheme which was announced in the most recent budget is poorly targeted. As a result, RDAs are now entirely irrelevant. Therefore, the super-deduction scheme should be bigger for RDAs to focus capital spending on R&D capital expenditure.

**Question 15: “How much of the activity in respect of which you claim R&D in the UK is undertaken outside of the company, and how much of that is not undertaken in the UK? What are the benefits and drawbacks of subcontracting, whether overseas or domestically? What are your commercial/other reasons for carrying out work overseas rather than in the UK?”**

We carried out a poll of our clients and London Business School alumni to gather a response to this question. We asked them: “Which of the following would encourage your firm to do more R&D in the UK?”. The responses included:

- More generous R&D tax relief schemes;
- Lower overall taxes;
- Easier R&D claim process;
- Easier to hire researchers/technical experts from abroad;
- More Innovate UK grant calls specific to our industry.

Subcontracting is important because it allows external expertise to be utilised without the inefficiencies of trying to develop that expertise in house.

**Question 16: “How could the government distinguish between work that needs to take place abroad and which benefits the UK, and that which doesn’t?”**

We are unable to think of a clear, universal and easy to apply a rule which would achieve this. Surely, if the work is being carried out outside the UK it is being done outside the UK for a reason, i.e., because it is cheaper or there is expertise that does not exist in the UK. Therefore, it would still be carried out despite the R&D scheme. The R&D scheme should not be further distorting the market by making this ex-UK subcontracted activity even cheaper.

**Question 17: “How can we identify the supporting activities which are most valuable for R&D, while providing a clear boundary to assist companies in claiming and HMRC in administering?”**

From our experience in managing thousands of eligible R&D tax relief claims, we have identified that the qualifying indirect activities which typically have the highest associated costs are:

- Salary costs:
  - Proportion of managers’ time spent managing those directly engaged in eligible R&D;
  - Proportion of HR’s time spent recruiting eligible R&D roles.

For HMRC to carry out a detailed analysis of supporting activities, we recommend they carry out a detailed review of the salary costs submitted for a wide range of claims, identifying direct and indirect eligible R&D roles. We would suggest including all technical roles (excluding managers) as direct costs and all non-technical roles, including managers as indirect costs.

We understand that the exchequer is keen to balance the books by widening eligibility related to some areas, such as data and cloud computing costs and reducing eligibility elsewhere. However, it must be clearly stated that widening eligibility related to specific areas, such as data and cloud computing costs will only benefit a small subset of R&D tax relief claimants. If the eligibility level of an area such as qualifying indirect activities is reduced, this will punish a much wider range of companies.

Therefore, we suggest that HMRC tackles the likely huge number of small R&D Tax Relief claims, which are routinely made each year which contain ineligible expenditure or ineligible R&D by asking more questions and opening enquiries on a larger number of these types of small claims, which will result in a significant cost saving to HMRC. Consulting firms can filter out marginal or ineligible activities assuming they have competency to act and if they are minded in doing so. Many smaller claims we see are simply submitted by accountants that have no specialist understanding nor the technical capability to assess whether an activity qualifies under the legislation and guidance.