

Optimizing your R&D claim and the risks

Q&A:

1. If a current claim is found to be a problem, how far back can HMRC go to look at similar claims?

Answer:

Normal assessing time limits will apply. So normal time limits 4 years, careless behaviour 6 years, deliberate behaviour 20 years. Of course, HMRC will need to be able to demonstrate that presumption of continuity is in point. Arguably unlikely with R&D.

2. For a project subsidised by a grant (which would normally be treated as RDEC) does expenditure over and above the grant claim qualify for SME R & D relief?

Answer:

Typically, yes. The exception would be if the grant is considered "Notified State Aid" under EU law. If the grant is NSA, then all a project's expenditure must be assessed under the RDEC incentive. If the grant is less than £200k over 3 years, de minimis rules generally apply and the grant should not be NSA.

3. Have you come across any enquiries that go back more than the enquiry period? From my understanding HMRC have the power to go back up to 6 years in certain circumstances?

Answer:

The usual assessing time limits will apply. So normal assessing time limits apply where a mistake (despite taking reasonable care) has been made, if careless behaviour has led to the inaccurate claim being made then the extended time limit of 6 years is in point. If there is deliberate behaviour, then the time limits is 20 years.

4. What are some practical next steps to take when struggling to get HMRC to understand an issue, e.g. the nature of complex technology using AI?

Answer:

Try to arrange a meeting with the competent professional from the company and HMRC, request they have officers from CDIO (their internal IT department) attend to discuss the outstanding concerns and risks. It doesn't always succeed but generally reduces protracted correspondence.

5. How comprehensive should the supporting documents be, for example with a large entity (RDEC)? Obviously, some entities will have a lot of eligible R&D, would documentation on a sample of the R&D be sufficient, or will HMRC expect in-depth documentation on all R&D?

Answer:

HMRC expects a summary of the costing and assessment method as normal. In instances where a company has more than three R&D projects, it is necessary to include at least three technical reports covering at least 50% of the eligible R&D expenditure.

6. What is your approach on a company with large numbers of qualifying projects? Do you use a sample method?

Answer:

A sample method is not ideal but is occasionally inevitable if a company has a very large number of projects. If it is at all feasible, it is preferable to assess each project individually. This adds rigour to the costing method, even if most projects cannot be included in the R&D report.

7. Can HMRC review the R&D claim even if the initial payment of a claim has been approved?
And what are the consequences in case it's proven that the claim was not legitimate?

Answer:

Yes, they can. In line with the usual enquiry window. Consequences will mean the claim is disallowed in full or in part. Depending on the circumstances, inaccuracy penalties may be charged by HMRC.

8. With the subsidised expenditure, I read that HMRC do not agree with the recent court case upholding the SME claim of the construction company. Can you please provide some information (perhaps an example) of what the subsidised expenditure is? If R&D on a product that you expect to sell to a customer is subsidised, then wouldn't 99% of SME claims be subsidised.....who is carrying out R&D except to then sell the product?

Answer:

This is exactly why the recent change of view from HMRC is absurd. They also do not acknowledge this change of view and maintain this has always been their view. However, the rest of the world

just weren't aware of it until 2020-21! The CIOT point out that HMRC's interpretation would give strange policy put comes. These include relief being given to companies that had no input into the R&D and may not even been aware of it being carried on, a lack of encouragement for SME's to undertake R&D in many circumstances, and, such restriction on the scheme that much R&D carried on by SME's would simply not be eligible for relief. We are aware of further cases that will be heard on this and the subcontracting point at Tribunal in the coming months.