



## **Response from ICAS**

### **Preventing abuse of the R&D tax relief for SMEs**

By 24 May 2019

## About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

## General comments

2. ICAS welcomes the opportunity to contribute to the consultation "Preventing abuse of the R&D tax relief for SMEs", published by HMT and HMRC on 29 March 2019.
3. Easements to any cap are vital if genuine R&D activity of SME companies is to be encouraged and supported. Proposals for a de minimis threshold limit and future relief for capped claims are therefore welcome.
4. While targeted anti-avoidance measures are understandable in the context of misuse of the system, concerns have been expressed that the system is inadequately policed, and blanket restrictions are an inappropriate substitute for more rigorous examination of claims.
5. There is an inherent tension between encouraging SMEs to make R&D claims while imposing blanket restrictions. It is likely that many SMEs are not making full use of R&D claims; while some businesses are being approached directly by organisations marketing R&D schemes and are encouraged to claim in excess of their entitlement.

## Comments on specific areas

6. **Question 1**  
**If the cap is only applied for payable tax credit claims above a defined "threshold", at what level would this be useful at reducing any potential administrative burdens on genuine companies?**

Genuine R&D activity in start-up companies that are pre-trading may suffer under these rules. If capped at a low level, such as £10,000, a company might forego the tax credit if it is seen to be too much of an administrative burden to claim. Whilst the tax relief is not lost entirely, the cashflow impact would slow growth and reduce the funds with which the company can innovate.

Some of our member firms report that 50% of claims submitted are for loss-making companies, and that for loss-making companies, for claims in the last 12 months, PAYE and NIC has been paid sufficiently to be within the 3x PAYE and NIC proposed cap.

7. **Question 2**  
**If a group was only able to submit one payable tax credit claim at or below a certain threshold per year, how would this fit with the way that claims are currently made? How common is it for more than one company in a group or common control entity to make a claim for the payable R&D tax credit?**

Our member firms report that in their experience it is uncommon for multiple claims within a group, or common control entity, to be submitted.

The proposal would appear to be a step towards eliminating fraudulent duplicate claims. However, regardless of the value of claims, it would be appropriate for HMRC to have some mechanism to obtain an overview of all claims for a group.

8. **Question 3**  
**If an element of the PAYE and NICs liabilities of another group or connected company were included as a part of the cap (where R&D has been subcontracted to it or EPWs provided by it), to what extent would this benefit companies? How much additional complexity would this add to claiming the payable tax credit?**

One potential difficulty here would be non-co-terminus year ends, making it difficult to ascertain the correct figures.

9. **Question 4**

**Would it be practical for claimant companies to obtain the PAYE and NICs information from other group or connected companies? Are there any limitations to their doing so? Would the other company be willing to provide this information?**

Information from firms in practice indicates that obtaining this data should be fairly straightforward under RTI. Caution would be needed where a group is abusing the SME scheme as they may be unwilling to share information and transparency would be lost.

10. **Question 5**

**How beneficial would surrendering carried forward losses, to claim a future payable tax credit when sufficient PAYE and NICs liability has been generated, be to a company affected by the cap? Would a time limit of 2 years be appropriate? How straightforward would it be to keep track of the origin year of the losses?**

The option to claim a future payable tax credit when sufficient PAYE and NIC liability has been generated is welcome. This would impose a cashflow disadvantage on SMEs but is far preferable to losing the right to surrender altogether. A two-year timeframe seems adequate and recordkeeping burdens would be in line with normal requirements to track tax losses.

11. **Question 6**

**Would carrying forward losses make companies consider taking on more staff in the future - to unlock some (or all) of the rest of their payable tax credit?**

This appears unlikely except for exceptional circumstances.

12. **Question 7**

**The government is interested in the characteristics of companies that could be affected by the cap. For example, if you are or represent a company likely to be affected by the cap, how large is the company in terms of employees? How many staff are primarily engaged in R&D activity? How old is the company? What sector does it operate in?**

No comments

13. **Question 8**

**What else could the government consider, regarding how the cap is applied to preventing abuse, to ensure genuine companies can continue access the payable tax credit? Are there any alternative measures that could prevent abuse of the payable tax credit.**

There is a concern that R&D claims may receive only 'light touch' checking. This could encourage organisations who prepare R&D claims on fixed percentages, or any other simplified arbitrary basis, rather than examining specific costs. Enhanced review would help identify spurious claims.