THE 100 GROUP

To: RDTaxReliefs@hmtreasury.gov.uk

1 June 2021

Dear Sir/Madam,

Please find enclosed our response to your R&D Tax Reliefs consultation issued in March 2021.

This response has been prepared by the 100 Group Tax Committee and is intended to speak on behalf of the Group as a whole. The 100 Group ("100G") membership represents around 87% of the FTSE100 market capitalisation as well as a number of equally significant sized unlisted businesses. We note that whilst this letter expresses the views of the 100 Group as a whole, these views are not necessarily those of individual members nor their respective employers. We thank you for the opportunity to respond to the consultation and are happy to have any follow up discussion if helpful.

The Group supports the need to ensure R&D Tax Credit regimes reflect the nature of modern R&D and ensure that reliefs incentivise present and future R&D practices while continuing to deliver good value for money for the taxpayer. Our members would welcome any changes to the regime that can provide additional certainty around the claiming of R&D Tax Credits including an extension of the Advanced Assurance process and additional guidance around activities that meet the R&D criteria. Additional certainty would provide businesses with the confidence to consider R&D Tax Credits when making investment decisions and provide a more direct relationship between R&D Tax Credits and future investment.

In addition, our members would encourage HMRC and HM Treasury to ensure a joined-up approach for incentives and investment that aligns with the UK's wider policy priorities. Greater links between the co-ordination of the R&D regime, grants and subsidies, Patent Box and additional incentives such as capital allowances (including the new Super Deduction) and freeports would be welcomed by our members.

There are some common threads between our comments here, and some of the priorities discussed in the call for evidence for large business tax administration. In particular, multinational companies can invest in UK activity with more confidence if they understand the post-tax ROI across the whole lifecycle, i.e. how it all fits together. We believe this would be a worthwhile area of focus for HMRC and HMT as it seeks to maintain a competitive environment for UK investment.

Please do contact our secretariat Hannah Maughan at secretariat@the100group.co.uk should you wish to discuss any of our comments in further detail and she will be very happy to put you in touch with us.

Yours faithfully

Andy Agg
Chair of the 100 Group Taxation Committee

APPENDIX 1 – 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?
100 Group response	Our members are only eligible to make R&D claims under the RDEC scheme and therefore have no experience of making claims under the SME scheme. Within the group, the levels of R&D intensity undertaken vary across companies but the members of the group spend approximately £9.1bn [1]per annum on R&D.
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?
100 Group response	Some of our members acquire UK entities that have historically made R&D claims through the SME scheme. Pre-acquisition modelling of R&D tax credit benefits can cause tension between vendor and target due to the uncertainty and complexity over validity of claims and the fact that new acquisitions fall within RDEC for the whole accounting period of the date of acquisition. One regime to cover SMEs and large corporates would be welcomed and reduce complexity for businesses and HMRC alike.
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?
100 Group response	Our members predominantly make R&D claims under the RDEC scheme and therefore do not feel able to comment in relation to the difference in additionality between the two schemes. Any additional upfront certainty that can be introduced to the RDEC scheme could incentivise businesses to undertake additional R&D activities if they were certain that they would be able to utilise the RDEC scheme when undertaking these activities as the RDEC allows businesses to reduce their cost of capital when appraising investment decisions. Our members would also encourage HMRC and HM Treasury to look at incentives and investment in a joined up approach. For example, introducing a single point of contact at HMRC across a range of incentives for a business (e.g. R&D regimes, grants or subsidies, Patent Box, capital allowances including the new Super Deduction and freeports) as well as allowing businesses to get certainty across multiple areas when making investment decisions. For example, an advanced assurance process for a potential investment where businesses can obtain certainty across all of the above would be welcomed and the certainty would allow businesses to take these incentives into account when making investment decisions.
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?
100 Group response	For some of our members, when considering where to locate a significant R&D-related investment, they would typically conduct a benchmarking exercise that looks at a range of relevant factors then compares different locations to see which offers the best mix. Aside from the levels of tax credits available, key factors when such decisions are made include assessment of existing and future talent, physical and digital connectivity, maturity of market, proximity to key customers, real estate market, political and regulatory environment, presence of competition, local research ecosystem and any available incentives. Recently positive testament has been given in relation to the flexible and wider scope of the Netherlands Innovation Box regime, as one of our members set up a technology hub there. The Netherlands Innovation Box, which is often compared to the UK's Patent Box but crucially rewards IP ownership without discriminating between different forms of IP protection, is significantly more flexible than the Patent Box regime in the type of activity it recognises and is more suitable to digital technology as it looks at the substance of R&D activity rather than requiring a specific link to

[1] 2020 Total Tax Contribution survey for the 100 Group (December 2020)
https://the100group.co.uk/2020/12/2020-total-tax-contribution/

patents. The Dutch Innovation Box regime is directly linked to "WBSO certificates" which effectively subsidise the labour costs of staff working on innovative projects. The regime takes a more granular approach to looking at the specific innovation projects being worked on. It is a joined-up approach, using the same assessment both for the labour cost incentive and the incentivised regime for the taxation of the profits from those projects, which the member finds more useful and easier to administer compared to the UK.

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?

100 Group response

Maintaining the R&D Tax regime within the Corporation Tax self-assessment feels sensible. This is mainly due to the interaction of the R&D Tax regime with the Corporation Tax self-assessment system. The following examples below demonstrate this interaction:

- Some of our members have seen synergies from a compliance administrative perspective from aligning the timing of preparation of the RDEC claim with the tax return.
- A change or departure from the existing regime, which is working well for many of our members, would require further 'one off' resources to adopt to a new way of working.
- Subject to the specific fact pattern, the RDEC receivable can often be offset with corporation tax payable providing a natural alignment.
- The RDEC as an 'above the line' credit is a component of a company's Taxable Profits in its tax return and computation. The RDEC claim must be finalised prior to or at the same time as the tax return itself again providing natural alignment for filing purposes.

Some Large Businesses have participated in HMRC's RDEC Advanced Clearance Service Pilot with positive feedback shared to date. Bringing the principles of this pilot into the regime on a permanent basis would likely make the RDEC scheme more attractive overall. The benefits include:

- Providing greater certainty to the business allowing credits to be re-invested with greater confidence.
- A more collaborative approach to working between HMRC, the taxpayer and the agent.
- Better aligns with the principles of real time working, something that many CCMs and taxpayers are doing very well today.
- Can better facilitate HMRC access to individuals working on ongoing R&D projects. This can be far more efficient compared to asking questions on projects completed in earlier years when relevant team members may no longer be available.

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?

100 Group response

Better guidance from HMRC, more suitable to the 'new economy' would be welcomed. For some of our members, the relative complexity of the rules and the lack of concrete examples from HMRC of what is qualifying R&D for tax purposes to share with technology and development teams results in the need to engage expensive third party providers, which erodes some of the tax benefit. Our members have seen a range of fees offered by agents including fixed fees and contingent fees of around 10-20% of the net benefit received from the claim.

Question 7

How can the responsibilities of HMRC, agents and the company be better reflected in the claims process?

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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?

100 Group response

Many of our members operate globally and can therefore make comparisons between different regimes. In the following examples, we show how the US and Netherlands regimes apply to R&D that our members are undertaking in those countries.

In the US, qualified research is defined as research being undertaken for discovering information that is technological in nature, and its application must be intended for use in developing a new or improved business component of the taxpayer. In addition, substantially all the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality. This is a somewhat broader and more generous definition than the UK's definition of R&D. It is not necessary for research to be aimed at generating entirely new discoveries/knowledge; the development merely needs to be new for the company doing the research. Costs can still qualify if another company has already made the same or a similar development.

In the Netherlands, according to the Dutch Tax Authority, R&D work comprises systematically-organised work activities carried out whose direct and exclusive purpose is technical scientific research and the development of products, processes or software that are technically new for the entity. Technical innovation requires the presence of a research element in the project or technical uncertainties or risks relating to the achievement of the required result. The Ministry of Economic Affairs in the Netherlands issues detailed annual manuals to support and encourage companies to make the most of the available R&D tax credits, including detailed guidance on its application to technical scientific research activities.

In summary, the Netherlands and US tax definitions only require the R&D to relate to knowledge new to the company compared to the UK definition of R&D which is only available there is an advance in the stock of publicly available knowledge; this may present a higher threshold for qualifying for tax incentives than in the US and Netherlands.

Some of our members have experience of making successful R&D tax credit claims in France. There is a pre-approval process whereby companies can request the tax authorities officially confirm the eligibility of R&D expenditure and companies will receive a response from the tax authorities within 3 months of application. This was implemented in response to businesses asking for predictability a way of avoiding systematic tax inspections after filing of tax returns.

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?

100 Group response

The focus of R&D tax credits on new discoveries and areas of uncertainty does not fit well with the more incremental nature of innovation in the technology sector. Tax incentives can be provided at the front-end of the innovation cycle, in the years when R&D expenditures are incurred, and/or at the back-end, in the years when income is generated from exploiting IP. We would encourage the Government to consider how the tax system addresses the commercialisation of technology projects. Other regimes in the Netherlands, US and France are better adapted to supporting R&D in the technology sector with a lower threshold for qualifying activity in the US and a more holistic approach in Netherlands looking at the Innovation Box and qualifying R&D activities together.

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 disincentives R&D in certain fields?

100 Group response

Our members agree that it is a good idea to look at projects and activities that support the greater good and environment, social and governance ("ESG") priorities whether this be on activities encouraging energy efficiency or social priorities.

In order to get the maximum benefit from policies targeting ESG priorities we would refer to our comments in question 3 regarding taking a comprehensive approach to grants and fiscal incentives for investments that support the UK's social and environmental agenda. This means making clear links, where possible, between R&D incentives policy and government action in relation to the new Freeports, regional / sector grant and subsidy policy post-Brexit, and other areas of legislation such as capital allowances.

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?

100 Group response

A suggestion to improve the regime would be to ensure HMRC are 'joined-up' with the regional development agencies and devolved administrations. The majority of our members have Head Offices in London and the South of England however the R&D activities undertaken by our members are taking place nationwide and worldwide.

The Government's roadmap highlights an objective of increasing the amount of R&D activity and expenditure occurring in other parts of the UK. We support this objective but would caution against trying through policy interventions to replicate what London has to offer in, for example, Birmingham or Manchester, or seeing London's success as being in clear conflict with other regional cities. In the technology sector, for example, the focus should be to improve the competitive position of cities like Manchester, Leeds and Glasgow versus other European cities of comparable size and/or maturity as tech hubs, such as Bucharest, Warsaw, Riga, Lisbon, Tallinn.

Question 12

Are there any other areas of qualifying expenditure that should be included within the reliefs? How would this influence your investment decisions?

100 Group response

Our members recognise the 2020 consultation into "The scope of qualifying expenditures for R&D Tax Credits" was an important opportunity to look at use of data, datasets and cloud computing. Data and datasets are a crucial supply-side issue for the R&D focussed digital technology sector. Data can be considered a 'foundational input' and support a change to include it as a qualifying cost for R&D tax credits. The industry trend towards cloud computing allows companies to work with large datasets and train new algorithms without the outlay of traditional IT infrastructure. This allows development of technologies based on machine learning and artificial intelligence.

However, within the technology sector new inventions tend not to be discovered from scratch as a self-contained innovation. Instead, advances in technology, particularly data analytics and artificial intelligence or machine learning, will usually be based upon iterative improvements to applications or software which eventually lead to a significant advance in the use of that technology or new use cases. This is not necessarily a new case of a "scientific discovery" or a "new invention" (and therefore may not qualify for tax credits) but it does involve technological innovation of the sort that one might expect the UK would wish to incentivise. These projects often involve large spend compared to low qualifying percentage and require the use of advisers to prepare the claim due to the complexity of the regime.

Question 13 and Question 14

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?

Do you currently claim RDAs? If not, why not? What do you like and/or dislike about RDAs?

100 Group response

Very few of our members make RDAs claims on their R&D expenditure that is capital for the purposes of corporation tax. The two primary reasons for this are that RDAs only provide a timing benefit rather than an actual cash benefit in the period the expenditure is incurred and for some of our members their tax profile is such that RDAs do not offer any benefit. Increased relief for capital expenditure could allow businesses to incorporate this additional relief into the cost of capital when appraising investment decisions in the same way that the RDEC can be considered in these decisions.

Question 15 and Question 16	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? How could the government distinguish between work that needs to take place abroad and which benefits the UK, and that which doesn't?
100 Group response	Outsourcing R&D support is an integral part of resourcing end-to-end R&D projects. Engaging with other organisations facilitates the R&D processes by encouraging new ideas, talent and expertise within the R&D process, supporting wider innovation. In many cases, this supplements internal capacity or leverages specialist expertise where niche experience or expertise in a particular area to deliver and this R&D would be performed on behalf of the UK outsourcer who would own the intellectual property and data generated, therefore this wider R&D supports the UK innovation and wider UK scientific ecosystem. In addition, certain industries have specific regulatory requirements which mean that access to global R&D programmes or support is sought, for example the pharmaceutical industry must perform clinical trials across a range of territories, requiring a significant number of investigator sites to access required number and appropriate patients to be included in clinical trials, including a need to ensure trials included minimum number of patients and ethnicity ratios to demonstrate outcomes. Consequently both internal and external R&D spend benefits the UK and providing R&D relief for outsourcing spend would reflect the ongoing evolution of business' R&D models and give businesses the flexibility to operate R&D studies either internally or externally to access the best science and encourage innovation.
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?
100 Group response	We support the inclusion of qualifying indirect activities as an essential enabler of R&D. The BIS guidelines provide a clear list and these types of costs all contribute towards genuine innovation, the BIS guidelines note that these costs form part of a project and are clear in each category that these should directly support or be undertaken for R&D purposes. These are a peripheral part of the wider R&D claim and assists in streamlining the processes and providing greater certainty for HMRC and taxpayers where they can be comfortable that they can claim for time of individuals whose roles include both direct and indirect activities.