BIA response to R&D tax relief advance clearances

About the BIA

The BioIndustry Association (BIA) is the voice of the innovative life sciences and biotech industry, enabling and connecting the UK ecosystem so that businesses can start, grow and deliver world changing innovation. Our 600+ members include start-ups, biotechnology and innovative life science companies, large pharmaceutical companies, universities, research centres, tech transfer offices, incubators and accelerators, and a wide range of life science service providers: investors, lawyers, IP consultants, and IR agencies. We promote an ecosystem that enables innovative life science companies to start and grow successfully and sustainably.

Responses to questions

Question 5: Where does your business operate? (please select all that apply)

- England
- Scotland
- Wales
- Northern Ireland
- ~~Isle of Man~~
- ~~EU~~
- ~~Other (please specify)~~

Question 6: Please provide your company's or organisation's name unless you are responding on your own behalf.

- The BioIndustry Association

Question 7: Please provide the best email address we can use to contact you.

- Lewis Miles lmiles@bioindustry.org

Question 8: To help us monitor the demographic of respondents, please provide the postcode for your company or organisation.

- WC1B 4DA

Question 9: Were you aware of the advance assurance scheme before this consultation?

- Yes

Question 10: Have you or your clients used the current advance assurance scheme?

- Very infrequently

Question 11: If you or your clients have used the current advance assurance scheme, please tell us if and how this met your needs.

We see that the principal purpose of advance assurance is to confirm whether the nature of the activities would fall within the DSIT guidelines for R&D. This is less of a concern for the majority of our members who are undertaking work that falls directly under – or is closely linked to – pre-clinical and clinical research and development as set out in CIRD81920. However, the R&D tax relief schemes' rules have become increasingly complex in recent years, and it may sometimes be helpful for companies to have certainty around whether they are applying them correctly; advance assurance is not meeting that need at the present time. Please see our response to Q12 and subsequent questions for more detail.

Question 12: If you or your clients have used the current advance assurance scheme, please tell us about what worked less well in the process.

To the best of our understanding, several aspects of the current advance assurance scheme proved to be very onerous. The process is seen as overly complex and administratively burdensome. It requires significant documentation, making it resource intensive for start-ups. We believe that the time taken to respond to applications for advance assurance can be significant, and delays can impact fundraising timelines where investors are seeking certainty about R&D tax eligibility. It is essential that the facility is appropriately resourced.

Question 13: For those who are aware of the current advance assurances, but chose not to use them, what were the reasons for this?

We see that the principal purpose of advance assurance is to confirm whether the nature of the activities would fall within he DSIT guidelines for R&D. This is less of a concern for the majority of our members who are undertaking work that falls directly under or is closely linked to pre-clinical and clinical research and development as set out in CIRD81920. On a related note we understand that awareness of these guidelines seems to be low across the HMRC team. Significant time could be saved by HMRC and claimants if this knowledge and understanding is accessed more readily.

Question 14: Is the current focus in advance assurances on treatment of a whole claim right or should it focus on a particular issue or number of issues in a claim? (please select)

- ~~focus on the whole claim~~
- ~~focus on one particular issue in the claim~~
- focus on more than one particular issue in the claim
- ~~other (please specify)~~

Being able to obtain certainty around certain aspects of the claim would be helpful. For example, points of difficulty can often arise with regard to aspects of interpretation around the exception to the PAYE/NI cap, Research Intensity calculation, and SME status, and we also anticipate that there will be a need to address similar, specific areas of uncertainty around the news rules for contracting and overseas expenditure.

Question 15: Which issues in R&D claims are of the most concern?

As noted in our response to Question 15, the principal areas of uncertainty are generally around:

i. The Research Intensity calculation
ii. The PAYE/NI Cap
iii. SME status
iv. Rules for contracting and
v. Restrictions on overseas expenditure

Question 16: Do you have any views on the current criteria for eligibility for advance assurances?

If specific assurance can be provided under the points of uncertainty covered in the response to Question 15, then this should be open to all claimants. Furthermore, significant efficiencies and consistency could be achieved if HMRC used the output of the submissions to update guidance on a periodic basis, and we strongly recommend that this practice is adopted.
For assurance on qualifying activities (i.e. eligibility under the DSIT guidelines) this determining factor should be HMRC's ability to resource this, effectively and ensure that responses are timely.

Question 17: Can you foresee circumstances in which paid-for voluntary assurances might be attractive?

Yes, we can foresee circumstances where a paid-for voluntary assurance might be attractive, particularly for complex R&D claims or in situations where greater certainty is needed ahead of an investment, or the release of financial information where the R&D incentive is a material item. A paid option would be a useful, provided that the process could be expedited and the response time is known and committed to.

Question 18: Do you agree that a voluntary service could be focused on growing and high-potential companies as well as sectors set out in the government's Industrial Strategy?

In principle, yes, but subject to the resource concerns explained above.

Question 19: If not, at which companies should a voluntary service be focused?

If a restriction were needed to manage volume, then this could be limited based on existing legislation to first time claimants and SMEs in the permitted sectors.

Question 20: Do you agree there is a minimum expenditure below which significant R&D does not take place?

Not necessarily, as research intensive companies often start with a low cost base. However, we are supportive of a de minimis threshold of qualifying expenditure. This will address the drain on incentives being given to fraudulent claims and soft R&D (innovation that a business would undertake as part of ongoing requirements for competitiveness, where it is much less obvious whether the activities sit within the ambit of the DSIT guidelines, but it remains difficult for HMRC to disprove that they do not). The savings from this could, in part, be used for start-up grants for companies in selected high potential research-intensive sectors.

Question 21: If yes, please give that level (in thousands)

A survey and analysis of member qualify expenditure could suggest a threshold of £25,000. However, this could still exclude some early stage claimants with genuine R&D activities. Therefore this should be complemented by start-up grants targeted towards specific science and technologies and the impact of any threshold should be monitored post-implementation

If this has the expected effect of reducing fraud and boundary pushing, as well as reducing the cost to the Exchequer, we would also welcome restoring ERIS to the former effective rate of 33%.

Question 22: Do you agree that the assurances should be mandatory for some?

Yes - if this can be successfully deployed to counter genuine concerns around sector-based abuse, for example those that have been targeted by no win/no fee advisers, or where there have been high instances of fraud and/or boundary pushing. It could also be restricted to first time claimants allowing high-risk claims for former claimants to be addressed through enquiry.

Question 23: If so, what factors should be considered in determining who must seek assurance?

In determining which companies must seek mandatory assurance, factors that could be considered include:

- Company size
- Sector
- Claim history
- Where contingent fees are being paid
- Agent
- Nature and complexity of R&D activity

This approach should be carefully balanced as to avoid excessive regulation and unnecessary barriers for genuine claimants or overburdening innovative businesses.

Question 24: How can HMRC best recognise the role of agents in designing a clearance service?

The agents of concern are very unlikely to use the facility unless mandated, as it would severely impact their business model, which relies on contingent claims by volume with minimal input. We cannot yet see how agents could be distinguished as part of this facility, but continue to advocate the disclosure (or prohibition) of contingent fees based on a percentage of R&D credits.

Question 25: Do you see value in pre-activity advance assurance?

We only see limited value in this and feel that the resource should be directed to pre-claim assurance, boundary pushing and fraud.

Question 26: If so, what sorts of issue might be raised with HMRC?

See response to Question 25.

Question 27: What sort of information might companies be able to provide to HMRC at this stage?

See response to Question 25.

Question 28: Which of the options A to C do you think would be most useful? (please rate all options: not useful, somewhat useful, useful)

- A Not useful
- B Somewhat useful if appropriately targeted
- C Somewhat useful (if it affords penalty protection)

Question 29: Please give reasons.

Pre-activity seems too early and an unnecessary drain on resource that could be deployed more effectively. Pre-claim assurance could be helpful on a voluntary basis (see responses to Qs 14 and 15).

Post-claim, pre-payment could be helpful if it provides penalty protection, but may need to be limited given resource constraints. These could be focused on aspects of technical interpretation rather than eligibility under the DSIT guidelines. However, our preference would be for an effective pre-claim facility on matters of technical uncertainty (as set out in the response to Questions 14 and 15)

Question 30: Please give any other suggestions you have for useful changes to R&D relief administration, particularly those that would address error and fraud.

Our recommendations would be:

i. Minimum qualifying expenditure of £25,000 with savings partially routed to start-up grants for selected high-priority technologies.
ii. Mandatory disclosure or prohibition of agent fees that are calculated by reference to the credit.
iii. Sector training for HMRC inspectorate.