The Construction Industry
Joint Taxation Committee

JTC

JTC NEWSLINE

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Research and development

If you look at Table 3: Sectoral breakdown of R&D claims received in 2020-2021 by small and medium sized enterprises here you will see that construction businesses made 7600 research and development claims with a total value of £260 million.

- Compliant claims 38%
- Partly non-compliant claims 44%
- Wholly non-compliant claims 18%

"Non-compliance" is a wide term here that includes fraud but also just plain error.

The total value of these construction sector non-compliant claims across the piece was £110 million. You can see why HMRC has concerns. Anyone can make a mistake, but if you look here, according to HMRC, a number of unscrupulous agents are preying on companies by suggesting they chance their arm by making spurious claims for R&D tax credits.

At its simplest, the way it works is someone contacts you to say they are R&D specialists and you could claim that various of your activities constitute "research". They make the claim on your behalf, in return for a proportion of any amount they successfully claim. They make the claim, HMRC process and pay it, the helpful specialists take their cut – and then when HMRC check and find it's bogus you have to pay back the money **and** the amount the specialist has taken.

If you think you have cause to make a legitimate R&D claim you should check out the HMRC guidance and then get your accountant or another professional to refer you to a specialist firm. Never accept someone who cold calls you or introduces themselves, and never, ever, claim something you know is pushing it.

As a result of tax leakage from these claims agents becoming a serious issue, HMRC now require shedloads of extra information before making an R&D tax credit payment: the impact assessment shows it will add an administrative burden of £400,000 million across the board, a figure so out of proportion to the £200-300 million extra tax it will bring in each year that I can only suppose it's a typo*. Or a very, very long form! ■

******_HMRC have, indeed, confirmed that it is a typo. The administrative burden is not, mercifully, £400 billion! They say it is actually £400,000, although set against a cost to HMRC of £23 million just for processing the resulting forms I wonder whether that, too, is a mistake and it is actually £400 million. But that would be more administrative burden imposed on taxpayers than the expected tax saved…_

Pensions

The deadline for making voluntary contributions to fill in gaps in your pension record has now been further extended to April 2025. Do not leave it till the last minute! ■

Negative earnings

You're unlikely to have to know about negative earnings unless you have employees with a clawback arrangement (for example a signing-on bonus that has to be repaid if the employee leaves before a certain date). If you find that you *do* need to know, the key thing to remember is that the tax refund has to be claimed by the employee from HMRC and not from the employer. ■

An IR35 investigation

I came across some useful advice for accountants who might be in the position of helping their clients through an HMRC investigation into, specifically, their IR35 status, although it holds good for other kinds of investigation too.

The key takeaway is the one I have banged on about in these pages several times: Keep good records. Keep them safe. Keep them for six years. And make absolutely sure they're in a format that someone new could read if the relevant person were run over by the proverbial bus on the first day of the enquiry!

Other pieces of advice that may be of use: if you are being investigated by HMRC they usually ask for a meeting but they have no way of making you meet with them, if you prefer to reply in writing. Make sure you remember that any piece of correspondence (or your records for that matter) may one day have to be read out in court, if you can't come to an agreement. In the context of IR35 or other status disputes, you might consider making contact with other players in the chain and making joint responses. And if there may be a repayment to set off against any settlement (for example you are found not to be liable to corporation tax but to PAYE instead) then be careful to make protective claims for any repayment in good time, so that you don't find yourself in the position of being asked for fresh tax, interest on that tax and perhaps a penalty, but unable to set off any amounts you've already paid under a different tax heading because you have run out of time to make a claim.

But the best advice is not to find yourself in that position in the first place. Make sure you have accountants who are on the ball and know what they are doing, and preferably have insurance cover in place that would cover their fees if you ever were investigated, and then make sure you keep them in the picture of what **you** are doing too. ■

Complaints

It has become fairly obvious this year that HMRC needs more resources to do the job we all want from them – the closure of the self assessment helpline over the summer is an example of the resource issue. All organisations receive complaints, but HMRC's complaint handling has been very up and down in recent years.

There is an independent Adjudicator who is the last resort if you have gone through the HMRC complaints process and still not been satisfied with the outcome. However in her annual report for 2023 she reports a large increase in what she calls "premature complaints". Some of these are complaints which go straight to her without going through the HMRC complaints process first, but the disturbing ones are the ones which have gone to her because HMRC have not dealt with the complaint properly or with sufficient urgency. As the report says "There are broadly two types of premature complaint: those where the customer has not followed HMRC's process whilst being given every opportunity to do so, and those where the evidence shows that the customer was prevented from progressing their complaint".

In other words, if you have a genuine complaint about HMRC and they are not following their own procedure, because of lack of resources or some other reason, you might want to consider making a "premature" complaint to the adjudicator. Let us hope that none of us find ourselves in this position. ■

Plant and machinery

There is updated guidance on disposing of plant and machinery after you have claimed a super-deduction or special first year allowance on it. The update is the addition of an online tool that works out the balancing charge for you (provided you know the type of allowance claimed and the disposal value before you start). The tool also suggests you take professional advice before you start. ■

VAT and late payment interest

If you have been charged VAT late payment interest you cannot "appeal" against the late payment interest but you can "object" (but you have to pay the relevant tax first!).

The objection will only be accepted in the four circumstances in this new guidance.

They are:

- A mistake or unreasonable delay by HMRC
- A dispute about the relevant or effective date of payment
- Mitigating circumstances, or,
- You are questioning the legislation

You can read HMRC staff's instructions on how to deal with these objections here, in the HMRC Debt Management and Banking Manual. ■

Interest rates

There are the usual updates to the interest rates HMRC charge and pay. See here for the full detail but the headline rates are:

- late payment interest rate — 7.75% from 22 August 2023
- repayment interest rate — 4.25% from 22 August 2023 ■

COVID helpline

This is now closed (as from 18th September) "due to the COVID schemes now being closed". ■

Advisory fuel rates from 1st September 2023

The latest update applies from 1st September 2023. These rates only apply to employees using a company car.

You can use the rates when you either:

- reimburse employees for business travel in their company cars
- need employees to repay the cost of fuel used for private travel

Hybrid cars are treated as either petrol or diesel cars for advisory fuel rates.
You can use the previous rates for up to 1 month from the date the new rates apply.
The details can be read here. The new rates per mile are listed below. ■

Engine size	Petrol	Diesel	LPG	Electric* *Fully electric cars only
1,400cc or less	13p		10p	10p
1,600cc or less		12p		10p
1,401cc - 2,000cc	16p		12p	10p
1,601cc - 2,000cc		14p		10p
Over 2,000cc	25p	19p	19p	10p

Avoidance schemes

HMRC is keen to have employers cascade information to contractors and agency workers about tax avoidance schemes. They have also asked me to pass on the article at the end of this newsletter (page 4). The only comment I would make is that, although the article I have linked to here says that "If one of your workers thinks they may be caught up in a tax avoidance scheme, encourage them to get in touch with us as soon as possible. We can support them to get out of the scheme and back on track" it is not clear what "support" is being offered other than a link to the Taxaid charity. The US tax authority offers whistleblowers a percentage of any additional tax they collect as a result of providing them with information that leads to a successful investigation. HMRC asks you to report tax fraud but does not offer any information I can find about whether (and under what circumstances) they might reward you for doing so. ■

Overlap relief

The HMRC service to find your amount of overlap relief, if HMRC holds it, launched on 11 September and can be found here. (You only need to start looking into this if you are a self assessment taxpayer whose accounting date is something other than 31 March or 5 April) ■

Low emission zones

If you are a sole trader or self employed and you need to drive through a clean air zone ULEZ in London or a low emission zone in Scotland then you will be pleased to know that, if your vehicle is non-compliant and you therefore have to pay the charge, at least it will be tax deductible. Apparently HMRC gave a statement to this effect to the BBC. It might have been helpful if they had included it on their website too! ■

Check if you may be caught up in tax avoidance

counter avoidance article produced by HMRC for JTC Newsline

If you work through an umbrella company or agency taking the steps below will help you recognise potential tax avoidance.

1. Check how you are paid
Are you receiving more money in your bank account than is shown on your payslip?
Are you receiving more payments than you would normally expect?
Are some of your payments described in ways you might not expect (e.g. loans or advances)?

2. Check how you are taxed
Are you having the correct amount of tax deducted from your payments?
Are some of your payments untaxed? Bear in mind the basic rate of Income Tax is 20% on top of which you also need to pay National Insurance contributions.

3. Seek advice
If you are unclear on why you are being paid the way you are, seek independent advice from a financial advisor or accountant or an organisation such as TaxAid.

For more information on recognising tax avoidance and what to do if you find it, see HMRC's "Tax avoidance: don't get caught out" campaign. ■

If you have any feedback or queries relating to any of the items in Newsline
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