GovGrant response to HMT consultation

Preventing abuse of the R&D tax relief for SMEs: Report outcomes and further opinion

Area of clarification	GovGrant Response
Inclusion of license payments for datasets	We fully agree that where the dataset has a wider commercial value beyond that of R&D, any ongoing commercial value should be assessed and excluded under the new category. We would support a clear exclusion as proposed to say that you cannot claim for data if it carries any rights of release of data, right to publish, share or communicate the dataset with a third party. We see the intent here as similar to the current rules around consumables i.e., if any waste material as a result of the R&D gains a commercial value (receiving a fee for scrap for example) then that fee is deducted from the original material cost price so only net R&D cost is captured. In our opinion that would be the fairest way to assess each case and achieve the intention of the change. An area of challenge will be data that may continue to be utilised beyond the R&D phase by the company itself. For example, if the original data was purchased for R&D purposes and then the historic data set continues to inform the ongoing development, such as actuarial pricing. In this case, we believe that whilst it is being utilised solely for the purposes of qualifying R&D it should be a qualifying cost and then only excluded post deployment (and R&D has ceased) instead of excluded from day 1. By excluding day 1, we believe the incentive will not achieve the desired goal of stimulating ongoing additionality.
Cloud computing costs that can be attributed to computation, data processing and software	It is critical that the activities most likely to drive additionality are subsidised and not limited due to administrative challenges. Where project work is contracted only on this basis, the costs will be clear but there may be many examples where this is bundled. The approach to apportionment may therefore need to see a normalised digital overhead cost to baseline the non-qualifying expenditure so the additional activities can be quantified. For example, if the ongoing license and storage costs are £10 and evidence can be produced that this is the regular spend and an invoice is received for £20 following the development work, it would be fair and reasonable to

	consider the additional £10 as cost above and beyond overhead to be then considered for potential qualifying expenditure.
Ease of invoice breakdown for cloud computing	How invoices are broken down will be challenging and we would recommend that the legislation follows reasonable apportionment in a similar manor to how time of an individual is considered in the absence of time sheets. What should be clear is where specific projects have a specific need and costs most likely to be more significant this is itemised clearly. Where the costs are greater than £50,000 an itemised bill should be required and easily obtained.
Limiting overseas costs	We agree that overseas cost that are not likely to generate UK spill over should be limited, however there are many legitimate reasons why overseas resources may be utilised. Whilst the consultation asks for examples of specific exceptions to the exclusion, we would propose restrictions against the current rules may better address the issues and be more futureproof. Whilst there are some obvious areas that could be carved out such as overseas field testing and clinical trials, filling a skills shortage is more variable and specific to a greater scope of industry. For large multinationals based in the UK, it can be common to have overseas centre of excellences that the UK draws on to help push the domestic agenda forward. For example, the exclusion could be, the costs of services that could reasonably be produced/sourced/purchased in the UK but purchased outside of the UK will be excluded. For the avoidance of doubt, commercial consideration will not be considered reasonable. We would further be supportive of a percentage or financial cap/restriction to the amount of overseas costs that are claimable. For example, overseas costs must not exceed 25% of the overall qualifying expenditure.
Endorsement by a senior officer	Whilst individual accountability impresses a level of responsibility, this is a mechanical action that does not drive standards. There is also an element of duplication as the claim is made via the tax return which already has a requirement to be signed off by an authorised signatory of the company. Due to poor practice of some agents in the market this will not act as a deterrent and other measures are needed including a more active involvement from the ASA in addition to the new enforcement officers targeting rouge agents of which they are easily found and named.

Inform HMRC in advance of plan to make a claim	In our opinion, this does not serve any meaningful purpose and becomes a pointless administrative task. There is also a strong argument to say all new start-ups will be encouraged to 'opt in' to protect their ability to claim so has the risk of inflating the potential of future claimants or worse, ones that have 'opted in' make a claim because they believe they then qualify to.