

## Maximising your R&D and innovation after Covid-19

Here we answer all the questions our viewers asked before and during our webinar on 8<sup>th</sup> July.

**Q: We are constantly updating our internal systems to match customer demand – we have an IT team of six people who are always working on this. How much of their time can we claim as R and D expenditure?**

A: Phil Waller

I have to go back to first principles here – what is the team doing; is it a project? Can you break it down in that way? This might involve a level of thought and possibly even timesheets, on their part. Then you need to think about what they are actually doing – are they moving things forward technologically or are they bug-fixing?

If they are creating something new or have made an advance in the technology, that is very relevant. If you can show that your six people, through the year, have been working on three or four distinct projects, and can show what innovative work they have been doing, that will be helpful. Even if it is effectively a continuous project, with different stages, HMRC should accept that if you can show it has been innovative. There is a good opportunity for a claim if you can do this work.

**Q: I have had software by consultants outside the UK and I want to IP that development. Is it too late to do something about their contracts; they started work in late 2019?**

A: Rajeshree Bhojnani

It may not be too late. When we are talking about software, certainly from a UK and EU perspective, there is no copyright registration system. Copyright is likely to be the main intellectual property right that will give you protection for your software, and your code. If you have had consultants, whether in the UK or outside it, involved in the writing of that code, it is not too late to get assignments of the rights of those consultants signed up and drafted in a way that would make sure that any IP that they have developed, either for that software in the past or, if they are continuing that development into the future, that they do develop, is transferred to you or your company.

It is not too late to do that. But how you approach the question in retrospect depends a little on your relationship with those consultants. Hopefully, it is collaborative and friendly and they will understand why you are doing it. If you have not already signed a contract with them, do remember that you will need to approach it with some care, if you think there are going to be any challenges from those consultants.

**Q: What is the main problem you see with tech companies when they come to sale?**

A: Inger Anson

I wouldn't say there is a common problem or common theme of problems with IP or tech businesses - many businesses have problems unique to them. But this is partly why we have raised these issues in the webinar because the one thing that IP and tech businesses need to focus on and take great

care to look after is their IP; understanding what it is they are using, how they are using it, how they are documenting it and how they are protecting it, because that is where the value lies in those businesses. The focus isn't so much on how many employees you have or whether they have employment contracts, but rather on the assets that make the business; do you own them, are you allowed to use them, can you sell them and are they being commercialised in the right way? That is the key focus for an IP or tech business.

**Q: Where is the line drawn on claims for R and D relief if a sub-contractor is working for a contractor; who can claim?**

A: Phil Waller

The simple answer is that it depends on what work each is doing. There are two regimes in operation depending on what size each contractor or sub contractor is, so the answer will differ there anyway. Are they large and therefore can claim RDEC or are they small and medium and can therefore claim the higher tax relief?

But also it depends on whether Company A, the contractor, has brought in Company B to do Company B's normal day to day work, or whether Company B is actually doing something innovative in its own right. If the overall project is innovative, it could be that Company A can claim R and D tax credits for the cost of that work of the subcontract work that it has passed Company B – it all goes back to first principles, and answering the main questions about the work that is being done.

**Answered by:**

Rajeshree Bhojnani, Partner, Commercial, Harrison Clark Rickerbys

M: 07860 924 363

E: rbhojnani@hcrlaw.com

Inger Anson, Partner, Corporate, Harrison Clark Rickerbys

M: 07855 746 797

E: ianson@hcrlaw.com

Phil Waller, Tax Partner, Ballards LLP

M: 07720 294 761

E: phil.waller@ballardsllp.com