

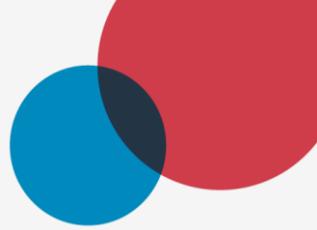


GLOBAL R&D TAX INCENTIVES

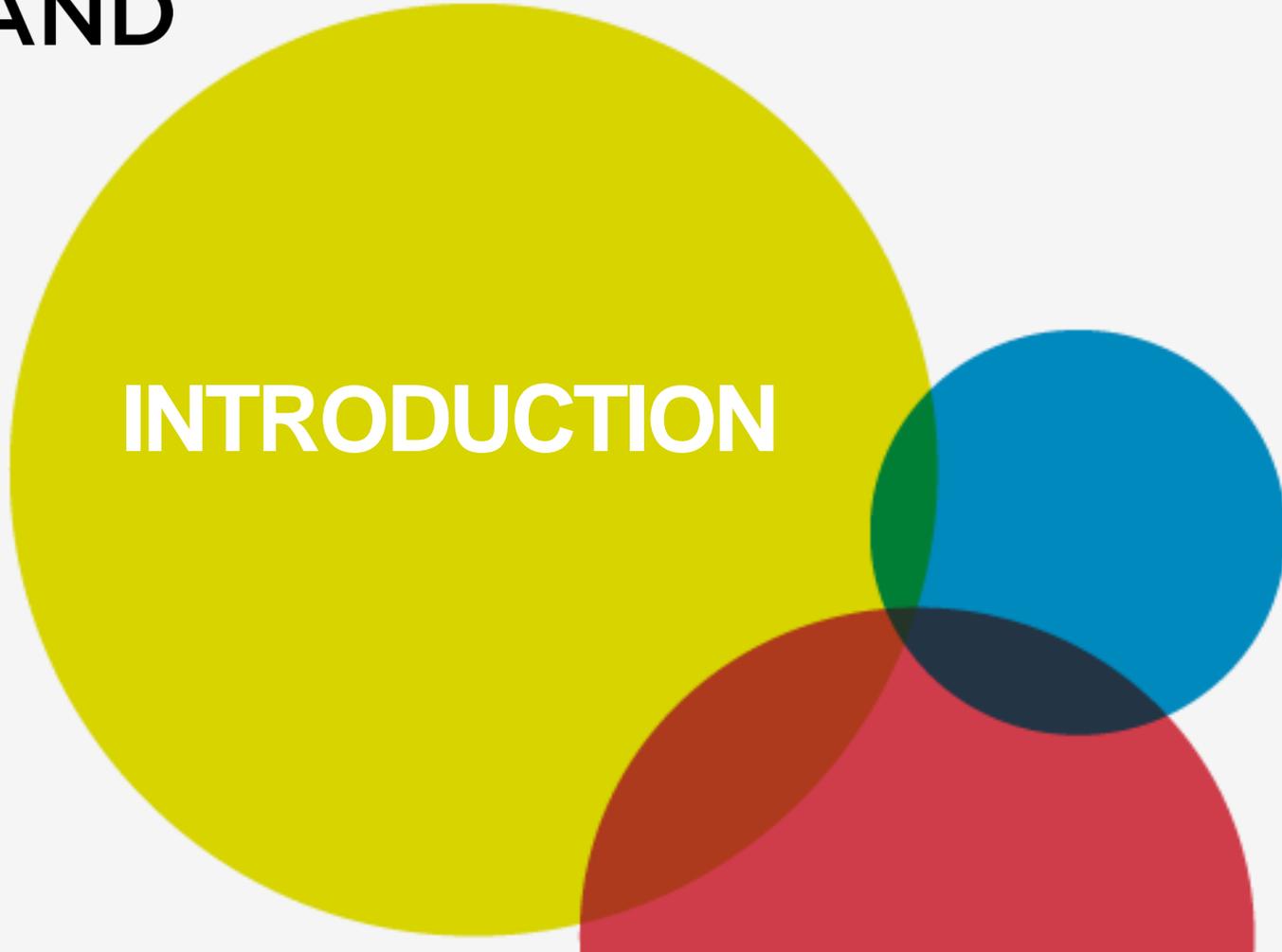
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Your global tax partner

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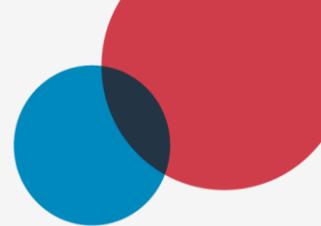


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INTRODUCTION

WHY A SPECIFIC WORKSHOP IN R&D?



With constraints arising from BEPS/EU related measures, we are facing a **new focus** on R&D incentives and review and audit by tax administrations.



Streamlining quality of incentives requires better coordination between different geographies, mobile assets and business units to adjust to global supply chain.



Keeping pace with developments, practices, audit scopes and trends is critical for maximisation of centralised R&D function and location decision-making.



FOURTH INDUSTRIAL REVOLUTION MEGA TRENDS

Digital transformation to differentiate and stay competitive – emphasis on Internet of Things, Big Data Analytics, Artificial Intelligence.



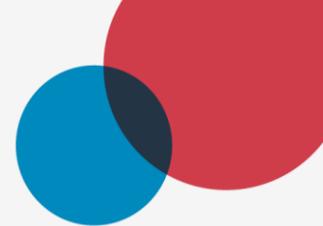
Knowledge-intensive global value chains with intangibles playing bigger role – spending on R&D and intangible assets such as brands, software, IP growing fast.



Innovation pushing frontier of what is possible in digital age, driving job creation, productivity and growth – increasing relevancy of public policies.



INTERNATIONAL TAX MEGA TRENDS



New business models emerging due to collaborative economy and technological advancements – potential departures from the traditional nexus principle.



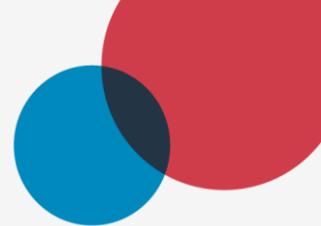
BEPS push on transfer pricing outcomes to be in line with value creation – strain on valuing supply-side (intangibles) vs demand-side factors (users in the market).



Global minimum tax and limits to IP regimes to substantial activities resulting from R&D activities – lowering the sensitivity of taxes on location of R&D.



STATE OF PLAY ON R&D TAX CREDITS – EU



Multiplicity of forms across EU MS with key differences on eligibility conditions, tax credit bases (incremental or volume based), sizes, ceilings and industry-specific.



Input incentives (R&D investment) and output incentives (IP box) under review by EU State Aid and Code of Conduct rules dealing with harmful tax competition.



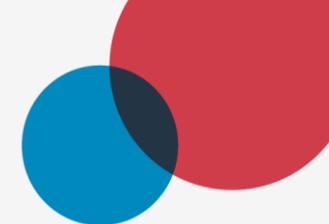
CCTB proposal ‘super-deduction’ on R&D expenditure and Europe 2020 strategy of R&D spending of 3% of GDP.





**RECENT
UPDATES IN R&D
INCENTIVES**

ARE THERE ANY SIGNIFICANT RECENT CHANGES IN FRANCE?



On one hand, there is no significant change in the law on the research tax credit. On the other hand, regarding to the patent box, France adopted the OECD recommendations on 1 January 2019.

In the field, we observe that tax audits are becoming more and more stringent, focusing on 1) scientific justification, and 2) subcontractor expenses.

MAJOR CHANGES

New eligible asset



Copyrighted software

New calculation method

$$\left[\text{Incomes} - \text{R\&D expenditure} \right] \times \text{Nexus}$$

↓
Corporate tax rate: **10%**

A FEW FIGURES OVER A YEAR:

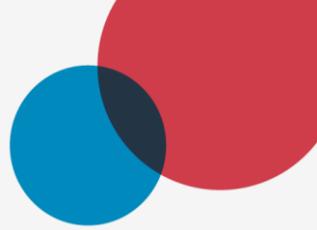
6 billion euros in costs for the State

Nearly **25,000** tax filers

Between **1000** and **1500** rectified CIRs

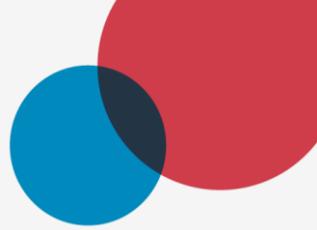
300 to **400** million euros adjusted

ARE THERE ANY SIGNIFICANT RECENT CHANGES IN UK?



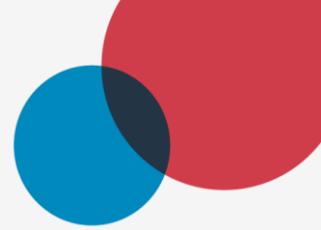
- ❖ Latest HMRC figures indicate over 40,000 R&D claims are processed annually (+19% on prior year), providing over £3.5 billion (+20%) of R&D tax relief support corresponding to £24.9 billion of R&D expenditure. In 2016-17 1,025 companies claimed £942.5 million relief using the Patent Box.
- ❖ R&D Expenditure Credit for Large companies increased to 12% from 1 January 2018; SME credit remains up to 33.35%; both potentially refundable but ongoing consultation regarding limits of cash refund
- ❖ Anti-abuse provisions, limits of refundable cash.

ARE THERE ANY SIGNIFICANT RECENT CHANGES IN US?



- ❖ US Tax Reform generally left the Research Tax Credit generally unchanged
 - RTC is one of the few broadly available tax incentives
- ❖ US Tax Reform included major changes to the deductibility of R&D tax expenditures starting in tax years beginning after 31 December 2021
 - US based R&D expenditures must be capitalised and deducted over 5 years
 - Foreign R&D expenditures must be capitalised and deducted over 15 years
- ❖ Net credit rate increased due to impact of rate reduction on the Section 280C(c) deduction
- ❖ New case law continues to evolve the legal interpretation of statutes and regulations.

R&D IN IBERIA – SIDE BY SIDE

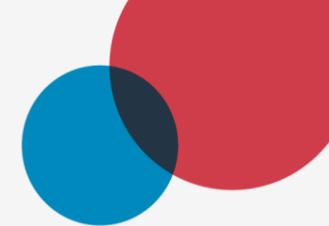


PORTUGAL	SPAIN	Evaluation
R&D tax credit SIFIDE (<u>full tax credit for CIT</u>), Contractual Tax Incentives (<u>Full tax credit against CIT due, real estate taxes</u>), foreign researchers (20% rate).	Tax Incentives for R&D&I Activities (<u>accelerated depreciation, full tax credit for CIT, social security reductions</u>).	Similar but tax credit broader in Spain (limits, carry-forward, monetisation).
Patent Box (<u>50% reduction of corporate income tax</u>).	Patent Box (<u>60% reduction of corporate income tax</u>).	Similar but tax reduction broader in Spain (percentage, types of IP).
SI I&DT for R&D projects (<u>Partial repayable grant – open</u>).	Financing of R&D&I Projects (<u>Partial repayable grant – open</u>) CIEN Programme (<u>Partial repayable grant – open</u>) ‘Cervera’ Technological Transfer R&D Projects (<u>Partial repayable grant – open</u>).	EU based grants in Portugal vs local grants in Spain.



**GLOBAL TRENDS
IN R&D
INCENTIVES**

WHAT TRENDS ARE WE SEEING ACROSS INNOVATION INCENTIVES – FRANCE



- ❖ There is a national desire to attract technology companies to France, whatever their field of expertise. The research tax credit scheme is often cited as one of the most attractive in the world
- ❖ However, we note two aspects that tend to value particular sectors or restrict access to the R&D tax credit to others.

In law

The **pharmaceutical sector** used to be particularly cited and valued in the FTA guidelines.

In 2018 this support has been Mitigated.

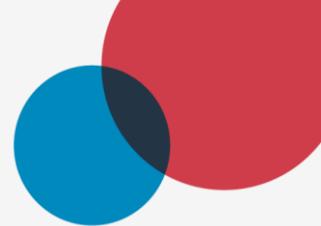


In practice

In practice, we observe that companies in the **digital sector** are finding it difficult to value their work in order to benefit from the R&D tax credit.

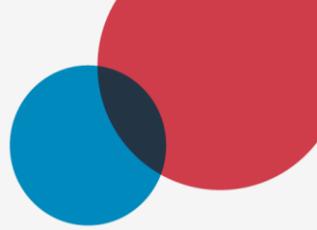


WHAT TRENDS ARE WE SEEING ACROSS INNOVATION INCENTIVES – UK



- ❖ Strong political support for regimes.
- ❖ Increased scrutiny on technological characteristics of R&D projects, in particular software development. HMRC regularly use in-house software professionals to review claims and have recently published revised guidance for software based claims.
- ❖ More integrated approach of ‘modified nexus’ Patent Box relies on increased ‘tracking and tracing’ of R&D costs/economic substance to Patent Box claims.
- ❖ Introduction of more pro-forma based submissions.

WHAT TRENDS ARE WE SEEING ACROSS INNOVATION INCENTIVES – US



- ❖ Strong political support for regimes
- ❖ More states are offering tax incentives to attract jobs in technology industries
- ❖ Government scrutiny of R&D tax credit claims is likely to continue.



**IMPROVING
THE CLAIM
PREPARATION
PROCESS**

HOW CAN WE MAKE THE PROCESS OF PREPARING CLAIMS EASIER IN FRANCE?

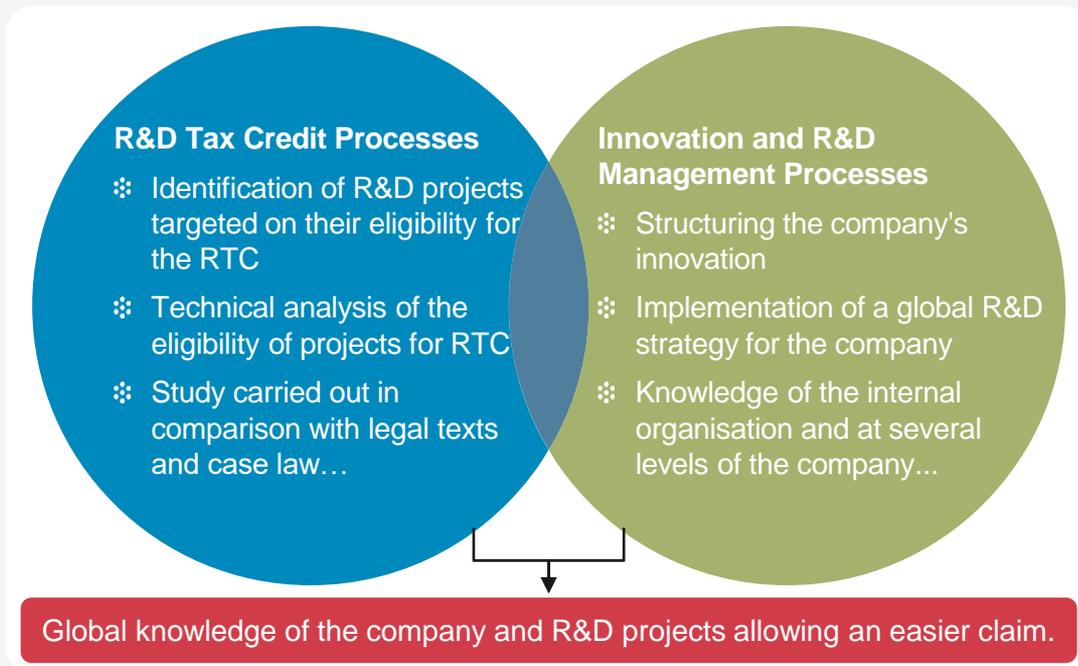
In our practice, we find that preparing R&D tax claims is easier if the company also implements rigorous R&D or innovation processes.

In other words, an R&D tax credit claim cannot be the result of a pure tax process.

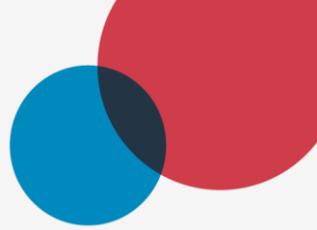
It is really the result of a cross-domain global project of the company, involving stakeholders from strategy, R&D, innovation, finance, and tax.

It works better if internal pilots are appointed, with special incentives.

❖ **TAXAND**

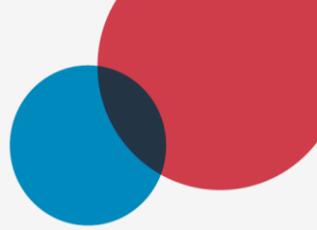


HOW CAN WE MAKE THE PROCESS OF PREPARING CLAIMS EASIER IN UK?



- ❖ R&D tax schemes are well-established and often regarded as routine compliance process
- ❖ But, ongoing requirement to make process more efficient AND to reflect changes to organisational structures
- ❖ ‘Less intensive but more often’ – separating assessment process from supporting document production; more contemporaneous assessments often stronger (and higher!)
- ❖ ‘Comprehensive’ commercial solutions offer to project manage the process, marshal interaction with HR & project cost systems and orchestrate questionnaire based approach to engineering community
- ❖ Often fail to deliver correct claims, few are proven/robust and are often either too generic or too restrictive; advisors looking to bind clients to solutions for greater ‘stickiness’.

HOW CAN WE MAKE THE PROCESS OF PREPARING CLAIMS EASIER IN US?



- ❖ Documentation should focus on areas of greatest risk and greatest opportunity
- ❖ Timely preparation and filing is essential

IRS is more suspicious of amended claims for credit.



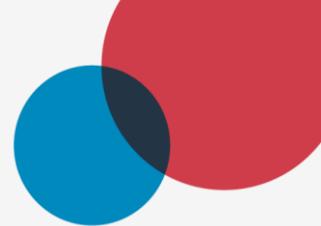
Certain elections must be made on original returns.



Availability of documentation and SMEs generally decreases over time.



HOW CAN WE MAKE THE PROCESS OF PREPARING CLAIMS EASIER IN IBERIA?



- ⌘ Timing is critical – pre-certification in Portugal/Spain may take longer than expected entity but tax credits widely accepted for industrial companies
- ⌘ Use available instruments for legal certainty on the qualification of a project as R&D or technology innovation (qualification as R&D but not items of expenses) – **only Spain not Portugal**
 - Higher risk of challenge the qualification of a project as R&D or technology innovation if no binding report from the R&D Administration.



**DEFENDING
CLAIMS
WITH TAX
AUTHORITIES**

HOW CAN WE DEFEND CLAIMS WITH TAX AUTHORITIES IN FRANCE?

As previously stated, the implementation of a process not only linked to the RTC but also to the R&D global strategy of the company makes it easier to defend cases.

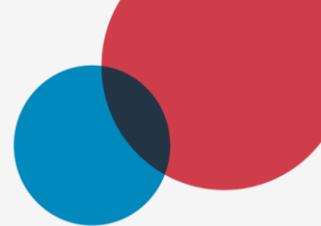
In addition, we observe that the defence of claims is facilitated if the company's R&D and tax departments are involved in the RTC. This dual competence must also be reflected in the management consulting firm.



Tax and scientific teams working together as a common front

Finally, other types of R&D indicators make it easier to defend projects: Collaborations with public bodies; Filing of patents; Other public subsidies; Scientific articles on the project...

HOW CAN WE DEFEND CLAIMS WITH TAX AUTHORITIES IN UK?



'Advance Assurance' pre-filing process for SMEs to guarantee claims accepted.



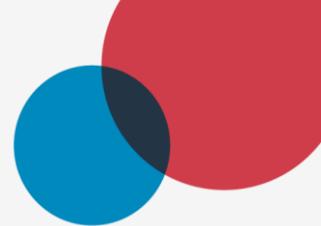
Early dialog useful, but HMRC increasingly resource constrained.



Understand new expectations of supporting evidence.



HOW CAN WE DEFEND CLAIMS WITH TAX AUTHORITIES IN US?



Document
contemporaneously



Understand your
areas of risk

- ❖ Points of law (see IRS Audit Technique Guides)
- ❖ Contingent fee claims
- ❖ High-level estimates
- ❖ Lack of nexus between business component and QREs
- ❖ Inadequate contemporaneous documentation of technical activities.



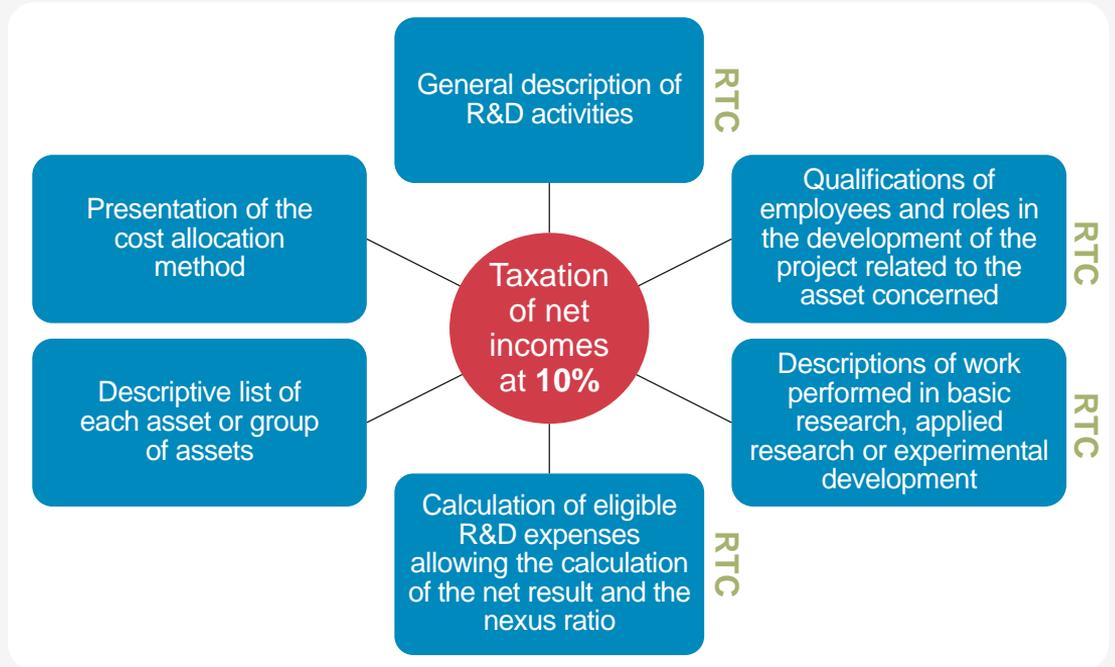


**BEST
PRACTICES**

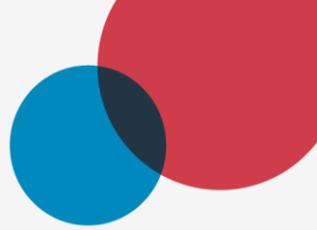
'BEST PRACTICES' FOR TRACKING R&D – FRANCE

Focusing on the link between RTC and IP Box processes, some efficiency can be leveraged by an integrated approach.

- ❖ If the RTC is contested, the R&D nature of the expenses retained for the patent box should not be validated
- ❖ A tax ruling also secures the work retained in the patent box
- ❖ The RTC's supporting documents already meet the majority of the documents requested under the patent box, as shown in the diagram.



'BEST PRACTICES' FOR TRACKING R&D – US



Understand what resources are already available to identify and quantify qualifying research activities and expenditures.

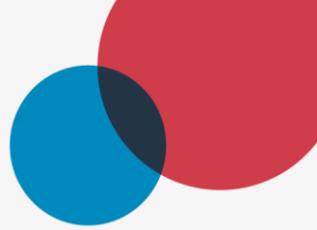


Taxpayers under continual IRS audit should discuss ways to develop a methodology that is reasonable to both the taxpayer and the government.



Leverage documentation and resources from the core R&D areas to substantiate supporting costs and activities.

'BEST PRACTICES' FOR TRACKING R&D – IBERIA



Spanish possibility to claim refund/monetisation not effectively used in certain conditions – need for motivated report and not possible if lack of tax due (Basque Country).



Spain/Portugal tax authorities reviewing projects based on software (eg financial institutions, insurance companies) even when the R&D Administration has qualified positively the project – indirect connection between the expenses and project.



Patent Box only used by reduced number of companies (no legal tradition, transfer pricing issues, WHT issues).

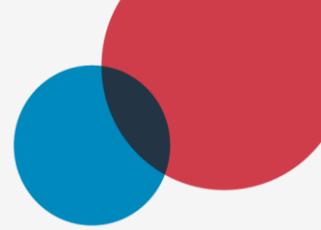


Flourish of 'engineering' consultancy firms specialised in obtaining R&D subsidies and R&D tax incentives.



**OTHER
DISCUSSION
POINTS**

OTHER DISCUSSION POINTS



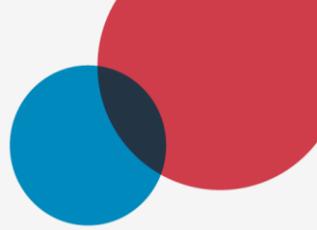
FRANCE	UK	PORTUGAL/SPAIN
<ul style="list-style-type: none">❖ Other territorial subsidies exist in France and in Europe. The RTC file, very complete, can help to set up the files for other subsidies in a process of mutualisation of efforts.❖ However, It should be noted that the subsidies obtained are deducted from the RTC base.❖ Other interesting schemes :<ul style="list-style-type: none">-Young Innovative Company status (tax and social benefits)- “Corporate Venture scheme”.	<ul style="list-style-type: none">❖ UK R&D regimes not territorial: overseas R&D supervised, controlled, directed from the UK and deductible for tax purposes in the UK qualifies, as do contributions to approved SROs etc.	<ul style="list-style-type: none">❖ In Portugal, outside SIFIDE only a small part of expenditure may be considered as part of an R&D process (such as transfer of technology or acquisition of patent rights)❖ In Spain, 65% of the grants received to carry out R&D activities that are imputed as taxable income of the tax period should be subtracted from the deduction basis of R&D tax credits.

❖ TAXAND



**SPEAKER
PROFILES**

SPEAKER PROFILE



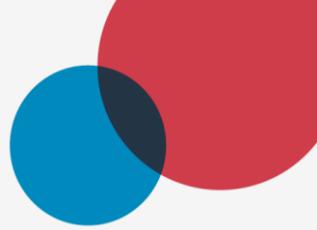
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Pierre Marchand is the Managing Director of Arsene Innovation, subsidiary of Arsene. After working over 15 years in the software industry, Pierre joined Arsene where he advises corporation on R&D financing strategy and innovation performance management. While having experience in various fields, he has a particular expertise of the digital projects and their business applications. Pierre co-authored 16 patents and co-founded three start-ups. He is a member of the Finance and Consulting Certification Committee in the 'Finance Innovation' Competitiveness hub.

SPEAKER PROFILE



Kathleen King

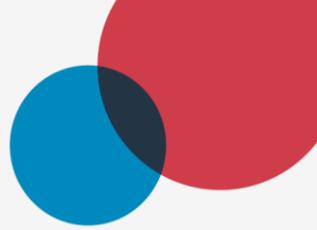
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Kathleen King is a Managing Director with Alvarez & Marsal Taxand in Washington, DC. For over 25 years Ms. King has led US R&D tax studies across multiple industry sectors including aerospace and defence, technology, food, retail, financial services and manufacturing. She previously served in the national office at a Big Four accounting firm. Ms. King is a frequent speaker and writer on R&D tax incentives. She has extensive experience dealing with tax controversy matters with the IRS.

Ms. King earned a bachelor's degree in Mineral Land Management and a Master's Degree in Accounting.

SPEAKER PROFILE



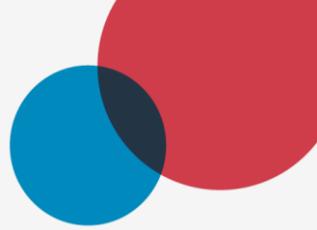
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Tiago Cassiano Neves is based in Taxand Portugal where he is a partner of Garrigues in Lisbon. Tiago leads the international tax practice of the Lisbon office and has a deep knowledge of international tax law and complex cross-border tax matters. Tiago has a wide experience on tax aspects of global structuring, real estate investment, mergers and acquisitions and reorganisations, as well private client advisory. Tiago speaks regularly at conferences dealing with international tax and is part of the faculty of the International Tax Center of Leiden University. Tiago holds a Law Degree from Portuguese Catholic University and LLM in International Taxation from Leiden. Tiago is listed as a recommended tax lawyer in Best Lawyers.

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David Byrne is a Senior Director with Alvarez & Marsal Taxand in London. For over 12 years Mr. Byrne has led UK R&D tax studies across multiple industry sectors including financial services, technology, media and telecommunications, retail and manufacturing. In addition, he has over 20 years of 'hands on' IT project experience in global corporations.

This blend of deep R&D tax knowledge and detailed technical experience enables Mr. Byrne to play a pivotal role in the efficient and robust preparation of R&D claims.

Mr. Byrne earned a bachelor's degree in Economics and a Postgraduate Diploma in Computer Science.