R&D Consultative Committee

Monday 10 June 2013

Bush House, Strand, London WC2B 4RD

Attendees:

HMRC	Paul Arnold
Carol Lunney (Assistant Director, CTISA)	Laurence Bard
Carol Johnson	Guang Deng
Alan Dickinson	Chris Harrison
Emma Spear	Kathie Haunton
Nalini Arora	Remy Husein
Tom Bradley	Steven Levine
	Richard Lewis
	Diarmuid MacDougall
Andrew Culley (BIS)	John Moore
	Rachel Moore
	Chris Newton
	David O'Keefe
	Peter Denison-Pender
	Mike Price
	Ian Rowland
	Faye Ruffles
	Jonathan Storey
	Neil Taylor
	Jennifer Tragner
	Samantha Vanags
	David Woodward

1. Minutes of previous Meeting

Minutes of previous meeting have been published. HMRC invited comments, but otherwise it was agreed that the minutes would be treated as final.

2. Above the line (ATL) expenditure credit

a. CJ explained that there had been a Government amendment to the R&D expenditure credit legislation. The policy intention was to benefit all companies irrespective of their corporation tax liability and it had been brought to the attention of HM Government (HMG) that this was not the case in certain circumstances. The net benefit to a company of the credit could be different depending on whether the company was claiming the credit to discharge a corporation tax liability or by way of a payable amount. Hence, the Government amendment was intended to ensure that this was not the case and that the net benefit to companies was consistent.
b. CJ explained that this amendment had resulted in a reordering of the steps to be taken to calculate how the payment of the credit would be made where a claim was made under Schedule 15 of the Finance Bill.
c. There were no questions asked about the Government amendments.

d. The committee then discussed the R&D expenditure credit more generally. The credit does not affect quarterly instalment payments (QIPs) because in order to ensure the credit's 'above the line' accounting status it is important that it does not affect a company's corporation tax liability. A company opting into the

e. A company can use the credit to discharge a corporation tax liability of a previous accounting period where that liability is outstanding at the time of the claim. If there is no outstanding liability at the time of the claim (because that tax has already been paid) then the credit cannot be carried back to a previous accounting period and create a repayment.
f. A company can claim a credit for qualifying R&D expenditure that has not been reflected as a receipt in the accounts, but an adjustment would be required in the tax computations. The committee thought that this could be dealt with from an accounting perspective by 'truing up' the accounts the following year.
g. It is not the policy of HMG to consult with other governments in relation to UK tax policy changes and so there has been no dialogue with the IRS about the implications of the R&D expenditure credit for US tax purposes.
h. There are no changes to the current procedures for SMEs that claim under both the SME and large company schemes. They will be able to continue to do so under the same circumstances and the company will be able to elect to claim an expenditure credit instead of an enhanced deduction.
i. There will not be a 28 day target, similar to that for the SME scheme, for payments of the expenditure credit. The majority of companies claiming the expenditure credit will have a CRM who will be able to discuss any payments that might be due.
j. There is no specific format in which amended returns have to be submitted, but it is likely that in future there will be a requirement to submit them electronically.
k. The PAYE/NIC cap is intended to apply in cases where arrangements are designed to claim a cash credit in the absence of UK R&D activity. Expectations are that in the majority of cases the PAYE/NIC cap will not apply. Calculating the cap shouldn't be too onerous given that the majority of information needed is required for the calculation of qualifying expenditure. However, where a company can provide clear evidence that the cap will not apply, a pragmatic approach may be taken regarding the extent to which a detailed calculation of the actual cap amount is required.
l. HMRC agreed to look at the interaction of the Employment Allowance and the PAYE/NIC cap.
m. HMRC explained that they intended to share the draft guidance on the R&D expenditure credit with the RDCC so that they could provide feedback. Although this guidance was expected shortly it would not be published until after the Finance Bill received Royal Assent. The FB2012 changes should be published shortly.
n. All the guidance including HMRC's technical guidance is to move onto the Gov.uk platform and the styles on this platform may differ to the existing set up. The Gov.uk platform is applying a generic approach to writing and presentation.
o. The take-up of the ATL credit will be monitored and there is no intention to make it available for SMEs or the Creative Industries Reliefs.

3. R&D: Capital Vs Revenue expenditure.

4. The committee expressed the view that the guidance in relation to capital and revenue expenditure is outdated and stated that HMRC are challenging claims in this area, particularly in relation to 'software'. The committee felt that the BIM guidance is not helpful.

5. The law regarding capital versus revenue has not changed so the application to claims for 'software' is consistent with other claims. HMRC apply the law to the facts that are available and there has been no change in approach.

6. It was agreed to establish a Working Group (WG) to discuss this issue. The RDCC was asked to email NA or CJ if they wished to volunteer to be part of the WG which would meet before the next Consultative Committee meeting in October.

7. It was agreed to include capital versus revenue as an agenda item at the next RDCC meeting.

8. **AOB**

The committee explained that they had experienced some inconsistency of approach from the R&D units. It was agreed that they could email Neil Smillie or CJ with examples of this.

The meeting closed at 3pm.

Nalini Arora