R&D Consultative Committee
Minutes of meeting held on 3rd April (13:30 to 15:00)
Bush House, Strand, London WC2B 4RD

HMRC:
Jennifer Payne (JP) (Chair), Neil Smillie (NS), Simone Barnett (SB),
Sian Stubbs (SS) Nalini Arora (NA) (Minutes)

HMT: Mihiri Seneviratne (MH)

BIS
Apologies: Andrew Culley

RDCC:
Paul Arnold (BE Vanbuckland); Rupinder Asham (Grant Thornton); Laurence Bard (Smith Williamson); Gavin Bate; David Clift (Hazelwoods); Guang Deng (Leyton); Victoria Garton (Fti Consulting); Chris Harrison (Deloitte); Kathie Mainta; Carol Johnson (KPMG); Stuart Lisle (Pronovotech); Stuart Knight (Matthey); Steven Levine (CVdfk); Richard Lewis (Pronovotech); Alexis Marz (MMP Tax); John Moore (Kingly Brookes); Rachel Moore (PwC); David O'Keeffe (Aiglon Consulting) Peter Denison-Pender (MMP Tax); Katy Rabindran (Grant Thornton); Faye Ruffles (Ernst Young); Sheetal Sanghvi (Baker Tilly); Jennifer Tragner; Neil Taylor (Edwards Accountants); Adrian Williams; Alex Moss.

JP welcomed everyone to the meeting and introduced herself as the new Policy Lead for both R&D and Patent Box. Simone Barnett also present has joined the R&D team.

1. Minutes of previous Meeting

JP asked whether there were any comments from the minutes of the last meeting. NA acknowledged that she had missed out a couple of names of those present, which she would correct before publication. It was agreed that the minutes would be treated as final.

2. Budget 2014 announcement

There was only one change made to the R&D tax credit schemes. The rate of the SME payable is increased from 11% to 14.5% for expenditure incurred on or after 1 April 2014.

The committee asked whether this rate increase will affect the EU aid intensity limit of 25 per cent for State aid purposes and whether clearance has been obtained for the proposed increase.

JP indicated that the introduction of the RDEC in the form of a payable credit and which is not a state aid, changed the base line for calculating the credit enabling the increase in the SME rate.

The net RDEC rate of 8% enables a SME rate of 33% to be introduced while remaining within the intensity limit of 25%.

The EU Commission has been notified of the change and a challenge is not expected.

3. HM Revenue & Customs (HMRC) organisational changes

As part of the wider Large Business Division (LBD) internal reorganisation the way support on R&D tax credits is currently being delivered is changing. This will have no effect on the way large business R&D cases are handled and these will continue to be dealt with in the first instance by the Customer Relationship Manager (CRM). The change will be who in HMRC provides the R&D specialist support. The new Large Business (LB) will take responsibility for large business R&D work currently undertaken in the specialist units and will increase its own R&D capability. R&D specialists will effectively sit alongside case teams within LB to provide necessary expertise.

LB will carry out this work through a network of tax professionals with the requisite skills working under the direction of a CRM.

The R&D specialist units will largely stay in place, but will deal with mid-sized businesses going forward. R&D work from the Cambridge unit will be moving as it will become a LB location from April 2014. The other R&D specialist units will move from Large and Complex into the Mid-size business area.

SME companies will continue to receive the same support from the specialist units as before albeit from fewer locations.

The new structure for large businesses will ensure their needs are met by providing R&D expertise where the rest of the company's tax affairs are dealt with. There will be a careful planned and phased redeployment over the next few months to ensure there are no risks to continuity of performance.

Steve Harris, current R&D specialist unit head in Cambridge, will oversee the changes that will take place. During the transitional period the R&D Unit Heads are committed to giving the same level of support. There will be a change to the post-code allocation which will be publicised shortly.

The committee members asked if the postcodes could be circulated to them at the earliest once this had been agreed.

Action Point
NA to circulate the postcodes when ready.

4. Update on RDEC Guidance

JP thanked all for their comments received on the draft RDEC guidance. The date for receiving comments closed on 31st January. HMRC is in the process of updating the draft guidance taking into consideration all the comments received with the final guidance being published in the summer.

Processing of RDEC claims and the interaction of the regime with other parts of the tax system had raised a number of issues e.g. the interaction with quarterly instalment payments. JP acknowledged that there was a lack of clarity in certain areas which would be addressed in the final guidance.

It was however important to remember that the RDEC was a stand-alone credit independent of tax which confirmed the 'above the line' accountancy treatment. Consequently the RDEC did not have any effect of taxation issues e.g. the calculation of quarterly instalment payments.

The absence of interest attaching to the RDEC required claimant companies to liaise with HMRC to ensure that the benefit materialised at the earliest point. In most cases this would be accomplished by making contact with the CRM.

5. Update on Capital vs Revenue

The last meeting of the sub-group to discuss capital v revenue issues was convened in September 2013. Work on this is still ongoing internally with the aim of gaining a better insight of deciding whether costs are capital or revenue, particularly in the software field

In the last sub-group meeting and the October 2013 RDCC meeting HMRC asked for examples of where the cap vs rev is an issue in practice.

Action Point for RDCC members:
HMRC has not received any examples to date and would like the committee to let them have examples before the next sub-group meeting. These can be emailed to NA.

A question had been raised prior to the meeting asking for HMRC's current position on claims in the financial sector.

HMRC confirmed that insurance company claims were currently under review on a sector basis to ensure consistency of approach and HMRC confirmed that this information could be relayed to their clients in this sector.

The capital/revenue divide may be an issue in some cases but this would depend on the particular facts of the case and how the claim has been presented. This was no different from any claim in other sectors.

SS (R&D Unit Head Leicester) emphasised that the sector review did not extend beyond Large Business cases and any other claims would be considered as normal on a case by case basis with the overriding question initially of whether the activity fell with the BIS guidelines.

6. Updating wider R&D Guidance

JP acknowledged that there are areas of the CIRD guidance that need updating and welcomed suggestions from the committee of prioritising certain paragraphs.

Action Point for RDCC members:
HMRC invited suggestions from the RDCC members of which areas of the guidance needed to be updated.

It was suggested that it would be beneficial to have the R&D rates in tabular from similar to the CT rate table and also update the list of qualifying bodies including rejected cases, NS confirmed both these suggestions would be considered although publishing rejected cases was unlikely.

NS confirmed again HMRC's view on reimbursed expenses and indicated that he had received no written submissions since the last meeting. NS did not consider that reimbursed expenditure automatically qualified for relief and would be limited by the 'appropriate proportion' restriction in CTA 2009 S1124 to expenditure in the particular classes of qualifying expenditure.

Action Point:
NS to look at updating the Qualifying Bodies.

Action Point for RDCC members:
Members of the RDCC were invited to send in writing to HMRC their understanding of how the reimbursed expenses legislation applied.

7. Role of R&D Consultative Committee

JP asked the committee whether its role and current format is working well, given the increased numbers of attendees. If not, would it be better for example to have an annual event to discuss technical and operational issues based on CIOT model and to have a smaller committee that focused on other R&D and possibly Patent Box issues?

The committee considered that the current forum worked well and would not favour moving to an annual event. It may help if the minutes were published on a timely basis and circulating the agenda earlier. This may assist members in deciding whether to attend a particular meeting. . Merging Patent Box with R&D seemed a good idea. In future, send attachments separately to the meeting invite.

8. AOB

(i) Only one response had been received on examples of the problems faced in the capital / revenue area and HMRC was still interested in seeing more of the issues faced.

The question of acquisition costs was raised and NS commented that the company would have to identify a qualifying R&D project in terms of both activity and expenditure before the capital /revenue issue became relevant.

(ii) HMRC was asked for clarification on protective claims. SS confirmed that claims had to be made in a return/amended return within the normal time limit of two years in a best estimate figure. The claim was capped by that amount and if no enquiry was raised then that figure would become final.

Action Point
HMRC agreed to provide confirmation of their general view on protective R&D claims (see footnote below).

(iv) Clarification was sought on the authority necessary from agents submitting R&D claims where the 64-8 mandate is with another accountant.

SS indicated that a further 64-8 was not required. The claimant company should notify HMRC of the agent acting and this could be done by letter and submitted by email attachment. SS confirmed that she would discuss with the other Unit Heads to ensure consistency.

Action Point:
SS to discuss procedure with other Unit heads**.**

(v) Gavin Bate (GB) said that previously HMRC Inspectors accepted a letter for amendments to returns for R&D claims but now Inspectors are asking for an amended CT600 Return. SS said in order to process the amendment all changes to figures should be included. This can be in any format, but the format has to show the revised R&D claim and the effect it has. For example, if there is a loss the effect of that loss needs to be shown. GB asked whether it was acceptable for amended returns to be emailed. SS responded in the affirmative but that she would check the general practice adopted in such situations

Action Point:
SS to check the process of amended returns and report back at the next RDCC meeting.

With no other business the meeting closed at 15:30.

Nalini Arora

Footnote

Provisional claims. Extract from CT600 notes on using estimated figures

Put an 'X' in the box if you have used estimates. To find out more about estimated figures please see CTM93280.

http://www.hmrc.gov.uk/manuals/ctmanual/CTM93280.htm