

Research & Development Consultative Committee, 29 April 2016
G28, Bush House, London

Attendees

HMRC: Alex Galloway, Phillip Hamblin, Kieran McCullagh, Sam Parkes, Jane James, Aziz Yusuf & Steve Williams. HMT: Jon Travis & Mark Hazell

RDCC: Adam Spriggs, Alexis Marz, Andrew England, Andy Ralston, Candy Staples, Carol Johnson, Chris Newton, Christopher Harrison, David Clift, David O’Keeffe, David Ward, Gavin Bate, Guang Deng, Harinder Sandu, Jackie A Latham, James Boughton, Jennifer Tragner, John Moore, John Wilkins, Julie May, Justin Arneson, Kathie Haunton, Maria Kitt, Matt Watts, Neil Taylor, Peter Denison-Pender, Rachel Moore, Remi Hussein, Richard Lewis, Richard Thorpe-Manley, Richard Turner, Rob Allan, Robert Perrin, Rod Hayward, Scott Burkinshaw, Stephen Edwards, Steve C Burgen, Steve Williams, Steven Garrod, Steven Levine, Sue Brown, Teresa Latch, Terry Toms, Vincent Walker.

1. Introduction and Updates

AG introduced everyone to the meeting, then HMRC members gave an overview of their role.

AG –Assistant Director, CT Innovation & Growth.

SW –Theme Lead -R&D and Patent Box, Large Business.

AY – Policy Advisor, CT Innovation & Growth.

PH – Technical Advisor, CT Innovation & Growth

JJ – Technical Adviser, Patent Box, CT Innovation and Growth team

KM – Final year trainee, currently on placement with CT Innovation & Growth.

AY ran through some updates since the last RDCC in July 2015. Finance Bill 2016 introduces a measure to provide for the expiry of Vaccine Research Relief (VRR) with effect from 31 March 2017.

Finance Bill 2016 introduces a legislative amendment to the State Aid cap in Chapter 8 part 13 CTA 2009, to ensure that the transition from the large company scheme to the RDEC has minimal impact on SME claims.

Advance Assurance launched on 30th November 2015, as a soft launch with something of a relaunch in March 2016 with the start of the online facility. By April around 60 applications had been received; these are handled by a dedicated team in Manchester. HMRC encouraged attendees to use the service and give feedback. It was expected that there would have been more than 60 applications however the online launch and increased publicity, such as tweets and webinars, will hopefully lead to an increased number of applications going forward. Feedback given was that Advance Assurance only has a limited potential population as it requires a lot of information and it can be difficult for people to prove expenditure as R&D, so people may find it preferable to simply make a claim and deal with HMRC where necessary in the future. It was recognised that there was a separate population of companies seeking seed capital who would prefer Advance Assurance.

Making R&D Easier was published in October 2015 following on from consultation in 2015. One of the MRDE commitments is bespoke guidance aimed at Small & Medium-sized Enterprises (SMEs). This publication has been drafted, but due to strict design specifications laid down by the Government Digital Service the guidance is not yet fulfilling its intended aims. There is currently a draft publication for SMEs that should offer a simplified version of the main guidance focusing on common areas of difficulty and utilising more case studies. Feedback given encouraged the use of case studies as these are often the clearest way for people to interpret guidance. HMRC asked for two or three further volunteers from the RDCC who would be willing to review this simplified guidance.

An additional ‘AOB’ point around RDA’s was mentioned by AG – Details given in AOB.

2. Grants and State Aid

AY presented on state aid transparency, and was followed by David O’Keeffe, who led a wider discussion on state aid issues.

The European Commission (EC) set out a programme in 2012 to modernise state aids. This programme include the replacement of separate approval of state aids with setting out approved categories and criteria. Alongside this sits increased requirements for transparency. From 1 July 2016, details of the state aids received by beneficiaries will be collected by HMRC and passed on to the EC. Finance Bill 2016 contains a measure to provide HMRC with the power to allow HMRC to monitor and evaluate state aid tax reliefs and other tax advantages, and share certain information with the EU through a legal gateway for the purpose of complying with EU obligations. If a company receives an aid of €500,000 or more the company name and some details will be published online. The details published will include sector, region and whether the company is SME or a large company. The sector applies to the industry the company operates in as opposed to the relevant sector for the specific R&D project. The amount of the aid will also be published in banded amounts – €0.5m to €1m, €1m to €2m, €2m to €5m, €5m to €10m, €10m to €30m, and greater than €30m. The information will be published by the later of 12 months from receipt of the information or 12 months from 1 July 2016. The commission will also require a ‘purpose of aid’ this will be a generic statement along and will not divulge any case specific details of the R&D project.

Generally speaking HMRC already gets all the information that they require to comply with this for R&D tax relief, although it is not in the correct format. In practice HMRC will not generally want any new information from companies as they will try and derive any missing information from that which they already have..

The change is only relevant to a few hundred companies who receive over €500,000 aid. As a precaution, and to ensure claims are paid, HMRC recommends that companies lay out the categories of state aid information separately in their covering letter.

The €500,000 is for each return period, so one project can receive several different state aids over the course of several years totalling over €500,000 but not be published so long as each claim is below €500,000.

DK clarified that the provision of this information is a condition that HMRC must fulfil to give the state aid, HMRC will not be able to provide the relief until the information is provided.

HMRC does not aggregate claims from the same company, HMRC only has an obligation to report on a regime by regime basis. The European Commission website may aggregate the claims from each company individually but HMRC are not aware of plans to do this.

HMRC is still finalising operational plans and will update any changes to the claim process in advance. HMRC will publish guidance in the Corporate Intangibles Research and Development Manual (CIRD) manual.

A point was brought up about Innovate UK’s claim on their website that implied that their grants were not state aid due to an exemption from 2008. HMRC were not aware of this statement. David O’Keeffe made a request for HMRC to increase coordination between themselves and providers such as Innovate UK. General feedback also a coordinated information for business on where grants or state aid are available and how they interact with tax relief.

Other additional points;

A question was raised as to whether De minimis aid was notified State aid for the purposes of section 1138(1)(a) Corporation Tax Act 2009. PH said that aid which was categorised as De minimis within the commission regulation on the application of articles 107 and 108 of the EU Treaty was not notified State aid for the purposes of section 1138(1)(a) CTA 2009 although of course section 1138(1)(b) or (c) of CTA 2009 would apply.

PH pointed out that just because a grant (or other aid) was small or was described as de minimis it;

- Did not mean that it was de minimis aid within the commission regulation.
- And if it wasn't de minimis aid within the commission regulation it may be caught by section 1138(1)(a) CTA 2009.

More details on de minimis aid for the purposes of the EU rules can be found in the Department for Business Innovation and Skills publication "[The State Aid Manual](#)"- and specifically Chapter 4. It was also noted that the aid provider should be approached for clarification. PH confirmed that aid which fell within the General Block Exemption Regulations was notified State aid and that section 1138(1)(a) applied to it.

Action Points – Aziz Yusuf will send round a list of industry sectors for state aid reporting purposes. Aziz Yusuf will provide an update on increasing information coordination.

3. Sub-Contracted R&D

There was a discussion about the current rules around subcontracting R&D, including how they were working and were there any areas where improvements can be made.

Feedback given included; more guidance as to the distinction between sub-contractor and externally provided workers would be helpful. This could include examples of contractual arrangements. The language used in the guidance could be clearer, for example replacing "company and subcontractor" with "subcontractor and sub-contractee".

Generally subcontractor issues make clients nervous, in that they fear they would struggle to answer some questions that would likely arise in a claim. The guidance is not all in one place, for example Externally Provided Worker is defined at page 84100 of the CIRDS and it would be helpful to have definitions of Staff Providers and Subcontracted R&D in the same place, perhaps as well as the details on these points which are found at CIRDS 84000 and CIRDS 84250 respectively.

Clarification of the payment requirement (Section 1133 CTA 2009) was requested. PH noted that a subcontractor payment would only qualify for relief once payment had been made. Paragraph 83E Schedule 18 FA 1998 allows a claim to be made or amended, up to the first anniversary of the filing date for the tax return of the claimant company, for the accounting period for which the claim was made. The statute allowed for claims as long as payment was made and the claim submitted within two years from the end of the period of accounts. The "relevant period" rules for connected party worker staff provision payments are, at twelve months (Section 1129(4)(a) CTA 2009), shorter.

The idea of a decision tree style guidance was discussed, however this was deemed to not reflect the complexity of the issue properly and would encourage people to attempt to claim without seeking specialist advice and this may lead to more confusion.

Further issues can be emailed to: phillip.hamblin@hmrc.gsi.gov.uk

4. R&D Report Subcommittee

The subject of a working group to look at improving the quality and consistency of R&D reports submitted to HMRC was raised at the July 2015 RDCC following approaches by some accountancy firms made to SW during Large Business meetings.

A number of factors were raised at the time, both from an HMRC and commercial perspective. These involved addressing perceived weaknesses and inefficiencies in the following areas:

- Reports that are not focussed on demonstrating that R&D for tax purposes took place
- Reports in a wide range of formats covering work carried out in greater or lesser detail
- Too little focus on the advances in science or technology sought
- Insufficient explanation for the calculation of cash amounts claimed
- Too many enquiries opened to request further supporting information
- No one place where HMRC's requirements for R&D supporting documents are set out

A significant number of accountancy firms represented at the RDCC agreed to form a working group seeking to address these issues. There are currently six HMRC staff working on this project, three of whom work in Large Business and three in Wealthy and Mid-Sized Compliance.

The working group considered whether there should be a fixed format such as a template or stencil. While there was no conclusive agreement to this, it was thought to be most practical to develop a 'form' (or a number of forms) which could ensure a consistent approach and that all the information that HMRC requires could be requested.

The question of whether there should be one form for SME claims and one for claims under the large scheme was also addressed. In this case the solution adopted is that one form caters for all options by taking the claimant or their agent to the relevant page whether they are making an SME claim alone, an SME and large scheme claim, or a large claim only.

HMRC has worked in cooperation with 24 accountancy firms through email correspondence and at a meeting in London on 27 November 2015 to develop an i-form that would meet the requirements. Currently there are four documents, although these are likely to be reduced to three, or even two on completion of the project and one of these (the landing page) is merely for information and so does not require completion. These are:

1. The 'landing page.' This is the information document which links the relevant part of the GOV.UK site to the R&D forms and provides basic information about their relevance and use.
2. The R&D Summary Form. This covers the basic information about the claimant, the period covered by the claim, which scheme it is being made under, qualifying heads of expenditure and basic claim methodology. It also contains links to HMRC's Guidance (CIRD), including the BIS Guidelines, record-keeping, conditions for relief and common errors.
3. The project Template. This may become integrated with the R&D Summary Form, depending on the level of complexity and which format provides the most robust digital solution. The template is where the project narratives are provided and the information requested focuses on the advances in science or technology sought, and work carried out to resolve scientific or technological uncertainties.
4. The RDEC Stencil. This stencil has already been tested over many months within HMRC and has been found to be a useful document for checking the accuracy of the RDEC computation and recording exactly what has happened for each claim received.

SW demonstrated the use of the current version of the i-form - the same version distributed to the working group on the 24th March – this is not the final version but there should not be substantial changes made. This was generally seen as a good development. Use of this form will not be obligatory, it is a voluntary method which should hopefully make the submission of R&D reports far easier and ensure that HMRC are provided with the information that they need.

Following a suggestion about their being a requirement for supporting information, there was some discussion over concerns about larger claimant companies not providing any information beyond the basic claim when smaller claimants may provide a lot more supporting information in the belief that it is necessary. SW confirmed that there is no additional legislative requirement for information concerning R&D relief and RDEC claims beyond that for filing the company tax return (CT600, accounts and computations). However, HMRC's CIRDC guidance does make clear that such supporting information should be provided. Clearly where a company chooses to adopt the new i-form template (when it is complete and made available), they will be providing the information that HMRC, working with the accountants involved with the project, believe necessary to give proper consideration to their claim.

5. HMRC Procedures / I&R units

AY led this part of the meeting as a representative from the specialist units could not be present. Feedback will be passed on and answers to any questions distributed at a later date.

The specialist units will work as a national team to the same standards and consistent processes to ensure effective quality of service throughout the UK.

The phone system will be moving to a single national telephone number likely to be launched in the summer, as well as a single email address.

The phone line will begin with an automatic menu to ensure connection to the appropriate team or to get progress reports on claims, however progress reports will only be available after 28 days from when the claim was made. Any current phone numbers and email addresses will still work but they will forward to the relevant line.

This means that HMRC are moving on from the current post code based system. It also means that it will no longer be the case that people will speak to the same person from the same team regularly, however during response work such as an enquiry there will be a tax professional allocated who can be contacted directly. All payment processing work will be done in Portsmouth. HMRC are still committed to the 28 day turnaround time.

6. Patent Box

While patent box is not a usual agenda item for the RDCC it is potentially a regular feature for the future.

The patent box regime was introduced in 2013 so the first complete year for claims for the original scheme only ended on 31/3/2016. The new regime will be introduced on 01/07/16. There is the same 2 year time limit to elect into the regime -from the end of the accounting year end which straddles 30/06/16. Therefore there is no need to make an election before 30/6/16 in order to be grandfathered.

There is an option for patents to be grandfathered – so that they remain in the same patent system for 5 years. The grandfathering applies to the patent/intellectual property owned at 30/6/16, not to the company who owns the patent/intellectual property, so that if the patent is

sold or a new patent applied for these patent falls into the new patent regime. Grandfathering will be available to patents pending as well, as long as they have been applied for by 30/6/16. The application date not the priority date is the date to use.

Guidance will be available in the form of flowcharts and examples. The requirement to track and trace R&D evidence doesn't have to be onerous if it is known that the fraction will be 1 (all direct or unconnected subcontractor R&D expenditure). There is an uplift of 30% applied to the numerator of the fraction. The track and trace requirement is to find where R&D comes from for a patent i.e. third parties/ in-house and will be an extra task for those with a fraction of less than 1.

7. RDCC Update

RDCC usually held twice a year, however HMRC feel that unless there was sufficient information to discuss there is no reason to hold a meeting. This meeting had to be delayed due to the budget purdah – for which apologies were given.

The initial 'pencilled-in' date is 3rd of October 2016 for the next RDCC meeting. Any topic suggestions for the agenda should be sent to Kieran McCullagh at Kieran.mccullagh@hmrc.gsi.gov.uk

The minutes for the last meeting have been published online. The significant delay was due to an embargo on online publishing however they were emailed to the existing contact list fairly quickly.

A survey was conducted prior to this meeting in August 2015 using Survey Monkey. This contained 7 questions:

Question 1: Themes – The votes were strongly towards retaining agenda suggestions and having themes if and when required. This has been shown in the agenda for this meeting.

Question 2: Agenda Items – Agenda items were asked for and these have formed the major part of this meeting - this has been appreciated.

Question 3: Presentation Topics – A number of people outside HMRC have volunteered for presenting topics and this has been part of the meeting today. HMRC would like to continue this move toward a general forum as opposed to solely HMRC presentations.

Question 4: Location – There did not seem to be much interest in having the meeting outside of London, although it is appreciated that asking people who attend the meeting in London may skew the results. Alternative locations (Manchester for example) are likely to be considered in the future.

Question 5: Sub-Committee – Almost unanimously it was felt that the subcommittees should be open to all to volunteer themselves for. This method was used successfully for Steve Williams' working group on R&D Reports.

Question 6: Technology –

- Surveys** - likely to continue as the majority found this useful.
- Mailbox** – Looking to get this implemented so emails do not get lost when the point of contact changes.
- Eventbrite** - has been used for organising the meeting– generally people were happy to use this system as it is fairly common in industry.
- Streaming** – People would be happy to try streaming but it would depend on the quality of the technology available.

Webinars – there was little demand for webinars in the near future but perhaps these could be of more use in the future.

Question 7 & 8: Satisfaction rating with the RDCC – Overall the rankings were positive with reasoning provided. The lowest ranking was due to ‘too many attendees’ which it was agreed is a difficult balancing act considering the number of people who wish to attend the meetings. The Eventbrite invitation was left open for this event, this may need to be reconsidered going forward to ensure that only those who are intended are able to come. A request was made that speakers distribute notes before the meetings as well as after so that those present can concentrate on listening rather than note taking.

8. Reimbursed Expenses

On 29 February, HMRC circulated revised draft guidance on the treatment of reimbursed expenses within the R&D tax relief scheme. This was non-final draft guidance, subject to internal sign off, but HMRC wanted to invite comments beforehand.

The draft guidance substantially expands CIR83200. It sets out HMRC’s view that the two circumstances in which reimbursed expenses may be qualifying staffing costs are where the expense constitutes an expense to the company of employing staff, and the expense is an expense the employee pays in order to fulfil the requirements of her employment.

This is where the expense has been actually incurred by the staff – not on a company credit card. It goes on to make clear HMRC’s view of when that second condition is fulfilled, such that home to work travel and training costs reimbursed are not allowable, but travel and subsistence would be allowable. The guidance then sets out a number of examples of allowable and disallowable types of reimbursed expenses, and sets out an example where the employee is only partially engaged directly and actively in relevant R&D.

This guidance was meant primarily for HMRC staff and reflects HMRC’s view of the law, if agents disagree with this interpretation, we would expect them to submit their returns on the basis of their view of the law.

As this reflects HMRC’s view of the law not an actual change in the law retrospective claims can be made. This should be taken as HMRC’s view from the date that the finalised guidance is published.

9. AOB

Research and Development Allowances were raised in the introduction (see above) but the AOB section was cut short due to time constraints. The request for feedback here was around awareness of these allowances and if clients had reasons why they may not claim RDA’s. All thoughts around the take up of RDA’s should be sent to jim.a.rogers@hmrc.gsi.gov.uk.

10. Email Contacts

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