

Research & Development Consultative Committee Minutes

DATE: Thursday 17th June 2021

Venue: Virtual Conference, 1pm – 4.00pm.

Present: HMRC: Tessa Robins (TR), Phillip Hamblin (PH), David Harris (DH), Yasmin Achha (YA), Sean Coneeny (SC), Tony Panons (TP), Hamzah Patel (HP), Caroline Bennett (CB), Susan Fawkes (SF), Odette Carnell (OC) Damian McCluskey (DM). HMT: Meredith Fisher (MF)
Special guest speaker: Jon Sherman (JS) (HMRC).

1. Introductions- TR

TR introduced herself, having taken leadership of the HMRC R&D policy team within the BAI (Business, Assets and International) Directorate from her predecessor Mike Crabtree. She thanked the RDCC for their attendance at the virtual meeting. She noted that members of other government departments were present, as well as other stakeholders such as professional bodies. TR also mentioned that the RDCC will be changing their name to the R&D Forum after this meeting.

2. Guest Speaker – JS (Directors, BAI)

JS spoke about how he was involved in setting up the RDCC and the dedicated R&D units. 15 years on he gave an overview of what has changed. He pointed towards the rising cost of the scheme and the rising number of claims. Abuse within the scheme is particularly concerning and we are seeing some agents encouraging marginal or even dubious claims.

JS also mentioned that the UK still needs to do more R&D to meet the government's objective of 2.4% of GDP by 2027. Given that and with R&D reliefs being nearly 20 years old, the current review which the Chancellor announced in the Budget is looking at the whole picture, what works and what doesn't.

Jon thanked everyone who sent their responses to the consultation. Even though the consultation period has ended, anything said at today's meeting will be considered.

3. Review Update – DH

DH gave a brief overview of the R&D review and the reasons for consulting on their reform. Numerous responses had been received. HMT and HMRC were analysing them and considering next steps. He couldn't say yet when results would be announced. Given the amounts of money involved and the importance of R&D to the UK – we had seen examples of this very recently with the COVID-19 vaccine – it was vital to get this right.

4. BT&C & WMBC Insight, Growth and Risk – SF & DM

SF began by mentioning a recent case involving a fraudulent claim for tax relief on a bogus IT project for £29.5m. Three men involved had been jailed for a total of 21 years. This came to light when HMRC requested supporting documents for the claim.

She read out a statement from Kath Doyle who is the deputy director from Fraud Investigation Service (FIS) within HMRC:

“These men tried to extract an astronomical sum of money by claiming tax relief from a scheme designed to help legitimate companies do work that seeks to make advances in science and technology.

This wasn’t research and development; it was out and out fraud. HMRC will continue to create a level playing field for law abiding businesses by rooting out the minority who seek to abuse these schemes, as this result clearly shows.”

DM introduced himself as the Corporation Tax Operational Lead for Birmingham. He gave a brief overview of HMRC performance and challenges the Department has been facing over the last year or so. (Slides have been transcribed and added to minutes to support accessibility).

Slide 1

COVID- We’re all acutely aware that Covid-19 has had a dramatic impact on businesses across the world and HMRC is no exception to that. 100% of our R&D workforce have been and are continuing to work from home. Faced with the added challenges of higher than average sick absences as a consequence of COVID, we have continued to deliver through extremely difficult times.

Collaboration- Through these challenges we have built up strong working partnerships which has been a great success.

Across WMBC and Business Tax we have worked closely to ensure we continue to deliver through these challenging circumstances.

Agility- Throughout January we were busy planning and forecasting for the March/April peak.

Training- To enable and deliver a stable customer service, in February we were able to increase our R&D trained resource by 73%. Virtual training adds its own challenges, but the teams have done an amazing job adapting to new ways of working.

Slide 2

So, throughout the 20/21 financial year we successfully processed just over 44K R&D claims which was an increase of 13% on 19/20

98% of Tax Credit claims were processed within 28 days between January and March.

Currently we are processing Tax Credit claims at Day 18 and RDEC claims at Day 26.

Going forward we will continue to explore further efficiency savings through the governance group and continue to build on our successes delivered in 20/21.

5. Large Business Update - TP

TP introduced himself as the R&D Project Lead within HMRC’s Large Business (LB) directorate. He took over from SW and has been in post since mid-Dec.

COVID- 19 Update

LB has maintained a good level of payment processing turnaround with regular reviewing of the BCP to ensure adequate resources are in place now and in the event of unforeseen circumstances – so not just COVID related.

Confident that we can maintain a good level of service. There haven't been any significant absences and the vast majority of staff continue to work productively from home.

The year-end peaks have been well managed and as I say, resources in the LB regions constantly under review.

Although some staff have moved into other roles, R&D payment processing is a key function thereby ensuring it is adequately resourced. There were no issues with the March year end peak.

2019/2020 Statistics

This year's statistics will be published centrally in September 2021. These statistics will show the breakdown of claims between the SME R&D tax credit scheme and RDEC. TP provided figures from LB returns received in 2020/21 (not accounting periods ended in 2020/2021) as follows:

2,780 RDEC claims – slightly up from 2019/2020

£2.76 billion RDEC claimed based on

£22.5 billion qualifying expenditure

£1 million average RDEC claim in LB

Sector analysis

Once again, centrally produced statistics for R&D claims by sector are for all claims, not just those made by Large Business groups.

There are limitations on the accuracy of business sector reports:

- Not all businesses fit neatly into a category
- Some cover several different categories
- Others will have changed during a reporting period

TP provided some LB sector analysis, but with the above caveat concerning the accuracy of the percentages shown.

Manufacturing	27%
Construction	10%
Retail	3%
Banking	2%
Business Services	3%
Leisure & Media	4%
Oil & Gas	6%
Professional, Scientific & Technical	3%
Pharmaceutical	1%
Utilities	3%
Agriculture and Food	2%
Insurance	3%
Automotive	1%

Telecommunications	7%
Other	25%
Total	100%

Late claims

Firstly – for a decision to be made about whether a late claim can be admitted – HMRC needs to receive an actual claim. Recently LB just received email with no claim amounts, CT600 or revised comps

TP explained that he can understand that as agents you may feel you are saving time by not submitting a claim and seeking advice, but this is not the correct procedure. In order to decide about a late claim, a claim needs to be submitted.

HMRC are not able to extend the amendment window which is what has been effectively suggested with some letter e.g., “if we submit by X date”.

TP gave recent examples.

- Vague timelines, meaning it is not clear that there were unavoidable situations (e.g., staff unavailable “during spring” – what period is “during spring” in this context?) and again not therefore clear that the company sought to make the claim (subject to there actually being a claim!) as soon as possible.
- COVID has been cited but with no real detail as to why it was particularly impactful, how the company tried to mitigate and why the decision to furlough key finance staff wasn’t beyond the company’s control when clearly that is a business decision.
- It has also been suggested that the RDEC will be brought into account in a later period (due to claim now being late) – again, this isn’t correct as the RDEC must be brought into account in the period for which there is an allowable CT deduction of the QE.

6. Technical session- RDECs s104N(2) CTA 2009 and the CT600L- PH

A) Introduction

PH introduced himself as one of the BAI Technical advisors on R&D and said that he would be covering the above two topics as the introduction of the recent CT600L digital form seemed an appropriate time to run through how HMRC consider that s104N works, and to take the opportunity to provide some background to the CT600L.

Unless stated otherwise all legislation can be found in CTA 2009.

B) Background to the CT600L and information on changes to the CT600L

PH explained the purpose and benefits of the CT600L. The form brings together much of the information needed to make a claim, hopefully leading to more complete information and fewer errors. The CT600L allows HMRC’s electronic filing system to immediately allocate RDEC against other liabilities included in that Corporation Tax Self-Assessment (CTSA), for example a surrender at s104N(2) step 6 to discharge bank levy. Where a company makes a claim for Payable Tax Credit

within the Small or Medium Size Enterprises scheme and decides to set some or all of that credit against other liabilities in that CTSA, for example the tax on loans to participators (s455 CTA 2010) the CT600L also allows this to be done automatically.

For the benefit of longer term attendees at the RDCC, he explained that the CT600L was the long-term solution which was mentioned under the heading S104N (2) step 1 CTA 2009 in paragraph 7 of the minutes of the RDCC which was held on 24 January 2019. The CT600L separated out the Research and Development Expenditure Credit (RDEC) in such a way that, as long as the CT600L was completed in accordance with the legislation found in Chapter 6A of Part 3 CTA 2009, it is only that RDEC which can be used at s104N(2) step 1 which is used at step 1

PH thanked those on the call for their assistance in dealing with the teething problems of the CT600L. A workaround (paper filings) was put in place to ensure that brought forward step 2 and step 3 RDEC was properly dealt with (and can still be used, for now, if needed). That problem has now been resolved but some software developers have not caught up with it yet. Claimants must now put the step 2 carry forward (as well as any RDEC surrendered from another group company) which is used during the accounting period which the CT600L relates to in box L20. Any unused amount for the step 2 brought forward figure should be excluded from Box L20 and manually added to the figure in box L140. The whole of the step 3 figure which is carried forward must also be included in box L20. In this version of the CT600L the user must put the correct figure in Box L65 (if an entry is required). It is expected that the CT600L will be updated in 2022, and those updates will include boxes for step 2 brought forward and surrendered from other companies separately from any step 3 carry forward amounts. When this version is brought in box L20 will only be used for step 3 carry forward figures and Box L65 will self-populate.

The same (broadly) paper filing solution has also been used where claimants and agents have experienced delays in being provided with the software by their suppliers. When writing these minutes on 23 June 2021 these measures are also still in place in case any claimants need to avail themselves of them.

A delegate noted that they had been told by an HMRC officer that a company claiming the Small and Medium Enterprise 'super deduction' (s1044(8)) but no payable tax credit (s1054) or RDEC still had to complete a CT600L. PH said that this was not the case at present (although the situation might change in the future).

C) RDEC Basics

In the remaining part of his talk, PH described some of the intricacies of RDEC claims. RDEC is a taxable credit, which gives a neat segue into the fact that it does not reduce a tax liability – it discharges it. This is important because if the tax which it is discharging has been unpaid for some time interest on that late payment is due for the period up until it is discharged by the RDEC. When there is a step 1 set off with no manual intervention by HMRC officers the computer system does not charge this interest. At present HMRC does not 'collect' this interest for the same – albeit the reverse – reasons which are outlined in FAQ 1 of CIR 89890. We still get the occasional concern raised by companies or their advisors about the inconsistency of a company's being charged, for example, late payment interest on surrendered RDEC but not being charged late payment interest where the step 1 RDEC was used to discharge overdue CT. HMRC appreciated those companies' concerns, and there

was a system to collect the unpaid interest to ensure consistent treatment. Any company which wishes to make use of that system should let HMRC know.

The steps have to be followed sequentially.

D) Claims

In most cases the legislation requires that RDEC is used in a certain way. But where the legislation is silent the company can choose.

The choices and surrenders available in s104N(2) are all a part of the claim, so the para 83E Schedule 18 FA 1998 time limits apply. If, after that time limit has elapsed, a company decides that they would prefer to have dealt with the RDEC seven steps differently that company would be relying on HMRC admitting an out of date amendment under authority of Paragraph 83E(2) Schedule 18 FA 1998. Any late amendment to the claim would only, by virtue of CIRD 81800, be admitted within the parameters of Statement of Practice 5 of 2001. Given that it was within the company's powers at the time to make the claim in a different way it is unlikely that an application would be successful.

E) RDEC carried forward and surrendered to company

Before moving on to the steps it's worth pointing out that the two carried forward amounts are different in nature, as follows:

Step 2 carried forward amounts are (s104O(2)(b)) an amount to be applied in discharging any liability of the company to pay CT for any subsequent accounting period.

With

Step 3 amounts (s104N(2) step 3 (b) being treated as an amount of RDEC to which the company is entitled for its next AP.

One practical upshot of this is that the step 3 carry forward amount forms a part of the s104N(2) "set off amount" but that the step 2 carry forward does not.

Before looking at the seven steps bear in mind that:

Step 2 carried forward- s104O(2) and s104O(5) can only be used against CT (so not ring fence, CFC, overdrawn loan account and similar) but must be used before any discharges are made at step 1.

Step 2 surrender from another group- s104O(3) and s104O(5) can also only be used against CT (so not ring fence, CFC, overdrawn loan account and similar) and must also be used before any discharges at step 1.

The legislation does not tell us which of the above two should be used first, meaning that this is a situation where the company can choose – e.g., surrendered amounts used before carried forward amounts.

F) Step 1

RDEC can only be set off against corporation tax, and not against liabilities treated as if they are corporation tax. Examples of these are the Controlled Foreign Company, Ring Fence and Overdrawn loan accounts taxes. More details on this can be seen in the RDCC Minutes for the 10 October 2016 meeting (scroll down to the screen shots of the slide presentations).

PH briefly explained box L35 (Income Tax deducted from profits). In most cases a company will put the same figure that is in the CT600 into box L35. But the RDEC claimant may be able to justify not doing so, and if they can justify it, they can put a smaller figure in. Here's why they might want to:

- The Income Tax deducted from profits is taken off of all the CT and non-CT liabilities which are collected through the CT600.
- A company with a step 2 RDEC restriction would want to use as much RDEC as possible in step 1.
- This box allows them to do so. For example, if half of the overall liability which flows from that CTSA is CT (and so can be discharged by RDEC at step 1) the company could justifiably only put 50% of the figure shown in box 515 on the CT600 into box L35.

G) Step 2

Step 2 is there to ensure that any discharge or payment of RDEC does not include the corporation tax which is due on that RDEC. S104A (1) deems RDEC to be taxable and treated as trade income. In a nutshell, if the tax on the RDEC is £19 and there is a liability to CT (and only CT, not liability which are treated as if they are CT, such as bank levy) of at least £19 in step 1 which is discharged by the claimed RDEC there is no step 2 restriction. If there is a step 2 restriction the rules make sure that that RDEC is 'used' as soon as possible. If that is not through a group surrender (s104O(3) - but it can only be used in that surrender against CT - not the other liabilities) then before any other RDEC in a later AP (s104O(5)) - as covered above in respect of step 2 brought forward amounts

Things to note here are:

- Since any brought forward RDEC step 2 restriction is not treated as RDEC in the later AP it does not go 'through' the 7 RDEC steps, which is why it does not feature in later (for example step 2 or 3) calculations.
- S104N(3) makes sure that although the Step 3 carry forward is treated as RDEC for that later accounting period the CT liability which flows from it is not a part of the later accounting periods step 2 calculation (s104N(3) Amount A (a) and s104N(3) Amount B (a)).
- S104R covers the situation where the company to whom a step 2 restriction is surrendered has a different AP to the claimant company.

H) Step 3

Restricts the amount of RDEC which goes forward to steps 4-7 to the total expenditure on staff.

It defines the total expenditure on staff, which is effectively the PAYE and NI (employee and employer) liability for the period covered by the CTSA for directors and employees included in the claim, along with the appropriate percentage of the PAYE Tax and NI of connected party EPWs.

Once we have this figure, we look at the set off amount brought forward from step 2 (box CT600L 70) and where this brought forward figure exceeds the total expenditure on staff that 'excess' does not go on to step 4 but is carried forward to the next AP. I've covered what happens in the next AP above.

I) Step 4

At this step the RDEC is used to discharge any liability to pay CT in other Ap's.

Things to note are:

- It is only CT liability which can be discharged, not the other liabilities of the claimant company.
- This would normally be done manually by HMRC. It is an example of my earlier point about a company which could see inconsistent treatment. Where late payment interest is due interest will, in most situations, not be charged on the step 1 discharge liability- but it should always be charged where it applies to the liability which is being discharged at step 4.

J) Step 5

At this step the claimant company can surrender any remaining RDEC to another member of the group.

Things to note here are:

- S104R- which applies to both step 2 and step 5 surrenders and covers non-coterminous Aps.
- S104R(3) is also the legislation which restricts the step 5 surrender to discharging the other group member's CT liabilities only. So, again, not Bank Levy etc.

K) Step 6

This is the point where the claimant company can use any remaining RDEC to set against any other liabilities which arise in respect of the CTSA in which the claim for RDEC is made. These include those liabilities which are not corporation tax but are treated as if they are corporation tax.

The company is not limited to those liabilities which appear in this or any other CTSA. They might, for example, wish to use the RDEC to discharge a PAYE or NI liability.

L) Step 7

And we finish our journey at step 7, where any remaining RDEC is paid to the company. Regardless of which AP the RDEC relates to or when the claim was made no interest is paid by HMRC.

Occasionally the computerised system will pay some interest, but as covered in the first FAQ at CIR 89890 whilst the recipient has no entitlement to interest HMRC will not collect any overpaid interest.

7. Questions & Any other business

Q: With recent major prosecutions (ref circa £150m fraud) in R&D tax fraud- the public reports detailed the criminals involved and the related sentences, but no mention was made of the advisors. Advisor quality has been a major and ongoing subject in RDCC. In this case - was a prosecution made of their advisors (Accountants) and if not why?

A: We are not aware of any agent being prosecuted in relation to the case SF spoke about in her session. HMRC will consider all courses of action where we think an agent is involved in fraud, and this would include prosecution. We cannot assume guilt of an agent and would need to look at all facts before coming to a decision.

Q: Does the statistic of 98% of TC claims being processed within 28 days include claims where an enquiry is opened? What percentage of all claims go on to enquiry?

A: Yes, the 98% does include when enquiries are opened. A detailed response to the second part of the question is not provided as this relates to our compliance activities.

Q: If 98% processed within 28 days, what is the average number of days?

A: Around 14-18 days.

8. Wrap Up – DH

DH thanked all for their attendance and the support team for running the event. He said that it was likely there would continue to be online sessions of the group even once COVID permitted face to face meetings, as these allowed more (and wider) participation but that there was also a valuable role for in-person sessions which would resume once this was possible.

DH thanked the delegates and guests for attending the virtual RDCC. Details of the next meeting would be communicated via email.