

## **Research and Development Consultative Committee Minutes**

**Friday 4<sup>th</sup> July 2018**

**Venue: HMRC Croydon Regional Office, 1 Ruskin Square, CR0 2WF, 1pm to 4pm**

Present: Adam Spriggs, Alexis Marz, Andrew Hawley, Andrew Mcmillan, Ashley Rawson, Caroline Barrett, Catherine Hsu, Chris Harrison, Christopher Brown, Dan Ellerton, Darryl Hoy, David Farbey, , Gavin Bate, George Strickland, Harinder Sandhu, Heather Williams, Mazars, Iain Butler, Ian Moss, Ian Rowland, James Pleace, James Rylatt, James Tetley, Jennifer Tragner, Jinjing Wang, John Moore, John Moxon, Joh Newell, Jonathon Connor, Justine Stalker, Kathie Haunton, Lisa Baum, Luke Hamm, Maria Kitt, Martin Turner, Matt Watts, Neil Taylor, Paul Barton, Paul Mann, Paul Sherbone, Peter Denison- Pender, Peter Jelfs, Rachel Moore, Ramesh Jethani, Remy Husein, Richard Lewis, Richard Thorpe Manley, Robert Perring, Ron Gibson, Sam Stephens, Shima Kelly, Shoayb Patel, Teresa Latch, Terry Toms, Thomas Hayden, Tom Byng, Vincent Walker, Yaysh Rasyagand, Tom Heslin(TH) Dilesh Patel(DP), Andrew Culley(AD), Adam Crook(AC), Susan Fawkes(SF), Steve Williams(SW), Karen Duffy(KD), Michael Shaw(MS), Sarah King(SK), John Pelter, Karin McHardy, Mike Crabtree(MC), Yasmin Achha(YA), Philip Hamblin(PH), David Harris(DH), Jane James(JJ), Ugo Ndubuisi, Guy Robinson(GR), Stephanie Speight(SS)

### **1. Introductions**

MC introduced himself and the delegates, thanking them for their attendance. He noted that members of other government departments were present, as well as other stakeholders such as professional bodies. He introduced Yasmin Achha – The new Research & Development Policy Advisor and Dilesh Patel – HMT Policy Partner

### **2. Large Business & Digital R&D update**

#### **1. Software Project**

SW said that Nick, Stuart and others within CTO (Chief Technical Office), part of CDIO, continue to support our R&D specialists as required for R&D claims on software projects. We have been asked about reports submitted on software claims and whether these should be different to other reports due to the different audience. No, we would like you to provide R&D reports for the R&D specialists who will consider the claims. They, in conjunction with the CT tax specialist and CCM form the case team and take decisions. CTO act as consultants and will not assist on every case. Where they are involved they do have their own preferred methods for establishing where the core R&D lies, and they have their own preferred template, but that does not change the underlying fundamentals – establishing the scientific or technological advance and scientific or technological uncertainties.

## 2. Engagement with accountancy firms

Some firms have asked to meet on a semi-regular basis to discuss recent issues and concerns. SW is open to such approaches and indeed sees them as potentially useful to ensure that any inconsistencies are addressed at an early stage. As a part of one such series of meetings he was asked about capital / revenue issues pertaining to software projects. Given that a number of RDCC members will not have attended as far back as three years ago, he thought it worth reiterating what he said in July 2015:

“HMRC’s view on the eligibility of software projects for R&D relief is covered at CIRD 81960, and has not changed. Where the development of software is the goal of the R&D project, whether or not the project is to develop a platform, website, application or suite of products for use by the claimant company, or grouped, associated or otherwise linked companies alone, the eligibility of any claim to R&D relief will be considered on the particular facts. Consideration will be given as to the potential capital nature of expenditure on software in the normal course of review by HMRC. However, neither the fact that R&D relief is claimed on a software project, nor the fact that the particular software project may be ‘in-house’, will be an overriding factor in this consideration.”

Of course, as you will know, we are currently working on updating the guidance on software at CIRD 81960 – so that will change – but in fact the reference there on capital is just one line and refers to CIRD 81700 which itself refers to the Business Income manual 35850.

## 3. RDEC stencil

SW was reminded recently that the ‘agent version’ of the RDEC stencil which we use in HMRC to check RDEC figures and ensure that we have a record of all set-offs and payments had not been updated recently to reflect rate changes. Very kindly Iain Nicolson from our Glasgow office has updated this stencil and it will be made available immediately after the meeting. The stencil was circulated with the RDCC update dated 5 July 2018.

## 4. Turnaround times for RDEC payments

SW still has not had a request to look at any LB case where the business is suffering undue delay. Obviously he takes this as a good thing, but reminds the delegates that the offer is still there where the elapsed time exceeds 60 days and the standard channels of communication with the LB case team have not yielded anything concrete.

## 5. HMRC concerns about reports

Finally SW had promised our specialists would report back to delegates about some of their more general concerns with reports that they have reviewed in recent months. One particular concern is that in some cases where there are claims for more than one AP submitted at the same time, the report does not identify which projects or activities took place in which AP. There is simply a summary covering the whole period. Other issues include descriptions of advances and uncertainties which are too vague and others where no interviews with the competent professionals have been carried out.

SW provided a presentation covering the user research on the digital form. This explained the concerns raised by RDCC members who had kindly agreed to help with this work and HMRC responses. Many changes had been adopted and these were demonstrated in a separate presentation of version 2 by GR and SS. The issues with this version were discussed during the RDCC. Primarily the removal of the calculation meant that the form would no longer 'stand alone', while lack of subtotals of qualifying expenditure for each project would provide insufficient detail for HMRC. Therefore SW, GR and SS agreed to quickly produce a version 3 which would include the minimum viable calculation and project expenditure figures which would be available for trial in survey form for the working group, with a view to releasing this product a few weeks later if feedback was generally positive.

### **3. Update on Industrial Strategy**

Adam Crook from the Industrial Strategy team in the Department for Business, Energy and Industrial Strategy gave a brief overview of the [UK Industrial Strategy](#), which was published in November 2017. Key points included:

- The Industrial Strategy is a long term plan to boost productivity and earning power of people throughout the UK.
- The UK has a number of key strengths, including being one of the most innovative countries in the world, with high employment and a strong business environment. However, it also has challenges around productivity, and regional disparities (e.g. the productivity of London is 33% above the UK average, while the productivity of Northern Ireland is 17% below that average).
- To achieve the aims of the UK Industrial Strategy, the Government is focusing on the five foundations of productivity: Ideas; People; Infrastructure; the Business Environment; and Places.
- Within the Ideas foundation, there are a number of key challenges for the UK, including: addressing underinvestment in R&D; improving our ability to turn our ideas into commercial products and services, and capture their value in the UK; building research and innovation excellence across the country; and ensuring the UK remains a world leader in global science and international collaboration. The Industrial Strategy has set out a number of key policies to help address these challenges, building on the many UK strengths in this area.
- The Government has also set out a series of Grand Challenges to put the UK at the forefront of the industries of the future. The four Grand Challenges are: Growing the AI and Data Driven Economy; maximising the opportunities from the global shift to Clean Growth; harnessing the power of innovation to meet the needs of an Ageing Society; and becoming a world leader in the Future of Mobility.
- The UK is also agreeing Sector Deals; partnerships between government and industry to increase sector productivity. The first Sector Deals have been agreed with the Life Sciences, Automotive, Creative Industries, Artificial Intelligence, Nuclear and Construction sectors, with a view to developing further deals in the future.

#### **4. Update on Awareness Campaigns**

JJ explained that the background to the campaigns relates to market research showing a lack of awareness by SMEs of the R&D tax credit relief leading to Budget announcement that an awareness campaign would be launched.

Two streamed approach:

Targeting new companies in Emerging Technologies, such as software, agriculture science, life sciences, renewable energy areas because this supports the Government's Industrial Strategy. We are doing this by working with BEIS and communicating with their trade organisations. Some areas have already put in messages or web links on their web page/ newsletter. Some are still discussing how best to do this.

Working with LEPs and Growth Hubs, Scotland, Wales and NI, to deliver a consistent, short but technically correct message from HMRC about R&D tax credits. The product will be based on the new flowchart which can be seen in CIRD100000. These are autonomous bodies, so they can decide how best to reach their local population but we are working with their steering group and also involving stakeholders such as the FSB and Innovate UK.

A further update will be delivered at the next RDCC but hopefully agents will see the effect of this before then as companies enquire about the R&D tax credit message. Feedback to the RDCC on this would be helpful as it would feed into measuring the campaign's success.

#### **5. Update on Software Guidance page CIRD81960**

Jane James introduced Tom Heslin of ForrestBrown who was part of the software subcommittee to explain what had been happening and how we worked together with the RDCC to improve software guidance.

The sub-committee were agents from the RDCC who volunteered to contribute to the discussion on software R&D claims.

##### **Tom Heslin's talk summary**

##### **Setting the scene**

Background • The guidance at CIRD 81960 needed a revamp.

Aim : To make it easier for companies to get access to the R&D tax reliefs and assess the projects that they are undertaking in terms of the guidelines.

How • Improved guidance to amend 81960. • Case studies that will help clients recognise their own projects.

##### **Common themes**

- Prior to the 14/06 meeting in Manchester, contributions, suggestions, concerns and example case studies had been submitted to Jane James at HMRC.
- Based on this the meeting sought to address the key aspects and common themes Jane had identified from the responses:

#### **Key discussion sessions at 14/06 meeting**

1. Qualifying and non-qualifying projects and the boundaries of these.
2. Advances in science and technology -feedback from CDIO and suggestions for guidance.
3. Explanation of the role of CDIO.
4. Scientific and technological uncertainties -feedback from CDIO and suggestions for guidance.

#### **Outcome:**

- A new case study format is being developed to enhance the text of the Guidance at CIRD81960 to help new software emerging technologies understand how the BEIS guidelines apply to their type of projects. New case studies will serve to highlight concepts in the BEIS guidelines rather than end to end projects. They could also be useful to illustrate concepts such as “readily deducible” which are not further defined in the guidance.
- Format of Guidance text needs to strike a balance between being specific enough to allow companies to recognise own projects and not so specific that it quickly becomes outdated given the speed of advances being achieved in this sector.
- The new Guidance will link directly to the BEIS guidelines to highlight the key areas for people learning about the R&D definitions and to ensure a clear message.
- CDIO do not seek to establish themselves as the competent professional in any particular case, and will never refuse a claim or tell a caseworker to do so.

Closed by saying that draft CIRD81960 will be sent with the RDCC minutes so RDCC members could review before publication.

JJ provided an update on Software and SME visibility. She explained there has been a subcommittee of RDCC members working with JJ in the policy team, operational colleagues from Large Business and the Incentive and Relief teams, and the software specialists in CTO to improve and update the software guidance in CIRD81960. The aim of the working group has not been to change the boundaries of qualifying R&D but to clarify agents and companies’ understanding of how the BEIS Guidelines can apply to software development projects. This draft is being shared via an update with delegate and communication

members of the RDCC and should not be shared more widely. Comments are welcome by 10 September, to [jane.james@hmrc.gsi.gov.uk](mailto:jane.james@hmrc.gsi.gov.uk).

## **6. Evaluation of SME Advance Assurance and pilot project on RDEC Large Business greater Certainty**

DH presented emerging results from the evaluation of the SME R&D advance assurances. Introduced in 2015, these gave companies a guarantee that a claim – in line with a previous notification – would be accepted, for a period of three years. In a first phase of evaluation work, basic data on the usage of the assurances had been collected. This showed that the numbers of applications received were low compared with what expected (229 in 2016, 222 in 2017 with a likely increase for 2018 but only by around 90 overall).

Applications had been received from across sectors, especially business and software development, though the low numbers overall meant there were few applicants in certain sectors. 14% of those who applied didn't have an accountant, and most accountants were only involved with one application (again, given the low numbers, this was to be expected).

We needed to understand why usage was low, and views on this were welcomed

Phase II of the evaluation would be to engage with users and non - users of the assurances, seeking to answer questions such as

- What did customers like?
- What can we do better?
- Why did they use/ not use the service?
- What difference does AA make to the Customers plans & decision making?
- Why do some customers drop out of the process and withdraw their applications?
- How many first time applicants are not aware of AA or decide not to use it?

This will enable a judgement about whether the service is useful to businesses; whether it justifies the resource applied; and how it can be improved.

There were a number of questions:

- Q. How does AA usage correlate with claim size and expenditure type?  
A. We have not yet undertaken this analysis but plan to do so. Given the small number of applications, we are though cautious about the significance of any correlation.
- Q. What happens when a company expands its R&D, taking on additional projects beyond those covered by the AA?  
A. The AA is granted to the company it is not for a specific project only. We would expect/hope that over a three year period companies would grow and undertake more R&D, as long as the company follows the guidelines and methodology as discussed and agreed then the Assurance will apply to all projects in the AA period. If anything has changed substantially we would expect the company to get in touch and discuss.

- Q. What is the budget for the AAs?  
A. There is no specific additional budget – the AAs are provided as part of the work of the I&R teams. This underlines the need for the spending to be cost-effective).
- Q. How do rejected AA applications correlate with sector? (ie is HMRC rejecting proportionately more from particular sectors?).  
A. We have not yet undertaken this analysis but plan to do so. Given the small number of applications, we are though cautious about the significance of any correlation.
- Q. What happens where an AA application is rejected?  
A. Where AA is refused the company will be told why. It may be that the activity does not meet the definition of R&D (per the Guidelines) or that the company has not provided sufficient information. Any claim that they subsequently make will be risk assessed in the usual way. Where no additional information to substantiate the claim is provided then it is likely that further questions may be asked.

## **7. WMBC Insight Growth and Risk**

Sue Fawkes, IGR R&D Strategic Lead, provided an overview of the R&D claims received during 2017/18, highlighting the increases received during peak periods. Due to high levels of claims so far this year (2018/19) on top of the in December and March turnaround times had been impacted. A plan has been put into place to manage the backlog.

As a result the teams were now on track to bring Payable Tax Credit claims up to date by end of July and RDEC early September. A request was made for agents to assist HMRC by refraining from chasing progress of claims as this was tying up processing staff and adding to the problem.

## **8. Technical issues**

PH covered there points, as follows;

### Qualifying Bodies

Statutory Instrument 2018 NO. 217, The Research and Development (Qualifying Bodies) (Tax) Order 2018, came in to force on 16 March 2018, when it replaced Statutory Instrument 2012 NO. 286. The new Statutory Instrument contains the details of 240 qualifying bodies, an increase of 109 from the previous Statutory Instrument. PH pointed out some changes from the previous Statutory Instrument, with prescription now being made in the legal name using both the local language and the local script, and that the date from which prescription should be requested was now from the first day of the accounting period in respect of which any potential claim would be made. In general, applications for consideration for prescription will not be accepted in respect of accounting periods where the period in which to make an in date R&D claim had passed.

New guidance has been developed along with the new Statutory Instrument. An application for prescription under s1142(1)(e) CTA 2009 requires sufficient information for HMRC to be

able to identify that a body is suitable for referral to H M Treasury to be considered for prescription, and the new guidance is in the form of a template which can be used when a company is seeking prescription of a body. A copy of the template was circulated to delegates, and to those on the RDCC communication list, on 5 July. The information on the template should assist potential applicants with both deciding whether an application is appropriate and, if an application is appropriate, ensuring that all the required details are provided.

PH noted that whilst claims were not valid and therefore could not be made in respect of bodies which do not appear in Statutory Instrument 2018 No. 217 HMRC are content to receive estimated claims in some situations. These situations are where the potential qualifying body has already been referred to H M Treasury (HMRC will advise, in individual cases, whether a specific body comes under this category) to be considered for prescription and where an application for the body to be referred to H M Treasury is still being processed. The Institute of Chartered Accountants of England and Wales have issued a technical release on estimated figures in returns. This release, ICAEW Technical Release 12 of 1992, is reproduced on page 93290 of the Company Taxation Manual and applies to estimated claims for qualifying bodies.

#### Research and Development Expenditure (RDEC)

PH explained how the interaction of s104A (1) and 104A (2) of the CTA 2009 has the effect that for a claim for RDEC to be valid the resulting RDEC has to be brought in to account for tax purposes in the same accounting period as the claim is made.

Looking at s104A(1) we see that if a company wishes to claim RDEC it can, and it does this by claiming for the RDEC to be brought into account as a receipt in calculating the profits of the trade for an accounting period. Turning to s104A(2) we see the 'allowable deduction' condition, meaning that if a company is going to claim RDEC it has to do so in the accounting period in which the qualifying expenditure is allowable as a deduction in calculating for corporation tax purposes.

The practical effect of the above is that a company can only claim RDEC once, and that claim is made in the accounting period in which the qualifying expenditure is an allowable deduction. In the very act of making this claim the company is claiming that the RDEC must be brought in to account for tax purposes in the same accounting period. Therefore for the claim to be valid the RDEC must be brought in to account for tax purposes in the same accounting period in which it is claimed.

#### Innovation Loans

Innovate UK are currently conducting a two year pilot involving loans which can be used for late-stage research and development projects. Details are available at the following web address;

<https://www.gov.uk/guidance/innovation-loans-what-they-are-and-how-to-apply>

Given the type of company which these loans are aimed at it is possible that delegates will receive queries about these loans, and please note that the loans are notified State aid. The State aid reference for the funding is SA.40761.

This means that, as is the case with Innovate UK's grant-funded projects, the expenditure incurred on a project which is supported by these loans will not be qualifying expenditure for the purposes of the SME R&D relief because of the effect of s1138(1)(a) and s1138(2) CTA 2009 . Of course it may still be possible for the company to make a claim within the RDEC scheme (s104F to s104H CTA 2009). Innovate UK and Department of Energy and Industrial Strategy colleagues are aware of this and regularly provide advice about it at their events.

## **9. Patent Box Claims and Transfer Pricing**

JJ explained that at the last RDCC the Patent Box slot had encouraged the smallest, newly profit making companies to elect into the Patent Box. The most complex steps would not be applicable for singleton companies with all their functions together in the UK, so it may not be as difficult or expensive as they feared. However this slot was addressing the other end of the spectrum: large complex groups whose Patent Box calculation involved Transfer Pricing. They were concerned about the complexity and Michael Shaw was invited to speak about Transfer Pricing. He is an Assistant Director in Large Business, East Midlands with responsibility for Transfer Pricing.

Michael Shaw's talk

- Introduction – he is a Transfer Pricing Specialist not a Patent Box (PB) Specialist, and speaks from a Large Business perspective
- Aims: want to support the enabling message that Jane is delivering, but deliver some high-level key messages about transfer pricing and interaction with PB
- Two areas where the TP rules are in play – notional marketing royalty and notional royalty
- We are upskilling PB specialists in understanding these areas and also upskilling TP specialists in PB – working together
- Intention is to take a risk-based approach, not tackle all claims – just those that look high-risk; PB specialist will liaise with TP specialist in assessing risk and working enquiries
- Principled approach, not target-driven – important to ensure level-playing field for those abiding by the rules; TP is complex area with its own governance
- High-level message is that the PB rules incorporate TP and need to respect these properly, following OECD approach and not abandoning principle
- Notional Marketing Royalty – must follow OECD guidelines; – those cases not within the 10% exemption can be difficult to quantify; HMRC will want to see details of methodology and functional analysis – will expect to have a TP discussion with you. Those within the 10% exemption but with brands and intangible goodwill will need to justify why they think they are exempt.
- Notional Royalty – main area with recurring issues around the “appropriate percentage” for calculating IP-derived income; again, we expect to see TP methodologies, reports and evidence; cannot short-cut this; expect to see benchmarking studies and TP analysis, not

blanket arguments that all profits are qualifying for the PB regime; so expect this to be an area where we might check. But explanations of what has been done, and what could not be done could be the starting point.

Overall message – TP arguments are all unique to each business's own facts and circumstances, so we will expect to see consideration of individual circumstances in the TP methodologies. Please do make claims but be aware that in doing so you cannot short-cut the TP aspects and must do this properly – blanket assertions or evidence-free arguments are areas of risk for us and we would expect to challenge so as to be fair to those businesses following the required methodologies. Conclusion: This talk is intended for complex Patent Box computations so whilst SMEs are not exempt from the Transfer Pricing requirements, put the comments into context of what the client company is delivering.

## **10. RDCC Membership**

MC explained we were running out of time to cover this agenda item and Yasmin would provide an update on the RDCC membership within the minutes.

We are having to revisit the membership structure of the RDCC given the amount of interested parties and number restrictions which apply to most venues. There are currently 93 potential delegates along with 11 on the waiting list. We now also have a communication only list (these delegates are not invited to the meetings) with 37 people on it. Therefore it seems time appropriate to

1. **Look at the name of the group**, as the meetings now include Patent box, and consultation is primarily done in smaller groups, for example the Digital R&D form and software guidance.
2. **Membership** – We will look at changes to the list of delegates with a view to including as many as possible

### ***The name***

We've come up with a suggested name;

### **'The HMRC Patent Box and Research & Development Forum'**

Any other suggestions will be considered, a prize of a signed (by Phil) pristine and unopened Qualifying Bodies Statutory Instrument goes to the winner!! So it's worth participating.

### ***Membership and future meetings***

We would like to see a delegate list with one name for each firm- but of course the firm could send someone else to the meeting if the named person is not available. All other interested parties would be on the communication list.

If a firm does not send a delegate to two consecutive meetings and there is someone on the delegate waiting list we may transfer that firm from the attendee list to the communication list in order to make way for a firm on the waiting list.

Where possible, we will not restrict the invitation to one from each firm, it really depends on the numbers and the capacity of the venue. Although there may be some instances where all delegates cannot be accommodated, on those occasions the list will be closed when acceptances of invites reach the venue limit.

So, in order to achieve the above, we propose to;

Contact each firm on the delegate list asking:

1. Do they wish to stay on the delegate list and if not would they like to be transferred to the communication list.
2. Asking which name should go on the attendee list and which name(s) should go on the communication list

But before doing so, and drawing up the new terms of reference, we would be pleased to receive delegates views on the proposals Please send those views to [randd.policy@hmrc.gsi.gov.uk](mailto:randd.policy@hmrc.gsi.gov.uk) . The review of the RDCC will be HMRC lead, we will collate comments and circulate the final proposals with a view to the new terms of reference and delegate list being in place before the next meeting.

## **11. Thanks and next meeting**

MC thanked the RDCC for an open and productive discussion.

The next meeting will be hosted in Trinity Bridge House, Manchester on Thursday 24<sup>th</sup> January, from 1pm to 4pm. Details will follow.

As space will be limited, it will be necessary to ask firms to restrict their attendance to one delegate each.