Research and Development Consultative Committee Minutes

Thursday 24th January 2019

Venue: HMRC office, Trinity Bridge House, Manchester, 1pm – 4pm

Present : James Clark, Nigel Adams, David O'Keeffe, Stephen Crawford, Emma Rawson, Adam Spriggs, Vincent Walker, Joe Clifford-Doyle, Julia Neate, Caroline Barrett, Robert Perrin, Laurence Kingdon, Nigel Holmes, Stuart Weekes, Kathie Haunton, James Rylatt, Neil Taylor, Teresa Latch, Harinder Sandhu, Naz Naveed, Antoine Abbatucci, Jennifer Tragner, Catherine Hsu, Peter Jelfs, Neil Maloney, Vanessa Cooper, Ian Rowland, Christopher Brown, David Clift, James Thompson, Peter Denison-Pender, Margaret Savory, David Ward, Mike Baker, Aarti Varia, John Moore, Shima Kelly, George Strickland, Guang Deng, Paul Mann, Anthony Lalsing, Weronika Swietch, David Marshall, Ron Gibson, Steven Levine, Roger Bramall, Dan Ellerton, Richard Bullock, Chris Knott, Jonathon Connor, Richard Lewis, James Geldart, Remy Husein, Terry Toms, Ian Moss, Vicky Kwenda, Mark Evans, Evgeni Vachkov, Philip Steel, Shoayb Patel, Sheetal Sanghi, Justine Stalker, Darryl Hoy, Steve Deighton, Maria Kitt(MK), Ramesh Jethani, Sam Stephens, Tom Rendle, Matthew Lewis, Chris Harrison, Christina Puntaru(CP), Adam Geleff(AR), Dil Patel(DP), Yasmin Achha(YA),Mike Crabtree(MC),Philip Hamblin(PH),Steve Williams(SW),Sharon Connolly(SC),Thomas Wood, Rachael Oliver, Jackie McComish, Janette White, Sonya McCarthy

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.

Some of the slides which were used during this section of the meeting are being published, please read these minutes in conjunction with those slides.

2. **Policy Update**

Budget 18

YA provided an update on Budget 18: On the 29th October 2018 the chancellor Phillip Hammond announced a limit to the amount of payable R&D Tax credit that can be claimed by a company under the SME scheme. The cap will only affect loss-making companies claiming the payable credit of the SME scheme. A similar but more restrictive cap (100%) was removed in 2012 as a simplification, alongside removing a minimum spend requirement. The relief was much smaller and abuse was expected to be manageable

Change- The measure will come into effect from 1st April 2020 and will be legislated in Finance Bill 2019-20. This will give more time for companies to consider the impact of the change. Government will consult on this change, so we can minimise the potential impacts on genuine UK R&D businesses. YA said AG and DP will talk about this in more detail during their presentation.

R&D National Statistics 2018

YA talked through headlines from the statistics, explaining total number of claims for R&D tax credits rose to 43,040, an increase of 22% from 2014-15. The increase was primarily driven by a rise in the number of SME claims, which totalled 36,820 in 2015-16, an increase of 23% from 2014-15.

While the total number of claims for the large company and RDEC schemes increased by 17% to 6,215. So far there have been 39,960 claims for 2016-17, of which 34,060 are in the SME scheme and 5,900 in the RDEC scheme. The total amount of R&D support claimed increased to £3.7bn in 2015-16, an increase of 25% from the previous year. The total value of R&D expenditure against which claims were made was £28.9bn in 2015-16, an increase of 16% from the previous year.

YA flagged that these numbers are expected to increase as more returns are received and that the 2018 national statistics only include claims received for the year ending 31 March 2017 on or before 30 June 2018. The y/e 31 March 2017 claims received between 1 July 2018 and 31 March 2019 will be included in the 2019 National Statistics.

As well as new statistics for 2016-17, this release includes revisions to 2014-15 and 2015-16 as a result of receiving additional returns and incorporating management information to improve the statistics. Further explanation on these changes are provided in the background notes of the National Statistics.

The number of claims is higher than the number of companies making claims. This is because a company can make more than one claim in the same year, either because they claim under different schemes or because a company with more than one accounting period ending in a single financial year will submit a return for each accounting period ending in that year

Advance Clearance Pilot

The aim of the pilot is to identify aspects of RDEC claims where having Advanced Assurance would be beneficial in bringing greater certainty to claims. We have seen little appetite from large businesses to join the pilot. The first evaluation of the pilot is planned for Autumn 2019

EU Exit and R&D Tax credits

With all the uncertainty around EU Exit, the most important point to flag is that the U.K's departure from the EU should not have any direct affect on tax reliefs. They are embedded in U.K'S legislation and paid out by HMRC. No major impacts on Tax credits – Maintain status quo

3. **HM Treasury**

DP and AG spoke about the Budget 2018 announcement; "Preventing abuse of R&D tax relief for small and medium-sized enterprises (SMEs) ". DP provided background of the SME scheme and explained the rationale behind the budget measure itself. Spending through R&D tax reliefs (including the SME scheme) has risen in recent years and there is evidence to suggest R&D tax reliefs are effective at incentivising additional R&D activity. However, while R&D tax reliefs are effective, HMRC has identified (and prevented) fraud attempts on the SME payable tax credit, worth £300 million in total. In these cases, companies were set up to claim the cash available through the payable credit even though they have no legitimate R&D activity. HMRC also identified structures set up deliberately to claim the payable tax credit despite having no or little employment or activity in the UK. Budget 2018 announced that, from April 2020, the amount of payable credit that a qualifying loss-making business can receive through the relief in any one year will be capped. The cap will be three times the company's total PAYE and NICs liability for that year. This will deter abuse because fraudulent companies typically do not employ many people or pay PAYE and NICs. The cap will therefore ensure that the relief goes to companies that have a real UK presence.

AG elaborated on the process behind the government's consultation on the measure and the next steps the government is taking. The government recognises that some genuine companies with UK R&D activity may have low PAYE and NICs liability relative to R&D spend and therefore could be affected by this measure, despite the cap being set at three times their liability. The government will also consult on how the cap will be applied, to minimise any impact on genuine UK businesses, publishing a consultation document in early 2019. Questions were then taken from the audience, including ways the government could consider applying the cap so that any impact on genuine UK businesses is minimised

4. **Incentives & Reliefs**

SC explained the number of claims are increasing. There has been an 8% increase on the number of claims at the same time 2017.

SC referred back to Sue Fawkes slide detailing the telephone spiral. Where the volume of progress chasing calls was having a detrimental effect on our ability to process claims.

In the short term we diverted resource from the phone lines to improve processing. In the longer term we said we would look at how we could make first customer contact more effective – we are now going to send the 'current dates' email rather than specific information about a claim unless the date has been exceeded. This will give you the information you need and speed up our process.

In October we introduced a new system to log voicemails and the new call back the customer. This has allowed the teams to manage calls more effectively, providing time to research and prepare a full response at a quieter point in the day. The system has been in place for 3 months now and during which time we have seen immediate benefits from a reduction in the number of calls and both staff and customers sharing positive experiences.

The number of calls received to date is 1409, the majority are still progress chasing, with an average of 2.12 days for the call back.

Agent Talking Points 15 March 2018 – R&D webinar

5. **Large Business report**

Claim numbers

SW noted that the number of LB claims totalled 2,100 (to date) for 2018-19. In 2017-18 2,000 returns were filed by 31 December, representing a 5% increase (to date) in 2018-19

Enquiries

There is a good spread across the seven LB regions, with no area dominating or overlooked

Sectors are mixed; 20+ represented across all areas of business

75% of enquires have resulted in a tax effect

There is a wide spread of risks with no one particular risk area dominant

Turnaround times for RDEC payments average 51 days, at present the Worst region is 73 days and the best is 34.

Total RDEC paid out and set off £1.7 billion year to date (1,800 claims)

Total qualifying expenditure £14.5 billion year to date

LB Regions vary significantly in number of claims and expenditure claimed

However the number of enquiries per region correlates well to this variation

Software

Use of Chief Technical Officer (CTO), which is a part of the Chief Digital Information Office, continues across LB and certain WMBC claims

95% of LB software claims are submitted by accountants (5% in-house)

There is a good spread of software claims between different agents where HMRC has CTO support.

Since the last RDCC Software guidance has been updated with case studies (CIRD 81960 and 81980). Hopefully you have found these useful!

The digital form

Work has continued on this daily since last July and I can now announce that the launch date for the SME form is 7 February. Cristina Puntaru has carried out user research throughout which has informed progress and she provided a brief presentation (see the slide back for this RDCC meeting) and spoke to those present about access and authorities.

6. **UK Science Parks**

Maria Kitt, Tax Insight, and a member of UKSPA, updated the Committee on the important work and objectives of UK Science Parks. Science Parks are at the forefront of several of the Industrial Strategy's deep tech and deep science partnerships. The Parks also help thousands of incubator and start-up SME's foster invention and innovation and provide important pathways for the commercialisation of UK R & D. Facilitating the economic growth of science and technology companies through collaboration and centres of expertise, UK science parks are home to pioneering technical breakthroughs and we heard briefly of progress within futuristic artificial intelligence, and bio / life science projects.

7. **Technical Issues**

PH covered three points, as follows;

S104N (2) step 1 CTA 2009

At step 1 RDEC discharges the liability to pay ‘corporation tax’, but it cannot be used at this step to discharge the liability to pay sums which are ‘due from a company as if they were an amount of corporation tax chargeable on the company’, for example Bank Levy.

A number of companies have submitted RDEC claims where they have incorrectly used RDEC at step 1 to discharge liabilities which are due from a company as if they were an amount of corporation tax chargeable on the company. HMRC have either already contacted those companies or will be contacting them. In some cases- for example where Large Business have a Customer Compliance Manager who deals with that company- the contact may be informal rather than by opening a formal enquiry.

It has become apparent that on some occasions HMRC’s electronic processing system ‘COTAX’ has automatically used RDEC to discharge liabilities which are due from a company as if they were an amount of corporation tax chargeable on the company, even though the company has not required such a discharge as a part of their self-assessment. The team in charge of the COTAX system are working on a short term and a long term solution. The long term solution should not affect delegates or their clients as it will prevent this incorrect allocation of RDEC. But the short term solution will inevitably affect delegates and their clients, which is why details are being provided today.

Where it seems likely that a company will be affected by this issue (for example COTAX has already treated the RDEC in the incorrect manner in an earlier accounting period) signals will be set in COTAX to stop automatic payments and allocations/re-allocations. The teams will be looking for claims which are affected by this and will prioritise checking that COTAX treats the RDEC as it has been self-assessed. The team will, of course, contact the company and/or agent as appropriate.

The team will also be contacting companies and/or their agents as appropriate where RDEC has already been reallocated incorrectly, paid incorrectly, or created other incorrect payments in order to regularise the position.

Amended Returns

From 1 April 2019 HMRC will be changing the form which it requires (paragraph 15 of Schedule 18 of the Finance Act 1998) amendments which contain an initial or amended claim for the Research and Development Tax Reliefs to take. This change applies to claims for the reliefs found in both Part 3 Chapter 6A and in Part 13 of the Corporation Tax Act 2009. The only amendments which are affected are those which are not made electronically through the Corporation Tax Portal 'COTAX'.

From 1 April 2019 the amendments which are not made electronically through the portal will have to take the form of a completed CT600, including a declaration, along with computations. In the rare cases where the Financial Statements have changed those will also be required.

Amendments which are in the wrong form will be returned, if any subsequent amendment in the required form is received after the window for amendments closes the claim will be one which has been made outside of a return and the claimant will be advised of the Statement of Practice 2005/01 late claim procedure which applies when a company is relying on paragraph 83E (2) of Schedule 18 of the Finance Act 1998 to make a claim.

There will be a transition period of three months ending on 30 June 2019. During that period there will be a procedure to deal with occasions where HMRC notify a company or an agent that a document which was submitted as an amendment is not an amendment as it is not in the required form. In those cases, where the time limit for making that claim closes within 30 days from that notification, any subsequent claim in the same amount (or less) and which is in the required form will be processed as long as it is received by HMRC within 30 days of the aforementioned notification.

These changes are being made as they will help HMRC speed up the processing of claims and should make it less likely that claimant companies experience problems such as the following;

Not being able to make a claim because time limits pass before the requirements to make a return are met. Examples of this are where the document(s) and/or information submitted in time is adequate, or the agent who is attempting to amend the company's Corporation Tax Self- Assessment has no authority to amend the Self-Assessment.

Corporation Tax Self- Assessment amendments are made without referral to the agent who provides overall advice on the Company's Corporation Tax Affairs. Examples would be where companies lose out as losses which have been surrendered for payable tax credit would be better used elsewhere, and where a company submits an incorrect self-assessment in respect of later accounting periods. An examples of a later incorrect self-assessment would be where a company attempts to surrender losses which were not in fact brought forward as they had been surrendered as a part of a payable tax credit claim. Another example would be where a company attempt to claim capital allowances on a written down value which was not in fact brought forward - as the expense had been used in an earlier year.

These changes will be announced in an HMRC Agent Update* and Guidance will be available in the Corporate Intangibles Research and Development Manual and the Company Taxation Manual.

This revised requirement will also apply to non-electronic amended self-assessments which includes claims for the Creative Reliefs, and those manuals will also be updated.

*Post meeting note- see page 8 of Agent Update 70, here –

https://www.gov.uk/government/publications/agent-update-issue-70

Interaction of Research and Development Expenditure Credit and the Creative Reliefs.

There are a number of different reliefs available within the creatives sector, with a variety of different rules as to how they interact with the R&D Reliefs.

The rules which apply to Video Games Development Relief (s1217C CTA 2009), Film Tax Relief (s1195 [(3A)] CTA 2009), Television Production Relief (1216C(4) CTA 2009) and Theatrical Productions relief (1217JA (2) CTA 2009) all have the same effect. Any expenditure which could, whether or not it is, be included in a claim for RDEC cannot be included as qualifying expenditure in a claim for these reliefs. This includes any potential claim to RDEC by an SME (sections 104C to 104I CTA 2009). The situation with claims in the SME R&D scheme is slightly different. In this situation the expenditure is only excluded from any claim for the aforementioned reliefs if the company has already used it for a claim within the SME scheme.

Turning now to the Museums and Galleries Exhibition Tax Relief. We need to consider the effect of Sections 1218ZCG(1)(b) and 218ZCG(2)(a) and (b) of CTA 2009. The aforementioned work together to prevent any claim for the Museums and Galleries Exhibition Tax Relief in respect of expenditure in which the company could claim RDEC or SME relief, even if they have not made such a claim.

There are no rules relating to the R&D reliefs in the Orchestra Tax Relief scheme legislation.

8. RDCC Terms of reference

a. PH thanked members for their comments on the proposals which were included in the minutes to the previous RDCC meeting, and for their further comments on the draft new terms of reference which reflected those comments. Having drawn everything together a suggested new terms of reference was circulated attendees of today's meeting with their agenda. There were no objections to the revised terms of reference applying, and these were published on and apply from 25 January 2019. They can be seen here;

https://www.gov.uk/government/groups/research-development-consultative-committee

b. PH drew attention to some points in the new terms of reference which reflected member's comments;

- The forum meetings will continue to focus on the R&D Relief schemes, with guest presenters.
- The name will not be changed.
- HMRC intend to leave the current membership as it is, but will review the position as members leave or are removed for other reasons.
- When space allows those on the waiting list will be invited as guests, although no requests to attend can be accepted when the room maximum is reached.

9. Thanks and next meeting

MC thanked the RDCC for attending and for their contributions.

He also thanked the guest presenters for their contribution and the team in the R&D Unit in Manchester for hosting the event.

Post meeting note- The next meeting will take place in The Churchill Room, 100 Parliament Street, Westminster Tuesday 24 September 2019. Details will follow.