

Research & Development

Minutes of R&D Consultative Committee on Thursday 28 June 2007 at 100 Parliament Street

Present:

Jon Sherman (JS) (HMRC – Chair)
Jeremy Sherwood (JDS) (HMRC)
Lynn Carroll (HMRC)
Simon Potter (HMRC)
Phil Gilbert (HMRC)
Frank Buffone (ICEAW & Ernst & Young)
Laurence Bard (ICEAW & Shaws)
Colin Davis (CIOT)
John Moore (ICAEW & Deloitte)
David O’Keeffe (CIOT & KPMG)
Diarmuid MacDougall (PWC)

Introductions

1. JS welcomed everyone to the meeting and this was followed by around the table introductions.

Apologies

2. Apologies had been received in respect of Norman Price, Purnima Madhvi, Peter Shield, Andrew Hubbard and Ian Huddart.

Matters arising from the previous meeting

3. There were no matters arising.

Terms of Reference & Composition of the R&D Consultative Committee

4. JS explained that the constitution and organisation of HMRC Consultative Committees needed to be formalised following the Varney report, which looks at links with large business, published in November 2006. As part of this all committees must have terms of reference and the minutes of their meetings must be published on the HMRC website.
5. HMRC had drawn up terms of reference and these had been circulated prior to the meeting. JS asked if anyone had any comments on them. CD suggested the following amendments to the wording
 - a. at the second bullet change ‘accountancy and trade bodies’ to ‘technical and trade bodies’
 - b. at the fifth bullet the ‘committee would liaise with the Corporation Tax *Operational* Consultative Committee’

6. Discussions then followed as to the future composition of the Committee. There was agreement that the Committee has to be representative of the business community and as such it was suggested that
 - a. representative bodies be invited to attend on an ad hoc basis as agenda items dictate.
 - b. invitations be issued to those bodies who responded to consultations or made representations at Pre Budget or Budget time
 - c. a letter be sent to representative bodies with R&D performing members inviting them to take part in the Committee.
7. JS said that the meeting agendas were largely HMRC led and there was a discussion about possible reasons for this. It was generally agreed that the meetings were very useful and should be continued. DO said that given the frequency of meetings any pressing issues would usually be raised either with CT&VAT or with the R&D Unit heads as they arose.
8. It was agreed that HMRC would amend the terms of reference and send out an amended draft with the minutes of the meeting.

Operational Issues

Large Business Service (LBS)

9. PG said he wanted to discuss the handling of R&D claims by the LBS. He said that the LBS wants to support claims to R&D relief and had taken on board the policy message. It wanted to help companies make claims.
10. He said that the LBS are trying to be proactive with respect to R&D and were helping companies to get the correct systems in place to support accurate claims to relief. There was an LBS R&D conference in January 2007 which included a summarised presentation of the software training previously developed for the Specialist Units. The aim of the conference was to promote a culture change within LBS inspectors in respect of their approach to R&D claims.
11. The LBS is organised into eighteen sectors most of which have an R&D sector expert who acts as a focal point for the exchange of information. There are also plans to set up an IT shared workplace within which LBS inspectors can discuss R&D issues they are dealing with. This will further help improve the consistency with which R&D is dealt both within and between LBS sectors and across HMRC generally.
12. When dealing with R&D the LBS looks to agree mutually acceptable procedures for drawing up future claims. To do this its inspectors need to fully understand the basis for any estimates or assumptions used or to be used in preparing claims.
13. Emerging R&D issues with the LBS include evidence of claims being made which push the boundaries of what is regarded as R&D for tax purposes. JDS said that the Corporate Intangibles Research & Development (CIRD) manual sets out the HMRC position with respect to the boundaries of an R&D project.

14. There then followed a discussion about the value of R&D claims to companies and whether the availability of the relief affects where companies locate their R&D activity. JM said that in a recent ICAEW survey the main point was that companies need commercial certainty i.e. companies need certainty that their R&D claims will succeed. PG said that improving the consistency with which claims are handled will help achieve this.
15. DM asked if there was a continuing programme to obtain feedback on the effectiveness of the R&D relief on attracting companies to the UK. JS said that HMRC commissioned a study by OXERA in 2005 which concluded that further years' data was needed before the R&D schemes were evaluated. He said that HMRC's knowledge and analysis section were looking at a number of options for future evaluation.
16. DM asked if HMRC worked with UKTI. JDS confirmed that HMRC had helped UKTI develop a presentation and internal training document covering the UK R&D reliefs. DM asked if that material was publicly available and JDS agreed to contact UKTI to see if it was or if not whether it could be made available.
17. DM asked if there was any update on the guidance concerning software and the capital/revenue issue. JDS said that he had been working with other HMRC technical specialists and had nearly finalised the guidance. JDS said that he hoped to shortly circulate the amended guidance around the Committee for comments. He said that he had improved central co-ordination of open R&D enquires where the capital/revenue argument was being run, to achieve better consistency.
18. JDS said that HMRC would like feedback if there were still areas of uncertainty after the new guidance had been issued.
19. LB asked if there was a HMRC view with respect to the timing of R&D relief for bought in software which is then capitalised. JDS said that S53 Finance Act 2004 overrules the accountancy treatment generally for the purpose of timing of the relief and allows relief for the expenditure when it is incurred.

Specialist R&D units

20. SP said that he had held the post of Unit Head for the Cardiff R&D Unit for the last two months.
21. Turning to the R&D Units generally SP said that the majority of R&D claims should now be either in the Units or being dealt with by them on a consultancy basis. If however advisors came across enquiries where there doesn't look to be specialist unit involvement they should query the situation and request that the appropriate Unit be notified.
22. SP said that the Unit Heads met on a monthly basis and discussed both operational and technical issues with a view to ensuring consistency. If however advisors see any evidence of inconsistency they should refer the matter to the Unit Heads.
23. SP then turned to the outreach/enabling activities of the Units. The Units are making contact with local business groups and advisors and are attending conferences and giving presentations. He also referred to the Patent Project

in which publicly available information had been used to try to identify R&D performing companies who may not yet have claimed R&D relief. He asked if any of the Committee had seen the letters.

24. Some Committee members had seen and were aware of the letters. CD said that a colleague of his had received a letter and HMRC were to be commended for this approach to business.
25. SP said that the Units were looking to develop further projects and asked whether any of those present had any ideas for future projects. DM said that the enabling activity should be continued as more face to face contact with business will change the public perception of HMRC.
26. JDS said that HMRC had publicity plans for later in the year with the aim of raising awareness within the business community of the enabling service provided by the Units. However, HMRC can't reach every potential claimant and advisors had an important role to play as well.

Finance Bill 2007

27. JDS said that there were two R&D clauses in the Finance Bill which passed through the Committee stage unchanged.
28. The first of these dealt with the extension of the SME R&D relief to mid-sized companies. The doubling of the staff, turnover and balance sheet limits was seen as the easiest way of achieving this. There may therefore be changes for those companies who were regarded as large and who will now be regarded as larger SMEs under the new legislation. JDS said that HMRC expected the new legislation to apply from 1 April 2007 but that this was subject to EC approval.
29. The second clause corrected a small error in the vaccine research relief scheme. The error was spotted by the tax law rewrite team and it was decided correct the error in the current Finance Bill.
30. DO asked what HMRC planned to do in respect of those companies who did not own the intellectual property arising from their R&D activity and who, as a result of the legislative changes, were now regarded as larger SMEs. He said those companies would be worse off as a result of the change.
31. JDS said that the changes were meant to extend the period for which SMEs were able to access the higher level of enhanced relief and the payable tax credit. The number of companies who will be adversely affected will be very low. JDS pointed out that the policy plans to extend relief to mid-sized companies had been known publicly for quite some time and apart from one very recent comment there had been no other concerns raised. JDS said that if there was real evidence that the current changes were causing problems for companies then both he and H M Treasury would want to know about it.

AOB

32. CD had a couple of points to mention. The first of these, the HMRC's proactive approach with respect to the Patent Project had already been

discussed. His second point concerned the R&D tool contained on the HMRC website. He said that the tool needed to be updated. LC said that there were plans to update all of the HMRC R&D pages this year and as part of this the guidance for small and medium companies would also be updated.

33. CD also asked whether XBRL tags could be used to facilitate a risk assessment-based approach to the handling of R&D claims. Following the meeting LC looked into this issue. There will be an electronic XBRL “tag” for each entry on a company tax return and this will, in the future, allow HMRC to better handle the information contained with electronically filed returns. Any use of the “tags” for risk assessment purposes will apply to all entries in the return and not just to those relating to R&D.
34. JM said that inspectors were looking for SSAP 13 disclosures in accounts as confirmation of R&D activity. He said that the absence of a disclosure was being used as evidence that there was no R&D activity. LC said a SSAP 13 disclosure in the accounts is at best an indication of R&D activity. An inspector can query why no disclosure was made in the accounts but can't use the absence of a disclosure as evidence that the company was not carrying on qualifying R&D activities
35. There being no further business the meeting ended at 12 pm.