R&D tax credits: reimbursed expenses

Large Corporate **OMB**

01 October 2015

CIOT challenges the meaning of staffing costs for R&D tax credits

The CIOT has written to HMRC for clarification on whether reimbursed expenses form part of ‘staffing costs’ within the meaning of CTA 2009 s 1123(3) and therefore qualify for R&D tax credits.

ince October 2013 this has been a topic of discussion with HMRC through the R&D consultative committee, a forum run by the department for stakeholders on which the CIOT is represented. In addition, we understand that independently many professional advisers have been in contact with HMRC about this on behalf of clients.

HMRC circulated a detailed note to RDCC members on 20 May 2015 which purports to set out the Revenue’s final view on the meaning of ‘staffing costs’ in the context of whether reimbursed expenses may form part of them. Broadly, out-of-pocket expenses reimbursed to employees do not qualify and what is included within this definition is limited, yet unclear. At the RDCC meeting on 13 July we were told that HMRC intend to amend the CIRD manual to reflect the position soon.

We expressed our concern and objection to HMRC’s course of action because:

- We believe HMRC’s interpretation of s 1123(3) is wrong and the proposed change to HMRC guidance would not be in accordance with existing legislation.
- To the extent that HMRC do not accept that they are changing the law by offering this new view of staffing costs, they should nonetheless be aiming for clarity and certainty for taxpayers. This will not be achieved by amending HMRC guidance to reflect a view that HMRC are aware most stakeholders disagree with and is different from the interpretation of the law applied by HMRC in the past.

- As well as being, in our view, incorrect in its analysis of the law, HMRC's note, which it is intended will form the basis of the revised guidance in the CIRD manual, is ambiguous and difficult to follow.

We told HMRC that we can speculate on what circumstances have arisen in submitted claims that are causing them particular concern and, if we are right, we sympathise with their position. However, we suggested that, if HMRC wish to prevent reimbursed expenses (either entirely or expenses of a particular type) being included in R&D claims, the correct course is either to use the existing anti-avoidance provisions in the R&D tax code or to change the legislation. We confirmed that we would not object to a change to the legislation to limit what can be included.

In any event, we said that, regardless of the difference in opinion between the CIOT and HMRC on the correct interpretation of the law, it seemed unhelpful to taxpayers for HMRC to pursue publication of such disputed and contradictory guidance.

Accordingly we suggested that HMRC reconsider amending the CIRD.

We are waiting to receive a response from HMRC to our letter, the full text of which, together with HMRC's note of 20 May 2015, can be found on the CIOT website.