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HMRC internal manual

Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)
([/government/organisations/hm-revenue-customs](#))

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CIRD81550 - R&D tax relief: conditions to be satisfied: intellectual property (SME scheme only)

[CTA09/Ss 1052,1053 & 1139 - SME scheme only](#)

The intellectual property condition is now abolished. The following only applies to expenditure for accounting periods ending before 9 December 2009. For expenditure to qualify for R&D tax relief a requirement is that any intellectual property ('IP') created as a result of the R&D is, or

will be, vested in the company (whether alone or with other persons). The condition needs to be fulfilled at the time the IP is created, rather than in hindsight. For IP to vest in a company in any meaningful way it must have the potential to exploit the IP if it has use or value, so arguments based on the IP being held by the company for some scintilla of time in transit to another owner are not sufficient to satisfy the condition.

The carrying out of R&D without the creation of any IP does not prevent relief being due. The requirement is only that if any IP arises from the R&D then it vests in the company.

In practice, there are many different forms of IP and attempting to identify all of them and the attached legal rights might often be an unrealistic task to attempt. In practice it should generally be accepted that so long as the claimant company has a real and material interest in any IP that has arisen, then the test is satisfied. But where there is an agreement recording that all IP that is created belongs to another party that is likely to be conclusive evidence that the IP test is failed.

HMRC accepts that where the terms of R&D require that the IP is to be placed in the public domain then the condition is satisfied.

In cases of difficulty HMRC officers should refer to Business, Assets & International, CS&TD.

Meaning of IP

IP here means:

- a. any industrial information or techniques likely to assist in:
 - the manufacture or processing of goods or materials, **or**
 - the working of a mine, oil well, or other source of mineral deposits, or the winning of access to them, **or**

- the carrying out of any agricultural, forestry or fishing operations;
- b. any patent, trade mark, registered design, copyright, design right or plant breeder's right; and
- c. any rights under the law of a country outside of the UK that correspond to those in (b): see **CTA09/S1139**.

Example

A company has an arrangement with its researchers, and a local university to which it sub-contracts part of the work, that patent rights are split equally on any invention that they devise. The R&D project results in an invention that has commercial possibilities. Immediately following the grant of the patent the company transfers its rights to a subsidiary. Although the company holds a part of the rights and held them only for a brief period it meets the requirements of the legislation, because it was not obliged to transfer them by any pre-existing agreement.



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