HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD137000 - R&D Tax Reliefs: reformed reliefs: categories of qualifying expenditure: externally provided workers

CTA09/S1127 - S1132A

Externally provided workers (EPWs) are defined at CIRD137100 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird137100). This category of qualifying expenditure applies where a staff provider is contracted to supply external workers. This does not include the recruitment costs of staff provided by employment agencies, nor does it include the situation where the contract is for more than the provision of workers and amounts to contracting out of a part of the R&D activity. Contractor payments are dealt with at CIRD138000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird138000). The expenditure must be for the provision of staff and not for other services. It does not include payments to self-employed consultants.

Expenditure for the provision of staff may include payments of reimbursed expenses, where the expenses are incurred initially by an EPW, subsequently refunded by a staff provider or staff controller, and then recharged to the company.

The workers must be directly and actively engaged in the R&D (CTA09/S1132), i.e. the costs must relate to staff time engaged in activity that constitutes R&D for tax purposes, which includes ‘qualifying indirect activities’.

If the workers are only partly directly and actively engaged on R&D, then an appropriate proportion of the qualifying expenditure should be arrived at.

Qualifying earnings

The definition of qualifying earnings at CTA09/S1132A is relevant to determining the amount of qualifying expenditure on EPWs for both connected and unconnected EPW payments. It acts to restrict availability of relief on EPWs expenditure overseas.

Qualifying earnings are earnings which are:

- Subject to UK PAYE and NICs, in whole or in part or
- Attributable to overseas (non-UK) R&D activity which meets the exemption at CTA09/S1138A (see CIRD150000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird150000))

Unconnected parties

If the company, staff provider(s), and staff controller(s) are not all connected to the company ([CIRD192000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird192000)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird192000)) then 65% of the amount of the payment paid to the staff provider which is attributable to qualifying earnings is potentially eligible to be treated as qualifying expenditure.

The company may jointly elect with the staff provider and the staff controller(s) to be treated as connected. Such an election is irrevocable and applies to all payments under the same contract or arrangement. The election must be made to HMRC in writing within two years from the end of the accounting period in which the contract or arrangement was entered into (CTA09/S1130). There is no provision for extending this time limit.

Example

A UK company engages an unconnected staff provider (and there is no election under CTA09/1130 for connected person treatment) to supply 10 specialist workers as EPWs to meet a particular need. Because their skills are in short supply, the staff provider is only able to provide 6 workers in the UK. They will work at the customer's UK site. The staff provider is able, via its international networks, to locate 4 additional workers who are based in Mexico. They do not wish to relocate temporarily to the UK and it is agreed that they will perform their functions remotely. The workers based in the UK are subject to UK PAYE/ NIC, those based in Mexico are not. The UK customer makes a single staff provision payment to the staff provider to cover the provision of the 10 workers. Assuming that the wage levels are the same, 6/10 or 60% of the staff provision payment is qualifying earnings and therefore 65% x 60% = 39% of the payment is qualifying expenditure.

Connected parties

This applies where all parties (company, staff controller(s) and staff provider(s) are connected).

Further guidance on the meaning of “connected” is available at CIRD192000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird192000).

Please note that in what follows, relevant expenditure may include reimbursed expenses, paid by the staff provider or staff controller to staff. Further guidance on what qualifies as reimbursed expenses is found at CIRD133100 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird133100). Relevant expenditure does not include EPWs earnings which are not qualifying earnings per CTA09/S1129(3)(d) (see above).

Claimable amount
Where the connected staff provider or staff controller includes:

- all the payment that it receives for provision of staff, and
- all of its relevant expenditure in paying the externally provided workers (these expenses should be identified by reference to the criteria used to identify staffing costs as in CIRD133000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird133000), and with regard to the definition of qualifying earnings given above),

in its accounts for a period ending not more than 12 months after the end of the accounting period in which the company claiming the R&D relief makes the payment, and does so in accordance with GAAP, then the company’s qualifying expenditure will be the lower of:

- the qualifying payment for staff that it makes to the staff provider, and
- the amount that the staff provider or staff controller includes as relevant expenditure (see above) in its accounting periods ending not more than 12 months after the end of the

company’s accounting period in which the payment was made.