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Corporate Intangibles Research and Development Manual

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CIRD138000 - R&D Tax Reliefs: reformed reliefs: categories of qualifying expenditure: contractor payments

CTA09/S1133 - S1136

A company can claim under either the new merged scheme RDEC ("new RDEC") or, if it qualifies, under enhanced R&D intensive support ("ERIS") for the qualifying element of a contractor payment. A "contractor payment" is a payment made in respect of contracted out research and development to a person to whom it is contracted

out. The meaning of "contracted out" is addressed in detail at CIRD160000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird160000) and following.

Contractor payments can form part of qualifying expenditure if the conditions in either CTA09/S1053 or CTA09/S1053A (ERIS) or CTA09/S1042E or CTA09/S1042F (new RDEC) are met (see CIRD131000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird131000)). Only the amount that is attributable to relevant R&D can qualify.

The treatment is different for connected and unconnected contractors. A contractor is connected to the claimant company if either:

- the law says they are connected (see CIRD192000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird192000)) or
- a joint election is made under CTA09/S1135

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

Unconnected contractor CTA09/S1136
Where the claimant company and the contractor are not connected, and no election is made under CTA09/S1135, 65% of the relevant portion of the contractor payment is claimable (subject to transitional provisions – read CIRD165000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird165000)).

The relevant portion includes:

- any amount incurred on R&D activity taking place in the UK and

- any amount incurred on overseas R&D activity to which CTA09/S1138A applies (see CIRD150000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird150000) and following for more information on overseas restrictions)

Example

Company A and B are unconnected, and no joint election under CTA09/S1035 is made. B invoices A for £100k of activities, of which £50k relates to R&D contracted out from A to B within CTA09/S1133. Of this contracted out R&D, £25k relates to UK activity, and £25k to overseas activity. CTA09/S1138A does not apply to the overseas element. Company A pays the entire amount before making its claim to new RDEC. The qualifying expenditure is £25k x 65% = £16,250.

Connected contractor CTA09/S1134
Where

- the claimant (A) and contractor (B) are connected, or they make a joint election under CTA09/S1135, and

- A pays B for contracted out relevant R&D, and

- B has brought into account the whole of its relevant expenditure (see below) in accordance with GAAP in calculating its trading profit or loss for a relevant period (see below)

the lower of

- the payment

- B's relevant expenditure

can be claimed by A (subject to transitional provisions – read CIRD165000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird165000)).

A relevant period is a period for which B has drawn up accounts, and that ends not more than 12 months after the end of A's period of account in which the contractor payment is brought into account under GAAP in determining A's profit or loss.

B's relevant expenditure is expenditure that

- is incurred by B in carrying on, on behalf of A, the activities to which the payment relates

- is not of a capital nature

- is incurred on staffing costs (CIRD133000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird133000)), software (CIRD134000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird134000)), data licenses, cloud computing services (CIRD135000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird135000)) or consumable items (CIRD136000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird136000)) or relevant payments to the subjects of a clinical trial (CIRD139000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird139000)) or is qualifying expenditure on externally provided workers (CIRD137000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird137000))

- is incurred in respect of:
  - R&D undertaken in the UK or

  - R&D undertaken overseas to which CTA09/S1138A applies (see CIRD150000 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird150000))

Contractor payments made by B to another party do not form part of B's relevant expenditure as contractor payments are not in the list at

CTA09/S1134(3)(c). This means that such amounts cannot form part of A's claimable contractor costs.