HMRC internal manual

Corporate Intangibles Research and Development Manual

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Back to contents

CIRD151000 - R&D Tax Reliefs: reformed reliefs: overseas restrictions: conditions

Excluded conditions are dealt with at CIRD151100 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird151100).

The legislation does not include an exhaustive list of the sorts of condition necessary for the R&D that may be considered in applying CTA09/S1138A(2). The term “conditions” is fairly wide, and while CTA09/S1138A(3)(a) sets out some of them in two categories, (geographical,

environmental and social conditions at CTA09/S1138A(3)(a)(i) and legal or regulatory requirements at CTA09/S1138A(3)(a)(ii)), these are not exhaustive. A valid condition may fall under either or both of CTA09/S1138A(3)(a)(i) or (ii) or, possibly, neither of them. It is convenient to consider examples of valid conditions under the two headings.

Geographical, environmental and social conditions

These are features of the world (whether natural in origin, such as a disease, or the result of human activity, such as a test facility). HMRC's view is that this includes (but is not limited to):

- medical circumstances such as incidence of a disease or availability of participants to trial a drug or other medical treatment (participants here covers both participants with particular relevant characteristics and willing participants in general, in particular note that there is a particular class of eligible costs for both reliefs that covers clinical trial participants)
- animal or plant distribution
- physical or geophysical circumstances (deep oceans or high altitudes; volcanic or seismic conditions; minerals and geology; fortuitous features such as deep mines suitable for locating particle detectors)
- centres of human expertise such as university or other research groups (but see CIRD151100 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird151100) for the distinction between this and availability of workers).
- the presence of machinery or facilities to which a company may require access
- cost (other than that associated with the R&D itself, see CIRD151100 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird151100)).
- environmental sustainability (for example the carbon impact of shipping materials or

equipment long distances or by the choice to use green energy or be able to recycle waste)

- legal factors such as IP ownership

Other geographical, environmental and social conditions may also exist.

Legal or regulatory requirements CTA09/1138A(3)(a)(ii)
The legislation also states that legal or regulatory requirements may be relevant conditions.

HMRC's view is that this includes (but is not limited to):

- explicit legislative requirements (such as that activities must take place in a particular country or according to recognised regulatory principles which do not obtain in the UK) whether set out in national legislation, international agreements or treaties or elsewhere
- the requirements and decisions, formal and informal, of regulatory bodies (so for example, if testing of a drug must be done according to a method agreed by a regulatory body and that body decides that activity must take place in a particular country, or imposes requirements that make that necessary, then this is a regulatory requirement, even if it is not stated somewhere in legislation)
- guidance from regulators, local and state government and professional or accreditation bodies (e.g. specific accreditation from an industry body for a newly developed product)
- agreement by the regulator to a process that the company has proposed to ensure the trial complies with good clinical practice standards and that any proposed manufacturing facilities comply with Good Manufacturing practice standards

Example 1
Motorcycle and Motor Car Grand Prix regulators restrict their testing sessions to specific tracks, normally overseas. If a manufacturer uses such a

facility for expenditure attributable to R&D that is affected by the overseas restriction (e.g. EPW costs) then would qualify.

Example 2
A SME life sciences business undertakes a range of clinical trials which include overseas EPW / subcontract activities. Some clinical trials relate to treatments for diseases more commonly present in the UK. The company uses a global CRO to identify clinical trial participants, and UK and overseas clinical trial sites are used.

The work could theoretically all happen in the UK - there are no regulatory requirements to carry out the studies overseas. However, the company is keen to utilise an ethnically diverse population sample (which is becoming increasingly important to regulators) - to achieve this diversity it requires them to undertake the trials in multiple overseas locations.

This also has the benefit of speeding up patient recruitment. Therefore, a variety of circumstances are behind the decision for undertaking the work overseas.

As there is no regulatory requirement for overseas activity, CTA09/S1138(3)(a)(ii) is not in point. However, the significance of other circumstances such as the increased speed of patient recruitment or other benefits that result from accessing an ethnically diverse population would need to be assessed.

Example 3
A drug company is required to run a trial in Germany to provide evidence in that territory such that the authorities will agree an appropriate price reimbursement for a drug after it is approved for use by the regulatory authorities.

In the absence of that evidence, it is unlikely that it would be economically viable to supply the product in Germany.

The payment for the cost of the trial would therefore meet CTA09/S1138A(2). In this instance the relevant conditions are both economic and regulatory. However, had the primary reason been a lower cost of carrying out the trial, this would not satisfy CTA09/S1138A(2).

The company might evidence this, if necessary, using a vendor selection form with a detailed description as to why a certain UK subcontractor or overseas subcontractor is chosen to conduct its R&D work. Alternatively, if there is specific correspondence from the regulatory body underlying the choice of supplier, this would also be useful evidence as might notes of meetings or calls.