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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)  
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## CIRD84100 - R&D tax relief: categories of qualifying expenditure: externally provided workers - definition

### CTA09/S1128

The definition of externally provided workers is based on the income tax rules for agency workers at Section 44 Income Tax (Earnings and Pensions) Act 2003 which require staffing providers to operate PAYE in relation to individual workers supplied to clients. The main difference is that the

externally provided worker rules also apply where the worker is an employee of the staff provider.

A person is an externally provided worker in relation to the claimant company if the following conditions are satisfied:

1. The worker is an individual (not a company)
2. the worker is not a director or employee of the company
3. the worker personally provides, or is under an obligation personally to provide, services to the company
4. the worker is subject to (or to the right of) supervision, direction or control by the company as to the manner in which those services are provided
5. the worker's services are supplied to the company by or through the staff provider or staff controller (whether or not he is a director or employee of the staff provider or staff controller or any other person)
6. the worker provides, or is under an obligation to provide, those services personally to the company under the terms of a contract between the worker and a person other than the company (the "staff provider"). (These rules were brought in for expenditure incurred on or after 1 April 2012 -see below for further information about earlier expenditure).
7. the provision of those services does not constitute the carrying on of activities contracted out by the company, see CIRD84200

The definition applies to both the Research & Development Expenditure Credit (RDEC) and the SME scheme.

Point (2) may be relevant in groups of companies where the staff provider or staff controller is in the same group as the claimant company and an individual is a director or employee of both

companies. The individual cannot be an externally provided worker for the claimant company because of point (2), but his normal staff costs (as defined by CTA09/S1123) paid by the R&D claimant may qualify for R&D relief.

Point (6) sets out the need for a contract between the individual worker and the staff provider (the company paid by the claimant company). If the worker provided their services through a contract between another company (for example a personal service company) and the staff provider then, before the 2012 changes, they would not have qualified as an externally provided worker. With the FA 12 removal of the tripartite arrangement this condition no longer applies for expenditure incurred on or after 1 April 2012.

The claimant company should satisfy itself that the conditions for relief are met before it can include any expenditure in respect of an externally provided worker in its claim. There should not normally be a need to examine the detailed terms of the contract between the staff provider and the worker. Instead a straightforward way to check whether the conditions are met may be to ask the staff provider or staff controller (where known) if it is operating PAYE in relation to the worker. If so, then the claimant company can assume the conditions at (3) to (7) above are met. If the staff provider or staff controller has no UK permanent establishment then the claimant company may have a similar obligation to operate PAYE in relation to the worker (see paragraph ESM2012 of the Employment Status Manual). If this is the case, then this will be evidence that conditions (3) to (7) are met. In any other cases (for example where the staff provider may have an obligation to operate PAYE in respect of the worker but is not doing so), then the claimant will need to make more detailed checks to ensure the conditions are satisfied.

Point (7) above is an important one, particularly with regard to the RDEC where there are more restrictive rules on the eligibility of subcontracting expenditure for the relief. To qualify as a payment for externally provided workers the payment

should be just for that, and the characteristics of the arrangement should support that. For example, one would generally expect to see active supervision of the workers, and to see charges based on the time they spent on the job.

### **Self-employed consultants**

A payment to a self-employed consultant will not be a payment for an externally provided worker because there will be no contractual arrangement between the consultant and the staff provider as required in point (6) above. So such expenditure is not allowable as being expenditure on externally provided staff. Expenditure described as being on self-employed consultants may on its particular facts sometimes prove to be on subcontracted R&D (CIRD84200).



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