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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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CIRD150500 - R&D Tax Reliefs: reformed reliefs: overseas restrictions: overview

Restrictions on overseas spend apply to EPW payments and contractor payments. Details of how the restrictions operate to restrict amounts claimable for connected and unconnected EPW and contractor payments can be found in [CIRD137000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird137000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird137000) and [CIRD138000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird138000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird138000) respectively.

Meaning of "overseas" / "abroad"

The terms "abroad" and "overseas" - used interchangeably in this guidance - mean "not in the UK". The UK is the United Kingdom of Great Britain and Northern Ireland, comprising England, Scotland, Wales, and Northern Ireland.

General rule

Spend on EPWs whose earnings are not subject wholly or in part to UK PAYE and contractor payments for R&D undertaken overseas only is excluded from qualifying expenditure under both ERIS and new RDEC, unless CTA09/S1138A applies.

Companies registered in Northern Ireland (NI)

NI-registered companies claiming under ERIS are subject to specific NI provisions under s1112J CTA09. Unless a company can and does opt out, the overseas restrictions do not apply to its Chapter 2 (ERIS) qualifying expenditure. The restrictions remain for any Chapter 1A (new RDEC) qualifying expenditure.

In addition, a 3-year limit on the total amount claimable under ERIS applies. Please see CIRD125000 for full details.

Exception for R&D necessarily carried on abroad CTA09/S1138A

This section applies in circumstances where there are conditions necessary for the purposes of the R&D

- that are not present in the UK
- that are present in the location where the R&D is undertaken and
- that it would be wholly unreasonable for the company to replicate in the UK

"Conditions" (see [CIRD151000](https://www.gov.uk/hmrc-internal-manuals/corporate-cird151000)
([https://www.gov.uk/hmrc-internal-manuals/corporate-](https://www.gov.uk/hmrc-internal-manuals/corporate-cird151000)

[intangibles-research-and-development-manual/cird151000](#)) includes in particular:

- geographical, environmental or social conditions
- legal or regulatory requirements

as a result of which the research and development may not be undertaken in the UK

This list is not exhaustive.

However, conditions are disregarded to the extent that they relate to:

- the cost of the R&D
- the availability of workers to carry out the R&D

The list of conditions to be disregarded is exhaustive.

Legal or regulatory conditions

HMRC's view is that this includes:

- 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

Meaning of “necessary”

Necessary is not defined in statute and takes its ordinary meaning.

If the R&D cannot proceed unless a condition is met, that condition is necessary for the purposes of the R&D.

Just because it is necessary to carry out one or more activities of the R&D project outside the UK does not mean that other activities of the project meet this test. Each must be judged on its own merits.

Not present in the United Kingdom/ present in another location

What is relevant is the conditions that exist at the time the R&D activity is undertaken. HMRC would expect that, in project planning, a company would consider alternatives and identify the best way forward and that this planning could be used to identify and justify choices made.

Wholly unreasonable

For examples, please see [CIRD152000](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird152000) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird152000>).

Whether it is wholly unreasonable for the company to replicate the conditions in the UK will depend upon the R&D, the circumstances of the company and the reason for undertaking the work abroad.

In particular, time pressure may affect this. Time pressure may arise either from the demands of the R&D itself (samples may have a limited life, a particular result may be needed before the next

iteration of a test run) from commercial, legal or contractual factors or from a mixture of both. There may be evidence to demonstrate this in project planning documentation, commercial documentation or less formally (communications between staff or between companies as the project evolves). Time pressure will affect different companies in different ways, depending on their size, resources and capacity.

There will be circumstances where it is obvious that time pressure is relevant, such as where unanticipated events occur which disrupt or change plans. In other cases time pressure will be apparent at an earlier stage when it becomes clear even then that some necessary condition will not be present in the UK. Each company's circumstances need to be taken into account – what is wholly unreasonable for one may be reasonable for another.

Whether or not conditions can be replicated in the UK is not necessarily an either/ or question. It may be possible to replicate them in part, either numerically or qualitatively (example 6 in [CIRD152000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird152000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird152000)).

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