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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD133100 - R&D Tax Reliefs: reformed reliefs: categories of qualifying expenditure: staffing costs: measure of staffing costs

CTA09/S1123

The measure of staffing costs in respect of employees engaged directly in R&D activities for the directors and employees is given by adding:

- the emoluments paid by the company to its directors or employees including all salaries,

wages, perquisites and profits whatsoever, other than benefits in kind, and

- the secondary class 1 national insurance contributions paid by the company, and
- the contributions paid by the company to any pension fund operated for the benefit of the directors or employees

CTA09/S1123(5) - extends the definition of staff costs to include compulsory contributions paid by the company in respect of benefits for directors and employees of the company under the social security legislation of all European Economic Area (EEA) States and Switzerland.

This extension enables companies to claim R&D relief in respect of certain social security costs they incur in respect of staff they employ in EEA States and Switzerland. Although Switzerland is not an EEA State it has signed up to the EC social security legislation in order to ensure the free movement of people across its borders.

The range and variety of social security benefits available across the EC is very wide and the S1123(5) extension is meant to give relief only in respect of compulsory contributions similar to the UK's Class 1 NICs. The EC Regulation No 883/2004 contains at Article 3(1) a list of legislation and compulsory contributions made in respect of that legislation attract R&D relief.

Companies with staff in EEA States or Switzerland will be aware of which contributions are compulsory and which are not under the rules of each particular EEA State. However, if areas of dispute arise as to whether or not a particular contribution is compulsory referral should be made to BAI.

In CTA09/S1123(2) & (3) the exclusion of benefits in kind applies to all benefits provided in a non-cash way. So, car and fuel benefits, living accommodation, vouchers and the like, are all excluded. Cash reimbursements of expenses or other reimbursements with salary

are not excluded.

One-off payments to staff, including redundancy payments.

HMRC would normally expect other payments for periods where employees cannot be regarded as being directly or actively engaged in relevant research and development, such as a payment in lieu of notice and payments for gardening leave, to be excluded from R&D and RDEC claims.

Other one-off payments, for example bonuses, should only be included in staffing costs to the extent that they meet the attribution rules in CTA09/S1124.

In accordance with *Nichols v Gibson* (68TC611) redundancy payments made by the company are not emoluments and so are not qualifying expenditure.

Reimbursed expenses

Expenditure is reimbursed if the cost is initially borne by the employee. So, for example, expenditure incurred by an employee using a credit card in the name of the company would not be reimbursed expenditure because the cost was not initially borne by the employee.

Under section CTA09/S1123(3), the company may reimburse expenses incurred initially by an employee, and such reimbursement may constitute qualifying staffing costs in the following circumstances.

- The expense constitutes an expense to the company of employing staff, and
- The expense is an expense the employee pays in order to fulfil the requirements of the employment.

This means that an expense does not qualify as a staffing cost just because an employee has initially incurred that expense.

What we mean by ‘an expense the employee pays in order to fulfil the requirements of the

employment’?

The expense must be incurred in actually carrying out the duties of the job. It is not enough for the expense to be relevant to the job, or to be incurred in connection with the duties of the job. Nor is it enough if the expense only puts the employee in a position to start work or keeps the employee qualified to do the work. On this basis, reimbursed home to work travel costs and reimbursed training costs are not within CTA09/S1123(3).

HMRC would normally treat qualifying travel and subsistence expenses paid by the employee, and refunded by her employer, as being among the types of expenses that could qualify under CTA09/S1123(3).

Example 1

Jane is an employee, who undertakes qualifying research and development as part of her work. She travels to another location to hold a meeting to discuss the emerging findings of the research. She pays the train fare of £10, which is subsequently refunded to her by her employer.

In this example, the £10 refunded to Jane constitutes an expense of the company of employing Jane. Jane initially paid £10 to meet an expense she incurred in order to fulfil the requirements of her employment, an expense that was personal to her and to her performance of her employment. The £10 payment is an allowable staffing cost of the company.

Example 2

Jane subsequently holds the second meeting in a different location. On this occasion, she pays £100 for the hire of a meeting room, and also £10 for her train fare. The employer refunds £110 to Jane.

In this example the £10 refund of the train fare is correctly treated as allowable staffing costs under the same analysis as example 1.

However, the £100 refund of the meeting room hire cost is not an allowable staff cost. The cost to the company of hiring a room is not a cost of employing staff. Neither is it a cost that relates to Jane's performance of the requirements of her job.

Example 3

Suresh is a director of a company that carries out R&D, and he undertakes qualifying research and development as part of his work.

He pays £1000 for roof repairs to the company R&D facility. The company subsequently refunds £1000 to Suresh.

The £1000 refund of the roof repair cost is not a qualifying staff cost. The cost of repairing the roof is not an expense of employing staff. Nor does the cost of the roof repair constitute an expense that Suresh pays in order to fulfil the requirements of his job.

It should be remembered that reimbursed expenses, like all other categories of qualifying staff costs, are subject to CTA09/S1124 (see [CIRD133000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird133000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird133000)), which tells us what staffing costs attributable to relevant research and development.

Reimbursed expenses that are attributable to relevant research and development are those that are paid to, or in respect of directors or employees who are directly and actively engaged in relevant research and development. Where such directors or employees are partly engaged directly and actively in relevant research and development, an appropriate proportion of the reimbursed expense can be qualifying staff costs.

Example 4

Pavel works as R&D director for a company that carries out qualifying R&D. During January, he attends three meetings. In each case, he travels

by train and taxi, and pays the costs himself, later claiming back the expense from his employer.

7 January Meeting to plan a new research project

12 January Meeting with a colleague to review and finalise a new feasibility study.

14 January Quarterly company board meeting.

The travel expenses for the first 2 meetings will be allowable staff costs under CTA09/S1123(3). The cost of attending the 14 January board meeting will not be an allowable expense.



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