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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD83200 - R&D tax relief: categories of qualifying expenditure: staffing costs - measure of 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

Section 27 of FA 2008 - now incorporated at 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 (excluding the UK, as CTA09/S1123 already provides for relief for UK compulsory contributions in the form of secondary class 1 NICs) but including Switzerland.

This extension will enable companies to claim R&D relief in respect of certain social security costs they incur on or after 1 August 2008 in respect of staff they employ in other 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 will now attract R&D relief.

Companies with staff in other EEA States or Switzerland will be aware of which contributions are compulsory and which are not under the rules of each particular EEA State and the extension of the relief should cause very few problems in practice. 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. 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.

Note that from 1 January 2021 the reference to "social security legislation" in s1123(5) applies to the list in Article 3(1) of Regulation (EC) No. 883/2004 as it had effect in the United Kingdom on 31 December 2020.

But for benefits in kind paid in accounting periods ending on or after 6 April 2003, but incurred prior to 1 April 2004 see [CIRD83250](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird83250) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird83250>).

Staffing Costs relating to staff Furloughed during the Covid-19 Pandemics (but see below regarding the Coronavirus Statutory Sick Pay Rebate Scheme)

The purpose of this section of the staffing costs guidelines is to provide advice as to how HMRC expects companies to deal with staffing costs when calculating their Research and Development Relief (R&D) and/or Research and Development Expenditure Credit (RDEC) claims for periods in which they had furloughed staff.

The Coronavirus Job Retention Scheme (CJRS) is not a notified State aid, so when furlough payments are met by the Government through the CJRS the notified State aid rule at s1138(1)(a) are not in point.

However, to the extent that furlough payments are met by the Government through the CJRS, the general subsidy rules at 1138(1) do apply, meaning that the expenditure has to be treated as having been subsidised and will therefore not qualify for relief within the SME scheme. The only area where this is likely not to be the case is if annual leave or sick leave is taken during furlough, and this point is covered later on this page.

In some cases all or a part of the payments made to employee during furlough would have been met by the Government through the CJRS. Under the CJRS one of the key conditions for an employee to be furloughed is that they have been instructed by their employer to cease all work in relation to their employment. From 1 July 2020 it was possible to be a flexibly-furloughed employee, which allowed businesses to bring back employees part-time, but required the employee to do no work in relation to their employment during a CJRS claim period. Furloughed staff are permitted to undertake study and training.

As the furloughed employees have ceased all work during the CJRS period HMRC considers that those employees cannot be regarded as being directly or actively engaged in relevant research and development during those times. This means that during those times the conditions in s1124(2) CTA 2009 are not been met in respect of their costs. HMRC therefore expect to see these costs excluded from R&D and RDEC claims. This applies equally to furlough payments met under the CJRS and to any 'top-up' from the company itself.

In some cases none of the furlough payments made to staff were met by the Government through the CJRS scheme. Where furloughed employees have ceased all work HMRC consider that those employees cannot be regarded as being directly or actively engaged in relevant research and development. If some qualifying activity has been carried out then HMRC would expect companies to claim in the usual way and

draw their attention to the appropriate proportion rules found in s1124(3) and (4) CTA 2009.

HMRC consider that paying holiday pay and sick pay is a necessary cost of the employees undertaking R&D work and is, in effect, part of the cost of their working time. This means that HMRC allows claimants to apply the same apportionment between qualifying and non-qualifying activities to holidays and sickness as they do to working time. HMRC consider that any period during furlough which is taken as annual leave or is recorded as sick leave can be included in the staffing cost calculation. However, for the reasons outlined above, the staffing costs incurred on leave and sickness during furlough are subsidised to the extent that they are met under the CJRS. Whilst this will not affect companies which only claim RDEC it will prevent this element of the staffing cost from qualifying where a company is making a claim in the small and medium size enterprises scheme (chapter 2 of part 13 CTA 2009). The company would however be able to include these staffing costs in a claim for RDEC (s104F to s104H CTA 2009). HMRC will accept a fair and reasonable apportionment when calculating the element of subsidised staffing costs in these circumstances.

Coronavirus Statutory Sick Pay Rebate Scheme- please note that this advice applies to the original scheme and also to the scheme when it was reintroduced in January 2022.

The Coronavirus Statutory Sick Pay Rebate Scheme is a notified State aid, which means that s1138(1)(a) CTA 2009 applies to aid received through it. This does not effect claims for Research and Development Expenditure Credit. But it does prevent any claims for SME relief in respect of projects which have received support through the scheme. Where this SME restriction

applies claims for Research and Development Expenditure Credit can, in some circumstances, be made under authority of s104F to s104H CTA 2009.

Other one-off payments to staff, including redundancy payments.

As with payments relating to furlough, 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.

HMRC would normally expect redundancy payments to be excluded from qualifying expenditure due to the attribution rules found at CTA09/S1124 because the payment is made as compensation for loss of job/office and not as payment for involvement in qualifying R&D activities.

Other one-off payments, for example bonuses, should only be included in staffing costs to the extent that they meet the attribution rules in s1124 CTA 2009.

Cash reimbursements of expenses

Under section 1123 (3) CTA 2009, 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 her employment.

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

Some companies may have understated their claims for reimbursed expenses as a result of a note which was read out at the Research and Development Consultative Committee on 8 October 2014. Details of this, along with the procedure to deal with those cases is shown later in this page. The procedure below only applies until 31 January 2018. Any queries in respect of this matter after that date should be referred to the Customer Compliance Manager where the company's affairs are dealt with by the Large Business Service. Companies not in this category should contact the R&D Unit (CIRD 80350).

What we mean by 'an expense the employee pays in order to fulfil the requirements of her 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 encompassed by S1123(3)CTA 2009.

We 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 S1123(3) CTA 2009.

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 section 1124 CTA 2009. See CIRD 83800. Section 1124 CTA 2009 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 S1123(3) CTA 2009. The cost of attending the 14 January board meeting will not be an allowable expense.

The following procedure no longer applies, but is being left in the CIRD for information.

This procedure explains how companies can amend their claims for Research and

Development Credits where their original claims were restricted as a result of the company relying on a note issued by HMRC on 8 October 2014.

The procedure only applies where;

- The aforementioned restriction in the qualifying amounts claimed would not have been undertaken if the company had been relying on the guidance which was published on 27 October 2016 and is found in page 83200 of the Corporate Intangible Research and Development Manual (CIRD).

And

- The accounting period in which the claim was restricted ended between 9 October 2012 and 30 April 2016, and the original claim for that period was made on or after 9 October 2014.
1. The guidance on this page was updated on 27 October 2016.
 2. The guidance on this page differs from guidance contained in a note which was issued on 8 October 2014 and which can be read at the following address
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399354/Reimbursed_expenses_clarification.pdf
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399354/Reimbursed_expenses_clarification.pdf)
 3. The revised guidance issued on 27 October 2016 was discussed with interested parties, and during those discussions HMRC noted that the differences between the revised guidance and the note which had been issued on 8 October 2014 was not a change in the law but a change in HMRC's interpretation of the law. HMRC advised that retrospective claims could, in some circumstances, be made where companies had restricted claims for research and development Tax Relief and/or Research and Development Expenditure Credit as a result of the 8 October note. This procedure provides details of the

circumstances where such claims will be considered and how those claims should be made.

The procedure will not apply to claims which are made within the time allowed by Paragraph 83E (1) Schedule 18 Finance Act 1998 (the first anniversary of the filing date for the accounting period for which the claim is made). It is also not envisaged that this procedure will apply to any accounting period where the time in which to make an amended in-date claim had already passed when the Research and Development Consultative Committee met on 8 October 2014. If it is considered that a company with an earlier accounting period was disadvantaged by relying on the 8 October 2014 note please contact the Business, Assets and International Research and Development team in room 3/63, 100 Parliament Street.

Companies and their advisors will be aware that CIRD 81800 “R&D tax reliefs: conditions to be satisfied: claims and time limits” states at “Late Claims” that where there is a late claim it should be dealt with in accordance with the guidance at Statement of Practice SP 05/01. While this does not specifically refer to R&D payable tax credits, the approach is a general one that HMRC adopt. Would each applicant therefore confirm that the claim in point is late due to reliance on the note issued by HMRC on 8 October 2014.

HMRC will consider admitting amended claims using the discretionary powers which are provided by Paragraph 83E (2) Schedule 18 of Finance Act 1998 when all the following points apply;

- The accounting period in which the claim is made ends between 9 October 2012 and 30 April 2016, and the original claim for that period was made on or after 9 October 2014.
- The time limit at Paragraph 83E (1) Schedule 18 of Finance Act 1998 has passed at the time the claim made under this procedure is made.

- The claim to be considered under this procedure is received by HMRC by 30 April 2018.
- The company had already made a claim for Research and Development Relief for the accounting period to which the claim made under this procedure applies.
- This procedure will only apply to claims which are limited to one category of qualifying expenditure, that found in S1123 (3) CTA 2009.
- This procedure also only applies to that expenditure which was excluded by a company relying on the statement issued by HMRC on 8 October 2014, but which would have been included if at that time the company had been in a position to rely on the guidance which was issued by HMRC on 27 October 2016.
- The claim is submitted with a revised corporation tax computation and, where appropriate, supporting explanations. It would aid processing and therefore expedite payment if an amended completed corporation tax self assessment was also provided.

Note that as the above claims are being made outside a return they are covered by the rules which can be found in Schedule 1A Taxes Management Act 1970. Therefore, it would be appropriate for claimants to include the information mentioned in Paragraph 2 Schedule 1A, namely;

- a declaration to the effect that all the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim.
- a statement of the amount of additional expenditure which is now also to be treated as qualifying expenditure under s1123(3) Corporation Tax Act 2009 to give effect to the claim.
- all relevant documents and accounts.

1. Claims should be sent either by post to Compliance S0733, R&D Procedure/2017 -

Reimbursed Expenditure, PO Box 3900,
Glasgow, G70 6AA or by email to
randd.reimbursedexpenses@hmrc.gsi.gov.uk.
As indicated in the above address, the letter or
email subject line should be marked 'R&D
Procedure/2017 - Reimbursed Expenditure'.

2. To be considered under this procedure a claim must have been received by HMRC by 30 April 2018.
3. HMRC will aim to make appropriate payment or raise queries in regards to 95% of the claims within 30 days of receiving them.



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