

Research and Development (R&D) tax credit Clawback of relief

Part 29-02-06

This document should be read in conjunction with section 766, 766A and 766B Taxes Consolidation Act 1997

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Introduction

The purpose of this manual is to highlight the 'clawback' procedure to be applied, when settling a research & development (R&D) intervention in relation to a claim for relief which was not properly due.

It also serves to highlight the importance of utilising the correct clawback mechanism provided for in the Corporation Tax (CT) return.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

The Corporation Tax return provides a tracking and tracing mechanism in relation to R&D intervention settlements. It is important that Revenue are in a position to quantify the amount of R&D credit claims adjusted on a Revenue intervention.

1. General R&D Scheme

A tax credit for certain qualifying expenditure incurred by a qualifying company on R&D activities is provided for under section 766, 766A and 766B Taxes Consolidation Act (TCA 1997). The tax credit is given at 25% of allowable expenditure on a claim to relief by the company on the CT1.

All claims for deductions, reliefs and credits in relation to CT are processed based on self-assessment.

2. Clawback Event – tax credit claimed not properly due

Where a claim for relief on expenditure on R&D is subsequently found to be non-qualifying or overstated then there are implications relating to the following:

1. Clawback of the additional tax due
2. Interest
3. Penalties

The R&D credit can be claimed as a credit against CT or it can be claimed as a payable credit. The clawback mechanism and the charge to tax depends on the figure being adjusted: a Schedule D Case IV liability arises under specific circumstances outlined in Paragraph [3](#) and in all other cases the amount clawed back is recorded in the CT return as outlined in Paragraph [4](#).

3. When do I make a Schedule D Case IV assessment?

3.1. Clawback of payable credits

Where a clawback arises on a specified amount, as defined, then in those specific circumstance a Schedule D Case IV assessment should be made.

Specified amount is defined in section 766(1)(a). It incorporates the payment of the excess remaining of the tax credit for qualifying research and development expenditure in 3 equal instalments to the company under section 766(4B), and the repayment of the excess tax credit remaining for specified relevant expenditure of a qualifying building which is repaid over 3 instalments under section 766A(4B).

The specified amount includes amounts that a company has surrendered to one or more key employees under section 766(2A)¹.

3.2. Change of use of building

If a building or structure is sold or ceases to be used for the purpose of the same trade a clawback will occur, and a Schedule D Case IV assessment should be raised as provided for in section 766A(3)(c)(ii).

3.3. Case IV of Schedule D clawback amount

- Repayment of tax credit over 3 instalments including qualifying expenditure on R&D and qualifying expenditure on buildings and structures – the clawback amount is calculated as an amount equal to **4 times** the excess credit claimed in the case of a claim found to be incorrect in any material particular
- Amount surrendered to key employees – Where it is found that a surrender claim by a company under Section 766(2A) is deliberately false or overstated and that the amount surrendered is not as authorised by Section 766, the company shall be liable to tax (under Case IV of Schedule D) on an amount equal to 8 times the unauthorised amount surrendered.
- In circumstances where it is found that a surrender claim by a company is not deliberately false or overstated but is not authorised by Section 766, the company may be liable to tax at the 25% rate of Corporation Tax (under Case IV of Schedule D) on an amount equal to 4 times the incorrect amount.
- Change of use of a building - clawback is calculated as an amount **4 times** the aggregate of the credit given, and this sum will be assessed as income for the accounting period in which the event occurs

The clawback should be recorded by amending the CT1 return by inserting the clawback amount in the appropriate box provided under the heading “**Clawback in respect of Research & Development activities**”.

This action then generates a Case IV of Schedule D assessment. **Example 1: section 766(7B)(c)(i)**

A company made a claim for a credit in respect of qualifying R&D expenditure. The amount of the credit claimed was €100,000.

¹ Refer to TDM Part [15-01-40](#) for more detail on surrendering R&D credits to key employees.

On an audit, the credit was amended to €75,000. The excessive credit claimed, found to relate to non-qualifying R&D expenditure, was €25,000.

To recover this amount of tax, an assessment is made under Case IV of Schedule D in the sum of 4 times the amount of the excessive credit [€25,000 x 4]

Assessed	
Case IV	€100,000
Charged to CT at 25%	€ 25,000

Form Type: Form CT1 Accounting period 01/01/2016 - 31/03/2016 Mode: INPUT/AMEND Amendments: 2

Irish Investment Income and Other Irish Income

✓ Company Details (b) Investment Undertakings (Section 739G(2A) TCA 1997) Investment Undertakings

✓ Trading Results

✓ Extracts from Accounts

✓ Irish Rental Income

✓ Irish Investment & Other Income **Clawback in respect of Research & Development activities**

Foreign Income Amount taxable Case IV Sch.D (Sec. 766(7B)(c) (i), Sec. 766(7C)(b) or Sec.766(7C)(c)) € 100000

Exempt Profits

Capital Gains

Chargeable Assets Amount taxable Case IV Sch. D (Sec. 766(7B)(c) (ii)) €

✓ Deductions, Reliefs & Credits

✓ Research & Development Credit

Film Corporation Tax Credit

Capital Gains (Development Land)

Close Company Surcharge

Recovery of Income Tax

Amount taxable Case IV Sch. D (Sec. 766A(3)(c) (ii)) €

Example 2: section 766(7B)(c)(ii)

A company made a claim for a credit in respect of an amount of tax surrendered to a key employee. The amount of the credit claimed was €50,000.

On an audit, the credit was amended to €00.00 as the claim was found to be deliberately false. The excessive credit claimed was €50,000.

To recover this amount of tax, an assessment is made under Case IV of Schedule D in the sum of 8 times the amount of the excessive credit [€50,000 x 8].

Assessed	
Case IV	€400,000
Charged to CT at 25%	€100,000

Form Type: Form CT1 Accounting period 01/01/2016 - 31/03/2016 Mode: INPUT/AMEND Amendments: 2

Irish Investment Income and Other Irish Income

<ul style="list-style-type: none"> ✓ Company Details ✓ Trading Results ✓ Extracts from Accounts ✓ Irish Rental Income ✓ Irish Investment & Other Income Foreign Income Exempt Profits Capital Gains Chargeable Assets ✓ Deductions, Reliefs & Credits ✓ Research & Development Credit Film Corporation Tax Credit Capital Gains (Development Land) Close Company Surcharge Recovery of Income Tax 	<p>(b) Investment Undertakings (Section 759G(2A) TCA 1997) <input type="text" value="Investment Undertakings"/></p> <p>Clawback in respect of Research & Development activities</p> <p>Amount taxable Case IV Sch. D (Sec. 766(7B)(c) (i), Sec. 766(7C)(b) or Sec. 766(7C)(c)) € <input type="text"/></p> <p>Amount taxable Case IV Sch. D (Sec. 766(7B)(c) (ii)) € <input type="text" value="400000"/></p> <p>Amount taxable Case IV Sch. D (Sec. 766A(3)(c) (ii)) € <input type="text"/></p>
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NOTE:

An overclaim of R&D credit is recouped by the creation of a CT liability for each period in which the overclaim occurred. This charge is ring-fenced to ensure that no offsets of the R&D tax credit from earlier or later periods can be allowed against the charge.²

4. When do I enter an assessment for the 'Research and Development Credit' being clawed back

In all circumstances other than those covered in Paragraph 3 above, the amount of R&D credit being clawed back should be input in the below panel on the Corporation Tax return.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Again, this is imperative to enable the statistics team track and trace research and development intervention settlements.

² Section 766(7B)(c)(iii) Taxes Consolidation Act 1997, as inserted by section 25(2)(g)(ii)(II) Finance Act 2019 and applies to accounting periods beginning on or after 22/12/2019.

Form CT1 for Accounting Period 01/01/2018 - 31/12/2018

Research & Development Credit and Allowances

✓ Company Details Form Help
 Trading Results ⓘ
 Extracts from Accounts
 Irish Rental Income
 Irish Investment & Other Income

Research & Development Credit and Allowances

17. Amount of Research and Development credit being clawed back €

5. Interest on excessive claims for R&D credit

Interest is charged on late payment of tax. If a claim was made for an R&D credit and the amount of the credit claimed was excessive then, the correct amount of tax was not paid at the date the tax was properly due.

The normal interest rules will apply where the clawback is done in accordance with paragraph 4 above.

For clawbacks done in accordance with paragraph 3, section 766(7B)(d) provides for interest where the clawback arises on a specified amount. In such cases, the interest will run from the date of payment of tax by the Revenue Commissioners until the date of payment of tax charged in accordance with section 766(7B)(c).

6. Penalties under section 1077E - Specified Amounts

The normal penalty rules will apply where the clawback is done in accordance with paragraph 4 above.

For clawbacks done in accordance with paragraph 3 above, section 766(7B)(b) provides for penalties where an excessive claim for tax credit was made in relation to a 'specified amount' in research and development expenditure.

Any claims for a credit, whether paid or unpaid³, which are found to be in excess of the amount due may be liable for a penalty under section 1077E and regard should be had to the Code of Practice for Revenue Audit and other Compliance Interventions in this respect.

³ Section 25(2)(g)(i) Finance Act 2019 substituted a new paragraph for paragraph (b) of section 766(7B) TCA 1997. An overclaim of the research and development tax credit, which has not been paid out, will attract a penalty, for accounting periods commencing on or after 22/12/2019.

Most recent version.

Note: This manual is currently subject to review and may not reflect up-to-date position.