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# [29-02-06] Research and Development (R&D) tax credit Clawback of relief

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## 1. Introduction

The purpose of this manual is to highlight to auditors the 'clawback' procedure to be applied, provided for in the legislation, when settling a research & development (R&D) audit 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 amend option of the electronic Corporation Tax (CT) return on ITP, in settling an R&D audit in that it generates the Case IV assessment, in addition to providing a tracking & tracing mechanism in relation to the audit settlement.

## 2. General R&D Scheme

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

All claims for deductions, reliefs and credits in relation to CT are processed on the basis of self-assessment. All CT returns are filed electronically and accepted non-judgmentally.

## 3. 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, overstated or false, then there are implications relating to the following:

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

*Section 766(7B)* contains two separate clawback provisions on relief claimed on the basis of a declaration made by the company and it is subsequently found that the company was not entitled to part or all of the relief claimed.

### **The clawback is by means of assessment under Case IV of Schedule D.**

Clawbacks should not be made by way of reducing the R&D credit claimed.

Processing clawbacks of the R&D credit in the correct manner provides for a tracking & tracing mechanism in relation to R&D audit settlements. This allows for the compiling of accurate statistics in relation to clawback amounts by means of Case IV of Schedule D in respect of R&D activities.

### 3.1. Clawback Amount

**Section 766(7B)(c)(i)** – provides for a clawback amount equal to 4 times the amount of the excess credit claimed in the case of a claim found to be incorrect in any material particular.

**Section 766(7B)(c)(ii)** – provides for a clawback amount equal to 8 times the amount of the excess credit surrendered to key employees in the case of a claim which is found to be deliberately false or overstated.

### 3.2. How to apply the clawback

The clawback should be recorded by amending the CT1 return on ITP 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.

#### Input amended return

#### Input a Revenue Assessment

#### Example 1: (S.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.

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

ITS - EURO - CT Assessing Detail	
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"> <li>✓ Company Details</li> <li>✓ Trading Results</li> <li>Extracts from Accounts</li> <li>✓ Irish Rental Income</li> <li>✓ <b>Irish Investment &amp; Other Income</b></li> <li>Foreign Income</li> <li>Exempt Profits</li> <li>Capital Gains</li> <li>Chargeable Assets</li> <li>✓ Deductions, Reliefs &amp; Credits</li> <li>✓ Research &amp; Development Credit</li> <li>Film Corporation Tax Credit</li> <li>Capital Gains (Development Land)</li> <li>Close Company Surcharge</li> <li>Recovery of Income Tax</li> </ul>	(b) Investment Undertakings (Section 739G(2A) TCA 1997) <input type="text" value="Investment Undertakings"/> <b>Clawback in respect of Research &amp; Development activities</b> Amount taxable Case IV Sch.D (Sec. 766(7B)(c) (i), Sec. 766(7C)(b) or Sec.766(7C)(c)) € <input type="text" value="100000"/> Amount taxable Case IV Sch. D (Sec. 766(7B)(c) (ii)) € <input type="text"/> Amount taxable Case IV Sch. D (Sec. 766A(3)(c) (ii)) € <input type="text"/>

### Example 2: (S.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

ITS - EURO - CT Assessing Detail	
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"> <li>✓ Company Details</li> <li>✓ Trading Results</li> <li>Extracts from Accounts</li> <li>✓ Irish Rental Income</li> <li>✓ <b>Irish Investment &amp; Other Income</b></li> <li>Foreign Income</li> <li>Exempt Profits</li> <li>Capital Gains</li> <li>Chargeable Assets</li> <li>✓ Deductions, Reliefs &amp; Credits</li> <li>✓ Research &amp; Development Credit</li> <li>Film Corporation Tax Credit</li> <li>Capital Gains (Development Land)</li> <li>Close Company Surcharge</li> <li>Recovery of Income Tax</li> </ul>	(b) Investment Undertakings (Section 739G(2A) TCA 1997) <input type="text" value="Investment Undertakings"/> <b>Clawback in respect of Research &amp; Development activities</b> Amount taxable Case IV Sch.D (Sec. 766(7B)(c) (i), Sec. 766(7C)(b) or Sec.766(7C)(c)) € <input type="text"/> Amount taxable Case IV Sch. D (Sec. 766(7B)(c) (ii)) € <input type="text" value="400000"/> Amount taxable Case IV Sch. D (Sec. 766A(3)(c) (ii)) € <input type="text"/>

### NOTE:

*In a case where you enter the clawback amount on the amended CT return and there are unused R&D credits carried forward on the original submission, the unused R&D credits carried forward will be offset against the clawback liability, thus reducing it downwards or wiping it out. However, the clawback amount entered on the tables will always be available for statistical purposes.*

**Example:**

Assuming the amended data input was R&D Clawback of €400,000 and with unused credits from the original return of €40,000, the amended notice will be displayed as follows:

R&D Clawback amount	€400,000
CT thereon: €400,000 x 25%	€100,000
Less R&D credits brought forward	€40,000
Liability	€60,000

**3.3. Interest on excessive claims for R&D credit**

Interest is charged on late payment of tax. If a claim was made for a 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.

*Section 766(7B)(d)* provides for the charging on interest where an excessive claim for credit was made in relation to research and development expenditure. Interest is charged for the period from the date of payment of tax by the Revenue Commissioners till the date of payment of tax as charged in the assessment made under *section 766(7B)(c)* to recover the excessive credit claimed.

**3.4. Penalties under Section 1077E - Specified Amounts**

*Section 766(7B)(b)* provides for penalties arising where an excessive claim for credit was made in relation to research and development expenditure.

Specified amounts under *section 766(1)(a)* includes both:

- 1 Claims for payment of credit due on R&D expenditure
- 2 Claims made by a company to surrender all or part of a credit due on R&D expenditure to “key employees”

Accordingly any claims for a credit 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.

**4. Clawback Event – Change of use of building**

*Section 766A(3)(c)* provides for clawback if a building or structure used for R&D is sold or ceases to be used for the purpose of the same trade.

*Section 766A(3)(c)(i)* provides for a clawback amount of 4 times the aggregate of the credit given and this sum will be assessed as income under Schedule D Case IV for the accounting period in which the event occurs.

Both claims for expenditure on R&D and claims made in respect of buildings and structures used for R&D are treated as specified amounts under *section 766(1)(a)*. Interest and penalties apply as per 3.3 and 3.4 above.

**R&D CLAWBACK – EXTRACT FROM THE LEGISLATION**

**Section 766(7B)(c)** provides that -

- (i) *Subject to subparagraph (ii), where a company makes a claim in respect of a specified amount and it is subsequently found that the claim is not as authorised by this section or by section 766A, as the case may be, then the company may be charged to tax under Case IV of Schedule D for the accounting period in respect of which the payment was made or the amount surrendered, as the case may be, in an amount equal to 4 times so much of the specified amount as is not so authorised.*
- (ii) *Where a company makes a claim under subsection (2A) and it is subsequently found that the claim is deliberately false or overstated and that the amount surrendered in accordance with that claim is not as authorised by this section, then subparagraph (i) shall not apply and the company shall be charged to tax under Case IV of Schedule D for the accounting period in respect of which the amount was surrendered in an amount equal to 8 times so much of the amount surrendered as is not so authorised.*

**Section 766(7B)(d)** provides that –

*Where in accordance with paragraph (c) an inspector makes an assessment in respect of a specified amount, the amount so charged shall for the purpose of 1080 be deemed to be tax due and payable and shall carry interest as determined in accordance with subsection (2) (c) of section 1080 as if a reference to the date when the tax became due and payable were a reference to the date the amount was paid by the Revenue Commissioners, or a reference to the date the corporation tax of the company for the accounting period in respect of which the amount was surrendered, was payable, as the case may be.*

**Section 766 (7B) (b)** provides that -

*Any claim in respect of a specified amount shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E (11) or 1077E (12), a reference to an amount of tax that would have been payable for the relevant periods by the person concerned shall be read as if it were a reference to a specified amount.*

**Section 766(1)(a)** defines a ‘specified amount’ as an amount –

- (i) *paid by the Revenue Commissioners in accordance with subsection (4B) of this section or section 766A (4B), as the case may be, or*
- (ii) *surrendered in accordance with subsection (2A),*

*and a claim in respect of a specified amount shall be construed accordingly;*

**Section 766A(3)** provides that -

*Where-*

- (a) in an accounting period a company incurs relevant expenditure on a building or structure,*
- (b) in relation to that expenditure the corporation tax of the company or another company is reduced under subsection (2) or (4A), or a payment has been made to the company or another company by the Revenue Commissioners by virtue of subsection (4B), and*
- (c) at any time in the period of 10 years commencing at the beginning of that accounting period the building or structure is sold or ceases to be used by the company for the purpose of research and development activities or for the purpose of the same trade that was carried on by the company at the beginning of the specified relevant period, in connection with which the research and development activities were carried on,*

*[then, subject to subsection (3A), the company]*

- (i) and in relation to that expenditure, another company, shall not be entitled to reduce corporation tax under subsection (2) for any accounting period ending after the time specified in paragraph (c), and*
- (ii) shall be charged to tax under Case IV of Schedule D for the accounting period in which the building or structure is sold or ceases to be used for the purpose of research and development activities or for the purpose of the trade, in an amount equal to 4 times the aggregate amount by which, in respect of the company or in relation to that expenditure, another company, the corporation tax payable is reduced under subsections (2), (4) and (4A), and payments are made under subsection (4B).*