

FEATURE ARTICLE – IRELAND

The R&D Tax Credit: Key Updates and Essential Insights

In this article, Eoin Brennan takes us through some of the recent changes to the R&D Tax Credit and also highlights an important decision by the Tax Appeals Commission in relation to the Science Test.

INTRODUCTION

In a previous article, “*The Research and Development Tax Credit – Finance Act 2022 Updates*” (TaxPoint, April 2023), I examined the significant changes brought by the Finance Act 2022 (FA22) to the R&D Tax Credit. Since then, the landscape has continued to evolve, with Finance (No.2) Act 2023 (FA23) not only modifying some of the FA22 provisions but also introducing new legislation of its own.

For practitioners, keeping up-to-date with these changes has become increasingly challenging. Even the task of completing the R&D sections of the Form CT1 has become more complicated, as the form has been amended to reflect the new legislation.

In this article, I review the current state of the R&D Tax Credit and the implications for making claims. Additionally, I highlight an interesting case that came before the Tax Appeals Commission dealing with the Science Test aspect of the tax credit.

THREE-YEAR FIXED PAYMENT SCHEDULE

For companies used to offsetting the R&D Tax Credit against corporation tax liabilities, the move to a three-year fixed payment schedule introduced by FA22 represents a significant change, with potential cash-flow implications. The new rules apply to all claims made in respect of R&D expenditure incurred in an accounting period commencing on or after 1 January 2023.

FA22 set the first instalment due under the new rules as the greater of:

- A) €25,000 (or if lower, the amount of the tax credit claimed), or
- B) 50% of the amount of the credit claimed.

For claims made in respect of accounting periods commencing on or after 1 January 2024, FA23 increases the amount available under A) to €50,000 (or if lower, the amount of the tax credit claimed).

If an excess remains after the first instalment, the second instalment is calculated at 3/5 of the excess and the third and final instalment is the balance.

R&D TAX CREDIT RATE INCREASE

When the R&D Tax Credit was first introduced in 2004, it offered a 20% credit. This rate was subsequently increased to 25% in Finance (No.2) Act 2008. For many years, this remained the only change to the headline rate.

However, FA23 has now ushered in a significant enhancement by raising the R&D Tax Credit rate to 30%. This new rate, a welcome development for R&D companies in Ireland, will apply to claims relating expenditure incurred in accounting periods beginning on or after 1 January 2024.

REMOVAL OF PAYABLE CREDIT RESTRICTION

FA22 also removed the restriction that limited the amount of the R&D Tax Credit available as payable credits. This restriction was calculated based on a company’s corporation tax or payroll liabilities.

A crucial detail to note is that the removal of the restriction applies

to claims submitted on corporation tax returns with a specified return date on or after 23 September 2023. Instalments relating to prior-year claims included in these returns do not constitute a new claim for those instalments. The claim in respect of prior-year instalments was made when the initial R&D Tax Credit submission giving rise to the instalments occurred.

I highlight this point as I have encountered a number of companies puzzled by Revenue's refusal to fully pay out on prior-year instalments, where this was the underlying reason.

ENHANCING SUPPORT FOR PRE-TRADING R&D EXPENDITURE

New rules for pre-trading R&D expenditure are also now operational, with effect from 1 January 2023. R&D expenditure incurred in the period prior to commencing to trade is treated for the purposes of the new three-year fixed payment schedule as incurred in the first accounting period from when the company commences to trade.

Significantly, the tax credit for this pre-trading R&D expenditure can now be claimed as a payable credit and/or an overpayment of tax. Previously, the R&D Tax Credit for such expenditure could only be offset against corporation tax. This improvement marks a substantial benefit for early-stage businesses, providing much-needed financial support during their initial growth phase.

PRE-NOTIFICATION REQUIREMENTS

FA23 introduced new pre-notification requirements for first-time claimants and companies that have not claimed the credit in the previous three years. The new requirements apply to claims made for accounting periods commencing on or after 1 January 2024.

Under the new rule, these companies must notify Revenue at least 90 days before making a claim of their intention to do so and submit certain information including a description of the R&D activities being claimed.

Companies coming within these new measures need to take them into account when planning their claim preparation. For many, it will bring forward when the claim preparation process must be gotten underway. For example, if a company with a 31 December 2024 year end intends submitting an R&D claim on its 2024 CT1 on the 23 September 2025 filing deadline, the pre-notification details will have to be submitted to Revenue 90 days before this, i.e. 25 June 2025.

COMPLETION OF FORM CT1

The R&D sections of the corporation tax return (Form CT1) have undergone major revision to reflect the recent legislative changes. Practitioners must ensure these sections of the Form CT1 are accurately completed with all necessary information. Failing to do so may lead Revenue to contend that a valid claim has not been made, potentially resulting in the refusal of the tax credit if the 12-month

submission deadline has passed before the tax return is amended.

Revenue underscored this point during a meeting of the Main Tax Administration Liaison Committee earlier this year. Subsequently, they published a note highlighting several errors observed in the R&D sections of submitted 2023 CT1s. These errors include:

1. *“Expenditure breakdown not provided on section 766C panels. The breakdown between machinery and plant, emoluments and the sum of the remaining qualifying expenditure is a legislative requirement. Failure to provide this breakdown will lead to an invalid claim.*
2. *The R&D credit claim under section 766C should equate to 25% of the sum of the expenditure included in the boxes for “amount of the expenditure attributable to research and development activities”.*
3. *Some claims are being made under the incorrect section of the legislation. Claims under section 766 or section 766A TCA 1997 cannot be made for accounting periods commencing on or after 1 January 2023. Claims for accounting periods commencing on or after 1 January 2023 must be made under section 766C/section 766D using the correct panels on the 2023 CT1.*
4. *For the section 766 claim to feed correctly into the tax calculation in the 2023 CT1, please be aware of the requirement to tick the section 766A box along with clicking the two “Calculate” buttons in the section 766A panel.”*

Revenue also observed that some companies are not specifying whether instalments should be treated as

A) a payable credit or B) an overpayment of tax, as is required in the legislation.

Revenue concluded the note by recommending to agents/taxpayers that they review 2023 R&D claims submitted to date and if necessary, correct the R&D panels within the 12-month time limit to ensure compliance and to avoid potential issues.

TAX APPEAL CASE

In September 2023, a notable case involving the Science Test aspect of the R&D Tax Credit was brought before the Tax Appeals Commission. During the appeal, representatives of an animal breeding company argued that Revenue was wrong to deny three projects included in their 2017 R&D Tax Credit claim. Unfortunately for the company, the Appeal Commissioner ruled in favour of Revenue, upholding the refusal of tax credits amounting to €42,647.

In addition to the company's R&D coordinator, two expert witnesses (one holding an MSc in Animal Physiology and a PhD, and the other an MSc in Animal Breeding) testified

on behalf of the company as to the merits of its claim. The external expert appointed by Revenue to assist with their initial audit of the claim, also appeared before the Commissioner to explain why, in his view, the Science Test had not been met.

The Appeal Commissioner sets out in detail in the determination the reasons for his decision. These include that, in his view, the company's projects were not seeking to achieve scientific or technological advancement but instead advanced the company's own state of knowledge regarding its gene pool by means of routine activity. It is not known if the company appealed the determination as they were entitled to do within 42 days. In my view, there would be value in further elucidating a number of aspects of the determination, whether in the courts, through updated guidance, or some other forum.

The full determination, which provides valuable insights into the intricacies of the Science Test and the appeals process, is available on the Tax Appeals Commission website (<https://www.taxappeals.ie/en/determinations/162tacd2023-corporation-tax>). It is worthwhile

reading for anyone involved R&D Tax Credits.

CONCLUSION

The recent changes to the R&D Tax Credit landscape have introduced new complexities and challenges that practitioners and companies must navigate with care. Beyond understanding and applying the new legislation, the administrative task of completing the Form CT1 has become increasingly intricate. In addition, the recent Tax Appeals Commission case underscores the importance of grasping the nuances of the Science Test and being well-prepared for potential disputes. Hopefully, this article if of assistance in navigating the ever-evolving R&D Tax Credit landscape.



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