

# R&D tax credit; Revenue audits and interventions

What's involved and how to achieve the best outcome for your claim.



The R&D Tax Credit (RDTC) is one of Ireland's key offerings to attract foreign direct investment and encourage entrepreneurs to grow their business. In 2020, the Irish Government supported 1,616 businesses with a total of €658 million in RDTC funding. Given the overall cost to the exchequer, the volume of claims each year and the availability of cash refunds from the system it is to be expected that the Revenue commissioners will want to ensure compliance with the legislation and Revenue guidance.

We understand that Revenue intends to step up interventions for RDTC claims in the near term. So, what does that mean for you?



An audit of an RDTC claim is unlike any other type of tax audit. The legislation is subjective and open to interpretation. Guidance changes frequently and Revenue often appoint independent experts to assess R&D activities. Being prepared for an audit at the earliest point possible is key for a successful outcome.



## Revenue Interventions for the RDTC

- The aim of an intervention, audit or otherwise, is to assess whether the RDTC claim meets the necessary criteria to be considered valid from both a finance/tax (i.e. accounting test) and a scientific technical (i.e. science test) perspective.
- While an enquiry or audit may arise shortly after filing an RDTC claim, Revenue generally have up to 5 years after the period in which the R&D activities took place to do so. It is often this extended time period, between R&D activity and Revenue audit, that can cause the most significant issues to arise when seeking to defend an RDTC claim.
- It is important to note that failing to provide sufficiently robust and thorough responses to a lower level intervention may lead to an escalation in the nature of the intervention.

What do the different levels mean?

- **'Level 1' intervention** (per 2022 "Code of Practice for Revenue audit"); generally involves a request for the RDTC claim report supporting the claim. Alternatively, it may involve a request for specific points of information to assess how the science and accounting tests have been met. Under Level 1 there remains the opportunity to make a 'qualifying unprompted disclosure'.
- **'Level 2' intervention**; This may involve either (i) a 'Risk Review' which generally arises where there is a perceived risk (or a small number of risks) in relation to the claim or (ii) a Revenue audit; this may involve further queries from Revenue dealt with via correspondence (i.e. a desk audit), or an in person audit involving meetings with Revenue and often a site visit to your premises. The opportunity to make an 'unprompted disclosure' is no longer available under Level 2.

- A poor outcome from an audit or intervention can include the following consequences for a company;
  - Consumption of significant staff time and expenditure trying to remediate negative findings from technical reviewer and/ or Revenue inspector.
  - Repayment of some or all of the RDTc claimed with interest
  - Risk of penalties being applied, except where one can argue for the application of “technical adjustment” (where there is a disagreement in interpretation of the law).
  - In extreme cases there is a risk of publication on the list of tax defaulters.
  - Increase in risk rating with Revenue leading to enhanced review for a number of years.
- The key measures for a successful outcome at audit can vary from client to client, depending on circumstances. They include;
  - Efficient use of company’s staff time inputs into the preparation and defense process
  - Minimum settlement amount (i.e. repayment of RDTc, interest and penalties)
  - Not published on list of tax defaulters
  - Maintenance of good relationship and risk rating with Revenue
  - Ability to continue to claim RDTcs

- Are you entitled to claim from a tax technical perspective?
  - Has the expenditure in the claim been treated appropriately according to the relevant legislation and guidelines?
  - Is there a clear nexus between the expenditure and the R&D activities in the claim?
  - Is there evidence to support the eligibility of the expenditure in the claim?
- Both tests place a heavy emphasis on the availability of evidence. That is, relevant, contemporaneous evidence generated by the company at the time that the R&D activities were ongoing. Failure to have adequate evidence can result in some or all of the RDTc being disallowed.
  - As noted above, the passage of time can present particular difficulties for firms to address any queries/ issues that arise during the course of a Revenue intervention. Thus, best practice is that you take steps to prepare for an audit before you file the claim.
  - While it is more challenging to retrospectively ensure your claim is robust, it is often possible and a worthwhile endeavor when you consider the potential outcomes from an audit/ intervention where the claim is found lacking.



### What does an audit involve?

This generally involves an in-depth review of the RDTc claim from all angles i.e.;

1. **Science test;** This is generally conducted by a Revenue appointed technical expert. They are usually an academic from Irish university or third level institution. High-level objectives include;
  - Does the R&D work included in the claim meet the definition of qualifying R&D activities?
  - Is there sufficient artifact evidence to support the eligibility of the work and the expenditure incurred on that work?
2. **Finance and tax technical test;** This is usually conducted by a Revenue Inspector. On occasion the Revenue Inspector may request a “technical expert” to assist with aspects of this review. High-level objectives for Revenue include;



### What issues can arise?

- Responses to Revenue queries assessing the eligibility of the RDTc claim are not readily available i.e. technical reports were not prepared contemporaneously or soon after the conclusion of the claim period.
- Scientific- Technical detail for the claim is not prepared by scientific/ technical personnel - this can lead to insufficient technical detail, clarity and depth in relation to, for example, the scientific rationale for uncertainties and advancements sought.
- Staff turnover resulting in loss of corporate memory in relation to activities and evidence
- Documentation retention policies insufficient to enable company to retain appropriate evidence
- Internal system change overs, for example time or task tracking systems, resulting in loss of evidence



## What to do to be prepared for a Revenue audit or intervention?

- **While the R&D is taking place;** Consider how you would defend your claim before you prepare the claim documents. Keep this in your mind as you conduct the R&D activities. For example; consider what documentation may be helpful to maintain, where gaps may be arising, what evidence should be retained, where and for how long, how to deal with loss of key technical staff.
- **When preparing the claim;** Ensure you have;
  - set out clearly how each project meets each of the technical criteria required for qualifying R&D activities
  - documented the relevant expenditure incurred on the activities
  - identified relevant, contemporaneous evidence of same
- **When selected for audit/ enquiry;** Ensure your finance and scientific/ technical personnel have refreshed on the technical reports, financial analyses and that you are aware of, and prepare to defend, any potential weaknesses/ issues identified during the claim preparation process.

- Review the evidence that you have retained
- Determine which technical personnel are best placed to present the R&D activities to the technical expert, if one is appointed
- Take advice to ensure that you are best placed to achieve an optimal outcome.



## What should I do if the claim is selected for audit/ intervention and we have a concern about the robustness of the claim/evidence?

- Consider if a qualifying disclosure may be required and if so, by when.
- Seek professional advice from an advisor that specialises in this complex area.
- We have extensive experience in the successful defence of RDTC claims under audit. We are often the “go to” practice for stepping in to assist with the audit of claims prepared by others.
- Contact us for an initial consultation to explore where attention may be required and what steps could be taken to achieve the best outcome for your intervention/audit. This is offered at no cost and without obligation.

# Contact us

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