

Tax alert

Ireland

e-Brief 056/20

Early payment of 2020 instalments of excess Research and Development (R&D) Tax Credits

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In a much-welcomed move, an [e-Brief](#) has issued on 1st April from Irish Revenue in response to the exceptional circumstances arising as a result of the Covid-19 pandemic, outlining that Revenue will accelerate the payment of excess R&D tax credits that are due to be paid to companies in 2020.

Normal rules around the repayment of the R&D tax credit

R&D tax credits are payable in cash instalments over a 33-month period. In accordance with Section 766 Taxes Consolidation Act 1997 ("TCA") the payment of each R&D cash instalment will not be paid to a company earlier than the company's corporation tax pay and file deadline for the period in which the expenditure was incurred. We have set out an example below of how the instalment arrangement works and the earliest date that the R&D cash instalments would normally be due.

Example

Company A has the following R&D tax credit claims for each of the years as set out in Table 1 below. In Table 1 we have also set out the R&D instalments that are due for each tax year. In Table 2 we have shown which instalments would be claimed on the company's FY2019 tax return and when the cash instalment would be due to Company A.

Table 1

	FY2019	FY2018	FY2017
R&D tax credit claim	€500,000	€300,000	€100,000
1 st Instalment due	€165,000	€99,000	€33,000
2 nd Instalment due	€167,500	€100,500	€33,500
3 rd Instalment due	€167,500	€100,500	€33,500

The company had no corporation tax liabilities for any of the above years.

Table 2 - FY2019 R&D claim on the corporation tax return

	FY2019 - 1 st Instalment	FY2018- 2 nd Instalment	FY2017- 3 rd Instalment	Total due to be claimed on FY2019 corporation tax return
<i>R&D tax credit not payable earlier than</i>	<i>23 September 2020</i>	<i>23 September 2020</i>	<i>23 September 2020</i>	<i>23 September 2020</i>
Total R&D tax credits	€165,000	€100,500	€33,500	€299,000

Therefore, under the provisions of S766 TCA 1997, where a company files its corporation tax return in advance of the pay and file deadline, this would normally not accelerate the payment of the R&D tax credit instalments as the date the R&D cash instalments are payable is by reference to the corporation tax pay and file deadlines. Based on the normal rules and using the example above, the total R&D instalments due to the company of €299,000 would not be repayable to the company before 23 September 2020.

The impact of the new measures provided for in e-Brief 056/20 will mean that Company A can seek the cash instalment of €299,000 now (subject to filing their FY2019 corporate tax return) instead of waiting till 23 September 2020 (at the earliest) to receive this potentially vital cashflow when most needed during these uncertain times.

To the extent there may be other R&D refunds that have not been paid to date, there may be an opportunity to enter into discussions with Revenue to expedite these refunds too given the current economic environment.

What does e-Brief 056/20 say and what does the company need to do to accelerate the payments?

e-Brief 056/20 has relaxed these rules relating to R&D instalments which are payable in 2020 and is allowing companies to avail of their R&D cash instalments earlier than by reference to the filing date of the company's corporation tax return. In order to accelerate the repayments of any 2020 R&D tax credit instalments, the company must:

1. Make a request to expedite the excess R&D tax instalments through MyEnquiries.
2. Have filed the Form CT1 (corporation tax return) for the accounting period ending in 2019 at the time of request.

To ensure timely processing of requests, the request should be tagged appropriately within MyEnquiries as follows:

- Enquiry relates to 'Corporation Tax'
- More specifically 'R&D instalments payable in 2020'

Points to still be aware of:

We would recommend that companies look to file their R&D tax credit claims for FY2019 as soon as possible to take advantage of these enhanced cashflow measures.

Now that Revenue have agreed to accelerate the repayments of R&D tax credit claims it is important that companies continue to focus on completing their supporting documentation from both a financial and technical perspective. In this regard Revenue have stated the repayments are *"subject to appropriate checks in selected cases"* and therefore they may request supporting documentation to substantiate the R&D tax credit claims. Where this has not been requested in advance of Revenue issuing the refunds, do be mindful that they may seek this supporting documentation at a later date and therefore it is imperative to ensure that such supporting documentation is available.

Revenue Audit Activity

Revenue have stated that they have in general, *"suspended audit and other compliance intervention activities on taxpayer' premises until further notice"*. This does not mean that they have ceased with audit activity as they will continue to engage with businesses on open interventions.

Be aware that in the event of a clawback of any R&D cash refunds that the clock on interest, and penalties (where relevant), will begin from the date of the receipt of the R&D cash instalment.

How can EY help?

The key to unlocking your R&D tax benefit is an in-depth understanding of:

- the scientific and technological issues involved in your business
- the business processes in your organisation
- the tax rules and guidance on the meaning of R&D for tax purposes and how this applies to your industry sector
- the ability to identify and capture all eligible R&D activities throughout your organisation

An eligible claim requires a well structured approach, which identifies eligible activities, quantifies eligible expenditure, and is substantiated through robust supporting documentation.

EY have dedicated and highly specialised teams located across the globe focusing solely on R&D tax claims. These multi-disciplinary teams are made up of engineers, PhD's, industry specialists and tax professionals. We have helped many clients evaluate, document and successfully complete R&D claims generating significant cashflow benefits.

We would be delighted to discuss with you any aspect of your R&D activities where you may need further assistance in accelerating claiming these valuable cash refunds.

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