
R&D credit: Appointment of expert to assist in audits

Part 12, Chapter 2

This document should be read in conjunction with sections 766, 766A and 766B TCA 1997, and the Revenue Guidelines for the R&D tax credit¹

Document created 16 February 2017

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¹ <http://www.revenue.ie/en/tax/ct/research-development.html>

1 Introduction

This manual sets out the Revenue procedure for appointing and briefing an independent expert to assist in evaluating the science test in R&D tax credit audits.

1 Forming the panel of independent experts

1.1 Creating the e-tender

Each January, the Incentives unit must place an advertisement on the public procurement website, www.eTenders.gov.ie². A template for the e-tender document is attached as Appendix III.

1.2 Applying to be on the panel of independent experts

Applications for membership of the panel will be accepted at any time during the year. In order to be eligible to apply for a place on the panel, individuals must hold a relevant PhD or experiential equivalent. Where an independent expert is required in a field that is not represented on the panel formed from the above process, the Incentives unit will identify suitable experts and approach them with a view to their joining the panel.

2 Appointment of the independent expert

2.1 Timing of appointment

The appropriate timing for appointing an independent expert will vary from case to case. In some cases it will be necessary to appoint an independent expert at the outset of a review while in others one may only be required where Revenue and the company reach an impasse in relation to an aspect of the science test.

At an early point in any enquiry, officers should seek a high level understanding of the subject matter to which the company's claim relates to. In many cases the officer will be able to judge whether or not there is likely to be an issue with the science test from this (i.e. whether or not the officer is satisfied that the explanation received qualifies as R&D) and if an independent expert is likely to be required.

In relation to appointing an independent expert attention is drawn to the Customer Service Charter, and in particular the undertaking that "*Revenue will administer the tax and duty regimes in a way that will minimise, as far as possible, compliance costs*". Officers should try to avoid situations where, for example, the company spends a day explaining very complex R&D to the officer, who then determines that

² The 2017 advertisement is available at https://irl.eu-supply.com/app/rfq/publicpurchase_frameset.asp?PID=107502&B=ETENDERS_SIMPLE&PS=1&PP=ctm/Supplier/publictenders (login details required)

an independent expert is required, and the company must spend another day explaining the R&D to that expert. It is acknowledged that there will be occasions where this is unavoidable but steps should be taken to avoid it.

The Incentives unit will therefore consider requests for independent experts at the outset of a review where the officer believes it is likely one will be required and where it is more efficient for both Revenue and the company to have one engaged from the outset.

2.2 Making the appointment

It is important to note that it is possible for a Revenue officer, for example in the case of cutting edge research, to accept that the science test is met without examining every aspect the R&D being undertaken. Independent experts should not be engaged to explain the science: they should only be engaged where there is a doubt that the science test has been met.

2.2.1 District

If the Revenue officer believes that an independent expert should be appointed, they should contact the Incentives unit by email to rdadmin@revenue.ie, providing a brief description of the activities to be examined. The email should also clearly set out the aspect of the projects on which the officer particularly wants advice. If the company's R&D projects have been subject to a review in the previous 4 years this should also be noted.

At this stage, the officer should also ensure that someone in their district has authorisation under s. 766(7) to allow them to engage with the independent expert.

2.2.2 Incentives unit

The Incentives unit will identify an appropriate independent expert from the panel and ask them to confirm if they would be interested in the appointment (see template email at Appendix I). This email will always be sent by the Incentives unit.

After that expert has confirmed that they wish to be considered for the review, the company must be given certain information (under s.766 (7)(b)) and a right to object to the appointment (see template letter at Appendix II). The company may object if there is a conflict of interest (e.g. the expert has worked for them or for a competitor in the past), but they must have a genuine concern and not object for an arbitrary reason. The company may also object if they believe that the independent expert's area of expertise is not appropriate to their R&D.

The letter must be sent by an authorised officer. If there is an authorised officer in the district managing the case, they will send this letter, if not, the district will

prepare any of the necessary attachments and the Incentives unit will send the letter.

Once the independent expert confirms their willingness to be engaged they are provided with certain further information and asked to confirm that there is no particular conflict of interest (see template letter forwarded with email in Appendix I). This letter will always be sent by the Incentives unit.

3 Briefing of the independent expert

The independent expert is appointed by Revenue. The expert's role is not to support the opinion of the Revenue officer but to give an independent opinion on whether or not the activities of the company are qualifying R&D. While the Revenue officer may meet with the expert in advance of any meeting at the company's premises, it is important that the company understands exactly what the officer's concern, which the expert has been asked to address, is. Once the expert has met with the company discussions between the expert and Revenue should generally include a representative of the company to ensure that in forming his or her opinion, the independent expert has an opportunity to fully hear both Revenue's and the company's arguments. This also ensures that the independent expert and the company are both in a position to focus their efforts on addressing the concerns of the Revenue officer.

While it will generally not be appropriate for an expert to express a definitive opinion to either Revenue or the company before preparing the draft report, it is not considered desirable that the result of the draft report is unexpected. To this end, the independent expert should ensure that any concern is raised with the company and Revenue in a timely manner, rather than waiting to raise them for the first time in the draft report.

Appendix I

[TEMPLATE EMAIL TO EXPERT]

Good afternoon [NAME],

I am contacting you as one of our independent Research & Development experts on the 201[X] Revenue Commissioners panel (you submitted your application to join the panel on [DATE]).

One of our auditors is currently conducting a Research & Development tax credit audit with a company based in [REGION].

[SHORT ANONYMISED DESCRIPTION OF THE COMPANY'S R&D ACTIVITIES].

Revenue needs to appoint an independent expert to evaluate whether the activity in respect of which the company is claiming the credit constitutes qualifying Research & Development as defined in s766 and 766A of the Taxes Consolidation Act 1997.

At this stage, I am contacting you to ask if you would be interested in principle in evaluating this claim. If you agree to do this work, we will propose you as our independent expert to the company. The company has a right of refusal if there is a conflict of interest or if they believe that your area of expertise is not applicable to their R&D. In order to enable the company to judge the relevance of your experience, please provide a brief summary of the aspects that you believe are of most relevance, given the description of the company's activities above.

If the company raises no objection, and providing you are agreeable and hold an up to date e-tax clearance certificate, I will then formally appoint you. A copy of our standard engagement letter is attached so that you can assess what is required of you. On formal appointment, I will be able to release the company's name and send you a copy of any technical reports and other relevant information we have received from the company.

You will liaise directly with the Revenue auditor to arrange any further information you may require and to conduct a site visit with the company.

Typically an engagement with an expert takes three days – one day to review the material and prepare to visit the company, one day for a site visit and one day to prepare a report for Revenue. The rate of payment is €920 per day plus any reasonable expenses incurred wholly and exclusively for the purposes of carry out this review (subject to professional services withholding tax).

I would appreciate if you would let me know at this stage if you are interested in principle.

If you would like to discuss this, or have any questions, please telephone me at the number below or contact me via e-mail.

[TEMPLATE ENGAGEMENT LETTER]

Dear [NAME],

I can confirm that the claimant company, [NAME], has agreed to our proposal to appoint you under s.766(7) Taxes Consolidation Act 1997 (TCA 1997) to examine their claim for the R&D tax credit. I enclose a copy of the papers Revenue has received from the company. Your attention is drawn to the Revenue Commissioners' Customer Service Charter, which you should adhere to in carrying out this review.

My colleague [NAME] is the case manager, and when you have reviewed these papers, please contact her directly to arrange dates for a site visit, etc.

Her contact details are: [PHONE #] or [EMAIL]@revenue.ie

In accordance with s.766 TCA 1997, [NAME], as Authorised Officer of the Revenue Commissioners, will provide you with any documentation or information held by Revenue in relation to the claimant company. If, having reviewed the documentation you consider that you need further advance briefing material from the company, please contact [NAME]. I would like to take this opportunity to remind you of the confidentiality agreement which you signed in order to be placed on the 201[X] panel of R&D experts and remind you to ensure that all documentation is kept in a secure manner.

All reports, draft or final, should be submitted to me directly. Any information, which you wish to forward to the claimant company and/or its agents, should be sent through the [NAME] and copied to me. Copies of any additional documentation that you may receive during the course of your examination should be sent to [NAME OF AUTHORISED OFFICER]. Once the engagement is finalised all papers must be returned to this office. All e-mail correspondence between you and Revenue should be sent by Secure E Mail via the My Enquiries service.

In the most general terms Revenue require an expert opinion to state whether the activities constitute research and development (R&D) as set out in s.766 TCA 1997. Your role is not to support an opinion that a Revenue officer has made, but to provide an independent evaluation of the activities presented. In determining whether or not the R&D tax credit is available to a company consideration should be given to the following 6 tests:

1. Are there systematic, investigative or experimental activities?
2. Are they in a field of science or technology?
3. Are those activities undertaken with a view to one or more of the following:

-
-
- (i) basic research, namely, experimental or theoretical work undertaken primarily to acquire new scientific or technical knowledge without a specific practical application in view,
 - (ii) applied research, namely, work undertaken in order to gain scientific or technical knowledge and directed towards a specific practical application, or
 - (iii) experimental development, namely, work undertaken which draws on scientific or technical knowledge or practical experience for the purpose of achieving technological advancement and which is directed at producing new, or improving existing, materials, products, devices, processes, systems or services including incremental improvements thereto?
4. Do those activities seek to achieve scientific or technological advancement?
 5. Do those activities involve the resolution of scientific or technological uncertainty?

The advancement and uncertainty in question is an advance in overall knowledge or capability in the field of science or technology concerned and not simply a company's own scientific or technological capability. The test relates to knowledge or capability that should be reasonably available to the company or to a competent professional working in the field.

Where knowledge of an advance in science or technology is not reasonably available, for example, where it has not been published, is not in the public domain or it is a trade secret of a competitor, companies would not be disqualified from claiming the credit where they undertake activities seeking to independently achieve the same scientific or technological advancement.

It is not necessary for the R&D to have been successful to qualify for the credit, if the company can demonstrate that they have exhausted every avenue to explore a particular hypothesis and have failed to make an advancement, this may demonstrate that this particular course is unattainable, which may constitute a resolution of uncertainty.

Revenue's guidance note (in paragraph 8.1) recommends that a literature review is carried out before the R&D is commenced to establish the state of knowledge outside of the company. It is important that the R&D is measured with respect to the state of knowledge at the time it was undertaken, and not knowledge that has subsequently become available, e.g. if the R&D claim relates to 2014 then it is the knowledge available in 2014 which must be considered and not anything published in 2015 onwards.

The answer to each of the above 5 questions must be 'yes' in order that the activities of the company are qualifying R&D activities for the purposes of the tax credit.

The final question which must be addressed is:

6. Are the activities carried on by the company or are they outsourced? Where they are outsourced, is it likely that the activities are 'qualifying R&D' carried on by the party carrying on the outsourced activity?

To assist you in answering these 6 questions I have attached the following documents to this letter:

- a copy of the relevant legislation, s.766 & s.766A of the TCA 1997, as it was for the year under review.
- A copy of S.I. No. 434/2004 - Taxes Consolidation Act 1997 (Prescribed Research and Development Activities) Regulations 2004
- a copy of the Revenue Guidelines for R&D applicable to the year under review which give a good overview of the tax credit and which should be read in conjunction with s.766 and s.766A of the Taxes Consolidation Act 1997.

Where there is still uncertainty, I refer you to the OECD's Frascati Manual. This manual may be particularly helpful in cases where the company has undertaken experimental development. While the Frascati Manual is not directly relevant, or a direct match, for the definition of qualifying R&D it may be instructive in areas of uncertainty.

Your report should:

- a) Identify each R&D project on which the claim is based and briefly describe the projects. It is important that a start and end date are included for each project.
- b) Answer questions 1 to 6 above in respect of each project, identifying the reasons behind the answer. It will usually be appropriate to take a holistic view of a project rather than to focus on each component of the activities individually. Where it is felt that it is appropriate to break the activities down into smaller pieces, an explanation for the approach should be included.
- c) Give your opinion, in respect of each project, as to whether or not the activities presented constitute qualifying R&D activities as defined in s.766 TCA 1997. Your opinion should clearly explain why you either agree or disagree with the company. Where a project is border-line between qualifying and not qualifying, your report should draw attention to the relevant issue and explain the rationale for coming down on either the qualifying / non-qualifying side. Equally, where it would be expected that a non-expert might come down on one side and you have come down on the other, attention should be drawn and a more detailed explanation should be included.
- d) Use appropriate language. The body of the report should be aimed at the personnel within the company who are carrying out the activities under review, while the conclusions should be written in language which is accessible to non-experts, such as the Revenue officer. This will facilitate detailed technical discussions between the

company's experts and the independent expert, while ensuring that the Revenue officer is in a position to rely upon any opinion given.

Your report should not:

- a) Cite the absence of documentation as a reason for a negative opinion unless the information has been sought and not provided.

Your report itself need not run to many pages but should, where possible, be unequivocal in the opinions expressed. A draft version of the report should be furnished to me within 2 months of meeting with the company, in order to give the company a right of reply before the report is finalised.

In addition it may be necessary for you to provide further assistance as required to Revenue's case manager. This could for example involve commenting on the allocation of certain resources to the R&D projects. In the event that the claim is based on numerous projects, it may be appropriate to discuss a shortlist of projects to be examined with the case manager named above.

As outlined, the fee to be paid by Revenue is €920 (plus VAT if applicable and reasonable out of pocket expenses incurred wholly and exclusively for the purposes of this review) per full working day. Revenue anticipates that this task could be completed within three working days. Where this is not possible and you expect that the number of working days will exceed three days, please contact me by e-mail or phone.

Many thanks for undertaking this engagement on behalf of the Revenue Commissioners. I look forward to receiving your draft report in due course. If you have any queries / problems please contact me on [PHONE#], or [EMAIL]@revenue.ie

Yours sincerely,

Appendix II

[TEMPLATE LETTER TO COMPANY]

Dear [NAME],

As required by s.766 (7)(b) I am writing to inform you of my intention to consult with an expert in relation to [DETAILS]. I intend to disclose the following information:

1. [DETAILS OF ALL INFO
2. ...]

The expert with whom I intend to consult is [NAME] and I have attached a brief summary of [his/her] expertise that is considered relevant to this case.

As set out in s.766(7)(b) you have a period of 30 days to show that the disclosure of the information set out above could prejudice the company's business.

You also have a period of 30 days to show that the individual above mentioned does not have the relevant expertise to review the aspects of the company's R&D tax credit claim which are under review. You must indicate specifically where the deficiencies arise so that Revenue can identify an alternative expert from the appropriate panel.

[NAME]

Authorised Officer under s.766 TCA 1997

Appendix III

Template e-Tender document

Office of the Revenue Commissioners

**Request for Applications for
Appointment to a Panel of Experts to provide
assistance to the Revenue Commissioners in
determining whether certain activities
constitute Research and Development activities
within the meaning of section 766 and 766A of
the Taxes Consolidation Act 1997.**

Panel to be Established in [DATE].

Section 1 Overview

1.1 Introduction

Under section 766 of the Taxes Consolidation Act 1997 (TCA), companies may claim a tax credit of 25% in respect of incremental expenditure incurred wholly and exclusively on research and development (R&D).

In examining such claims the Revenue Commissioners (Revenue) may engage the services of an external expert with expertise in the relevant field of science or technology to:

1. Assist Revenue in the examination of the claim, and to
2. Provide written expert opinion as to whether or not the activities forming the basis of the claim constitute R&D activities within the meaning of section 766 TCA 1997.

Revenue wishes to form a panel of suitably qualified experts from which Revenue may select an individual to review an R&D claim.

The role of the expert will include the following:

- Reviewing technical information provided by a claimant company in relation to a claim.
- Accompanying a Revenue auditor on a site visit and attending presentations by a company to support a claim where possible. An expert will also typically conduct a visit to the site / plant where the R&D takes place.
- Submitting a written report to the Revenue authorised officer confirming in their expert opinion, whether or not the activities forming the basis of a claim constitute R&D activities within the meaning of 766 TCA 1997.
- Where possible, assisting Revenue in evaluating the quantum of any claim.
- In the event that the claim is subject to an appeal, giving evidence in an appeal or court hearing.

1.2 Further Information

Any queries or requests for clarification should be addressed in writing to: -

Incentives Unit – Research & Development,
Business Taxes, Policy & Legislation,
Stamping Building,
Dublin Castle,
Dublin 2.

Or by e-mail to
rdadmin@revenue.ie

Section 2 Statement of Requirements

All applications must be submitted by email.

Applicants must complete Appendix 2 of this document and email it to rdadmin@revenue.ie

The application procedure will open on the 01/01/2017 and will close on the 31/12/2017. Individuals can join the panel at any time throughout that calendar year. This panel will expire at midnight on the 31/12/2017.

Information supplied by applicants will be treated in the strictest confidence. Revenue reserves the right to seek clarification or verification of any information contained in the applications.

Eligible candidates:

- Successful applicants must hold a PhD, or have equivalent industry experience, preferably in one of the fields outlined in Appendix 1, and should have significant research experience. For new applicants (i.e. those who have not applied to join the panel in previous years), evidence of their academic qualifications must be submitted with their application.
- Applicants hold an up to date tax clearance certificate.
- Before any applicant is placed on the panel they must sign a confidentiality agreement with Revenue. This agreement can be found in Appendix 3 of this document and **should be completed and submitted with your application.**
- On application, the individual must notify Revenue of any potential conflict of interest, including details of any work (paid or otherwise) undertaken with/on behalf of/in connection with any commercial activity or organisation.
- All applications will be subject to a review by the R&D unit within Revenue
- Applications from individuals only (not companies) will be considered.

Successful applicants:

- Successful appointment to the panel does not confer any entitlement to engagement. Appointments will be made subject to suitability and availability.
- The tax clearance status of all panel members will be subject to checking through Revenue's eTax Clearance system
- Before any individual engagement is agreed the expert must notify Revenue of any conflict of interest with the claimant company or any other potential conflict of interest.
- Once the engagement is completed the expert must return all papers to Revenue.
- The expert engaged may not subcontract any part of the work to anyone else, including their employees, agents or colleagues. All work must be carried out in person by the individual expert engaged.

Payment and Withholding Tax:

- Any payment made under this contract will be a matter between Revenue and the individual engaged. All payments will be subject to Professional Services With-holding Tax.
- The daily rate will be fixed at per diem rate of €920. Payment will be made by Electronic Funds Transfer only. Prior to any payment being made the applicant will be required to provide bank account details.

Freedom of Information:

Revenue undertakes to use its best endeavours to hold confidential any information provided by applicants subject to its obligations under law, including the Freedom of Information Act, 2014 as amended.

Should you wish that any of the information supplied in this application would not be disclosed you should identify this sensitive information clearly, and specify the reason for its sensitivity. Revenue will consult you about any such sensitive information before making a decision on its disclosure on foot of any relevant Freedom of Information Request, which may be received.

General:

Responses to this document should be in English or Irish.

All applicants who meet the criteria as laid out and are willing to accept the confidentiality requirements will be included on the panel. Being accepted onto the panel is not to be construed as a guarantee of any engagement. Appointments will be made based on suitability and availability.

Applicants who are engaged will not be employees of Revenue and successful entry on a panel is not a contract of employment.

Revenue reserve the right to remove an applicant's name from the panel(s) at anytime.

Appendix 1 - Field of Science & Technology

Natural Sciences

- Mathematics and computer sciences, including mathematics and other allied fields, computer sciences and other allied subjects, software development,
- Physical sciences including astronomy and space sciences, physics, and other allied subjects,
- Chemical sciences including chemistry and other allied subjects,
- Earth and related environmental sciences including geology, geophysics, mineralogy, physical geography and other geosciences, meteorology and other atmospheric sciences including climatic research, oceanography, vulcanology, palaeoecology, and other allied sciences,
- Biological sciences including biology, botany, bacteriology, microbiology, zoology, entomology, genetics, biochemistry, biophysics, other allied sciences, excluding clinical and veterinary sciences.

Engineering and Technology

- Civil engineering including architecture engineering, building science and engineering, construction engineering, municipal and structural engineering and other allied subjects,
- Electrical engineering, electronics including communication engineering and systems, computer engineering (hardware) and other allied subjects,
- Other engineering sciences such as chemical, aeronautical and space, mechanical, metallurgical and materials engineering, and their specialised subdivisions; forest products; applied sciences such as geodesy and industrial chemistry; the science and technology of food production, specialised technologies of interdisciplinary fields, e.g. systems analysis, metallurgy, mining, textile technology and other allied subjects.

Medical Sciences

- Basic medicine including anatomy, cytology, physiology, genetics, pharmacy, pharmacology, toxicology, immunology and immunohaematology, clinical chemistry, clinical microbiology, pathology,
- Clinical medicine including anaesthesiology, paediatrics, obstetrics and gynaecology, internal medicine, surgery, dentistry, neurology, psychiatry, radiology, therapeutics, otorhinolaryngology and ophthalmology,
- Health sciences including public health services, social medicine, hygiene, nursing, epidemiology.

Agricultural Science

- Agriculture, forestry, fisheries and allied sciences including agronomy, animal husbandry, fisheries, forestry, horticulture, and other allied subjects,
- Veterinary medicine.

Appendix 2 - Application Form

Please complete in **BLOCK CAPITALS**

A. GENERAL INFORMATION

A1: Applicant Details

NAME	
HOME ADDRESS	
Line 1	
Line 2	
Line 3	
CONTACT NUMBER	
E-MAIL ADDRESS	
STATUS (e.g. <i>Employee, Sole Trader, Lecturer etc.</i>)	

B. ACADEMIC QUALIFICATIONS

B1. Details of academic qualifications

AWARD	YEAR OF AWARD	COLLEGE / UNIVERSITY

C: PROFESSIONAL QUALIFICATIONS

C1: **Details** of professional / industry specific qualifications

AWARD	YEAR OF AWARD	COLLEGE

D: FINANCIAL STATUS

I confirm and declare that my tax affairs are fully in order and shall remain so for the duration of any contract that may be awarded resulting from this panel.

Signature: _____

E: TECHNICAL / PROFESSIONAL CAPACITY

E1. Organisation Details

Please provide details of your current role and position within your organisation.

E2. Research Areas

Please provide details of your research area with particular reference to where it fits within the areas outlined in Appendix 1.

Appendix 3 – Confidentiality Agreement

CONFIDENTIALITY

“My Report” means all or any reports furnished by me to the Revenue Commissioners in respect of the Relevant Information for the purposes of assisting in the determination of whether or not a Relevant Company is entitled to a Tax Credit.

“Relevant Company” means any company in respect of which the Revenue Commissioners request me to prepare My Report.

“Relevant Information” means any information and/or documents made available to me by or on behalf of a Relevant Company or any other information which I in my absolute discretion consider relevant to obtain from any other source in the public domain or otherwise available to me on the World Wide Web for the purposes of preparing My Report.

I acknowledge that Relevant Information containing confidential information will be conveyed to me for the purposes of preparing My Report and providing the independent expert evidence. I will not disclose the confidential information to any third party (save the Revenue Commissioners, their servants, agents, legal advisers or the Appeal Commissioners or a Judge of any Court hearing a tax appeal pursuant to the Taxes Consolidation Act 1997), and, except as provided in the preceding sentence, I will not utilize the confidential information for my own benefit or the benefit of any third party PROVIDED THAT the foregoing shall not apply to any information.

- i. Which is now public knowledge or which hereafter becomes public knowledge through no fault of my own; or,
- ii. Which I can show, through written records, is properly provided to me without restriction by an independent third party; or,
- iii. Which I can show, through written records created prior to the disclosure of the confidential information to me, was already in my possession at the time of receipt from the Revenue Commissioners or from the Relevant Company.

I agree that upon request, or upon the request of the Relevant Company, all Relevant Information received from the Revenue Commissioners, or from the Relevant Company, as the case may be, shall be returned to the disclosing party upon the later of the grant of the Tax Credit to the Relevant Company or the final determination of any appeal by the Relevant Company against the Revenue Commissioners relating to any refusal to grant such Tax Credit.

I hereby acknowledge that I am subject to the terms of the Official Secrets Act 1963 and Section 851A of the Taxes Consolidated Act 1997, and may be required to sign an acknowledgement that I have read and understood the terms of those Acts.

Signature

Date

Appendix 4 – Checklist

For an application to be considered, please send the following to rdadmin@revenue.ie:

- Completed application form
- Completed confidentiality agreement
- e-Tax clearance
- Evidence of academic qualification(s)