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A clawback adjustment applies if:

- you receive – or are entitled to receive – a government recoupment (such as a grant or reimbursement) for eligible research and development (R&D) expenditure.
- you have claimed the R&D tax incentive tax offset for this eligible R&D expenditure (or decline in value notional deductions where the expenditure was for a depreciating asset used in R&D activities).

Clawback does not decrease the grant or offset you receive; rather, it increases the income tax you are liable to pay on the recoupment. This income tax increase is called a 'clawback adjustment'.

A clawback adjustment does not apply to:

- cash flow boosts you receive as it is not a recoupment of expenditure incurred on or in relation to certain activities
- a JobKeeper payment you received for your paid employees as the payment has already triggered the at-risk rule – the total expenditure you can claim as a notional deduction for your wage expenditure has already been reduced by its receipt

- a JobKeeper payment you received based on business participation as the payment is not a recoupment of expenditure incurred on or in relation to certain activities.

Find out about:

- how you [determine if a clawback adjustment is required](#)
- the [timing of the clawback adjustment](#)
- how you [calculate the clawback adjustment](#)
- the interaction between [clawback and R&D partnerships](#)
- the interaction between [clawback and consolidation](#)
- [transitional rules](#) that may apply
- [whether recoupments you receive are assessable income](#)
- [other requirements](#) you may need to meet to claim the R&D tax incentive.

When we say **you** in this guide, we are referring to a company that meets the definition of an R&D entity. For more information about R&D entities, see [Research and development tax incentive – who can claim](#).

Determine if a clawback adjustment is required

A clawback adjustment under Subdivision 355-G of the *Income Tax Assessment Act 1997* (ITAA 1997) arises if, during an income year, you either receive or are entitled to receive a recoupment from an Australian government agency, or a state or territory body, (other than under the CRC program) and all of the following apply:

- The recoupment (such as a reimbursement) relates to expenditure incurred on certain activities or the recoupment (such as a grant) requires expenditure to either be or have been incurred on certain activities.
- You have claimed the R&D tax incentive in relation to the expenditure (or decline in value notional deductions where the expenditure was for a depreciating asset used in those activities).

To work out if you need to make a clawback adjustment, you must work through these three steps:

- [Step 1](#) – have you received or are you entitled to receive a recoupment during the income year?
- [Step 2](#) – is the recoupment from an Australian government agency or a state or territory body?
- [Step 3](#) – have you or a related entity, claimed the R&D tax incentive tax offset for expenditure that relates to the recoupment?

If you answer yes to steps 1, 2 and 3, you will need to make a clawback adjustment. If you have answered no to any of these questions, you will not need to make a clawback adjustment at this point in time.

However, if you have answered yes to steps 1 and 2, you may need to make a clawback adjustment in the future if you later satisfy step 3.

Step 1

You may be required to make a clawback adjustment if in an income year you [receive or are entitled to receive](#) a [recoupment](#) that is either a:

- [recoupment of expenditure incurred](#) on certain activities (including R&D activities)
- [recoupment that requires expenditure to be incurred or to have been incurred](#) on certain activities (including R&D activities).

If you do not satisfy this requirement, you do not need to make a clawback adjustment and do not need to work through steps 2 and 3.

Recoupment

A recoupment as referred to in Subdivision 355-G of the ITAA 1997 is defined in section 20-25 of the ITAA 1997. There are two broad categories of recoupment as defined:

- a recoupment of your expenditure that has been incurred and includes a full or partial reimbursement, refund or recovery of expenditure – in Subdivision 355-G this is referred to as a [recoupment of expenditure incurred](#) on certain activities
- a grant in respect of your expenditure – in Subdivision 355-G this is referred to as a [recoupment that requires expenditure to be incurred or to have been incurred](#) on certain activities.

See also:

- Section 20-25 of the ITAA 1997 for the definition of recoupment

Recoupment of expenditure incurred

If you have received or are entitled to receive a recoupment of all or some of the expenditure that you have already incurred on your R&D activities you may need to make a clawback adjustment. A recoupment of this type, which could include reimbursement, refund or recovery of expenditure, will typically be retrospective, as it is paid to you after expenditure has been incurred.

This type of recoupment restores you to the position you would be in if you had not incurred that expenditure (to which the recoupment relates). As a result, you have not experienced any financial detriment in relation to the expenditure to the extent that it has been recouped.

Example: Recoupment that reimburses R&D expenditure

Company C conducts R&D activities for which Company C receives the R&D tax offset in the income year ending 30 June 2016. In the income year ending 30 June 2017, Company C receives a \$500,000 reimbursement under a government scheme for specified costs that it incurred in the prior year, of which \$400,000 was for expenditures notionally deducted under the R&D tax incentive. Company C has received a recoupment of expenditure it has incurred on certain activities (including R&D activities that qualify for the R&D tax incentive).

Recoupment that requires expenditure to be incurred or to have been incurred

The second type of recoupment is where the recoupment you receive or are entitled to receive is a recoupment that requires a specified amount (the project expenditure) to be incurred or to have been incurred on certain activities (which include R&D activities). This form of a recoupment is often referred to as a grant.

A grant provides funding for specific purposes. Often, a grant is conditional on you spending a specified amount (project expenditure) on certain activities. The grant may be for an amount that is equal to, greater than or less than the project expenditure. A grant can be made

in an income year before, at the same time or after related expenditure has been incurred.

A grant is in respect of your expenditure if there is a sufficient nexus between the expenditure and the grant. A material reason for the payment of the grant must be the expenditure.

Example: Recoupment that is a grant

Company D applies for and receives \$1 million from an Australian government entity on the condition that it will spend at least \$2 million on a range of specific activities. Those specific activities include some eligible R&D activities. Company D undertakes those activities, incurs the required \$2 million expenditure and receives the R&D tax offset in relation to the expenditure on the R&D activities. Company D would have received \$1 million regardless of the actual amount incurred by Company D provided it met the \$2 million threshold. The recoupment Company D receives is a grant.

Receive or entitled to receive

You receive a recoupment when it is actually paid to you.

You are entitled to receive a recoupment when you are unconditionally entitled to that recoupment.

If you have applied for a government grant and have been notified that your application for funding has been approved this does not necessarily mean that you are entitled to receive the grant at that point. Grant programs are often paid in instalments. Each instalment may be contingent or conditional on certain events or milestones occurring which may include expenditure being incurred or proposed to be incurred within a certain timeframe.

You are entitled to receive a grant instalment when you have met all the conditions that must be satisfied for the instalment to be made, to the satisfaction of the entity paying the grant. You are not entitled to receive a grant instalment if you have not met all conditions that need to be met before the instalment can be paid.

Even if the grant is subject to a repayment obligation that may arise in the future, that alone does not affect your entitlement to the grant and it would still be considered for clawback purposes.

Example: An R&D entity is entitled to receive grant instalments

In the income year 30 June 2015, Company A has applied for and received approval for an Australian government agency grant for certain R&D expenditure it proposes to incur. The grant is to be paid on a quarterly basis during the income years ending 30 June 2016 and 30 June 2017. Each quarterly payment of the grant (\$25,000) is conditional on Company A meeting certain conditions and milestones and notifying the Australian government agency that they have been met. The grant instalment is to be paid to Company A within 30 days of the company notifying the Australian government agency that it is has met the relevant conditions and milestones.

Although Company A has received approval for the \$200,000 grant, Company A has not received and is not entitled to receive the grant in the income year ending 30 June 2015. In the income year ending 30 June 2016, Company A met and notified the Australian government agency that all conditions and milestones had been met before the end of each quarter. The Australian government agency paid Company A the following instalments:

Notification to agency	Instalment paid	Amount
30 September 2015	21 October 2015	\$25,000
23 December 2015	20 January 2016	\$25,000
26 March 2016	6 April 2016	\$25,000
25 June 2016	20 July 2016	\$25,000

In the income year ending 30 June 2016, Company A received the first three instalments of \$25,000 listed in the table above (totalling \$75,000). In addition, while the final instalment was not paid until the following income year, as Company A had notified the Australian government agency that the conditions for payment had been met on 25 June 2016 it was entitled to receive the final \$25,000 instalment for the 2013 income year.

As at 30 June 2016, Company A was not entitled to receive any further grant instalments (that is, the remaining \$100,000) that they may receive in the income year ending 30 June 2017. This is because at 30 June 2016 they have not met the conditions relating to the remaining grant instalments.

See also:

- Section 355-435 of the ITAA 1997
- Section 355-440 of the ITAA 1997
- Section 355-445 of the ITAA 1997

Step 2

You only need to make a clawback adjustment if the recoupment is from either:

- an [Australian government agency](#)
- a [state or territory body \(STB\)](#).

A variety of Australian Government assistance programs provide support for R&D entities undertaking R&D activities. Even if an assistance program does not necessarily specify that an objective of the funding is to support R&D activities, a clawback adjustment may still be required.

Many of these programs will also support activities other than R&D activities. A clawback adjustment will not be required to the extent that the funding is received for activities that are not R&D activities.

If you have received a recoupment but it is not from an Australian government agency or an STB, you do not need to make a clawback adjustment and you do not need to work through step 3.

Australian government agency

Where we say 'an Australian government agency' we mean any of the following:

- the Australian Government
- a state or a territory
- an authority of the Australian Government

- an authority of a state or a territory.


AusIndustry, as a division of the Department of Industry, Innovation and Science is one such government agency that has a range of programs designed to support innovation within Australian industry. These programs may support R&D activities through:

- grants for expenditure that qualify for the R&D tax incentive
- other forms of support that result in a recoupment of expenditure that qualifies for the R&D tax incentive tax offset.

If you have received funding from an AusIndustry program that supports R&D activities as outlined above, you may need to make a clawback adjustment.

You do not need to make a clawback adjustment for recoupments received under the Cooperative Research Centres Program.

See also:

- For information about the funding programs provided by the Department of Industry, visit the grants & programs section on business.gov.au .

State or territory body (STB)

Division 1AB of the *Income Tax Assessment Act 1936* (ITAA 1936) sets out the ways that a body can be an STB.

A body is an STB if it is a company limited solely by shares and all the shares are owned by one or more government entities.

A body that is not a company can also be an STB if it is established by state or territory legislation and it meets certain other requirements about the distribution of profits and assets only to one or more government entities or if one or more government entities has certain powers regarding the management of the body.

A body that is not a company and is not established by state or territory legislation can also be an STB if it meets certain requirements about ownership held by one or more government entities and if one or more government entities has certain powers regarding voting and the management of the body.

See also:

- For the definition of government entity, refer to **section 24AT** and **section 24AU** of the ITAA 1936.
- For more information about the five different ways that a body can be an STB, refer to
 - **Section 24AO** of the ITAA 1936
 - **Section 24AP** of the ITAA 1936
 - **Section 24AQ** of the ITAA 1936
 - **Section 24AR** of the ITAA 1936
 - **Section 24AS** of the ITAA 1936.
- For more information about step 2, refer to
 - **Section 355-435** of the ITAA 1997
 - **Section 355-440** of the ITAA 1997.

Example: Government funding program

Company B incurs R&D expenditure and other expenditure under a project it carries out in the income year ending 30 June 2017. Company B receives a partial reimbursement for their expenditure from a funding program of the Department of Industry, Innovation and Science. As this Department is an Australian government agency, step 2 is satisfied and Company B may need to make a clawback adjustment.

Step 3

You need to make a clawback adjustment if all or some of the expenditure for which you have received the recoupment is also expenditure that has been taken into account in working out your R&D tax incentive tax offset in one or more income years.

You also need to make a clawback adjustment if you have received or become entitled to receive a recoupment for expenditure that has been taken into account in working out R&D tax incentive tax offsets obtained by certain [related entities](#) in one or more income years.

Expenditure is taken into account in working out an R&D tax incentive tax offset if you or certain related entities can notionally deduct this expenditure under Division 355 of the ITAA 1997 (notional deductions). These notional deductions may be available for the expenditure itself or for the decline in value for R&D assets (if the expenditure incurred was to acquire R&D assets). The notional deductions that may be taken into account working out your R&D tax incentive tax offset are:

- R&D expenditure (including expenditure to a registered service provider) in the current year
- decline in value of R&D assets (including R&D partnership assets) where expenditure is for the acquisition of an R&D asset
- R&D expenditure associated with the recoupment incurred an earlier year
- CRC contributions.

If the relevant requirements are met and your notional deductions are less than \$20,000, the notional deductions you can take into account when working out your R&D tax incentive tax offset are limited to:

- notional deductions for expenditure incurred to a research service provider, and
- notional deductions for CRC contributions.

Example: R&D tax offset claimed for expenditure partially reimbursed

Company D incurs R&D expenditure under a project it carries out in the income year ending 30 June 2016. In this income year, the company is entitled to notional deductions for this R&D expenditure, which are taken into account in working out the R&D tax incentive tax offset claimed by the company in that income year. The company receives a partial reimbursement for this expenditure from an Australian government agency funding program in the following income year.

Company D will need to make a clawback adjustment because the company has received a partial recoupment of expenditure incurred from an Australian government agency, for expenditure for which the R&D tax incentive tax offset is claimed.

See also:

- Amounts you can claim

Expenditure not at risk

In some cases, if you receive or are entitled to receive a recoupment, section 355-405 of the ITAA 1997 may apply to prevent deductions from being claimed for R&D expenditure or earlier year associate R&D expenditure. If you are unable to claim the R&D tax incentive for any expenditure related to the recoupment because section 355-405 of the ITAA 1997 applies (the expenditure is not at risk), you do not meet the requirements of step 3 and do not need to make a clawback adjustment.

In other cases when you receive or are entitled to receive a recoupment, section 355-405 may not apply to prevent deductions from being claimed for R&D expenditure or earlier year associate R&D expenditure. In these circumstances, you may still need to make a clawback adjustment if you meet the relevant requirements.

If you do not meet the requirements of step 3 you do not need to make a clawback adjustment at present. However, if you have answered yes to steps 1 and 2, you may need to make a clawback adjustment in the future if you later satisfy the requirements of step 3. For example, you may not be entitled to claim the R&D tax incentive tax offset for expenditure in the current year, but you may be able to claim the R&D tax offset in the following income year. If this occurs, you will need to make a clawback adjustment when you also satisfy the requirements of step 3, which will require you to amend your company tax return for the previous income year.

Related entities

When working out if the need for a clawback adjustment will arise, you also need to consider whether you have received or are entitled to receive any government recoupments in relation to expenditure that has been taken into account in working out the research and development tax offset for:

- an R&D entity that is [connected with you](#)
- an R&D entity that is [an affiliate of yours](#) or an R&D entity that you are an affiliate of.

An R&D entity includes a company. An individual, partnership or trust cannot be an R&D entity and therefore cannot claim the R&D tax incentive (with the exception of a corporate trustee of a public trading trust).

See also:

- Who can claim – for more information on R&D entities.

Connected with you

You are connected with another entity if any of the following applies:

- you control the other entity
- the other entity controls you
- you and the other entity are controlled by the same third entity.

You control a company if you, your affiliates, or you together with your affiliates, have either:

- shares and other equity interests in the company that give you and/or your affiliates at least 40% of the voting power in the company
- the right to receive at least 40% of any income or capital the company distributes.

You also control a company if you, your affiliates, or you together with your affiliates have the right to acquire shares or other equity that interests in the company that give you and/or your affiliates either:

- shares and other equity interests in the company that give you and/or your affiliates at least 40% of the voting power in the company
- the right to receive at least 40% of any income or capital the company distributes.

See also:

- Aggregation
- Grouping for aggregate turnover purposes

An affiliate of you

A company is your affiliate if, in relation to the affairs of its business, it acts, or could reasonably be expected to act, in either of the following

ways:

- in accordance with your directions or wishes
- in concert with you.

A company is not your affiliate merely because of the nature of the business relationship you and the company share.

See also:

- [Affiliates](#)
- [section 355-450 of the ITAA 1997](#)

Timing of the clawback adjustment

To work out in which income year you need to make a clawback adjustment to pay extra income tax on your recoupment, you must identify the 'trigger year'.

The trigger year is the year that you receive the recoupment that relates to R&D activities or the year that you are entitled to receive that recoupment if this occurs in an earlier income year.

Often, you will be entitled to receive a recoupment in the same income year that it is received. However, it is possible that you may be entitled to receive a recoupment in an income year earlier than the income year that you actually receive the recoupment. If this occurs, the year that you are entitled to receive the recoupment is the trigger year.

If your recoupment is paid in instalments over more than one income year you may have more than one trigger year. You are required to make a clawback adjustment for each trigger year.

The extra income tax on the recoupment is payable in the trigger year, regardless of whether you claim the R&D tax offset in the same, an earlier or later income year. As a result, you may need to amend your past income tax assessments in some circumstances to make the clawback adjustment.

Example: more than one trigger year

Company E is a successful applicant for an Australian government agency grant. The grant is paid in two instalments, in advance of and for specified expenses being incurred by the

company, provided certain milestones have been met by the payment date of the instalment. Company E receives the following grant instalments from the Australian government agency upon completion of the relevant milestones:

Instalment date	Instalment amount
1 June 2015 received during the income year ending 30 June 2015	\$50,000
1 January 2016 received during the income year ending 30 June 2016	\$80,000

The relevant specified expenses, which were eligible R&D expenses, were incurred and claimed by Company E under the R&D tax incentive in the income year ending 30 June 2016.

As Company E receives recoupments in two income years, the income years ending 30 June 2015 and 30 June 2016, Company E has two trigger years.

However, at 30 June 2015, Company E has not claimed the R&D tax incentive for expenditure related to the grant instalment received on 1 June 2015. Therefore Company E will lodge its 2015 company tax return in July 2015 without a clawback adjustment being made for that income year.

When Company E lodges its 2016 company tax return, it claims the R&D tax incentive for the relevant expenditure that relates to both instalments of the grant. Company E also makes a clawback adjustment for the recoupment received on 1 January 2016. Company E also lodges an amendment to its 2015 company tax return to make a clawback adjustment for the recoupment received in the income year ending 30 June 2015.

See also:

- [Receive or entitled to receive](#)

Calculate the clawback adjustment

Once you have determined that clawback applies and the timing of the clawback adjustment, you will next need to calculate the amount of your clawback adjustment.

The clawback adjustment is an amount of extra income tax at the rate of 10% of the amount of expenditure which relates to the recoupment for which you have received the R&D tax incentive. To work out your clawback adjustment, you first need to identify your 'R&D expenditure' (that is relevant to the recoupment), as the extra income tax of 10% is imposed on this amount.

The first step to identifying your 'R&D expenditure' is to work out whether your recoupment is a:

- [recoupment of expenditure incurred](#) on or in relation to certain activities or
- [recoupment that requires expenditure to be incurred or to have been incurred on certain activities.](#)

You would have considered what type of recoupment you have when determining whether a clawback adjustment is required under step 1.

Recoupment of expenditure incurred

A recoupment of this type could include reimbursement, refund or recovery of expenditure incurred.

If you have received a recoupment of expenditure incurred on certain activities (including R&D activities), your R&D expenditure that is relevant to your clawback adjustment is the expenditure that has been recouped to the extent that both the following apply:

- You have claimed
 - a notional deduction for that expenditure under Division 355 of the ITAA 1997, and/or
 - the notional decline in value (if the expenditure relating to the recoupment was for an R&D asset) under Division 355 of the ITAA 1997.
- The notional deductions and/or notional decline in value have been taken into account in working out the R&D tax incentive tax offset obtained for one or more income years.

If only some of your expenditure has been recouped, for example you have only been partially reimbursed for R&D expenditure you have incurred, then your R&D expenditure that you use when calculating your clawback adjustment is limited to the amount of expenditure that has been recouped or reimbursed, rather than the total R&D expenditure.

Example: Identifying R&D expenditure used to calculate a clawback adjustment – reimbursement

Company Q carries out an R&D project in the income year ending 30 June 2016. In this income year, Company Q incurs expenditure of \$120,000 that qualifies for a notional deduction under Division 355 of the ITAA 1997 and is also claimed as an R&D tax offset. The company also applies for funding from an Australian government agency for expenditure it has incurred.

As a result, the Australian government agency reimburses the company for half of its expenditure incurred (\$60,000) in the same income year. The R&D expenditure that Company Q uses when calculating its clawback adjustment is \$60,000. Company Q's clawback adjustment in the income year ending 30 June 2016 is:

$$\text{R\&D expenditure } (\$60,000) \times 10\% = \$6,000$$

Recoupment that requires expenditure to be incurred

This form of a recoupment is often referred to as a grant that provides funding for specific purposes. If your recoupment requires expenditure to be incurred on certain activities (including R&D activities), your R&D expenditure for these purposes is the expenditure that is required to be incurred to the extent that both the following apply:

- You have claimed
 - a notional deduction for that expenditure under Division 355 of the ITAA 1997, and/or
 - the notional decline in value (if the expenditure relating to the recoupment was for an R&D asset) under Division 355 of the

ITAA 1997.

- The notional deductions and/or notional decline in value have been taken into account in working out your R&D tax incentive tax offset for one or more income years.

Example: Identifying R&D expenditure used to calculate a clawback adjustment – grant

Company V receives a grant from an Australian government agency of \$230,000 for its R&D project it carries out in the income year ending 30 June 2015. The Australian government agency requires that Company V carries out certain specified activities in the relevant income year and Company V is also required to spend at least \$360,000 on the R&D project in the relevant income year.

Company V spends \$360,000 (including grant funding) on the project that qualifies for a notional deduction under Division 355 of the ITAA 1997. The company also claims an R&D tax offset for this expenditure in the income year ending 30 June 2015. The R&D expenditure that Company V uses when calculating its clawback adjustment is \$360,000.

Company V's clawback adjustment in the income year ending 30 June 2015 (before calculating the cap for grants) is:

$$\text{R\&D expenditure } (\$360,000) \times 10\% = \$36,000$$

In this example, the [cap for grants](#) does not affect the calculation of the clawback adjustment.

If you have a grant that is paid in two instalments over more than one income year (or trigger year), you will need to identify the R&D expenditure for each income year to calculate your clawback adjustment. In this circumstance, you do not include R&D expenditure that you have already taken into account to work out your earlier clawback adjustment in the following year. The example below shows how R&D expenditure is identified in these circumstances.

Example: Working out R&D expenditure for

multiple years

Company Y receives a grant from an Australian government agency for \$200,000 for certain specified R&D activities. Under the agreement the Australian government agency agreed to pay \$200,000 over two years to Company Y. Company Y is required under the agreement to spend \$400,000 (including the grant funding) over these two years. In the income year ending 30 June 2015, Company Y receives its first instalment of the grant (\$150,000), which relates to expenditure required to be incurred on the R&D project in the income year ending 30 June 2015 (\$300,000). This expenditure qualifies for a notional deduction under Division 355 of the ITAA 1997 and is also claimed as an R&D tax offset in the same income year.

On 30 June 2016, Company Y receives its second and final instalment of the grant (\$50,000), which relates to expenditure required to be incurred on the R&D project in the income year ending 30 June 2016 (\$100,000). This expenditure qualifies for a notional deduction under Division 355 of the ITAA 1997 and is also claimed as an R&D tax offset in the same income year.

Entitlement to each grant instalment did not arise before it was paid to Company Y.

The R&D expenditure that Company Y uses when calculating its clawback adjustment in the income year ending 30 June 2015 is \$300,000. Company Y's clawback adjustment in that year (before calculating the cap for grants) is:

$$\text{R\&D expenditure } (\$300,000) \times 10\% = \$30,000$$

In this example, the [cap for grants](#) does not affect the calculation of the clawback adjustment.

The R&D expenditure that Company Y uses when calculating its clawback adjustment in the income year ending 30 June 2016 is \$100,000. Company Y's clawback adjustment in that year (before calculating the cap for grants) is:

$$\text{R\&D expenditure } (\$100,000) \times 10\% = \$10,000$$

In this example, the [cap for grants](#) does not affect the calculation of the clawback adjustment.

If you have received or are entitled to receive a recoupment in relation to expenditure that has been taken into account in working out the research and development tax offset for certain related entities, this will affect your clawback adjustment.

See also:

- [Related entities](#)

Cap for grants

If you have received a recoupment that is a grant then a cap applies to the amount of the extra income tax. This cap applies to ensure the amount of extra income tax you pay on your grant cannot exceed the amount of the grant that, on a pro-rata basis, is deemed to relate to the R&D expenditure. This is done by using the following formula to determine the maximum amount of the extra income tax:

Net amount of the recoupment x (R&D expenditure ÷ Project expenditure)

The **Net amount of the recoupment** means the total amount of the recoupment, less any repayments of the recoupment during an income year.

Project expenditure is expenditure that the recoupment requires to be / to have been incurred on certain activities. You need to refer to your grant agreement to work out what your project expenditure is in respect of each recoupment received. A recoupment may be an instalment under the agreement.

This cap ensures that, in relation to your R&D activities, you will receive the R&D incentive, rather than the grant, where the R&D tax incentive is worth more than the grant.

If you have received a recoupment that is a reimbursement, no cap applies. This is because logically, your clawback adjustment on the reimbursement cannot exceed 10% of the reimbursement because the recoupment will always equal the expenditure being reimbursed.

See also:

- [Clawback adjustment](#) for information about identifying your R&D expenditure.

Examples

The following examples show how you work out the clawback adjustment in different scenarios.

Example: Recoupment that reimburses R&D and other expenditure

In the income year ending 30 June 2016, Company E conducts R&D activities for which they receive the R&D tax offset. Company E receives a \$500,000 reimbursement under an Australian government agency scheme for specified costs that it incurred, of which \$400,000 was eligible for R&D expenditure notionally deducted under the R&D tax incentive and for which they received an R&D tax offset in the relevant income year.

Company E's clawback adjustment (extra income tax) for the income year ending 30 June 2016 is:

$$\text{R\&D expenditure } (\$400,000) \times 10\% = \$40,000$$

Example: Recoupment that partially reimburses R&D expenditure

Company F conducts R&D activities on which it incurred \$1,000,000 R&D expenditure and for which it receives an R&D tax offset in the year ended 30 June 2015. In the income year ending 30 June 2016 Company F receives a \$500,000 reimbursement from an Australian government agency for half of the R&D expenditures it incurred in the previous income year.

Company F's clawback adjustment (extra income tax) for the income year ending 30 June 2016 is:

$$\text{R\&D expenditure } (\$500,000) \times 10\% = \$50,000$$

Example: Grant wholly relates to R&D expenditure

Company D receives a \$1 million Australian government agency grant in relation to eligible R&D activities that it conducts in the income year ending 30 June 2016. The grant agreement requires Company D to spend a total of \$2 million (including the grant money) on specified R&D activities, which it does during the income year the grant was received. Company D also claims the R&D tax incentive tax offset for the \$2 million of expenditure in that income year.

Company D determines that a clawback adjustment is required and works out its clawback adjustment for the income year ending 30 June 2016 as:

$$\text{R\&D expenditure } (\$2,000,000) \times 10\% = \$200,000$$

In this example, the cap does not limit the clawback adjustment.

The extra income tax Company D will need to pay in the income year ending 30 June 2016 is therefore \$200,000.

Example: Grant for R&D expenditure and other expenditure

Company Q receives a \$90,000 grant in relation to certain activities that it conducts in the income year ending 30 June 2016. The grant agreement between Company Q and an Australian government agency specifies that Company Q is required to spend \$1 million (including grant funding) on a particular project, which it does in the same income year. Of this amount, \$100,000 is required to be spent on R&D activities that relate to expenditure for which that Company Q claims the R&D tax incentive tax offset. The remaining \$900,000 that Company Q is required to spend relates to other activities that do not qualify for the R&D tax incentive.

The total project expenditure is \$1 million, but only \$100,000 of this expenditure was claimed under the R&D tax incentive. Company D determines that a clawback adjustment is required and works out its clawback adjustment for the income year ending 30 June 2016 as:

The clawback adjustment (before working out the cap) is:

$$\text{R\&D expenditure } (\$100,000) \times 10\% = \$10,000$$

Calculation of the cap, limits the clawback adjustment:

Net amount of the recoupment \times (R&D expenditure \div Project expenditure)

$$\$90,000 \times (100,000 \div 1,000,000)$$

$$= \$9,000$$

Therefore, the clawback adjustment is limited to the cap of \$9,000. The amount of the clawback adjustment is the extra income tax Company Q will need to pay in the relevant income year.

Example: Grant for R&D expenditure and other expenditure

In the income year ending 30 June 2016, Company P receives approval for a \$100,000 grant from an Australian government agency, which is paid later in that income year. The grant is paid for specified activities including R&D activities that Company P carries out in the relevant income year.

The grant agreement requires that Company P spend at least \$2 million on the specified activities. Half of this required expenditure on the activities specified in the agreement relates to R&D activities on which Company P claims the R&D tax incentive.

Company P spends \$3 million on the project (including \$1,500,000 on the R&D activities in which it is entitled to claim the R&D tax incentive in the relevant income year). Company P determines that clawback applies and calculates its clawback adjustment:

Clawback adjustment (before the calculation of the clawback cap):

$$\text{R\&D expenditure } (\$1,000,000) \times 10\% = \$100,000$$

Calculation of the cap:

Net amount of the recoupment \times (R&D expenditure \div Project expenditure)

$$\$100,000 \times (1,000,000 \div 2,000,000) = \$50,000.$$

In this example, the cap limits the clawback adjustment to \$50,000. The amount of the clawback adjustment is the extra income tax Company P will need to pay in the income year ending 30 June 2016.

Example: Grant paid for multiple years

In the income year ending 30 June 2014, Company Z has applied for and received approval for an Australian government agency grant for certain specified R&D activities. Under the agreement the Australian government agency agreed to pay \$110,000 over the following two years to Company Z. Company Z is required under the agreement to spend \$220,000 (including the grant funding) over these two years. If Company Z fails to spend the total amount required to be spent under the agreement with the Australian government agency by the end of the grant program, Company Z will need to repay an amount to the Australian government agency.

On 30 June 2015, Company Z receives its first instalment of the grant (\$50,000), which relates to expenditure required to have been incurred on the R&D activities in the income year ending 30 June 2015.

On 30 June 2016, Company Z receives its second and final instalment of the grant (\$60,000), which relates to expenditure required to have been incurred on the R&D activities in the income year ending 30 June 2016.

Entitlement to each grant instalment did not arise before it was paid to Company Z.

The following table outlines expenditure that Company Z is required to incur in the relevant income years by the Australian government agency (expenditure required to be incurred) and

the actual expenditure Company Z incurred in the relevant income years (expenditure actually incurred).

Expenditure	Income year ending 30 June 2014	Income year ending 30 June 2015	Income year ending 30 June 2016
Expenditure required to be incurred – claimed under the R&D tax incentive	0	\$100,000	\$120,000
Expenditure actually incurred – expenditure claimed under the R&D tax incentive	\$20,000	\$200,000	\$170,000

Determine trigger years

The timing of the clawback adjustment depends on the trigger year(s). In this example, Company Z receives two instalments of the grant, one in the income year ending 30 June 2015 and one in the income year ending 30 June 2016. Therefore, Company Z has two trigger years, the income years ending 30 June 2015 and 30 June 2016.

Income year ending 30 June 2014

No clawback adjustment is required in this income year.

Income year ending 30 June 2015

Company Z calculates its clawback adjustment as follows:

Clawback adjustment (before the calculation of the clawback cap)

$$\text{R\&D expenditure } (\$100,000) \times 10\% = \$10,000$$

In this example, the cap does not limit the clawback adjustment.

The extra income tax Company Z will need to pay for the income year ending 30 June 2015 is therefore \$10,000.

Income year ending 30 June 2016

Company Z calculates its clawback adjustment as follows:

Clawback adjustment (before the calculation of the clawback cap)

$$\text{R\&D expenditure } (\$120,000) \times 10\% = \$12,000$$

In this example, the cap does not limit the clawback adjustment.

The extra income tax Company Z will need to pay for the income year ending 30 June 2016 is therefore \$12,000.

Example: Grant received after expenditure incurred

Company L receives an Australian government agency grant in the income year ending 30 June 2016. The grant agreement between Company L and the Australian government agency requires that Company L spends \$500,000 on certain R&D activities in the relevant income year. Once Company L spends this amount and meets other milestones, the Australian government agency pays the grant of \$250,000. Company L claims the R&D tax incentive for the \$500,000 expenditure it is required to incur under the grant agreement. Company L also claims the R&D tax incentive for an additional \$200,000 it spent on the same R&D project in that income year.

Company L determines that a clawback adjustment is required and works out its clawback adjustment for the income year ending 30 June 2016 as:

$$\text{R\&D expenditure} \times 10\%$$

$$\$500,000 \times 10\%$$

= \$50,000

Note that in this example, the cap does not limit the clawback adjustment.

Related entities

When working out your clawback adjustment, you also need to consider whether you have received or are entitled to receive any government recoupments relating to expenditure taken into account in working out the R&D tax incentive tax offset for an:

- R&D entity connected with you
- R&D entity that is an affiliate of yours or an R&D entity you are an affiliate of.

If you have received or are entitled to receive any government recoupment relating to expenditure taken into account in working out the R&D tax offset for one of the related entities specified above, you will also need to take your related entity's expenditure and combine it with your R&D expenditure, before applying the extra income tax rate of 10%.

Example: Recoupment for a related entity

In the income year ending 30 June 2016, Company E received a recoupment from an Australian government agency. The amount of the recoupment was \$200,000. This recoupment was a reimbursement of expenses that Company E and Company F have incurred in the relevant income year.

The recoupment reimbursed Company E for \$150,000 of expenditure it has incurred in relation to an R&D project. The remaining \$50,000 recoupment related to expenditure incurred by Company F for a related R&D project. Both Company E and F notionally deducted this reimbursed expenditure under the R&D tax incentive and therefore have claimed the R&D tax incentive tax offset for this expenditure in the relevant income year.

In the relevant income year, Company E owned all the shares of Company F and controlled Company F. Therefore, Company E is connected with Company F and will need to take into account

the recoupment received for it and also its related entity Company F when calculating its clawback adjustment.

Relevant R&D expenditure for the clawback adjustment calculation includes expenditure that both Company E and Company F can claim the R&D tax incentive tax offset for:

$$\$150,000 + \$50,000$$

$$= \$200,000$$

Company E's clawback adjustment is:

$$\text{R\&D expenditure } (\$200,000) \times 10\%$$

$$= \$20,000$$

Therefore, Company E will need to pay additional income tax of \$20,000 in relation to the recoupment in the income year ending 30 June 2016. This additional income tax includes an amount payable for that part of the recoupment that related to expenditure incurred by Company F.

See also:

- [Related entities](#)

A recoupment that is repaid

You may have received a recoupment that may need to be repaid or partially repaid at a later date under the recoupment agreement. For example, the government repayment obligation may align with the success of the project. If the project is considered successful and a certain amount of sales are made in connection with the project, then you may be required to repay part of your recoupment to the government agency. Alternatively, a recoupment may need to be repaid if you have breached certain conditions of the recoupment agreement.

If your grant is repaid to some extent in an income year, you may need to reduce the expenditure required to be incurred, which will reduce the extra income tax in relation to the year the grant was received. You will also need to recalculate your cap, to take into account a repayment by reducing the net amount of the recoupment by the amount of the grant that is repaid.

If your recoupment is a reimbursement, you will need to adjust your calculation of the clawback adjustment to take into account that the recoupment has been reduced and therefore reimburses a lesser amount of the expenditure that you can claim a notional deduction and R&D tax offset in relation to.

If you are required to repay all or part of your recoupment in an income year after the income year that you receive or are entitled to receive your recoupment, you may need to amend your income tax return (if you had previously lodged it with a clawback adjustment). You will need to work out the new clawback adjustment taking into account the repayment of the recoupment and change your clawback adjustment accordingly.

Example: Repayment of reimbursement

In the income year ending 30 June 2015, Company J carried out an R&D project and incurred R&D expenses of \$400,000 for which the R&D tax incentive was claimed. During that year, the company also applied for funding from an Australian government agency funding program. As a result, Company J received a partial reimbursement of its expenditure of \$200,000 in the same income year. In that income year, Company J also makes a clawback adjustment in its tax return which is worked out as follows:

10% of \$200,000 is \$20,000

In the income year ending 30 June 2016 it was determined that Company J had breached the funding agreement and did not qualify for funding for all of the expenditure it had incurred. Therefore, Company J repaid \$150,000 to the Australian government agency in the income year ending 30 June 2016. As a result, the clawback adjustment will need to be recalculated as follows:

10% of \$50,000 is \$5,000

Therefore, Company J will need to amend its tax return to show a clawback adjustment of \$5,000 in the income year ending 30 June 2015.

Example: Grant repayment

Company U applies to a competitive grants scheme and receives \$1 million toward its proposal to spend \$10 million on final stage R&D activities during the income year ending 30 June 2015. The grant is repayable at 10 cents for every dollar on any sales over \$5 million the project generates within three years.

In the income year ending 30 June 2015, Company U spends \$12 million on R&D activities for its project, including expenditure required to be incurred by the grant program of \$10 million, which the company claims an R&D tax incentive tax offset for in the relevant income year.

In the income year ending 30 June 2015, the company determines that clawback applies.

Before working out the cap, the clawback is:

$$10\% \times \text{R\&D expenditure}$$

$$10\% \times \$10 \text{ million}$$

$$= \$1 \text{ million}$$

The cap on clawback is equal to the clawback adjustment:

$$\$1 \text{ million} \times (\$10 \text{ million} \div \$10 \text{ million})$$

$$= \$1 \text{ million}$$

Part of grant later repaid

In the income year ending 30 June 2016, Company U achieves sales of \$6 million arising from the project and so repays \$100,000 (10 cents for every dollar above \$5 million) of the grant. The net amount of the recoupment is now \$900,000 (\$1 million less \$100,000).

Company U will need to recalculate its cap and clawback adjustment and lodge an amendment to its income tax return for the income year ending 30 June 2015:

$$\text{Clawback} = 10\% \times \$10 \text{ million} = \$1 \text{ million}$$

The cap is now recalculated as:

$$(\$1 \text{ million} - \$100,000) \times (\$10 \text{ million} \div \$10 \text{ million}) = \$900,000$$

Company U's clawback adjustment is now \$900,000 and the company lodges an amendment to take this into account. This may result in a tax refund of \$100,000 in relation to the income year ending 30 June 2015 (depending on outstanding tax liabilities).

See also:

- Section 355-450 of the ITAA 1997

The impact on basic income tax liability

Your clawback adjustment will increase your basic income tax liability on your taxable income beyond the amount worked out by applying the income tax rates to your taxable income.

Example: Basic income tax liability

Company Y has taxable income of \$10 million in the income year ending 30 June 2015. Company Y applies tax rate of 30% to its taxable income, resulting in basic income tax liability on that taxable income of \$3,000,000. Company Y also has a clawback adjustment of \$200,000 that applies to the same income year. The company's basic income tax liability is adjusted to take into account the clawback adjustment:

$$\begin{aligned} &\text{Basic income tax liability (including clawback adjustment)} \\ &\$3,000,000 + \$200,000 \\ &= \$3,200,000 \end{aligned}$$

Clawback and R&D partnerships

There are special rules in Subdivision 355-J of the ITAA 1997 regarding the R&D tax incentive for certain types of partnerships known as R&D partnerships.

If you are a partner of an R&D partnership you may also have to pay your proportion of extra income tax if recoupments are received that

relate to expenditure on R&D activities by the R&D partnership and you are entitled to claim the R&D tax incentive for these activities.

Specifically, you are taken to have:

- incurred your proportion of partnership expenditure when the R&D partnership incurred that expenditure (including expenditure to acquire a depreciating asset)
- received your proportion of the recoupment when the R&D partnership received the recoupment.

These deeming rules mean that each R&D entity that is a partner of an R&D partnership can then determine if a clawback adjustment applies, when it applies and work out the amount of the clawback adjustment.

The R&D partnership does not make a clawback adjustment.

See also:

- R&D partnerships

Clawback and consolidation

If you are the head company of a consolidated group or MEC group, your subsidiary members are treated as part of you (the head company) while they are part of the consolidated or MEC group for income tax purposes. Therefore, the R&D tax incentive applies to your consolidated group or MEC group as if it is a single entity.

This is known as the single entity rule and it means that:

- the actions and transactions of a subsidiary member are treated as having been undertaken by you, the head company
- expenditure a subsidiary member incurs on R&D activities is taken to be incurred by you, the head company
- you (and not your subsidiary member) may be entitled to the R&D tax incentive for expenditure on R&D activities undertaken by a subsidiary member while it was in your consolidated or MEC group
- you (and not your subsidiary member) may need to make a clawback adjustment if your subsidiary member has received a government recoupment in relation to notional deductions you take into account when claiming the R&D tax incentive tax offset.

If you are the head company of a consolidated or MEC group and a subsidiary member joins or leaves your consolidated or MEC group, the entry history rule or exit history rule will assist you to calculate your liability for income tax or loss, which could be impacted by a clawback adjustment.

For example, the entry history rule requires that after an entity becomes a subsidiary member of a consolidated or MEC group, everything that happened in relation to it before it became a subsidiary member is taken to have happened in relation to you (the head company) for the purposes of calculating your liability for income tax or loss.

If a company received a government recoupment in the income year before joining your consolidated or MEC group, you are taken to have received that recoupment after the subsidiary member joined the consolidated or MEC group due to the entry history rule. You will then take this recoupment into account when determining if you need to make a clawback adjustment, its timing and amount, which will impact on your income tax liability.

See also:

- Consolidation
- Single entity rule
 - section 701-1 of the ITAA 1997
 - Taxation Ruling TR 2004/11 *Income tax: consolidation: the meaning and application of the single entity rule in Part 3-90 of the Income Tax Assessment Act 1997*
- Section 701-5 of the ITAA 1997 – the entry history rule
- Section 701-40 of the ITAA 1997 – the exit history rule

Transitional rules

The R&D tax incentive applies to assessments for income years commencing on or after 1 July 2011. Before the introduction of the R&D tax incentive, the former R&D tax concession applied.

The R&D tax incentive clawback rules differ from those that were formerly in place for the R&D tax concession. The R&D tax incentive

imposes an extra income tax on certain recoupments. This compares to the R&D tax concession clawback under the former section 73C of the ITAA 1936, which reduced what all or part of could be claimed as an R&D deduction under the R&D tax concession from 125% to 100% of the expenditure incurred.

If you claimed the former R&D tax offset instead of an R&D deduction, this would result in a reduction in the former R&D tax offset, as the former R&D tax offset is calculated based on R&D deductions the company could claim if it had not elected the former R&D tax offset.

Under the former section 73C of the ITAA 1936, the reduction in your claim was calculated by working out the initial clawback amount (twice the amount of the grant or recoupment) which was then applied against expenditure on research and development activities (relevant expenditure) until it was completely absorbed.

By applying the initial clawback amount against R&D expenditure, you reduce the claim from 125% to 100% of the expenditure incurred. The initial clawback amount was applied against relevant expenditure in the following order:

- in the year of the grant or recoupment
- in years before the year of the grant or recoupment in reverse chronological order
- in chronological order in years after the year of the grant or recoupment.

You may have received a grant or recoupment that was subject to the former clawback rules in section 73C of the ITAA 1936. It is possible that after you have applied the initial clawback amount against relevant expenditure as outlined above until 30 June 2011, that you may have a remaining initial clawback amount (which has not yet been absorbed) at that point in time. As the new clawback rules apply to income years commencing on or after 1 July 2011, this initial clawback amount is not applied to expenditure incurred in income years starting on or after 1 July 2011, as the new clawback rules generally apply from this point onwards.

If you have received a recoupment that has instalments before and after 1 July 2011, you will need to consider which clawback rules to apply. For recoupments received in the income year ending 30 June 2011 you apply the former R&D tax concession clawback rules. For recoupments (including instalments) you receive in income years

starting on or after 1 July 2011 (for example the income year ending 30 June 2012), you apply the R&D tax incentive clawback rules.

However, there is a transitional rule that provides an exception. The effect of the transitional rule is that even though section 73C is repealed, the repeal can be disregarded in certain circumstances.

For example, if you receive a recoupment of expenditure from an Australian government agency on or after 1 July 2011, for expenditure incurred before that date, you will need to reduce your claim for deduction for relevant expenditure (or R&D tax offset if you have elected this instead) using the former clawback rules in section 73C of the ITAA 1936 in earlier income years.

Example: Reimbursement received in the income year ending 30 June 2012, partly for an earlier income year

Company R is carrying out an R&D project in the income years ending 30 June 2011 and 2012. In the income year ending 30 June 2011, Company R incurs R&D expenditure that qualifies for a deduction under the former R&D tax concession under section 73B of the ITAA 1936 (\$200,000). Company R claims this expenditure in its company tax return at a rate of 125%.

In the income year ending 30 June 2012, Company R receives an Australian government agency recoupment of \$50,000 of the expenditure incurred during the year ended 30 June 2011. An Australian government agency also provides a recoupment of expenditure that Company R incurred in the income year ending 30 June 2012 (\$50,000) for which Company R determines it is entitled to claim the R&D tax incentive tax offset under Division 355 of the ITAA 1997. The total reimbursement received is \$100,000.

Income year ending 30 June 2011

Company R determines it needs to amend its company tax return to apply the former clawback rules under section 73C of the ITAA 1936 to relevant expenditure it claimed under the R&D tax concession, for that part of the reimbursement received in the income year ending 30 June 2012 that related to the earlier income year (\$50,000).

Initial clawback amount:

$$\$50,000 \times 2 = \$100,000$$

Company R amends its claim for R&D expenditure in its tax return for the income year ending 30 June 2011 to apply clawback:

R&D expenditure deductible at 100% \$100,000

R&D expenditure deductible at 125% \$100,000

Income year ending 30 June 2012

Company R then applies the new clawback rules in Subdivision 355-G of the ITAA 1997 to that part of the reimbursement that is received for expenditure incurred in the income year ending 30 June 2012. After determining that a clawback adjustment is required in this income year, Company R calculates its clawback adjustment (and extra income tax it will need to pay on this reimbursement) as follows:

$$\$50,000 \times 10\% = \$5,000$$

Example: Grant instalments received over the income years ending 30 June 2011 and 30 June 2012

Company C conducts R&D activities and receives approval for a \$200,000 Australian government agency grant for costs associated with the project. The grant is paid in instalments upon the incurring of relevant expenditure on an annual basis until the grant amount is exhausted.

Income year ending 30 June 2011

During the year ending 30 June 2011, Company C undertakes R&D activities and incurs \$120,000 of expenditure that qualifies for the R&D tax concession.

Company C receives a grant instalment of \$120,000 in this year relating to the project.

As the expenditure is incurred in an income year commencing before 1 July 2011, Company C claims the R&D tax concession, under the former section 73B of the ITAA 1936, for expenditure relating to the project.

As the grant instalment of \$120,000 is received in an income year commencing before 1 July 2011, Company C reduces its claim for the R&D tax concession using the former clawback rules in section 73C of the ITAA 1936.

Income year ending 30 June 2012

During the year ending 30 June 2012, Company C undertakes R&D activities and incurs related expenditure in excess of \$80,000 that qualifies for the R&D tax incentive.

Company C receives a grant instalment of \$80,000 in this year relating to the project.

As the expenditure is incurred in an income year commencing on or after 1 July 2012, Company C claims the R&D tax incentive, under the new rules contained in Division 355 of the ITAA 1997, for expenditure relating to the project.

As the grant instalment of \$80,000 was received in an income year commencing on or after 1 July 2011, Company C makes a clawback adjustment that relates to the \$80,000 recoupment according to the clawback rules for the R&D tax incentive contained in Subdivision 355-G of the ITAA 1997.

See also:

- For information about the former R&D tax concession, including the former clawback rules, refer to **Part C-8** of the *Guide to the R&D tax concession*.

Whether recoupments are assessable income

Recoupments (including grants) you receive for R&D expenditure that you claim the R&D tax incentive for must be included in your total assessable income unless they are specifically exempt under a provision of the ITAA 1936 or ITAA 1997.

See also:

- Section 6-5 of the ITAA 1997
- Section 20-25 of the ITAA 1997
- Taxation Ruling TR 2006/3 *Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business*

Other requirements

If you are an eligible R&D entity and you want to claim the R&D tax incentive, you should consider the other requirements, including that you:

- must register your R&D activities every year
- can notionally deduct expenditure on R&D activities
- may need to adjust your income tax return if
 - your eligible activities have produced tangible products for supply to someone else, or to be applied to your own use – other than in transforming these products for supply (feedstock adjustment)
 - you are registered for GST
- must claim your R&D tax offset by lodging a company tax return and R&D tax incentive schedule at the end of your income year
- must keep adequate records to demonstrate to AusIndustry, Innovation Australia and to us that you carried out the eligible R&D activities and that you did incur eligible R&D expenditure on those activities
- must consider any special transitional rules that apply to situations that extend over income years where the R&D tax concession provisions and the R&D tax incentive provisions apply.


See also

- Registering
- Amounts you can claim
- Adjustments

- Claiming the tax offset
- Keeping records and calculating your notional deductions

More information

For information on registration, eligibility of R&D activities and findings, contact AusIndustry:

- visit the 'Contact Us' page on the business.gov.au  website for details on how to contact AusIndustry via phone (**13 28 46**), email or web chat.

For information on eligible entities and amounts you can claim, contact the ATO:

- visit ato.gov.au/randdtaxincentive
- phone us on **13 28 66** between 8.00am and 6.00pm Monday to Friday
- email us at innovationtax@ato.gov.au

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Keeping records and calculating your notional deductions

Check the record requirements and how to apportion R&D expenditure between R&D activities and non-R&D activities.

28 February 2017

Determine if a clawback adjustment is required

Timing of the clawback adjustment

Calculate the clawback adjustment

Clawback and R&D partnerships



Clawback and consolidation

Transitional rules

Whether recoupments are assessable income

Other requirements

More information

Records you need to keep and how to apportion your expenditure between R&D activities and non-R&D activities.

Your business and tax records must show what R&D activities you are undertaking and support the amounts you claim.

You must keep records that:

- specify and explain all transactions - including any documents that are relevant for the purpose of working out your tax liabilities
- are made as soon as transactions occur or as soon as possible after they occur
- relate to all taxes for which you are liable - including income tax, goods and services tax, pay as you go taxes, capital gains tax, and fringe benefits tax
- relate to any election, choice, determination or calculation made under a tax law, including the basis on which any were made.

A valid record for the purposes of claiming the R&D tax incentive is any record that verifies or contributes to calculating your claim.

Your records must be in English (or easily translated into English) and you must keep them for five years after you make a claim as we may ask to see them. You can store records in either paper or electronic form. You do not need to send your records to us unless we ask you to.

If you are having difficulty maintaining your records you could talk to an experienced bookkeeper or accountant about setting up a good record-keeping system to keep track of your business records.

Records that are backdated or contain non-specific details of the work undertaken are not appropriate records.

The following products and guides will help you meet good record keeping practices:

- Manage your invoices, payments and records
- Valid tax invoices and GST credits
- Record keeping evaluation tool
- Penalties for not keeping proper records.

Information about the types of records you need to keep is also available in the following taxation rulings:

- TR 96/7 - Income tax: record keeping - section 262A - general principles
- TR 2005/9 - Income tax: record keeping - electronic records.

Specific records

Although your usual business and tax records may provide a sufficient amount of information to support your R&D claim, some aspects of the R&D tax incentive may require additional or more detailed records. In particular, you may need specific records to show all of the following apply:

- the amounts you are claiming relate to your registered R&D activities
- you receive the major benefit from your R&D activities
- you have correctly apportioned between eligible R&D activities and non-eligible activities.

R&D record keeping

To work out your notional R&D deduction and support your claims, you need to keep records to show all of the following:

- how the expenditure you have incurred relates to the R&D activities you have registered
- how you have apportioned your expenditure between eligible R&D activities and ineligible activities
- that you receive the major benefit from the R&D activities
- when amounts have been paid to associates

- how you have calculated adjustments required as a result of either
 - receiving a government recoupment (clawback)
 - producing a marketable product (feedstock adjustments).

These records must be relevant to the year you are claiming your R&D tax offset. However, if you need to make adjustments these records may also be relevant for future years.


You must keep up-to-date records for each R&D activity so you are ready to calculate and claim your R&D tax offset in your company tax return at the end of the year.

The records you currently keep for your business will generally be enough to support your R&D tax offset claim, if they show:

- you incurred the expenditure (and if incurred to an associate the amount(s) paid)
- the expenditure was eligible for the R&D tax incentive
- you received the major benefit from your expenditure on R&D activities
- the amount of your expenditure that relates to the R&D activities you have registered with AusIndustry.

You must also be able to support your methodology for apportioning your expenditure between eligible R&D activities and non-eligible activities.

See also

- business.gov.au  for examples of records you may need to keep in relation to your R&D activities.

Note: It is your responsibility to show us that the basis for calculating your notional R&D deduction produces, as far as practicable, accurate claims consistent with the law and its interpretation. You must be able to substantiate your claims for R&D expenditure with your records.

Linking your expenditure to your R&D activities

The expenses you can claim as R&D expenditure are limited to the extent they are incurred on R&D activities. Therefore, you must show that the amounts you are claiming on your tax return have been

incurred on the activities you have registered with AusIndustry. The type of expenditure that qualifies for a notional deduction under **Division 355** of the ITAA 1997 depends on the facts of each particular case. Administrative costs and overheads may be incurred on R&D activities if there is a direct link between the R&D activities and the expenditure incurred.

Ineligible expenses are those without sufficient link to the R&D activities, particularly if they relate to general company operations or marketing expenditure that would be incurred regardless of the R&D activities.

In these circumstances, prior to claiming the amount, you should ensure that you have carefully considered the extent to which this expenditure has been incurred on R&D activities. If you are unsure if an amount is eligible for the R&D tax incentive, you should seek guidance from us or a registered tax professional

Claims under review

If we review your claim, we may request a full description of your R&D activities to ensure that they have the required relationship to the expenditure incurred.

We jointly administer the R&D incentive with AusIndustry (on behalf of Innovation Australia). AusIndustry determine if a particular activity is a 'core R&D activity' or a 'supporting R&D activity'- but this only covers the eligibility of the R&D activity itself. It is your responsibility to ensure that you have appropriate records to demonstrate the connection between your expenditure and the R&D activities you have undertaken. Your records must also be sufficient to demonstrate to AusIndustry that the claimed R&D activities took place and that they met all aspects of the legislative definition of 'core R&D activities' or 'supporting R&D activities'.

The records needed for specific expenditure types will vary and you may need to keep different records to show the connection between the amounts claimed and the registered R&D activities.

Salary expenditure for employees carrying out your R&D activities

You must substantiate the time spent on eligible R&D projects by your employees (that is, the researchers and technicians who carry out the

R&D project). How you substantiate this depends on your specific circumstances.

Appropriate records for salary expenditure

The most accurate and effective method of allocating time is to maintain timesheets or job cards. If you don't use these methods, it may be more difficult to show that the allocation of time is accurate. It is your responsibility to make sure you keep sufficient records to support your claims.

However, we acknowledge that it may not always be practical for you to retain timesheets or job cards. If so, a summary sheet may be acceptable if the information is accurate and as reliable as a timesheet.

Situations where timesheets may not be practical include:

- having a large number of employees making it difficult to retain individual timesheets
- when an employee works exclusively on eligible R&D activities
- when an employee works on long term projects which are mostly eligible R&D activities and the ratio of time between eligible and non-eligible activities is fairly constant - in this case, the employee could maintain a diary of activities.

Note: If you use project hours as a basis of apportionment for other expenditure types, you may need to retain timesheets for this purpose, even if you do not need them to help support the salary component of your claim.

If your employees do not work a standard number of hours each day, you may need to establish how much time they spent on non-R&D activities. You need to calculate an employee's hourly rate of pay to work out the cost of employing that person on R&D activities.

Where a portion of a staff member's time is allocated to R&D as a component of 'other' expenditure, it would be useful for that staff member to keep a detailed timesheet. If it is unreasonable to keep detailed timesheets for these staff, you must still use a reasonable basis of apportionment for their time and be able to demonstrate how it relates to your R&D activities.

If salary amounts for R&D activities relate to your associate, you must calculate the amount on an arm's length basis and only amounts paid

are eligible for a notional R&D deduction.

Note: If you choose to use any method of apportionment to calculate your claim, you must be able to explain why this is the most reasonable basis. You may need to keep additional records to do so.

Feedstock expenditure records

If a feedstock adjustment is triggered, you must include an amount in your assessable income. This may be in the current or in a future income year, depending on when the output is sold or applied.

It is important to keep detailed records of your feedstock expenditure to help work out your feedstock adjustment, especially if the feedstock adjustment may be triggered in a year after the R&D activities are conducted.

Specifically, records you may need to keep for this purpose are:

- invoices from the sale of the marketable products
- working papers documenting
 - the market value of products you apply to your own use
 - valuations of all goods and materials subject to processing or transformation and feedstock outputs
 - calculation of feedstock expenditure and resulting feedstock adjustment
- records showing energy usage input directly into the transformation or processing
- records of the R&D process, including the flow-through of materials or goods, subject to processing or transformation, to the marketable product
- records that describe the processing or transformation activities.

See also

- Feedstock adjustments.

Records to show you receive the major benefit from the R&D activities

Expenditure on R&D activities conducted to a significant extent for another entity will not be notionally deductible by you (these amounts

will instead be deductible by the entity receiving the major benefit) under the R&D tax incentive. Some special rules and exceptions apply if the R&D activities are conducted for associated foreign corporations or by an R&D partnership.

Your eligible expenditure must be on R&D activities conducted for yourself and not (to a significant extent) for some other entity. This is intended to limit claims to cases where you receive the major benefit from your expenditure on those activities. It will also prevent duplication of claims by different entities where essentially the same R&D activities are involved.

Whether an R&D activity is conducted for you is a matter of fact. You need to work out if the activity is conducted, in substance, to provide the majority of knowledge benefits resulting from the activity to you.

If someone is conducting R&D activities (in whole or part) for you under contract, or you are under contract to produce a specific product for someone else (and R&D activities will be required to meet the contract), it is particularly important to ensure you maintain records to support this requirement.

See also

- For whom are the R and D activities conducted?

Work performed for you under contract

If the R&D activity is undertaken for you by a contractor, documents relating to the contract and the R&D activities (for example, the project report and invoices) must contain:

- the date(s) the R&D activities are undertaken
- sufficient detail to ascertain the amount of expenditure incurred on the R&D activities as opposed to other goods or services being provided under the contract
- ownership of results - ownership of or rights to the resulting intellectual property as opposed to an end product.

If the contract is with your associate, the fee must be charged on an arm's length basis and only amounts paid are eligible for a notional R&D deduction.

To establish the relationship between your R&D activities and the expenditure you have incurred under the contract, we may need to

look through the contract to establish the extent of the work done by the contractor on your behalf, particularly if you are not contracting at arm's length. You must keep sufficient records for this purpose. This may be required where the broad nature of the agreement makes it difficult to determine the extent to which your expenditure has been incurred on R&D activities.

Supporting records

Records to support this requirement generally relate to the contracts and other agreements between yourself and any parties involved. On review of these documents we should be able to work out who:

- 'effectively owns' the know-how, intellectual property or other similar results arising from your company's expenditure on the R&D activities
- has appropriate control over both the day-to-day management and the overall direction of the R&D activities
- has the financial burden of carrying out the R&D activities.

If the commercial contracts you have entered into do not clearly show this, you will need to keep additional records or include additional clauses in your contracts to clearly show the arrangement between yourself and other parties.

When contracting with a related party, verbal contracts are made. Verbal contracts are recognised contracts under law in relation to commercial transactions. However, it may be difficult to remember the specific details of the agreement for the length of your two or four year review period under tax laws. For this reason, you could make a detailed written record, including (but not limited to) the parties involved, time, place and specific details of your agreement.

Apportionment

You can only claim a notional deduction under the R&D tax incentive to the extent that the expenditure has been incurred on R&D activities. In the case of expenditure to an associate it must be paid within the income year you want to claim the R&D tax offset in). The words 'to the extent that' mean that a method of apportionment may be required if you cannot specifically identify the value of expenditure incurred on R&D versus non-R&D activities.

There are many ways and methods you can use to apportion your expenditure. It is up to you to determine the most reasonable basis with the information you have at the time. You need to take into account your circumstances, accounting methods and the type of expenditure.

For some types of expenditure incurred on R&D activities it may be difficult to examine each invoice received and calculate the amount of expenditure applicable to the R&D activity. You may need to apportion the expenses to achieve the best degree of accuracy. The method you chose to use will depend on the internal accounting procedure adopted by your company and the type of expense involved.

Under the R&D tax incentive, it is not accepted that one apportionment method or formula will be suitable for all expenditure types you may have. You need to consider each expenditure type separately to ensure that the method of apportionment you have used is reasonable and provides the most accurate measure of R&D expenditure.

To obtain certainty about the method of apportionment you have used, you can apply for a private binding ruling. **Getting help** provides information about different ways we can help.

Methods of apportionment

Preferably, your accounting and record keeping processes should enable the tracking of expenditure to your R&D activities on a 'real time' basis, so apportionment methodologies are only used in limited situations. However, we recognise that this is not always practical for companies, especially smaller companies where R&D activities only make up a small portion of the company's activities.

The appropriate basis of apportionment needs to be determined for each expenditure type based on all of the following:

- the type of R&D activities you are conducting
- how you are conducting your R&D activities
- the type of expenditure you have incurred.

If the expenditure is incurred over a period of use (for example, utilities such as electricity, decline in value of R&D assets), an apportionment based on the time spent by employees on R&D activities over total company employee hours may be more appropriate than a dollar value of R&D salary over total company salary. A dollar value can inflate or

deflate an amount you can claim, because employees within a company are unlikely to be remunerated consistently. A dollar value is unlikely to be representative of time spent.

Expenses such as rates, land taxes, rent and lease costs which are mainly for the area used for R&D activities, may be best apportioned on a basis that reflects the area of use. How many staff and time spent is irrelevant for determining the extent to which this type of expenditure has been incurred on your R&D activities and would therefore not represent a reasonable basis of apportionment.

The apportionment basis of R&D salaries over total company salaries, for expenditure, will only be considered reasonable under the R&D tax incentive where the expenditure is based on how much an employee earns (for example, payments of super, worker's compensation and payroll taxes) and if these amounts can not be separately determined by reference to a company's accounts.

Using the decline in value costs for assets used in R&D activities as a proportion of total company decline in value, to apportion all expenditure (including expenses unrelated to the use of the R&D asset), is not an appropriate apportionment methodology.

Choosing the correct apportionment method

When working out your basis of apportionment for each expenditure type, you can ask yourself if the apportionment method best reflects the extent to which the expenditure has been incurred on my R&D activities.

If the answer is yes and you can explain why it is the best method of apportionment for this type of expenditure, then it is likely that you have chosen a reasonable basis of apportionment.

If you are unable to answer yes to this question, you should not use this basis of apportionment.

If you are still unsure and would like certainty from us, we can provide you with a private binding ruling. For more information about the individual advice we offer, refer to [Getting help](#).

Examples of acceptable records

The following list shows **some** of the types of records kept for tax or business purposes generally, that may help you to substantiate your

R&D claim:

- project plans and design specifications
- contracts between yourself and people conducting work for you
- contracts between yourself and a third party for which you have agreed to develop a product
- progress reports
- sales and purchase tax invoices
- receipts
- bank statements
- diaries
- expenditure journals and cash books
- R&D working papers
- financial statements
- apportionment based log books
- credit card statements
- bank deposit books and cheque butts
- bank account statements employee records such as copies of tax file number declarations, wage books, time sheets and super records
- motor vehicle expenses, including logbooks
- debtors and creditors lists
- records of depreciating assets
- stocktake records
- records of any private use in relation to assets or other purchases
- timesheets.

Note: This is not a complete list.

Compliance and monitoring


We work together with AusIndustry to undertake complementary risk assessment and compliance work. AusIndustry's compliance work focuses on the eligibility of R&D activities and our compliance work focuses on the R&D tax offsets allowable for those activities.

It is your responsibility to show us that the basis for calculating your notional R&D deduction produces, as far as practicable, accurate claims consistent with the law and its interpretation. You must substantiate a claim for R&D expenditure by reference to reliable source documents.

If you make incorrect claims you may incur penalties. For more information about our compliance and monitoring, refer to:

- **Compliance model**

See also

- business.gov.au . for more information about AusIndustry's compliance work.

More information

For information on registration, eligibility of R&D activities and findings, contact AusIndustry

- Visit the 'Contact Us' page on the business.gov.au website for details on how to contact AusIndustry via phone **13 28 46**, email or web chat.

For information on eligible entities and amounts you can claim, contact the ATO:

- Visit the website ato.gov.au/randdtaxincentive
- Call the ATO on **13 28 66** between 8:00 am and 6:00 pm Monday to Friday
- Email the ATO at innovationtax@ato.gov.au

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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