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Clawback guide – government grants and reimbursements

Information about clawback adjustments for research and development (R&D) tax incentive claimants.

Last updated 9 February 2023

How clawback adjustments work

Explains when an adjustment applies, what clawbacks do, and where adjustments don't apply.

Determine if a clawback adjustment is required

How to work out if this applies to you and the 3 questions you answer to see if a clawback adjustment is required.

Timing of the clawback adjustment

To work out in which income year you need to make a clawback adjustment, you must identify the 'trigger year'.

Calculate the claw back adjustment

Once you have determined the timing of the clawback adjustment, you will need to calculate the amount of tax paid on it.

Clawback and R&D partnerships

See the special rules that apply to R&D partnerships.

Clawback and consolidation

How the single entity rule applies and what to do if a member joins or leaves.

QC 71313

How clawback adjustments work

Explains when an adjustment applies, what clawbacks do, and where adjustments don't apply.

Last updated 9 February 2023

When an adjustment applies

A clawback adjustment applies if:

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

What clawbacks do

Clawback doesn't decrease the grant or offset you receive; rather, it increases your assessable income by an amount for the notional deduction that an R&D entity received or is entitled to receive in relation to the recoupment. This is called a 'clawback adjustment'.

The clawback adjustment also applies to you if the recoupment belongs to an entity that is connected or affiliated with you, or you are affiliated with.

Where adjustments don't apply

A clawback adjustment doesn't 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 on application of the at-risk rule.)
- 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.

Also, recoupments you receive under the Cooperative Research Centre (CRC) Program are exempt from the clawback adjustment.

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.

QC 71313

Determine if a clawback adjustment is required

How to work out if this applies to you and the 3 questions you answer to see if a clawback adjustment is required.

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How to work out if this applies to you

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 (STB), (other than under the CRC program)
- 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 of notional deductions where the expenditure was for a depreciating asset used in those activities).

Three questions you must answer

Answer each of these 3 questions to work out how a clawback adjustment may affect you.

- Question 1 - received a recoupment
- Question 2 – who the recoupment was from
- Question 3 – claimed the R&D tax incentive tax offset

If you answer **yes** to:

- all questions (1, 2 and 3), you need to make a clawback adjustment
- questions 1 and 2 only, you
  - don't need to make a clawback adjustment now
  - may need to make a clawback adjustment in the future if you later answer yes to question 3.

Question 1 – received a recoupment

Have you or a related entity received or are entitled to receive a recoupment during the income year?

How to answer question 1

You may be required to make a clawback adjustment if in an income year you or a related entity receives or is 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 don't satisfy this requirement, you don't need to make a clawback adjustment and don't need to answer questions 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 2 broad categories of recoupment:

- 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 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 2022. In the income year ending 30 June 2023, 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 expenditure notionally deducted under the R&D tax incentive. Company C has received a recoupment of expenditure that 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 agency 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 doesn't 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 that 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 aren't 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 doesn't 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

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In the income year 30 June 2021, 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 2022 and 30 June 2023. 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 2021. In the income year ending 30 June 2022, 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.

Company A – grants received

Notification to agency	Instalment paid	Amount
30 September 2021	21 October 2021	$25,000
23 December 2021	20 January 2022	$25,000
26 March 2022	6 April 2022	$25,000
25 June 2022	20 July 2022	$25,000

In the income year ending 30 June 2022, Company A received the first 3 instalments of $25,000 listed in the table above (totalling $75,000). 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 2022 it was entitled to receive the final $25,000 instalment for the 2022 income year.

As at 30 June 2022, 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 2023. This is because as at 30 June 2022 they have not met the conditions relating to the remaining grant instalments.

Question 2 – who the recoupment was from

Is the recoupment from an Australian government agency or a state or territory body?

How to answer question 2

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

- an Australian government agency

- a state or territory body.

A variety of Australian Government assistance programs provide support for R&D entities undertaking R&D activities. Even if an assistance program doesn't 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 aren't R&D activities. This because an R&D tax offset can only be claimed on R&D activities.

If you have received a recoupment but it is not from an Australian government agency or an STB, you don't need to make a clawback adjustment and you don't need to answer question 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 a Commonwealth Department 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 don't need to make a clawback adjustment for recoupments received under the CRC Program.

For information about the funding programs provided, visit the grants & programs section on business.gov.au.

State or territory body

Division 1AB of the *Income Tax Assessment Act 1936* (ITAA 1936) sets out the ways in which 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.

For the definition of government entity, refer to section 24AT and section 24AU of the ITAA 1936.

For more information about the 5 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 question 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 2022. Company B receives a partial reimbursement for their expenditure from a funding program of AusIndustry. As this Department is an Australian government agency, the answer to question 2 is 'yes' and Company B may need to make a clawback adjustment.

Question 3 – claimed the R&D tax incentive tax offset

Have you claimed the R&D tax incentive tax offset for expenditure that relates to the recoupment?

How to answer question 3

You need to make a clawback adjustment if all or some of the expenditure for which the recoupment is received, or is entitled to be received, 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.

Expenditure is taken into account in working out an R&D tax offset if you 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 of R&D assets (if the expenditure incurred was to acquire R&D assets). The notional deductions that may be taken into account in working out your R&D 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 in 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 2022. 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 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 offset is claimed.

If you don't answer yes to question 3 you don't need to make a clawback adjustment at present.

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

For example, you may not be entitled to claim the R&D 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 answer yes to question 3, which will require you to amend your company tax return for the previous income year.

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 offset for any expenditure related to the recoupment because section 355-405 applies (the expenditure is not at risk), you don't answer yes to question 3 and don't 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.

Related entities

When working out if the need for a clawback adjustment will arise in the current or a future year, you also need to consider whether you have claimed or will claim in the future an R&D tax offset for expenditure that has the required connection with any government recoupment received or entitled to be received by:

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

See 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 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.

An affiliate of you

A company or individual 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.

QC 71313

Timing of the clawback adjustment

To work out in which income year you need to make a clawback adjustment, you must identify the 'trigger year'.

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Trigger year

The trigger year is the year that you either:

- receive the recoupment that relates to R&D activities
- 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.

Instalments

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. Only R&D expenditure and total project expenditure that is required for the instalment is considered in working out the clawback adjustment for the trigger year.

Amending past tax assessments

The clawback adjustment on the recoupment is made 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 2 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.

Grant instalments received

Instalment date	Instalment amount
1 June 2022 received during the income year ending 30 June 2022	$50,000
1 January 2023 received during the income year ending 30 June 2023	$80,000

The expenses were eligible R&D expenses, and were incurred and claimed by Company E under the R&D tax incentive in the income year ending 30 June 2023.

As Company E receives recoupments in 2 income years it has 2 trigger years, the income years ending 30 June 2022 and 30 June 2023.

However, as at 30 June 2022, Company E has not claimed the R&D tax offset for expenditure related to the grant instalment received on 1 June 2022. Therefore, Company E will lodge its 2022 company tax return without a clawback adjustment being made for that income year.

When Company E lodges its 2023 company tax return, it claims the R&D tax offset for the relevant expenditure that relates to both instalments of the grant and makes a clawback adjustment for the recoupment received on 1 January 2023. Company E also lodges an amendment to its 2022 company tax return to make a clawback adjustment for the recoupment received in the income year ending 30 June 2022.

QC 71313

Calculate the claw back adjustment

Once you have determined the timing of the clawback adjustment, you will need to calculate the amount of tax paid on it.

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Identify your R&D expenditure

The clawback adjustment is calculated on the amount of expenditure that 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).

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

- recoupment of expenditure incurred on or in relation to certain activities
- 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 answering whether a clawback adjustment is required in question 1.

Year-by-year calculation

You calculate the clawback amount on a year-by-year basis. The total of the amounts worked out for each offset year is included in assessable income for the trigger year.

The adjustment for each clawback amount is worked out using this formula:
(starting offset - adjusted offset - deduction amount) ÷ corporate tax rate for the present year

When you calculate the clawback adjustment, the:

- **starting offset** is the actual amount of R&D tax offset the entity receives that includes an amount being clawed back (remembering that the formula is used separately for each offset year that includes an amount being clawed back)
- **adjusted offset** is the offset amount that the entity would have received for the offset year if its notional R&D deductions were reduced by the amount being clawed back
- **deduction amount** is the clawback amount multiplied by the R&D entity's company tax rate for the offset year (so, by subtracting this, the clawback only includes the incentive component of the tax offset)
- **tax rate** means that the amount is grossed-up for the entity's company tax rate for the current year to work out the equivalent amount to include in assessable income.

Notional R&D deductions exceed $150 million

If an entity's notional R&D deductions exceed $150 million for an income year, the amount of expenditure used in the calculation of the clawback adjustment may be reduced.

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 either or both
  - a notional deduction for that expenditure
  - the notional decline in value (if the expenditure relating to the recoupment was for an R&D asset).
- 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.

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 of the following apply:

- You have claimed either or both
  - a notional deduction for that expenditure under Division 355 of the ITAA 1997

- 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: calculating a clawback adjustment – grant

Company V receives a grant from an Australian government agency of $2.3 million for its R&D project that it carries out in the income year ending 30 June 2022. 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 $3.6 million on the R&D project in the relevant income year. Its aggregated turnover for that income year is greater than $50 million and its total expense is $15 million. Its company tax rate is 30%.

Company V spends $3.6 million (including grant funding) on the project that qualifies for a notional deduction. The company also claims an R&D tax offset for this expenditure in the income year ending 30 June 2022. The R&D expenditure that Company V uses when calculating its clawback adjustment is $3.6 million.

Company V's clawback adjustment in the income year ending 30 June 2022 (before calculating the cap for grants) is calculated according to the formula:
(starting offset – adjusted offset – deduction amount) ÷ corporate tax rate

The starting offset of $1,650,000 is the actual amount of the tax offset that Company V can claim.

Work out the starting offset

Step	Notional deduction amount	Offset rate	Offset amount
Work out the part of the	Total expense ×	38.5%	$300,000 × 38.5% =

total notional deductions that exceed nil but don't exceed 2% of the R&D entity's total expenses	2% = $15,000,000 × 2% = $300,000		$115,500
Work out the part of the total notional deductions that exceed 2% of the R&D entity's total expenses	$3,600,000 − $300,000 = $3,300,000	46.5%	$3,300,000 × 46.5% = $1,534,500

Company V calculates the adjusted offset on a notional deduction amount of $1,300,000 ($3,600,000 − $2,300,000), which excludes the amount of notional deductions that relates to the grant.

Work out the adjusted offset

Step	Notional deduction amount	Offset rate	Offset amount
Work out the part of the total notional deductions that exceed nil but don't exceed 2% of the R&D entity's total expenses	Total expense × 2% = $15,000,000 × 2% = $300,000	38.5%	$300,000 × 38.5% = $115,500
Work out the part of the total notional deductions that exceed 2% of the R&D	$1,300,000 − $300,000 = $1,000,000	46.5%	$1,000,000 × 46.5% = $465,000

entity's total expenses			

Therefore, the adjusted offset is $580,500.

The deduction amount is calculated by multiplying the amount of expenditure related to the recoupment under the grant by Company V's tax rate of 30%. This is calculated as: $2,300,000 × 30% = $690,000.

Company V calculates the clawback amount of $1,265,000 to include in its assessable income as:
($1,650,000 - $580,500 - $690,000) ÷ 30%

The tax on this amount ($379,500) reflects the incentive component of the tax offset.

If you have a grant that is paid in 2 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 don't 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 of $200,000 for certain specified R&D activities. Under the agreement the Australian government agency agreed to pay $200,000 over 2 years to Company Y. Company Y is required under the agreement to spend $500,000 (including the grant funding) over these 2 years. In the income year ending 30 June 2022, 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 2022 ($350,000). 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 2023, 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 2023 ($150,000). 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.

Company Y is eligible for the 43.5% refundable tax offset (calculated as Company Y's tax rate of 25% plus an uplift of 18.5%). 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 2022 is $350,000.

The R&D expenditure that Company Y uses when calculating its clawback adjustment in the income year ending 30 June 2023 is $150,000.

Calculating the clawback adjustment

For the income year ending 30 June 2022, Company Y received a recoupment amount of $150,000 for incurring $350,000 on R&D expenditure and for the year ending 30 June 2023 a recoupment amount of $50,000 for incurring $150,000 on R&D expenditure. The clawback amount is limited to the net amount of the recoupment attributable to R&D expenditure:
Net amount of the recoupment × (R&D expenditure ÷ project expenditure)

Since all Company Y's project expenditure was R&D expenditure, the clawback amount is $150,000 and $50,000 for the years ending 30 June 2022 and 2023 respectively.

Clawback adjustment calculation

Step	2021–22	2022–23
Starting offset	$350,000 × 43.5% = $152,250	$150,000 × 43.5% = $65,250
Adjusted offset	$200,000 × 43.5% = $87,000	$100,000 × 43.5% = $43,500
Deduction amount	$150,000 × 25% = $37,500	$50,000 × 25% = $12,500

Clawback adjustment	$152,250 – $87,000 – $37,500 = $27,750 ÷ 25% = $111,000	$65,250 – $43,500 – $12,500 = $9,250 ÷ 25% = $37,000

Example: working out R&D expenditure for multiple years

Company Y's aggregated turnover is less than $20 million for the income years ending 30 June 2022 and 2023 and its total notional deduction is $1 million and $1.5 million for each of those years respectively, which includes the expenditure incurred and a recoupment amount in relation to $400,000 in grant funding with amounts that became entitled to be received of $300,000 in the 2021-22 income year and $100,000 2022-23 income years.

Alternative method

Step	2021–22	2022–23
Starting offset	$1,000,000 × 43.5% = $435,000	$1,500,000 × 43.5% = $652,500
Adjusted offset	($1,000,000 – $300,000) = $700,000 × 43.5% =$304,500	($1,500,000 – $100,000) = $1,400,000 × 43.5% =$609,000
Deduction amount	$300,000 × 25% = $75,000	$100,000 × 25% = $25,000
Clawback adjustment amount	($435,000 - $304,500 -$75,000) ÷ 25% = $222,000	($652,500 - $609,000 - $25,000) ÷ 25% = $74,000

> Company Y includes $222,000 and $74,000 in its assessable income for the years ending 30 June 2022 and 2023 respectively.

If a connected or affiliated entity has received or is entitled to receive a recoupment in relation to expenditure that has been taken into account in working out your R&D tax offset, this will also affect your clawback adjustment.

Cap for grants

If your recoupment is a grant then a cap applies to ensure the tax outcome:

- reflects the extent to which your grant is related to the R&D expenditure
- doesn't exceed the R&D proportion of the recoupment.

This is done by using the following formula:
Net amount of the recoupment × (R&D expenditure ÷ project expenditure)

Net amount of the recoupment means the total amount of the recoupment received or entitled to be received during the trigger year, less any repayments of that recoupment during an income year.

Project expenditure is total expenditure required to be incurred or to have been incurred on certain activities for the recoupment received or entitled to be received during the trigger year. 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. To the extent that grant conditions allow, it is up to you to decide how to apply the mandated project expenditure. This means that you can apply the mandated project expenditure against non-R&D activities first. Where you choose to spend more on your project than the grant mandates, you can apply your 'extra' expenditure to R&D activities first.

R&D expenditure is as much of the project expenditure that is notionally deducted in working out your R&D tax offset for any income year.

If you have received a recoupment that is a reimbursement, no cap applies. This is because the recoupment will always equal the expenditure being reimbursed.

See Clawback adjustment for information about identifying your R&D expenditure.

Examples of different scenarios

How you work out the clawback adjustment in different scenarios:

- Recoupment that reimburses R&D and other expenditure
- Recoupment that partially reimburses R&D expenditure
- Grant for R&D expenditure and other expenditure
- Grant for R&D expenditure and other expenditure
- Grant paid for multiple years.

Recoupment that reimburses R&D and other expenditure

Example: recoupment that reimburses R&D and other expenditure

In the income year ending 30 June 2022, 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 to be included for the income year ending 30 June 2022 is calculated on the reimbursement amount of $400,000 for which it claimed a notional deduction.

Recoupment that partially reimburses R&D expenditure

Example: recoupment that partially reimburses R&D expenditure

Company F conducts R&D activities on which it incurred $1 million R&D expenditure and for which it receives an R&D tax offset in the year ended 30 June 2022. In the income year ending 30 June 2023, 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 to be included in its assessable income for the income year ending 30 June 2023 is calculated on the reimbursement amount of $500,000. Company F’s aggregated turnover is less than $20 million and its R&D tax offset rate is 43.5% (calculated as company tax rate of 25% plus uplift of 18.5%).

Clawback adjustment = (Starting offset - Adjusted offset - Deduction amount) ÷ Company tax rate

Starting offset = $1,000,000 × 43.5% = $435,000

Adjusted offset = ($1,000,000 - $500,000) × 43.5% = $217,500

Deduction amount = ($500,000 × 25%) = $125,000

Company tax rate = 25%

Clawback amount = ($435,000 - $217,500 – $125,000) ÷ 25% = $370,000

The clawback adjustment to be included in Company F’s assessable income in the 2022–23 income year is $370,000. The tax payable on this amount is $92,500. This reflects the incentive component of the tax offset received on the R&D expenditure provided for by the grant.

Grant for R&D expenditure and other expenditure

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 2022. 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 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 don't qualify for the R&D tax incentive. Company Q's aggregated turnover is less than $20 million and its R&D tax offset rate is 43.5% (calculated as company tax rate of 25% plus uplift of 18.5%).

The total project expenditure is $1 million, but only $100,000 of this expenditure was claimed under the R&D tax incentive. The clawback amount is capped at $9,000 calculated as:
Net amount of recoupment × (R&D expenditure ÷ Project expenditure)
$90,000 × ($100,000 ÷ $1,000,000) = $9,000

Company Q determines that a clawback adjustment is required and works out its clawback adjustment for the income year ending 30 June 2022 as:

Clawback adjustment = (Starting offset - Adjusted offset - Deduction amount) ÷ Company tax rate

Starting offset = $100,000 × 43.5% = $43,500

Adjusted offset = ($100,000 - $9,000) × 43.5% = $39,585

Deduction amount = ($9,000 × 25%) = $2,250

Company tax rate = 25%

Clawback adjustment = ($43,500 - $39,585 - $2,250) ÷ 25% = $6,660

The tax payable on this amount that is included in assessable income is $1,665. This reflects the incentive component of the tax offset received on the R&D expenditure provided for by the grant.

Grant for R&D expenditure and other expenditure

Example: grant for R&D expenditure and other expenditure

In the income year ending 30 June 2022 Company P's aggregated turnover is less than $5 million. It 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 offset. Company P's tax rate is 25% and its R&D tax offset rate is 43.5% (determined as company tax rate of 25% plus an uplift factor of 18.5%).

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 offset in the relevant income year). More is spent than the grant required. The clawback amount is capped at $50,000 calculated as:

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

$100,000 × ($1,000,000 ÷ $2,000,000) = $50,000

Company P determines that clawback applies and calculates its clawback adjustment:

Clawback Adjustment = (Starting offset - Adjusted offset - Deduction amount) ÷ Company tax rate

Starting offset = $1,500,000 × 43.5% = $652,500

Adjusted offset = ($1,500,000 - $50,000) × 43.5% = $630,750

Deduction amount = ($50,000 × 25%) = $12,500

Company tax rate = 25%

Clawback amount = ($652,500 – $630,750 – $12,500) ÷ 25% = $37,000

Grant paid for multiple years

Example: grant paid for multiple years

In the income year ending 30 June 2022, Company Z has applied for and received approval for an Australian government agency grant for certain specified R&D activities. Its aggregated turnover for each income year ending 30 June 2022 to 2024 is under $10 million. Under the agreement, the Australian government agency agreed to pay $110,000 over the following 2 years to Company Z. Company Z is required under the agreement to spend $220,000 (including the grant funding) over these 2 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 2023, 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 2023.

On 30 June 2024, 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 2024.

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 – Company Z

Expenditure	Income year ending 30 June 2022	Income year ending 30 June 2023	Income year ending 30 June 2024

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 or years. In this example, Company Z receives 2 instalments of the grant, one in the income year ending 30 June 2023 and one in the income year ending 30 June 2024. Therefore, Company Z has 2 trigger years, the income years ending 30 June 2023 and 30 June 2024. Its company tax rate is 25% for each trigger year.

Income year ending 30 June 2022

No clawback adjustment is required for this income year.

Income year ending 30 June 2023

Company Z calculates its clawback adjustment as follows:

Clawback adjustment = (Starting offset - Adjusted offset - Deduction amount) ÷ corporate tax rate

Starting offset = ($200,000 × 43.5%) = $87,000

Adjusted offset = ($200,000 - $50,000) × 43.5% = $65,250

Deduction amount = ($50,000 × 25%) = $12,500

Clawback amount = ($87,000 – $65,250 – $12,500) ÷ 25% = $37,000

Income year ending 30 June 2024

Company Z calculates its clawback adjustment as follows:

Clawback adjustment = (Starting offset - Adjusted offset - Deduction amount) ÷ corporate tax rate

Starting offset = ($170,000 × 43.5%) = $73,950

Adjusted offset = ($170,000 - $60,000) × 43.5% = $47,850

Deduction amount = ($60,000 × 25%) = $15,000

Clawback amount = ($73,950 - $47,850 - $15,000) ÷ 25% = $44,400

Company Z includes the clawback adjustments of $37,000 and $44,400 in its assessable income in the income years ending 30 June 2023 and 2024 respectively.

Example: grant received after expenditure incurred

Company L enters into a grant agreement with an Australian government agency in the income year ending 30 June 2022. 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 2021-22 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 lodges and is paid its grant claim during the 2022-23 income year once all milestone requirements are met.

Company L's aggregated turnover for that year is $10 million and its tax rate is 25% for the 2021–22 and 2022–23 income years.

Company L determines that a clawback adjustment is required and works out its clawback adjustment for the income year ending 30 June 2023 as:

> Clawback adjustment = (Starting offset - Adjusted offset - Deduction amount) ÷ Company tax rate

Starting offset = ($700,000 × 43.5%) = $304,500

Adjusted offset = ($700,000 - $250,000) × 43.5% = $195,750

Deduction amount = ($250,000 × 25%) = $62,500

Clawback amount = ($304,500 - $195,750 - $62,500) ÷ 25% = $185,000

Clawback adjustment = $185,000

Related entities

When working out your clawback adjustment, you also need to consider whether you have claimed (or will claim in the future) an R&D tax offset for expenditure that has the required connection with any government recoupment received or entitled to be received by:

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

Example: recoupment for a related entity

In the income year ending 30 June 2022, Company Q 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 Q incurred in the relevant income year.

The recoupment reimbursed Company Q for $150,000 of expenditure it has incurred in relation to R&D activities. The remaining $50,000 recoupment related to other expenditure incurred by Company Q. Company R notionally deducted the $150,000 reimbursed expenditure under the R&D tax incentive and therefore has claimed the R&D tax incentive tax offset for this expenditure in the relevant income year.

In the relevant income year, Company Q owned all the shares of Company R and controlled Company R. Therefore, Company Q is connected with Company R and will need to take into account the recoupment received when calculating its clawback adjustment.

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 in 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 2022, Company J had an aggregated turnover of less than $20 million. Company J carried out an R&D project and incurred R&D expenditure 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:

(Starting offset - Adjusted offset - Deduction amount) ÷ Company tax rate

Clawback adjustment = (($400,000 × 43.5%) - ($200,000 × 43.5%) - ($200,000 × 25%)) ÷ 25%= $148,000

> In the income year ending 30 June 2023, 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 2023. As a result, the clawback adjustment will need to be recalculated as follows:

Starting offset = ($400,000 × 43.5%) = $174,000

Adjusted offset = ($400,000 - $50,000) × 43.5% = $152,250

Deduction amount = ($50,000 × 25%) = $12,500

> Clawback adjustment = ($174,000 -$152,250 - $12,500) ÷ 25% = $37,000

Therefore, Company J will need to amend its tax return for the income year ending 30 June 2022 to show a reduced clawback adjustment of $37,000.

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 2022. The grant is repayable at 10 cents for every dollar on any sales over $5 million the project generates within 3 years. Company U's aggregated turnover is $20 million in that year.

In the income year ending 30 June 2022, 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 2022, the company determines that clawback applies.

Starting offset = ($12,000,000 × 43.5%) = $5,220,000

Adjusted offset = ($12,000,000 - $1,000,000) × 43.5% = $4,785,000

Deduction amount = ($1,000,000 × 25%) = $250,000

Clawback amount = ($5,220,000 - $4,785,000 - $250,000) ÷ 25% = $740,000.

Part of grant later repaid

In the income year ending 30 June 2023, 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 clawback adjustment and lodge an amendment to its tax return for the income year ending 30 June 2022:

Clawback = (($12,000,000 × 43.5%) - ($11,100,000 × 43.5%) - ($900,000 × 25%)) ÷ 25% = $666,000

QC 71313

Clawback and R&D partnerships

See the special rules that apply to R&D partnerships.

Last updated 9 February 2023

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 include in your assessable income your proportion of the clawback adjustment for recoupments that relate to expenditure on R&D activities by the R&D partnership.

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.

R&D partnerships do not make a clawback adjustment.

QC 71313

Clawback and consolidation

How the single entity rule applies and what to do if a member joins or leaves.

Last updated 9 February 2023

Single entity rule

If you are the head company of a consolidated group or multiple entry consolidated (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.

For more information on the single entity rule, see:

- 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.*

Implications of the single entity rule

The single entity rule 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 offset.

If a member joins or leaves

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 your tax outcomes.

See Section 701-5 of the ITAA 1997 for the entry history rule and Section 701-40 of the ITAA 1997 for the exit history rule.

QC 71313

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