



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

50TACD2026

Between



**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal before the Tax Appeals Commission (“the Commission”) brought by the Appellant against Notices of Amended Assessment to corporation tax (“the assessments”) issued by the Revenue Commissioners (“the Respondent”) for the financial years ended 31 December 2021 (“FY2021”), 31 December 2022 (“FY2022”) and 31 December 2023 (“FY2023”) (hereinafter collectively referred to as “the relevant years”) following the Respondent’s refusal of a claim for repayment of the excess Research and Development (“R&D”) tax credit for qualifying R&D expenditure incurred by the Appellant in the financial year ended 31 December 2021 (“FY2021”). The claim for repayment of the excess R&D credit was refused on the basis that it was made outside the statutory time limit.
2. The Appellant claimed a R&D tax credit in respect of qualifying R&D expenditure incurred during FY2021 on, *inter alia*, technology development. The claim for the R&D tax credit was made pursuant to section 766(2) of the TCA 1997. The R&D credit claim was made within the twelve-month statutory time frame applicable to such R&D credit claims, as laid down in section 766(5) of the TCA 1997. The R&D credit claimed was in the amount of [REDACTED]. That this R&D tax credit claim under section 766(2) of the TCA 1997 was made in that amount is not in dispute between the parties.
3. The matter in dispute in this appeal is the Appellant’s claim for the repayment of the excess R&D tax credit arising in FY2021 to be repaid to the Appellant in three instalments over the relevant years, that claim having been made by the Appellant under the provisions of section 766(4B) of the TCA 1997.
4. The claim for the repayment of the excess R&D tax credit was processed by the Respondent and repayments were made to the Appellant in three instalments as follows:

FY2021	[REDACTED]
FY2022	[REDACTED]
FY2023	[REDACTED]
5. In April 2025, following a review of the claim for the repayment of the excess R&D tax credit, the Respondent refused the claim stating the claim was made outside the relevant twelve-month time limit applicable to such claims, as laid down in section 766(5) of the TCA 1997. This resulted in the issue of the assessments which are the subject of this appeal. The assessments computed additional corporation tax (“CT”) payable, for each of the relevant years as follows:

FY2021

FY2022

FY2023

6. The total CT payable by the Appellant on foot of the assessments amounted to [REDACTED]. The Appellant submitted that this liability was collected via offset against other tax repayments due to the Appellant. The Appellant stated that this clawback of the repayments has had a significant negative cashflow impact on its business which is in a start-up phase.
7. On 13 May 2025, the Appellant submitted its Notice of Appeal. On 31 July 2025, the Commission received the Appellant's Statement of Case ("SoC"). On 2 July 2025, the Commission received the Respondent's SoC. On 7 January 2026, a Book of Documents, agreed by the parties, was submitted to the Commission. The Commission received an Outline of Arguments from both parties and an outline legal submission from the Respondent.
8. The Appellant elected, in both its SoC and hearing attendance documentation, that the appeal be held in private. Therefore, this determination will be redacted prior to its publication on the Commission's website pursuant to section 949AO of the TCA 1997.
9. The appeal proceeded by way of a remote hearing on [REDACTED]. The Appellant was represented by the Appellant's agent, and a director of the Appellant gave evidence on behalf of the Appellant. The Respondent was represented by two members of staff from its Business Services to Support Compliance unit.
10. The Commissioner has considered the evidence provided at the hearing and all submissions from both parties in making this Determination.

### **Background**

11. On 12 July 2022, the Appellant's agent submitted the original CT return for the Appellant for FY2021 via the Respondent's Revenue Online Services ("ROS"). That return did not include a claim for a R&D tax credit or a claim for repayment of the excess of such credit.
12. On 13 September 2022, the Appellant's agent submitted an amended CT return for the Appellant for FY2021. In that amended return, Box 2 in the "Research and Development Credit and Allowances" panel ("the R&D Panel") was completed thereby claiming a R&D tax credit for qualifying R&D expenditure incurred in FY2021 in accordance with section 766(2) of the TCA 1997. The amount of the R&D credit claimed is [REDACTED]. The amended

return did not include a claim for the repayment of the excess R&D tax credit, pursuant to section 766(4B) of the TCA 1997, in the relevant box for such a claim (Box 21) on the R&D Panel of the online CT return.

13. During the period from submission of the amended CT return for FY2021 (13 September 2022) to 21 June 2023, the Appellant's in-house accountant contacted the Respondent by telephone on a number of occasions requesting an update on the status of the R&D credit claim and the refund for the excess R&D tax credit.
14. On 21 June 2023, following a telephone conversation between the Appellant and the Respondent, the Appellant's in-house accountant submitted an enquiry in writing to the Respondent via the Respondent's MyEnquiries service ("MyEnquiries") stating:

*"[...]*

*We filled our accounts over a year ago for the 2021 financial year and included an amount of ████████ as an R&D tax credit which I thought would have been payable and paid by now. Could you let me know when you expect this to be paid [...].*

*[...]" (sic)*

15. On 1 August 2023, the Respondent replied to the Appellant's correspondence of 21 June 2023, via MyEnquiries, stating:

*"[...]*

*The R&D was not claimed correctly on the CT1 and this is why no refund issued.*

*There is no entry in the first instalment.*

*[...]"*

16. On 24 August 2023, the Appellant's agent issued correspondence to the Respondent via MyEnquiries stating:

*"[...]*

*We claimed the R&D tax credit on the form CT1 for the year ended 31st December 2021 in the amount of ████████. As the company had no [CT] liability we wanted to claim the 1st instalment for repayment of the excess amount. However when I went in to amend the form I was unable to make the claim for the repayment as the box is greyed out.*

*The instalments to be claimed are:*

*1st instalment payable on or after 23rd September 2022* [REDACTED]

*2nd instalment payable on or after 23rd September 2023* [REDACTED]

*3rd instalment payable on or after 23rd September 2024* [REDACTED]

*I would be grateful if you could make the necessary amendments to the form and issue the relevant repayable credits to the company.*

*[...]*

17. On 15 September 2023, the Respondent replied to the Appellant's agent via MyEnquiries stating:

*[...]*

*The 2021 and 2022 CT1s have been amended to include the installment payments omitted from lines between 20(a) and 26 in the R&D section. Please ensure that line 25 is completed for the 3rd installment for the 2023 CT1 when filing next year.*

*[...]* (sic)

18. On the same date, 15 September 2025, the Respondent emailed the Appellant via MyEnquiries, stating:

*[...]*

*Following on from correspondence from your agent the 2021 and 2022 CT1s have been amended.*

*The CT1s were not completed correctly to claim the 1<sup>st</sup> and 2<sup>nd</sup> instalments.*

*[...]*

19. The Respondent issued the repayment of the excess R&D tax credit claimed in FY2021 to the Appellant as follows:

19.1. The first instalment [REDACTED] was repaid to the Appellant on 29 September 2023 for FY2021.

19.2. The second instalment [REDACTED] was repaid to the Appellant on 26 September 2023 for FY2022, after the Appellant's CT return for FY2022 was submitted.

19.3. The third instalment [REDACTED] was repaid to the Appellant on 24 September 2024 for FY2023, after the Appellant's CT return for FY2023 was submitted.

20. On 11 April 2025, the Respondent issued correspondence to the Appellant's agent via MyEnquiries stating:

*"[...]*

*Unfortunately, upon review of your R&D claims, an error has been identified with the 2021 return.*

*On 13/09/22, you submitted a CT1 return for period end 31/12/21 with a claim for 25% credit of [REDACTED]. You did not include an election for 1st repayable instalment.*

*On 15/09/23, the 2021 CT1 return was amended to include a 1st repayable instalment of [REDACTED]. The deadline for making this claim was 31/12/22.*

*Sec 766(5) states that "Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred."*

*The use of the word "shall" in section 766(5) indicates that the timeframe for application is mandatory and that no concessions or exceptions are permitted in relation to this timeframe. Therefore, an application must be made within the 12-month timeframe to be valid.*

*Where a company has filed a return with a claim for the R&D tax credit and wishes to amend any of the panels (e.g. to change the amount of the credit claimed, to change the amount of the instalments and to change the manner in which the company has specified that the amounts are to be paid or offset), this must be done within the 12-month time limit.*

*The 12-month timeframe in section 766(5) is mandatory and does not allow for any exceptions.*

*It is important to emphasise that this is a self-assessment process, and the onus is on the taxpayer to ensure that a valid claim is made within the 12-month timeframe. As such, having reviewed the legislation, I regret to inform you that I am precluded from allowing an amendment to the claim outside the 12 month time limit.*

*·Your 2021 return has been amended to remove the 1st repayable instalment.*

*·The 2022 and 2023 returns have been amended to remove the 2nd and 3<sup>rd</sup> repayable instalments that relate to the 2021 claim.*

*·The 2021 credit is not lost, it can be carried forward indefinitely and offset against future CT liabilities.*

*You may appeal against most [Respondent] decisions that directly affect you and with which you disagree to the Tax Appeals Commission. For further information, please visit our website:*

*<http://www.revenue.ie/en/corporate/information-about-revenue/appeals/how-to-make-an-appeal.aspx>*

*[...]” (sic)*

21. On the same date, 11 April 2025, the Respondent emailed the Appellant via MyEnquiries stating:

*“[...]*

*Your agent has been contacted regarding discrepancies with your R&D claim for the period end 31/12/2021. Unfortunately, the claim was not submitted before the deadline and refunds will be clawed back. Revised statements will be issued in due course.*

*[...]”*

22. On 14 April 2025, the Respondent issued the assessments whereby the claim for the repayment of the excess R&D tax credit that arose in FY2021 was removed for each of the relevant years. The notices of amended assessment computed the balance of CT payable for the relevant years as follows:

FY2021

FY2022

FY2023



23. On 13 May 2025, the Appellant submitted its Notice of Appeal to the Commission stating the following grounds of appeal:

*“The corporation tax return for the year ended 31st December 2021 [...] was originally submitted on 12th July 2022 by [...] the Appellant’s tax agent. It subsequently transpired that there was a claim to be made for a Research & Development tax credit in respect of R&D carried out by the company. Accordingly the corporation tax return for the year ended 31st December 2021 was amended on 13th September 2022 by [the Appellant’s agent] to claim the R&D tax credit. [...]The Appellant was hoping to receive the first instalment of their repayable R&D tax credit shortly thereafter but as this was the first R&D claim by the Appellant, the Appellant was unsure how long the refund would take to issue. The Appellant’s inhouse accountant called [the Respondent] on several occasions to follow up on the refund. The Appellant was told*

on each occasion that the refund can take a significant amount of time to be reviewed and processed and that the individual in [the Respondent] could not comment on individual cases and advising the Appellant to call back in a few weeks' time. After calling back on several occasions, the Appellant was eventually advised to submit a query in writing through MyEnquiries which was done immediately on 21st June 2023. A reply was finally received on 22nd August 2023 advising that the claim for the R&D refund was not included in the correct box on the Form CT1 [...]. On 24th August 2023, [the Appellant's agent] emailed [the Respondent] as [the Appellant's agent was] unable to amend the form to include the figures in the correct box as the box was greyed out [...]. [The Respondent] subsequently replied on 15th September 2023 and advised that [the Respondent] had made the appropriate amendments [...]. The Appellant was repaid the 1st instalment of the repayable R&D tax credit for 2021 on 29th September 2023 and the 2nd instalment for 2022 on 26th September 2023. The 3rd and final instalment was claimed on the 2023 form submitted on 22nd September 2024 and the refund was issued to the Appellant on 24th September 2024.

On the 11th April 2025 the Appellant received an email stating that [the Appellant's agent] had been contacted regarding a discrepancy on the Appellant's R&D tax credit. [The Appellant's agent] also received correspondence that same day [...] advising that the R&D repayment was being disallowed as it was not claimed in sufficient time. As you can see from the above outline, the claim was made in sufficient time as it was made within 12 months of the corporation tax filing date i.e. by 31st December 2022. However it would appear that, although the claim was made in sufficient time, an administrative error by [the Appellant's agent] meant that the claim for the R&D tax credit repayment was not included in the correct box on the Form CT1. Immediately the Appellant was made aware of this minor administrative error, [the Appellant's agent] proceeded to try and rectify this within 2 days of being notified of the issue by [the Respondent]. It transpired that [the Respondent] themselves were required to carry out the amendment as it was impossible for either [the Appellant's agent] or the Appellant to complete it. Almost two years after [the Respondent] assisted in amending the form and issuing the relevant R&D refunds, [the Respondent has] now decided it should not have been repaid and have now withheld the amounts previously repaid from the refund due for 2023 resulting in the Appellant being out of pocket to the tune of [REDACTED].

[...]"

24. On the same day, 13 May 2025, the Appellant's agent issued correspondence to the Respondent seeking to resolve the matter with the Respondent. That correspondence stated:

*"[...]*

*At no time, when either ourselves or the client was in discussions with [the Respondent] staff regarding the amending of the tax returns for 2021 [...] to correct the administrative error [made by the agent], did anyone advise that the claim was not made within the appropriate deadlines. The first time either ourselves or the company were aware of any issue was on 11<sup>th</sup> April 2025 when an email was received by both of us to advise that there was a discrepancy noted on the R&D tax credit claim and that the refunds previously given were being withdrawn. The funds of ██████████ were all withheld by [the Respondent] from a separate refund due to the company without any opportunity being given to the company to make submissions regarding this issue.*

*Whilst I appreciate that the tax credit is still available to the company to be used against future [CT] profits, ██████████ has asked me to draw to your attention that it may be some time before the benefit of same can be seen. As a loss-making start-up company, cash is king and the start-up does not expect to be profitable in the immediate coming years when a sum as small as ██████████ makes a huge difference to their cashflow. This sudden withdrawal of refunds previously advanced has left an unexpected shortfall in their budgets for the year.*

*It is our view that the company made the claim for R&D tax credit in good faith and within 12 months of the year end. Due to an administrative error by this office, the claim was not included in the correct box for the 1<sup>st</sup> instalment reclaim but it was claimed on the Form CT1. In the circumstances where the Form CT1 is very overly complicated and unclear as to which boxes are required to be completed for the various R&D tax credit claims and the R&D tax credit information had been included on the form within 12 months of the year end but not in the correct box, we are formally requesting that the [Respondent] review their decision to disallow the repayable tax credit granted for 2021, 2022 and 2023 which was withdrawn on 14<sup>th</sup> April 2025.*

*[...]"*

25. On 18 June 2025, the Respondent issued correspondence to the Appellant's agent in reply to the letter of 13 May 2025, stating:

*"[...]*

*Please be advised that in order to have the excess R&D credit repaid in instalments, the onus is on the company to make a claim – Section 766(4B)(a).*

*Section 766(4B)(b) provided that on receipt of a claim, the [Respondent] shall pay any excess remaining to the company in 3 instalments.*

*While the company included the amount of tax credit claimed for the accounting period under S766 on the CT return at panel 2(a), they failed to make a claim to have the excess repaid.*

*[...]*

*In the absence of a claim under S766(4B), the excess can only be carried forward for offset against future [CT] liability.*

*The legislation is very clear and unambiguous on the matter.*

*[...]*

***On review of the legislation and on review of the claim included on the CT1, in this case, while the company made a claim in respect of the [R&D] Tax credit within the 12 month time line, unfortunately the company did not make a claim for a payment of excess within the 12 month time limit, as there were no entries made to this section of the CT1.***

*On 24/08/2023, the agent submitted an instruction through [MyEnquiries] to amend the CT1 and to include the relevant repayable credits. The CT1 31/12/2021 was amended on the 30/09/2023 by a [...] case worker [of the Respondent] on foot of this instruction, and the amendment was made to include a claim for repayment of the excess, being the first instalment amount of [REDACTED] (being the credit claimed in the amount of [REDACTED] x 33%).*

*The instruction was received outside the 12-month deadline. The deadline to make the claim for the payment of excess [R&D] Tax credit for an accounting period 31/12/2021 was the 31/12/2022.*

*On 14/04/2025, following a review of the Ct1 31/12/2021, the CT1 was amended by [the Respondent] to remove the first instalment amount. This resulted in a liability to recoup the earlier refund.*

*We regret to inform the Appellant that [the Respondent] is legislatively precluded from making a payment in this case, and no amount of the credit claimed can be paid to the company.*

*Under Section 766(4) the excess shall be carried forward and treated as an amount by which [CT] for the next succeeding accounting period may be reduced, and so on for succeeding accounting period. This means that while the credit cannot be paid, it can be used to offset against future [CT] liabilities.*

*[...]" (sic) (emphasis in the original)*

## **Legislation and Guidelines**

26. Section 766 of the TCA 1997, Tax credit for research and development expenditure, provides for the R&D tax credit and the repayment of the excess of the R&D tax credit. In this appeal, the parties have agreed the claim for the R&D tax credit in FY2021 was made correctly. This appeal concerns the claim for the repayment of the excess R&D tax credit. The relevant provisions in section 766 of the TCA 1997 are:

*"[...]*

*(2) [...] where for any accounting period a company makes a claim in that behalf, the corporation tax of the company for that accounting period shall be reduced by an amount equal to 25 per cent of qualifying expenditure attributable to the company as is referable to the accounting period.*

*[...]*

*(4) Subject to subsections (4A) and (4B), where as respects any accounting period of a company the amount by which the company is entitled to reduce corporation tax of the accounting period exceeds the corporation tax of the company for the accounting period, the excess shall be carried forward and treated as an amount by which corporation tax for the next succeeding accounting period may be reduced, and so on for succeeding accounting periods.*

*(4A)*

*(a) Where as respects any accounting period of a company the amount by which the company is entitled to reduce corporation tax of the accounting period exceeds the corporation tax of the company for the accounting period, the company may make a claim requiring the corporation tax of the preceding accounting period ending within the time specified in paragraph (b) to be reduced by the amount of the excess.*

- (b) *The time referred to in paragraph (a) shall be a time immediately preceding the accounting period first mentioned in that paragraph, equal in length to that accounting period, but the amount of the reduction which may be made under paragraph (a) in the corporation tax of an accounting period falling partly before that time shall not exceed the corporation tax referable to the part of those profits proportionate to the part of the period falling within that time.*

(4B)

- (a) *Where a claim under subsection (4A)(a) has been made, and the amount of the excess referred to in subsection (4A)(a) exceeds the corporation tax of the preceding accounting periods ending within the time specified in subsection (4A)(b) or where no corporation tax arises for those preceding accounting periods, the company may make a claim to have any excess remaining paid to the company by the Revenue Commissioners.*
- (b) *Subject to section 766B, on receipt of a claim the Revenue Commissioners shall pay any excess remaining to the company, in 3 instalments -*
- (i) *the first instalment shall be paid by the Revenue Commissioners not earlier than the date provided for in paragraph (b) of the definition of 'specified return date for the chargeable period' as defined in section 959A, for the accounting period in which the expenditure on research and development was incurred and shall equal 33 per cent of the excess remaining,*
- (ii) *in respect of the second instalment -*
- (I) *the excess remaining, as reduced by the first instalment under subparagraph (i), shall be first treated as an amount by which the corporation tax of the accounting period next succeeding the accounting period in which the expenditure giving rise to the claim under this subsection was incurred, is reduced in accordance with subsection (4), and*
- (II) *the second instalment shall be paid by the Revenue Commissioners not earlier than 12 months immediately*

*following the date referred to in subparagraph (i) and shall equal 50 per cent of the amount of the excess remaining as reduced by the aggregate of the first instalment under subparagraph (i) and the amount treated as reducing the corporation tax of an accounting period under clause (I),*

*and*

*(iii) in respect of the last instalment -*

*(I) the excess remaining, as reduced by the first and second instalments and by the amount treated as reducing the corporation tax of an accounting period under clause (I) of subparagraph (ii), shall be first treated as an amount by which the corporation tax of the accounting period next succeeding the accounting period referred to in clause (I) of subparagraph (ii) is reduced in accordance with subsection (4), and*

*(II) the last instalment shall be paid by the Revenue Commissioners not earlier than 24 months immediately following the date referred to in subparagraph (i) and shall equal the amount by which the excess remaining is reduced by the first and second instalments and by the total of the amounts by which the corporation tax of an accounting period is reduced under clause (I) of subparagraph (ii) and under clause (I) of this subparagraph.*

*(5) Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred.*

*[...]"*

## **Submissions**

### *Evidence from the Appellant's witness*

27. At the appeal hearing the director of the Appellant (“the Witness”) gave evidence on the background to the Appellant’s business, and the claims for R&D credit and repayment of the excess R&D credit. The Witness stated the Appellant was in a start-up phase [REDACTED]. The Witness stated that the Appellant was not in a CT payable position from its activities in FY2021 and subsequent years. The Witness stated that the only way a cashflow value could be obtained from the R&D tax credit claimed in FY2021 was to claim repayment of the excess R&D credit for that year via the claim mechanism available under the relevant legislation. The Witness emphasised the importance of the positive cashflow benefit that arose from the repayments of the excess R&D credits when they were received, and the cashflow difficulties that resulted when those repayments were subsequently clawed back by the Respondent.

### *Appellant's submissions*

28. At the appeal hearing, the Appellant’s agent presented the appeal and made submissions on behalf of the Appellant. The agent referred to the Appellant’s Notice of Appeal and SoC and submitted that an administrative error by the agent led to the omission of the claim for the repayment of the excess R&D tax credit for FY2021 from the amended CT return filed on 13 September 2022. The agent stated that the R&D tax credit had been correctly claimed within the twelve-month time limit for such claims in the CT return submitted on 13 September 2022. The agent noted that the Respondent had accepted the claim for the repayment of the excess R&D tax credit in its correspondence to both the agent and the Appellant on 15 September 2023. The agent referred to the delay in the Respondent’s processing of the claim for the R&D tax credit, after that claim was made on 13 September 2022, and the extensive efforts of the Appellant’s in-house accountant during the period 13 September 2022 to 23 August 2023 to obtain, from the Respondent, an update on the status of the repayment that the Appellant was expecting. The agent submitted that, during the numerous telephone calls between the Appellant’s in-house accountant and the Respondent during this time, the Respondent did not indicate that the claim for the repayment of the excess R&D tax credit had not been made correctly in the CT return submitted on 13 September 2022. The agent stated that if the Respondent had so notified the Appellant on a timely basis there would have been an opportunity for the agent to correct the CT return within the twelve-month time limit laid

down in section 766(5) of the TCA 1997. The Appellant's agent also submitted that the R&D Panel in the CT return on ROS is long and confusing and requires a number of different boxes to be completed to make the separate claims for the R&D tax credit and the repayment of the excess R&D tax credit. The agent also submitted that this was the agent's first experience of making a claim for repayment of the excess R&D tax credit.

#### *Respondent's submissions*

29. At the appeal hearing, the Respondent submitted that a claim for the repayment of the excess R&D tax credit for FY2021 is made by completing Box 21 on the R&D Panel of the CT return on ROS. The Appellant's agent completed Box 2 on the R&D Panel within the statutory time frame, thereby claiming the R&D tax credit correctly. However, it is the Respondent's position that, as Box 21 was completed after the statutory time limit had expired, the claim for the repayment of the excess R&D tax credit was not made in time and therefore could not be allowed. The Respondent stated that CT returns are made under the self-assessment system. As such, the Respondent submitted that it was the responsibility of the Appellant and its agent to ensure the correct claims are made in the CT return within the statutory timeframe laid down for such claims. The Respondent stated that, when its case worker made the amendments to the CT return for FY2021 following the MyEnquiries request received from the agent on 24 August 2023, and the assessment was issued for FY2021 on 18 September 2023 including the claim for the repayment, this was done pursuant to the self-assessment system. The Respondent confirmed that, following review of the claim by an R&D case worker, the claim was refused as it was found to have been made outside the statutory time limit imposed by section 766(5) of the TCA 1997. The Respondent then issued the assessments for each of the relevant years, on 14 April 2025, whereby the repayments previously issued for each of those years were clawed back. The Respondent empathised with the Appellant and its agent in the circumstances but stated that it is precluded under legislation from allowing the repayment that had been claimed under section 766(4B) of the TCA 1997 as that claim for the repayment had not been made within the required twelve-month timeframe set down in the legislation. The Respondent submitted that the deadline under section 766(5) of the TCA 1997 is clear and the Respondent is legislatively precluded from making the repayment to the Appellant in this case.

#### **Material Facts**

30. Having considered the evidence of the Witness and the submissions from both parties in this appeal, the Commissioner makes the following findings of material fact:

- 30.1. The Appellant is a limited liability company which was incorporated in Ireland on 28 February 2020.
- 30.2. The Appellant is registered for CT.
- 30.3. The Appellant has a financial year end of 31 December.
- 30.4. On 12 July 2022, on behalf of the Appellant, the Appellant's agent filed a CT return for FY2021 on ROS.
- 30.5. On 13 September 2022, on behalf of the Appellant, the Appellant's agent filed an amended CT return for FY2021 on ROS.
- 30.6. The amended CT return for FY2021, filed on 13 September 2022, included a claim for an R&D tax credit for qualifying R&D expenditure incurred in FY2021, with that claim being made in accordance with section 766(2) of the TCA 1997.
- 30.7. The total R&D tax credit claimed in FY2021 was [REDACTED].
- 30.8. The claim for the R&D tax credit in FY2021 has been accepted by the Respondent and is not in dispute in this appeal.
- 30.9. The amended CT return for FY2021, filed on 13 September 2022, did not include a claim for the repayment of the excess R&D tax credit for FY2021 pursuant to section 766(4B) of the TCA 1997, as Box 21 of the R&D Panel in the CT return was not completed.
- 30.10. The claim for the repayment of the excess R&D tax credit for FY2021, pursuant to section 766(4B) of the TCA 1997 was filed by the Appellant's agent, on behalf of the Appellant, via an email sent to the Respondent on 24 August 2023.
- 30.11. The claim for the repayment of the excess R&D tax credit for FY2021, pursuant to section 766(4B) of the TCA 1997, was repaid in three instalments for the relevant years, resulting in repayments of the excess R&D tax credit for FY2021 being issued by the Respondent as follows:
  - 30.11.1. A first instalment repayment amount relating to FY2021 of [REDACTED] pursuant to the provisions of section 766(4B)(b)(i) of the TCA 1997;
  - 30.11.2. A second instalment repayment amount relating to FY2022 of [REDACTED] pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997; and
  - 30.11.3. A third instalment repayment amount relating to FY2023 of [REDACTED] pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997.

30.12. Following a review of the claim for repayment of the excess R&D credit for FY2021, on 11 April 2025, the Respondent notified the Appellant and the Appellant's agent that the claim was refused as it had been made outside the statutory twelve-month time limit laid down in section 766(5) of the TCA 1997.

30.13. On 14 April 2025, the Respondent issued the assessments for each of the relevant years clawing back the repayments that had previously been issued to the Appellant as follows:

30.13.1. The first instalment repayment amount relating to FY2021 of [REDACTED] pursuant to the provisions of section 766(4B)(b)(i) of the TCA 1997;

30.13.2. The second instalment repayment amount relating to FY2022 of [REDACTED] pursuant to the provisions of section 766(4B)(b)(ii)(II) of the TCA 1997, despite the first instalment having been repaid by the Appellant for FY2021; and

30.13.3. The third instalment repayment amount relating to FY2023 of [REDACTED] pursuant to the provisions of section 766(4B)(b)(iii)(II) of the TCA 1997, despite the first instalment having been repaid by the Appellant for FY2021 and the second instalment having been repaid by the Respondent for FY2022.

30.14. The clawback totalled [REDACTED] for the relevant years.

30.15. The clawback was paid through offset against other tax repayments due to the Appellant.

30.16. On 13 May 2025, the Appellant commenced the appeal process by submitting its Notice of Appeal to the Commission.

## **Analysis**

### *Burden of proof in tax appeals*

31. The appropriate starting point for this analysis is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that the assessment to tax or the decision of the Respondent is incorrect.

32. This proposition is well established by case law. For example, in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 ("*Menolly Homes*"), at paragraph 22, Charleton J. stated:

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

33. The Commissioner considers it helpful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated:

*“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute [...]”*

34. The Court of Appeal affirmed this position recently in the case of *JSS & Others v Tax Appeals Commissioner* [2025] IECA 96. In that case, at paragraph 34, McDonald J. stated:

*“[...] the taxpayer bears the burden of demonstrating that a tax assessment is wrong.”*

35. In *Hanrahan v The Revenue Commissioners* [2024] IECA 113 (“*Hanrahan*”), the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The judgment of Donnelly J. and Butler J. stated:

*“97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. [...]”*

*98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; [...]. Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner’s correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation [...].”*

#### *Statutory interpretation principles*

36. As this appeal concerns the interpretation of the legislation that provides for the claiming of a repayment for a tax credit, as laid down in section 766(4B) of the TCA 1997, the Commissioner considers it appropriate at this stage to summarise the well-established principles of statutory interpretation in the context of taxation statutes.

37. The principles to be applied to statutory interpretation were set out by McDonald J. in the High Court case of *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”). In that case, McDonald J. considered the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60.*

*Based on the judgment of McKechnie J. [in the Dunnes Stores v. The Revenue Commissioners case], the relevant principles can be summarised as follows:*

- (a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
- (b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:  
  
“... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*
- (c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*
- (d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*
- (e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*
- (f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what*

*otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

- (g) *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

*“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.*”

38. The principles of statutory interpretation, as stated in the judgment of McDonald J. in *Perrigo* have been confirmed in the more recent decision of the Supreme Court in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 and *Hanrahan* (as referred to above).
39. The approach to statutory interpretation as set down in *Perrigo* is authoritative. The judgment provides a framework for interpreting tax legislation, including legislation that provides for reliefs from taxation, such as section 766 of the TCA 1997 providing for the R&D tax credit and the repayment of such credits in certain circumstances. In interpreting the tax legislation relevant in this appeal, and in particular section 766(5) of the TCA 1997, the Commissioner is satisfied that a literal interpretative approach must be taken and the wording in the statutes must be given their ordinary, plain and natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, in accordance with the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

*Statutory time limit*

40. Section 766 of the TCA 1997 is entitled “*Tax credit for research and development expenditure*”. It makes provision for R&D tax credits to be claimed by companies in respect of qualifying R&D expenditure incurred (section 766(2) of the TCA 1997). The section also provides for the repayment of the R&D tax credits in certain circumstances (section 766(4B) of the TCA 1997).
41. Section 766(4B) of the TCA 1997 provides that where the R&D tax credit claimed by a company in an accounting period cannot be offset against the CT of the company for that same accounting period or the immediately preceding accounting period, a claim may be made by the company to have the excess amount of the R&D tax credit repaid to the company in three instalments. The Commissioner is satisfied that the legislation provides that a claim is required to be made by the company in order to obtain the repayment of the excess R&D tax credit under section 766(4B) of the TCA 1997.
42. Section 766(5) of the TCA 1997 sets down the time limit for making claims under section 766 of the TCA 1997, providing:

*“Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim is incurred.”* (emphasis added)
43. The Commissioner is satisfied that the meaning of the word “*shall*” in section 766(5) of the TCA 1997 is plain and self-evident. The Commissioner finds that, adopting a literal interpretation and applying the ordinary meaning of the words in context means that the use of the word “*shall*” in that section requires that “*any claims made under this section*” (section 766 of the TCA 1997) must be made within twelve months from the end of the accounting period in which the qualifying R&D expenditure, giving rise to the relevant claim, is incurred. The Commissioner further finds that the legislation is clear and unambiguous in the context of the twelve-month time limit laid down in section 766(5) of the TCA 1997. The Commissioner is satisfied that the twelve-month time limit applies to any claim made under any subsection within section 766 of the TCA 1997. Hence the twelve-month time limit applies to any claim made for repayment of excess R&D tax credits pursuant to section 766(4B) of the TCA 1997, as any claim made under section 766(4B) of the TCA 1997 is a claim made under section 766 of the TCA 1997.
44. The Commissioner is satisfied that the twelve-month time limit provided in section 766(5) of the TCA 1997 applies to the claim that was made by the Appellant’s agent, on behalf of the Appellant, under section 766(4B) of the TCA 1997 in respect of the R&D credits

claimed for FY2021. Therefore, that claim should have been made by 31 December 2022 to be within the statutory time limit. The Commissioner has found as a material fact that on 24 August 2023, the claim under section 766(4B) of the TCA 1997 was made via the Appellant's agent's email to the Respondent stating that the agent was unable to complete the relevant box on the R&D Panel of the CT return due to that box being "greyed out" in the online CT return on ROS. Therefore, the Commissioner is satisfied that the claim was made after the statutory time limit for such claims had elapsed.

45. The Appellant's agent submitted that this was the Appellant's first claim for an R&D tax credit and the Appellant's first claim for repayment of the excess of that credit. The Appellant's agent further submitted that the R&D tax credit legislation and the claim requirements are complex and the R&D Panel in the CT return on ROS is long and confusing with a number of boxes within that panel for completion. The Commissioner accepts that this was the agent's first experience of making a claim under section 766(4B) of the TCA 1997. The Appellant's agent submitted that the delay in making the claim for the repayment of the excess R&D tax credit was due to an administrative error by the agent. The Witness's oral evidence referred to the Respondent's delay in replying to the Appellant's queries on the status of its R&D tax credit claim and the repayment of the excess credit during the period from September 2022 to August 2024. The Appellant's agent submitted that if the Respondent had replied to the Appellant's queries earlier than it did, the Appellant could have had an opportunity to make the claim under section 766(4B) of the TCA 1997 before the expiry of the statutory time limit on 31 December 2022. The Appellant also submitted that the Respondent should have been aware that the Appellant would be seeking a repayment of the excess R&D credit, as the Respondent was aware that the Appellant was not generating taxable profits during its start-up phase based on a holistic view of all the information submitted in the Appellant's CT return.
46. While the Commissioner empathises with the Appellant on the issues raised, the Commissioner is satisfied that the applicable legislation does not provide for any exceptions to the twelve-month time limit, in any of the circumstances outlined. The Commissioner is satisfied that the applicable legislation does not allow her to take these matters into consideration in making her determination. The Commissioner finds that the Appellant's claim for repayment of the excess R&D tax credit, in respect of qualifying R&D expenditure incurred in FY2021, was made after the statutory time limit had elapsed and therefore the claim is out of time.

## *Conclusions*

47. Having considered the relevant legislation, the evidence from the Witness during the hearing and the submissions from both parties, the Commissioner concludes as follows:
- 47.1. In an appeal before the Commission, the burden of proof rests on the Appellant who must prove, on the balance of probabilities, that an assessment to tax or a decision of the Respondent is incorrect. For the reasons set out in the analysis above, the Commissioner is satisfied that the Appellant has not discharged the burden of proof that, on the balance of probabilities, the assessments for each of the relevant years, dated 14 April 2025, were incorrect.
- 47.2. The legislation which provides for the claiming of repayments of excess R&D credits includes a requirement that such a claim must be made within twelve months of the end of the accounting period in which the qualifying expenditure on R&D giving rise to the claim is incurred (section 766(5) TCA 1997).
- 47.3. The Appellant's application for repayment of the excess R&D credit for FY2021 was made on 24 August 2023. The deadline for the making of that claim, under section 766(5) of the TCA 1997, was 31 December 2022. Therefore, the claim was made after the statutory time limit of twelve months had expired.
- 47.4. The Commissioner does not have discretion to disapply the statutory time limit imposed in section 766(5) of the TCA 1997 in any of the circumstances that have been submitted by the Appellant. The applicable legislation does not permit the Commissioner to take any such discretionary matters into consideration
48. The Commissioner notes that the R&D credit claim for FY2021 of [REDACTED] has already been granted and is not in dispute in this appeal. The Respondent has confirmed that this R&D tax credit is available for carry forward for offset in future accounting periods. The Commissioner acknowledges the Appellant's submission that it will be some time before the Appellant is in a position to utilise the R&D tax credit carried forward in this manner and, in the meantime, the Appellant has suffered a negative cashflow impact. While the Commissioner has every sympathy with the Appellant in this regard, she does not have any discretion in relation to this matter.
49. The Commissioner appreciates that this decision will be disappointing for the Appellant and acknowledges the particular circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the assessments were correct and was prudent to do so. However, the Commissioner must make her determination in accordance with the legislation.

### **Determination**

50. As such and for all the reasons set out above, the Commissioner determines that this appeal is denied and the assessments for each of the relevant years, issued by the Respondent on 14 April 2025, shall stand.
51. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

52. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

53. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Suzanne Carter  
Appeal Commissioner  
9 March 2026