



Overseas Findings: How long does an Overseas Finding last?

Specific Issue Guidance

Do companies need to re-apply for an Overseas Finding every three years?

Overseas Findings last for the duration of the activity

AusIndustry and the Australian Taxation Office (ATO) continue to investigate opportunities to streamline compliance with the *R&D Tax Incentive*. AusIndustry and the ATO are pleased to announce they have agreed that Overseas Findings apply for the duration of the activity. This means that R&D entities that already hold an Overseas Finding for particular ongoing activities need not reapply for those activities after three income years.

R&D entities will still need to apply in respect of overseas activities that are not covered by an Overseas Finding certificate (including where the activities have significantly changed) if they wish to claim the R&D Tax Incentive for expenditure on those R&D activities.

Advance Findings still only last for up to three years

Advance Findings will continue to only bind the Commissioner of Taxation for a period of up to three income years from the start of the income year in which the application was made. After that time, Innovation Australia can make new findings about the eligibility of the activities. If an R&D entity wishes to have the additional certainty provided by an Advance Finding then it may wish to re-apply for the ongoing activities. However, this is not required in order to register R&D activities and claim the *R&D Tax Incentive* for expenditure on those R&D activities.

R&D entities that have already applied to extend findings

Entities that are considering making, or have made, applications to extend findings may wish to consider whether they require any or all of the additional findings applied for.

If you have an assessment underway in relation to an extension to a previous finding, then the AusIndustry officer processing your application will be in touch shortly to discuss whether you need, and wish, to continue with all or part of the additional finding. If you have any queries, please contact the AusIndustry officer processing your application.

Entities that have applied for new findings to extend their previous findings but have not yet had contact with an assessor will shortly be contacted by AusIndustry.

If an R&D entity has applied for findings for new or different activities to those covered by existing findings then the R&D entity may need to continue to have their application for the new findings determined.

Existing certificates

Existing certificates will be sufficient for any Overseas Findings to apply for the duration of the activity - they will not be replaced. The wording on certificates that relates to the 'Income Years Commissioner is bound for each activity' only relates to Advance Findings listed in the document. It does not relate to any Overseas Findings listed in the document. The wording will be updated in future certificates to make it clear this only applies to the Advance Findings.

Precedence of this Guidance

This guidance takes precedence over earlier publications to the extent that past statements about the duration of Overseas Findings conflict with this publication.

Background to Overseas Findings

R&D entities wishing to claim expenditure on R&D activities conducted outside Australia and its external territories must obtain an Overseas Finding for those activities. The ATO allows a minor exception for incidental expenditure on overseas activities (for more details see the link below). Applications for Overseas Findings must be submitted during the income year in which the company first wishes to claim the expenditure on those activities. Late applications cannot be backdated and no extensions of time can be given under the legislation. In order to obtain a positive Overseas Finding several conditions must be met and the activities must be covered by an Advance Finding which is usually applied for at the same time and on the same AusIndustry application form.

Background to Advance Findings

R&D entities wishing to have certainty about the eligibility of their activities may apply for an Advance Finding by lodging the appropriate form with AusIndustry. An Advance Finding is only required if an R&D entity wants the certainty or wishes to apply for an Overseas Finding. R&D entities do not need to seek an Advance Finding for activities conducted within Australia and its external territories.

An Advance Finding determines the eligibility of an R&D activity and is binding on the Commissioner of Taxation for up to three income years, commencing in the income year of application. Advance Findings only bind the Commissioner in respect of the eligibility of the activities. They do not bind the Commissioner in respect of the eligibility of particular expenditure. During the period for which the Commissioner is bound by a certificate stating that the activities satisfy the definition of R&D activities, Innovation Australia cannot issue a negative finding in regard to activities covered by the certificate.

In order to obtain a positive Advance Finding, entities need to describe their activities in sufficient detail to demonstrate that they meet the legislative definition of R&D activities.

Need to Register and Claim

All R&D entities wishing to access the R&D Tax Incentive need to register their activities conducted during an income year within 10 months after the end of that income year and lodge a tax return including a completed Research and Development Tax Incentive schedule with the ATO. An Advance or Overseas Finding is not registration. R&D entities need to apply separately to register their R&D activities.

Further information

For further information from AusIndustry on Advance and Overseas Findings including the criteria please go to:

<http://www.business.gov.au/grants-and-assistance/innovation-rd/RD-TaxIncentive/Eligibility/Pages/Findings-Advance-and-Overseas.aspx>

For further information from the ATO on claiming expenditure in relation to overseas activities with or without an Overseas Finding please go to:

https://www.ato.gov.au/Business/Research-and-development-tax-incentive/In-detail/Guides--ATO/Research-and-development-tax-incentive---amounts-you-can-claim/?page=11#Expenditure_on_overseas_activities

This document is intended to provide useful information for companies considering accessing the *R&D Tax Incentive*. However it is not exhaustive and it is not legal or financial advice. It is your responsibility, with the assistance of any advice you wish to seek, to satisfy yourself about the eligibility of your activities for the *R&D Tax Incentive*. The Commonwealth disclaims all liability for any loss or damage arising from you or anyone else relying on this document or any statement contained in it.