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The R&D Tax Incentive

Guide to Findings

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Introduction

The R&D Tax Incentive is a broad-based, market driven program accessible to all industry sectors.¹ It provides a targeted tax offset to encourage more companies to engage in research and development (R&D).

The *R&D Tax Incentive* aims to boost competitiveness and improve productivity across the Australian economy by:

- encouraging industry to conduct R&D that may not otherwise have been conducted;
- providing business with more predictable, less complex support; and
- improving the incentive for smaller firms to engage in R&D.

The *R&D Tax Incentive* is jointly administered by AusIndustry (on behalf of Innovation Australia) and the Australian Taxation Office (ATO).

This guidance product provides information solely on the topic of findings, which are decisions made by Innovation Australia about a company's eligibility in specific circumstances.

Part A contains general information applicable to all findings. It is important to read Part A first before reading a subsequent Part on a particular finding that you are interested in.

¹ The Australian Government has committed to target access to the *R&D Tax Incentive* to entities with aggregated assessable income of less than \$20 billion. This change requires legislation. More information is available from AusIndustry.

Part A · Information on all findings

What are findings?

Innovation Australia, assisted by AusIndustry, can provide advice in the form of 'findings' under the *R&D Tax Incentive*. A finding is a decision by Innovation Australia about a company's eligibility in specific circumstances.

Findings are made on a range of matters relating to:

- the eligibility of activities (as either core R&D activities or supporting R&D activities²);
- activities performed overseas;
- registration of activities that companies have self-assessed to be eligible under the program; and
- particular technology acquired for the purpose of eligible activities.

The objective of findings is to:

1. provide certainty to companies about their entitlement to benefits under the *R&D Tax Incentive*; and
2. give Innovation Australia powers to carry out compliance and protect the program's integrity in relation to eligible research and development (R&D) activities.

Findings bind both Innovation Australia and the Australian Taxation Office (ATO), in that both agencies must administer the *R&D Tax Incentive* consistently with any findings made. Ultimately a finding affects registrations and claims that may be made under the program.

Findings can be initiated in a number of ways and at different times. Companies or the ATO can request particular findings; Innovation Australia can also independently initiate a finding.

In addition to findings, the ATO provides advice through its private rulings. Further information is available from the ATO website.

Who makes the findings?

The *R&D Tax Incentive* is administered jointly by AusIndustry (on behalf of Innovation Australia) and the ATO.

Innovation Australia has key functions relating to registering R&D activities and research service providers, as well as making findings.

Innovation Australia is assisted by AusIndustry officers who are delegated certain powers in relation to findings. AusIndustry officers:

- conduct the initial investigation into the merits of activities or technology that is the subject of a proposed finding;
- gather relevant information to analyse whether activities meet the legislative requirements;
- provide information to Innovation Australia in a report; and
- make a recommendation (supported by evidence) relating to the finding that should be made.

Innovation Australia considers the recommendations of AusIndustry officers, but is not bound to adopt their recommendations in making its decision.

What are the types of findings available?

There are five types of findings available under the *R&D Tax Incentive*.

1. Advance findings – are about the eligibility of activities before those activities can be registered;
2. Overseas findings – are about activities to be conducted outside Australia;
3. Findings about a registration application – are about activities described in a registration application before they are registered;
4. Core technology findings – are about a technology a company has purchased for use in an activity; and
5. Post-registration findings – are about activities that have been registered.

² Further information on eligible activities can be found in the *R&D Tax Incentive – Eligibility of activities (core and supporting) Information Sheet* and the business.gov.au website.

Who can apply?

The following companies (called 'R&D entities') are eligible to apply for any of the first four findings listed earlier:

- A company incorporated under an Australian law; or
- A company incorporated under foreign law but an Australian resident for income tax purposes; or
- A company incorporated under foreign law that:
 - is a resident of a country with which Australia has a double tax agreement, including a definition of a 'permanent establishment'; and
 - carries on business in Australia through a permanent establishment as defined in the double tax agreement.

Trusts are generally not R&D entities. The one exception is a body corporate acting as trustee of a public trading trust. If you are in doubt as to whether you are an R&D entity, please contact the ATO.

In addition to R&D entities, the ATO may request particular findings. However, a finding about a registration application may only be initiated by Innovation Australia.

A company whose entire income is exempt from income tax are not R&D entities and cannot apply.

Findings are made on the assumption that the applicant has correctly assessed that it is an R&D entity.

Who can apply for consolidated or multi-entry consolidated groups?

A subsidiary member of a consolidated or MEC (multi-entry consolidated) group cannot apply for a finding while they belong to a group. Instead the head company of the group must apply in relation to activities conducted by their subsidiaries.

Applicants must self-assess whether they are a subsidiary company of a consolidated or MEC group. If a subsidiary is given a finding, the finding has no effect and does not bind the ATO or Innovation Australia. Receipt of a finding does not indicate that Innovation Australia agrees with the applicant's assessment that they are eligible to apply. Companies in doubt as to whether they are an eligible entity, should contact the ATO.

Entities that can apply for advance findings on behalf of R&D entities

The Regulations will specify entities who can apply for an advance finding on behalf of one or more R&D entities if they have the latter's written consent³.

Application forms will require evidence of the written consent to act on behalf of the R&D entity.

Summary of the different types of findings

Advance findings

Advance findings may be sought before registration of activities. An advance finding states whether all or part of the activity is: a core R&D activity; a supporting R&D activity; or neither a core nor a supporting R&D activity.

An advance finding does not remove the need for registration nor is it a pre-condition for registration. A company can register an activity without an advance finding being made about the activity.

An advance finding is restricted to activities conducted within the income year that an application is made and/or the next two income years. The advance finding binds the ATO in relation to the eligibility of R&D activities, and Innovation Australia for the purposes of registration.

Overseas findings

A company can only claim expenditure on R&D activities carried out overseas, if the activities are registered and are covered by a finding that it meets the following four conditions:

1. the overseas activity is covered by an advance finding that the activities are eligible R&D activities;
2. the overseas activity has a significant scientific link to 'Australian core activities';
3. the overseas activity cannot be conducted within Australia or the external Territories⁴ for a reason listed in the legislation⁵; and
4. the expenditure on the overseas activity and certain other overseas activities is less than the expenditure on the related core R&D activities and supporting R&D activities conducted in Australia.

An overseas finding is in force from the start of the income year in which the application is made.

³ See the [business.gov.au](https://www.business.gov.au) website for more information on the Regulations.

⁴ Within this Guide, a reference to activities conducted in Australia should also be taken to be a reference to activities conducted in Australia or the external Territories.

⁵ More information on these reasons is in Part C.

Finding about a registration application

At the time of registration, Innovation Australia may choose to make a finding concerning all or some of the activities in the company's application. Only Innovation Australia may initiate this particular type of finding.

This finding about a registration application will state whether all or part of an activity is, or is not, a core or supporting R&D activity that was conducted during the registration year.

AusIndustry (on behalf of Innovation Australia) must register the company's activities found to be eligible. Ineligible activities will not be registered.

These findings will bind the ATO for the relevant incomes years.

Core technology findings

Innovation Australia can make a finding that technology acquired for eligible activities is or is not 'core technology'. Technology is considered to be core technology if it is for one or more eligible activities in certain circumstances. One example is where the purpose of the activities is to obtain new knowledge based on that technology. Core technology includes both intangible property, such as intellectual property and software, and tangible property.

Generally expenditure on core technology or the rights to use core technology cannot be considered in calculating a company's entitlement to the *R&D Tax Incentive*. That expenditure on core technology however may qualify for deductions under other provisions of income tax legislation⁶.

This finding binds the ATO if it is made within four years of the last income year in which the activities (that used the technology) were conducted.

Post-registration finding

Following registration, Innovation Australia can examine a company's activities for the purposes of making a finding about their eligibility. This will only happen to activities which are not already subject to an earlier advance finding or finding at registration. Registration of activities alone does not confirm eligibility of those activities

A post-registration finding states whether all or part of a registered activity was, or was not, a core or supporting R&D activities that was conducted during the registration year.

A post-registration finding binds the ATO, if it is made within four years of the last income year in which the activity was registered. The outcome of the finding may result in the company's tax assessment for an income year being amended to give effect to the finding.

The following table provides a summary overview of the different findings.

⁶ For example, the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997*.

Overview of findings

TYPE OF FINDING	WHO CAN APPLY?				WHEN SHOULD REQUESTS BE MADE OR INITIATED?	EFFECT
	R&D ENTITY	ENTITIES LISTED IN THE REGULATIONS	INNOVATION AUSTRALIA	ATO		
Advance findings	Yes	Yes*	No	No	Before the end of the income year in which the activity was conducted	Innovation Australia must register activities found to be eligible if carried out consistently with the finding. Activities found to be ineligible will not be registered. The ATO is bound as to the eligibility of activities for the income year a request for an advance finding is made and/or the next two income years.
Overseas findings	Yes	No	No	No	In the first income year the overseas activities are conducted	A company can register activities conducted overseas found to meet the conditions under the <i>R&D Tax Incentive</i> as stated in their overseas finding certificate. A company may claim a tax offset for eligible expenditure associated with those activities in their tax return.
Finding about a registration application	No	No	Yes	No	At the time a company seeks to register activities	Innovation Australia will only register activities within a company's registration application found to be eligible. This will mean all or part of the activities sought to be registered may not be registered.
Core technology findings	Yes	No	Yes	Yes	After the technology is acquired and prior to claiming in tax return	Generally a company cannot claim the <i>R&D Tax Incentive</i> for expenditure incurred on acquiring what is found to be core technology. The one exception applies in relation to tangible depreciating assets.
Post-registration findings	Yes	No	Yes	Yes	Within a certain number of years after the activities have been registered	The activities considered to be eligible will remain registered. However, activities found to be ineligible will be considered as never having been registered. The company will need to amend their tax return to remove their claim for the <i>R&D Tax Incentive</i> in relation to those ineligible activities.

* Written consent of the R&D entity is needed.

The process by which findings are made

Findings are made on the basis of information from multiple sources including:

- a company's application;
- subsequent meetings and correspondence with a company;
- site visits organised in advance with the company;
- information provided by the company in response to information requests from AusIndustry;
- research, including literature searches, by AusIndustry officers; and/or
- independent experts engaged to provide opinions on particular cases.

Requests for information

Companies normally have 30 days to provide any requested information and may request an extension of this time period. This request for an extension must be made in writing to AusIndustry. Innovation Australia may allow an extension to provide this information in accordance with the Decision-making Principles⁷.

Decisions that can be made relating to findings

AusIndustry will notify applicants in writing of Innovation Australia's decision. The notice will include one or more certificates in relation to the decisions made. Generally a certificate will include:

- details of the 'R&D entity' to which the finding relates;
- a description of the finding;
- Innovation Australia's reasons for the finding;
- a description of the activity or technology affected by the finding;
- the company's right to have the finding reviewed;
- details of the 'R&D entity' to which the finding relates;
- if Innovation Australia specifies in a finding the times to which the finding relates – the relevant time period(s) the activity was, or is being, conducted; and
- any other information relevant to the particular finding made.

Where a notice fails to meet the above requirements, this does not affect the validity of the finding. Companies will also be given a certificate for each finding made by Innovation Australia where an application has been made by another entity on their behalf. The ATO will also be given a certificate for each finding made by Innovation Australia.

Refusing to make a finding

If a company has applied for a finding, Innovation Australia will be able to refuse to make the finding if justified in accordance with the Decision-making Principles. The Decision-making Principles set out circumstances in which a refusal is justified.⁸

Innovation Australia will advise the R&D entity and/or the applicant in writing of any refusal to make a finding and the reasons for the refusal.

Innovation Australia cannot refuse to make a finding if the ATO has requested the finding, for example in relation to core technology findings and post-registration findings.

Review of findings

Internal review

Decisions which may be subject to an internal review are referred to as 'reviewable decisions'. The following decisions relating to findings are reviewable decisions:

- Findings or decisions to refuse to make a finding
- Decisions to refuse an extension of time for providing information requested as part of an investigation for the purpose of making a finding.

An internal review of a decision may be sought by either affected companies or the ATO.

A company whose interests are affected by Innovation Australia decisions may seek an internal review of those decisions within 28 days after notification of the decision (unless Innovation Australia has allowed additional time).

The ATO can also apply for internal review of a reviewable decision at any time.

The outcome of an internal review may be to confirm, vary or set aside the original decision. If the decision is set aside, it will be replaced with a new decision.

Innovation Australia has 90 days to review the decision. If Innovation Australia does not issue a decision within this time, it will be taken to have confirmed the original decision. This is known as a 'deemed decision'. A company may seek a review of the deemed decision to the Administrative Appeals Tribunal (the AAT).

Unless a company has appealed the deemed decision to the AAT, Innovation Australia is still able to make a decision after the 90 days has expired. Innovation Australia's decision will then apply and the deemed decision will be taken not to have been made.

The company and the ATO will be advised in writing of the internal review decision and the reasons for that decision.

⁷ See the business.gov.au website for further information on the Decision-making Principles.

⁸ See the business.gov.au website for further information.

Review by Administrative Appeals Tribunal

Internal review decisions, including deemed decisions, can be reviewed by the AAT.

An application for review by the AAT must be made within 28 days of receiving notification of the internal review decision or, in the case of a deemed decision, within 28 days from the time the internal review decision was deemed to have been made.

Variations or substitutions of internal review decisions by the AAT take effect from the day on which the reviewable decision took effect (i.e. the decision is treated as if it were always made in the form made by the AAT).

Application forms and advice about applying for an AAT review are available at the AAT's website aat.gov.au.

Part B · *Advance findings*

What is an advance finding

An advance finding is a decision made by Innovation Australia regarding the eligibility of activities before registration.

Should I consider applying for an advance finding?

The following sections outline what to consider before deciding to apply for an advance finding.

What will an advance finding give me?

The intention of an advance finding is to give companies certainty about the eligibility of activities before those activities can be registered. Companies may be attracted to this certainty because they:

- are unsure about the eligibility of their activities; and/or
- want to rely on the advance finding for securing support (financial or otherwise) for the conduct of their commercial project.

Companies who are confident that their activity meets the definitions do not need to apply for an advance finding. An advance finding is not a pre-condition of registration nor does it not relieve a company from registering their activities. Companies will still be required to register their activities at the end of each income year in order to claim the *R&D Tax Incentive*.

When must I have an advance finding?

Generally companies make a choice about whether it is in their interests to seek an advance finding in relation to a particular activity, or group of activities.

The exception to this general rule is where a company intends to conduct all or some of its activities overseas and claim the *R&D Tax Incentive* for those activities as part of its R&D project in Australia. In this situation, it is a pre-condition that the company have an advance finding stating that those activities are eligible before claiming under the program.

The advance finding considers the eligibility of activities conducted or proposed to be conducted overseas, while an overseas finding considers whether certain conditions are met for those overseas activities to be supported under the *R&D Tax Incentive*. If you are interested in an overseas finding, it is discussed in Part C.

What is the effect of an advance finding?

The effect of an advance finding is that:

- Innovation Australia must register or refuse to register the activities subject to the advance finding in accordance with that finding; and
- The ATO is bound as to the eligibility of the activities for the purposes of assessing a company's income tax return for the relevant income year/s.

What is the scope of an advance finding?

An advance finding only relates to activities conducted within the income year that an application for an advance finding is made and/or the next two income years. It does not apply to activities proposed outside of that timeframe.

In addition, a company can only rely on the advance finding if it carries out activities in a way that is consistent with the advance finding granted. The advance finding is ineffective for activities that are materially different to those described in an advance finding.

What information will I likely need to provide?

In applying for an advance finding, companies should be prepared to:

- provide supporting information on their proposed activities as part of their application; and
- respond to any requests for further information about their application.

In order to receive an advance finding stating that the activities are eligible, companies will need to demonstrate that the described activities will meet the definitions of core R&D activities and supporting R&D activities.

Further information on this is discussed later on under 'What type of information will I need to provide?'

When and how can I apply?

An advance finding can be sought in relation to:

- activities completed or conducted in the current income year that an advance finding is sought; and/or
- activities that can reasonably be expected to be conducted in the subsequent two income years.

Applications are due *before* the end of the income year in which the activity was conducted or commenced.

An advance finding cannot be sought for activities occurring in previous income years. If activities relate to a previous income year, the company should proceed to register the activities that they have assessed to be eligible within the deadline for registrations. Registrations are due within 10 months of the end of the income year in which the activity was conducted.

Applications must be made using the approved form available from the business.gov.au website.

AusIndustry has developed a single form for applications for an advance finding and overseas finding. The form incorporates questions about overseas activities; where they are identified, the applicant will be taken to be applying for an overseas finding as well.

What type of information will I need to provide?

Innovation Australia will need sufficient information to make a decision as to:

- whether the conducted or proposed activities meet the legislative definitions; and
- if the activities have yet to occur, whether they are likely to be conducted within the eligible timeframe and registered.

The application form will ask for a range of information to help Innovation Australia make those decisions. The form is available from the business.gov.au website and provides instructions (including help and hover text) as to the information required.

Examples of key information required in relation to eligibility of activities will be for companies to:

- Describe the purpose of the R&D project and eligible activities (categorised as core or supporting R&D activities) to be covered by the advance finding request;
- Outline how they established or will establish that the outcome of the experiments cannot be known or determined on the basis of publicly available knowledge, information or experience (often referred to as the 'knowledge gap');
- Outline the experimentation planned to be undertaken to resolve the unknown or uncertain outcome; and
- Describe the records intended to be kept about the activities to support eligibility with the legislative requirements for the *R&D Tax Incentive*.

Detailed information on the meaning of 'core R&D activities' or 'supporting R&D activities' is contained in the:

- *R&D Tax Incentive – Eligibility of activities (core and supporting R&D activities)* Information Sheet,
- *R&D Tax Incentive: A Guide to Interpretation*, and
- chapter on eligibility in the online *Customer Information Guide to the R&D Tax Incentive*.

Additional information regarding intent to conduct activities

Often requests for advance findings are likely to involve activities that have yet to take place. In these circumstances, Innovation Australia will need to be satisfied that the activities will be conducted and registered within either the income year an advance finding is sought and/or either of the next two income years.

For these proposed activities, applicants will need to provide details of their preparations in anticipation of conducting the activities. Whether it is reasonable to expect that the activities will be conducted within the required timeframe will be determined having regard to all the circumstances.

Relevant considerations could include:

- whether the activity has been identified within the applicant's R&D planning documents or business plan;
- the applicant's overall financial position; and
- evidence that the applicant has made preparations for the commencement of the R&D activities,
 - for example, securing necessary funding, purchasing equipment, developing appropriate plans, or hiring appropriate staff or entering into contracts.

Innovation Australia may request more information as it reasonably needs.

Information requests

Innovation Australia or its delegates may request more information before making a finding. Companies will normally have 30 days to provide the requested information, and may request an extension of time in exceptional circumstances.

What is the outcome of an advance finding?

Innovation Australia's decision will state whether an activity in the advance finding request is: a core R&D activity; a supporting R&D activity; or neither a core nor supporting R&D activity. Innovation Australia may also refuse to make an advance finding if justified in accordance with the Decision-making Principles⁹. Applicants and the ATO will be notified of Innovation Australia's decision. Information on the contents of a notice is discussed in Part A.

Companies should register activities found to be eligible in the advance finding within 10 months after the end of the income year in which the activities were undertaken. Innovation Australia is bound to register these activities found to be eligible in accordance with the advance finding granted. Innovation Australia cannot review these activities to make another finding that is inconsistent with the earlier advance finding.

The ATO will also be bound as to the eligibility of the activities when assessing a company's income tax return for the income year an application for an advance finding is made and/or the next two income years.

What happens if activities are carried out differently after the advance finding?

A finding attaches to the described activities and is limited to the particular R&D entity(ies) to which the finding relates. A R&D entity, different to that listed in the advance finding, cannot rely on the advance finding.

If the activities actually undertaken change, a company will need to assess whether the conducted activities are materially different from those described in the advance finding. Activities which materially differ may still be eligible; however, a company cannot rely on the advance finding that has been given. Instead a company can:

1. Register the different activity with Innovation Australia within the registration deadline (i.e. within 10 months after the end of the income year in which the activity was conducted).

Note that at registration, Innovation Australia may choose to examine that activity for the purpose of making a finding about a registration application. This may result in all or part of the different activities not being registered.

OR

2. Seek a separate advance finding in relation to the different activity. This request will need to be made before the end of the income year in which the different activity was conducted otherwise a company should proceed to the registration option discussed earlier.

⁹ See the [business.gov.au](https://www.business.gov.au) website for information on the Decision-making Principles.

Part C · Overseas Findings

What is an overseas finding?

An overseas finding is a decision made by Innovation Australia regarding whether activities performed outside Australia and the external Territories¹⁰ are eligible under the *R&D Tax Incentive*.

Unlike other findings, an overseas finding is a pre-condition for a company wanting to claim a tax offset under the program. An overseas finding does not remove the need for registration. A company must also still register the activities at the end of each income year in order to claim a tax offset.

What are the conditions for receiving a finding about overseas activities?

There are four conditions to be met for a finding to be made that activities conducted outside Australia are eligible under the *R&D Tax Incentive*.

1. The activities must be covered by an advance finding stating that the activities are eligible.
2. The activities must have a significant scientific link to one or more 'Australian core activities' registered or reasonably likely to be conducted and registered.
3. The activities must be unable to be conducted within Australia because of one or more of the reasons listed in the legislation (these are discussed further under the heading 'Condition 3 – the activity cannot be conducted in Australia')
4. Expenditure on activities conducted overseas must not exceed expenditure on certain Australian activities.

Condition 1:

The activity is covered by an advance finding

The first condition is that the overseas activity is covered by an advance finding stating that the activity is eligible as a core or supporting R&D activity. In order to meet this condition, a company must seek an advance finding for the activities to be conducted overseas.

AusIndustry provides a form that allows an overseas and advance finding to be made in the one application.

The application must be made in the first income year that the overseas activities are conducted. The application can also be made in advance of the company conducting the activity outside Australia. The application cannot be for activities conducted in previous income years.

The application for an advance finding will consider the eligibility of the activities, while the overseas finding will consider whether the overseas activities meet the conditions of the legislation.

Condition 2:

The activity must have a significant scientific link to one or more core R&D activities

The second condition is that the overseas activity must have a significant scientific link to one or more core R&D activities conducted, or to be conducted, solely in Australia. Those Australian activities must be registered or reasonably likely to be conducted and registered for an income year.

This condition requires two things:

- The presence of one or more core R&D activities conducted in Australia (referred to as 'Australian core activities'); and
- A 'significant scientific link' between the overseas activity and the above Australian core activities.

The meaning of these requirements is explained in the following two sections.

What are Australian core activities?

Innovation Australia needs to be satisfied that there is at least one Australian core activity to which the overseas activity has a 'significant scientific link'.

The Australian core activities (i.e. the related activities in Australia) may have been registered under either the *R&D Tax Incentive* or its predecessor the *R&D Tax Concession*. If activities were registered under the *R&D Tax Concession*, Innovation Australia needs to be satisfied that the activities meet the definition of core R&D activities or supporting R&D activities under the *R&D Tax Incentive*¹¹. If the activities were registered under the *R&D Tax Incentive*, Innovation Australia may choose to examine the registered activities and make a finding about them¹².

For Australian core activities yet to be registered, companies must demonstrate that the activities are reasonably likely to be conducted and registered. Whether this requirement is met will be determined having regard to all the circumstances. A company's application should provide detailed information about the related activities in Australia even if a company does not intend to seek an advance finding as to the activities in Australia.

¹⁰ Within this section, a reference to activities conducted in Australia should also be taken to be a reference to activities conducted in the external Territories. The external Territories include: Christmas Island, Cocos (Keeling) Islands, Norfolk Island, Ashmore & Cartier Islands, Coral Sea Islands, Australian Antarctic Territory, Heard & McDonald Islands.

¹¹ More information on transitional requirements is provided on the business.gov.au website.

¹² Findings relating to registered activities is discussed in Part E.

What is needed to establish a significant scientific link?

The overseas activity needs to have a significant scientific link to the identified Australian core activities.

In order to demonstrate a significant scientific link to Australian core activities, the company must be able to demonstrate that the Australian core activities cannot be completed without the overseas activity being conducted.

Condition 3:

The activity cannot be conducted in Australia

The third condition is that the activity cannot be conducted solely in Australia because of one of the following factors:

- conducting the activity requires access to a facility, expertise or equipment not available in Australia;
- conducting the activity in Australia would contravene a law relating to quarantine;
- conducting the activity requires access to a population (of living things) not available in Australia; or
- conducting the activity requires access to a geographical or geological feature not available in Australia.

Condition 4:

Expenditure on overseas activities does not exceed expenditure on Australian activities

The fourth condition is that the financial commitment to the Australian core activities and their related Australian supporting activities must exceed the financial commitment to all overseas activities which have a significant scientific link to the Australian core activities. The underlying consideration here is that expenditure on the related Australian activities has to exceed expenditure on the total overseas activities.

Note that expenditure is not restricted to expenditure incurred only by the R&D entity; it also includes expenditure by 'any other entities', for example all contractors, joint venture partners or collaborators on the project.

a. How is expenditure on overseas activities determined?

The financial commitment to overseas activities is calculated by considering the total amount expended in all income years (both actual and reasonably anticipated) on activities that:

- meet the conditions in the legislation; and
- each other activity conducted overseas (wholly or partly) that has a 'significant scientific link' to the Australian core activities.

b. How is expenditure on Australian activities determined?

The financial commitment to Australian activities is calculated by considering the total amount expended in all income years (both actual and reasonably anticipated) on:

- the Australian core activities (i.e. those activities that cannot be completed without the overseas activity being conducted, and that are registered or reasonably likely to be conducted and registered); and
- the activities conducted in Australia that are supporting the Australian core activities (i.e. supporting R&D activities to the Australian core activities).

What is the outcome of an overseas finding?

Innovation Australia will make a decision as to whether an activity conducted overseas meets or does not meet the four conditions. Innovation Australia may also refuse to make an advance finding if justified in accordance with the Decision-making Principles¹³. Applicants and the ATO will be notified of Innovation Australia's decision. Information on the contents of a notice is discussed in Part A.

Where an activity or group of activities satisfy the conditions, the company must register those activities with Innovation Australia within the deadline for registrations. The company may then claim a tax offset for expenditure incurred in relation to that activity for the relevant income year/s.

¹³ See the [business.gov.au](https://www.business.gov.au) website for information on the Decision-making Principles.

Part D · *Findings about a registration application*

What is a finding about a registration application?

In some cases, Innovation Australia can choose to make a finding about the eligibility of activities described in an application for registration. This finding is made at the time a company seek to register activities. Only Innovation Australia may initiate this particular type of finding.

Innovation Australia may initiate this finding where there is perceived to be a risk of a company's registration being non-compliant with the eligibility requirements.

Companies will be contacted to discuss their registration application where they are subject to this examination prior to a finding being made.

In making its finding, Innovation Australia:

- may re-classify the activity, for example from a core R&D activity to a supporting R&D activity where it meets the legislative definition of the latter;
- may find that only part of an activity meets the definition; and
- does not have to consider every activity in an application for registration. It may make findings in relation to some activities nominated in an application and not in relation to others.

What is the outcome of a finding about a registration application?

The finding about a registration application will state Innovation Australia's decision as to whether all or part of an activity is, or is not, a core or supporting R&D activity that was conducted during the registration year. The ATO and affected R&D entities will be notified of Innovation Australia's decision. Information on the contents of a notice is discussed in Part A.

AusIndustry (on behalf of Innovation Australia) will register the company's activities found to be eligible. The finding is binding on the ATO for the relevant income year.

If some part or all of an activity within a company's registration application is found to be ineligible, it will not be registered.

Part E · Findings about core technology

What is a core technology finding?

Companies may seek a finding about technology that they have purchased for their R&D activities. In this finding, Innovation Australia determines whether the technology is or is not 'core technology'.

What is 'core technology'?

Technology is considered to be 'core technology' if it is for one or more research and development (R&D) activities in the following circumstances:

- Where the purpose of the R&D activities is to obtain new knowledge based on that technology;
- Where the purpose of the R&D activities is to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or
- Where the R&D activities were or are an extension, continuation, development, or completion of the activities that produced the technology.

Core technology is not necessarily limited to intangible property, such as intellectual property and software. It can also include tangible property if those conditions discussed earlier are met.

When would a company seek a core technology finding?

Companies who are in doubt as to whether a technology that they have recently acquired is core technology can request a finding from Innovation Australia. This finding will give companies certainty about how to treat the expenditure in acquiring the technology, or the right to use the technology, in their income tax return.

Information on who can apply for a finding is discussed in Part A. The ATO may also seek this finding, or it can be initiated by Innovation Australia.

Applying for a core technology finding is optional; a company does not need it in order to claim a tax offset under the *R&D Tax Incentive*. Any request should be made prior to claiming a tax offset or deduction in relation to that technology in a company's tax return for the relevant income year/s. A request may relate to technology acquired for the purposes of R&D activities over several income years either in advance of activities being conducted or after.

What is the outcome of a core technology finding?

The finding will state whether the technology for R&D activities is or is not a core technology. Innovation Australia may also refuse to make a core technology finding if a company has requested it. The finding must be made within four years after the R&D activity (that used the technology) was conducted in order to bind the ATO.

The outcome of the finding affects how expenditure on core technology or the rights to use core technology should be treated in a company's income tax return.

Generally expenditure on core technology or the rights to use core technology cannot be considered in calculating your entitlement to the *R&D Tax Incentive*.

The one exception is if the expenditure relates to acquiring a tangible depreciating asset used for conducting registered R&D activities. In these circumstances, a company may be entitled to a notional R&D deduction¹⁴ for the decline in the value of the depreciating asset.

While expenditure on core technology is excluded under the program, it may qualify for deductions under other provisions of income tax law.

If a company has incorrectly included a claim in their tax return relating to technology that is subject to a core technology finding, they will need to amend it accordingly to give effect to the finding.

If a company does not amend their tax assessment, the ATO has powers to do this within certain timeframes to give effect to the finding. The core technology finding binds the ATO if it is made within four years of the last income year in which the activities (that used the technology) were conducted.

Further information about amendments to a company's tax assessment is available on the ATO website.

Information on transitional arrangements about undeducted expenditure on core technology is available in the *R&D Tax Incentive – Core Technology Information Sheet*.

¹⁴ Notional deductions are amounts that a R&D entity can take into account in calculating their offsets under the *R&D Tax Incentive*. See the ATO website for further information.

Part F · *Post-registration finding*

What is a post-registration finding?

Innovation Australia usually accepts applications for registration without verifying the eligibility of activities contained within the application. Registration of activities does not, by itself, indicate that activities are eligible.

Following registration, Innovation Australia can examine a company's activities to make a finding about their eligibility, including whether the activities were conducted during the relevant income year. This will only happen to activities which are not already subject to an earlier advance finding.

A company or the ATO may request this finding, or Innovation Australia can initiate it. Innovation Australia may also refuse in certain circumstances to make a post-registration finding in accordance with the Decision-making Principles except where the request is from the ATO.

What is the outcome of a post-registration finding

The finding will state whether all or part of the registered activity is, or is not, a core or supporting R&D activity that was conducted in the relevant income year.

The outcome of the post-registration finding will vary a company's registration such that it is taken to have been always consistent with the finding.

The activities considered to be eligible will remain registered. However, activities found to be ineligible will be considered never to have been registered while the finding is in force.

A company cannot claim a tax offset for those activities found to be ineligible. If a company has included a claim in their tax return relating to ineligible activities, they will need to amend it accordingly to give effect to the finding.

If a company does not amend their tax assessment, the ATO has powers to do this within certain timeframes to give effect to the finding. The finding will only bind the ATO if it is made within four years of the last income year in which the activity was registered.

Further information about amendments to a company's tax assessment is available on the ATO website.

Where do I go for more information?

Visit the 'Contact Us' page on the [business.gov.au](https://www.business.gov.au) website for full details on how to contact us via phone (**13 28 46**), email or web chat.

Disclaimer

The material in this document aims to provide general guidance only. The intention of the guidance material is to provide useful information that will assist taxpayers seeking to claim the tax offsets available under the program. However, it is by no means exhaustive or in the nature of definitive legal or financial advice. The guidance material cannot and does not purport to extend or supplement the operation of the legislation. Any examples provided in the guidance material are for illustrative purposes only and are not an exhaustive statement of the application of the legislation to any particular fact situation.

It is up to you and your advisers to manage your financial and tax affairs, and to ensure the accuracy of any information that you provide concerning your claims. You are also responsible for keeping yourself informed of any changes to the law that may affect your rights and responsibilities in claiming the *R&D Tax Incentive* for R&D.

