



## AusIndustry Registration Administrative Arrangements for the *R&D Tax Incentive* \$100 million threshold

### Specific Issue Guidance

A rate threshold has been placed on *R&D Tax Incentive* claims in excess of \$100 million for the 2014-15 and later income years.

The *R&D Tax Incentive* continues to be available to all eligible entities carrying out eligible R&D activities, including those which may expend more than \$100 million per year on R&D activities.

AusIndustry's existing registration administrative arrangements will accommodate the change to a \$100 million tax offset rate threshold.

In order to claim an offset under the *R&D Tax Incentive* for any R&D activity, that activity must be registered. Expenditure on registered R&D activities may not be claimed as a normal deduction, but must be claimed as an R&D Tax offset.

For registered activities, expenditure up to \$100 million will attract the concessional tax offset at the relevant rate depending on the aggregated turnover of the entity. If activities are registered that give rise to notional deductions in excess of \$100 million, then any notional deductions in excess of \$100 million will instead attract a tax offset at the corporate tax rate.

This may mean that registering activities that result in notional deductions in excess of \$100 million may not provide any additional tax benefit to an R&D entity, compared to not registering those activities and claiming the related expenditure as a normal deduction.

Companies will need to make their own decisions about the tax effects and other effects of registering activities in excess of \$100 million in their own tax circumstances, and may wish to seek independent professional advice.

#### **What happens if only \$100 million of activities were registered, and registered activities turn out not to be eligible?**

R&D entities are obliged to carry out self-assessment of the eligibility of activities that they apply to register as R&D activities, and must retain records to substantiate the eligibility of activities and their expenditure claims under the programme. AusIndustry and the ATO have developed a suite of guidance on the *R&D Tax Incentive* to support companies in their self-assessment and record keeping obligations. Guidance is available online at [business.gov.au](http://business.gov.au)<sup>1</sup> and [ato.gov.au](http://ato.gov.au)<sup>2</sup>.

Companies are expected to register R&D activities that have been carefully self-assessed and that are genuinely believed to be eligible under the programme. If a company considers that activities have a measure of genuine eligibility risk, it would be expected to seek an Advance Finding from Innovation Australia to determine eligibility prior to applying for registration.

In the event that compliance findings by Innovation Australia establish that registered activities are not eligible R&D activities, or ATO compliance activities establish that expenditure on registered activities is not eligible R&D expenditure, a company may apply to AusIndustry to make a late registration of R&D activities that were not registered because, at the time of the relevant year's registration, the company genuinely believed it had registered eligible R&D activities with \$100 million expenditure. AusIndustry would consider this as an exceptional circumstance, so long as the company can substantiate that it had carried out a careful self-assessment of eligibility of the activities in its original registration against all the required elements of the legislative R&D activity definitions.

However, it should be noted that the decision on accepting such a late registration application would have regard to the *Industry Research and Development Decision Making Principles 2011*, which among other things require that the evidence will have to be considered, and that the past or present behaviour, or any contributing act or omission, of the company are considerations.

Any application for late registration due to compliance action in these circumstances would likely be subject to further compliance scrutiny. Companies will need to ensure that they keep adequate records to substantiate the eligibility of R&D activities that they may wish to register at any stage, whether an initial registration or a late registration of activities arising from AusIndustry's acceptance of a company's exceptional circumstance as outlined above.

There are statutory time limits that apply to amending taxation assessments. The ATO has published guidance<sup>3</sup> on the time limits including the special rules that apply in relation to the *R&D Tax Incentive*, and how to amend a claim for the *R&D Tax Incentive*. It is recommended that companies and their advisors review this material for their information and reference.

1 <http://www.business.gov.au/grants-and-assistance/innovation-rd/RD-TaxIncentive/Pages/default.aspx>

2 <https://www.ato.gov.au/Business/Research-and-development-tax-incentive/About-the-program/>

3 <https://www.ato.gov.au/Business/Research-and-development-tax-incentive/Correcting-mistakes-and-disputing-decisions/Amend-your-tax-return/>, and <https://www.ato.gov.au/general/building-confidence/public-and-international-groups/tailored-engagement/amendment-periods/>