



## AusBiotech response to the Consultation Paper re R&D Tax Incentive quarterly payments

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## Introduction

Please find following comments from AusBiotech, Australia's biotechnology industry organisation, working on behalf of members for more than 25 years to provide representation and services to promote the global growth of Australian biotechnology. AusBiotech is a well-connected network of over 3,000 members in the life sciences, including therapeutics, medical technology (devices and diagnostics), food technology and agricultural, environmental and industrial biotechnology sectors.

As such, AusBiotech has been and remains very supportive of the adoption of the R&D Tax Incentive and agrees with the Government that it is the "biggest reform to the way Government supports business investment in innovation for over a decade" in its design "to encourage companies to undertake R&D activities, which will deliver wider benefits to the economy and society."

AusBiotech is also fully supportive of the 2008 Review of the National Innovation System, which recommended that:

*"Risk management models be developed to maximise the extent to which the refundable tax [offset] can be paid more regularly — at least quarterly in arrears. Regard should be had to the likely benefit relative to administrative and compliance costs and the need to manage risk."*

## AusBiotech comments

A survey conducted by AusBiotech as part of a series of member briefings on the R&D Tax Incentive, indicated the timing of the receipt of payments (i.e. quarterly or annually) will be a critical factor in its value as an incentive for additional R&D activities.

AusBiotech and the biotechnology community congratulate the Government on its resolve to introduce quarterly payments from 1 January 2014. AusBiotech has been advocating for quarterly payments since its first submission on the Tax Credit and is pleased to see the Government responsive to the cash-flow needs of small companies, giving companies the ability to smooth out cash-flow over the year and provide increased predictability.

However, this great news story, could quickly and easily switch to a bad news story if the process is too cumbersome or discouraging for the companies it seeks to assist, and AusBiotech would like to contribute the following comments:

Response to Q1: Are the proposed arrangements for quarterly credit workable? What features are most useful or problematic? How might the arrangements be improved while appropriately managing risks to companies and the Commonwealth?

Referring to the process flow chart depicted in Figure 1 (page 11), this diagram is indicative of the complexity of the proposed claiming process and highlights the many points at which it may be delayed or a problem may occur. Further, for all companies and small companies in particular, speed is as important as money, and efficiency in the process will be vital to its success as a mechanism to give companies the benefits of quarterly cash-flows.

AusBiotech asks the Government to give an undertaking to set the number of days that will elapse in each step and give an assurance that the whole claim process will be finalised within four weeks of initiation. Clearly the time taken by a company will be added into this period. There is precedent within Government of such an approach, with similar provisions used by regulatory agencies such as the TGA. The complexity is such that unless the amount to be claimed is substantial, we fear the system may not be used by small companies, whose compliance burden is comparatively greater. In illustration, we understand anecdotally that currently there is at least a two-month delay on the

June year-end refundable claims. Any undue delay will reduce the positive impact of the policy by reducing its attraction to industry, in particular to small companies.

The tagging of the quarterly payment to the PAYG system appears to be reasonable from an integrity point-of-view, as is the ability for a company to vary from its 'safe harbour' arrangement to account for variation in R&D spending. However, there is a low level of risk in allowing self assessment to replace the safe harbour provision and would be more workable and efficient for companies. AusBiotech believes this would provide a better alternative and asks the Government to consider it.

In the case that a repayment needs to be made, we ask the Government to provide some leniency of timeframe or repayment provisions, if the amount involved is small or if it will cause solvency issues for the company involved. If the amount to be repaid is less than 10 per cent or a \$1 million variation, it could be broken down into payments or deducted from the next quarterly claim, to allow for planning. While we understand the real need for compliance measures, there is also a real need to give companies confidence and certainty.

The requirement for small companies to pay back to the ATO immediately with GIC applying, would be untenable for some. The uncertainty associated with a dual-managed scheme and high-level assessment of activities, calls for a more reasonable approach to paying back over-charges particularly for companies undertaking R&D activities not yet in a commercial setting.

Response to 2: What type of guidance material or services would be most useful to assist companies to access quarterly credits and meet any associated obligations?

AusBiotech recommends that the Government develop an online calculator to appear on the ATO website, that is accompanied with the claim process steps and maximum guaranteed timeframes for each step. This will enable companies to have a clear oversight of how the process works and give immediate self-guidance and assessment for business planning purposes.

The need to go through the claim process quarterly will be onerous for small companies, and the provision of pre-filled forms (after the first claim) would make subsequent claims faster and easier – thereby encouraging companies to use the system and in doing so reduce the burden on them. If companies have to advise the ATO quarterly on their continuing eligibility, this again puts the onus of work on the claiming companies, and could be simplified with a pre-fill online form arrangement.

Response to 3: Do the proposed arrangements for quarterly credits create any problematic interactions with other taxation or regulatory arrangements? If so, what are these interactions and how should they be addressed?

The dual-managed scheme also calls for serious attention to the full integration and harmonisation of the process between ATO and AusIndustry, as well as consistency within each organisation. For example, with companies needing to provide a high-level assessment of their R&D activities for the year to AusIndustry, it is unclear how a brief outline of proposed activities will provide enough information to receive payments – noting that full applications often don't give enough information to satisfy. What if a company provides a high-level review of activities, it is accepted by AusIndustry and then when full application is made, the claim is rejected? Different assessors can see things quite differently.

AusBiotech is interested in how the pre-approval process (from AusIndustry) could create certainty in the quarterly payment process. Perhaps the most effective way would be for companies to apply for an Advanced Finding on activities, as this would mean a once-off assessment of R&D activities,

providing enough information for a proper assessment and reducing the need for the same information at the end of the income year.

Response to 4: Are there any other comments on the proposed arrangements for quarterly credits outlined in this consultation paper?

In extension to the comments on the harmonisation between AusIndustry and the ATO being critical to the process's success, consideration should be given to personnel needs to be able to assess claims in a timely manner and enable the quarterly refunds to flow to business. I refer back to the note on current delays, and hope that this situation can be avoided in regard to the quarterly payments.

While it appears logical at the administrative level for a need for a company to have claimed R&D tax offset in a prior year to be able to obtain the quarterly payments, this won't help first time claimants and start-ups – which again runs counter to the policy intent. The need for a history will leave them ostracised from a measure that is very much targeted at them in the first place, at least for a year more. AusBiotech invites the Government to make comment about how start-ups will be managed in this process.

#### Conclusion

AusBiotech is supportive of the quarterly credit and welcomes the initiation of its implementation, but is concerned that the complexity, uncertainty and many steps in the process may discourage this policy component from achieving its aim, thereby undermining innovation in Australian SMEs. With the right conditions, the move to quarterly payments can be a vital support to the R&D Tax Incentive and a good news story for Australian innovation.