

From: [Bob Dyring](#)
To: [R&D amendments](#)
Subject: R&D tax incentive amendments
Date: Thursday, 26 July 2018 3:10:01 PM

Thank you for the invitation to comment on the proposed legislation changes to the R&D tax incentive. I have been involved in advising applicants seeking to apply for the R&D tax incentive for more than 30 years. I also assist applicants with claiming their EMDG entitlements.

My experience with both schemes and the bureaucratic process is when a scheme becomes popular, the first we hear is of are so called rorts and rip offs. Therefore the administrators of the scheme under the spotlight claim that the integrity of the scheme is being compromised by dodgy applicants and/or their advisors.

Having been through several ATO reviews and involved with the Victorian State Reference Group (SRG) in respect of the R&D tax incentive, I am able to provide first hand experience of how the current scheme is being administered. It would appear that the ATO is taking a broader role in reviewing claims made under the scheme. That is they are not only closely reviewing the R&D expenses but also the R&D activities being claimed by an applicant.

This action is of great concern, as the ATO does not have the technical expertise to assess the eligibility of the R&D activities. ATO officers are questioning applicant's R&D personnel about the claimed R&D activities. This is the area of Ausindustry's (Innovation and Science Australia-ISA) responsibility and not the ATO. We are told at the SRG meetings that it is the ATO that will audit the R&D expenses claimed and for ISA to review the claimed R&D activities. This is not the current situation. The ATO make it quite clear that they see their role reducing the claims made under the R&D tax incentive. Applicants are afraid to object to the ATO methods out of fear of any further ATO audit reviews.

Your explanatory notes mention the different roles each government agency has under the scheme. In practice this is not the case.

The proposed changes also target a cap of \$4 million for the cash rebate, with the exception of applicants conducting clinical trials. Is the Government trying to pick winners again? Is it taking a view that only certain R&D applicants are worthy of full support. When the current scheme was introduced we were given estimates that more than 24,000 Australian companies would access the R&D tax incentive. There are, from the 2015/16 figures, around 16,500 applicants. Caps have been put on R&D expenditure (\$100 million), a reduction in the cash benefit rate from 45% to 43.5% has been introduced. Applicants with a turnover greater than \$20 million, have seen their R&D tax benefit reduced from 10% to 8.5%.

Another area of inconsistency is the turnover figure. EMDG has a \$50 million turnover limit, R&D \$20 million turnover limit for the cash rebate. The proposed company tax rates have various levels which only complicate the R&D tax incentive. What the business sector needs is a consistent level for all applicants to these schemes. It seems the Government has difficulty in defining, in dollar terms, an SME when compared with a "large enterprise"

The proposed R&D intensity will become an administrative nightmare, complicating a scheme that applicants and their advisors need to be fully aware of the constant policy changes. It is mentioned in the explanatory material that:

This approach, while administratively simple, requires careful consideration as to whether it would give rise to integrity concerns. An R&D intensity calculation on a claimant level may not appropriately reflect the R&D intensity of the claimant as part of

its broader economic group. Examples of where this might occur include where companies have diverse and non-consolidated business structures.

There are upcoming policy changes for example, apparently there is a proposed new fact sheet on R&D software due sometime this year. I have been involved with R&D and the R&D tax incentive since 1985 and those administering the scheme have always struggled with the ICT and software development concepts. This area is changing constantly, it is a technically dynamic industry. It needs to be, to keep up with the demands of all users. Australia also has to compete with every innovative country, therefore R&D and the tax system should support this vital innovation. What R&D rules may apply to this industry in 2018 will probably be outdated within a short space of time.

I am encouraged by R&D tax advisors being involved in more than 70% of the applications. For this reason I cannot understand why Governments and their bureaucrats do not seek the R&D tax advisors comments more readily and apply their knowledge which has both a business and practical advantage.

Perhaps it is summarised better in the Budget Announcement that the proposed changes will save more than \$2.4 billion in the forward estimates period. There is of course an increase cost in the “greater enforcement activity” which means increased personnel to police and monitor the scheme.

Regards

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