

24 July 2018

Manager
Small Business Entities & Industry Concessions Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: RnDamendments@treasury.gov.au

Dear Sir/Madam

Research & Development Tax Incentive Amendments

As an R&D Tax Incentive (**Incentive**) claimant, Telstra welcomes the opportunity to comment on the exposure draft legislation (*Treasury Laws Amendment (Research and Development Incentive) Bill 2018*) and associated explanatory materials, released on 29 June 2018, which implement the Government's 2018-19 Budget measure – *Better targeting the research and development tax incentive*.

We have reviewed the materials and generally support the proposed changes. However, we believe further clarity could be provided in respect of the timing around the Commissioner's publication of R&D information. Secondly, we believe further discretion should be provided to the Board of Innovation and Science Australia (**ISA**) to grant extensions of time in certain circumstances.

Schedule 3 Administrative matters – Reporting information about research and development tax offset

Item 1, section 3G of the *Tax Administration Act 1953*, in Schedule 3 of the Exposure Draft, seeks to improve transparency of the Incentive by requiring the Commissioner to publish, "as soon as practicable after the end of the income year", information about the R&D entities that have claimed notional deductions for R&D activities, including the amount claimed.

There is no prescribed time period in which the Commissioner must publish this information. However, the Explanatory Memorandum notes at paragraph 3.19, that it is intended that the Commissioner will publish one annual report, released several months after the date for the lodgement of the final company income tax returns for an income year.

We submit that more clarity is required as to the timing of the publication of this information, so that it aligns with real life practice. For many entities such as Telstra, the annual tax return is lodged (eg. in December 2018) several months before the R&D Application is due to be lodged with AusIndustry (ie. 30 April 2019). In practice, as the exact amount of R&D expenditure is not known at the time the tax return is lodged, an estimate is provided. This estimate is subsequently updated after the R&D Application is lodged, in a request to the ATO for an amended assessment.

We suggest that consideration be given to publishing the annual report after the due date for lodgement of R&D Applications with AusIndustry, and after the resulting request for an amended assessment has been processed by the ATO, which amendment would generally be lodged in May/June.

The provisions have a built-in "safeguard" to enable the Commissioner to correct errors made in a publication in certain circumstances, such as when an entity submits an amended assessment. While this may be the case, if the information contained in the original tax return is already published, interested parties who do not regularly review the publication for updates will have been misled by amounts which are merely "best estimates" provided by the R&D entity at the time it lodges its income tax return.

Schedule 3 Administrative matters – extensions of time

Currently, extensions of time may be granted by the Board of ISA for various things, such as an application to register R&D activities. Under the proposed rules, the Board of ISA must not grant extensions beyond three months. The only exception is if the subject matter of the extension relates to a pending decision on another matter (see Exposure Draft, Schedule 3, item 18, subsections 3.2(3) and (4) of the *Industry Research and Development Decision-making Principles 2011*).

While we agree that the extension time allowed should not be open-ended, we submit that there should be a discretion in the legislation to allow the Board of ISA to grant extensions beyond three months in certain exceptional situations, eg if there are circumstances completely outside the entity's control, which would mean the entity is unable to complete an application to register R&D activities within the three month extension deadline.

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We would welcome the opportunity to discuss our comments further. If you would like to discuss or clarify any aspect of our submission, please contact Rod Marshall on 0437 002 638 or Ramah Sakul on 0402 145 499.

Yours faithfully



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