



## Australian Government

### The Treasury

## R&D TAX INCENTIVE – TARGETING ACCESS

### SUMMARY OF CONSULTATION PROCESS

The previous government announced on 17 February 2013 that it would target access to the research and development (R&D) tax incentive to small and medium sized entities.

The measure was included in Tax Laws Amendment (2013 Measures No.4) Bill 2013, which was introduced into Parliament on 26 June 2013.

The Government announced on 6 November 2013 that it would reintroduce the measure. It was included in the Tax Laws Amendment (Research and Development) Bill 2013, which was introduced into Parliament on 14 November 2013.

#### Consultation process

Consultation on the draft legislation was conducted between 7 May 2013 and 20 May 2013. Nineteen submissions were received, including eight confidential submissions.

Submissions can be viewed on the [Treasury website](#).

#### Summary of key issues

##### *Issues opposed to the policy intent*

The majority of submissions were generally opposed to the policy intent of the measure; that is, to deny very large companies access to the R&D tax incentive.

##### *Issues with aspects of the draft legislation*

A number of submissions raised concerns about not having the right or the ability to access confidential information about a connected entity's assessable income if a 40 per cent ownership threshold were used. The aggregation of the assessable income of connected entities to determine whether a company is over the \$20 billion threshold is an integrity measure to ensure that large companies cannot circumvent the threshold by diverting R&D activities to other members of a corporate group. Submissions suggested that an increase in the control threshold from 40 per cent to a 50 per cent or greater control test would be more practicable and is consistent with the commercial understanding of control.

Submissions also raised concerns about the use of assessable income instead of turnover, as assessable income includes some amounts that are unrelated to the ordinary business of the company. These submissions felt that turnover would be a better measure as it is based on ordinary income that more accurately reflects the size of the business because it is the income derived in the ordinary course of conducting business activities.



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Some submissions argued that retail fuel sales and transactions between connected entities should not be included in the test for determining access to the R&D tax incentive.

The Government considers that assessable income is an effective test of the size of an entity's Australian operation because it excludes most actively derived foreign income. Developing a new definition of 'Australian turnover' would increase legislative complexity and impose additional compliance costs on taxpayers. Assessable income also excludes some amounts that could be included in the turnover of an entity.

Submissions also claimed that R&D expenditure on developing intangible assets (such as intellectual property) will not be able to be claimed as an immediate deduction and instead will have to be claimed over time under provisions such as the project pooling provisions or 'black hole deduction' provisions in Division 40.

Three submissions argued that the \$20 billion threshold should be indexed.

Submissions also raised concerns that companies will not be able to assess their eligibility for the R&D tax incentive until they complete their income tax return at the end of the year. However, companies will still need to record their expenditure on R&D activities whether they are eligible for the R&D tax incentive or if they were seeking to claim the expenditure as a deduction. Not knowing until the end of the income year will not change a company's need to record its expenditure on R&D activities for tax purposes.

An additional issue raised in submissions is that life insurance companies will be subject to a structural bias with a threshold that uses assessable income because life insurance companies include policyholder investment premiums in their assessable income, while superannuation trustees and fund managers do not.

#### *Changes to the final legislation*

A 50 per cent control test has been adopted to ensure that the test remains practicable while retaining the integrity of the measure.

The final legislation includes a change to avoid the unintended capture of Australian government agencies for the purpose of the aggregated assessable income test. Requiring a company to aggregate its assessable income with entities it is connected to for the purpose of determining access to the R&D tax incentive is an integrity measure to ensure that the company cannot circumvent the threshold by diverting R&D activities to a connected or affiliated entity.

The final legislation also includes consequential amendments to the *Industry Research and Development Act 1986* to ensure the existing provisions for overseas expenditure continue to operate as intended.



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#### **Feedback**

Feedback on the consultation process for this measure can be forwarded to [consultation@treasury.gov.au](mailto:consultation@treasury.gov.au) . Alternatively, you can contact David Lowe on (02) 6263 2860.

Thank you to all participants in the consultation process.