



Australian Government

The Treasury

R&D TAX INCENTIVE – QUARTERLY CREDITS

SUMMARY OF CONSULTATION PROCESS

The Government announced in June 2011 that it would provide advanced payments of the R&D 45 per cent refundable tax offset through quarterly credits.

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

Consultation process

Consultation on policy design was conducted between 3 August 2012 and 31 August 2012. Twenty one submissions were received, including two confidential submissions. Consultation meetings were held with key stakeholder forums for the R&D tax incentive and also stakeholders who expressed an interest in further engagement.

Consultation on the draft legislation was conducted between 12 April 2013 and 10 May 2013. Seven submissions were received in response to consultation. Throughout April and May 2013, consultation meetings were held with key stakeholder forums and some individual stakeholders.

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

Summary of key issues

Submissions were generally supportive of the system and welcomed the Government's response to stakeholder feedback arising from the consultation paper released in August 2012.

Submissions agreed that it was important the system strike a balance between improving cash-flow for companies, minimising the costs imposed on those companies and the Australian Taxation Office (ATO) and maintaining the integrity of the tax system. However, submissions expressed the view that the compliance burden imposed on companies by particular elements of the system was too onerous.

Of particular concern in regards to onerous compliance costs was the design of the complying taxpayer test, which a company needs to meet in order to participate in quarterly credits. Following concerns raised in consultation, changes were made to the complying taxpayer test to make it easier for taxpayers to enter into and participate in the quarterly credits system. The test has been separated out into two components. The first is a simplified entry test into the system, making it easier for taxpayers to self-assess their eligibility. The second component provides a discretion for the Commissioner of Taxation to revoke participation in the case of non-compliance with tax obligations.



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Submissions also expressed concern that the requirement for a company applying to participate in quarterly credits to have at least one year of history in claiming the R&D tax incentive would exclude first year start-up companies. The purpose of the history test is for companies to have a proven record of interacting with the R&D tax incentive. A start-up company in its first year of operation will not have lodged a tax return or claimed the R&D tax incentive. This minimises the risk that the new company's claim for a refundable tax offset will be rejected, requiring them to then repay the quarterly credit amounts. It also provides protection against the real risk of fraudulent claims by 'fly by night' operations. Start-up companies will still be eligible to receive the refundable tax offset at the end of their first income year, and may be eligible to enter the quarterly credits system in their second year.

Submissions were also concerned that a strict liability offence applies to companies who either do not withdraw from the system or do not notify the Commissioner within 28 days after they fail the reasonable receipt test or the complying taxpayer test. A strict liability offence creates a strong incentive for companies to meet their responsibilities under this self-assessment based system. The Commissioner will also have a choice whether to apply an administrative penalty instead of the strict liability offence. This will provide some flexibility to respond to less serious taxpayer behaviour.

Submissions noted concerns about the provision of new powers under the *Industry Research and Development Act 1986* for Innovation Australia to initiate advance findings at any time. They expressed concerns that this applies to all R&D performing entities and not just those participating in the quarterly credits system. The ability to initiate and make advance and overseas findings will form a vital part of the integrity of the quarterly credits system. Affording Innovation Australia these powers to apply to the R&D tax incentive as a whole, not just to quarterly credits, avoids unnecessary complexity in the legislative amendments and additional administrative costs to the Australian Government. To alleviate concerns, the explanatory memorandum has been revised to clarify that the decision-making principles that apply to Innovation Australia decisions will be reviewed to ensure it is clear when it would be appropriate to initiate an advance finding.

Another concern was the application of general interest charge (GIC) if a company's end of year refund of the offset is not at least 85 per cent of payments to the company under the quarterly credits system. The Commissioner has a general power to waive the GIC, which will apply to quarterly credits. However, this has been further clarified with a note in the legislation and further explanation in the explanatory memorandum.

There has been a modification to the final legislation to more clearly outline powers conferred on the Commissioner of Taxation to administer the system. This has resulted in a more general power to withhold payment of an amount based on an assessment of factors. Should the Commissioner's concerns be resolved, then any payments withheld past the due date would need to be paid to the taxpayer with interest. Alternatively, should the Commissioner revoke the company's participation, having withheld the payment would reduce the amount to be recovered. The greater clarity will be of assistance to companies participating in the system and will assist the ATO in protecting the integrity of the tax system.



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Provisions covering two new matters were included in the final legislation. The first is to allow consolidated groups to participate. For mature consolidated groups with stable membership, the legislation now ensures that quarterly credits operates in much the same way that it would for an individual company.

The second new provision is to provide the Commissioner of Taxation with a mechanism to mandate electronic payments for the quarterly credits system. Mandating electronic payments will support the efficient administration of the system. Electronic payments will also ensure that companies receive timely payments. However, the Commissioner will have discretion to allow companies to apply to pay by other means if necessary.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Rachel Thompson on 6263 3832.

Thank you to all participants in the consultation process.