

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Research and Development Incentive) Bill 2018

No. , 2018

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Treasury Laws Amendment (Research and*
6 *Development Incentive) Act 2018.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedules 1, 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
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2 Note: This table relates only to the provisions of this Act as originally
3 enacted. It will not be amended to deal with any later amendments of
4 this Act.

5 (2) Any information in column 3 of the table is not part of this Act.
6 Information may be inserted in this column, or information in it
7 may be edited, in any published version of this Act.

3 Schedules

9 Legislation that is specified in a Schedule to this Act is amended or
10 repealed as set out in the applicable items in the Schedule
11 concerned, and any other item in a Schedule to this Act has effect
12 according to its terms.

13 Note: The provisions of the *Industry Research and Development*
14 *Decision-making Principles 2011* amended or inserted by this Act,
15 and any other provisions of that instrument, may be amended or
16 repealed by an instrument made under section 32A of the *Industry*
17 *Research and Development Act 1986* (see subsection 13(5) of the
18 *Legislation Act 2003*).

2 *Treasury Laws Amendment (Research and Development Incentive) Bill* No. , 2018
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1 **Schedule 1—Main amendments**
2

3 *Income Tax Assessment Act 1997*

4 **1 Subsection 63-10(1) (at the end of the cell at table item 35,**
5 **column headed “Tax offset”)**

6 Add: “or is a tax offset to which subparagraph 67-30(1A)(a)(ii)
7 applies”.

8 **2 Subsection 67-30(1)**

9 Omit “if all or part of the amount of the tax offset is worked out using
10 the percentage in item 1 of the table in subsection 355-100(1)”,
11 substitute “if the amount of the tax offset is worked out in accordance
12 with item 1 of the table in subsection 355-100(1) (disregarding
13 subsection 355-100(3))”.

14 **3 Subsection 67-30(1) (notes)**

15 Repeal the notes, substitute:

16 Note: Otherwise, the tax offset will be a non-refundable tax offset (see
17 item 35 of the table in subsection 63-10(1)).

18 **4 After subsection 67-30(1)**

19 Insert:

20 (1A) Despite subsection (1), if, disregarding the part of the *tax offset
21 (the *clinical trial component*) mentioned in subsection (1B), the
22 amount of the tax offset (the *original offset*) exceeds \$4 million,
23 this Act applies as if:

- 24 (a) the *R&D entity were entitled under section 355-100 to:
- 25 (i) a tax offset equal to the sum of the clinical trial
26 component and \$4 million; and
 - 27 (ii) another tax offset equal to the difference between the
28 original offset and the tax offset mentioned in
29 subparagraph (i); and
- 30 (b) the tax offset mentioned in subparagraph (a)(ii) were not
31 subject to the refundable tax offset rules.

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Schedule 1 Main amendments

1 (1B) The part is such amount of the *tax offset as is attributable to
2 amounts mentioned in subsection 355-100(1) that relate to *R&D
3 activities that form part of a clinical trial.

4 (1C) A *clinical trial* is a planned study of the safety or efficacy in
5 humans of an intervention (including a medicine, treatment or
6 diagnostic procedure) with the aim of achieving at least one of the
7 following:

- 8 (a) the discovery, or verification, of clinical, pharmacological or
9 other pharmacodynamic effects;
10 (b) the identification of adverse reactions or adverse effects;
11 (c) the study of absorption, distribution, metabolism or
12 excretion.

13 **5 Subsection 355-100(1) (heading)**

14 Repeal the heading, substitute:

15 *If notional deductions are between \$20,000 and \$150 million*

16 **6 Subsection 355-100(1) (cell at table item 1, column headed** 17 **“The percentage is:”)**

18 Repeal the cell, substitute:

the R&D entity’s *corporate tax rate for
the income year, plus 13.5 percentage
points

19 **7 Subsection 355-100(1) (table items 2 and 3, column headed** 20 **“The percentage is:”)**

21 Omit “38.5%”, substitute “the R&D entity’s *corporate tax rate for the
22 income year”.

23 **8 Subsection 355-100(1) (note)**

24 Repeal the note, substitute:

25 Note 1: The tax offset will generally be a refundable tax offset if item 1 of the
26 table applies (see section 67-30). However, if the amount of the tax
27 offset (disregarding any clinical trial component) exceeds \$4 million,
28 part of the tax offset will not be refundable (see subsections 67-30(1A)
29 and (1B)).

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Main amendments **Schedule 1**

1 Note 2: The tax offset is increased under subsection (1A) of this section if
2 item 2 or 3 of the table applies.

3 **9 After subsection 355-100(1)**

4 Insert:

5 *R&D premium*

6 (1A) If item 2 or 3 of the table in subsection (1) applies to the *R&D
7 entity, the amount of the *tax offset for the income year is
8 increased by the sum of the amounts (if any) worked out for each
9 item of the following table for that entity:

10

Tiered offset rates

Item	Work out the part of the total amount mentioned in subsection 355-100(1) that:	Multiply that part by this percentage:
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1	exceeds nil but does not exceed 2% of the *R&D entity's expenditure for the income year worked out under section 355-115	4%
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2	exceeds 2% but does not exceed 5% of the *R&D entity's expenditure for the income year worked out under section 355-115	6.5%
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3	exceeds 5% but does not exceed 10% of the *R&D entity's expenditure for the income year worked out under section 355-115	9%
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4	exceeds 10% of the *R&D entity's expenditure for the income year worked out under section 355-115	12.5%
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Main amendments **Schedule 1**

1 **13 Subsection 355-525(4) (heading)**

2 Repeal the heading, substitute:

3 *Amount to be included in assessable income may be reduced if*
4 *notional deductions exceeded \$150 million*

5 **14 Section 355-720 (heading)**

6 Omit “\$100 million”, substitute “\$150 million”.

7 **15 Subsection 355-720(1) (note)**

8 Omit “\$100 million”, substitute “\$150 million”.

9 **16 Section 355-750**

10 Repeal the section.

11 **17 Subsection 995-1(1)**

12 Insert:

13 *clinical trial* has the meaning given by subsection 67-30(1C).

14 ***Income Tax (Transitional Provisions) Act 1997***

15 **18 Subsection 355-325(4A) (heading)**

16 Repeal the heading, substitute:

17 *Amount to be included in assessable income may be reduced if*
18 *notional deductions exceeded \$150 million*

19 **19 Section 355-720 (heading)**

20 Omit “\$100 million”, substitute “\$150 million”.

21 ***Tax Laws Amendment (Research and Development) Act 2015***

22 **20 Subsection 2(1) (table item 3)**

23 Repeal the item.

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Schedule 1 Main amendments

1 **21 Part 2 of Schedule 1**

2 Repeal the Part.

3 **22 Application of amendments**

4 The amendments made by this Schedule apply in relation to
5 assessments for income years commencing on or after 1 July 2018.

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Integrity measures **Schedule 2**
Schemes to reduce income tax **Part 1**

1 **Schedule 2—Integrity measures**

2 **Part 1—Schemes to reduce income tax**

3 *Income Tax Assessment Act 1936*

4 **1 Subsection 177A(1)**

5 Insert:

6 *R&D tax offset* means a tax offset allowed under Division 355 of
7 the *Income Tax Assessment Act 1997*.

8 **2 After paragraph 177C(1)(bc)**

9 Insert:

10 or (bd) an R&D tax offset being allowable to the taxpayer where the
11 whole or a part of that R&D tax offset would not have been
12 allowable, or might reasonably be expected not to have been
13 allowable, to the taxpayer if the scheme had not been entered
14 into or carried out;

15 **3 At the end of subsection 177C(1)**

16 Add:

17 ; and (h) in a case to which paragraph (bd) applies—the amount of the
18 whole of the R&D tax offset or of the part of the R&D tax
19 offset, as the case may be, referred to in that paragraph.

20 **4 At the end of subsection 177C(2)**

21 Add:

22 ; or (f) an R&D tax offset being allowable to the taxpayer the whole
23 or a part of which would not have been, or might reasonably
24 be expected not to have been, allowable to the taxpayer if the
25 scheme had not been entered into or carried out, where:

26 (i) the allowance of the R&D tax offset to the taxpayer is
27 attributable to the making of a declaration, agreement,
28 election, selection or choice, the giving of a notice or
29 the exercise of an option by any person, being a

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Schedule 2 Integrity measures

Part 1 Schemes to reduce income tax

1 declaration, agreement, election, selection, choice,
2 notice or option expressly provided for by this Act; and
3 (ii) the scheme was not entered into or carried out by any
4 person for the purpose of creating any circumstance or
5 state of affairs the existence of which is necessary to
6 enable the declaration, agreement, election, selection,
7 choice, notice or option to be made, given or exercised,
8 as the case may be.

5 Subsection 177C(3)

9 Omit “or (e)(i)”, substitute “, (e)(i) or (f)(i)”.

6 After paragraph 177C(3)(cb)

11 Insert:
12 or (cc) the allowance of an R&D tax offset to a taxpayer;

7 At the end of subsection 177C(3)

14 Add:
15 ; or (i) the R&D tax offset would not have been allowable.

8 At the end of subsection 177CB(1)

17 Add:
18 ; (f) the whole or a part of an R&D tax offset not being allowable
19 to the taxpayer.
20

9 After paragraph 177F(1)(e)

21 Insert:
22 or (f) in the case of a tax benefit that is referable to an R&D tax
23 offset, or a part of an R&D tax offset, being allowable to the
24 taxpayer—determine that the whole or a part of the R&D tax
25 offset, or the part of the R&D tax offset, as the case may be,
26 is not to be allowable to the taxpayer;
27

10 After paragraph 177F(3)(f)

28 Insert:
29 or (g) if, in the opinion of the Commissioner:
30

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Integrity measures **Schedule 2**
Schemes to reduce income tax **Part 1**

- 1 (i) an amount would have been allowed, or would be
- 2 allowable, to the relevant taxpayer as an R&D tax offset
- 3 if the scheme had not been entered into or carried out,
- 4 being an amount that was not allowed or would not,
- 5 apart from this subsection, be allowable, as the case
- 6 may be, as an R&D tax offset to the relevant taxpayer;
- 7 and
- 8 (ii) it is fair and reasonable that the amount, or a part of the
- 9 amount, should be allowable as an R&D tax offset to
- 10 the relevant taxpayer;
- 11 determine that that amount or that part, as the case may be,
- 12 should have been allowed or is allowable, as the case may be,
- 13 as an R&D tax offset to the relevant taxpayer;

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Schedule 2 Integrity measures

Part 2 Clawback of R&D recoupments and feedstock adjustments

1 **Part 2—Clawback of R&D recoupments and**
2 **feedstock adjustments**

3 *Income Tax Assessment Act 1997*

4 **11 Section 4-25**

5 Repeal the section, substitute:

6 **4-25 Special provisions for working out your basic income tax**
7 **liability**

8 Subsection 392-35(3) may increase your basic income tax liability
9 beyond the liability worked out simply by applying the income tax
10 rates to your taxable income.

11 Note: Subsection 392-35(3) increases some primary producers' tax liability
12 by requiring them to pay extra income tax on their averaging
13 components worked out under Subdivision 392-C.

14 **12 Subsection 9-5(1) (table item 4A)**

15 Repeal the item.

16 **13 Section 10-5 (table item headed "R&D")**

17 Omit:

feedstock adjustment 355-465

18 substitute:

recoupments and feedstock adjustments 355-450

19 **14 Section 20-5 (table item 10)**

20 Repeal the item, substitute:

10 An *R&D entity: Subdivision 355-G

- receives, or becomes entitled to receive, a recoupment from government relating to *R&D activities; or
- can deduct, under Division 355, expenditure on goods, materials or

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Integrity measures **Schedule 2**
Clawback of R&D recoupments and feedstock adjustments **Part 2**

energy used during R&D activities to produce marketable products or products applied to the R&D entity's own use;

and the entity is entitled under Division 355 to a tax offset relating to those R&D activities.

An amount is included in its assessable income.

1 **15 Subdivisions 355-G and 355-H**

2 Repeal the subdivisions, substitute:

3 **Subdivision 355-G—Clawback of R&D recoupments and**
4 **feedstock adjustments**

5 **Guide to Subdivision 355-G**

6 **355-430 What this Subdivision is about**

7 An amount is included in an R&D entity's assessable income if:
8 (a) the entity receives a recoupment from government of
9 expenditure on R&D activities for which it has obtained
10 tax offsets under this Division; or
11 (b) the entity can deduct under this Division expenditure on
12 goods, materials or energy used during R&D activities
13 to produce marketable products or products applied to
14 the R&D entity's own use.

15 **Table of sections**

16 **Operative provisions**

17 355-435 When this Subdivision applies
18 355-440 Clawback amount for R&D recoupments
19 355-445 Clawback amount for feedstock adjustments
20 355-450 Amount to be included in assessable income

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Schedule 2 Integrity measures

Part 2 Clawback of R&D recoupments and feedstock adjustments

1 **Operative provisions**

2 **355-435 When this Subdivision applies**

3 This Subdivision applies to an *R&D entity for an income year (the
4 *present year*) if:

- 5 (a) the R&D entity has an amount (a *clawback amount*) under
6 section 355-440 or 355-445 for the present year; and
7 (b) the R&D entity has received, or is entitled to receive, a *tax
8 offset under section 355-100 for one or more income years
9 (each an *offset year*) in relation to that clawback amount.

10 **355-440 Clawback amount for R&D recoupments**

11 (1) The *R&D entity has an amount under this section if:

- 12 (a) the entity, or another entity mentioned in subsection (5),
13 receives or becomes entitled to receive a *recoupment from
14 either of the following (otherwise than under the *CRC
15 program):
16 (i) an *Australian government agency;
17 (ii) an STB (within the meaning of Division 1AB of Part III
18 of the *Income Tax Assessment Act 1936*); and
19 (b) the recoupment is received, or the entitlement to receive the
20 recoupment arises, during the present year; and
21 (c) either:
22 (i) the recoupment is of expenditure incurred on or in
23 relation to certain activities; or
24 (ii) the recoupment requires expenditure (the *project*
25 *expenditure*) to have been incurred, or to be incurred,
26 on certain activities.

27 Note: Paragraph (b) includes expenditure incurred in purchasing a tangible
28 depreciating asset to be used when conducting R&D activities.

29 (2) The amount is equal to the sum of:

- 30 (a) so much of the expenditure referred to in subsection (1) that
31 is deducted under this Division; and
32 (b) for each asset (if any) for which expenditure referred to in
33 subsection (1) is included in the asset's *cost—each amount
-

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Integrity measures **Schedule 2**
Clawback of R&D recoupments and feedstock adjustments **Part 2**

1 (if any) equal to the asset's decline in value that is deducted
2 under this Division;

3 that is taken into account in working out *tax offsets under
4 section 355-100 obtained by the *R&D entity for one or more
5 income years.

6 Note: Paragraphs (a) and (b) of this subsection refer to amounts notionally
7 deducted under this Division (see section 355-105).

8 *Amount is reduced by any repayments of the recoupment*

9 (3) For the purposes of subsection (2), reduce the expenditure referred
10 to in subparagraph (1)(c)(i) by any repayments of the *recoupment
11 during an income year.

12 *Cap on extra income tax if recoupment relates to a project*

13 (4) Despite subsection (2), if the *recoupment is covered by
14 subparagraph (1)(c)(ii), the amount mentioned in subsection (2) for
15 the present year cannot exceed the amount worked out using the
16 following formula:

17 Net amount of the recoupment $\times \frac{\text{R\&D expenditure}}{\text{Project expenditure}}$

18 where:

19 ***net amount of the recoupment*** means the total amount of the
20 *recoupment, less any repayments of the recoupment during an
21 income year.

22 ***R&D expenditure*** means the amount mentioned in subsection (2),
23 disregarding subsection (3).

24 *Related entities*

25 (5) The other entities for the purposes of paragraph (1)(a) are as
26 follows:

- 27 (a) an entity *connected with the *R&D entity;
28 (b) an *affiliate of the R&D entity or an entity of which the R&D
29 entity is an affiliate.

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Schedule 2 Integrity measures

Part 2 Clawback of R&D recouplements and feedstock adjustments

1 355-445 Clawback amount for feedstock adjustments

- 2 (1) The *R&D entity has an amount under this section if:
- 3 (a) it incurs expenditure in one or more income years in
4 acquiring or producing goods, or materials, (the *feedstock*
5 *inputs*) transformed or processed during *R&D activities in
6 producing one or more tangible products (the *feedstock*
7 *outputs*); and
- 8 (b) it obtains under section 355-100 *tax offsets for one or more
9 income years (each an *offset year*) for deductions under this
10 Division:
- 11 (i) for the expenditure; or
- 12 (ii) for expenditure it incurs on any energy input directly
13 into the transformation or processing; or
- 14 (iii) for the decline in value of assets used in acquiring or
15 producing the feedstock inputs; and
- 16 (c) during the present year, a feedstock output, or a transformed
17 feedstock output, (the *marketable product*) is:
- 18 (i) *supplied by the R&D entity to another entity; or
- 19 (ii) applied by the R&D entity to the R&D entity's own use,
20 other than use for the purpose of transforming that
21 product for supply.
- 22 (2) The amount is equal to the lesser of:
- 23 (a) the *feedstock revenue for the feedstock output; and
- 24 (b) so much of the total of the amounts deducted as described in
25 paragraph (1)(b) as is reasonably attributable to the
26 production of the feedstock output.
- 27 (3) Subsection (2) does not apply to the feedstock output if:
- 28 (a) it becomes, or is transformed into, a feedstock input; or
- 29 (b) that subsection already applies to the feedstock output
30 because of the application of paragraph (1)(c) to:
- 31 (i) an earlier time during the present year; or
- 32 (ii) an earlier income year.
- 33 (4) The *feedstock revenue*, for the feedstock output, is worked out
34 using the following formula:
-

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Integrity measures **Schedule 2**
Clawback of R&D recoupments and feedstock adjustments **Part 2**

1 Market value of the
 marketable product \times $\frac{\text{Cost of producing the feedstock output}}{\text{Cost of producing the marketable product}}$

2 where:

3 ***market value of the marketable product*** means the marketable
4 product's *market value at the time it is:

- 5 (a) *supplied by the *R&D entity to the other entity; or
6 (b) first applied by the R&D entity to the R&D entity's own use,
7 other than use for the purpose of transforming that product
8 for supply.

9 (5) This section applies to a *supply or use of the marketable product
10 by:

- 11 (a) an entity *connected with the *R&D entity; or
12 (b) an *affiliate of the R&D entity or an entity of which the R&D
13 entity is an affiliate;

14 as if it were by the R&D entity.

15 **355-450 Amount to be included in assessable income**

16 (1) The *R&D entity must include, in the entity's assessable income
17 for the present year, the sum of the following amounts for each
18 offset year relating to the clawback amount:

19
$$\frac{\text{Starting offset} - \text{Adjusted offset} - \text{Deduction amount}}{\text{R\&D entity's *corporate tax rate for the present year}}$$

20 where:

21 ***adjusted offset*** means the *tax offset the entity would have
22 received under section 355-100 for the offset year if the total
23 amount mentioned in subsection 355-100(1) for that tax offset
24 were reduced by the portion of the clawback amount that is
25 attributable to the offset year.

26 ***deduction amount*** means the portion of the clawback amount that
27 is attributable to the offset year, multiplied by the entity's
28 *corporate tax rate for the offset year.

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Schedule 2 Integrity measures

Part 2 Clawback of R&D recoupments and feedstock adjustments

1 *starting offset* means the amount of the *tax offset the entity has
2 received, or is entitled to receive, under section 355-100 for the
3 offset year.

4 (2) However, if this section has previously applied (whether in the
5 present year or an earlier income year) in relation to another
6 clawback amount the *R&D entity has that relates to the offset
7 year, subsection (1) applies as if:

8 (a) the starting offset were the *tax offset the entity would have
9 received under section 355-100 for the offset year if the total
10 amount mentioned in subsection 355-100(1) were reduced by
11 the sum of the portions of those other clawback amounts that
12 are attributable to the offset year; and

13 (b) the reference to the “total amount” in the definition of
14 *adjusted offset* were a reference to that amount as so reduced.

15 **16 Section 355-510 (paragraph (b) of the note)**

16 Omit “, 355-G and 355-H”, substitute “and 355-G”.

17 **17 Subsection 355-720(2) (table items 2 and 3)**

18 Repeal the items.

19 **18 Subsection 355-720(2) (notes)**

20 Repeal the notes, substitute:

21 Note: Reducing the amount in column 3 will reduce the amount in column 1.

22 **19 Subsection 995-1(1) (definition of feedstock revenue)**

23 Omit “section 355-470”, substitute “subsection 355-445(4)”.

24 *Income Tax Rates Act 1986*

25 **20 Subsection 12(7)**

26 Omit “sections 12A and 12B” (wherever occurring), substitute
27 “section 12A”.

28 **21 Sections 12B and 31**

29 Repeal the sections.

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Integrity measures **Schedule 2**
Application of amendments **Part 3**

1 **Part 3—Application of amendments**

2 **22 Application of amendments**

- 3 (1) The amendments made by Part 1 of this Schedule apply on or after
4 1 July 2018 in connection with a scheme, whether or not the scheme
5 was entered into, or was commenced to be carried out, before that day.
- 6 (2) Despite subitem (1), the amendments made by Part 1 of this Schedule
7 do not apply in relation to tax benefits that a taxpayer derives before
8 that day.
- 9 (3) The amendments made by Part 2 of this Schedule apply in relation to
10 assessments for income years commencing on or after 1 July 2018.

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Schedule 3 Administrative matters

Part 1 Reporting of information about research and development tax offset

1 **Schedule 3—Administrative matters**

2 **Part 1—Reporting of information about research and**
3 **development tax offset**

4 *Taxation Administration Act 1953*

5 **1 At the end of Part 1A**

6 Add:

7 **3G Reporting of information about research and development tax**
8 **offset**

- 9 (1) This section applies to an R&D entity for an income year if,
10 according to information reported to the Commissioner in the
11 entity's income tax return for the income year, the entity is entitled
12 under Division 355 of the *Income Tax Assessment Act 1997* to a tax
13 offset for amounts it can deduct under that Division for the income
14 year.
- 15 (2) The Commissioner must, as soon as practicable after the end of the
16 income year, make publicly available the information mentioned in
17 subsection (3).
- 18 (3) The information is as follows:
- 19 (a) the entity's name;
- 20 (b) the entity's ABN (within the meaning of the *Income Tax*
21 *Assessment Act 1997*) or, if the entity's income tax return
22 does not include the entity's ABN but does include the
23 entity's ACN (within the meaning of the *Corporations Act*
24 *2001*), the entity's ACN;
- 25 (c) the difference worked out under subsection (4) using
26 amounts indicated in the entity's income tax return.
- 27 (4) The difference is between:
- 28 (a) the total of what the entity can deduct for the income year as
29 described in subsection (1) of this section; and

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Administrative matters **Schedule 3**
Reporting of information about research and development tax offset **Part 1**

- 1 (b) the total of the amounts the entity has under section 355-445
2 of the *Income Tax Assessment Act 1997* for the income year.
- 3 (5) Subsection (6) applies if:
4 (a) the entity gives the Commissioner a notice in writing that the
5 return mentioned in paragraph (3)(c) contains an error; and
6 (b) the notice contains information that corrects the error.
- 7 (6) The Commissioner may at any time make the information
8 mentioned in paragraph (5)(b) publicly available, in accordance
9 with subsection (2), in order to correct the error.
- 10 (7) To avoid doubt, if the Commissioner considers that information
11 made publicly available under subsection (2) fails to reflect all of
12 the information required to be made publicly available under that
13 subsection, the Commissioner may at any time make publicly
14 available other information in order to remedy the failure.
- 15 (8) An expression used in this section and in the *Income Tax*
16 *Assessment Act 1997* has the same meaning in this section as in
17 that Act.

2 Subsection 355-50(1) in Schedule 1 (note 2)

18 Omit “and 3E”, substitute “, 3E and 3G”.

3 Application

20 Section 3G of the *Taxation Administration Act 1953* applies to income
21 years that start on or after 1 July 2018.
22

EXPOSURE DRAFT

Schedule 3 Administrative matters

Part 2 Findings about clinical trials and determinations about performance of Board's functions

1 **Part 2—Findings about clinical trials and**
2 **determinations about performance of**
3 **Board's functions**

4 ***Industry Research and Development Act 1986***

5 **4 Subsection 4(1)**

6 Insert:

7 *clinical trial* has the same meaning as in the *Income Tax*
8 *Assessment Act 1997*.

9 **5 At the end of section 26A**

10 Add:

- 11 • The Board may make general determinations about how it will
12 exercise its powers, and perform its functions and duties,
13 under this Part. The Board must act in accordance with such a
14 determination.

15 **6 After paragraph 27B(1)(d)**

16 Insert:

- 17 ; (e) that all or part of an activity mentioned in the application
18 formed part of a clinical trial conducted during the
19 registration year;
20 (f) that all or part of an activity mentioned in the application did
21 not form part of a clinical trial conducted during the
22 registration year.

23 **7 Subsection 27B(1) (note 2)**

24 Repeal the note, substitute:

25 Note 2: The Board could make a finding under paragraph 27B(1)(b) if, for
26 example, the Board has insufficient information to make a finding
27 under paragraph 27B(1)(a). Similarly, the Board could:

EXPOSURE DRAFT

Administrative matters **Schedule 3**
Findings about clinical trials and determinations about performance of Board's
functions **Part 2**

- 1 (a) make a finding under paragraph 27B(1)(d) if it has insufficient
2 information to make a finding under paragraph 27B(1)(c); or
3 (b) make a finding under paragraph 27B(1)(f) if it has insufficient
4 information to make a finding under paragraph 27B(1)(e).

5 **8 Subsection 27E(2) (note 3)**

6 Omit “or (d)”, substitute “, (d) or (f)”.

7 **9 Subsection 27H(2) (note 3)**

8 Omit “or (d)”, substitute “, (d) or (f)”.

9 **10 After paragraph 27J(1)(d)**

10 Insert:

- 11 ; (e) that all or part of a registered activity formed part of a
12 clinical trial conducted during the registration year;
13 (f) that all or part of a registered activity did not form part of a
14 clinical trial conducted during the registration year.

15 **11 Subsection 27J(1) (note 2)**

16 Repeal the note, substitute:

- 17 Note 2: The Board could make a finding under paragraph 27J(1)(b) if, for
18 example, the Board has insufficient information to make a finding
19 under paragraph 27J(1)(a). Similarly, the Board could:
20 (a) make a finding under paragraph 27J(1)(d) if it has insufficient
21 information to make a finding under paragraph 27J(1)(c); or
22 (b) make a finding under paragraph 27J(1)(f) if it has insufficient
23 information to make a finding under paragraph 27J(1)(e).

24 **12 Section 28**

25 Omit “an R&D activity.”, substitute “an R&D activity or forms part of a
26 clinical trial.”.

27 **13 After paragraph 28A(1)(c)**

28 Insert:

- 29 (ca) find that all or part of the activity forms part of a clinical
30 trial;
31 (cb) find that all or part of the activity does not form part of a
32 clinical trial;

EXPOSURE DRAFT

Schedule 3 Administrative matters

Part 2 Findings about clinical trials and determinations about performance of Board's functions

1 **14 After Division 6 of Part III**

2 Insert:

3 **Division 6A—Determinations about Board's powers,**
4 **functions and duties under this Part**

5 **31C Simplified outline**

- | | |
|----|---|
| 6 | • The Board may make general determinations about the |
| 7 | circumstances or way in which it will exercise its powers, or |
| 8 | perform its functions or duties, under this Part. |
| 9 | • The Board must act in accordance with such a determination. |
| 10 | • A determination cannot override the decision-making |
| 11 | principles. |

12 **31D Board may make a determination about its powers, functions**
13 **and duties**

- 14 (1) On its own initiative, the Board may, by notifiable instrument,
15 make a determination about the circumstances or way in which the
16 Board will exercise any of its powers, or perform any of its
17 functions or duties, under this Part (except this Division).
- 18 (2) The determination must not relate to the exercise of powers, or the
19 performance of functions or duties, in a particular case or in
20 relation to a particular entity.
- 21 (3) The Board must exercise its powers, and perform its functions and
22 duties, under this Part (except section 30D and this Division) in
23 accordance with the determination.

24 Note: Section 30D is about the Board reviewing a reviewable decision.

- 25 (4) The determination has no effect to the extent of any inconsistency
26 with this Act, the regulations or the decision-making principles.

27 Note: The Board must revoke or amend the determination to remove any
28 inconsistency: see section 31E.

EXPOSURE DRAFT

1 **31E When Board must amend or revoke a determination**

- 2 (1) This section applies to a determination made under section 31D if:
- 3 (a) as a result of reviewing under section 30D a reviewable
- 4 decision that was made in accordance with the determination
- 5 because of section 31D, the Board is satisfied that the
- 6 determination is incorrect; or
- 7 (b) the determination is inconsistent with:
- 8 (i) a decision of a court; or
- 9 (ii) a decision of the Administrative Appeals Tribunal on
- 10 review of an internal review decision relating to a
- 11 reviewable decision that was made in accordance with
- 12 the determination because of section 31D; or
- 13 (iii) this Act, the regulations or the decision-making
- 14 principles.
- 15 (2) The Board must, by notifiable instrument, revoke the determination
- 16 or amend it so it is no longer incorrect or inconsistent.
- 17 (3) This section does not limit the application of subsection 33(3) of
- 18 the *Acts Interpretation Act 1901* in relation to the power to make a
- 19 determination under section 31D of this Act.

20 Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a

21 power to make an instrument includes the power to revoke or vary the

22 instrument.

23 **15 Application**

24 The amendments made by this Part apply in relation to the exercise of

25 powers, and the performance of functions and duties, by the Board after

26 the commencement of this Part.

EXPOSURE DRAFT

Schedule 3 Administrative matters

Part 3 Delegation by Board and committees

1 **Part 3—Delegation by Board and committees**

2 *Industry Research and Development Act 1986*

3 **16 Paragraph 21(1)(e)**

4 Omit “who is an SES employee, or acting SES employee”.

5 **17 Subsection 22A(1)**

6 Omit “who is an SES employee, or acting SES employee,”.

EXPOSURE DRAFT

Administrative matters **Schedule 3**
Extensions of time **Part 4**

1 **Part 4—Extensions of time**

2 *Industry Research and Development Decision-making*
3 *Principles 2011*

4 **18 At the end of section 3.2**

5 Add:

6 (3) However, the total of further periods allowed under this Part for a
7 particular thing to be given by an interested person must not
8 exceed 3 months. This subsection has effect despite section 3.4.

9 (4) Subsection (3) does not apply if the thing to be given deals with a
10 matter that corresponds to the subject of a decision that:

- 11 (a) relates to the interested person and an earlier income year;
12 and
13 (b) has not been finalised.

14 Example: Subsection (3) does not apply to an application to register activities of
15 an R&D entity under section 27A of the Act for an income year if:

- 16 (a) the entity has previously applied for registration, or for variation
17 of the entity's registration, for corresponding activities for an
18 earlier income year; and
19 (b) a decision on the previous application either has not been made
20 or is subject to review under Division 5 of Part III of the Act.

21