



Australian Government

The Treasury

THE NEW RESEARCH AND DEVELOPMENT TAX INCENTIVE

SUMMARY OF CONSULTATION PROCESS

The Government announced that it would introduce a new research and development (R&D) tax incentive as part of the 2009-10 Budget released on 12 May 2009.

Legislation to implement the measure, the Tax Laws Amendment (Research and Development) Bill 2010, was introduced into Parliament on Wednesday, 12 May 2010.

Consultation process

Following the Budget announcement, the Government undertook an extensive consultation process on the design of the new R&D tax incentive.

On 18 September 2009, the Government issued a consultation paper titled *The new R&D tax incentive*. One hundred and ninety seven submissions were received in response to the consultation paper. Copies of public submissions are available on the [Treasury website](#).

A first exposure draft of the legislation for the new incentive was issued on 18 December 2009. The Government received 131 submissions in response to the first exposure draft. Copies of public submissions are available on the [Treasury website](#).

On 24 February 2010, the Treasury wrote to all parties who made a submission on the exposure draft. That letter:

- identified five issues attracting a majority of concerns;
 - whether the definition of ‘core R&D activities’ was more demanding;
 - the requirement that ‘Supporting R&D activities’ be undertaken for the dominant purpose of supporting core R&D and the extension of the exclusions list to supporting R&D activities (as well as core R&D activities);
 - the scope of the software exclusions from the definition of ‘R&D activities’;
 - the requirement for taxpayers to register their core and supporting R&D activities separately; and
 - the potential scope and application of the augmented feedstock rule.
- invited stakeholders to provide additional examples of ‘genuine R&D’ excluded from the new incentive by the exposure draft legislation; and
- undertook to provide a second exposure draft of the legislation for further comment.



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A second exposure draft was released for comment on 31 March 2010. Fifty-five submissions were received in response to the second exposure draft. A summary of the key issues is provided below. Public submissions can be viewed on the [Treasury website](#).

Summary of key issues

Submissions in response to the second exposure draft were generally more focussed on the detail of the legislation than responses to the first exposure draft, and demonstrated a broader range of opinions, reflecting alleviation of some of the concerns expressed in response to the first exposure draft.

Core R&D

The revised definition of core R&D activities used clear language instead of ambiguous concepts such as ‘considerable (or appreciable) novelty’ and ‘high levels of technical risk’. Some submissions commented that the Government had improved the definition, and removed ambiguity, in line with the objectives of the new incentive. However, other submissions were critical of the revised definition, expressing concern about what ‘new knowledge’ means, and suggesting that the change creates ambiguity and uncertainty.

The Bill retains the definition of core R&D activities from the second exposure draft.

Supporting R&D

Submissions continued to express concern about the dominant purpose test for supporting R&D activities even though its application is now limited to production activities and activities on the exclusions list for core R&D activities and non-production activities will only need to meet a ‘directly related’ test similar to the existing law.

The Government has retained the dominant purpose test as outlined in the second exposure draft, as it is central to its efforts to refocus the new R&D tax incentive toward genuine R&D activities without jeopardising the development of new products and services. .

Excluded activities

During the consultation period, further consideration was given to the scope of the existing exclusions list that rules out certain activities from being considered as core R&D activities. The new tests for core and supporting R&D activities suggest that it is no longer necessary for some of these activities to be excluded. Consequently, the Government has decided to significantly scale back the exclusions list.

Feedstock

The second exposure draft stated that while the augmented feedstock rule would not be implemented, the existing feedstock rule would be retained and rewritten into the new law. There was general support for not pursuing the augmented feedstock provisions.



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Consequently, the Bill maintains the existing feedstock rule. For ease of use, the rewritten feedstock adjustment takes the form of an increase in assessable income, rather than a reduction in offset. However, the scope of the new feedstock provision is not wider than that of the existing law.

Administration

Some submissions suggest that the new tax incentive may be complex to administer and may therefore entail a compliance burden that would detract from the incentive.

There will be compliance costs associated with the change from the former arrangements during the early stages of the new incentive associated mainly with the requirement to identify Core and Supporting R&D activities at the time of registration for the tax incentive. However, it is expected that such compliance costs will be transitory while taxpayers become accustomed to the new scheme and adjust their practices. In acknowledging these potential compliance costs, AusIndustry and the ATO have been provided with additional funding to assist taxpayers. Enhanced advisory services and materials from AusIndustry should help taxpayers comply with the requirements of the new tax incentive.

Clawback of government grants

Submissions on the second exposure draft identified a technical flaw in the proposed approach to the clawback of government grants. The Government has refined the relevant provisions to ensure a more neutral and equitable outcome.

Some submissions also raised various detailed technical issues, which has resulted in some technical refinements to the legislation (e.g. to the rule about disposal of R&D results).

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Gerry Antioch on (02) 6263 4832.

The Treasury thanks those who made submissions and those who participated in the consultation process.