

SECOND EXPOSURE DRAFT

2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

SECOND EXPOSURE DRAFT

Tax Laws Amendment (Research and Development) Bill 2010

No. , 2010

(Treasury)

**A Bill for an Act to amend the law relating to
taxation and research and development, and for
other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation and research and development, and for**
3 **other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax Laws Amendment (Research and*
7 *Development) Act 2010.*

8 **2 Commencement**

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

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	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.	
2. Schedules 1 and 2	The day this Act receives the Royal Assent.	
3. Schedule 3, Parts 1 to 4	The day this Act receives the Royal Assent.	
4. Schedule 3, Part 5, Division 1	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Tax Laws Amendment (Transfer of Provisions) Act 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 3, Part 5, Division 2	The day this Act receives the Royal Assent. However, if Schedule 2 to the <i>Tax Laws Amendment (Transfer of Provisions) Act 2010</i> commences before that day, the provision(s) do not commence at all.	
5. Schedule 3, Part 6	The day this Act receives the Royal Assent.	
6. Schedule 4	The day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

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Schedule 1—Main components of new R&D incentive

Income Tax Assessment Act 1997

1 After Division 345

Insert:

Division 355—Research and Development

Table of Subdivisions

Guide to Division 355

- 355-A Object
- 355-B Meaning of R&D activities and other terms
- 355-C Entitlement to tax offset
- 355-D Notional deductions for R&D expenditure
- 355-E Notional deductions for decline in value of depreciating assets used for R&D activities
- 355-F Integrity Rules
- 355-G Clawback of R&D recoupments
- 355-H Feedstock adjustments
- 355-I Application to earlier income year R&D expenditure incurred to associates
- 355-J Application to R&D partnerships
- 355-K Application to Cooperative Research Centres
- 355-W Other matters

1 **Guide to Division 355**

2 **355-1 What this Division is about**

3 An R&D entity may be entitled to a tax offset for R&D activities.
4 The tax offset may be a refundable tax offset if the R&D entity's
5 aggregated turnover is less than \$20 million.

6 To be entitled to the tax offset, the R&D entity will need to have
7 one or more notional deductions under this Division.

8 There are 2 main kinds of notional deductions. One is for
9 expenditure on R&D activities. The other is for the decline in value
10 of tangible depreciating assets used for R&D activities.

11 Note: All of these notional deductions require the R&D entity to be
12 registered for the R&D activities under Part III of the *Industry*
13 *Research and Development Act 1986*.

14 **Subdivision 355-A—Object**

15 **Table of sections**

16 355-5 Object

17 **355-5 Object**

18 (1) The object of this Division is to encourage industry to conduct
19 research and development activities that might otherwise not be
20 conducted because of:

21 (a) the cost of the activities; or

22 (b) an uncertain return from the activities;

23 in cases where the knowledge gained is likely to benefit the wider
24 Australian economy.

25 (2) This object is to be achieved by providing a tax incentive for
26 industry to conduct, in a scientific way, experimental activities for
27 the purpose of generating new knowledge or information in either a
28 general or applied form.

1 **Subdivision 355-B—Meaning of R&D activities and other terms**

2 **Table of sections**

3	355-20	<i>R&D activities</i>
4	355-25	<i>Core R&D activities</i>
5	355-30	Excluded activities
6	355-35	<i>Supporting R&D activities</i>
7	355-40	<i>R&D entities</i>

8 **355-20 *R&D activities***

9 *R&D activities* are *core R&D activities or *supporting R&D
10 activities.

11 **355-25 *Core R&D activities***

12 *Core R&D activities* are experimental activities:

- 13 (a) whose outcome cannot be known or determined in advance
14 on the basis of current knowledge, information or experience,
15 but can only be determined by applying a systematic
16 progression of work that:
- 17 (i) is based on principles of established science; and
 - 18 (ii) proceeds from hypothesis to experiment, observation
19 and evaluation, and leads to logical conclusions; and
- 20 (b) that are conducted for the purpose of generating new
21 knowledge (including knowledge about the creation of new
22 or improved materials, products, devices, processes or
23 services).

24 **355-30 Excluded activities**

25 However, none of the following activities are *core R&D activities*:

- 26 (a) market research, market testing or market development, or
27 sales promotion (including consumer surveys);
- 28 (b) quality control;
- 29 (c) prospecting, exploring or drilling for minerals or *petroleum
30 for the purposes of one or more of the following:
- 31 (i) discovering deposits;
 - 32 (ii) determining more precisely the location of deposits;
 - 33 (iii) determining the size or quality of deposits;
-

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- 1 (d) making cosmetic modifications, or stylistic changes, to
2 products, processes or production methods;
3 (e) management studies or efficiency surveys;
4 (f) research in social sciences, arts or humanities;
5 (g) making donations;
6 (h) pre-production activities including demonstrating
7 commercial viability, tooling-up and trial runs;
8 (i) routine collection of information, except as part of another
9 activity that is an *R&D activity;
10 (j) preparing for teaching;
11 (k) commercial, legal and administrative aspects of patenting,
12 licensing or other activities;
13 (l) activities associated with complying with statutory
14 requirements or standards, including one or more of the
15 following:
16 (i) maintaining national standards;
17 (ii) calibrating secondary standards;
18 (iii) routine testing and analysis of materials, components,
19 products, processes, soils, atmospheres and other things;
20 (m) specialised routine medical care;
21 (n) any activity related to the reproduction of a commercial
22 product or process:
23 (i) by a physical examination of an existing system; or
24 (ii) from plans, blueprints, detailed specifications or
25 publically available information;
26 (o) developing, modifying or customising computer software
27 solely or primarily for use by any of the following entities for
28 their internal administration (including the internal
29 administration of their business functions):
30 (i) the entity (the *developer*) for which the software is
31 developed, modified or customised;
32 (ii) an entity *connected with the developer;
33 (iii) an *affiliate of the developer, or an entity of which the
34 developer is an affiliate.

35 **355-35 Supporting R&D activities**

- 36 (1) **Supporting R&D activities** are activities directly related to *core
37 R&D activities.

- 1 (2) However, if an activity:
2 (a) is an activity referred to in section 355-30; or
3 (b) is the production of goods or services; or
4 (c) is directly related to the production of goods or services;
5 the activity is a *supporting R&D activity* only if it is undertaken
6 for the dominant purpose of supporting *core R&D activities.

7 **355-40 R&D entities**

- 8 (1) Each of the following is an *R&D entity*:
9 (a) a body corporate incorporated under an *Australian law;
10 (b) a body corporate incorporated under a *foreign law that is an
11 Australian resident.

12 Note: Each of the above paragraphs extends to a body corporate acting in its
13 capacity as trustee of a public trading trust (see subsection 102T(9) of
14 the *Income Tax Assessment Act 1936*).

- 15 (2) A body corporate incorporated under a *foreign law that:
16 (a) is a resident of a foreign country for the purposes of an
17 agreement in force between that country and Australia that:
18 (i) is a double tax agreement (as defined in Part X of the
19 *Income Tax Assessment Act 1936*); and
20 (ii) includes a definition of *permanent establishment*; and
21 (b) carries on business in Australia through a permanent
22 establishment (within the meaning of that definition) of the
23 body corporate in Australia;
24 is an *R&D entity* to the extent that it carries on business through
25 that permanent establishment.
26 (3) Despite subsections (1) and (2), an *exempt entity cannot be an
27 *R&D entity*.

28 **Subdivision 355-C—Entitlement to tax offset**

29 **Table of sections**

30	355-100	Entitlement to tax offset
31	355-110	Deductions under this Division are notional only

355-100 Entitlement to tax offset

If notional deductions are at least \$20,000

(1) An *R&D entity is entitled to a *tax offset for an income year equal to the percentage, set out in the table, of the total of the amounts (if any) that the entity can deduct for the income year under any or all of the following provisions:

- (a) section 355-200 (R&D expenditure);
- (b) section 355-300 (decline in value of R&D assets);
- (c) section 355-310 (balancing adjustment for R&D assets);
- (d) section 355-480 (earlier year associate R&D expenditure);
- (e) section 355-525 (decline in value of R&D partnership assets);
- (f) section 355-530 (balancing adjustment for R&D partnership assets);
- (g) section 355-580 (CRC contributions).

Note: The tax offset will be a refundable tax offset if the percentage applicable to the entity is the percentage in item 1 of the table (see section 67-30).

Rate of R&D tax offset

Item	In this case:	The percentage is:
1	the *R&D entity's *aggregated turnover for the income year is less than \$20 million (and item 2 of this table does not apply)	45%
2	an *exempt entity, or combination of exempt entities, would control the *R&D entity in a way described in section 328-125 (connected entities) if: (a) references in section 328-125 to 40% were references to 50%; and (b) subsection 328-125(6) were ignored	40%
3	any other case	40%

If notional deductions are less than \$20,000

(2) However, if the total of those amounts is less than \$20,000, the *R&D entity is instead entitled to a *tax offset for the income year

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1 equal to that percentage of the total of the following kinds of
2 expenditure (if any):
3

Expenditure not subject to \$20,000 threshold

Item Kind of expenditure

- 1 Expenditure:
- (a) that the *R&D entity can deduct under section 355-200 (R&D expenditure); and
 - (b) that was incurred to a research service provider (within the meaning of the *Industry Research and Development Act 1986*) that is not an *associate of the R&D entity or of the relevant *R&D partnership (as appropriate); and
 - (c) that was for the provider to provide services, within a research field for which the provider is registered under Division 4 of Part III of that Act, applicable to one or more of the *R&D activities to which the deduction relates
-
- 2 Expenditure that the *R&D entity can deduct under section 355-580 (CRC contributions)
-

4 *Notional deductions include prepaid expenditure*

- 5 (3) For the purposes of this Division, if:
- 6 (a) apart from Subdivision H (prepaid expenditure) of Division 3
7 of Part III of the *Income Tax Assessment Act 1936*, an *R&D
8 entity can deduct an amount under section 355-200 or
9 355-480 for an income year (the **present year**) or an earlier
10 income year; and
 - 11 (b) that Subdivision applies to the calculation of that amount;
12 and
 - 13 (c) the entity can deduct an amount, as a result of that
14 application of that Subdivision, for the present year;
15 the entity is taken to be able to deduct under section 355-200 or
16 355-480 (as appropriate) the amount referred to in paragraph (c)
17 for the present year.

18 Note: Section 355-200 is about deductions for R&D expenditure.
19 Section 355-480 is about deductions for earlier year associate R&D
20 expenditure.

1 **355-110 Deductions under this Division are notional only**

2 An amount that an *R&D entity can deduct under this Division is
3 disregarded except for the purposes of:

- 4 (a) this Division; and
5 (b) a provision (of this Act or any other Act) that:
6 (i) prevents some or all of the amount from being
7 deducted; or
8 (ii) changes the income year for which some or all of the
9 amount can be deducted; and

10 Note: Examples are Divisions 26 and 27 of this Act, Subdivision H of
11 Division 3 of Part III of the *Income Tax Assessment Act 1936* and
12 Part IVA of that Act.

- 13 (c) a provision (of this Act or any other Act) that includes an
14 amount in assessable income wholly or partly because of the
15 first-mentioned amount; and

16 Note: An example is Subdivision 20-A, which may include in
17 assessable income a recoupment of a loss or outgoing if the entity
18 can deduct an amount for the loss or outgoing.

- 19 (d) a provision (of this Act or any other Act) that excludes
20 expenditure from:
21 (i) the *cost base or *reduced cost base of a *CGT asset; or
22 (ii) an element of that cost base or reduced cost base.

23 Note: An example is section 110-45, which may exclude deductible
24 expenditure from elements of the cost base of an asset.

25 **Subdivision 355-D—Notional deductions for R&D expenditure**

26 **Table of sections**

27	355-200	When notional deductions for R&D expenditure arise
28	355-205	Conditions for R&D activities
29	355-210	R&D activities conducted by a permanent establishment for other parts of 30 the body corporate
31	355-215	R&D activities conducted for a foreign entity
32	355-220	Expenditure that cannot be notionally deducted

33 **355-200 When notional deductions for R&D expenditure arise**

- 34 (1) An *R&D entity can deduct for an income year (the *present year*)
35 expenditure it incurs during that year to the extent that the
36 expenditure:

- 1 (a) is incurred on one or more *R&D activities:
2 (i) for which the R&D entity is registered under
3 section 27A of the *Industry Research and Development*
4 *Act 1986* for an income year; and
5 (ii) that are activities to which section 355-205 (conditions
6 for R&D activities) applies; and
7 (b) if the expenditure is incurred to the R&D entity's
8 *associate—is paid to that associate during the present year.

9 Note 1: If the matters in subparagraphs (a)(i) and (ii) are not satisfied until a
10 later income year, the R&D entity will need to wait until then before it
11 can deduct the expenditure for the present year.

12 Note 2: The R&D activities will need to be conducted during the income year
13 the R&D entity is registered for those activities (see sections 27A and
14 27H of the *Industry Research and Development Act 1986*).

15 Note 3: The entity may also be able to deduct expenditure incurred to an
16 associate in an earlier income year (see section 355-480).

17 Note 4: Expenditure incurred in income years starting on or after 1 July 2010
18 may be deductible for activities registered for income years starting
19 before 1 July 2010 (see section 355-200 of the *Income Tax*
20 *(Transitional Provisions) Act 1997*).

- 21 (2) This section has effect subject to section 355-220 (excluded
22 expenditure), Subdivision 355-F (integrity rules) and subsection
23 355-580(3) (CRC contributions).

24 **355-205 Conditions for R&D activities**

- 25 (1) An *R&D activity covered by one or more of the following
26 paragraphs is an activity to which this section applies:
27 (a) the R&D activity is conducted for the *R&D entity solely
28 within Australia or an external Territory;
29 (b) if the R&D entity is a body corporate carrying on business
30 through a permanent establishment (as described in
31 subsection 355-40(2))—the R&D activity is conducted:
32 (i) for the body corporate; but
33 (ii) not for the purposes of that permanent establishment;
34 and the conditions in section 355-210 (activities conducted
35 for a body corporate by its permanent establishment) are met
36 for the R&D activity;
37 (c) the R&D activity is conducted for one or more foreign
38 residents who are each:
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- 1 (i) incorporated under a *foreign law; and
2 (ii) a resident of a foreign country for the purposes of an
3 agreement of a kind described in subsection 355-40(2);
4 and the conditions in section 355-215 (activities conducted
5 for a foreign entity) are met for the R&D activity;
6 (d) the R&D activity is:
7 (i) conducted for the R&D entity solely outside Australia
8 and the external Territories; and
9 (ii) covered by a finding in force under paragraph 28B(1)(a)
10 of the *Industry Research and Development Act 1986*;
11 (e) the R&D activity consists of several parts, with:
12 (i) some parts being conducted for the R&D entity solely
13 within Australia or an external Territory; and
14 (ii) the other parts being conducted for the R&D entity
15 outside Australia and the external Territories while
16 covered by a finding in force under paragraph 28B(1)(a)
17 of the *Industry Research and Development Act 1986*.

18 Note: An activity can be covered by a finding under paragraph 28B(1)(a) of
19 the *Industry Research and Development Act 1986* if the activity
20 cannot be conducted in Australia or the external Territories.

- 21 (2) However, an *R&D activity is not an activity to which this section
22 applies if the activity is conducted, to a significant extent, for one
23 or more other entities not covered by any paragraph of
24 subsection (1).

25 Note: An entity would not be covered by, for example, paragraph (1)(c) if
26 the conditions in section 355-215 were not met for the R&D activity
27 in relation to that entity.

28 **355-210 R&D activities conducted by a permanent establishment for**
29 **other parts of the body corporate**

30 The conditions for an *R&D activity covered by paragraph
31 355-205(1)(b) are as follows:

- 32 (a) the R&D activity is conducted solely within Australia or an
33 external Territory;
34 (b) if the R&D activity is a *supporting R&D activity, each
35 corresponding *core R&D activity must be:
36 (i) an activity conducted, or to be conducted, solely within
37 Australia or an external Territory; and

- 1 (ii) an activity for which the *R&D entity is or has been
2 registered under section 27A of the *Industry Research*
3 *and Development Act 1986*, or could be registered for an
4 income year if that core R&D activity were conducted
5 during the income year;
- 6 (c) there is written evidence that the R&D activity is conducted
7 for the body corporate but not for the purposes of that
8 permanent establishment.
- 9 Note: The body corporate is the R&D entity to the extent that it carries on
10 business through that permanent establishment (see subsection
11 355-40(2)).

12 **355-215 R&D activities conducted for a foreign entity**

- 13 The conditions for an *R&D activity covered by paragraph
14 355-205(1)(c) for one or more foreign residents are as follows:
- 15 (a) the R&D activity is conducted solely within Australia or an
16 external Territory;
- 17 (b) if the R&D activity is a *supporting R&D activity, each
18 corresponding *core R&D activity must be:
- 19 (i) an activity conducted, or to be conducted, solely within
20 Australia or an external Territory; and
- 21 (ii) an activity for which the *R&D entity is or has been
22 registered under section 27A of the *Industry Research*
23 *and Development Act 1986*, or could be registered for an
24 income year if that core R&D activity were conducted
25 during the income year;
- 26 (c) when the R&D activity is conducted:
- 27 (i) each foreign resident is *connected with the R&D
28 entity; or
- 29 (ii) for each foreign resident—either the foreign resident is
30 an *affiliate of the R&D entity or the R&D entity is an
31 affiliate of the foreign resident;
- 32 (d) the R&D activity is conducted:
- 33 (i) in accordance with a written agreement binding on the
34 R&D entity and each foreign resident; and
- 35 (ii) either directly by the R&D entity, or indirectly by
36 another entity under an agreement binding on the R&D
37 entity;

-
- 1 (e) the R&D activity is not conducted in connection with an
2 agreement that:
- 3 (i) is between the R&D entity (the *first entity*) and an R&D
4 entity of which the first entity is an affiliate, or is
5 between the first entity and an R&D entity that is
6 connected with or is an affiliate of the first entity, when
7 the R&D activity is conducted; and
- 8 (ii) is an agreement for the R&D activity to be conducted
9 either by the first entity or by a person who is not a
10 party to the agreement and is to conduct the activity
11 directly or indirectly under another agreement to which
12 the first entity is, or will become, a party.
- 13 Note 1: An example of conducting an R&D activity indirectly under a contract
14 is conducting the R&D activity under a subcontract, or one of a chain
15 of subcontracts, under the contract.
- 16 Note 2: One effect of paragraph (e) is that, even if the R&D entity has an
17 agreement with the foreign resident for conducting the R&D activity,
18 the R&D entity cannot deduct expenditure incurred:
- 19 (a) for conducting the R&D activity as a subcontractor under a
20 subcontract with an affiliated R&D entity; or
- 21 (b) if the R&D entity is a subcontractor to an affiliated R&D
22 entity—for further subcontracting the conducting of the R&D
23 activity.

24 **355-220 Expenditure that cannot be notionally deducted**

25 *Kinds of excluded expenditure*

- 26 (1) Sections 355-200 (deductions for R&D expenditure) and 355-480
27 (deductions for earlier year associate R&D expenditure) do not
28 apply to the following expenditure:
- 29 (a) expenditure incurred to acquire or construct:
- 30 (i) a building or a part of a building; or
- 31 (ii) an extension, alteration or improvement to a building;
- 32 (b) expenditure included in the *cost of a tangible *depreciating
33 asset for the purposes of Division 40 (as that Division applies
34 as described in section 355-305 or otherwise);
- 35 (c) expenditure incurred for interest (within the meaning of
36 Division 11A of Part III of the *Income Tax Assessment Act*
37 *1936*) payable to an entity.
- 38 Note 1: Expenditure covered by paragraph (a) may be deductible under
39 Division 43 (capital works).

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1 Note 2: The decline in value of an asset covered by paragraph (b) may be
2 notionally deductible under section 355-300.

3 Note 3: Expenditure covered by paragraph (c) may be deductible under
4 section 8-1.

5 *Expenditure on core technology*

6 (2) Sections 355-200 (deductions for R&D expenditure) and 355-480
7 (deductions for earlier year associate R&D expenditure) do not
8 apply to expenditure incurred in acquiring, or in acquiring the right
9 to use, technology wholly or partly for the purposes of one or more
10 *R&D activities if:

- 11 (a) a purpose of the R&D activities was or is:
12 (i) to obtain new knowledge based on that technology; or
13 (ii) to create new or improved materials, products, devices,
14 processes, techniques or services to be based on that
15 technology; or
16 (b) the R&D activities were or are an extension, continuation,
17 development or completion of the activities that produced
18 that technology.

19 **Subdivision 355-E—Notional deductions for decline in value of**
20 **depreciating assets used for R&D activities**

21 **Table of sections**

22	355-300	When notional deductions for decline in value arise
23	355-305	Notional application of Division 40
24	355-310	Balancing adjustments—assets only used for R&D activities

25 **355-300 When notional deductions for decline in value arise**

- 26 (1) If:
27 (a) an *R&D entity is registered under section 27A of the
28 *Industry Research and Development Act 1986* for an income
29 year (the *present year*) for one or more *R&D activities that
30 are activities to which section 355-205 (conditions for R&D
31 activities) applies; and
32 (b) while a tangible *depreciating asset is *held by the R&D
33 entity during the present year, the asset is used for the
34 purpose of conducting one or more of those R&D activities;
35 and
-

- 1 (c) the asset is neither a building, nor a part of a building, unless
2 it is *plant; and
3 (d) the R&D entity could deduct an amount under section 40-25
4 for the asset for the present year if Division 40 applied with
5 the changes described in section 355-305; and
6 (e) the R&D entity cannot deduct an amount for the asset for:
7 (i) an earlier income year under Subdivision 328-D (capital
8 allowances for small business entities); or
9 (ii) an earlier income year under Division 40 (as that
10 Division applies apart from this Division), in a case
11 where section 40-440 (low-value pools) applied;
12 the R&D entity can deduct the amount referred to in paragraph (d)
13 for the present year.
14 (2) This section has effect subject to subsection 355-580(4) (CRC
15 contributions).

16 **355-305 Notional application of Division 40**

- 17 (1) In addition to its application apart from this section, Division 40
18 also applies with the changes set out in this section for the purposes
19 of:
20 (a) paragraph 355-220(1)(b) (excluded expenditure); and
21 (b) paragraph 355-300(1)(d); and
22 (c) section 355-310 (balancing adjustments).
23 (2) Firstly, for references in Subdivisions 40-A to 40-D (other than for
24 the purposes of sections 40-100, 40-105 and 40-110) to:
25 (a) the *purpose of producing assessable income; or
26 (b) a *taxable purpose;
27 substitute the following reference:
28

The purpose that applies in place of those set out in paragraphs (a) and (b)

Item	If this application of Division 40 is for the purposes of:	Substitute a reference to the purpose of conducting one or more of these activities:
1	paragraph 355-220(1)(b) or 355-300(1)(d)	the *R&D activities covered by paragraph 355-300(1)(b)
2	section 355-310	the *R&D activities to which the

The purpose that applies in place of those set out in paragraphs (a) and (b)

Item	If this application of Division 40 is for the purposes of:	Substitute a reference to the purpose of conducting one or more of these activities:
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R&D deductions (within the meaning of that section) relate

1 Note: Sections 40-100, 40-105 and 40-110 are about working out an asset's
2 effective life. Those sections already refer to the use of the asset for
3 R&D activities.

4 (3) Secondly, assume that Division 40 does not apply to a building,
5 nor to an extension, alteration or improvement to a building, (the
6 **building works**) for which the *R&D entity:

7 (a) can deduct amounts under Division 43 (capital works); or

8 (b) could deduct amounts under Division 43:

9 (i) apart from expenditure being incurred, or the building
10 works being started, before a particular day; or

11 (ii) had the R&D entity used the building works for a
12 purpose relevant to those building works under
13 section 43-140 (using an area in a deductible way).

14 (4) Finally, assume that the following provisions had not been enacted:

15 (a) subsection 40-25(7) (meaning of taxable purpose);

16 (b) subsection 40-45(2) (assets to which Division 40 does not
17 apply);

18 (c) section 40-425 (low-value pools);

19 (d) Subdivision 328-D (capital allowances for small business
20 entities).

21 Note: Subsection (3) and paragraph (4)(b) mean that deductions under
22 section 355-300 may be available for capital works other than building
23 works.

24 **355-310 Balancing adjustments—assets only used for R&D activities**

25 (1) This section applies to an *R&D entity if:

26 (a) a *balancing adjustment event happens in an income year (the
27 **event year**) for an asset *held by the R&D entity; and

28 (b) the R&D entity cannot deduct an amount under
29 section 40-25, as that section applies apart from:

30 (i) this Division; and

-
- 1 (ii) former section 73BC of the *Income Tax Assessment Act*
2 *1936*;
3 for the asset for an income year; and
4 (c) the R&D entity is entitled under section 355-100 to *tax
5 offsets for one or more income years for deductions (the
6 ***R&D deductions***) under section 355-300 for the asset; and
7 (d) the entity is registered under section 27A of the *Industry*
8 *Research and Development Act 1986* for one or more *R&D
9 activities for the event year; and
10 (e) if Division 40 applied with the changes described in
11 section 355-305:
12 (i) the entity could deduct for the event year an amount
13 under subsection 40-285(2) for the asset and the
14 balancing adjustment event; or
15 (ii) an amount would be included in the entity's assessable
16 income for the event year under subsection 40-285(1)
17 for the asset and the balancing adjustment event.

18 Note 1: This section applies in a modified way if the entity also has deductions
19 for the asset under former section 73BA or 73BH of the *Income Tax*
20 *Assessment Act 1936* (see section 355-320 of the *Income Tax*
21 *(Transitional Provisions) Act 1997*).

22 Note 2: Section 40-292 applies if the entity can deduct an amount under
23 section 40-25, as that section applies apart from this Division and
24 former section 73BC of the *Income Tax Assessment Act 1936*.

25 *Notional deduction*

- 26 (2) If the *R&D entity could deduct for the event year an amount
27 under subsection 40-285(2) for the asset and the event if
28 Division 40 applied as described in paragraph (1)(e), the R&D
29 entity can deduct that amount for the event year.

30 *Amount to be included in assessable income*

- 31 (3) If an amount (the ***section 40-285 amount***) would be included in the
32 *R&D entity's assessable income for the event year under
33 subsection 40-285(1) for the asset and the event if Division 40
34 applied as described in paragraph (1)(e), the sum of that amount
35 and the following amount is included in the R&D entity's
36 assessable income for the event year:

1 Adjusted section 40-285 amount $\times \frac{1}{3}$

2 where:

3 **adjusted section 40-285 amount** means so much of the
4 section 40-285 amount as does not exceed the total decline in
5 value.

6 **total decline in value** means the asset's *cost, less its *adjustable
7 value, worked out under Division 40 as it applies as described in
8 paragraph (1)(e).

9 Subdivision 355-F—Integrity Rules

10 Table of sections

11	355-400	Expenditure incurred while not at arm's length
12	355-405	Expenditure not at risk
13	355-410	Disposal of R&D results
14	355-415	Reducing deductions to reflect mark-ups within groups

15 355-400 Expenditure incurred while not at arm's length

16 If:

17 (a) an *R&D entity incurs expenditure to another entity on all or
18 part of an *R&D activity; and

19 (b) either:

20 (i) when the R&D entity incurs the expenditure, the R&D
21 entity and the other entity do not deal with each other at
22 *arm's length; or

23 (ii) the other entity is the R&D entity's *associate; and

24 (c) the expenditure exceeds the *market value of the relevant
25 R&D activity or part (as appropriate);

26 for the purposes of this Division, the R&D entity is treated as if the
27 amount of expenditure it incurred on the relevant R&D activity or
28 part (as appropriate) were equal to that market value.

29 Note 1: For the purposes of a deduction under section 355-300 or 355-525 for
30 an asset's decline in value, the arms' length rules in Division 40 apply
31 as part of the notional application of that Division under that section.

32 Note 2: In the application of Division 13 of Part III of the *Income Tax*
33 *Assessment Act 1936* (about international transfer-pricing

1 arrangements), this section is disregarded (see subsection 136AB(2) of
2 that Act).

3 **355-405 Expenditure not at risk**

4 (1) An *R&D entity cannot deduct expenditure under section 355-200
5 or 355-480 if:

6 (a) when it incurs the expenditure, the R&D entity or its
7 *associate had received, or could reasonably be expected to
8 receive, consideration:

9 (i) as a direct or indirect result of the expenditure being
10 incurred; and

11 (ii) regardless of the results of the activities on which the
12 expenditure is incurred; and

13 (b) that consideration is equal to or greater than the expenditure.

14 Note: Section 355-200 is about deductions for R&D expenditure.
15 Section 355-480 is about deductions for earlier year associate R&D
16 expenditure.

17 (2) If:

18 (a) when an *R&D entity incurs expenditure, the R&D entity or
19 its *associate had received, or could reasonably have
20 expected to receive, consideration:

21 (i) as a direct or indirect result of the expenditure being
22 incurred; and

23 (ii) regardless of the results of the activities on which the
24 expenditure is incurred; and

25 (b) that consideration is less than the expenditure;

26 the R&D entity cannot deduct under section 355-200 or 355-480 so
27 much of the expenditure as is equal to the consideration.

28 (3) For the purposes of paragraphs (1)(a) and (2)(a), have regard to:

29 (a) anything that happened or existed before or at the time the
30 expenditure is incurred; and

31 (b) anything that is likely to happen or exist after that time.

32 (4) This section does not apply to expenditure incurred on *R&D
33 activities covered by paragraph 355-205(1)(b) or (c).

34 Note: Those paragraphs cover R&D activities conducted for foreign
35 residents.

1 **355-410 Disposal of R&D results**

2 (1) This section applies to an *R&D entity if:

3 (a) the R&D entity is entitled under section 355-100 to a *tax
4 offset because it can:

5 (i) deduct under section 355-200 or 355-480 expenditure
6 incurred on *R&D activities; or

7 (ii) deduct an amount under section 355-300 or 355-525 for
8 an asset (the **R&D asset**) used for the purpose of
9 conducting one or more R&D activities; and

10 (b) the R&D entity receives or becomes entitled to receive one or
11 more of the following amounts (the **results amounts**) in an
12 income year (the **results year**):

13 (i) an amount for the results of any of the R&D activities;

14 (ii) an amount from granting access to, or the right to use,
15 any of those results;

16 (iii) an amount from *disposing of a *CGT asset, or from
17 granting a right to occupy or use a CGT asset, where the
18 disposal or grant resulted in another person acquiring a
19 right to access or use any of those results;

20 (iv) an amount attributable to the R&D entity having
21 incurred the expenditure, including an amount it is
22 entitled to receive regardless of the results of the R&D
23 activities;

24 (v) an amount attributable to the R&D asset being used for
25 the purpose mentioned in subparagraph (a)(ii), including
26 an amount the R&D entity is entitled to receive
27 regardless of the results of the R&D activities.

28 Note: This section also applies with changes to the partners of an R&D
29 partnership (see section 355-535).

30 (2) For each results amount, the following amount is included in the
31 *R&D entity's assessable income for the results year:

32 (a) if the results amount is covered by subparagraph (1)(b)(iii)
33 for a *disposal or grant relating to a *depreciating asset—an
34 amount equal to the extent (if any) that the results amount
35 exceeds the asset's *cost just before the disposal or grant;

36 (b) otherwise—the results amount.

37 (3) For the purposes of paragraph (2)(a), assume that subsection
38 40-45(2) did not, except in the case of buildings and extensions,

1 alterations and improvements to buildings, prevent Division 40
2 from applying to certain capital works.

3 **355-415 Reducing deductions to reflect mark-ups within groups**

- 4 (1) This section applies to an *R&D entity if:
5 (a) the R&D entity can deduct an amount under section 355-200
6 or 355-480 for an income year for one or more *R&D
7 activities; and
8 (b) one or more other entities (the *grouped entities*) incurred
9 expenditure during the income year, or an earlier income
10 year, on one or more of those *R&D activities; and
11 (c) when each grouped entity incurred the expenditure:
12 (i) the grouped entity was *connected with the R&D entity;
13 or
14 (ii) the grouped entity was an *affiliate of the R&D entity or
15 the R&D entity was an affiliate of the grouped entity.

16 Note: Section 355-200 is about deductions for R&D expenditure.
17 Section 355-480 is about deductions for earlier year associate R&D
18 expenditure.

- 19 (2) The amount otherwise deductible by the *R&D entity under
20 section 355-200 or 355-480 for the income year is reduced by the
21 amount (the *reduction amount*) worked out as follows:

22 *Method statement*

23 Step 1. For each grouped entity, work out the sum of the amounts
24 derived by the grouped entity for goods or services
25 relating to one or more of the *R&D activities while:

- 26 (a) the grouped entity was *connected with the *R&D
27 entity; or
28 (b) the grouped entity was an *affiliate of the R&D
29 entity or the R&D entity was an affiliate of the
30 grouped entity;

31 during the income year or an earlier income year.

32 Step 2. For each grouped entity, disregard any of the amounts
33 from step 1 that have already been taken into account

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under this section for the *R&D entity and the *R&D activities for an earlier income year.

Step 3. Add up the amounts (the *remaining amounts*) from step 1 that remain after step 2.

Step 4. From the result of step 3, subtract the actual cost to each grouped entity of providing the goods or services that correspond to the remaining amounts.

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- (3) However, if the *R&D entity can deduct amounts under both sections 355-200 and 355-480 for the income year, those amounts are reduced as follows:
- (a) first, apply the reduction amount to reduce the amount otherwise deductible under section 355-200 (but not below zero); and
 - (b) secondly, apply any remainder of the reduction amount to reduce the amount otherwise deductible under section 355-480 (but not below zero).

17

Subdivision 355-G—Clawback of R&D recoupments

18

Table of sections

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355-430	What this Subdivision is about
355-435	When extra income tax is payable
355-440	Entity receives government recoupment
355-445	Recoupment relates to R&D activities
355-450	Amount on which extra income tax is payable

24

355-430 What this Subdivision is about

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An entity must pay extra income tax:

- (a) on government grants it acquires against R&D activities for which entitlements to tax offsets arise under this Division; and
- (b) on its other recoupments from government of expenditure on R&D activities for which entitlements to tax offsets arise under this Division.

1 **355-435 When extra income tax is payable**

2 An entity must pay extra income tax on all or part of a *recoupment
3 if the conditions in sections 355-440 and 355-445 are met for the
4 recoupment.

5 Note 1: Section 355-450 sets out how much of the recoupment is subject to
6 extra income tax.

7 Note 2: A recoupment includes a grant (see subsection 20-25(1)).

8 **355-440 Entity receives government recoupment**

9 The condition in this section is met if the entity (the *recipient*)
10 receives or becomes entitled to receive the *recoupment from:

- 11 (a) an *Australian government agency; or
12 (b) an STB (within the meaning of Division 1AB of Part III of
13 the *Income Tax Assessment Act 1936*);
14 otherwise than under the *CRC program.

15 **355-445 Recoupment relates to R&D activities**

16 (1) The condition in this section is met for a *recoupment that is a
17 grant if:

- 18 (a) during an income year (the *trigger year*), either or both of the
19 following things happen:
20 (i) the recipient acquits all or part (the *R&D acquittals*) of
21 the grant against one or more *R&D activities;
22 (ii) the grant is received or the entitlement to receive the
23 grant arises, and the grant is wholly or partly (the *R&D*
24 *receipts*) a recoupment of expenditure on or in relation
25 to one or more R&D activities; and
26 (b) an entity is entitled to *tax offsets under section 355-100 for
27 one or more income years for those R&D activities; and
28 (c) an amount (the *R&D portion*) greater than nil remains after:
29 (i) adding up the R&D acquittals and R&D receipts; and
30 (ii) from the result, subtracting any repayments under the
31 grant of those acquittals or receipts during an income
32 year.

33 Note: Paragraph (a) includes using grant funds to purchase a tangible
34 depreciating asset for use when conducting the R&D activities.

- 1 (2) The condition in this section is met for a *recoupment other than a
2 grant if:
3 (a) the recoupment is received, or the entitlement to receive the
4 recoupment arises, during an income year (the *trigger year*);
5 and
6 (b) the recoupment is wholly or partly (the *R&D portion*) of
7 expenditure on or in relation to one or more R&D activities;
8 and
9 (c) an entity is entitled to *tax offsets under section 355-100 for
10 one or more income years for those R&D activities.

11 Note: Paragraph (b) includes a recoupment of expenditure used to purchase
12 a tangible depreciating asset for use when conducting the R&D
13 activities.

14 **355-450 Amount on which extra income tax is payable**

15 The extra income tax is payable for the trigger year on the R&D
16 portion.

17 Note: Section 12B or 31 of the *Income Tax Rates Act 1986* sets the rate at
18 which the recipient must pay extra income tax on the R&D portion.

19 **Subdivision 355-H—Feedstock adjustments**

20 **Table of sections**

21 355-460 Feedstock adjustments

22 **355-460 Feedstock adjustments**

23 *A feedstock adjustment rule is under consideration*

24 **Subdivision 355-I—Application to earlier income year R&D**
25 **expenditure incurred to associates**

26 **Table of sections**

27 355-480 Notional deductions for expenditure incurred to associate in earlier income
28 years

1 **355-480 Notional deductions for expenditure incurred to associate in**
2 **earlier income years**

3 *Notional deductions for earlier year associate expenditure*

4 (1) An *R&D entity can deduct for an income year (the *present year*)
5 expenditure it incurred to its *associate during an earlier income
6 year to the extent that:

7 (a) the expenditure was incurred on one or more *R&D
8 activities:

9 (i) for which the R&D entity is registered under
10 section 27A of the *Industry Research and Development*
11 *Act 1986* for an income year; and

12 (ii) that are activities to which section 355-205 (conditions
13 for R&D activities) applies; and

14 (b) the expenditure is paid to that associate during the present
15 year; and

16 (c) subsection (2) applies to the expenditure.

17 Note 1: This section applies in a modified way to R&D partnership
18 expenditure (see sections 355-515 and 355-520).

19 Note 2: Expenditure paid in income years starting on or after 1 July 2010 may
20 be deductible for activities registered for income years starting before
21 1 July 2010 (see section 355-200 of the *Income Tax (Transitional*
22 *Provisions) Act 1997*).

23 *Expenditure cannot have been otherwise deducted etc.*

24 (2) This subsection applies to the expenditure if:

25 (a) the *R&D entity can deduct the expenditure, or is entitled to a
26 *tax offset for the expenditure, under any other Division of
27 this Act for an earlier income year; and

28 (b) by the time of lodging its *income tax return for the most
29 recent income year before the present year, the R&D entity
30 had neither:

31 (i) deducted the expenditure; nor

32 (ii) obtained a tax offset for the expenditure;

33 as described in paragraph (a).

34 (3) The entitlement to the deduction, or *tax offset, described in
35 paragraph (2)(a) ceases to the extent that subsection (2) applies to
36 the expenditure.

**TSchedule 1T Main components of new R&D incentiveT
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1 Example: If, by the time mentioned in paragraph (2)(b), an R&D entity chose to
2 deduct only a third of the expenditure it could have deducted under
3 another Division, then the remaining 2 thirds of that expenditure:
4 (a) can be deducted under this section; but
5 (b) can no longer be deducted under the other Division.

6 *Notional deduction is subject to integrity rules etc.*

7 (4) This section has effect subject to section 355-220 (excluded
8 expenditure), Subdivision 355-F (integrity rules) and subsection
9 355-580(3) (CRC contributions).

10 **Subdivision 355-J—Application to R&D partnerships**

11 **Table of sections**

12	355-500	What this Subdivision is about
13	355-505	Meaning of <i>R&D partnership</i> and <i>partner's proportion</i>
14	355-510	Implications for partner's aggregated turnover
15	355-515	R&D partnership expenditure on R&D activities
16	355-520	R&D activities conducted by or for an R&D partnership
17	355-525	When notional deductions arise for decline in value of depreciating assets 18 of R&D partnerships
19	355-530	Balancing adjustments for R&D partnership assets only used for R&D 20 activities
21	355-535	Disposal of R&D results—assets of R&D partnerships
22	355-540	Application of recoupment rules
23	355-545	Relevance for net income, and losses, of the R&D partnership

24 **355-500 What this Subdivision is about**

25 This Subdivision modifies the rules in this Division for partners of
26 R&D partnerships.

27 In particular, the rules about deducting R&D expenditure are
28 modified to allow a partner to deduct the partner's proportion of
29 the R&D partnership's expenditure on R&D activities.

30 A partner of an R&D partnership may also be able to deduct under
31 this Subdivision the decline in value of partnership assets used for
32 R&D activities.

1 **355-505 Meaning of *R&D partnership* and *partner's proportion***

- 2 (1) A partnership is an *R&D partnership* at a particular time if, at that
3 time, each of the partners is an *R&D entity.
- 4 (2) For an amount attributable to an *R&D partnership for an income
5 year, each partner of the R&D partnership is taken to bear or be
6 entitled to (as appropriate) this proportion (the *partner's*
7 *proportion*) of the amount:
- 8 (a) so much of the amount the partners agreed the partner should
9 bear or be entitled to (as appropriate); or
- 10 (b) if there is no such agreement—the proportion of the amount
11 equal to the proportion of the partner's interest in the *net
12 income or *partnership loss of the R&D partnership for the
13 income year.

14 **355-510 Implications for partner's aggregated turnover**

15 For the purposes of sections 40-292 (balancing adjustments for
16 decline in value) and 355-100 (tax offsets for R&D), if:

- 17 (a) an *R&D entity is a partner of an *R&D partnership at some
18 time during an income year; and
- 19 (b) the partner's *aggregated turnover for the income year does
20 not include the R&D partnership's *annual turnover for the
21 income year;

22 the partner's aggregated turnover for the income year includes the
23 partner's proportion of the R&D partnership's annual turnover for
24 the income year.

25 **355-515 R&D partnership expenditure on R&D activities**

26 If an *R&D partnership incurs expenditure on one or more R&D
27 activities during an income year, this Division applies in relation to
28 each *R&D entity that is a partner of the R&D partnership at some
29 time during the income year as if:

- 30 (a) the partner incurred the partner's proportion of that
31 expenditure when the R&D partnership incurred that
32 expenditure; and
- 33 (b) neither the R&D partnership, nor any other partner of the
34 R&D partnership, incurred expenditure during the income
35 year on the R&D activities; and

1 (c) such other changes were made to this Division as are
2 appropriate having regard to that partner's proportion of
3 amounts attributable to the R&D partnership.

4 Note: This section and section 355-520 may result in:
5 (a) the partner being able to deduct the partner's proportion of the
6 partnership expenditure under section 355-200 (R&D
7 expenditure) or 355-480 (earlier year associate R&D
8 expenditure) for the R&D activities; and
9 (b) that deduction being affected by the integrity rules in
10 Subdivision 355-F.

11 **355-520 R&D activities conducted by or for an R&D partnership**

12 (1) If one or more *R&D activities are conducted by or for an *R&D
13 partnership during an income year, this Division applies in relation
14 to each *R&D entity that is a partner of the R&D partnership at
15 some time during the income year as if:

16 (a) the R&D activities were conducted by or for the partner in a
17 corresponding way to the way the R&D activities were
18 conducted by or for the R&D partnership; and

19 (b) the partner had relationships with other entities in relation to
20 the R&D activities that corresponded to the relationships the
21 R&D partnership had with those other entities in relation to
22 the R&D activities; and

23 (c) a thing done by, or in relation to, the R&D partnership in
24 relation to the R&D activities were a thing done by, or in
25 relation to, the partner; and

26 (d) the R&D activities were neither:
27 (i) conducted by or for the R&D partnership; nor
28 (ii) conducted by or for any other partner of the R&D
29 partnership; and

30 (e) such other changes were made to this Division as are
31 appropriate having regard to that partner's proportion of
32 amounts attributable to the R&D partnership.

33 Note 1: For the purposes of this Division, entities that are associates or
34 affiliates of, or connected with, the R&D partnership are taken to be
35 associates or affiliates of, or connected with, the partner (see
36 paragraph (b)).

37 Note 2: For the purposes of this Division, payments and agreements made by
38 the R&D partnership for the R&D activities are taken to be made by
39 the partner (see paragraph (c)).

- 1 (2) For the purposes of paragraph (1)(b), disregard the *R&D
2 partnership's relationship with each of the R&D partnership's
3 partners in their capacity as partners.

4 **355-525 When notional deductions arise for decline in value of**
5 **depreciating assets of R&D partnerships**

6 *When notional deductions arise*

- 7 (1) If:
- 8 (a) an *R&D entity is a partner of an *R&D partnership at some
9 time during an income year (the *present year*); and
- 10 (b) the partner is registered under section 27A of the *Industry*
11 *Research and Development Act 1986* for the present year for
12 one or more *R&D activities that are activities to which
13 section 355-205 (conditions for R&D activities) applies; and
- 14 Note: Section 355-205 applies with changes for this paragraph (see
15 section 355-520).
- 16 (c) while a tangible *depreciating asset is *held by the R&D
17 partnership during the present year, the asset is used for the
18 purpose of conducting one or more of those R&D activities;
19 and
- 20 (d) the asset is neither a building, nor a part of a building, unless
21 it is *plant; and
- 22 (e) the R&D partnership could deduct an amount under
23 section 40-25 for the asset for the present year if Division 40
24 applied with the changes described in section 355-305; and
- 25 Note: Section 355-305 applies with changes for this paragraph (see
26 subsection (2) of this section).
- 27 (f) the R&D partnership cannot deduct an amount for the asset
28 for:
- 29 (i) an earlier income year under Subdivision 328-D (capital
30 allowances for small business entities); or
- 31 (ii) an earlier income year under Division 40 (as that
32 Division applies apart from this Division), in a case
33 where section 40-440 (low-value pools) applied;
- 34 the partner can deduct the partner's proportion of the amount
35 referred to in paragraph (e) for the present year.

Changed application of Division 40 for this Subdivision

- (2) For the purposes of this Subdivision, section 355-305 applies as if the following changes were made:

Changes to be made

Item	For a reference in section 355-305 to ...	substitute a reference to ...
1	paragraph 355-300(1)(d)	paragraph 355-525(1)(e)
2	section 355-310	section 355-530
3	paragraph 355-300(1)(b)	paragraph 355-525(1)(c)
4	*R&D entity	*R&D partnership

Disregard certain assets held because of CRC contributions

- (3) This section has effect subject to subsection 355-580(4) (CRC contributions).

355-530 Balancing adjustments for R&D partnership assets only used for R&D activities

- (1) This section applies to an *R&D entity (the *partner*) if:
- (a) a *balancing adjustment event happens in an income year (the *event year*) for an asset *held by an *R&D partnership; and
 - (b) the R&D partnership cannot deduct an amount under section 40-25, as that section applies apart from:
 - (i) this Division; and
 - (ii) former section 73BC of the *Income Tax Assessment Act 1936*;for the asset for an income year; and
 - (c) the partner is entitled under section 355-100 to *tax offsets for one or more income years for deductions (the *R&D deductions*) under section 355-525 for the asset; and
 - (d) the partner is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities for the event year; and
 - (e) if Division 40 applied with the changes described in section 355-305:

- 1 (i) the R&D partnership could deduct for the event year an
2 amount under subsection 40-285(2) for the asset and the
3 balancing adjustment event; or
4 (ii) an amount would be included in the R&D partnership's
5 assessable income for the event year under subsection
6 40-285(1) for the asset and the balancing adjustment
7 event.

8 Note 1: For the purposes of paragraph (e), section 355-305 applies with the
9 changes set out in subsection 355-525(2).

10 Note 2: This section applies in a modified way if the partner has deductions
11 for the asset under former section 73BA or 73BH of the *Income Tax*
12 *Assessment Act 1936* (see section 355-325 of the *Income Tax*
13 *(Transitional Provisions) Act 1997*).

14 Note 3: Section 40-293 applies if the R&D partnership can deduct an amount
15 under section 40-25, as that section applies apart from this Division
16 and former section 73BC of the *Income Tax Assessment Act 1936*.

17 *Notional deduction*

- 18 (2) If the *R&D partnership could deduct for the event year an amount
19 under subsection 40-285(2) for the asset and the event if
20 Division 40 applied as described in paragraph (1)(e), the partner
21 can deduct the partner's proportion of that amount for the event
22 year.

23 *Amount to be included in assessable income*

- 24 (3) If an amount (the *section 40-285 amount*) would be included in the
25 *R&D partnership's assessable income for the event year under
26 subsection 40-285(1) for the asset and the event if Division 40
27 applied as described in paragraph (1)(e), the partner's proportion of
28 the sum of:

- 29 (a) that amount; and
30 (b) the following amount;

31 is included in the partner's assessable income for the event year:

32 Adjusted section 40-285 amount $\times \frac{1}{3}$

33 where:

1 *adjusted section 40-285 amount* means so much of the
2 section 40-285 amount as does not exceed the total decline in
3 value.

4 *total decline in value* means the asset's *cost, less its *adjustable
5 value, (worked out under Division 40 as it applies as described in
6 paragraph (1)(e)).

7 **355-535 Disposal of R&D results for R&D partnerships**

8 In addition to its application apart from this section,
9 section 355-410 (disposal of R&D results) also applies to each
10 partner of an *R&D partnership with such changes as are
11 appropriate having regard to:

- 12 (a) amounts (the *results amounts*) of a kind set out in
13 subparagraphs 355-410(1)(b)(i) to (v) that the R&D
14 partnership receives or becomes entitled to receive in an
15 income year; and
16 (b) the principle that any amount to be included in the partner's
17 assessable income for the income year for a results amount
18 should be the partner's proportion of the amount arising
19 under subsection 355-410(2) for the results amount.

20 Note: The ordinary application of section 355-410 will apply to any of the
21 partner's deductions under this Division that do not relate to the R&D
22 partnership.

23 **355-540 Application of recoupment rules**

- 24 (1) If:
25 (a) an *R&D partnership incurs expenditure (the *partnership*
26 *expenditure*) on *R&D activities; and
27 (b) an *R&D entity (the *partner*) is entitled under
28 section 355-100 to a *tax offset because it can, under
29 section 355-200 or 355-480, deduct some or all of that
30 expenditure; and
31 (c) the R&D partnership receives an amount as *recoupment of
32 any or all of the partnership expenditure;
33 the partner is taken, for the purposes of Subdivisions 20-A and
34 355-G:

- 1 (d) to have incurred the partner's proportion of the partnership
2 expenditure when the R&D partnership incurred that
3 expenditure; and
4 (e) to have received the partner's proportion of the recoupment
5 when the R&D partnership received the recoupment.
- 6 (2) If:
- 7 (a) an *R&D entity (the *partner*) is entitled under
8 section 355-100 to a *tax offset because it can, under
9 section 355-525, deduct an amount for an income year for an
10 asset; and
11 (b) the applicable *R&D partnership receives an amount as
12 *recoupment of any or all of the R&D partnership's
13 expenditure included in the *cost of the asset for the purposes
14 of the application of Division 40 as described in paragraph
15 355-525(1)(e);
16 the partner is taken, for the purposes of Subdivisions 20-A and
17 355-G:
18 (c) to have incurred the partner's proportion of that expenditure
19 when the R&D partnership incurred that expenditure; and
20 (d) to have received the partner's proportion of the recoupment
21 when the R&D partnership received the recoupment.

22 **355-545 Relevance for net income, and losses, of the R&D**
23 **partnership**

24 For an *R&D entity that is a partner of an *R&D partnership,
25 neither:

- 26 (a) any expenditure the R&D entity is taken to have incurred
27 because of this Subdivision; nor
28 (b) any *recoupment the R&D entity is taken to have received
29 because of this Subdivision;

30 is to be taken into account in determining the *net income of the
31 R&D partnership, or any *partnership loss of the R&D partnership,
32 for an income year.

33 **Subdivision 355-K—Application to Cooperative Research**
34 **Centres**

35 **Table of sections**

1 355-580 When notional deductions for CRC contributions arise

2 **355-580 When notional deductions for CRC contributions arise**

3 *Monetary contributions are deductible*

- 4 (1) An *R&D entity can deduct for an income year expenditure it
5 incurs during that year to the extent that:
6 (a) the expenditure is in the form of monetary contributions
7 under the *CRC program; and
8 (b) the contributions have been or will be spent under the CRC
9 program on one or more *R&D activities for which the R&D
10 entity is registered under section 27A of the *Industry*
11 *Research and Development Act 1986* for an income year.

12 Note 1: The R&D activities will need to be conducted during the income year
13 the R&D entity is registered for those activities (see sections 27A and
14 27H of the *Industry Research and Development Act 1986*).

15 Note 2: Expenditure incurred in income years starting on or after 1 July 2010
16 may be deductible for activities registered for income years starting
17 before 1 July 2010 (see section 355-200 of the *Income Tax*
18 *(Transitional Provisions) Act 1997*).

- 19 (2) Subsection (1) does not apply to expenditure to the extent that it is
20 incurred out of Commonwealth funding.

21 *No other deductions arise for monetary contributions etc.*

- 22 (3) Neither:
23 (a) a contribution an *R&D entity can deduct under
24 subsection (1); nor
25 (b) expenditure incurred under the *CRC program, to the extent
26 that the expenditure is incurred out of a contribution an R&D
27 entity can deduct under subsection (1);
28 can be deducted by any R&D entity under any other provision of
29 this Division for any income year.
- 30 (4) If an asset's *cost includes expenditure incurred under the *CRC
31 program out of a contribution an *R&D entity can deduct under
32 subsection (1), the asset's decline in value cannot be deducted
33 under this Division by any R&D entity for any income year.

1 **Subdivision 355-W—Other matters**

2 **Table of sections**

3	355-699	Objecting to assessment of refundable tax offset
4	355-700	Effect of findings by Innovation Australia
5	355-705	Amendment of assessments
6	355-710	Implications for other deductions and tax offsets

7 **355-699 Objecting to assessment of refundable tax offset**

8 (1) An *R&D entity may object under subsection 175A(1) of the
9 *Income Tax Assessment Act 1936* against an assessment made in
10 relation to the R&D entity to the extent that the assessment relates
11 to the amount of a *tax offset under section 355-100 that is subject
12 to the refundable tax offset rules.

13 Note: See section 67-30 to see when a tax offset under section 355-100 is
14 subject to the refundable tax offset rules.

15 (2) This section does not limit subsection 175A(1) of that Act, and has
16 effect despite subsection 175A(2) of that Act.

17 Note: Subsection 175A(2) of that Act prevents objections if the taxpayer has
18 no taxable income, or if there is no tax payable on the taxpayer's
19 taxable income.

20 **355-700 Effect of findings by Innovation Australia**

21 *Findings about registration or core technology*

22 (1) If:

23 (a) a certificate given to the Commissioner under the *Industry*
24 *Research and Development Act 1986* sets out:

25 (i) a finding under section 27B of that Act about an *R&D
26 entity's application for registration under section 27A of
27 that Act for an income year; or

28 (ii) a finding under section 27H of that Act about an R&D
29 entity's registration under section 27A of that Act for an
30 income year; or

31 (iii) a finding under section 28BB of that Act about an R&D
32 entity and one or more *R&D activities conducted or to
33 be conducted during one or more income years; and

1 (b) the finding was made within 4 years after the end of the
2 income year or the last of the income years (as appropriate);
3 the finding binds the Commissioner for the purposes of
4 assessments of the R&D entity for the income year or years (as
5 appropriate).

6 Note: Section 28BB of the *Industry Research and Development Act 1986*
7 deals with findings that technology is core technology for particular
8 R&D activities. Expenditure incurred in acquiring such technology is
9 not deductible under this Division (see subsection 355-220(2)).

10 *Advance findings about activities yet to be completed*

11 (2) If:

- 12 (a) an activity is being conducted, or is yet to be conducted, in an
13 income year (the *application year*); and
14 (b) an *R&D entity applies in the application year for a finding
15 under section 28A of the *Industry Research and Development*
16 *Act 1986* about the activity; and
17 (c) Innovation Australia makes the finding and gives the
18 Commissioner a certificate under section 28C of that Act
19 setting out the finding;
20 the finding binds the Commissioner for the purposes of
21 assessments of the R&D entity for the application year and the next
22 2 income years.

23 *Advance findings about completed activities*

24 (3) If:

- 25 (a) an activity is completed during an income year (the
26 *application year*); and
27 (b) an *R&D entity applies in the application year for a finding
28 under section 28A of the *Industry Research and Development*
29 *Act 1986* about the activity; and
30 (c) Innovation Australia makes the finding and gives the
31 Commissioner a certificate under section 28C of that Act
32 setting out the finding;
33 the finding binds the Commissioner for the purposes of
34 assessments of the R&D entity for the application year.

1 **355-705 Amendment of assessments**

2 *Dealing with findings of Innovation Australia*

3 (1) If:

4 (a) a certificate given to the Commissioner under the *Industry*
5 *Research and Development Act 1986* sets out:

6 (i) a finding under section 27B of that Act about an *R&D
7 entity's application for registration under section 27A of
8 that Act for an income year; or

9 (ii) a finding under section 27H of that Act about an R&D
10 entity's registration under section 27A of that Act for an
11 income year; or

12 (iii) a finding under section 28A or 28B of that Act made on
13 application by an R&D entity during an income year; or

14 (iv) a finding under section 28BB of that Act about an R&D
15 entity and one or more R&D activities conducted or to
16 be conducted during one or more income years; and

17 (b) the finding was made within 4 years after the end of the
18 income year or the last of the income years (as appropriate);

19 despite section 170 of the *Income Tax Assessment Act 1936*, the
20 Commissioner may amend the R&D entity's assessment for an
21 income year affected by the finding at any time within 2 years after
22 the Commissioner is given the certificate, for the purposes of
23 giving effect to the finding.

24 *Dealing with key decisions of Innovation Australia and others*

25 (2) If:

26 (a) an internal review decision (the **key decision**) under
27 subsection 30D(2) of the *Industry Research and Development*
28 *Act 1986* relates to an *R&D entity; or

29 (b) a decision (also the **key decision**) under the *Administrative*
30 *Appeals Tribunal Act 1975*:

31 (i) varies a decision covered by paragraph (a); or

32 (ii) sets aside a decision covered by paragraph (a) (the
33 **internal review decision**), whether or not the key
34 decision also includes a decision made in substitution
35 for the internal review decision; or

36 (c) a decision (also the **key decision**) of a court is about:

- 1 (i) a decision under Part III of the *Industry Research and*
2 *Development Act 1986* relating to an R&D entity; or
3 (ii) a decision covered by paragraph (b);
4 despite section 170 of the *Income Tax Assessment Act 1936*, the
5 Commissioner may amend the R&D entity's assessment for an
6 income year affected by the key decision at any time within 2 years
7 after the making of that decision, for the purposes of giving effect
8 to that decision.

9 **355-710 Implications for other deductions and tax offsets**

- 10 (1) If an *R&D entity is entitled under section 355-100 to a *tax offset
11 for an income year for expenditure it can deduct under
12 section 355-200, 355-480 or 355-580, that expenditure:
13 (a) cannot be taken into account by any entity in working out a
14 deduction under any other Division of this Act for any
15 income year; and
16 (b) cannot be taken into account by any entity in working out a
17 tax offset under any other Division of this Act for any income
18 year.

19 Note: Section 355-200 is about R&D expenditure, section 355-480 is about
20 earlier year associate R&D expenditure, and section 355-580 is about
21 CRC contributions.

- 22 (2) If an *R&D entity is entitled under section 355-100 to a *tax offset
23 for an income year for a deduction under section 355-300,
24 355-310, 355-525 or 355-530 for the decline in value of an asset,
25 that decline in value:
26 (a) cannot be taken into account by any entity in working out a
27 deduction under any other Division of this Act (other than
28 section 40-292 or 40-293) for any income year; and
29 (b) cannot be taken into account by any entity in working out a
30 tax offset under any other Division of this Act for any income
31 year;

32 to the extent that the decline in value is attributable to the use of
33 the asset for the purpose of conducting one or more of the *R&D
34 activities to which the deduction relates.

35 Note 1: A deduction may be available under section 40-25 to the extent that
36 the asset's decline in value is attributable to another purpose. If so,
37 that deduction under section 40-25 will not take into account the
38 asset's decline in value to the extent that it is attributable to the R&D
39 activities (see also subsection 40-25(2)).

1 Note 2: Section 355-300 is about the decline in value of R&D assets,
2 section 355-310 is about balancing adjustments for R&D assets,
3 section 355-525 is about the decline in value of R&D partnership
4 assets, and section 355-530 is about balancing adjustments for R&D
5 partnership assets.

6 Note 3: Sections 40-292 and 40-293 deal with balancing adjustments when
7 deductions have been available for the asset's decline in value both
8 under this Division and section 40-25.

9 **2 Subsection 995-1(1)**

10 Insert:

11 *core R&D activities* has the meaning given by sections 355-25 and
12 355-30.

13 **3 Subsection 995-1(1)**

14 Insert:

15 *CRC program* means the program administered by the
16 Commonwealth known as the Cooperative Research Centres
17 Program.

18 **4 Subsection 995-1(1)**

19 Insert:

20 *partner's proportion* has the meaning given by subsection
21 355-505(2).

22 **5 Subsection 995-1(1)**

23 Insert:

24 *R&D activities* has the meaning given by section 355-20.

25 **6 Subsection 995-1(1)**

26 Insert:

27 *R&D entity* has the meaning given by section 355-40.

28 **7 Subsection 995-1(1)**

29 Insert:

30 *R&D partnership* has the meaning given by subsection
31 355-505(1).

1 **8 Subsection 995-1(1) (definition of *research and***
2 ***development activities*)**

3 Repeal the definition.

4 **9 Subsection 995-1(1)**

5 Insert:

6 *supporting R&D activities* has the meaning given by
7 section 355-35.

1

Schedule 2—Innovation Australia's role

2

Part 1—Main amendment

3

Industry Research and Development Act 1986

4

1 After Part II

5

6 Insert:

6

Part III—Functions relating to the R&D tax offset

7

Division 1—Introduction

8

26 Objects

9

10 The objects of this Part are:

10

11 (a) to provide integrity for the working out of tax offsets under
12 Division 355 (about R&D) of the *Income Tax Assessment Act*
13 *1997*; and

13

14 (b) to increase certainty through findings about matters relevant
15 to the working out of those tax offsets; and

14

16 (c) to improve access for small and medium R&D entities to
17 quality research services by maintaining a register of research
18 service providers.

16

17

18

19 Note: The integrity mentioned in paragraph (a) is provided, for example, by:

19

20 (a) the Board registering entities seeking these tax offsets; and

20

21 (b) the Board conducting compliance checks on those entities.

21

26A Simplified outline

22

23 The following is a simplified outline of this Part:

23

- 24 • The Board may, on application by an R&D entity, register the
25 R&D entity for R&D activities. This registration is needed
26 before the R&D entity can be entitled to a tax offset (an *R&D*
27 *tax offset*) under Division 355 of the *Income Tax Assessment*
28 *Act 1997* for the R&D activities.

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- The R&D entity can seek an advance finding to get early notice about whether an activity is considered to be an R&D activity.
- The R&D entity can seek a finding that an activity cannot be conducted in Australia. The finding is needed before expenditure incurred on the activity can count towards an R&D tax offset.
- The Board may register entities as research service providers capable of providing research services to R&D entities.
- Internal and external review can be sought for certain decisions under this Part.

12 **Division 2—Registering for the R&D tax offset**

13 **Subdivision A—Introduction**

14 **27 Simplified outline**

15 The following is a simplified outline of this Division:

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- The Board may register an R&D entity for R&D activities conducted during an income year.
- The Board may make findings about the nature of an R&D entity's activities both before and after registration. This includes findings made on application by the R&D entity after registration.
- These findings bind the Commissioner for the purposes of any entitlement of the R&D entity to a tax offset under Division 355 of the *Income Tax Assessment Act 1997* for the activities.
- The Board will register an R&D entity's activities consistently with any findings made about the entity's application. Any findings made about these activities after registration will, if necessary, automatically vary the entity's registration.

- 1
- | |
|---|
| <ul style="list-style-type: none">• Registrations can also be varied and revoked. |
|---|

2 **Subdivision B—Registering R&D entities for R&D activities**

3 **27A Registering R&D entities for R&D activities**

4 (1) The Board must, on application by an R&D entity, decide whether
5 to register or refuse to register the entity for the following for an
6 income year:

- 7 (a) one or more specified activities as core R&D activities
8 conducted during the income year;
9 (b) one or more specified activities as supporting R&D activities
10 conducted during the income year.

11 Note: A decision to refuse to register is reviewable (see Division 5).

12 (2) If the Board decides under subsection (1) to register the R&D
13 entity, the Board must do so consistently with:

- 14 (a) any findings already in force under subsection 27B(1) in
15 relation to the application; and
16 (b) any findings already in force under subsection 28A(1)
17 (advance findings about the nature of activities) in relation to
18 the R&D entity.

19 (3) For each activity registered under subsection (1) as a supporting
20 R&D activity for an R&D entity for an income year, the
21 registration is to also specify:

- 22 (a) one or more activities as the corresponding core R&D
23 activities; and
24 (b) if any of those activities specified as a core R&D activity is
25 not registered under paragraph (1)(a) for the R&D entity for
26 the income year—each income year for which that core R&D
27 activity:
28 (i) was registered under paragraph (1)(a) for the R&D
29 entity; or
30 (ii) is proposed to be registered under paragraph (1)(a) for
31 the R&D entity.

1 **27B Findings about applications for registration**

- 2 (1) The Board may make one or more findings to the following effect
3 when considering an R&D entity's application for the purposes of
4 subsection 27A(1):
5 (a) that all or part of an activity mentioned in the application was
6 a core R&D activity conducted during the income year;
7 (b) that all or part of an activity mentioned in the application was
8 not an activity of a kind covered by paragraph (a);
9 (c) that all or part of an activity mentioned in the application was
10 a supporting R&D activity conducted:
11 (i) during the income year; and
12 (ii) in relation to one or more specified core R&D activities
13 for which the entity has been or could be registered
14 under section 27A for an income year;
15 (d) that all or part of an activity mentioned in the application was
16 not an activity of a kind covered by paragraph (c).

- 17 Note 1: A finding is reviewable (see Division 5).
18 Note 2: The Board could make a finding under paragraph (b) if, for example,
19 the Board has insufficient information to make a finding under
20 paragraph (a). Similarly, the Board could make a finding under
21 paragraph (d) if it has insufficient information to make a finding under
22 paragraph (c).
23 Note 3: The Board may also make findings after registration (see subsection
24 27H(1)).

- 25 (2) If the Board makes a finding under subsection (1) in relation to the
26 R&D entity's application, the Board may specify in the finding the
27 times to which the finding relates.

28 Example: A finding under paragraph 27B(1)(a) could specify the times during
29 the income year that an activity was a core R&D activity.

- 30 (3) This section has effect subject to section 31B (findings cannot be
31 inconsistent with any earlier findings).

32 **27C Notice of decision about registration**

- 33 (1) The Board must notify an applicant in writing of the Board's
34 decision under subsection 27A(1) about the application.

- 1 (2) The notice must include a certificate for each finding (if any) made
2 under subsection 27B(1) for the application. The certificate must
3 set out:
4 (a) a description of the finding; and
5 (b) the Board's reasons for the finding; and
6 (c) the activity affected by the finding; and
7 (d) the matters (if any) specified in regulations made for the
8 purposes of this paragraph.
9 The notice and certificate may set out other matters.
10 Note: The notice should also mention the applicant's right to have the
11 finding reviewed under Division 5 (see section 30B).
- 12 (3) The Board must give the Commissioner a copy of the notice if the
13 notice includes one or more certificates.
- 14 (4) A failure to comply with this section does not affect the validity of
15 the decision or finding.

16 **Subdivision C—Applying to register R&D activities**

17 **27D Applying to register R&D activities**

- 18 An application to register activities under section 27A for an
19 income year must be:
20 (a) in the approved form; and
21 (b) accompanied by the fee (if any) specified in regulations made
22 under section 48A for the purposes of this section; and
23 (c) made within:
24 (i) 10 months after the end of the income year; or
25 (ii) a further period allowed by the Board in accordance
26 with the decision-making principles.
- 27 Note 1: A refusal to allow a further period is reviewable (see Division 5).
28 Note 2: Section 31 deals with approved forms.
29 Note 3: Section 31A deals with the decision-making principles.

30 **27E Board may request further information**

- 31 (1) The Board may request the applicant in writing to give specified
32 information, or specified kinds of information, to the Board about
33 the application.
-

- 1 (2) The request may ask for the information or kinds of information to
2 be given:
- 3 (a) in the approved form; and
4 (b) within:
- 5 (i) 30 days after the request was given; or
6 (ii) a further period allowed by the Board in accordance
7 with the decision-making principles.
- 8 Note 1: A refusal to allow a further period is reviewable (see Division 5).
9 Note 2: Section 31 deals with approved forms.
10 Note 3: Section 31A deals with the decision-making principles.
11 Note 4: A failure by the entity to give the information may result in a finding
12 under paragraph 27B(1)(b) or (d).

13 **Subdivision D—Examining registrations**

14 **27F Examining a registration**

- 15 (1) The Board may conduct one or more examinations of all or part of
16 an R&D entity's registration under section 27A for an income year
17 for the purposes of making one or more findings under subsection
18 27H(1).
- 19 Note: A finding under subsection 27H(1) will support the entity's
20 registration, or provide grounds to vary that registration.
- 21 (2) The Board may examine an R&D entity's registration on its own
22 initiative.
- 23 (3) The Board must examine an R&D entity's registration if:
24 (a) requested by the Commissioner; or
25 (b) the R&D entity has applied for the Board to make one or
26 more findings under subsection 27H(1) about the registration.
- 27 Note: A finding under subsection 27H(1) can only bind the Commissioner
28 for the purposes of the R&D entity's income tax assessment for the
29 income year if the finding is made within 4 years after the end of the
30 income year (see subsection 355-700(1) of the *Income Tax Assessment*
31 *Act 1997*).
- 32 (4) If the R&D entity applies for a finding under subsection 27H(1)
33 about the registration, the Board must:
34 (a) make one or more findings under subsection 27H(1) about
35 the registration; or

1 (b) if justified in accordance with the decision-making
2 principles—refuse to make a finding under subsection
3 27H(1) about the registration.

4 Note 1: The Board may make a finding that differs from that sought by the
5 R&D entity.

6 Note 2: A finding, or a refusal to make a finding, is reviewable (see
7 Division 5).

8 Note 3: Section 31A deals with the decision-making principles.

9 **27FA Applying for findings**

10 An application for one or more findings under subsection 27H(1)
11 must be:

12 (a) in the approved form; and

13 (b) accompanied by the fee (if any) specified in regulations made
14 under section 48A for the purposes of this section.

15 Note 1: An application can seek findings for several activities.

16 Note 2: Section 31 deals with approved forms.

17 **27G Board may request information during an examination**

18 (1) When examining an R&D entity's registration, the Board may
19 request the entity in writing to give specified information, or
20 specified kinds of information, to the Board about the entity's
21 registration.

22 (2) The request may ask for the information or kinds of information to
23 be given:

24 (a) in the approved form; and

25 (b) within:

26 (i) 30 days after the request was given; or

27 (ii) a further period allowed by the Board in accordance
28 with the decision-making principles.

29 Note 1: A refusal to allow a further period is reviewable (see Division 5).

30 Note 2: Section 31 deals with approved forms.

31 Note 3: Section 31A deals with the decision-making principles.

32 Note 4: A failure by the entity to give the information may result in a finding
33 under paragraph 27H(1)(b) or (d).

1 **27H Findings about a registration**

- 2 (1) The Board may make one or more findings to the following effect
3 about an R&D entity's registration under section 27A for an
4 income year (the *registration year*):
5 (a) that all or part of a registered activity was a core R&D
6 activity conducted during the registration year;
7 (b) that all or part of a registered activity was not an activity of a
8 kind covered by paragraph (a);
9 (c) that all or part of a registered activity was a supporting R&D
10 activity conducted during the registration year and in relation
11 to:
12 (i) one or more specified registered core R&D activities; or
13 (ii) one or more specified core R&D activities for which the
14 entity has been registered in an earlier income year; or
15 (iii) one or more specified core R&D activities yet to be
16 conducted for which the entity could be registered in the
17 registration year if those activities were conducted
18 during the registration year; or
19 (iv) several specified core R&D activities, each covered by
20 subparagraph (i), (ii) or (iii);
21 (d) that all or part of a registered activity was not an activity of a
22 kind covered by paragraph (c).

23 Note 1: A finding is reviewable (see Division 5).

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

- 29 (2) If the Board makes a finding under subsection (1) in relation to the
30 R&D entity's registration, the Board may specify in the finding the
31 times to which the finding relates.

32 Example: A finding under paragraph 27H(1)(a) could specify the times during
33 the registration year that a registered activity was a core R&D activity.

- 34 (3) This section has effect subject to section 31B (findings cannot be
35 inconsistent with any earlier findings).

1 **27J Notice of findings or of decisions refusing to make findings**

2 (1) The Board must notify an R&D entity, and the Commissioner, in
3 writing of any findings under subsection 27H(1) about the entity's
4 registration under section 27A.

5 (2) The notice must include a certificate for each finding. The
6 certificate must set out:

- 7 (a) a description of the finding; and
8 (b) the Board's reasons for the finding; and
9 (c) the registered activity affected by the finding; and
10 (d) the effect of the finding on the entity's registration; and
11 (e) the matters (if any) specified in regulations made for the
12 purposes of this paragraph.

13 The notice and certificate may set out other matters.

14 Note 1: For the effect of the finding on the entity's registration, see
15 section 27L (about automatic variations to registrations).

16 Note 2: The notice should also mention the applicant's right to have the
17 finding reviewed under Division 5 (see section 30B).

18 (3) The Board must notify an R&D entity in writing of any decision
19 under paragraph 27F(4)(b) refusing to make a finding under
20 subsection 27H(1) in response to an application under
21 section 27FA by the R&D entity.

22 (4) A failure to comply with this section does not affect the validity of
23 a finding or decision.

24 **27L Automatic variations so registration is consistent with findings**

25 (1) If an R&D entity is registered under section 27A for an income
26 year, then while a finding is in force:

- 27 (a) under subsection 27H(1) in relation to the registration; or
28 (b) under subsection 27B(1) in relation to the application for the
29 registration;

30 the registration is taken always to have existed in a form consistent
31 with the finding.

32 Note 1: This subsection will cease to apply if the finding is set aside on review
33 (see Division 5).

34 Note 2: A finding has no effect to the extent of any inconsistency with a
35 finding already in force under this Part in relation to the R&D entity
36 (see section 31B).

- 1 (2) If:
- 2 (a) a finding under subsection 28A(1) (advance findings about
- 3 the nature of activities) comes into force for an R&D entity
- 4 about an activity conducted during an income year; and
- 5 (b) the R&D entity is later registered under section 27A for the
- 6 activity for the income year;
- 7 then, while the finding is in force, the registration is taken to exist
- 8 in a form consistent with the finding.
- 9 Note 1: This subsection will cease to apply if the finding is set aside on review
- 10 (see Division 5).
- 11 Note 2: A finding has no effect to the extent of any inconsistency with a
- 12 finding already in force under this Part in relation to the R&D entity
- 13 (see section 31B).
- 14 (3) This section has effect for the purposes of this Act and the *Income*
- 15 *Tax Assessment Act 1997*.

16 **27M Varying registrations on entity's request**

- 17 (1) The Board may, by notice in writing given to an R&D entity, vary
- 18 the entity's registration under section 27A for an income year if:
- 19 (a) the entity applies for the variation; and
- 20 (b) the variation is consistent with the Board's findings (if any)
- 21 in force under this Part in relation to the R&D entity; and
- 22 (c) making the variation is justified in accordance with the
- 23 decision-making principles.
- 24 Note 1: A decision not to vary is reviewable (see Division 5).
- 25 Note 2: Section 31A deals with the decision-making principles.
- 26 (2) An application for a variation must be:
- 27 (a) in the approved form; and
- 28 (b) accompanied by the fee (if any) specified in regulations made
- 29 under section 48A for the purposes of this section.
- 30 Note: Section 31 deals with approved forms.
- 31 (3) Section 27E applies to an application under this section in a way
- 32 corresponding to the way that section applies to an application
- 33 under section 27D.
- 34 Note: This means the Board may request further information about the
- 35 application (see section 27E).
-

- 1 (4) For the purposes of this Act and the *Income Tax Assessment Act*
2 *1997*, the effect of the variation is that the entity's registration
3 under section 27A for the income year is taken always to have
4 existed as varied.

5 **27N Revoking registrations**

- 6 (1) The Board may, by notice in writing given to an entity, revoke the
7 entity's registration under section 27A for an income year if the
8 Board is satisfied that entity was not an R&D entity at any time
9 when an activity covered by the registration was conducted during
10 the income year.

11 Note: A decision to revoke under this subsection is reviewable (see
12 Division 5).

- 13 (2) The Board may, by notice in writing given to an R&D entity,
14 revoke the entity's registration under section 27A for an income
15 year if the entity requests the Board to do so.

- 16 (3) A request for a revocation under subsection (2) must be:
17 (a) in the approved form; and
18 (b) accompanied by the fee (if any) specified in regulations made
19 under section 48A for the purposes of this section.

20 Note: Section 31 deals with approved forms.

- 21 (4) For the purposes of this Act and the *Income Tax Assessment Act*
22 *1997*, the effect of a revocation under this section is that the entity
23 is taken never to have been registered under section 27A for the
24 income year.

25 Note: This subsection will cease to apply if a revocation under
26 subsection (1) is set aside on review (see Division 5).

- 27 (5) The Board must notify the Commissioner of a revocation under
28 this section.

29 **Division 3—Other findings**

30 **Subdivision A—Introduction**

31 **28 Simplified outline**

32 The following is a simplified outline of this Division:

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- An R&D entity can seek a finding (an *advance finding*) about whether an activity is an R&D activity.
- An advance finding binds the Commissioner for the purpose of working out tax offsets (*R&D tax offsets*) under Division 355 of the *Income Tax Assessment Act 1997*.
- An R&D entity can seek a finding that an activity cannot be conducted in Australia.
- An R&D tax offset will only be available for expenditure incurred on an activity conducted overseas if a finding that the activity cannot be conducted in Australia has come into force.
- The Board may also make a finding about whether particular technology is core technology for R&D activities.
- An effect of a finding that the technology is core technology for the R&D activities is that an R&D tax offset will not be available for expenditure incurred in acquiring, or in acquiring the right to use, the technology for the R&D activities.

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Subdivision B—Advance findings about the nature of activities

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28A Advance findings about the nature of activities

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- (1) The Board must, on application by an R&D entity for a finding under this section about an activity, do one or more of the following:
 - (a) find that all or part of the activity is a core R&D activity;
 - (b) find that all or part of the activity is a supporting R&D activity in relation to one or more specified core R&D activities for which the entity has been or could be registered under section 27A for an income year;
 - (c) make a finding to the effect that all or part of the activity is neither:
 - (i) a core R&D activity; nor
 - (ii) a supporting R&D activity of a kind covered by paragraph (b);

1 (d) if justified in accordance with the decision-making
2 principles—refuse to make a finding about all or part of the
3 activity.

4 Note 1: A finding, or a refusal to make a finding, is reviewable (see
5 Division 5).

6 Note 2: A finding binds the Commissioner for the purposes of income tax
7 assessments for certain income years (see subsections 355-700(2) and
8 (3)).

9 Note 3: Section 31A deals with the decision-making principles.

10 (2) The Board must not make a finding under subsection (1) about an
11 activity unless the Board is satisfied that the activity:

12 (a) has been completed during the income year in which the
13 application is made; or

14 (b) is being conducted when the application is made; or

15 (c) is yet to be conducted, but that it is reasonable to expect that
16 the activity will be conducted in any or all of the following
17 income years:

18 (i) the income year in which the application is made;

19 (ii) either of the next 2 income years.

20 (3) If the Board makes a finding under subsection (1) about an activity
21 that has been completed during the income year in which the
22 application is made, the Board may specify in the finding the times
23 to which the finding relates.

24 (4) This section has effect subject to section 31B (findings cannot be
25 inconsistent with any earlier findings).

26 **28AA Applications made on behalf of R&D entities**

27 (1) For the purposes of subsection 28A(1), an application by an R&D
28 entity may be made on behalf of that R&D entity by an entity (the
29 ***authorised person***) who:

30 (a) is specified in regulations made for the purposes of this
31 subsection; and

32 (b) is acting with the R&D entity's written consent.

33 Note: For specification by class, see subsection 13(3) of the *Legislative*
34 *Instruments Act 2003*.

35 (2) If:

- 1 (a) an entity (the *authorised person*) could, under subsection (1),
2 make an application on behalf of more than one R&D entity
3 for the same finding for the same activity; and
4 (b) the authorised person applies (the *joint application*) under
5 subsection 28D(2) for the finding on behalf of those R&D
6 entities;
7 the joint application is taken to be a separate application under
8 subsection 28D(1) for the finding by each of those R&D entities.

9 **Subdivision C—Findings about activities to be conducted**
10 **outside Australia**

11 **28B Findings about activities to be conducted outside Australia**

- 12 (1) The Board must, on application by an R&D entity for a finding
13 under this section about an activity, do one or more of the
14 following:
15 (a) find that all or part of the activity is an activity (the *overseas*
16 *activity*) that meets the conditions in section 28BA;
17 (b) find that all or part of the activity is not an activity that meets
18 the conditions in section 28BA;
19 (c) if justified in accordance with the decision-making
20 principles—refuse to make a finding about all or part of the
21 activity.
- 22 Note 1: A finding, or a refusal to make a finding, is reviewable (see
23 Division 5).
- 24 Note 2: An effect of a finding under paragraph (a) is that a tax offset may be
25 available for expenditure incurred on the overseas activity after the
26 finding comes into force (see Division 355 of the *Income Tax*
27 *Assessment Act 1997*, in particular paragraphs 355-205(1)(d) and (e)
28 of that Act).
- 29 Note 3: Section 31A deals with the decision-making principles.
- 30 (2) For the purposes of this Act and the *Income Tax Assessment Act*
31 *1997*, a finding under this section comes into force at the start of
32 the income year in which the application for the finding is made.
- 33 (3) This section has effect subject to section 31B (findings cannot be
34 inconsistent with any earlier findings).

1 **28BA Conditions for a finding that an overseas activity cannot be**
2 **conducted in Australia etc.**

3 *Must be an R&D activity*

- 4 (1) The first condition is that the overseas activity is covered by a
5 finding under paragraph 28A(1)(a) or (b) (findings that activities
6 are R&D activities).

7 *Must have significant scientific link to Australian core activities*

- 8 (2) The second condition is that the overseas activity has a significant
9 scientific link to one or more core R&D activities (the ***Australian***
10 ***core activities***):

11 (a) that are conducted or to be conducted solely within Australia
12 or an external Territory; and

13 (b) that:

14 (i) are registered under section 27A for the R&D entity for
15 an income year; or

16 (ii) are reasonably likely to be conducted and be registered
17 under section 27A for the R&D entity for an income
18 year.

- 19 (3) The overseas activity has a ***significant scientific link*** to the
20 Australian core activities if:

21 (a) the Australian core activities cannot be completed without
22 the overseas activity being conducted; and

23 (b) the conditions (if any) specified in regulations made for the
24 purposes of this subsection are met.

25 *Must be unable to be conducted within Australia etc.*

- 26 (4) The third condition is that the overseas activity cannot be
27 conducted solely in Australia or the external Territories because:

28 (a) conducting it requires access to a facility, expertise or
29 equipment not available in Australia or the external
30 Territories; or

31 (b) conducting it in Australia or the external Territories would
32 contravene a law relating to quarantine; or

33 (c) it meets a condition specified in regulations made for the
34 purposes of this subsection.

- 1 *Expenditure must be less than that incurred on Australian core*
2 *activities*
- 3 (5) The fourth condition is that the total actual and reasonably
4 anticipated expenditure of any entity in all income years on:
5 (a) the overseas activity; and
6 (b) each other activity (if any) conducted wholly or partly
7 outside Australia and the external Territories that has a
8 significant scientific link to the Australian core activities;
9 is less than the total actual and reasonably anticipated expenditure
10 of any entity in all income years on:
11 (c) the Australian core activities; and
12 (d) activities conducted solely within Australia and the external
13 Territories that are supporting R&D activities in relation to
14 the Australian core activities.

15 **Subdivision CA—Findings about whether technology is core**
16 **technology**

17 **28BB Findings about whether technology is core technology**

- 18 (1) If an R&D entity has acquired, or has acquired the right to use,
19 particular technology wholly or partly for the purposes of one or
20 more R&D activities conducted, or to be conducted, during one or
21 more income years, the Board may:
22 (a) find that the technology is core technology for the R&D
23 activities; or
24 (b) find that the technology is not core technology for the R&D
25 activities; or
26 (c) if justified in accordance with the decision-making
27 principles—refuse to make a finding about the technology
28 and the R&D activities.
- 29 Note 1: A finding, or a refusal to make a finding, is reviewable (see
30 Division 5).
- 31 Note 2: A finding under paragraph (a) means that a tax offset will not be
32 available for expenditure incurred in acquiring, or in acquiring the
33 right to use, the technology for the R&D activities (see subsection
34 355-220(2) of the *Income Tax Assessment Act 1997*).
- 35 Note 3: Section 31A deals with the decision-making principles.

- 1 (2) Particular technology is *core technology* for one or more R&D
2 activities if:
- 3 (a) a purpose of the R&D activities was or is:
- 4 (i) to obtain new knowledge based on that technology; or
- 5 (ii) to create new or improved materials, products, devices,
6 processes, techniques or services to be based on that
7 technology; or
- 8 (b) the R&D activities were or are an extension, continuation,
9 development or completion of the activities that produced
10 that technology.
- 11 (3) The Board must make a finding under paragraph (1)(a) or (b) if
12 requested by the Commissioner to make a finding under this
13 section.
- 14 (4) In addition to subsection (3), the Board:
- 15 (a) may make a finding under this section on its own initiative;
16 and
- 17 (b) must consider making a finding under this section if the R&D
18 entity applies for a finding under this section.
- 19 (5) This section has effect subject to section 31B (findings cannot be
20 inconsistent with any earlier findings).

21 **Subdivision D—Matters relevant to findings under this Division**

22 **28C Notice of decision about findings**

- 23 (1) The Board must notify an applicant in writing of each of the
24 Board's decisions under subsection 28A(1), 28B(1) or 28BB(1)
25 about the application.
- 26 Note: For the purposes of an application made on an R&D entity's behalf as
27 described in section 28AA, the applicant is the R&D entity.
- 28 (2) The notice must include a certificate for each finding (if any) made
29 under this Division for the application. The certificate must set out:
- 30 (a) a description of the finding; and
- 31 (b) the Board's reasons for the finding; and
- 32 (c) a description of the activity affected by the finding; and
- 33 (d) for a finding under subsection 28BB(1)—a description of the
34 technology affected by the finding; and
-

1 (e) the matters (if any) specified in regulations made for the
2 purposes of this paragraph.

3 The notice and certificate may set out other matters.

4 Note: The notice should also mention the applicant's right to have the
5 finding reviewed under Division 5 (see section 30B).

6 (3) The Board must give the Commissioner a copy of the notice if the
7 notice includes one or more certificates.

8 (4) A failure to comply with this section does not affect the validity of
9 a decision or finding.

10 **28D Applying for findings**

11 *Applications for findings*

12 (1) An application for one or more findings under this Division must
13 be:

14 (a) in the approved form; and

15 (b) accompanied by the fee (if any) specified in regulations made
16 under section 48A for the purposes of this subsection.

17 Note 1: An application can seek findings for several activities.

18 Note 2: Section 31 deals with approved forms.

19 *Joint applications for identical advance findings*

20 (2) An application under this subsection for identical findings under
21 subsection 28A(1) on behalf of several R&D entities must be:

22 (a) in the approved form; and

23 (b) accompanied by the fee (if any) specified in regulations made
24 under section 48A for the purposes of this subsection.

25 Note: The application is taken to be a separate application under
26 subsection (1) for the finding by each of those R&D entities (see
27 subsection 28AA(2)).

28 **28E Board may request further information**

29 (1) The Board may request the applicant in writing to give specified
30 information, or specified kinds of information, to the Board about
31 the application.

32 Note: For the purposes of an application made on an R&D entity's behalf as
33 described in section 28AA, the applicant is the R&D entity.

1 (2) The request may ask for the information or kinds of information to
2 be given:

3 (a) in the approved form; and

4 (b) within:

5 (i) 30 days after the request was given; or

6 (ii) a further period allowed by the Board in accordance
7 with the decision-making principles.

8 Note 1: A refusal to allow a further period is reviewable (see Division 5).

9 Note 2: Section 31 deals with approved forms.

10 Note 3: Section 31A deals with the decision-making principles.

11 Note 4: A failure by the entity to give the information may result in a refusal
12 to make the finding.

13 (3) If the application was made on the applicant's behalf by an
14 authorised person as described in section 28AA, the Board must
15 ensure the authorised person is made aware of the substance of the
16 request.

17 **Division 4—Research service providers**

18 **Subdivision A—Introduction**

19 **29 Simplified outline**

20 The following is a simplified outline of this Division:

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|---|
| <ul style="list-style-type: none">21 • The Board may register entities as research service providers
22 capable of providing research services to R&D entities.23 • Near the end of each financial year, registered research service
24 providers will be asked if they want their registrations to
25 continue for the next financial year.26 • Registrations can be varied and revoked.27 • Details of registrations are set out in a register available on the
28 internet. |
|---|

1 **Subdivision B—Registering research service providers**

2 **29A Registering research service providers**

3 (1) The Board must, on application by an entity, decide whether to
4 register or refuse to register the entity as a research service
5 provider capable of providing services in one or more specified
6 research fields to R&D entities registered under section 27A.

7 Note: A decision under this subsection is reviewable (see Division 5).

8 (2) The Board must not register the entity under subsection (1) unless
9 the Board is satisfied that the entity meets the criteria specified in
10 regulations made for the purposes of this subsection.

11 (3) A registration under this section is subject to the conditions (if any)
12 specified in regulations made for the purposes of this subsection.

13 **Subdivision C—Applying for registration**

14 **29C Applying for registration**

15 An application to be registered under section 29A must be:

16 (a) in the approved form; and

17 (b) accompanied by the fee (if any) specified in regulations made
18 under section 48A for the purposes of this section.

19 Note: Section 31 deals with approved forms.

20 **29D Board may request further information about an application**

21 (1) The Board may request an applicant in writing to give specified
22 information, or specified kinds of information, to the Board about
23 the application.

24 (2) The request may ask for the information or kinds of information to
25 be given:

26 (a) in the approved form; and

27 (b) within 30 days after the request was given.

28 Note: Section 31 deals with approved forms.

29 (3) The Board may refuse to consider the application if the applicant
30 fails to give the information within:

- 1 (a) the 30 days; or
2 (b) a further period allowed by the Board in accordance with the
3 decision-making principles.

4 Note 1: A refusal to allow a further period is reviewable (see Division 5).

5 Note 2: Section 31A deals with the decision-making principles.

6 **29E Board may need to make inquiries about an application**

- 7 (1) The Board may notify an applicant in writing that the Board:
8 (a) needs to make inquiries in order to determine whether the
9 applicant meets the criteria for registration referred to in
10 subsection 29A(2); and
11 (b) requires the applicant to pay the Board a specified amount
12 towards the cost of those inquiries.
- 13 (2) The Board may refuse to consider the application until the
14 applicant pays the Board that amount.
- 15 (3) An amount specified in a notice under subsection (1) must not
16 exceed the higher of:
17 (a) \$1,000; and
18 (b) the amount (if any) specified in regulations made for the
19 purposes of this subsection;
20 and must not be such as to amount to taxation.

21 **Subdivision D—Varying or revoking registrations**

22 **29F Duration of registrations**

- 23 (1) At least 2 months before the end of each financial year, the Board
24 must give each research service provider a notice:
25 (a) asking the provider if it wishes to continue to be registered
26 under section 29A; and
27 (b) attaching an approved form to be completed by the provider
28 and returned to the Board if the provider wishes to continue
29 to be registered.

30 This subsection does not apply to a provider who becomes
31 registered under section 29A in May or June of that financial year.

32 Note: Section 31 deals with approved forms.

- 1 (2) The Board may, by notice in writing given to the provider, revoke
2 the provider's registration under section 29A if the provider does
3 not return the completed form within:
4 (a) 30 days after the notice under subsection (1) was given; or
5 (b) a further period allowed by the Board in accordance with the
6 decision-making principles.

7 Note 1: A decision to revoke under this subsection is reviewable (see
8 Division 5).

9 Note 2: Section 31A deals with the decision-making principles.

- 10 (3) For the purposes of this Act and the *Income Tax Assessment Act*
11 *1997*, the revocation takes effect at the end of that financial year.

12 Note: This subsection will cease to apply if the revocation is set aside on
13 review (see Division 5).

14 **29G Varying registrations—on provider's request**

- 15 (1) The Board may, by notice in writing given to a research service
16 provider, vary the provider's registration under section 29A if:
17 (a) the provider applies for the variation; and
18 (b) the Board is satisfied that the provider would still meet the
19 criteria for registration referred to in subsection 29A(2) were
20 the application to be successful.

21 Note: A refusal to vary is reviewable (see Division 5).

- 22 (2) An application for a variation must be:
23 (a) in the approved form; and
24 (b) accompanied by the fee (if any) specified in regulations made
25 under section 48A for the purposes of this section.

26 Note: Section 31 deals with approved forms.

- 27 (3) Sections 29D and 29E apply to applications under this section in a
28 way corresponding to the way those sections apply to applications
29 under section 29C.

30 Note: This means the Board may request further information about the
31 application (see section 29D), and make inquiries about the
32 application (see section 29E).

1 **29H Varying registrations—otherwise than on request**

2 (1) The Board may, by notice in writing given to a research service
3 provider, vary the provider's registration under section 29A so that
4 the provider ceases to be registered to provide services in one or
5 more specified research fields.

6 Note 1: A decision to vary is reviewable (see Division 5).

7 Note 2: This subsection will cease to apply if the variation is set aside on
8 review (see Division 5).

9 (2) The Board may do so if the Board is satisfied that the provider
10 does not meet the criteria for registration referred to in subsection
11 29A(2) in so far as those criteria relate to those research fields.

12 **29J Revoking registrations**

13 (1) The Board may, by notice in writing given to a research service
14 provider, revoke the provider's registration under section 29A if
15 the Board is satisfied:

16 (a) that the provider has ceased to meet the criteria for
17 registration referred to in subsection 29A(2); or

18 (b) that the provider has breached a condition, referred to in
19 subsection 29A(3), of the registration.

20 Note 1: A decision to revoke under this subsection is reviewable (see
21 Division 5).

22 Note 2: This subsection will cease to apply if the revocation is set aside on
23 review (see Division 5).

24 Note 3: Revocation can also happen under subsection 29F(2) if the provider
25 does not appropriately indicate that it wishes to continue to be
26 registered for the next financial year.

27 (2) The Board may, by notice in writing given to a research service
28 provider, revoke the provider's registration under section 29A if
29 the provider requests the Board to do so.

30 (3) A request for a revocation under subsection (2) must be:

31 (a) in the approved form; and

32 (b) accompanied by the fee (if any) specified in regulations made
33 under section 48A for the purposes of this section.

34 Note: Section 31 deals with approved forms.

1 **Subdivision E—Register of research service providers**

2 **29K Register of research service providers**

- 3 (1) The Board is to make available for inspection on the internet a
4 register that includes details of:
5 (a) registrations in force under this Division; and
6 (b) registrations that have been revoked under this Division
7 during the current financial year or the previous financial
8 year.

9 Note 1: A registration in force under this Division includes the research fields
10 for which the provider is registered.

11 Note 2: A registration in force under this Division is that registration as varied
12 under section 29G or 29H.

- 13 (2) The register is not a legislative instrument.

14 **Division 5—Review**

15 **30 Simplified outline**

16 The following is a simplified outline of this Division:

- 17 • A person affected by a reviewable decision may ask the Board
18 to conduct an internal review of that decision.
19 • The person, or another person affected by the resulting
20 internal review decision, may ask the Administrative Appeals
21 Tribunal to review the internal review decision.

22 **30A Reviewable decisions**

23 Each of the following decisions of the Board is a *reviewable*
24 *decision*:
25

Reviewable decisions

Item	Decision	Provision under which decision is made
1	Registering or refusing to register an entity for activities	Subsection 27A(1)

Reviewable decisions		
Item	Decision	Provision under which decision is made
2	A finding made when considering an application for registration of activities	Subsection 27B(1)
3	Refusing to allow a further period for making an application for registration of activities	Paragraph 27D(c)
4	Refusing to allow a further period for giving further information about an application for registration of activities	Paragraph 27E(2)(b)
5	Refusing to make a finding about a registration of activities	Paragraph 27F(4)(b)
6	Refusing to allow a further period for giving further information about an examination of a registration of activities	Paragraph 27G(2)(b)
7	A finding made about a registration of activities	Subsection 27H(1)
8	Refusing to vary on request a registration of activities	Subsection 27M(1)
9	Refusing to allow a further period for giving further information about an application for variation of a registration of activities	Paragraph 27E(2)(b), as that paragraph applies because of subsection 27M(3)
10	Revoking a registration of activities	Subsection 27N(1)
11	An advance finding, or refusing to make an advance finding, about the nature of an activity	Subsection 28A(1)
12	A finding, or refusing to make a finding, about an activity to be conducted outside Australia	Subsection 28B(1)
13	A finding, or refusing to make a finding, about particular technology	Subsection 28BB(1)
14	Refusing to allow a further period for giving further information about an application for: (a) an advance finding about the nature of an activity; or (b) a finding about an activity to be	Paragraph 28E(2)(b)

Reviewable decisions

Item	Decision	Provision under which decision is made
	conducted outside Australia; or (c) a finding that technology is core technology	
15	Registering or refusing to register an entity as a research service provider	Subsection 29A(1)
16	Refusing to allow a further period for giving further information about an application for registration as a research service provider	Subsection 29D(3)
17	Revoking a research service provider's registration for not returning a completed form about continuing that registration	Subsection 29F(2)
18	Refusing to vary on request a research service provider's registration	Subsection 29G(1)
19	Refusing to allow a further period for giving further information about an application for variation of a research service provider's registration	Subsection 29D(3), as that subsection applies because of subsection 29G(3)
20	Varying a research service provider's registration otherwise than on request	Section 29H
21	Revoking a research service provider's registration	Subsection 29J(1)
22	Refusing to allow a further period for making an application for review of a decision	Subsection 30C(3)

1 **30B Notice of reviewable decision and internal review rights**

- 2 (1) When making a reviewable decision relating to an R&D entity, the
3 Board must give written notice to the entity of the following
4 things:
5 (a) the making of the decision;
6 (b) the reasons for the decision;
7 (c) the entity's right to have the decision reviewed under this
8 Division.

1 If written notice of any of these things is given to the entity under
2 another provision of this Part, notice of the thing does not have to
3 be given twice.

4 Note: Other provisions of this Part require notice to be given about decisions
5 covered by item 2, 7 or 11 of the table in section 30A.

6 (2) A failure to comply with this section does not affect the validity of
7 the decision.

8 **30C Applications for internal review of reviewable decisions**

9 *Applications by affected persons*

10 (1) An application for review of a reviewable decision may be made
11 by or on behalf of any person or persons whose interests are
12 affected by the reviewable decision.

13 (2) An application under subsection (1) must be in the approved form.

14 Note: Section 31 deals with approved forms.

15 (3) An application under subsection (1) for review of a reviewable
16 decision must be made within:

17 (a) 28 days after the entity to which the decision relates is
18 notified of the decision under this Part; or

19 (b) such further period as the Board allows in accordance with
20 the decision-making principles.

21 Note 1: A refusal to allow a further period is reviewable (see section 30A).

22 Note 2: Section 31A deals with the decision-making principles.

23 *Applications by Commissioner*

24 (4) The Commissioner may, at any time, apply to the Board for review
25 of a reviewable decision.

26 **30D Internal review of reviewable decisions**

27 (1) After receiving an application for review of a reviewable decision,
28 the Board must review the decision.

1 *Making internal review decisions*

- 2 (2) After reviewing the reviewable decision, the Board must make a
3 decision (an *internal review decision*):
4 (a) confirming the reviewable decision; or
5 (b) varying the reviewable decision; or
6 (c) setting aside the reviewable decision and substituting a new
7 decision.

8 Note: An internal review decision is reviewable by the Administrative
9 Appeals Tribunal (see section 30E). Under the *Administrative Appeals*
10 *Tribunal Act 1975*, notice of the internal review decision must be
11 given to any person whose interests are affected by the decision.

12 *Deemed internal review decisions*

- 13 (3) If the Board does not make a decision under subsection (2) before
14 the end of the period of 90 days after the day on which the Board
15 received the application for review, the Board is taken, at the end
16 of that period, to have made a decision (also an *internal review*
17 *decision*) confirming the reviewable decision.

18 Note: Under the *Administrative Appeals Tribunal Act 1975*, notice must be
19 given to any person whose interests are affected by the internal review
20 decision taken to be made under this subsection.

- 21 (4) However, an internal review decision (the *deemed decision*) is
22 taken not to have been made under subsection (3) if:
23 (a) after the end of the period referred to in that subsection, the
24 Board makes a decision under subsection (2) about the
25 applicable reviewable decision; and
26 (b) an application has yet to be made under section 30E to the
27 Administrative Appeals Tribunal for review of the deemed
28 decision.

29 *Matters relevant to all internal review decisions*

- 30 (5) For the purposes of this Act and the *Income Tax Assessment Act*
31 *1997*, an internal review decision takes effect on the day on which
32 the reviewable decision took effect.
- 33 (6) The Board must notify the Commissioner in writing of:
34 (a) the making of an internal review decision; and
35 (b) the reasons for that decision.
-

1 **30E External review by AAT of internal review decisions**

2 (1) Application may be made to the Administrative Appeals Tribunal
3 for review of an internal review decision of the Board.

4 (2) Subsection 43(6) of the *Administrative Appeals Tribunal Act 1975*
5 has effect for the purposes of this Act and the *Income Tax*
6 *Assessment Act 1997* for:

7 (a) an internal review decision as varied by the Tribunal under
8 section 43 of the *Administrative Appeals Tribunal Act 1975*;
9 or

10 (b) a decision made by the Tribunal under that section in
11 substitution for an internal review decision.

12 Note: This means that the varied or substituted decision takes effect from the
13 day on which the reviewable decision took effect (see subsection
14 30D(5)).

15 (3) If an internal review decision is taken to be made under subsection
16 30D(3), section 29 of the *Administrative Appeals Tribunal Act*
17 *1975* applies as if:

18 (a) paragraph 29(1)(d) of that Act applied to the internal review
19 decision; and

20 (b) the prescribed time for the purposes of that paragraph were
21 the end of the period of 28 days starting on the day on which
22 the internal review decision is taken to be made.

23 (4) Despite section 35 of the *Administrative Appeals Tribunal Act*
24 *1975*:

25 (a) hearings of proceedings for review of an internal review
26 decision are to be held in private; and

27 (b) during the proceedings, the Tribunal may, by order:

28 (i) give directions as to the persons who may be present
29 during all or part of a hearing of the proceedings; and

30 (ii) give directions of a kind mentioned in paragraph
31 35(2)(aa), (b) or (c) of that Act.

32 **Division 6—Consolidated groups and MEC groups**

33 **30GA Subsidiary members of groups cannot seek registration or**
34 **findings for group R&D activities**

35 An R&D entity:

- 1 (a) cannot apply to be registered under section 27A for an
2 activity; and
- 3 (b) cannot apply for a finding under Division 3 for an activity;
4 to the extent that the activity is conducted during a period that the
5 R&D entity is a subsidiary member of a consolidated group or
6 MEC group.
- 7 Example: If an activity is conducted by the R&D entity during all of an income
8 year, and part way through the income year the R&D entity becomes a
9 subsidiary member of a consolidated group:
- 10 (a) the R&D entity can apply to be registered under section 27A for
11 the activity for the income year in respect of the first part of the
12 income year; and
- 13 (b) the head company of the group can apply to be registered under
14 section 27A for the activity for the income year in respect of the
15 second part of the income year.

16 30GB What happens to findings if R&D entity joins a group

- 17 (1) If a finding (the *actual finding*) under Division 3:
- 18 (a) is in force for an R&D entity immediately before the time
19 (the *joining time*) it becomes a subsidiary member of a
20 consolidated group or MEC group, of which the head
21 company is an R&D entity; and
- 22 (b) is for an activity to be conducted after the joining time;
23 a corresponding finding (the *deemed finding*) in the same terms is
24 taken to come into force at the joining time for the head company
25 and the activity.
- 26 (2) The deemed finding ceases to be in force if the R&D entity ceases
27 to be a subsidiary member of the group.
- 28 (3) The result of any review (see Division 5) of an actual finding is
29 taken to apply in a corresponding way to the deemed finding.
- 30 (4) Neither section 28C (notice of decision about findings) nor
31 Division 5 (review) apply to the deemed finding.
- 32 Note: The results of any review of the actual finding will apply to the
33 deemed finding (see subsection (3)).

34 30GC What happens to findings if R&D entity leaves a group

- 35 (1) The consequences in subsection (2) apply if a finding (the *group*
36 *finding*) under Division 3:
-

- 1 (a) is for an R&D entity that is the head company of a
2 consolidated group or MEC group; and
3 (b) is in force immediately before the time (the *leaving time*)
4 another R&D entity ceases to be a subsidiary member of the
5 group; and
6 (c) is for an activity to be conducted by or for the other R&D
7 entity after the leaving time; and
8 (d) is not a deemed finding.
- 9 (2) The consequences are as follows:
10 (a) a corresponding finding (the *continuing finding*) in the same
11 terms is taken to come into force at the leaving time for the
12 other R&D entity and the activity;
13 (b) everything that happened under this Part before the leaving
14 time in relation to the group finding is taken to have
15 happened in relation to the continuing finding;
16 (c) the group finding ceases to be in force at the leaving time.

17 **Division 7—Other matters**

18 **31 Approved forms**

- 19 (1) This section applies if a provision of this Part requires a thing to be
20 in the approved form.
- 21 (2) To be in the approved form for the provision, the thing must:
22 (a) be in writing in a form approved by the Board; and
23 (b) include the information required by the form; and
24 (c) include any other material (including documents) required by
25 the form.
- 26 (3) The Board may approve, in writing, a form for the purposes of
27 paragraph (2)(a). When doing so, the Board must ensure the form
28 requires the production of information, or other material (including
29 documents), specified in regulations made for the purposes of this
30 subsection.

31 Note: For specification by class, see subsection 13(3) of the *Legislative*
32 *Instruments Act 2003*.

1 **31A Decision-making principles**

2 The Minister may, by legislative instrument, make principles (the
3 **decision-making principles**) that the Board must comply with
4 when deciding the following:

- 5 (a) whether to allow a thing to be given under this Part within a
6 further period than that specified in this Part;
7 (b) whether refusing to make a finding sought under this Part is
8 justified;
9 (c) whether making a variation sought under section 27M is
10 justified.

11 **31B Finding cannot be inconsistent with any earlier findings**

12 A finding made under this Part in relation to an R&D entity has no
13 effect to the extent of any inconsistency with a finding already in
14 force under this Part in relation to the R&D entity.

15 Example: A finding under subsection 27H(1) in relation to an R&D entity's
16 registration has no effect to the extent of any inconsistency with:

- 17 (a) a finding already in force under that subsection in relation to that
18 registration; or
19 (b) a finding already in force under subsection 27B(1) in relation to
20 the application for that registration; or
21 (c) a finding already in force under subsection 28A(1) (advance
22 findings about the nature of activities) in relation to the R&D
23 entity.

1

2

Part 2—Other amendments

3

Industry Research and Development Act 1986

4

2 Section 3

5

Omit “research and development activities”, substitute “R&D activities”.

6

7

3 Subsection 4(1)

8

Insert:

9

approved form has the meaning given by section 31.

10

4 Subsection 4(1) (definition of *approved research institute*)

11

Repeal the definition.

12

4A Subsection 4(1)

13

Insert:

14

authorised person has the meaning given by section 28AA.

15

5 Subsection 4(1)

16

Insert:

17

Commissioner has the same meaning as in the *Income Tax Assessment Act 1997*.

18

19

6 Subsection 4(1) (definition of *company*)

20

Repeal the definition.

21

6A Subsection 4(1)

22

Insert:

23

consolidated group has the same meaning as in the *Income Tax Assessment Act 1997*.

24

25

7 Subsection 4(1)

26

Insert:

1 *constitutional corporation* has the same meaning as in the *Income*
2 *Tax Assessment Act 1997*.

3 **8 Subsection 4(1)**

4 Insert:

5 *core R&D activities* has the same meaning as in the *Income Tax*
6 *Assessment Act 1997*.

7 **8A Subsection 4(1)**

8 Insert:

9 *core technology* has the meaning given by subsection 28BB(2).

10 **9 Subsection 4(1)**

11 Insert:

12 *decision-making principles* has the meaning given by section 31A.

13 **10 Subsection 4(1)**

14 Insert:

15 *entity* has the same meaning as in the *Income Tax Assessment Act*
16 *1997*.

17 **11 Subsection 4(1) (definition of *finance scheme guidelines*)**

18 Repeal the definition.

19 **11A Subsection 4(1)**

20 Insert:

21 *head company* has the same meaning as in the *Income Tax*
22 *Assessment Act 1997*.

23 **12 Subsection 4(1)**

24 Insert:

25 *income year* has the same meaning as in the *Income Tax*
26 *Assessment Act 1997*.

27 **13 Subsection 4(1)**

1 Insert:

2 *internal review decision* has the meaning given by section 30D.

3 **13A Subsection 4(1)**

4 Insert:

5 *MEC group* has the same meaning as in the *Income Tax*
6 *Assessment Act 1997*.

7 **14 Subsection 4(1)**

8 Insert:

9 *R&D activities* has the same meaning as in the *Income Tax*
10 *Assessment Act 1997*.

11 **15 Subsection 4(1)**

12 Insert:

13 *R&D entity* has the same meaning as in the *Income Tax*
14 *Assessment Act 1997*.

15 **15A Subsection 4(1) (definition of *research and development***
16 ***activities*)**

17 Repeal the definition.

18 **15B Subsection 4(1) (definition of *researcher*)**

19 Repeal the definition, substitute:

20 *researcher* means an entity that the Board believes is capable of
21 carrying out a project of R&D activities or innovation activities.

22 **16 Subsection 4(1)**

23 Insert:

24 *research field* means a research field specified in regulations made
25 for the purposes of this definition.

26 **17 Subsection 4(1)**

27 Insert:

1 *research service provider* means an entity registered under
2 section 29A.

3 **18 Subsection 4(1)**

4 Insert:

5 *reviewable decision* has the meaning given by section 30A.

6 **18A Subsection 4(1)**

7 Insert:

8 *significant scientific link* has the meaning given by subsection
9 28BA(3).

10 **18B Subsection 4(1)**

11 Insert:

12 *subsidiary member* has the same meaning as in the *Income Tax*
13 *Assessment Act 1997*.

14 **19 Subsection 4(1)**

15 Insert:

16 *supporting R&D activities* has the same meaning as in the *Income*
17 *Tax Assessment Act 1997*.

18 **19A Subsection 4(2)**

19 Repeal the subsection.

20 **20 Paragraph 7(aa)**

21 Repeal the paragraph.

22 **21 Subsection 11(1)**

23 Omit "(1)".

24 **22 Subsection 11(2)**

25 Repeal the subsection.

26 **23 Subsection 22(9)**

27 Repeal the subsection.

1 **24 Part IIIA**

2 Repeal the Part.

3 **25 Subparagraph 46(2)(b)(iv)**

4 Omit "research and development activities", substitute "R&D
5 activities".

6 **26 Paragraph 46(2)(ca)**

7 Repeal the paragraph, substitute:

8 (ca) must set out:

- 9 (i) the total number of applications during the year for
10 registration under section 27A for a tax offset under
11 Division 355 of the *Income Tax Assessment Act 1997*;
12 and
13 (ii) the total amounts of the offsets involved; and
14 (iii) an analysis of the operation of the R&D tax offset
15 scheme for the year; and

16 **27 At the end of subsection 46(2)**

17 Add:

18 ; and (f) must set out a copy of the register mentioned in section 29K
19 as it exists at the end of the year.

20 **28 Subsection 47(1)**

21 Omit "except for the purposes of this Act, of the *Census and Statistics*
22 *Act 1905* or of the *Income Tax Assessment Act 1936* or".

23 **29 Subsection 47(1)**

24 Omit "supply protected information to a person if the supplying",
25 substitute "disclose protected information to a person if disclosing".

26 **30 Subsection 47(2)**

27 Omit "Subsection (1) does not apply to the supply of", substitute "An
28 official to whom this section applies may disclose".

29 **31 After subsection 47(2)**

30 Insert:

- 1 (2A) An official to whom this section applies may disclose protected
2 information if the disclosure is made:
3 (a) in the course of performing a duty or function, or exercising a
4 power, under this Act; or
5 (b) for the purposes of enabling another person to perform duties
6 or functions, or exercise powers, under this Act; or
7 (c) for the purposes of enabling a person to perform duties or
8 functions, or exercise powers, under the *Census and Statistics*
9 *Act 1905* or the *Income Tax Assessment Act 1997*.

10 **32 Subsection 47(3)**

11 Insert:

12 *disclose* means divulge or communicate.

13 **33 Section 48A**

14 Repeal the section, substitute:

15 **48A Fees for making applications under Part III**

- 16 (1) The regulations may specify:
17 (a) fees for making applications to the Board under Part III; and
18 (b) a method for indexing the fees.
19 (2) The fees must not be such as to amount to taxation.

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Schedule 3—Other amendments relating to new R&D incentive

Part 1—Tax offset rules

Income Tax Assessment Act 1997

1 Subsection 63-10(1) (after table item 30)

Insert:

35	A *tax offset under Division 355 (about R&D) that is not covered by section 67-30	You may carry it forward to a later income year (under Division 65)
----	---	---

2 Section 67-23 (table item 35)

Repeal the item.

3 At the end of section 67-23

Add:

Note 3: For the tax offsets available under Division 355 (about R&D), see section 67-30.

4 At the end of Division 67

Add:

67-30 Refundable tax offsets—R&D

A *tax offset to which an *R&D entity is entitled under section 355-100 (about R&D) for an income year is subject to the refundable tax offset rules if the amount of the tax offset is worked out using the percentage in item 1 of the table in subsection 355-100(1).

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

Note 2: This section can apply to an entitlement under subsection 355-100(1) or (2).

1

2

Part 2—Prepayments of expenditure

3

Income Tax Assessment Act 1936

4

5 Subsection 82KZL(1) (paragraph (d) of the definition of *excluded expenditure*)

5

6

Repeal the paragraph, substitute:

7

(d) to the extent that it is of a capital nature and cannot be deducted under:

8

9

(i) section 355-200 (R&D expenditure); or

10

(ii) section 355-480 (earlier year associate R&D expenditure);

11

of the *Income Tax Assessment Act 1997*; or

12

13

(da) to the extent that it is of a private or domestic nature; or

14

6 Subsection 82KZL(1)

15

Insert:

16

R&D activities has the same meaning as in the *Income Tax Assessment Act 1997*.

17

18

7 Subsection 82KZL(1) (definition of *research and development activities*)

19

20

Repeal the definition.

21

8 Subsection 82KZL(3)

22

Omit “carrying on research and development activities”, substitute “conducting R&D activities”.

23

24

9 After section 82KZLA

25

Insert:

1 **82KZLB How this Subdivision applies to deductible R&D**
2 **expenditure incurred to associates in earlier income years**

3 In addition to its application apart from this section, this
4 Subdivision applies to expenditure deductible under
5 section 355-480 of the *Income Tax Assessment Act 1997* as if:

- 6 (a) references in this Subdivision to incurring the expenditure
7 were references to paying the expenditure; and
8 (b) references in this Subdivision to the expenditure year were
9 references to the payment year.

10 **10 Paragraph 82KZM(1)(c)**

11 Repeal the paragraph, substitute:

- 12 (c) apart from this section, a deduction under:
13 (i) section 8-1; or
14 (ii) section 355-200 (R&D expenditure) or 355-480 (earlier
15 year associate R&D expenditure);
16 of the *Income Tax Assessment Act 1997*, in respect of the
17 expenditure, would be allowable from the taxpayer's
18 assessable income for the year of income in which the
19 expenditure is incurred;

20 **11 Paragraph 82KZMA(1)(a)**

21 Repeal the paragraph, substitute:

- 22 (a) apart from that section, the taxpayer could deduct the
23 expenditure for the expenditure year under:
24 (i) section 8-1; or
25 (ii) section 355-200 (R&D expenditure) or 355-480 (earlier
26 year associate R&D expenditure);
27 of the *Income Tax Assessment Act 1997*; and

28 **12 Paragraph 82KZME(1)(a)**

29 Repeal the paragraph, substitute:

- 30 (a) apart from that section, the taxpayer could deduct the
31 expenditure for the expenditure year under:
32 (i) section 8-1; or
33 (ii) section 355-200 (R&D expenditure) or 355-480 (earlier
34 year associate R&D expenditure);
35 of the *Income Tax Assessment Act 1997*; and
-

TSchedule 3T Other amendments relating to new R&D incentiveT

TPart 2T Prepayments of expenditureT

1 **13 Paragraph 82KZMF(2)(a)**

2 Omit “section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y
3 of this Act or”.

4 **14 At the end of subsection 82KZMF(2)**

5 Add:

6 Note: Deductions under section 355-200 or 355-480 of the *Income Tax*
7 *Assessment Act 1997* for R&D expenditure are subject to this section
8 (see subsection 8-5(2) and section 355-110 of that Act).

1

2

Part 3—Capital allowances

3

Income Tax Assessment Act 1997

4

15 Subsection 40-25(7) (note)

5

Omit “Note”, substitute “Note 1”.

6

16 At the end of subsection 40-25(7)

7

Add:

8

Note 2: When this Division notionally applies under section 355-305 (about depreciating assets used for R&D activities), the taxable purpose is sometimes only the purpose of conducting R&D activities.

9

10

11

17 Subsection 40-65(6)

12

Repeal the subsection, substitute:

13

Exception: also notionally deductible under R&D provisions

14

(6) If:

15

(a) only one of the following events has happened:

16

(i) you have deducted one or more amounts under this Division for an asset;

17

18

(ii) you have been entitled under section 355-100 (about

19

R&D) to one or more *tax offsets because you can

20

deduct one or more amounts under section 355-300 for an asset; but

21

22

(b) later, the other event happens for the asset;

23

then, for the purposes of working out the deduction for the later event, you must choose the same method that you chose for the first event.

24

25

26

Note 1: Deductions under section 355-300 (about decline in value of tangible depreciating assets used for R&D activities) are worked out using a notional application of this Division.

27

28

29

Note 2: This subsection applies with changes if you have or could have deducted an amount under former section 73BA of the *Income Tax Assessment Act 1936* for the asset (see section 40-67 of the *Income Tax (Transitional Provisions) Act 1997*).

30

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(7) If:

- 1 (a) the events in paragraph (6)(a) could both arise for the same
2 period for an asset; and
3 (b) neither event has already arisen for the asset;
4 then you must choose the same method for the purposes of
5 working out the deduction for each event.

6 **18 Subsection 40-95(9) (note)**

7 Repeal the note.

8 **19 Subsection 40-100(4)**

9 Repeal the subsection, substitute:

10 *Criteria for making a determination*

- 11 (4) The Commissioner is to make a determination of the *effective life*
12 of a *depreciating asset in accordance with subsections (5) and (6).
- 13 (5) Firstly, estimate the period (in years, including fractions of years)
14 the asset can be used by any entity for one or more of the following
15 purposes:
16 (a) a *taxable purpose;
17 (b) the purpose of producing *exempt income or *non-assessable
18 non-exempt income;
19 (c) the purpose of conducting *R&D activities, assuming that
20 this is reasonably likely.
- 21 (6) Secondly, if relevant for the asset:
22 (a) assume the asset will be subject to wear and tear at a rate that
23 is reasonable for the Commissioner to assume; and
24 (b) assume the asset will be maintained in reasonably good order
25 and condition; and
26 (c) have regard to the period within which the asset is likely to
27 be scrapped, sold for no more than scrap value or abandoned.
28 However, for paragraph (c), disregard reasons attributable to the
29 technical risk in conducting *R&D activities if it is reasonably
30 likely that the asset will be used for such activities.

31 **20 Subsections 40-105(1), (2) and (3)**

32 Repeal the subsections, substitute:

- 1 (1) You work out the *effective life* of a *depreciating asset yourself in
2 accordance with this section.
- 3 (1A) Firstly, estimate the period (in years, including fractions of years)
4 the asset can be used by any entity for one or more of the following
5 purposes:
6 (a) a *taxable purpose;
7 (b) the purpose of producing *exempt income or *non-assessable
8 non-exempt income;
9 (c) the purpose of conducting *R&D activities, assuming that
10 this is reasonably likely.
- 11 (1B) Secondly, if relevant for the asset:
12 (a) have regard to the wear and tear you reasonably expect from
13 your expected circumstances of use; and
14 (b) assume that the asset will be maintained in reasonably good
15 order and condition.
- 16 (2) If, in working out that period, you decide that the asset would be
17 likely to be:
18 (a) scrapped; or
19 (b) sold for no more than scrap value or abandoned;
20 before the end of that period, its *effective life* ends at the earlier
21 time. However, when making your decision, disregard reasons
22 attributable to the technical risk in conducting *R&D activities if it
23 is reasonably likely that the asset will be used for such activities.
- 24 (3) You work out the period mentioned in subsection (1A) or (2) as
25 from the *start time of the *depreciating asset.

26 **21 Subsection 40-215(1)**

27 Omit “(1)”.

28 **22 At the end of subsection 40-215(1)**

29 Add:

30 Note: This section does not apply to notional deductions under
31 section 355-300 or 355-525 (about R&D) because those provisions are
32 about deducting the asset’s decline in value, not its cost.

33 **23 Subsection 40-215(2)**

34 Repeal the subsection.

1 **24 Section 40-292**

2 Repeal the section, substitute:

3 **40-292 Adjustments—assets used for both general tax purposes and**
4 **R&D activities**

5 (1) This section applies if:

6 (a) a *balancing adjustment event happens in an income year (the
7 *event year*) for an asset you *held and for which:

8 (i) you can deduct, for an income year, an amount under
9 section 40-25, as that section applies apart from
10 Division 355 and former section 73BC of the *Income*
11 *Tax Assessment Act 1936*; or

12 (ii) you could have deducted, for an income year, an amount
13 as described in subparagraph (i) if you had used the
14 asset; and

15 (b) you are entitled under section 355-100 to *tax offsets for one
16 or more income years for deductions (the *R&D deductions*)
17 under section 355-300 for the asset.

18 Note: This section applies in a modified way if you have deductions for the
19 asset under former section 73BA or 73BH of the *Income Tax*
20 *Assessment Act 1936* (see section 40-292 of the *Income Tax*
21 *(Transitional Provisions) Act 1997*).

22 *Section 40-290 to be applied as if use for conducting R&D*
23 *activities were use for a taxable purpose*

24 (2) You must, in applying section 40-290 (including references in that
25 section to the reduction of deductions under section 40-25) in
26 relation to the asset, assume that when you used it either for:

27 (a) a *taxable purpose; or

28 (b) the purpose of conducting the *R&D activities to which the
29 R&D deductions relate;

30 you used it for a taxable purpose.

31 *Increase in amounts deductible under section 40-285*

32 (3) If the total of the amounts you can deduct for the event year for the
33 purposes of subsection 355-100(1) is at least \$20,000, any amount
34 (the *section 40-285 amount*) you can deduct for the asset under

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Other amendments relating to new R&D incentiveT **TSchedule 3T**
Capital allowancesT **TPart 3T**

1 section 40-285 (after applying subsection (2) of this section) is
2 increased by:

- 3 (a) if your *aggregated turnover for the income year is less than
4 \$20 million—¹/₂ of the amount worked out under
5 subsection (5) of this section; and
6 (b) otherwise—¹/₃ of the amount worked out under
7 subsection (5) of this section.

8 *Increase in amounts assessable under section 40-285*

- 9 (4) Any amount (the **section 40-285 amount**) that is included in your
10 assessable income for the asset under section 40-285 (after
11 applying subsection (2) of this section) is increased by ¹/₃ of the
12 amount worked out under subsection (5) of this section.

13 *Component of any increase in amounts deductible or assessable*

- 14 (5) The amount is worked out as follows:

15
$$\frac{\text{Sum of your R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

16 where:

17 **adjusted section 40-285 amount** means:

- 18 (a) if the section 40-285 amount is a deduction—the amount of
19 the deduction; or
20 (b) if the section 40-285 amount is an amount included in your
21 assessable income—so much of the section 40-285 amount as
22 does not exceed the formula component **total decline in**
23 **value**.

24 **total decline in value** means the *cost of the asset less its
25 *adjustable value.

1 **40-293 Adjustments—partnership assets used for both general tax**
2 **purposes and R&D activities**

3 (1) This section applies to an *R&D partnership if:

4 (a) a *balancing adjustment event happens in an income year for
5 a *depreciating asset *held by the R&D partnership and for
6 which:

7 (i) the R&D partnership can deduct, for an income year, an
8 amount under section 40-25, as that section applies
9 apart from Division 355 and former section 73BC of the
10 *Income Tax Assessment Act 1936*; or

11 (ii) the R&D partnership could have deducted, for an
12 income year, an amount as described in subparagraph (i)
13 if it had used the asset; and

14 (b) one or more partners of the R&D partnership are entitled
15 under section 355-100 to *tax offsets for one or more income
16 years for deductions (the ***R&D deductions***) under
17 section 355-525 for the asset.

18 Note: This section applies in a modified way if the partners have deductions
19 for the asset under former section 73BA or 73BH of the *Income Tax*
20 *Assessment Act 1936* (see section 40-293 of the *Income Tax*
21 *(Transitional Provisions) Act 1997*).

22 *Section 40-290 to be applied as if use for conducting R&D*
23 *activities were use for a taxable purpose*

24 (2) The *R&D partnership must, in applying section 40-290 (including
25 references in that section to the reduction of deductions under
26 section 40-25) in relation to the asset, assume that when the R&D
27 partnership used it either for:

28 (a) a *taxable purpose; or

29 (b) the purpose of conducting the *R&D activities to which the
30 R&D deductions relate;

31 the R&D partnership used it for a taxable purpose.

32 *Increase in amounts deductible or assessable under section 40-285*

33 (3) Any amount (the ***section 40-285 amount***):

34 (a) that the *R&D partnership can deduct for the asset under
35 section 40-285 (after applying subsection (2) of this section);

36 or

1 (b) that is included in the R&D partnership's assessable income
2 for the asset under section 40-285 (after applying
3 subsection (2) of this section);

4 is increased by $\frac{1}{3}$ of the following amount:

5
$$\frac{\text{Sum of all R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

6 where:

7 ***adjusted section 40-285 amount*** means:

8 (a) if the section 40-285 amount is a deduction—the amount of
9 the deduction; or

10 (b) if the section 40-285 amount is an amount included in the
11 *R&D partnership's assessable income—so much of the
12 section 40-285 amount as does not exceed the formula
13 component ***total decline in value***.

14 ***total decline in value*** means the *cost of the asset less its
15 *adjustable value.

16 **25 Subsection 40-425(8)**

17 Repeal the subsection, substitute:

18 *Exception: R&D*

19 (8) You cannot allocate a *depreciating asset to a low-value pool if you
20 are entitled under section 355-100 to a *tax offset for a deduction
21 under section 355-300 for the asset for an income year starting
22 before, or at the same time as, the allocation has effect.

23 Note: A similar rule applies if you deducted or could have deducted amounts
24 under former 73BA of the *Income Tax Assessment Act 1936* (see
25 section 40-430 of the *Income Tax (Transitional Provisions) Act 1997*).

1

2

Part 4—Capital works

3

Income Tax Assessment Act 1997

4

26 Section 43-35

5

Repeal the section, substitute:

6

43-35 Requirement for registration under the Industry Research and Development Act

7

8

You may deduct an amount under this Division on the basis of using capital works for the purpose of conducting *R&D activities only if:

9

10

11

(a) you are registered under section 27A (registering R&D activities) of the *Industry Research and Development Act 1986* for the R&D activities for an income year; or

12

13

14

(b) if you are an *R&D partnership—an *R&D entity, who was a partner of the R&D partnership at some time while the R&D activities were conducted, is registered under that section of that Act for the R&D activities for an income year.

15

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Note 1: R&D activities must be conducted in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

19

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21

Note 2: You may still deduct an amount under this Division if you were registered for the R&D activities under former section 39J (Registration of eligible companies) of the *Industry Research and Development Act 1986* (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

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27 Paragraph 43-70(2)(g)

27

Repeal the paragraph, substitute:

28

(g) expenditure on property for which a deduction under section 355-300 or 355-525 is allowable for the property, or would be allowable if the property were for use for conducting *R&D activities; or

29

30

31

32

28 Subsection 43-70(2) (note)

33

Repeal the note.

1 **29 Section 43-90**

2 Omit “*research and development activities”, substitute “research and
3 development activities (within the meaning of former section 73B of the
4 *Income Tax Assessment Act 1936*)”.

5 **30 Section 43-90**

6 After “research and development activities”, insert “(within the
7 meaning of that former section)”.

8 **31 Section 43-90 (note)**

9 Repeal the note, substitute:

10 Note: There are special rules that explain or qualify the uses described in
11 Column 3 of this Table. These rules are set out in Subdivision 43-E
12 (sections 43-155 to 43-195). For example, certain facilities that are not
13 commonly provided in a hotel, motel or guest house in Australia are
14 taken not to be used or for use to operate a hotel, motel or guest house,
15 see subsection 43-180(6).

16 **32 Section 43-100**

17 Omit “*research and development activities”, substitute “*core R&D
18 activities or *supporting R&D activities”.

19 **33 At the end of section 43-100**

20 Add:

21 Note: Core R&D activities and supporting R&D activities are kinds of R&D
22 activities.

23 **34 Subsection 43-140(1)**

24 Omit “carrying on *research and development activities” (wherever
25 occurring), substitute “conducting *R&D activities”.

26 **35 Subsection 43-140(1) (note 1)**

27 Omit “Research and development activities must be carried on”,
28 substitute “R&D activities must be conducted”.

29 **36 Subsection 43-140(1) (note 2)**

30 Omit “carrying on research and development activities”, substitute
31 “conducting R&D activities”.

32 **37 Section 43-195 (heading)**

1 Repeal the heading, substitute:

2 **43-195 Use for R&D activities must be in connection with a business**

3 **38 Section 43-195**

4 Omit “*research and development activities”, substitute “*R&D
5 activities”.

6 **39 Section 43-210 (step 4)**

7 Omit “carrying on *research and development activities”, substitute
8 “conducting *R&D activities”.

9 **40 Section 43-210 (note to step 4)**

10 Omit “research and development activities”, substitute “R&D
11 activities”.

12 **41 Section 43-215 (step 3)**

13 Omit “carrying on *research and development activities”, substitute
14 “conducting *R&D activities”.

1

2 **Part 5—Forgiveness of commercial debts**

3 **Division 1—Amending the new law**

4 *Income Tax Assessment Act 1997*

5 **42 Subsection 245-145(1) (table item 4)**

6 Repeal the item, substitute:

4 Expenditure deductible under Division 355 of this Act
Division 355 (R&D)

7 Note: This item will not commence unless Schedule 2 to the *Tax Laws Amendment (Transfer*
8 *of Provisions) Act 2010* commences.

9 **Division 2—Amending the old law**

10 *Income Tax Assessment Act 1936*

11 **43 Subsection 245-140(1) in Schedule 2C (table item 8 of the**
12 **definition of *table of deductible expenditure*)**

13 Repeal the item, substitute:

8 Expenditure deductible under Division 355 of that Act
Division 355 (R&D) of the *Income*
Tax Assessment Act 1997

14 Note: This item will not commence if Schedule 2 to the *Tax Laws Amendment (Transfer of*
15 *Provisions) Act 2010* has already commenced.

1

2

Part 6—Other amendments

3

Income Tax Assessment Act 1936

4

44 Sections 73B to 73Z

5

Repeal the sections.

6

45 Section 94J

7

After “this Act”, insert “and other than Division 355 of the *Income Tax Assessment Act 1997*”.

8

9

46 After subsection 102T(8)

10

Insert:

11

(9) A reference in section 355-40 of the *Income Tax Assessment Act 1997* to a body corporate is to be read as including a reference to a body corporate acting in its capacity as trustee of a public trading trust.

12

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47 Subsection 136AB(2)

16

After “*Income Tax Assessment Act 1997*”, insert “, and of section 355-400 of that Act,”.

17

18

48 Subsection 170(10A)

19

Repeal the subsection.

20

49 Subsection 262A(4AC)

21

Omit “73E(1), 73F(1) or 73G(1),”.

22

50 Paragraph 262A(4AC)(a)

23

Omit “73E, 73F or 73G,”.

24

51 Subsection 57-85(3) in Schedule 2D (table item 13)

25

Repeal the item, substitute:

13

R&D

Division 355

26

52 Subsection 57-110(2) in Schedule 2D (table item 7)

1 Repeal the item, substitute:

7 R&D Sections 40-292, Section 40-25, 355-300 or
40-293, 355-310 and 355-525
355-530

2 **53 At the end of subsection 57-110(2) in Schedule 2D**

3 Add:

4 Note: Item 7 of the table is expanded by section 355-340 of the *Income Tax*
5 (*Transitional Provisions*) Act 1997.

6 ***Income Tax Assessment Act 1997***

7 **54 Section 4-25**

8 Repeal the section, substitute:

9 **4-25 Special provisions for working out your basic income tax**
10 **liability**

11 The following provisions may increase your basic income tax
12 liability beyond the liability worked out simply by applying the
13 income tax rates to your taxable income:

- 14 (a) Subdivision 355-G;
15 (b) subsection 392-35(3).

16 Note 1: Subdivision 355-G increases some entities' tax liability by requiring
17 them to pay extra income tax on government recoupments relating to
18 R&D activities for which entitlements to tax offsets arise under
19 Division 355.

20 Note 2: Subsection 392-35(3) increases some primary producers' tax liability
21 by requiring them to pay extra income tax on their averaging
22 components worked out under Subdivision 392-C.

23 **55 Subsection 9-5(1) (after table item 4)**

24 Insert:

4A An entity is liable to pay extra Subdivision 355-G
income tax on government
recoupments relating to R&D
activities for which entitlements to
tax offsets arise under Division 355.

25 **56 Section 10-5 (table item headed "balancing adjustment")**

26 Omit "*research & development*", substitute "*R&D*".

1 **57 Section 10-5 (table item headed “industrial property”)**

2 Omit “*research and development*”, substitute “*R&D*”.

3 **58 Section 10-5 (after table item headed “quarrying”)**

4 Insert:

R&D

balancing adjustment	40-292, 40-293, 355-310 and 355-530
return on	355-410

5 **59 Section 10-5 (table item headed “research &
6 development”)**

7 Repeal the item.

8 **60 Section 12-5 (table item headed “balancing adjustment”)**

9 Omit “*research & development and*”, substitute “*R&D and*”.

10 **61 Section 12-5 (table item headed “industrial property”)**

11 Omit “*research and development*”, substitute “*R&D*”.

12 **62 Section 12-5 (after table item headed “qualifying
13 securities”)**

14 Insert:

R&D

Division 355

15 **63 Section 12-5 (table item headed “research &
16 development”)**

17 Repeal the item.

18 **64 Section 12-5 (table item headed “scientific research”)**

19 Omit “*research & development*”, substitute “*R&D*”.

20 **65 Section 13-1 (after table item headed “public unit trust”)**

21 Insert:

R&D

Division 355

1 **66 Section 13-1 (table item headed “research and**
2 **development”)**

3 Repeal the item.

4 **67 Section 20-5 (table items 5 and 6)**

5 Repeal the items.

6 **68 Section 20-5 (at the end of the table)**

7 Add:

9 An R&D entity receives or becomes entitled 355-410
to receive an amount:

- for, or relating to, the results of R&D activities; or
- attributable to it incurring expenditure on R&D activities or to its use of a depreciating asset for the purpose of conducting R&D activities;

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

The amount is included in its assessable income.

10 You receive a recoupment from government Subdivision 3
relating to R&D activities for which 55-G
entitlements to tax offsets under
Division 355 arise.

Extra income tax is payable on the recoupment.

8 **69 Subsection 20-30(1) (after table item 1.19)**

9 Insert:

1.19 Division 355 R&D
A

10 **70 Subsection 20-30(2) (table item 2.8)**

11 Before “73B, 73BA or 73BH”, insert “Former”.

12 **71 Subsection 41-10(2)**

13 Repeal the subsection, substitute:

1 (2) Subsection 355-710(2) (tax offset for assets used for R&D
2 activities) does not apply to a deduction under subsection (1).

3 **72 Paragraph 41-10(3)(c)**

4 Repeal the paragraph, substitute:

5 (c) disregard subsection 355-710(2) (tax offset for assets used
6 for R&D activities).

7 **73 Section 104-235 (heading)**

8 Repeal the heading, substitute:

9 **104-235 Balancing adjustment events for depreciating assets and**
10 **certain assets used for R&D: CGT event K7**

11 **74 Paragraph 104-235(1A)(a)**

12 Repeal the paragraph, substitute:

13 (a) you are an *R&D entity and you could deduct an amount
14 under section 40-25 for the *depreciating asset if the
15 following assumptions were made:

16 (i) despite paragraph 40-30(1)(c) and subsection 40-30(2),
17 all intangible assets were excluded from the definition
18 of *depreciating asset* in section 40-30;

19 (ii) subsection 40-45(2) did not, except in the case of
20 buildings, prevent Division 40 from applying to capital
21 works to which Division 43 applies, or to which
22 Division 43 would apply but for expenditure being
23 incurred, or capital works being started, before a
24 particular day;

25 (iii) you satisfied any relevant requirement for deductibility
26 under Division 40; or

27 **75 Subsection 104-235(1B)**

28 Repeal the subsection, substitute:

29 (1B) *CGT event K7* also happens if:

30 (a) you are an *R&D entity; and

31 (b) a *balancing adjustment event occurs for a *depreciating asset
32 you *held; and

- 1 (c) when you held the asset, you could deduct an amount under
2 section 40-25 for the asset if the following assumptions were
3 made:
4 (i) despite paragraph 40-30(1)(c) and subsection 40-30(2),
5 all intangible assets were excluded from the definition
6 of *depreciating asset* in section 40-30;
7 (ii) subsection 40-45(2) did not, except in the case of
8 buildings, prevent Division 40 from applying to capital
9 works to which Division 43 applies, or to which
10 Division 43 would apply but for expenditure being
11 incurred, or capital works being started, before a
12 particular day;
13 (iii) you satisfied any relevant requirement for deductibility
14 under Division 40; and
15 (d) at some time when you held the asset:
16 (i) you used it other than for a taxable purpose or for the
17 purpose of conducting *R&D activities for which you
18 were registered under section 27A of the *Industry*
19 *Research and Development Act 1986*; or
20 (ii) you had it installed ready for use other than for a taxable
21 purpose.

22 **76 At the end of subsection 104-235(1B)**

23 Add:

24 Note: For subparagraph (d)(i), disregard any use of the asset for the purpose
25 of carrying on research and development activities (within the
26 meaning of former section 73B of the *Income Tax Assessment Act*
27 *1936*): see section 104-235 of the *Income Tax (Transitional*
28 *Provisions) Act 1997*.

29 **77 Paragraph 104-235(4)(a)**

30 Repeal the paragraph, substitute:

- 31 (a) the *depreciating asset covered by subsection (1) or (1B) is a
32 *pre-CGT asset; or

33 **78 Subsection 104-240(1)**

34 Omit “or the section 73BA depreciating asset”, substitute “covered by
35 subsection 104-235(1) or (1B)”.

1 **79 Subsection 104-240(1) (paragraph (a) of the definition of**
2 **sum of reductions)**

3 Omit “in the case of the *depreciating asset”, substitute “if the
4 *depreciating asset is covered by subsection 104-235(1)”.

5 **80 Subsection 104-240(1) (paragraph (b) of the definition of**
6 **sum of reductions)**

7 Repeal the paragraph, substitute:

8 (b) if the depreciating asset is covered by subsection
9 104-235(1B)—the reductions that would have been required
10 under section 40-25 on the assumption that when you used
11 the asset either for:

12 (i) a *taxable purpose; or

13 (ii) the purpose of conducting *R&D activities for which
14 you were registered under section 27A of the *Industry*
15 *Research and Development Act 1986*;

16 you used it for a taxable purpose.

17 **81 Subsection 104-240(1) (definition of total decline)**

18 Omit “or the section 73BA depreciating asset”.

19 **82 Subsection 104-240(1) (note)**

20 Repeal the note, substitute:

21 Note 1: This subsection applies in a modified way if you used the asset for the
22 purpose of carrying on research and development activities (within the
23 meaning of former section 73B of the *Income Tax Assessment Act*
24 *1936*); see section 104-235 of the *Income Tax (Transitional*
25 *Provisions) Act 1997*.

26 Note 2: The CGT concepts of cost base and capital proceeds are not relevant
27 for this event.

28 **83 Subsection 104-240(2)**

29 Omit “or the section 73BA depreciating asset”, substitute “covered by
30 subsection 104-235(1) or (1B)”.

31 **84 Paragraphs 108-55(1)(a) and (b)**

32 Repeal the paragraphs, substitute:

33 (a) Subdivision 40-D; or

34 (b) section 355-310 or 355-530 (about R&D).

1 **85 Paragraph 110-45(2)(b) (note)**

2 Repeal the note.

3 **86 Subsection 110-45(2) (table item 3)**

4 Repeal the item.

5 **87 Section 118-24 (heading)**

6 Repeal the heading, substitute:

7 **118-24 Depreciating assets**

8 **88 Subsection 118-24(1)**

9 Omit “or a section 73BA depreciating asset (within the meaning of
10 section 73BB of the *Income Tax Assessment Act 1936*)”.

11 **89 Subsection 118-24(1)**

12 After “Division 40”, insert “(including that Division as it applies under
13 Division 355)”.

14 **90 Section 118-35**

15 Repeal the section, substitute:

16 **118-35 R&D**

17 Disregard a *capital gain or *capital loss from a *CGT event if an
18 amount is included in your assessable income in any income year
19 under section 355-410 (about disposal of R&D results) because of
20 that CGT event.

21 **91 Subsection 205-15(1) (table items 1 and 2)**

22 After “that part of the payment that is attributable to the period during
23 which the entity was a franking entity”, insert “, less any reduction
24 under subsection (4)”.

25 **92 At the end of section 205-15**

26 Add:

27 (4) An entity’s *franking credit for a payment mentioned in item 1 or 2
28 of the table in subsection (1) is reduced by the amount (if any)
29 worked out as follows, but not below zero.

Method statement

Step 1. Identify any income years ending before the payment was made for which the entity has *received a refund of income tax.

Step 2. Add up the part (if any) of each of those refunds that is attributable to a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).

Step 3. Subtract any reduction under this subsection of a *franking credit for any earlier payment by the entity. (For this purpose, assume a credit reduced to zero is still a franking credit.)

93 Subsection 205-30(2)

Repeal the subsection, substitute:

- (2) Despite item 2 of the table in subsection (1), no debit arises on that part of the refund that is attributable to any of the following:
 - (a) a payment of income tax in relation to either or both of the following:
 - (i) an *FHSA component;
 - (ii) an *RSA component;
 - (b) a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).

94 Paragraph 205-35(1)(b)

Repeal the paragraph, substitute:

- (b) the refund of the amount, or the application of the credit, represents in whole or in part:
 - (i) a return to the entity of an amount paid or applied to satisfy the entity's liability to pay income tax; or
 - (ii) the amount remaining after applying a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D) against the entity's basic income tax liability.

95 Subsection 205-35(2)

1 After “return”, insert “, or amount remaining.”.

2 **96 Paragraph 230-515(2)(b)**

3 Repeal the paragraph.

4 **97 Paragraph 250-290(2)(c)**

5 Omit “and 40-292”, substitute “, 40-292 and 40-293”.

6 **98 Subsection 295-85(4) (table item 7)**

7 Omit “Research and development”, substitute “R&D”.

8 **99 Subsection 328-175(9)**

9 Repeal the subsection, substitute:

10 *Exception: assets for which previously entitled to a tax offset under*
11 *the R&D provisions*

12 (9) You cannot deduct amounts for a *depreciating asset for any period
13 under this Subdivision if you are entitled under section 355-100 to
14 a *tax offset for a deduction under section 355-300 for the asset for
15 the same or an earlier period.

16 **100 Subsection 345-10(4) (table item 7)**

17 Omit “Research and development”, substitute “R&D”.

18 **101 Section 701-5 (note 2)**

19 Repeal the note.

20 **102 Subsection 701-40(1) (note)**

21 Repeal the note.

22 **103 Subsection 701-55(2)**

23 Omit “Subdivision 328-D, and sections 73BA and 73BF of the *Income*
24 *Tax Assessment Act 1936*,” substitute “Subdivisions 328-D and 355-E”.

25 **104 Before Subdivision 716-Z**

26 Insert:

1 **Subdivision 716-V—Research and Development**

2 **Table of sections**

3	716-500	Head company bound by agreements binding on subsidiary members
4	716-505	History for entitlement to tax offset: joining entity
5	716-510	History for entitlement to tax offset: leaving entity

6 **716-500 Head company bound by agreements binding on subsidiary**
7 **members**

8 Section 355-215 (about R&D activities conducted for a foreign
9 entity) applies to the *head company of a *consolidated group as if
10 the head company were bound by an agreement during any period
11 that a *subsidiary member of the group is bound by the agreement.

12 **716-505 History for entitlement to tax offset: joining entity**

13 If:

- 14 (a) a company becomes a *subsidiary member of a *consolidated
15 group; and
16 (b) things happening in relation to the company before it became
17 a subsidiary member are, because of section 701-5 (the entry
18 history rule), taken into account as things happening in
19 relation to the *head company for working out the head
20 company's *aggregated turnover for the purposes of
21 section 355-100 (tax offsets for R&D);

22 the things happening are not to be taken into account as mentioned
23 in paragraph (b).

24 **716-510 History for entitlement to tax offset: leaving entity**

25 If:

- 26 (a) a company ceases to be a *subsidiary member of a
27 *consolidated group; and
28 (b) while the company was a subsidiary member, things
29 happened in relation to an entity which, if section 701-1 (the
30 single entity rule) were disregarded:
31 (i) would be *connected with the company; or
32 (ii) would be an *affiliate of the company; or
33 (iii) would have the company as an affiliate; and

- 1 (c) those things would, if section 701-1 were disregarded, have
2 been taken into account in working out the company's
3 *aggregated turnover for the purposes of section 355-100 (tax
4 offsets for R&D); and
5 (d) the things are not also things that, because of section 701-40
6 (the exit history rule), are taken into account as things
7 happening in relation to an eligible asset etc. (within the
8 meaning of that section) of the company in working out for
9 the entity core purposes the company's aggregated turnover
10 for the purposes of section 355-100;
11 the things are to be taken into account in working out the
12 company's aggregated turnover for the purposes of
13 section 355-100.

14 **105 Subsection 995-1(1) (paragraph (e) of the definition of**
15 **capital allowance)**

16 Omit "films); or", substitute "films).".

17 **106 Subsection 995-1(1) (paragraph (f) of the definition of**
18 **capital allowance)**

19 Repeal the paragraph.

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

21 **107 Subsection 118-24A(1)**

22 Before "subsection 73B(1)", insert "former".

23 ***Taxation Administration Act 1953***

24 **108 Paragraph 14ZW(1)(bc)**

25 Repeal the paragraph.

26 **109 Subsection 286-75(3) in Schedule 1**

27 Repeal the subsection.

28 **110 Paragraph 286-80(2)(b) in Schedule 1**

29 Repeal the paragraph.

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Schedule 4—Application, savings and transitional provisions

Part 1—Application provisions

1 Application of repeals and amendments

- (1) The repeals and amendments made by this Act apply:
- (a) so far as they affect assessments—to assessments for income years commencing on or after 1 July 2010; and
 - (b) so far as they relate to income years but do not affect assessments—to income years commencing on or after 1 July 2010; and
 - (c) otherwise—to acts done or omitted to be done, or states of affairs existing, on or after the commencement of the first income year commencing on or after 1 July 2010.

Note: For the purposes of an assessment for an income year commencing on or after 1 July 2010, regard may still be had to acts done or omitted to be done, or states of affairs existing during an earlier income year. For example, regard may be had to expenditure incurred by other entities in income years commencing before 1 July 2010 for the purposes of paragraph 355-415(1)(b) of the *Income Tax Assessment Act 1997*.

- (2) However, each of the following applies in relation to the 2010-11 financial year and all later financial years:
- (a) section 29F of the *Industry Research and Development Act 1986* (as inserted by Schedule 2);
 - (b) the repeal of paragraph 39H(b) of the *Industry Research and Development Act 1986*;
 - (c) section 46 of the *Industry Research and Development Act 1986* (as amended by this Act).

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Part 2—General savings provisions

3

2 Object

4

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

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(a) any act done or omitted to be done; or

8

(b) any state of affairs existing; or

9

(c) any period ending;

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before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

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3 Making and amending assessments, and doing other things, in relation to past matters

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16

(1) Even though a provision is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

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(a) making or amending an assessment (including under a provision that is itself repealed or amended);

21

22

(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

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in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

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Note: Examples of things covered by this item are as follows:

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(a) an eligible company may object under Part IVC of the *Taxation Administration Act 1953* in an income year commencing on or after 1 July 2010 about a notice given under former section 731 of the *Income Tax Assessment Act 1936* for an income year commencing before 1 July 2010;

(b) an eligible company seeking registration under former section 39J of the *Industry Research and Development Act 1986* for an income year commencing before 1 July 2010 may do so during an income year commencing on or after 1 July 2010;

(c) an amount may be included in an eligible company's assessable income under former subsection 73BF(4) of the *Income Tax*

1 *Assessment Act 1936* for an income year commencing on or after
2 1 July 2010 if the company receives in that income year an
3 amount for the results of research and development activities for
4 which the company had deductions under former section 73BA
5 of that Act in an income year commencing before 1 July 2010;
6 (d) Innovation Australia may give a certificate under former
7 section 39M of the *Industry Research and Development Act 1986*
8 in an income year commencing on or after 1 July 2010 about
9 research and development activities registered for an income year
10 commencing before 1 July 2010.

11 (2) To avoid doubt, subitem (1) extends to the repeal of subsection
12 286-75(3), and paragraph 286-80(2)(b), in Schedule 1 to the *Taxation*
13 *Administration Act 1953*. In particular, if, in a particular case, the period
14 in respect of which an administrative penalty is payable under
15 subsection 286-75(3) in that Schedule:

16 (a) has not begun; or

17 (b) has begun but not ended;

18 when those provisions are repealed, then, despite the repeal, those
19 provisions continue to apply in the particular case until the end of the
20 period.

21 **4 Saving of provisions about effect of assessments**

22 If a provision or part of a provision that is repealed or amended by this
23 Act deals with the effect of an assessment, the repeal or amendment is
24 disregarded in relation to assessments made, before or after the repeal or
25 amendment applies, in relation to any act done or omitted to be done,
26 any state of affairs existing, or any period ending, before the repeal or
27 amendment applies.

28 **5 Repeals disregarded for the purposes of dependent provisions**

29
30 If the operation of a provision (the *subject provision*) of any Act or
31 legislative instrument (within the meaning of the *Legislative*
32 *Instruments Act 2003*) made under any Act depends to any extent on a
33 provision that is repealed by this Act, the repeal is disregarded so far as
34 it affects the operation of the subject provision.

35 **6 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901**

36
37 This Schedule does not limit the operation of section 8 of the *Acts*
38 *Interpretation Act 1901*.

1

2

Part 3—Transitional provisions appearing as amendments of other Acts

3

Income Tax Assessment Act 1997

4

7 Subsection 40-75(2) (note)

5

Omit “Note”, substitute “Note 1”.

6

8 At the end of subsection 40-75(2)

7

Add:

8

Note 2: You may also adjust the formula for an income year if you had undeducted core technology expenditure for the asset at the end of your last income year commencing before 1 July 2010 (see section 355-605 of the *Income Tax (Transitional Provisions) Act 1997*).

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9 Subsection 40-85(2) (note)

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Repeal the note, substitute:

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Note: The opening adjustable value of a depreciating asset may be modified by one of these provisions:

- (a) Subdivision 27-B;
- (b) subsection 40-90(3);
- (c) subsection 40-285(4);
- (d) paragraph 40-365(5)(b);
- (e) section 775-70;
- (f) section 775-75;
- (g) section 355-605 of the *Income Tax (Transitional Provisions) Act 1997*.

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Income Tax (Transitional Provisions) Act 1997

26

10 After section 40-65

27

Insert:

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40-67 Methods for working out decline in value

29

(1) Subsections 40-65(6) and (7) of the *Income Tax Assessment Act 1997* apply with the changes set out in this section if either or both of the following events have happened:

30
31
32

- 1 (a) you have deducted one or more amounts under former
2 section 73BA of the *Income Tax Assessment Act 1936* for an
3 asset;
4 (b) you could have deducted one or more amounts under that
5 former section for the asset if you had not chosen tax offsets
6 under former section 73I of that Act.
- 7 (2) Assume:
8 (a) paragraph 40-65(6)(a) of the *Income Tax Assessment Act*
9 *1997* included both events set out in subsection (1) of this
10 section; and
11 (b) subsections 40-65(6) and (7) of that Act deal with all 4 kinds
12 of events in a corresponding way to the way that they deal
13 with 2 kinds of events.

14 **11 At the end of Subdivision 40-B**

15 Add:

16 **40-105 Calculations of effective life**

- 17 (1) This section applies to the following (the *instrument*):
18 (a) a determination under section 40-100 of the *Income Tax*
19 *Assessment Act 1997* of the effective life of an asset;
20 (b) a calculation under section 40-105 of that Act of the effective
21 life of an asset;
22 if the instrument was in force immediately before the
23 commencement of Schedule 1 to the *Tax Laws Amendment*
24 *(Research and Development) Act 2010*.
- 25 (2) The instrument has effect, after that commencement, as if it had
26 been made under that section as amended by the *Tax Laws*
27 *Amendment (Research and Development) Act 2010*.

28 **12 After section 40-290**

29 Insert:

1 **40-292 Balancing adjustment—assets used for both general tax**
2 **purposes and R&D activities**

3 *R&D entity has old law R&D decline in value deductions*

- 4 (1) This section applies to an R&D entity if:
- 5 (a) a balancing adjustment event happens in an income year
6 commencing on or after 1 July 2010 for an asset held by the
7 R&D entity and:
- 8 (i) the R&D entity can deduct, for an income year, an
9 amount under section 40-25 of the *Income Tax*
10 *Assessment Act 1997* (the ***new Act***), as that section
11 applies apart from Division 355 of that Act and former
12 section 73BC of the *Income Tax Assessment Act 1936*
13 (the ***old Act***); or
- 14 (ii) the R&D entity could have deducted, for an income
15 year, an amount as described in subparagraph (i) if it
16 had used the asset; and
- 17 (b) either or both of the following subparagraphs apply:
- 18 (i) the R&D entity can deduct (the ***old law deductions***)
19 under former section 73BA or 73BH of the old Act an
20 amount for one or more income years for the asset;
- 21 (ii) the R&D entity chooses tax offsets under former
22 section 73I of the old Act instead of deductions (also the
23 ***old law deductions***) under those former sections for one
24 or more income years for the asset.

25 Note: This section applies even if the R&D entity is entitled under
26 section 355-100 of the new Act to tax offsets for one or more income
27 years for deductions under section 355-300 of that Act for the asset.

28 *Section 40-290 to be applied as if use for carrying on R&D*
29 *activities were use for a taxable purpose*

- 30 (2) The R&D entity must, in applying section 40-290 of the new Act
31 (including references in that section to the reduction of deductions
32 under section 40-25 of that Act) in relation to the asset, assume that
33 when the R&D entity used it for:
- 34 (a) a taxable purpose; or
- 35 (b) the purpose of the carrying on, by or on behalf of the R&D
36 entity, of the research and development activities (within the

- 1 meaning of former section 73B of the old Act) to which the
2 old law deductions relate; or
3 (c) if the R&D entity is entitled under section 355-100 of the
4 new Act to tax offsets for one or more income years for
5 deductions (the *new law deductions*) under section 355-300
6 of that Act for the asset—the purpose of conducting the R&D
7 activities to which the new law deductions relate;
8 the R&D entity used it for a taxable purpose.

9 *Increase in amounts deductible or assessable under section 40-285*

- 10 (3) Any amount (the *section 40-285 amount*):
11 (a) that the R&D entity can deduct for the asset under
12 section 40-285 of the new Act (after applying subsection (2)
13 of this section); or
14 (b) that is included in the R&D entity's assessable income for the
15 asset under section 40-285 of the new Act (after applying
16 subsection (2) of this section);
17 is taken to be increased under section 40-292 of the new Act by the
18 following amount:

19
$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

20 where:

21 *adjusted section 40-285 amount* means:

- 22 (a) if the section 40-285 amount is a deduction—the amount of
23 the deduction; or
24 (b) if the section 40-285 amount is an amount included in the
25 R&D entity's assessable income—so much of the
26 section 40-285 amount as does not exceed the formula
27 component *total decline in value*.

28 *old law 1.25 rate deductions* means the sum of the R&D entity's
29 notional Division 40 deductions, and notional Division 42
30 deductions, (if any) for the asset that were multiplied by 1.25 in
31 working out the old law deductions.

1 ***total decline in value*** means the cost of the asset less its adjustable
2 value.

3 *Normal rules do not apply for the asset and the event*

4 (4) Neither of the following sections:

5 (a) section 40-292 of the new Act (as amended by the *Tax Laws*
6 *Amendment (Research and Development) Act 2010*);

7 (b) section 40-292 of the new Act (as that section applies
8 because of Part 2 of Schedule 4 to the *Tax Laws Amendment*
9 *(Research and Development) Act 2010*);

10 to the extent that they would otherwise apply apart from this
11 section to the R&D entity for the event, do so apply to the R&D
12 entity for the event.

13 Note 1: The section 40-292 of the new Act mentioned in paragraph (a) would
14 otherwise apply for the event in a case where the R&D entity had new
15 law deductions.

16 Note 2: The section 40-292 of the new Act mentioned in paragraph (b) would
17 otherwise apply for the event in respect of the old law deductions.

18 **40-293 Balancing adjustment—partnership assets used for both**
19 **general tax purposes and R&D activities**

20 *Partners have old law R&D decline in value deductions*

21 (1) This section applies to an R&D partnership if:

22 (a) a balancing adjustment event happens in an income year
23 commencing on or after 1 July 2010 for an asset held by the
24 R&D partnership and:

25 (i) the R&D partnership can deduct, for an income year, an
26 amount under section 40-25 of the *Income Tax*
27 *Assessment Act 1997* (the ***new Act***), as that section
28 applies apart from Division 355 of that Act and former
29 section 73BC of the *Income Tax Assessment Act 1936*
30 (the ***old Act***); or

31 (ii) the R&D partnership could have deducted, for an
32 income year, an amount as described in subparagraph (i)
33 if it had used the asset; and

34 (b) either or both of the following subparagraphs apply:

35 (i) one or more partners of the R&D partnership can deduct
36 (the ***old law deductions***) under former section 73BA or

- 1 73BH of the old Act amounts for one or more income
2 years for the asset;
- 3 (ii) one or more partners of the R&D partnership choose tax
4 offsets under former section 73I of the old Act instead
5 of deductions (also the *old law deductions*) under those
6 former sections for one or more income years for the
7 asset.

8 Note: This section applies even if the partners are entitled under
9 section 355-100 of the new Act to tax offsets for one or more income
10 years for deductions under section 355-525 of that Act for the asset.

11 *Section 40-290 to be applied as if use for carrying on R&D*
12 *activities were use for a taxable purpose*

- 13 (2) The R&D partnership must, in applying section 40-290 of the new
14 Act (including references in that section to the reduction of
15 deductions under section 40-25 of that Act) in relation to the asset,
16 assume that when the R&D partnership used it for:
- 17 (a) a taxable purpose; or
18 (b) the purpose of the carrying on, by or on behalf of the R&D
19 partnership, of the research and development activities
20 (within the meaning of former section 73B of the old Act) to
21 which the old law deductions relate; or
22 (c) if one or more partners of the R&D partnership are entitled
23 under section 355-100 of the new Act to tax offsets for one or
24 more income years for deductions (the *new law deductions*)
25 under section 355-525 of that Act for the asset—the purpose
26 of conducting the R&D activities to which the new law
27 deductions relate;
- 28 the R&D partnership used it for a taxable purpose.

29 *Increase in amounts deductible or assessable under section 40-285*

- 30 (3) Any amount (the *section 40-285 amount*):
- 31 (a) that the R&D partnership can deduct for the asset under
32 section 40-285 of the new Act (after applying subsection (2)
33 of this section); or
34 (b) that is included in the R&D partnership's assessable income
35 for the asset under section 40-285 of the new Act (after
36 applying subsection (2) of this section);

1 is taken to be increased under section 40-293 of the new Act by the
2 following amount:

3 Adjusted section 40-285 amount $\times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of all new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$

4 where:

5 **adjusted section 40-285 amount** means:

- 6 (a) if the section 40-285 amount is a deduction—the amount of
7 the deduction; or
8 (b) if the section 40-285 amount is an amount included in the
9 R&D partnership’s assessable income—so much of the
10 section 40-285 amount as does not exceed the formula
11 component **total decline in value**.

12 **old law 1.25 rate deductions** means the sum of the partners’
13 notional Division 40 deductions, and notional Division 42
14 deductions, (if any) for the asset that were multiplied by 1.25 in
15 working out the old law deductions.

16 **total decline in value** means the cost of the asset less its adjustable
17 value.

18 *Normal rules do not apply for the asset and the event*

- 19 (4) Section 40-293 of the new Act, to the extent that it would
20 otherwise apply apart from this section to the R&D partnership or
21 its partners for the event, does not so apply to the R&D partnership
22 and the partners for the event.

23 Note: Section 40-293 of the new Act would otherwise apply for the event in
24 a case where the partners had new law deductions.

25 **13 After section 40-420**

26 Insert:

1 **40-430 Allocating assets to low-value pools**

2 For the purposes of Subdivision 40-E of the *Income Tax*
3 *Assessment Act 1997*, you cannot allocate a depreciating asset to a
4 low-value pool if:

- 5 (a) you can deduct an amount for the asset under former
6 section 73BA of the *Income Tax Assessment Act 1936*; or
7 (b) you could so deduct an amount if you had not chosen a tax
8 offset under former section 73I of that Act;
9 for a period before, or starting at the same time as, the allocation
10 has effect.

11 **14 After section 104-205**

12 Insert:

13 **104-235 CGT event K7: asset used for old law R&D activities**

14 *Section applies if asset used for old law R&D activities*

- 15 (1) This section applies to an R&D entity if:
16 (a) a balancing adjustment event happens in an income year
17 commencing on or after 1 July 2010 for an asset held by the
18 R&D entity; and
19 (b) at some time when the R&D entity held the asset, it used the
20 asset for the purpose of the carrying on by or on its behalf of
21 research and development activities (within the meaning of
22 former section 73B of the *Income Tax Assessment Act 1936*).

23 *Changed application of sections 104-235 and 104-240*

- 24 (2) Sections 104-235 and 104-240 of the *Income Tax Assessment Act*
25 *1997* (the **new Act**) apply to the R&D entity for the event as if:
26 (a) a reference in those sections to the purpose of conducting
27 R&D activities for which you were registered under
28 section 27A of the *Industry Research and Development Act*
29 *1986*;
30 included:
31 (b) a reference to the purpose described in paragraph (1)(b) of
32 this section.

1 *Normal rules do not apply for the asset and the event*

2 (3) Neither of the following sections:

3 (a) sections 104-235 and 104-240 of the new Act (as amended
4 by the *Tax Laws Amendment (Research and Development)*
5 *Act 2010*);

6 (b) sections 104-235 and 104-240 of the new Act (as those
7 sections apply because of Part 2 of Schedule 4 to the *Tax*
8 *Laws Amendment (Research and Development) Act 2010*);

9 to the extent that they would otherwise apply apart from this
10 section to the R&D entity for the event, do so apply to the R&D
11 entity for the event.

12 Note 1: The sections described in paragraph (a) would otherwise apply for the
13 event in a case where the R&D entity had used the asset for the
14 purpose of conducting R&D activities for which it was registered
15 under section 27A of the *Industry Research and Development Act*
16 *1986*.

17 Note 2: The sections described in paragraph (b) would otherwise apply in
18 respect of the purpose described in paragraph (1)(b) of this section.

19 **15 After Division 328**

20 Insert:

21 **Division 355—Research and Development**

22 **Table of Subdivisions**

23	355-D	Registration for activities before 2010-11 income year
24	355-E	Balancing adjustments for decline in value deductions for
25		assets used in R&D activities
26	355-F	Integrity rules
27	355-K	Modified application of the old R&D law
28	355-M	Undeducted core technology expenditure

29 **Subdivision 355-D—Registration for activities before 2010-11** 30 **income year**

31 **Table of sections**

32	355-200	Registration for activities before 2010-11 income year
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1 **355-200 Registration for activities before 2010-11 income year**

2 A reference in each of the following provisions of the *Income Tax*
3 *Assessment Act 1997* to a registration under section 27A of the
4 *Industry Research and Development Act 1986* includes a reference
5 to a registration under former section 39J of that Act:

- 6 (a) paragraph 43-35(a);
7 (b) subparagraph 355-200(1)(a)(i);
8 (c) subparagraph 355-210(b)(ii);
9 (d) subparagraph 355-215(b)(ii);
10 (e) subparagraph 355-480(1)(a)(i);
11 (f) paragraph 355-580(1)(b).

12 **Subdivision 355-E—Balancing adjustments for decline in value**
13 **deductions for assets used in R&D activities**

14 **Table of sections**

15 355-320 Balancing adjustment—assets only used for R&D activities
16 355-325 Balancing adjustment—R&D partnership assets only used for R&D
17 activities

18 **355-320 Balancing adjustment—assets only used for R&D activities**

19 *R&D entity has old law R&D decline in value deductions*

- 20 (1) This section applies to an R&D entity if:
21 (a) a balancing adjustment event happens in an income year (the
22 *event year*) commencing on or after 1 July 2010 for an asset
23 held by the R&D entity; and
24 (b) the R&D entity cannot deduct an amount under section 40-25
25 of the *Income Tax Assessment Act 1997* (the *new Act*), as that
26 section applies apart from:
27 (i) Division 355 of that Act; and
28 (ii) former section 73BC of the *Income Tax Assessment Act*
29 *1936* (the *old Act*);
30 for the asset for an income year; and
31 (c) either or both of the following subparagraphs apply:
32 (i) the R&D entity can deduct (the *old law deductions*)
33 under former section 73BA or 73BH of the old Act an
34 amount for one or more income years for the asset;
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- 1 (ii) the R&D entity chooses tax offsets under former
2 section 73I of the old Act instead of deductions (also the
3 **old law deductions**) under those former sections for one
4 or more income years for the asset; and
5 (d) the R&D entity is registered under section 27A of the
6 *Industry Research and Development Act 1986* for one or
7 more R&D activities for the event year; and
8 (e) if Division 40 of the new Act applied as described in
9 subsection (2) of this section:
10 (i) the R&D entity could deduct for the event year an
11 amount under subsection 40-285(2) of that Act for the
12 asset and the balancing adjustment event; or
13 (ii) an amount would be included in the R&D entity's
14 assessable income for the event year under subsection
15 40-285(1) of that Act for the asset and the balancing
16 adjustment event.

17 Note 1: This section applies even if the R&D entity is entitled under
18 section 355-100 of the new Act to tax offsets for one or more income
19 years for deductions (the **new law deductions**) under section 355-300
20 of that Act for the asset.

21 Note 2: Section 40-292 of this Act may apply if paragraph (c), but not
22 paragraph (b), of this subsection is satisfied.

23 *Changed application of Division 40*

- 24 (2) For the purposes of paragraph (1)(e), assume that Division 40 of
25 the new Act applied with the changes described in section 355-305
26 of that Act, but with these changes to that section:
27

Changes to be made to section 355-305 of the new Act

Item	For a reference in section 355-305 to ...	substitute a reference to ...
1	section 355-310	this section
2	the R&D activities to which the R&D deductions (within the meaning of that section) relate	both: (a) the research and development activities (within the meaning of former section 73B of the old Act) to which the old law deductions relate; and (b) the R&D activities to which the new law deductions (if any) relate

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Notional deduction

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(3) If the R&D entity could deduct for the event year an amount under subsection 40-285(2) of the new Act for:

3

(a) the asset; and

4

(b) the event;

5

if Division 40 of that Act applied as described in subsection (2) of this section, the R&D entity is taken to be able to deduct under subsection 355-310(2) of the new Act that amount for the event year.

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Note: The R&D entity may be entitled to a tax offset under section 355-100 (about R&D) of the new Act for the deduction.

11

12

Amount to be included in assessable income

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(4) If an amount (the **section 40-285 amount**) would be included in the R&D entity's assessable income for the event year under subsection 40-285(1) of the new Act for the asset and the event if Division 40 of that Act applied as described in subsection (2) of this section, the sum of:

14

15

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17

(a) that amount; and

18

(b) the following amount;

19

is taken to be included in the R&D entity's assessable income for the event year under subsection 355-310(3) of the new Act:

20

21

22

$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

23

where:

24

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

25

26

27

old law 1.25 rate deductions means the sum of the R&D entity's notional Division 40 deductions, and notional Division 42 deductions, (if any) for the asset that were multiplied by 1.25 in working out the old law deductions.

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1 ***total decline in value*** means the asset's cost, less its adjustable
2 value, (worked out under Division 40 of the new Act as it applies
3 as described in subsection (2)).

4 *Normal rules do not apply for the asset and the event*

5 (5) Neither of the following sections:

- 6 (a) section 355-310 of the new Act;
7 (b) former section 73BF of the old Act (as that section applies
8 because of Part 2 of Schedule 4 to the *Tax Laws Amendment*
9 *(Research and Development) Act 2010*);

10 to the extent that they would otherwise apply apart from this
11 section to the R&D entity for the event, do so apply to the R&D
12 entity for the event.

13 Note 1: Section 355-310 of the new Act would otherwise apply for the event
14 in a case where the R&D entity had new law deductions.

15 Note 2: Former section 73BF of the old Act would otherwise apply for the
16 event in respect of the old law deductions.

17 **355-325 Balancing adjustment—R&D partnership assets only used**
18 **for R&D activities**

19 *Partner has old law R&D decline in value deductions*

- 20 (1) This section applies to an R&D entity (the ***partner***) if:
21 (a) a balancing adjustment event happens in an income year (the
22 ***event year***) commencing on or after 1 July 2010 for an asset
23 held by an R&D partnership; and
24 (b) the R&D partnership cannot deduct an amount under
25 section 40-25, as that section applies apart from:
26 (i) Division 355 of the *Income Tax Assessment Act 1997*
27 (the ***new Act***); and
28 (ii) former section 73BC of the *Income Tax Assessment Act*
29 *1936* (the ***old Act***);
30 for the asset for an income year; and
31 (c) either or both of the following subparagraphs apply:
32 (i) the partner can deduct (the ***old law deductions***) under
33 former section 73BA or 73BH of the old Act an amount
34 for one or more income years for the asset;

- 1 (ii) the partner chooses tax offsets under former section 73I
2 of the old Act instead of deductions (also the *old law*
3 *deductions*) under those former sections for one or more
4 income years for the asset; and
- 5 (d) the partner is registered under section 27A of the *Industry*
6 *Research and Development Act 1986* for one or more R&D
7 activities for the event year; and
- 8 (e) if Division 40 of the new Act applied as described in
9 subsection (2) of this section:
- 10 (i) the R&D partnership could deduct for the event year an
11 amount under subsection 40-285(2) of that Act for the
12 asset and the balancing adjustment event; or
- 13 (ii) an amount would be included in the R&D partnership's
14 assessable income for the event year under subsection
15 40-285(1) of that Act for the asset and the balancing
16 adjustment event.

17 Note 1: This section applies even if the partner is entitled under
18 section 355-100 of the new Act to tax offsets for one or more income
19 years for deductions (the *new law deductions*) under section 355-525
20 of that Act for the asset.

21 Note 2: Section 40-293 of this Act may apply if paragraph (c), but not
22 paragraph (b), of this subsection is satisfied.

23 *Changed application of Division 40*

- 24 (2) For the purposes of paragraph (1)(e), assume that Division 40 of
25 the new Act applied with the changes described in section 355-305
26 of that Act, but with these changes to that section:

27

Changes to be made to section 355-305 of the new Act

Item	For a reference in section 355-305 to ...	substitute a reference to ...
1	section 355-310	this section
2	the R&D activities to which the R&D deductions (within the meaning of that section) relate	both: (a) the research and development activities (within the meaning of former section 73B of the old Act) to which the old law deductions relate; and (b) the R&D activities to which the new law deductions (if any) relate

Changes to be made to section 355-305 of the new Act

Item	For a reference in section 355-305 to ...	substitute a reference to ...
3	R&D entity	R&D partnership

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Notional deduction

- (3) If the R&D partnership could deduct for the event year an amount under subsection 40-285(2) of the new Act for:
- (a) the asset; and
 - (b) the event;
- if Division 40 of that Act applied as described in subsection (2) of this section, the partner is taken to be able to deduct under subsection 355-530(2) of the new Act the partner's proportion of that amount for the event year.

Note: The partner may be entitled to a tax offset under section 355-100 (about R&D) of the new Act for the deduction.

Amount to be included in assessable income

- (4) If an amount (the **section 40-285 amount**) would be included in the R&D partnership's assessable income for the event year under subsection 40-285(1) of the new Act for the asset and the event if Division 40 of that Act applied as described in subsection (2) of this section, the sum of:
- (a) the partner's proportion of that amount; and
 - (b) the following amount;
- is taken to be included in the partner's assessable income for the event year under subsection 355-530(3) of the new Act:

$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of all new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

1 *old law 1.25 rate deductions* means the sum of the partner's
2 notional Division 40 deductions, and notional Division 42
3 deductions, (if any) for the asset that were multiplied by 1.25 in
4 working out the old law deductions.

5 *total decline in value* means the asset's cost, less its adjustable
6 value, (worked out under Division 40 of the new Act as it applies
7 as described in subsection (2)).

8 *Normal rules do not apply for the asset and the event*

9 (5) Neither of the following sections:

10 (a) section 355-530 of the new Act;

11 (b) former section 73BF of the old Act (as that section applies
12 because of Part 2 of Schedule 4 to the *Tax Laws Amendment*
13 *(Research and Development) Act 2010*);

14 to the extent that they would otherwise apply apart from this
15 section to the partner for the event, do so apply to the partner for
16 the event.

17 Note 1: Section 355-530 of the new Act would otherwise apply for the event
18 in a case where the partner had new law deductions.

19 Note 2: Former section 73BF of the old Act may otherwise apply for the event
20 in respect of the old law deductions.

21 **355-340 Balancing adjustment—tax exempt entities that become**
22 **taxable**

23 Item 7 of the table in subsection 57-110(2) in Schedule 2D to the
24 *Income Tax Assessment Act 1936* applies as if the deduction rules
25 set out in the final column of that item also included former
26 sections 73BA and 73BH of the *Income Tax Assessment Act 1936*.

27 **Subdivision 355-F—Integrity rules**

28 **Table of sections**

29 355-415 Expenditure reduced to reflect group mark-ups

30 **355-415 Expenditure reduced to reflect group mark-ups**

31 For the purposes of step 2 of the method statement in subsection
32 355-415(2) of the *Income Tax Assessment Act 1997*, also disregard
33 amounts that have already been taken into account under former

1 subsection 73B(14AA) of the *Income Tax Assessment Act 1936* for
2 the R&D entity, the grouped entity and the R&D activities for an
3 earlier income year.

4 **Subdivision 355-K—Modified application of the old R&D law**

5 **Table of sections**

6 355-550 Prepayments of R&D expenditure extending into the 2010-11 income year

7 **355-550 Prepayments of R&D expenditure extending into the**
8 **2010-11 income year**

9 *Advance R and D expenditure*

10 (1) This section applies if, apart from former paragraph 73B(10)(a) of
11 the *Income Tax Assessment Act 1936*, an eligible company could
12 deduct advance R and D expenditure in one or more income years
13 commencing on or after 1 July 2010.

14 Note: That deduction would be under former section 73B of that Act as that
15 former section applies because of Part 2 of Schedule 4 to the *Tax Laws*
16 *Amendment (Research and Development) Act 2010*.

17 *Other prepayments of R&D expenditure*

18 (2) This section also applies if:
19 (a) apart from Subdivision H (prepaid expenditure) of Division 3
20 of Part III of the *Income Tax Assessment Act 1936*, an
21 eligible company can deduct an amount under former section
22 section 73B, 73BA, 73BH, 73QA, 73QB or 73Y of that Act
23 for an income year commencing before 1 July 2010; and
24 (b) that Subdivision applies to the calculation of that amount;
25 and
26 (c) apart from former paragraph 73B(10)(a) of that Act, the
27 eligible company could deduct an amount, as a result of that
28 application of that Subdivision, for an income year
29 commencing on or after 1 July 2010.

30 Note: That deduction would be under that Act as it applies because of Part 2
31 of Schedule 4 to the *Tax Laws Amendment (Research and*
32 *Development) Act 2010*.

1 *Changed registration requirement*

2 (3) Former paragraph 73B(10)(a) of that Act is taken to apply to those
3 income years commencing on or after 1 July 2010 as if the
4 reference in that former paragraph to section 39J of the *Industry*
5 *Research and Development Act 1986* were a reference to
6 section 27A of that Act.

7 *Meaning of expressions*

8 (4) An expression used in this section that is also used in former
9 section 73B of the *Income Tax Assessment Act 1936* has the same
10 meaning in this section as it has in that former section.

11 **Subdivision 355-M—Undeducted core technology expenditure**

12 **Table of sections**

13	355-600	Scope
14	355-605	Core technology that is a depreciating asset
15	355-610	Core technology that is not a depreciating asset

16 **355-600 Scope**

17 This Subdivision applies to core technology (within the meaning of
18 former section 73B of the *Income Tax Assessment Act 1936*) if:

- 19 (a) you incurred core technology expenditure (within the
20 meaning of that former section) in an income year
21 commencing before 1 July 2010 in relation to the core
22 technology under one or more contracts entered into at or
23 after the time referred to in former subsection 73B(12) of that
24 Act; and
- 25 (b) that expenditure (the *undeducted expenditure*) cannot be
26 deducted for the last income year commencing before 1 July
27 2010.

28 **355-605 Core technology that is a depreciating asset**

29 *This section only applies for deductions under Division 40*

- 30 (1) This section applies for the purposes of Division 40 of the *Income*
31 *Tax Assessment Act 1997*, other than sections 40-292 and 40-293

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1 of that Act, if the core technology (the *asset*) is a depreciating
2 asset.

3 (2) Disregard this section, including its effect on the amount you can
4 deduct under section 40-25 of that Act for the asset, for the
5 purposes of working out:

6 (a) a deduction under any other Division of that Act for any
7 income year; and

8 (b) a tax offset under any other Division of that Act for any
9 income year.

10 *Changes made by this section*

11 (3) The asset's opening adjustable value for the first income year that
12 commences on or after 1 July 2010 (the *first new income year*) is
13 equal to the amount of the undeducted expenditure.

14 (4) Subsection 40-75(2) of the *Income Tax Assessment Act 1997*
15 applies to the asset as if the first new income year were a change
16 year (within the meaning of that subsection).

17 **355-610 Core technology that is not a depreciating asset**

18 If the core technology is not a depreciating asset, you can deduct
19 the undeducted expenditure in equal proportions over a period of 5
20 income years starting in the first income year commencing on or
21 after 1 July 2010.

1

2 **Part 4—Other savings and transitional provisions**

3 **16 R&D activities registered under the old law**

4 A reference in each of the following provisions of the *Industry*
5 *Research and Development Act 1986* (as amended by this Act) to a
6 registration under section 27A of that Act includes a reference to a
7 registration under former section 39J of that Act:

- 8 (a) subparagraph 27A(3)(b)(i);
9 (b) subparagraph 27B(1)(c)(ii);
10 (c) subparagraph 27H(1)(c)(ii);
11 (d) paragraph 28A(1)(b);
12 (e) paragraph 28BA(2)(b).

13 Note: For each of these provisions, the R&D activity registered under former section 39J will
14 need to be a core R&D activity within the meaning of the amendments made by this
15 Act.

16 **17 Australian research agencies registered under the old law**

- 17 (1) This item applies to an entity registered, immediately before the
18 commencement of this item, under section 39F of the *Industry Research*
19 *and Development Act 1986* as an Australian research agency in respect
20 of one or more classes (the *research classes*) of Australian research and
21 development activities.
- 22 (2) The entity is taken, immediately after the commencement of this item,
23 to be registered under section 29A of that Act as a research service
24 provider qualified to provide services in research fields corresponding
25 to those research classes.

26 **18 Regulations**

- 27 (1) The Governor-General may make regulations prescribing matters:
28 (a) required or permitted by this Act to be prescribed; or
29 (b) necessary or convenient to be prescribed for carrying out or
30 giving effect to this Act.
- 31 (2) The Governor-General may make regulations dealing with matters of a
32 transitional, savings or application nature relating to the repeals and
33 amendments made by this Act.