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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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 This Act commences on the day this Act receives the Royal
10 Assent.

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3 repealed as set out in the applicable items in the Schedule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

- Subdivision 355-A—Object
- Subdivision 355-B—Meaning of R&D activities and other terms
- Subdivision 355-C—Entitlement to tax offset
- Subdivision 355-D—Notional deductions for R&D expenditure
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- Subdivision 355-K—Other matters

Guide to Division 355

355-1 What this Division is about

An R&D entity may be entitled to a tax offset for R&D activities. The tax offset may be a refundable tax offset if the R&D entity's aggregated turnover is less than \$20 million.
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1 To be entitled to the tax offset, the R&D entity will need to have
2 one or more notional deductions under this Division.

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

6 There are similar notional deductions for R&D entities who are
7 partners of R&D partnerships involved in R&D activities.

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

11 Subdivision 355-A—Object

12 Table of sections

13 355-5 Object

14 355-5 Object

- 15 (1) The object of this Division is to encourage industry to conduct
16 *R&D activities that might otherwise not be conducted because of
17 technical uncertainty, in cases where the knowledge gained is
18 likely to spillover to the benefit of the wider Australian economy.
- 19 (2) This object is achieved by providing a tax incentive for industry to
20 conduct experimental activities that:
21 (a) are systematic and investigative; and
22 (b) involve considerable novelty and *high levels of technical
23 risk; and
24 (c) are conducted for the purpose of generating new knowledge
25 or information in a general or applied form.
- 26 (3) The tax incentive takes the form of a *tax offset for these core
27 experimental activities. The tax offset is also available for directly
28 related activities that are conducted for the dominant purpose of
29 supporting such core experimental activities (rather than for a
30 broader commercial or other purpose).

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	355-35	<i>Supporting R&D activities</i>
6	355-40	<i>R&D entities</i>

7 **355-20 R&D activities**

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

10 **355-25 Core R&D activities**

11 (1) *Core R&D activities* are experimental activities that:

- 12 (a) are systematic and investigative; and
13 (b) involve considerable novelty and *high levels of technical
14 risk; and
15 (c) are conducted for the purpose of acquiring new knowledge or
16 information, including knowledge or information about the
17 creation of new or improved materials, products, devices,
18 processes or services;

19 other than activities mentioned in subsection 355-35(2) (excluded
20 activities).

21 (2) Activities involve *high levels of technical risk* only if:

- 22 (a) the probability of obtaining a given technical or scientific
23 outcome from the activities cannot be known or determined
24 in advance on the basis of current knowledge, information or
25 experience; and
26 (b) the uncertainty of obtaining that outcome can only be
27 removed by applying scientific method, in a systematic
28 progression of work, from hypothesis to experiment,
29 observation and evaluation, followed by logical conclusions;
30 and
31 (c) that work is based on principles of physical, biological,
32 chemical, medical, engineering or computer sciences.
-

1 **355-35 Supporting R&D activities**

- 2 (1) **Supporting R&D activities** are activities undertaken for the
3 dominant purpose of supporting *core R&D activities.
- 4 (2) However, none of the following activities are **supporting R&D**
5 **activities**:
- 6 (a) market research, market testing or market development, or
7 sales promotion (including consumer surveys);
- 8 (b) quality control;
- 9 (c) prospecting, exploring or drilling for minerals or *petroleum
10 for the purposes of one or more of the following:
- 11 (i) discovering deposits;
- 12 (ii) determining more precisely the location of deposits;
- 13 (iii) determining the size or quality of deposits;
- 14 (d) making cosmetic modifications, or stylistic changes, to
15 products, processes or production methods;
- 16 (e) management studies or efficiency surveys;
- 17 (f) research in social sciences, arts or humanities;
- 18 (g) making donations;
- 19 (h) pre-production activities including demonstrating
20 commercial viability, tooling-up and trial runs;
- 21 (i) routine collection of information, except as part of another
22 activity that is an *R&D activity;
- 23 (j) preparing for teaching;
- 24 (k) commercial, legal and administrative aspects of patenting,
25 licensing or other activities;
- 26 (l) activities associated with complying with statutory
27 requirements or standards, including one or more of the
28 following:
- 29 (i) maintaining national standards;
- 30 (ii) calibrating secondary standards;
- 31 (iii) routine testing and analysis of materials, components,
32 products, processes, soils, atmospheres and other things;
- 33 (m) specialised routine medical care;
- 34 (n) any activity related to the reproduction of a commercial
35 product or process:
- 36 (i) by a physical examination of an existing system; or
-

- 1 (ii) from plans, blueprints, detailed specifications or
2 publically available information;
3 (o) developing computer software, except:
4 (i) for the purpose of making a commercial return directly
5 from the supply of that software to 2 or more entities
6 (the *recipients*), each of which is not an *associate of an
7 entity for which that software is developed and is not an
8 associate of any other recipient; or
9 (ii) for purposes including that purpose;
10 (p) integrating off-the-shelf commercial computer software;
11 (q) integrating off-the-shelf open source computer software;
12 (r) computer software services not otherwise covered by this
13 subsection.

14 **355-40 R&D entities**

- 15 (1) Each of the following is an *R&D entity*:
16 (a) a body corporate incorporated under an *Australian law;
17 (b) a body corporate incorporated under a *foreign law that is an
18 Australian resident.
- 19 Note: Each of the above paragraphs extends to a body corporate acting in its
20 capacity as trustee of a public trading trust (see subsection 102T(9) of
21 the *Income Tax Assessment Act 1936*).
- 22 (2) A body corporate incorporated under a *foreign law that:
23 (a) is a resident of a foreign country for the purposes of an
24 agreement in force between that country and Australia that:
25 (i) is a double tax agreement (as defined in Part X of the
26 *Income Tax Assessment Act 1936*); and
27 (ii) includes a definition of permanent establishment; and
28 (b) carries on business in Australia through a permanent
29 establishment (within the meaning of that definition) of the
30 body corporate in Australia;
31 is an *R&D entity* to the extent that it carries on business through
32 that permanent establishment.
- 33 (3) Despite subsections (1) and (2), an *exempt entity cannot be an
34 *R&D entity.

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

2 **Table of sections**

3 355-100 Entitlement to tax offset
4 355-110 Deductions under this Division are notional only

5 **355-100 Entitlement to tax offset**

6 *If notional deductions are at least \$20,000*

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

- 11 (a) section 355-200 (R&D expenditure);
12 (b) section 355-480 (earlier year associate R&D expenditure);
13 (c) section 355-505 (R&D partnership expenditure);
14 (d) section 355-300 (decline in value of R&D assets);
15 (e) section 355-310 (balancing adjustment for R&D assets);
16 (f) section 355-515 (decline in value of R&D partnership assets).

17 Note: The tax offset will be a refundable tax offset if the percentage
18 applicable to the entity is the percentage in item 1 of the table (see
19 section 67-30).
20

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 a combination of exempt entities, owned or controlled, either directly or indirectly, more than 50% of the *R&D entity at some time during the income year	40%
3	any other case	40%

1 *If notional deductions are less than \$20,000*

- 2 (2) However, if the total of those amounts is less than \$20,000, the
3 entity is instead entitled to a *tax offset for the income year equal
4 to that percentage of the total expenditure (if any):
5 (a) that the entity can deduct under section 355-200 (R&D
6 expenditure) or 355-505 (R&D partnership expenditure); and
7 (b) that was made to a research service provider (within the
8 meaning of the *Industry Research and Development Act*
9 *1986*) that is not an *associate of the entity or of the relevant
10 *R&D partnership (as appropriate); and
11 (c) that was for the provider to provide services, within a
12 research field for which the provider is registered under
13 Division 4 of Part III of that Act, applicable to one or more of
14 the *R&D activities to which the deduction relates.

15 *Reduction for feedstock*

- 16 (3) This section has effect subject to section 355-450.

17 Note: The total of the deductions mentioned in subsection (1), and the total
18 expenditure mentioned in subsection (2), will be reduced by any
19 feedstock amount (see section 355-450).

20 *Notional deductions include prepaid expenditure*

- 21 (4) For the purposes of this Division, if:
22 (a) an *R&D entity can deduct an amount under section 355-200
23 (R&D expenditure) for an earlier income year; and
24 (b) Subdivision H (period of deductibility of certain advance
25 expenditure) of Division 3 of Part III of the *Income Tax*
26 *Assessment Act 1936* applied to the calculation of that
27 amount; and
28 (c) the entity can deduct an amount, as a result of that
29 application of that Subdivision, for the present income year;
30 the entity is taken to be able to deduct under section 355-200 the
31 amount referred to in paragraph (c) for the present income year.

32 **355-110 Deductions under this Division are notional only**

33 An amount that an *R&D entity can deduct under this Division
34 (except subsection 355-450(2)) is disregarded except for the
35 purposes of:

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

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

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

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

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

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

Note: Deductions for feedstock amounts under subsection 355-450(2) are not notional.

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

Table of sections

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

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

An *R&D entity can deduct for an income year (the *present year*) expenditure it incurred during that year if:

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

- 1 (i) for which the R&D entity was registered under
2 section 27A of the *Industry Research and Development*
3 *Act 1986* for an income year; and
4 (ii) while those R&D activities were activities to which
5 section 355-205 (conditions for R&D activities) applies;
6 and
7 (b) to the extent the expenditure was incurred to an *associate of
8 the R&D entity, the expenditure was paid to that associate
9 during the present year.

10 This section has effect subject to section 355-220 (excluded
11 expenditure) and Subdivision 355-F (integrity rules).

12 Note 1: The R&D activities will need to have been conducted during the
13 income year the R&D entity was registered for those activities (see
14 sections 27A and 27H of the *Industry Research and Development Act*
15 *1986*).

16 Note 2: The entity may also be able to deduct expenditure incurred to an
17 associate in an earlier income year (see section 355-480), or its
18 monetary contributions to an R&D partnership (see section 355-505).

19 **355-205 Conditions for R&D activities**

- 20 (1) An *R&D activity covered by one or more of the following
21 paragraphs is an activity to which this section applies:
22 (a) the R&D activity is being conducted for the *R&D entity
23 within Australia or an external Territory;
24 (b) if the R&D entity is a body corporate carrying on business
25 through a permanent establishment (as described in
26 subsection 355-40(2))—the R&D activity is being conducted:
27 (i) for the body corporate; but
28 (ii) not for the purposes of that permanent establishment;
29 and the conditions in section 355-210 (activities conducted
30 for a body corporate by its permanent establishment) are met
31 for the R&D activity;
32 (c) the R&D activity is being conducted for one or more foreign
33 residents who are each:
34 (i) incorporated under a *foreign law; and
35 (ii) a resident of a foreign country for the purposes of an
36 agreement of a kind described in subsection 355-40(2);
37 and the conditions in section 355-215 (activities conducted
38 for a foreign entity) are met for the R&D activity;
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1 (d) the R&D activity is being conducted for the R&D entity
2 outside Australia and the external Territories while a finding
3 under section 28B of the *Industry Research and Development*
4 *Act 1986* is in force for the R&D activity.

5 (2) However, an *R&D activity is not an activity to which this section
6 applies if the activity is being conducted, to a significant extent, for
7 one or more other entities not covered by any paragraph of
8 subsection (1).

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

12 **355-210 R&D activities conducted by a permanent establishment for**
13 **other parts of the body corporate**

14 The conditions for an *R&D activity covered by paragraph
15 355-205(1)(b) are as follows:

- 16 (a) the R&D activity is conducted within Australia or an external
17 Territory;
- 18 (b) if the R&D activity is a *supporting R&D activity, the R&D
19 activity must be conducted for the dominant purpose of
20 supporting one or more *core R&D activities:
- 21 (i) conducted, or to be conducted, within Australia or an
22 external Territory; and
- 23 (ii) for which the *R&D entity is or has been registered
24 under section 27A of the *Industry Research and*
25 *Development Act 1986*, or could be registered for an
26 income year if those core R&D activities were
27 conducted during the income year;
- 28 (c) there is written evidence that the R&D activity is conducted
29 for the body corporate but not for the purposes of that
30 permanent establishment.

31 Note: The body corporate is the R&D entity to the extent that it carries on
32 business through that permanent establishment (see subsection
33 355-40(2)).

34 **355-215 R&D activities conducted for a foreign entity**

35 The conditions for an *R&D activity covered by paragraph
36 355-205(1)(c) for one or more foreign residents are as follows:

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- (a) the R&D activity is conducted within Australia or an external Territory;
- (b) if the R&D activity is a *supporting R&D activity, the R&D activity must be conducted for the dominant purpose of supporting one or more *core R&D activities:
 - (i) conducted, or to be conducted, within Australia or an external Territory; and
 - (ii) for which the *R&D entity is or has been registered under section 27A of the *Industry Research and Development Act 1986*, or could be registered for an income year if those core R&D activities were conducted during the income year;
- (c) when the R&D activity is conducted:
 - (i) each foreign resident is *connected with the R&D entity; or
 - (ii) for each foreign resident—either the foreign resident is an *affiliate of the R&D entity or the R&D entity is an affiliate of the foreign resident;
- (d) the R&D activity is conducted:
 - (i) in accordance with a written agreement binding on the R&D entity and each foreign resident; and
 - (ii) either directly by the R&D entity, or indirectly by another entity under an agreement binding on the R&D entity;
- (e) the R&D activity is not conducted in connection with an agreement that:
 - (i) is between the R&D entity (the *first entity*) and an R&D entity of which the first entity is an affiliate, or is between the first entity and an R&D entity that is connected with or is an affiliate of the first entity, when the R&D activity is conducted; and
 - (ii) is an agreement for the R&D activity to be conducted either by the first entity or by a person who is not a party to the agreement and is to conduct the activity directly or indirectly under another agreement to which the first entity is, or will become, a party.

Note 1: An example of conducting an R&D activity indirectly under a contract is conducting the R&D activity under a subcontract, or one of a chain of subcontracts, under the contract.

- 1 Note 2: One effect of paragraph (e) is that, even if the R&D entity has an
2 agreement with the foreign resident for conducting the R&D activity,
3 the R&D entity cannot deduct expenditure incurred:
4 (a) for conducting the R&D activity as a subcontractor under a
5 subcontract with an affiliated R&D entity; or
6 (b) if the R&D entity is a subcontractor to an affiliated R&D entity,
7 for further subcontracting the conducting of the R&D activity.

8 **355-220 Expenditure that cannot be notionally deducted**

9 *Kinds of excluded expenditure*

- 10 (1) Sections 355-200 (deductions for R&D expenditure) and 355-480
11 (deductions for earlier year associate R&D expenditure) do not
12 apply to the following expenditure:
13 (a) expenditure incurred to acquire or construct:
14 (i) a building or a part of a building; or
15 (ii) an extension, alteration or improvement to a building;
16 (b) expenditure included in the *cost of a tangible *depreciating
17 asset for the purposes of Division 40 (as that Division applies
18 as described in section 355-305 or otherwise);
19 (c) expenditure incurred for interest (within the meaning of
20 Division 11A of Part III of the *Income Tax Assessment Act*
21 *1936*) payable to an entity.

22 Note 1: Expenditure covered by paragraph (a) may be deductible under
23 Division 43 (capital works).

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

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

28 *Expenditure on core technology*

- 29 (2) Sections 355-200 (deductions for R&D expenditure) and 355-480
30 (deductions for earlier year associate R&D expenditure) do not
31 apply to expenditure incurred in acquiring, or in acquiring the right
32 to use, technology wholly or partly for the purposes of *R&D
33 activities if:
34 (a) a purpose of the R&D activities was or is:
35 (i) to obtain new knowledge based on that technology; or

- 1 (ii) to create new or improved materials, products, devices,
2 processes, techniques or services to be based on that
3 technology; or
4 (b) the R&D activities were or are an extension, continuation,
5 development or completion of the activities that produced
6 that technology.

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

9 **Table of sections**

10	355-300	When notional deductions for decline in value arise
11	355-305	Notional application of Division 40
12	355-310	Balancing adjustments—assets only used for R&D activities

13 **355-300 When notional deductions for decline in value arise**

14 If:

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

6 **355-305 Notional application of Division 40**

- 7 (1) In addition to its application apart from this section, Division 40
8 also applies with the changes set out in this section for the purposes
9 of:
10 (a) paragraph 355-220(1)(b) (excluded expenditure); and
11 (b) paragraph 355-300(d); and
12 (c) section 355-310 (balancing adjustments).
- 13 (2) Firstly, for references in Subdivisions 40-A to 40-D (other than for
14 the purposes of sections 40-100, 40-105 and 40-110) to:
15 (a) the *purpose of producing assessable income; or
16 (b) a *taxable purpose;
17 substitute a reference to the purpose of conducting one or more of
18 the *R&D activities covered by subparagraph 355-300(b)(ii).
- 19 Note: Sections 40-100, 40-105 and 40-110 are about working out an asset's
20 effective life. Those sections already refer to the use of the asset for
21 R&D activities.
- 22 (3) Secondly, assume that Division 40 does not apply to a building,
23 nor to an extension, alteration or improvement to a building, (the
24 **building works**) for which the *R&D entity:
25 (a) can deduct amounts under Division 43 (capital works); or
26 (b) could deduct amounts under Division 43:
27 (i) apart from expenditure being incurred, or the building
28 works being started, before a particular day; or
29 (ii) had the R&D entity used the building works for a
30 purpose relevant to those building works under
31 section 43-140 (using an area in a deductible way).
- 32 (4) Finally, assume that the following provisions had not been enacted:
33 (a) subsection 40-25(7) (meaning of taxable purpose);
34 (b) subsection 40-45(2) (assets to which Division 40 does not
35 apply);
36 (c) section 40-425 (low-value pools);
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1 (d) Subdivision 328-D (capital allowances for small business
2 entities).

3 **355-310 Balancing adjustments—assets only used for R&D activities**

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

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

7 (i) whose decline in value the R&D entity has not worked
8 out under Subdivision 40-B (as that Subdivision applies
9 apart from this Division); and

10 (ii) whose decline in value the R&D entity could not have
11 worked out under that Subdivision (as that Subdivision
12 applies apart from this Division) if it had used the asset;
13 and

14 (b) the R&D entity was entitled under section 355-100 to *tax
15 offsets for one or more income years for deductions under
16 section 355-300 for the asset; and

17 (c) the entity is registered under section 27A of the *Industry
18 Research and Development Act 1986* for one or more *R&D
19 activities for the event year; and

20 (d) if Division 40 applied with the changes described in
21 section 355-305:

22 (i) the entity could deduct for the event year an amount
23 under subsection 40-285(2) for the asset and the
24 balancing adjustment event; or

25 (ii) an amount would be included in the entity's assessable
26 income for the event year under subsection 40-285(1)
27 for the asset and the balancing adjustment event.

28 Note: If the entity has both deducted amounts under section 40-25 and been
29 entitled to tax offsets for deductions under section 355-300 for the
30 asset, the balancing adjustment provisions of Division 40 apply in a
31 modified way (see section 40-292).

32 *Notional deduction*

33 (2) If the *R&D entity could deduct for the event year an amount
34 under subsection 40-285(2) for the asset and the event if
35 Division 40 applied as described in paragraph (1)(d), the R&D
36 entity can deduct that amount for the event year.

1 *Amount to be included in assessable income*

2 (3) If an amount (the *section 40-285 amount*) would be included in the
3 *R&D entity's assessable income for the event year under
4 subsection 40-285(1) for the asset and the event if Division 40
5 applied as described in paragraph (1)(d), the following amount is
6 included in the R&D entity's assessable income for the event year:

7 Adjusted section 40-285 amount $\times \frac{4}{3}$

8 where:

9 *adjusted section 40-285 amount* is so much of the section 40-285
10 amount as does not exceed the asset's *cost, less its *adjustable
11 value, (worked out under Division 40 as it applies with the changes
12 described in section 355-305) just before the *balancing adjustment
13 event.

14 **Subdivision 355-F—Integrity Rules**

15 **Table of sections**

16	355-400	Expenditure incurred while not at arm's length
17	355-405	Expenditure not at risk
18	355-410	Disposal of R&D results
19	355-415	Expenditure reduced to reflect group mark-ups

20 **355-400 Expenditure incurred while not at arm's length**

21 If:

- 22 (a) an *R&D entity incurs expenditure on all or part of an *R&D
23 activity; and
24 (b) either:
25 (i) when incurring the expenditure, the R&D entity and the
26 entity to whom the expenditure is incurred did not deal
27 with each other at *arm's length; or
28 (ii) that entity is the R&D entity's *associate; and
29 (c) the expenditure is not equal to the *market value of the
30 relevant R&D activity or part (as appropriate);

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

1 **355-405 Expenditure not at risk**

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

- 4 (a) when it incurred the expenditure, the R&D entity or an
5 *associate had received, or could reasonably have expected to
6 receive, consideration as a direct or indirect result of the
7 expenditure being incurred; and
8 (b) that consideration is equal to or greater than the expenditure.

9 Note: Section 355-200 is about deductions for R&D expenditure.
10 Section 355-480 is about deductions for earlier year associate R&D
11 expenditure.

12 (2) If:

- 13 (a) when an *R&D entity incurs expenditure, the R&D entity or
14 an *associate had received, or could reasonably have
15 expected to receive, consideration as a direct or indirect
16 result of the expenditure being incurred; and
17 (b) that consideration is less than the expenditure;

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

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

- 21 (a) anything that happened or existed before or at the time the
22 expenditure was incurred; and
23 (b) anything that was likely to happen or exist after that time.

24 **355-410 Disposal of R&D results**

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

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

- 28 (i) deduct under section 355-200 or 355-480 expenditure
29 incurred on *R&D activities; or
30 (ii) deduct an amount under section 355-300 for an asset
31 (the *R&D asset*) used for the purpose of conducting one
32 or more R&D activities; and

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

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

- 1 (ii) an amount from granting access to, or the right to use,
2 any of those results;
- 3 (iii) an amount from *disposing of a *CGT asset, or from the
4 granting a right to occupy or use a CGT asset, where the
5 disposal or grant resulted in another person acquiring a
6 right to access or use any of those results;
- 7 (iv) an amount attributable to the R&D entity having
8 incurred the expenditure or used the R&D asset for that
9 purpose, including an amount that it is entitled to
10 receive regardless of the results of the R&D activities.
- 11 (2) For each results amount, the following amount is included in the
12 *R&D entity's assessable income for the results year:
- 13 (a) if the results amount is covered by subparagraph (1)(b)(iii)
14 for a *disposal or grant relating to a *depreciating asset—an
15 amount equal to the extent (if any) that the results amount
16 exceeds the asset's *cost just before the disposal or grant;
17 (b) otherwise—the results amount.
- 18 (3) For the purposes of paragraph (2)(a), assume that subsection
19 40-45(2) did not, except in the case of buildings and extensions,
20 alterations and improvements to buildings, prevent Division 40
21 from applying to capital works:
- 22 (a) to which Division 43 (deductions for capital works) applies;
23 or
24 (b) to which Division 43 would apply but for expenditure being
25 incurred, or capital works being started, before a particular
26 day.

27 **355-415 Expenditure reduced to reflect group mark-ups**

- 28 (1) This section applies to an *R&D entity if:
- 29 (a) one or more other entities (the *grouped entities*) incurred
30 expenditure during the income year, or an earlier income
31 year, on one or more of the *R&D activities for which the
32 R&D entity can deduct an amount under section 355-200 or
33 355-480 for the income year; and
- 34 (b) when each grouped entity incurred the expenditure:
- 35 (i) the grouped entity was *connected with the R&D entity;
36 or
-

- 1 (ii) the grouped entity was an *affiliate of the R&D entity or
2 the R&D entity was an affiliate of the grouped entity.

3 Note: Section 355-200 is about deductions for R&D expenditure.
4 Section 355-480 is about deductions for earlier year associate R&D
5 expenditure.

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

9 *Method statement*

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

- 13 (a) the grouped entity was *connected with the *R&D
14 entity; or
15 (b) the grouped entity was an *affiliate of the R&D
16 entity or the R&D entity was an affiliate of the
17 grouped entity;

18 during the income year or an earlier income year.

19 Step 2. For each grouped entity, disregard any of the amounts
20 from step 1 that have already been taken into account
21 under this section for the *R&D entity and the *R&D
22 activities for an earlier income year.

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

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

- 28 (3) However, if the *R&D entity can deduct amounts under both
29 sections 355-200 and 355-480 for the income year, those amounts
30 are reduced as follows:

- 31 (a) first, apply the reduction amount to reduce the amount
32 otherwise deductible under section 355-200 (but not below
33 zero); and

- 1 (b) secondly, apply any remainder of the reduction amount to
2 reduce the amount otherwise deductible under
3 section 355-480 (but not below zero).

4 **Subdivision 355-G—Feedstock adjustments**

5 **Table of sections**

6 355-450 Feedstock adjustments

7 **355-450 Feedstock adjustments**

- 8 (1) The total of the amounts (the *total deductions*) an *R&D entity can
9 deduct for an income year for the purposes of subsection
10 355-100(1) or (2) is reduced by the amount (if any) (the *feedstock*
11 *amount*) worked out as follows:

12 *Method statement*

- 13 Step 1. For each output (the *feedstock output*), other than new
14 knowledge or information, produced by the *R&D
15 activities to which the deductions relate, work out the
16 output's *market value (the *output's value*) at the time of
17 its production.
- 18 Step 2. For each feedstock output, work out how much (the
19 *output's cost*) of the total deductions either:
- 20 (a) relate to expenditure (other than expenditure on
21 conceptual design) that directly relates to the
22 production of that feedstock output; or
- 23 (b) relate to the use of tangible *depreciating assets to
24 produce that feedstock output.
- 25 Step 3. For each feedstock output, work out the lesser of the
26 output's value and the output's cost.
- 27 Step 4. Add up the results of step 3.

- 28 (2) The *R&D entity can deduct the feedstock amount for the income
29 year.

1 Note: Unlike the other deductions in this Division, this is not a notional
2 deduction.

3 (3) For the purposes of step 1 of the method statement in
4 subsection (1), new knowledge or information includes knowledge
5 or information about the creation of new or improved materials,
6 products, devices, processes or services.

7 **Subdivision 355-H—Application to earlier income year R&D**
8 **expenditure incurred to associates**

9 **Table of sections**

10 355-480 Notional deductions for expenditure incurred to associate in earlier income
11 years

12 **355-480 Notional deductions for expenditure incurred to associate in**
13 **earlier income years**

- 14 (1) An *R&D entity can deduct for an income year (the *present year*)
15 expenditure it incurred to an *associate during an earlier income
16 year if:
- 17 (a) the expenditure was incurred on one or more *R&D
18 activities:
 - 19 (i) for which the R&D entity was registered under
20 section 27A of the *Industry Research and Development*
21 *Act 1986* for an income year; and
 - 22 (ii) while those R&D activities were activities to which
23 section 355-205 (conditions for R&D activities) applies;
24 and
 - 25 (b) in an *income tax return, the R&D entity did not take the
26 expenditure into account in working out an amount the entity
27 can deduct under any other Division of this Act for any
28 income year; and
 - 29 (c) in an income tax return, the R&D entity did not take the
30 expenditure into account in working out the amount of the
31 entity's entitlement to a *tax offset under any other Division
32 of this Act for any income year; and
 - 33 (d) the R&D entity paid the expenditure during the present year.
- 34 (2) This section has effect subject to section 355-220 (excluded
35 expenditure) and Subdivision 355-F (integrity rules).

1 **Subdivision 355-I—Application to R&D partnerships**

2 **Table of sections**

3	355-500	Meaning of <i>R&D partnership</i>
4	355-505	When notional deductions for R&D partnership expenditure arise
5	355-510	Conditions for R&D activities—R&D partnerships
6	355-515	When notional deductions arise for decline in value of depreciating assets 7 of R&D partnerships
8	355-520	Notional application of Division 40 for R&D partnerships
9	355-525	R&D partnership expenditure not at risk
10	355-530	Disposal of R&D partnership results
11	355-535	R&D partnership expenditure reduced to reflect group mark-ups
12	355-540	Application of recoupment rules
13	355-545	Relevance for net income, and losses, of the R&D partnership

14 **355-500 Meaning of *R&D partnership***

15 A partnership is an *R&D partnership* at a particular time if, at that
16 time:

- 17 (a) at least one of the partners is an *R&D entity, and each of the
18 other partners is either:
- 19 (i) an R&D entity; or
 - 20 (ii) a research service provider (within the meaning of the
21 *Industry Research and Development Act 1986*); or
- 22 (b) at least one of the partners is an R&D entity, and the
23 partnership is a cooperative research centre for the purposes
24 of the program administered by the Commonwealth known
25 as the Cooperative Research Centre Program.

26 **355-505 When notional deductions for R&D partnership
27 expenditure arise**

- 28 (1) An *R&D entity is taken to have incurred during, and can deduct
29 for, an income year (the *present year*) so much of the expenditure
30 incurred by an *R&D partnership during the present year:
- 31 (a) while the R&D entity was a partner of the R&D partnership;
32 and
 - 33 (b) that is expenditure to which subsection (2) applies;
34 as was incurred out of money the R&D entity contributed
35 (otherwise than by way of loan) in the present year or an earlier
36 income year.
-

- 1 (2) Expenditure incurred by the *R&D partnership is expenditure to
2 which this subsection applies if:
- 3 (a) the expenditure is incurred on one or more *R&D activities:
- 4 (i) for which the *R&D entity is registered under
5 section 27A of the *Industry Research and Development*
6 *Act 1986* for an income year; and
- 7 (ii) while those R&D activities were activities to which
8 section 355-510 applies; and
- 9 (b) the expenditure is not expenditure of a kind covered by
10 section 355-220 (excluded expenditure); and
- 11 (c) it were assumed that section 355-400 (expenditure not at
12 arm's length) applied to the expenditure as if references in
13 that section to the R&D entity were references to the R&D
14 partnership; and
- 15 (d) to the extent the expenditure was incurred to an *associate of
16 the R&D partnership, it was paid to that associate during the
17 present year.
- 18 (3) Subsection (2) has effect subject to sections 355-525 (R&D
19 partnership expenditure not at risk) and 355-535 (R&D partnership
20 expenditure reduced to reflect group mark-ups).

21 **355-510 Conditions for R&D activities—R&D partnerships**

- 22 (1) An *R&D activity covered by one or more of the following
23 paragraphs is an activity to which this section applies:
- 24 (a) the R&D activity is being conducted for the *R&D
25 partnership within Australia or an external Territory;
- 26 (b) the R&D activity is being conducted for one or more foreign
27 residents covered by paragraph 355-205(1)(c), for which the
28 conditions in section 355-215 are met;
- 29 (c) the R&D activity is being conducted for the R&D partnership
30 outside Australia and the external Territories while a finding
31 under section 28B of the *Industry Research and Development*
32 *Act 1986* is in force for the R&D activity.
- 33 (2) However, an *R&D activity is not an activity to which this section
34 applies if the activity is being conducted, to a significant extent, for
35 one or more other entities not covered by any paragraph of
36 subsection (1).

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

4 (3) For the purposes of subsection (1), section 355-215 (activities
5 conducted for a foreign entity) applies as if references in that
6 section (other than in subparagraph 355-215(b)(ii)) to the *R&D
7 entity were references to the *R&D partnership.

8 **355-515 When notional deductions arise for decline in value of**
9 **depreciating assets of R&D partnerships**

- 10 (1) This section applies to an *R&D entity for an income year for a
11 tangible *depreciating asset if:
- 12 (a) the R&D entity is registered for one or more *R&D activities
13 under section 27A of the *Industry Research and Development*
14 *Act 1986* for the income year; and
 - 15 (b) while:
 - 16 (i) the asset is *held by an *R&D partnership during the
17 income year; and
 - 18 (ii) one or more of those R&D activities are R&D activities
19 to which section 355-510 (conditions for R&D
20 activities) applies;
 - 21 the asset is used for the purpose of conducting one or more of
22 the R&D activities covered by subparagraph (ii); and
 - 23 (c) the asset is neither a building, nor a part of a building, unless
24 it is *plant; and
 - 25 (d) the R&D entity was a partner of the R&D partnership at
26 some time during the income year; and
 - 27 (e) the R&D partnership could deduct an amount under
28 section 40-25 for the asset for the income year if Division 40
29 applied with the changes described in section 355-520; and
 - 30 (f) the R&D partnership cannot deduct an amount for the asset
31 for:
 - 32 (i) an earlier income year under Subdivision 328-D (capital
33 allowances for small business entities); or
 - 34 (ii) an earlier income year under Division 40 (as that
35 Division applies apart from this Division), in a case
36 where section 40-440 (low-value pools) applied.

- 1 (2) The *R&D entity can deduct in the income year the following
2 proportion of the amount the *R&D partnership could deduct as
3 described in paragraph (1)(e) of this section:

4 *Method statement*

- 5 Step 1. Work out the *cost of the asset for the purposes of the
6 application of Division 40 as described in
7 paragraph (1)(e) of this section.
8 Step 2. Work out the proportion of that *cost that represents
9 money contributed by the *R&D entity (otherwise than
10 by way of loan) in the income year or an earlier income
11 year.

12 **355-520 Notional application of Division 40 for R&D partnerships**

- 13 (1) In addition to its application apart from this section, Division 40
14 also applies with the changes set out in this section for the purposes
15 of:
16 (a) paragraph 355-220(1)(b) (excluded expenditure); and
17 (b) paragraph 355-515(1)(e).

- 18 (2) Firstly, for references in Subdivisions 40-A to 40-D (other than for
19 the purposes of sections 40-100, 40-105 and 40-110) to:
20 (a) the *purpose of producing assessable income; or
21 (b) a *taxable purpose;
22 substitute a reference to the purpose of conducting one or more of
23 the *R&D activities covered by subparagraph 355-515(1)(b)(ii).

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

- 27 (3) Secondly, assume that Division 40 does not apply to a building,
28 nor to an extension, alteration or improvement to a building, (the
29 **building works**) for which the *R&D partnership:
30 (a) can deduct amounts under Division 43 (capital works); or
31 (b) could deduct amounts under Division 43:
32 (i) apart from expenditure being incurred, or the building
33 works being started, before a particular day; or

1 (ii) had the R&D partnership used the building works for a
2 purpose relevant to those building works under
3 section 43-140 (using an area in a deductible way).

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

- 5 (a) subsection 40-25(7) (meaning of taxable purpose);
6 (b) subsection 40-45(2) (assets to which Division 40 does not
7 apply);
8 (c) section 40-425 (low-value pools);
9 (d) Subdivision 328-D (capital allowances for small business
10 entities).

11 **355-525 R&D partnership expenditure not at risk**

12 (1) Expenditure incurred by the *R&D partnership is not expenditure
13 to which subsection 355-505(2) applies if:

- 14 (a) when it incurred the expenditure, the R&D partnership or an
15 *associate had received, or could reasonably have expected to
16 receive, consideration as a direct or indirect result of the
17 expenditure being incurred; and
18 (b) that consideration is equal to or greater than the expenditure.

19 (2) If:

- 20 (a) when the *R&D partnership incurs expenditure, the R&D
21 partnership or an *associate had received, or could reasonably
22 have expected to receive, consideration as a direct or indirect
23 result of the expenditure being incurred; and
24 (b) that consideration is less than the expenditure;
25 then so much of the expenditure as is equal to the consideration is
26 not expenditure to which subsection 355-505(2) applies.

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

- 28 (a) anything that happened or existed before or at the time the
29 expenditure was incurred; and
30 (b) anything that was likely to happen or exist after that time.

31 **355-530 Disposal of R&D partnership results**

32 (1) In addition to its application apart from this subsection,
33 section 355-410 also applies to an *R&D entity as if:

- 1 (a) the reference in paragraph 355-410(1)(a) to section 355-200
2 were a reference to section 355-505; and
3 (b) the reference in paragraph 355-410(1)(a) to section 355-300
4 were a reference to section 355-515; and
5 (c) the references in paragraph 355-410(1)(b) to the R&D entity
6 were references to the applicable *R&D partnership; and
7 (d) for the purposes of subsection 355-410(2), each results
8 amount were taken to be the amount worked out under
9 subsection (2) of this section.

10 (2) The amount is worked out as follows:

11
$$\frac{\text{Results amount before the application of this subsection} \times \text{R\&D entity's contribution}}{\text{Total contribution}}$$

12 where:

13 ***R&D entity's contribution*** means the total contribution made
14 (otherwise than by way of loan) by the *R&D entity to the funds of
15 the *R&D partnership as at the time when the results amount was
16 received.

17 ***total contribution*** means the total of the contributions made
18 (otherwise than by way of loan) by all the partners to the funds of
19 the *R&D partnership as at the time when the results amount was
20 received.

21 **355-535 R&D partnership expenditure reduced to reflect group**
22 **mark-ups**

- 23 (1) This section applies to an *R&D entity if:
24 (a) one or more other entities (the ***grouped entities***) incurred
25 expenditure during the income year, or an earlier income
26 year, on one or more of the *R&D activities for which the
27 R&D entity can deduct an amount under section 355-505
28 (R&D partnership expenditure) for the income year; and
29 (b) when each grouped entity incurred the expenditure:
30 (i) the grouped entity was *connected with the applicable
31 *R&D partnership; or
32 (ii) the grouped entity was an *affiliate of the applicable
33 R&D partnership or that R&D partnership was an
34 affiliate of the grouped entity.

- 1 (2) The *R&D partnership's expenditure to which subsection
2 355-505(2) applies for the income year is reduced by the amount
3 (the *reduction amount*) worked out as follows:

4 *Method statement*

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

8 (a) the grouped entity was *connected with that *R&D
9 partnership; or

10 (b) the grouped entity was an *affiliate of that R&D
11 partnership or that R&D partnership was an
12 affiliate of the grouped entity;

13 during the income year or an earlier income year.

14 Step 2. For each grouped entity, disregard any of the amounts
15 from step 1 that have already been taken into account
16 under this section for the *R&D entity and the *R&D
17 activities for an earlier income year.

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

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

- 23 (3) For the purposes of subsection 355-505(1), the money the *R&D
24 entity contributed (otherwise than by way of loan) in the present
25 year or an earlier income year towards that expenditure is taken to
26 be reduced in the same proportions.

27 **355-540 Application of recoupment rules**

- 28 (1) This section applies to an *R&D entity if:
29 (a) an *R&D partnership incurs expenditure on *R&D activities;
30 and
-

1 (b) the R&D entity is entitled under section 355-100 to a *tax
2 offset because it can, under section 355-505, deduct some or
3 all of that expenditure; and

4 (c) the R&D partnership receives an amount as *recoupment of
5 any or all of the expenditure referred to in paragraph (a).

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

7 (a) the R&D entity is entitled under section 355-100 to a *tax
8 offset because it can, under section 355-515, deduct an
9 amount for an income year for an asset; and

10 (b) the applicable *R&D partnership receives an amount as
11 *recoupment of any or all of the R&D partnership's
12 expenditure included in the *cost of the asset for the purposes
13 of the application of Division 40 as described in paragraph
14 355-515(1)(e).

15 (3) The *R&D entity is taken, for the purposes of Subdivision 20-A, to
16 have received so much of the *recoupment as is worked out as
17 follows:

18
$$\frac{\text{Amount of *recoupment} \times \text{R\&D entity's contribution}}{\text{Total contribution}}$$

19 where:

20 ***R&D entity's contribution*** means the total contribution made
21 (otherwise than by way of loan) by the *R&D entity to the funds of
22 the *R&D partnership as at the time when the *recoupment was
23 received.

24 ***total contribution*** means the total of the contributions made
25 (otherwise than by way of loan) by all the partners to the funds of
26 the *R&D partnership as at the time when the *recoupment was
27 received.

28 **355-545 Relevance for net income, and losses, of the R&D**
29 **partnership**

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

32 (a) any expenditure the R&D entity is taken to have incurred
33 because of this Subdivision; nor

1 (b) any *recoupment the R&D entity is taken to have received
2 because of this Subdivision;
3 is to be taken into account in determining the net income of the
4 R&D partnership, or any *partnership loss of the R&D partnership,
5 for an income year.

6 **Subdivision 355-J—Effect of consolidation**

7 **Table of sections**

8	355-600	Head company treated as registered
9	355-605	History for entitlement to tax offset: joining entity
10	355-610	History for entitlement to tax offset: leaving entity

11 **355-600 Head company treated as registered**

12 This Division applies to the *head company of a *consolidated
13 group or *MEC group as if the head company:
14 (a) were an *R&D entity; and
15 (b) were registered under section 27A of the *Industry Research*
16 *and Development Act 1986* for *R&D activities for an income
17 year;
18 during any period that a *subsidiary member of the group is an
19 R&D entity and registered under that section for those R&D
20 activities for that income year.

21 **355-605 History for entitlement to tax offset: joining entity**

22 If:
23 (a) a company becomes a *subsidiary member of a *consolidated
24 group or *MEC group; and
25 (b) things happening in relation to the company before it became
26 a subsidiary member are, because of section 701-5 (the entry
27 history rule), taken into account as things happening in
28 relation to the *head company for working out the head
29 company's *aggregated turnover for the purposes of
30 section 355-100 (tax offsets for R&D);
31 the things happening are not to be taken into account as mentioned
32 in paragraph (b).

1 **355-610 History for entitlement to tax offset: leaving entity**

2 If:

- 3 (a) a company ceases to be a *subsidiary member of a
4 *consolidated group or *MEC group; and
5 (b) while the company was a subsidiary member, things
6 happened in relation to an entity which, if section 701-1 (the
7 single entity rule) were disregarded:
8 (i) would be *connected with the company; or
9 (ii) would be an *affiliate of the company; or
10 (iii) would have the company as an affiliate; and
11 (c) those things would, if section 701-1 were disregarded, have
12 been taken into account in working out the company's
13 *aggregated turnover for the purposes of section 355-100 (tax
14 offsets for R&D); and
15 (d) the things are not also things that, because of section 701-40
16 (the exit history rule), are taken into account as things
17 happening in relation to an eligible asset etc. (within the
18 meaning of that section) of the company in working out for
19 the entity core purposes the company's aggregated turnover
20 for the purposes of section 355-100;

21 the things are to be taken into account in working out the
22 company's aggregated turnover for the purposes of
23 section 355-100.

24 **Subdivision 355-K—Other matters**

25 **Table of sections**

26 355-700 Effect of findings by Innovation Australia
27 355-705 Amendment of assessments
28 355-710 Implications for other deductions and tax offsets

29 **355-700 Effect of findings by Innovation Australia**

30 *Findings about registration*

31 (1) If:

- 32 (a) a certificate given to the Commissioner under Division 2 of
33 Part III of the *Industry Research and Development Act 1986*
34 sets out a finding under that Division about an *R&D entity's

1 registration under section 27A of that Act for an income year;
2 and

3 (b) the finding was made within 4 years after the end of the
4 income year;

5 the finding binds the Commissioner for the purposes of an
6 assessment of the R&D entity for the income year.

7 *Findings about activities yet to be completed*

8 (2) If:

9 (a) an *R&D entity applies in an income year (the *application*
10 *year*) for a finding under section 28A of the *Industry*
11 *Research and Development Act 1986*; and

12 (b) Innovation Australia makes the finding and gives the
13 Commissioner a certificate under section 28C of that Act
14 setting out the finding;

15 the finding binds the Commissioner for the purposes of
16 assessments of the R&D entity for the application year and the next
17 2 income years.

18 **355-705 Amendment of assessments**

19 (1) If:

20 (a) a certificate given to the Commissioner under Division 2 of
21 Part III of the *Industry Research and Development Act 1986*
22 sets out a finding under that Division about an *R&D entity's
23 registration under section 27A of that Act for an income year;
24 and

25 (b) the finding was made within 4 years after the end of the
26 income year;
27 despite section 170 of the *Income Tax Assessment Act 1936*, the
28 Commissioner may amend the R&D entity's assessment for the
29 income year at any time within 2 years after the Commissioner is
30 given the certificate, for the purposes of giving effect to the
31 finding.

32 (2) If:

33 (a) an internal review decision (the *key decision*) under
34 subsection 30D(2) of the *Industry Research and Development*
35 *Act 1986* is made about an *R&D entity and an income year;
36 or

- 1 (b) a decision (also the *key decision*) under subsection 43(1) of
2 the *Administrative Appeals Tribunal Act 1975* is made about
3 an internal review decision under subsection 30D(2) of the
4 *Industry Research and Development Act 1986* about an R&D
5 entity and an income year; or
6 (c) a decision (also the *key decision*) is made by a court about:
7 (i) a decision under Part III of the *Industry Research and*
8 *Development Act 1986* about an R&D entity and an
9 income year; or
10 (ii) a decision of the Administrative Appeals Tribunal made
11 about a decision covered by subparagraph (i);
12 despite section 170 of the *Income Tax Assessment Act 1936*, the
13 Commissioner may amend the R&D entity's assessment for the
14 income year at any time within 2 years after the key decision, for
15 the purposes of giving effect to that decision.

16 **355-710 Implications for other deductions and tax offsets**

- 17 (1) If an *R&D entity is entitled under section 355-100 to a *tax offset
18 for an income year for expenditure it can deduct under
19 section 355-200, 355-480 or 355-505, that expenditure:
20 (a) cannot be taken into account in working out an amount the
21 R&D entity can deduct under any other Division of this Act
22 for any income year; and
23 (b) cannot be taken into account in working out the amount of
24 the R&D entity's entitlement to a tax offset under any other
25 Division of this Act for any income year.

26 Note: Section 355-200 is about R&D expenditure, section 355-480 is about
27 earlier year associate R&D expenditure and section 355-505 is about
28 R&D partnership expenditure.

- 29 (2) If an *R&D entity is entitled under section 355-100 to a *tax offset
30 for an income year for a deduction under section 355-300, 355-310
31 or 355-515 for the decline in value of an asset, that decline in
32 value:
33 (a) cannot be taken into account in working out an amount the
34 R&D entity can deduct under any other Division of this Act
35 (other than section 40-292) for any income year; and
36 (b) cannot be taken into account in working out the amount of
37 the R&D entity's entitlement to a tax offset under any other
38 Division of this Act for any income year;
-

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

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

9 Note 2: Section 355-300 is about the decline in value of R&D assets,
10 section 355-310 is about balancing adjustments for R&D assets and
11 section 355-515 is about the decline in value of R&D partnership
12 assets.

13 Note 3: Section 40-292 deals with balancing adjustments when deductions
14 have been available for the asset's decline in value both under this
15 Division and section 40-25.

16 **2 Subsection 995-1(1)**

17 Insert:

18 *core R&D activities* has the meaning given by subsection
19 355-25(1).

20 **3 Subsection 995-1(1)**

21 Insert:

22 *high levels of technical risk* has the meaning given by subsection
23 355-25(2).

24 **4 Subsection 995-1(1)**

25 Insert:

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

27 **5 Subsection 995-1(1)**

28 Insert:

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

30 **6 Subsection 995-1(1)**

31 Insert:

32 *R&D partnership* has the meaning given by section 355-500.

1 **7 Subsection 995-1(1) (definition of *research and***
2 ***development activities*)**

3 Repeal the definition.

4 **8 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:

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

7

Division 1—Introduction

8

26 Objects

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10 (1) The main objects of this Part are:

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11 (a) to provide integrity and an administrative framework for the
12 working out of tax offsets under Division 355 of the *Income*
13 *Tax Assessment Act 1997*; and

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(2) Another object of this Part is to improve access for small and medium R&D entities to quality research services by maintaining a register of research service providers.

26A Simplified outline

The following is a simplified outline of this Part:

- The Board may register an R&D entity for R&D activities. This registration is needed before the R&D entity can be entitled to a tax offset under Division 355 of the *Income Tax Assessment Act 1997* for the R&D activities.
- The R&D entity can seek advance findings about activities that have yet to be conducted or completed.

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- One kind of advance finding gives early notice about whether an activity is considered to be an R&D activity. The other kind of advance finding is needed before expenditure incurred on the activity can be considered when working out tax offsets under that Division.
- 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.

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

11 **Subdivision A—Introduction**

12 **27 Simplified outline**

13 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 R&D entity and the nature of the activities both before and after registration. This includes findings made on application by the R&D entity.
- 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 registration will be made consistently with any findings about the R&D entity's application for registration. The registration will later change, if necessary, so as to be consistent with any later findings about the registration.
- Registrations can also be varied and revoked.

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

2 **27A Registering R&D entities for R&D activities**

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

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

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

11 (2) If the Board decides under subsection (1) to register the entity, the
12 Board must do so consistently with the Board's findings (if any)
13 under subsection 27B(1) about the application.

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

- 17 (a) one or more activities as the core R&D activities that the
18 supporting R&D activity was undertaken to support; and
19 (b) if any of those activities specified as a core R&D activity is
20 not registered under paragraph (1)(a) for the R&D entity for
21 the income year—each income year for which that core R&D
22 activity:
23 (i) was registered under paragraph (1)(a) for the R&D
24 entity; or
25 (ii) is proposed to be registered under paragraph (1)(a) for
26 the R&D entity.

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

28 (1) The Board may make one or more findings to the following effect
29 when considering an R&D entity's application for the purposes of
30 subsection 27A(1):

- 31 (a) that all or part of an activity mentioned in the application was
32 a core R&D activity conducted during the income year;
33 (b) that all or part of an activity mentioned in the application was
34 not an activity of a kind covered by paragraph (a);
-

- 1 (c) that all or part of an activity mentioned in the application was
2 a supporting R&D activity conducted:
3 (i) during the income year; and
4 (ii) in relation to one or more specified core R&D activities
5 for which the entity could be registered under
6 section 27A for an income year;
7 (d) that all or part of an activity mentioned in the application was
8 not an activity of a kind covered by paragraph (c).
- 9 Note 1: The Board could make a finding under paragraph (b) if, for example,
10 the Board has insufficient information to make a finding under
11 paragraph (a). Similarly, the Board could make a finding under
12 paragraph (d) if it has insufficient information to make a finding under
13 paragraph (c).
- 14 Note 2: A finding is reviewable (see Division 5).
- 15 Note 3: The Board may also make findings after registration (see subsection
16 27H(1)).
- 17 (2) A finding under subsection (1) relating to an R&D entity has no
18 effect to the extent of any inconsistency with an earlier finding
19 under subsection 28A(1) (advance findings about the nature of
20 activities) relating to the R&D entity.

21 **27C Notice of decision about registration**

- 22 (1) The Board must notify an applicant in writing of the Board's
23 decision under subsection 27A(1) about the application.
- 24 (2) The notice must include a certificate for each finding (if any) made
25 under subsection 27B(1) for the application. The certificate must
26 set out:
27 (a) a description of the finding; and
28 (b) the Board's reasons for the finding; and
29 (c) the activity affected by the finding.
30 The notice and certificate may set out other matters.
- 31 Note: The notice should also mention the applicant's right to have the
32 finding reviewed under Division 5 (see section 30B).
- 33 (3) The Board must give the Commissioner a copy of the notice if the
34 notice includes one or more certificates.
- 35 (4) A failure to comply with this section does not affect the validity of
36 the decision or finding.
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1 **Subdivision C—Applying to register R&D activities**

2 **27D Applying to register R&D activities**

3 An application to register activities under section 27A for an
4 income year must be:

- 5 (a) in the approved form; and
6 (b) accompanied by the fee (if any) specified in regulations made
7 under section 48A for the purposes of this section; and
8 (c) made within:
9 (i) 10 months after the end of the income year; or
10 (ii) within a further period allowed by the Board in
11 accordance with the decision-making principles.

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

13 Note 2: Section 31 deals with approved forms.

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

15 **27E Board may request further information**

16 (1) The Board may request the applicant in writing to give specified
17 information, or specified kinds of information, to the Board about
18 the application.

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

- 21 (a) in the approved form; and
22 (b) within:
23 (i) 30 days after the request was given; or
24 (ii) a further period allowed by the Board in accordance
25 with the decision-making principles.

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

27 Note 2: Section 31 deals with approved forms.

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

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

1 **Subdivision D—Examining registrations**

2 **27F Examining a registration**

- 3 (1) The Board may conduct one or more examinations of all or part of
4 an R&D entity's registration under section 27A for an income year
5 the purposes of making one or more findings under subsection
6 27H(1).

7 Note: A finding under subsection 27H(1) will support the entity's
8 registration, or provide grounds to vary or revoke that registration.

- 9 (2) The Board may examine an R&D entity's registration on its own
10 initiative.

- 11 (3) The Board must examine an R&D entity's registration if:
12 (a) requested by the Commissioner; or
13 (b) the R&D entity has applied for the Board to make one or
14 more findings under subsection 27H(1) about the registration.

15 Note: A finding under subsection 27H(1) can only bind the Commissioner
16 for the purposes of the R&D entity's income tax assessment for the
17 income year if the finding is made within 4 years after the end of the
18 income year (see subsections 355-700(1) and 355-705(1) of the
19 *Income Tax Assessment Act 1997*).

- 20 (4) An application referred to in paragraph (3)(b) must be:
21 (a) in the approved form; and
22 (b) accompanied by the fee (if any) specified in regulations made
23 under section 48A for the purposes of this section.

24 Note: Section 31 deals with approved forms.

- 25 (5) If the R&D entity applies for a finding under subsection 27H(1)
26 about the registration, the Board must:
27 (a) make one or more findings under subsection 27H(1) about
28 the registration; or
29 (b) refuse to make a finding under subsection 27H(1) in response
30 to the application.

31 Note 1: The Board may make a finding that differs from that sought. For
32 example, the Board may make a finding that an activity was not a core
33 R&D activity if the Board has insufficient information to make a
34 finding that it was a core R&D activity.

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

1 **27G Board may request information during an examination**

- 2 (1) When examining an R&D entity's registration, the Board may
3 request the entity in writing to give specified information, or
4 specified kinds of information, to the Board about the entity's
5 registration.
- 6 (2) The request may ask for the information or kinds of information to
7 be given:
- 8 (a) in the approved form; and
9 (b) within a specified period of at least 30 days after the request
10 was given.

11 Note 1: Section 31 deals with approved forms.

12 Note 2: A failure by the entity to give the information may result in a finding
13 under paragraph 27H(1)(b) or (d).

14 **27H Findings about a registration**

- 15 (1) The Board may make one or more findings to the following effect
16 about an R&D entity's registration under section 27A for an
17 income year (the **registration year**):
- 18 (a) that all or part of a registered activity was a core R&D
19 activity conducted during the registration year;
- 20 (b) that all or part of a registered activity was not an activity of a
21 kind covered by paragraph (a);
- 22 (c) that all or part of a registered activity was a supporting R&D
23 activity conducted during the registration year and in relation
24 to:
- 25 (i) one or more specified registered core R&D activities; or
26 (ii) one or more specified core R&D activities for which the
27 entity has been registered in an earlier income year; or
28 (iii) one or more specified core R&D activities yet to be
29 conducted for which the entity could be registered in the
30 registration year if those activities were conducted
31 during the registration year; or
32 (iv) several specified core R&D activities, each covered by
33 subparagraph (i), (ii) or (iii);
- 34 (d) that all or part of a registered activity was not an activity of a
35 kind covered by paragraph (c);

1 Note 1: The Board could make a finding under paragraph (b) if, for example,
2 the Board has insufficient information to make a finding under
3 paragraph (a). Similarly, the Board could make a finding under
4 paragraph (d) if it has insufficient information to make a finding under
5 paragraph (c).

6 Note 2: A finding is reviewable (see Division 5).

7 (2) A finding under subsection (1) about an R&D entity's registration
8 under section 27A for an income year has no effect to the extent of
9 any inconsistency with:

10 (a) an earlier finding under subsection (1) about that registration;
11 or

12 (b) a finding under subsection 27B(1) relating to the application
13 for that registration; or

14 (c) an earlier finding under subsection 28A(1) (advance findings
15 about the nature of activities) relating to the R&D entity.

16 **27J Notice of findings or of decisions refusing to make findings**

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

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

22 (a) a description of the finding; and

23 (b) the Board's reasons for the finding; and

24 (c) the registered activity affected by the finding; and

25 (d) the effect of the finding on the entity's registration.

26 The notice and certificate may set out other matters.

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

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

31 (3) The Board must notify an R&D entity in writing of any decision
32 under paragraph 27F(5)(b) refusing to make a finding under
33 subsection 27H(1) in response to an application under section 27F
34 by the R&D entity.

35 (4) A failure to comply with this section does not affect the validity of
36 the findings or decision.

1 **27K Revoking registrations**

- 2 (1) The Board may, by notice in writing given to an entity, revoke the
3 entity's registration under section 27A for an income year if the
4 entity was not an R&D entity at any time when an activity covered
5 by the registration was conducted during the income year.

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

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

- 11 (3) A request for a revocation under subsection (2) 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: Section 31 deals with approved forms.

- 16 (4) For the purposes of this Act and the *Income Tax Assessment Act*
17 1997, the effect of a revocation under this section is that the entity
18 is taken never to have been registered under section 27A for the
19 income year.

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

- 22 (5) The Board must notify the Commissioner of the revocation.

23 **27L Automatic variations so registration is consistent with findings**

- 24 (1) If the Board makes a finding under subsection 27H(1) about an
25 R&D entity's registration under section 27A for an income year,
26 the registration is taken always to have existed in a form consistent
27 with the finding.

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

- 30 (2) This section has effect for the purposes of this Act and the *Income*
31 *Tax Assessment Act 1997*.

1 **27M Varying registrations on entity's request**

- 2 (1) The Board may, by notice in writing given to an R&D entity, vary
3 the entity's registration under section 27A for an income year if:
4 (a) the entity applies for the variation; and
5 (b) the variation is consistent with the Board's findings (if any)
6 under subsections 27B(1) and 27H(1) about the registration;
7 and
8 (c) the Board is satisfied the variation is justified in accordance
9 with the decision-making principles.

10 Note 1: A decision not to vary is reviewable (see Division 5).

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

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

16 Note: Section 31 deals with approved forms.

- 17 (3) Section 27E (Board requesting further information) applies to an
18 application under this section in a way corresponding to the way
19 that section applies to an application under section 27D.

- 20 (4) For the purposes of this Act and the *Income Tax Assessment Act*
21 *1997*, the effect of the variation is that the entity's registration
22 under section 27A for the income year is taken always to have
23 existed as varied.

24 **Division 3—Advance findings about activities**

25 **Subdivision A—Introduction**

26 **28 Simplified outline**

27 The following is a simplified outline of this Division:

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<ul style="list-style-type: none">• An R&D entity can seek an advance finding about whether an 29 activity that has yet to be conducted or completed is an R&D 30 activity.

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- This kind of advance finding binds the Commissioner for 3 income years for tax offsets available under Division 355 of the *Income Tax Assessment Act 1997*.
- An R&D entity can also seek an advance finding that an activity that has yet to be conducted or completed can only be conducted overseas.
- An effect of this kind of advance finding is that a tax offset under Division 355 of that Act will only be available for expenditure incurred on the activity after the finding was made.
- This kind of advance finding has an ongoing effect, but can be examined by the Board and revoked.

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Subdivision B—Making advance findings

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28A Findings about the nature of activities yet to be completed

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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 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);
 - (d) refuse to make a finding about the activity.
- Note 1: An example of when the Board may make a finding under paragraph (c), or refuse to make a finding, is if the Board has insufficient information to make a finding under paragraph (a) or (b).
- Note 2: A finding, or a refusal to make a finding, is reviewable (see Division 5).

- 1 (2) The Board must not make a finding under subsection (1) about an
2 activity unless the Board is satisfied that the activity:
3 (a) is being conducted when the application is made; or
4 (b) is yet to be conducted, but that it is reasonable to expect that
5 the activity will be conducted in any or all of the following
6 income years:
7 (i) the income year in which the application is made;
8 (ii) either of the next 2 income years.
- 9 (3) A finding under subsection (1) relating to an R&D entity has no
10 effect to the extent of any inconsistency with an earlier finding
11 under subsection (1) relating to the R&D entity.

12 **28B Findings about activities to be conducted outside Australia**

- 13 (1) The Board must, on application by an R&D entity for a finding
14 under this section about an activity, do either of the following:
15 (a) find that all or part of the activity is an activity that cannot be
16 conducted in Australia or the external Territories;
17 (b) refuse to make a finding about the activity.
- 18 Note: A refusal to make a finding is reviewable (see Division 5).
- 19 (2) The Board must not make the finding about an activity unless the
20 Board is satisfied that the activity:
21 (a) is an R&D activity; and
22 (b) cannot be conducted in Australia or the external Territories
23 for one or more of the reasons specified in regulations made
24 for the purposes of this paragraph; and
25 (c) meets the requirements specified in regulations made for the
26 purposes of this paragraph.
- 27 Note: An effect of the finding is that a tax offset may be available for
28 expenditure incurred on the activity after the finding was made (see
29 Division 355 of the *Income Tax Assessment Act 1997*, in particular
30 paragraph 355-205(1)(d) of that Act).
- 31 (3) A finding under this section is subject to the conditions (if any)
32 specified in regulations made for the purposes of this subsection.

1 **28C Notice of decision about findings**

- 2 (1) The Board must notify an applicant in writing of each of the
3 Board's decisions under subsection 28A(1) or 28B(1) about the
4 application.
- 5 (2) The notice must include a certificate for each finding (if any) made
6 under section 28A or 28B for the application. The certificate must
7 set out:
8 (a) a description of the finding; and
9 (b) the Board's reasons for the finding; and
10 (c) a description of the activity affected by the finding.
11 The notice and certificate may set out other matters.
- 12 Note: For a finding under section 28A, the notice may also mention the
13 applicant's right to have the finding reviewed under Division 5 (see
14 section 30B).
- 15 (3) The Board must give the Commissioner a copy of the notice if the
16 notice includes one or more certificates.
- 17 (4) A failure to comply with this section does not affect the validity of
18 the decision or a finding.

19 **Subdivision C—Applying for advance findings**

20 **28D Applying for findings**

- 21 An application for one or more findings under section 28A or 28B
22 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 1: An application can seek findings for several activities.
27 Note 2: Section 31 deals with approved forms.

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.

- 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: Section 31 deals with approved forms.
9 Note 2: Section 31A deals with the decision-making principles.
10 Note 3: A failure by the entity to give the information may result in a refusal
11 to make the finding.
12 Note 4: A refusal to allow a further period is reviewable (see Division 5).

13 **Subdivision D—Examining and revoking advance findings**

14 **28F Board may examine findings about activities to be conducted** 15 **outside Australia**

- 16 (1) The Board may request in writing an R&D entity that has been
17 given a finding under section 28B to give specified information, or
18 specified kinds of information, to the Board about the R&D
19 entity's compliance with a condition of the finding.

20 Note: For the conditions of the finding, see subsection 28B(3).

- 21 (2) The request may ask for the information or kinds of information to
22 be given:
23 (a) in the approved form; and
24 (b) within a specified period of at least 30 days after the request
25 was given.

- 26 Note 1: Section 31 deals with approved forms.
27 Note 2: A failure by the entity to give the information may result in the finding
28 being revoked under subsection 28G(1).

29 **28G Revoking findings**

- 30 (1) The Board may, by notice in writing given to an R&D entity,
31 revoke a finding under section 28B given to the R&D entity if the
32 Board is satisfied that the R&D entity has breached a condition of
33 the finding.

34 Note 1: For the conditions of the finding, see subsection 28B(3).

- 1 Note 2: A decision to revoke under this subsection is reviewable (see
2 Division 5).
- 3 (2) The Board may, by notice in writing given to an R&D entity,
4 revoke a finding made under this Division for the entity if the
5 entity requests the Board to do so.
- 6 (3) A request for a revocation under subsection (2) must be:
7 (a) in the approved form; and
8 (b) accompanied by the fee (if any) specified in regulations made
9 under section 48A for the purposes of this section.
- 10 Note: Section 31 deals with approved forms.
- 11 (4) For the purposes of this Act and the *Income Tax Assessment Act*
12 *1997*, the effect of a revocation under this section is that the
13 finding is taken never to have been made.
- 14 Note: This subsection will cease to apply if a revocation under
15 subsection (1) is set aside on review (see Division 5).
- 16 (5) The Board must notify the Commissioner of the revocation.

17 **Division 4—Research service providers**

18 **Subdivision A—Introduction**

19 **29 Simplified outline**

20 The following is a simplified outline of this Division:

- | |
|---|
| <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 section.

- 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 **29B Research fields**

14 A *research field* is a research field specified in regulations made
15 for the purposes of this section.

16 **Subdivision C—Applying for registration**

17 **29C Applying for registration**

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

- 19 (a) in the approved form; and
20 (b) accompanied by the fee (if any) specified in regulations made
21 under section 48A for the purposes of this section.

22 Note: Section 31 deals with approved forms.

23 **29D Board may request further information about an application**

- 24 (1) The Board may request an applicant in writing to give specified
25 information, or specified kinds of information, to the Board about
26 the application.

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

- 29 (a) in the approved form; and
30 (b) within 30 days after the request was given.
-

1 Note: Section 31 deals with approved forms.

- 2 (3) The Board may refuse to consider the application if the applicant
3 fails to give the information within:
4 (a) the 30 days; or
5 (b) a further period allowed by the Board in accordance with the
6 decision-making principles.

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

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

9 **29E Board may need to make inquiries about an application**

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

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

25 **29F Duration of registrations**

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

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

3 Note: Section 31 deals with approved forms.

4 (2) The Board may, by notice in writing given to the provider, revoke
5 the provider's registration under section 29A if the provider does
6 not return the completed form within:

7 (a) 30 days after the notice under subsection (1) was given; or

8 (b) a further period allowed by the Board in accordance with the
9 decision-making principles.

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

11 (3) For the purposes of this Act and the *Income Tax Assessment Act*
12 *1997*, the revocation takes effect at the end of that financial year.

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

15 **29G Varying registrations—on provider's request**

16 (1) The Board may, by notice in writing given to a research service
17 provider, vary the provider's registration under section 29A if:

18 (a) the provider applies for the variation; and

19 (b) the Board is satisfied that the provider will still meet the
20 criteria for registration referred to in subsection 29A(2) were
21 the application to be successful.

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

23 (2) An application for a variation must be:

24 (a) in the approved form; and

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

27 Note: Section 31 deals with approved forms.

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

31 Note: This means the Board may request further information about the
32 application (see section 29D), and make inquiries about the
33 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 (2) The Board may do so if the Board is satisfied that the provider
7 does not meet the criteria for registration referred to in subsection
8 29A(2) in so far as those criteria relate to those research fields.

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

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

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

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

31 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 section 29F or
7 29J.

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

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

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

13 **Division 5—Review**

14 **30 Simplified outline**

15 The following is a simplified outline of this Division:

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

21 **30A Reviewable decisions**

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

24

Reviewable decisions		
Item	Decision	Provision under which decision is made
1	Registering or refusing to register an entity for activities	Subsection 27A(1)
2	A finding made when considering an	Subsection 27B(1)

Reviewable decisions		
Item	Decision	Provision under which decision is made
	application for registration of activities	
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(5)(b)
6	A finding made about a registration of activities	Subsection 27H(1)
7	Revoking a registration of activities	Subsection 27K(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	An advance finding about the nature of an activity yet to be completed	Subsection 28A(1)
11	Refusing to make an advance finding about the nature of an activity yet to be completed	Subsection 28A(1)
12	Refusing to make an advance finding about an activity to be conducted outside Australia	Subsection 28B(1)
13	Refusing to allow a further period for giving further information about an application for an advance finding	Paragraph 28E(2)(b)
14	Revoking an advance finding about an activity to be conducted outside Australia	Subsection 28G(1)
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	Subsection 29D(3)

Reviewable decisions

Item	Decision	Provision under which decision is made
	application for registration as a research service provider	
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 entity, the Board
3 must give written notice to the entity of the following things:
4 (a) the making of the decision;
5 (b) the reasons for the decision;
6 (c) the entity's right to have the decision reviewed under this
7 Division.

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

11 Note: Other provisions of this Part require notice to be given about decisions
12 covered by item 2, 6 or 10 of the table in section 30A.

- 13 (2) A failure to comply with this section does not affect the validity of
14 the decision.

1 **30C Applications for internal review of reviewable decisions**

2 *Applications by affected persons*

- 3 (1) An application for review of a reviewable decision may be made
4 by or on behalf of any person or persons whose interests are
5 affected by the reviewable decision.
- 6 (2) An application under subsection (1) must be in the approved form.
7 Note: Section 31 deals with approved forms.
- 8 (3) An application under subsection (1) for review of a reviewable
9 decision must be made within:
10 (a) 28 days after the entity to which the decision relates is
11 notified of the decision under this Part; or
12 (b) such further period as the Board allows in accordance with
13 the decision-making principles.

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

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

16 *Applications by Commissioner*

- 17 (4) The Commissioner may apply to the Board for review of a
18 reviewable decision.

19 **30D Internal review of reviewable decisions**

- 20 (1) After receiving an application for review of a reviewable decision,
21 the Board must review the decision.

22 *Making internal review decisions*

- 23 (2) After reviewing the reviewable decision, the Board must make a
24 decision (an ***internal review decision***):
25 (a) confirming the reviewable decision; or
26 (b) varying the reviewable decision; or
27 (c) setting aside the reviewable decision and substituting a new
28 decision.

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

1 *Deemed internal review decisions*

- 2 (3) However, if the Board does not make a decision under
3 subsection (2) before the end of the period of 90 days after the day
4 on which the Board received the application for review, the Board
5 is taken, at the end of that period, to have made a decision (also an
6 ***internal review decision***) confirming the reviewable decision.

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

- 10 (4) Disregard a decision (the ***deemed decision***) taken to have been
11 made because of subsection (3) if:
12 (a) after the end of the period referred to in that subsection, the
13 Board makes a decision under subsection (2) about the
14 applicable reviewable decision; and
15 (b) an application has yet to be made under section 30E to the
16 Administrative Appeals Tribunal for review of the deemed
17 decision.

18 *Matters relevant to all internal review decisions*

- 19 (5) For the purposes of this Act and the *Income Tax Assessment Act*
20 *1997*, an internal review decision takes effect on the day on which
21 the reviewable decision took effect.
22 (6) The Board must notify the Commissioner in writing of:
23 (a) the making of an internal review decision; and
24 (b) the reasons for that decision.

25 **30E External review by AAT of internal review decisions**

- 26 (1) Application may be made to the Administrative Appeals Tribunal
27 for review of an internal review decision of the Board.
28 (2) Subsection 43(6) of the *Administrative Appeals Tribunal Act 1975*
29 has effect for the purposes of this Act and the *Income Tax*
30 *Assessment Act 1997* for:
31 (a) an internal review decision as varied by the Tribunal under
32 section 43 of that Act; or
33 (b) a decision made by the Tribunal under that section in
34 substitution for an internal review decision.
-

1 Note: This means that the varied or substituted decision takes effect from the
2 day on which the reviewable decision took effect (see subsection
3 30D(5)).

4 (3) If an internal review decision is taken to be made under subsection
5 30D(3), section 29 of the *Administrative Appeals Tribunal Act*
6 *1975* applies as if:

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

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

12 (4) Despite section 35 of the *Administrative Appeals Tribunal Act*
13 *1975*:

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

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

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

19 (ii) give directions of a kind mentioned in paragraph
20 35(2)(aa), (b) or (c) of that Act.

21 **Division 6—Other matters**

22 **31 Approved forms**

23 (1) This section applies if a provision of this Part requires a thing to be
24 in the approved form.

25 (2) To be in the approved form for the provision, the thing must:

26 (a) be in writing in a form approved by the Board; and

27 (b) include the information required by the form; and

28 (c) include any other material (including documents) required by
29 the form.

30 (3) The Board may approve, in writing, a form for the purposes of
31 paragraph (2)(a). When doing so, the Board must ensure the form
32 is consistent with any determinations under subsection (4).

33 (4) The Minister may, in writing, determine that a form approved for
34 the purposes of paragraph (2)(a) must require a thing to include

1 specified kinds of information and/or other material (including
2 documents).

3 (5) A determination made under subsection (4) is not a legislative
4 instrument.

5 **31A *Decision-making principles***

6 The Minister may, by legislative instrument, make principles (the
7 ***decision-making principles***) for the Board to comply with in
8 deciding the following:

- 9 (a) whether to allow something to be given under this Part within
10 a further period than that specified in this Part;
11 (b) whether a proposed variation under section 27M is justified.

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
6 activities”.

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 **5 Subsection 4(1)**

13 Insert:

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

16 **6 Subsection 4(1) (definition of *company*)**

17 Repeal the definition.

18 **7 Subsection 4(1)**

19 Insert:

20 *constitutional corporation* has the same meaning as in the *Income*
21 *Tax Assessment Act 1997*.

22 **8 Subsection 4(1)**

23 Insert:

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

26 **9 Subsection 4(1)**

1 Insert:

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

3 **10 Subsection 4(1)**

4 Insert:

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

7 **11 Subsection 4(1) (definition of *finance scheme guidelines*)**

8 Repeal the definition.

9 **12 Subsection 4(1)**

10 Insert:

11 *income year* has the same meaning as in the *Income Tax*
12 *Assessment Act 1997*.

13 **13 Subsection 4(1)**

14 Insert:

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

16 **14 Subsection 4(1)**

17 Insert:

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

20 **15 Subsection 4(1)**

21 Insert:

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

24 **16 Subsection 4(1)**

25 Insert:

26 *research field* has the meaning given by section 29B.

27 **17 Subsection 4(1)**

1 Insert:

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

4 **18 Subsection 4(1)**

5 Insert:

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

7 **19 Subsection 4(1)**

8 Insert:

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

11 **20 Paragraph 7(aa)**

12 Repeal the paragraph.

13 **21 Subsection 11(1)**

14 Omit "(1)".

15 **22 Subsection 11(2)**

16 Repeal the subsection.

17 **23 Subsection 22(9)**

18 Repeal the subsection.

19 **24 Part IIIA**

20 Repeal the Part.

21 **25 Subparagraph 46(2)(b)(iv)**

22 Omit "research and development activities", substitute "R&D
23 activities".

24 **26 Paragraph 46(2)(ca)**

25 Repeal the paragraph, substitute:

26 (ca) must set out:

27 (i) the total number of applications during the year for
28 registration under section 27A for a tax offset under

- 1 Division 355 of the *Income Tax Assessment Act 1997*;
2 and
3 (ii) the total amounts of the offsets involved; and
4 (iii) an analysis of the operation of the R&D tax offset
5 scheme for the year; and

6 **27 At the end of subsection 46(2)**

- 7 Add:
8 ; and (f) must set out a list of the research service providers as at the
9 end of the year and the research fields for which each of
10 those providers is registered under section 29A.

11 **28 Subsection 47(1)**

- 12 Omit “except for the purposes of this Act, of the *Census and Statistics*
13 *Act 1905*, of the *Income Tax Assessment Act 1936* or of the *Industrial*
14 *Research and Development Incentives Act 1976* or”.

15 **29 Subsection 47(1)**

- 16 Omit “supply protected information to a person if the supplying”,
17 substitute “disclose protected information to a person if disclosing”.

18 **30 Subsection 47(2)**

- 19 Omit “Subsection (1) does not apply to the supply of”, substitute “An
20 official to whom this section applies may disclose”.

21 **31 After subsection 47(2)**

- 22 Insert:
23 (2A) An official to whom this section applies may disclose protected
24 information if the disclosure is made:
25 (a) in the course of performing a duty or function, or exercising a
26 power, under this Act; or
27 (b) for the purposes of enabling another person to perform duties
28 or functions, or exercise powers, under this Act; or
29 (c) for the purposes of enabling a person to perform duties or
30 functions, or exercise powers, under the *Census and Statistics*
31 *Act 1905*, the *Income Tax Assessment Act 1997* or the
32 *Industrial Research and Development Incentives Act 1976*.

33 **32 Subsection 47(3)**

1 Insert:

2 *disclose* means divulge or communicate.

3 **33 Section 48A**

4 Repeal the section, substitute:

5 **48A Fees for making applications under Part III**

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

1
2 **Schedule 3—Other amendments relating to**
3 **new R&D incentive**

4 **Part 1—Tax offset rules**

5 *Income Tax Assessment Act 1997*

6 **1 Subsection 63-10(1) (after table item 30)**

7 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)

8 **2 Section 67-23 (table item 35)**

9 Repeal the item.

10 **3 At the end of section 67-23**

11 Add:

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

14 **4 At the end of Division 67**

15 Add:

16 **67-30 Refundable tax offsets—research and development**

17 A *tax offset to which an *R&D entity is entitled under
18 section 355-100 (about R&D) for an income year is subject to the
19 refundable tax offset rules if the amount of the tax offset is worked
20 out using the percentage in item 1 of the table in subsection
21 355-100(1).

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

24 Note 2: This section can apply to an entitlement under subsection 355-100(1)
25 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**
5 ***excluded expenditure*)**

6 Repeal the paragraph, substitute:

7 (d) to the extent that it is of a capital nature and not deductible
8 under section 355-200 (R&D expenditure) of the *Income Tax*
9 *Assessment Act 1997*; or

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

11 **6 Subsection 82KZL(1)**

12 Insert:

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

15 **7 Subsection 82KZL(1) (definition of *research and***
16 ***development activities*)**

17 Repeal the definition.

18 **8 Subsection 82KZL(3)**

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

21 **9 Paragraph 82KZM(1)(c)**

22 Repeal the paragraph, substitute:

23 (c) one or more of the following:

24 (i) a deduction under former section 51, or former
25 section 73Y, of this Act;

26 (ii) a deduction under section 8-1 or 355-200 (R&D
27 expenditure) of the *Income Tax Assessment Act 1997*;

28 in respect of the expenditure would, apart from this section,
29 be allowable from the assessable income of the taxpayer of
30 the year of income in which the expenditure is incurred;

1 **10 Paragraph 82KZMA(1)(a)**

2 Repeal the paragraph, substitute:

3 (a) apart from that section, the taxpayer could deduct the
4 expenditure under one or more of the following for the
5 expenditure year:

6 (i) former section 73Y of this Act;

7 (ii) section 8-1 or 355-200 (R&D expenditure) of the
8 *Income Tax Assessment Act 1997*; and

9 **11 Paragraph 82KZME(1)(a)**

10 Repeal the paragraph, substitute:

11 (a) apart from that section, the taxpayer could deduct the
12 expenditure under one or more of the following for the
13 expenditure year:

14 (i) former section 73Y of this Act;

15 (ii) section 8-1 or 355-200 (R&D expenditure) of the
16 *Income Tax Assessment Act 1997*; and

17 **12 Paragraph 82KZMF(2)(a)**

18 Omit “section 73B, 73BA, 73BH, 73QA, 73QB or”.

19 **13 At the end of subsection 82KZMF(2)**

20 Add:

21 Note: Deductions under section 355-200 of the *Income Tax Assessment Act*
22 *1997* for R&D expenditure are subject to this section (see subsection
23 8-5(2) and section 355-110 of that Act).

1

2 **Part 3—Capital allowances**

3 *Income Tax Assessment Act 1997*

4 **14 Subsection 40-25(7) (note)**

5 Omit “Note”, substitute “Note 1”.

6 **15 At the end of subsection 40-25(7)**

7 Add:

8 Note 2: When this Division notionally applies under section 355-305 or
9 355-520 (both about depreciating assets used for R&D activities), the
10 taxable purpose is sometimes only the purpose of conducting R&D
11 activities.

12 **16 Subsection 40-65(6)**

13 Repeal the subsection, substitute:

14 *Exception if also notionally deductible under R&D provisions*

15 (6) If:

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

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

19 (ii) you have been entitled under section 355-100 (about
20 R&D) to one or more *tax offsets because you can
21 deduct one or more amounts under section 355-300 for
22 an asset; but

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

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

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

30 (7) If:

31 (a) the events in paragraph (6)(a) could both arise for the same
32 period for an asset; and

1 (b) neither event has already arisen for the asset;
2 then you must choose the same method for the purposes of
3 working out the deduction for each event.

4 **17 Subsection 40-95(9) (note)**

5 Repeal the note.

6 **18 Subsection 40-100(4)**

7 Repeal the subsection, substitute:

8 *Criteria for making a determination*

9 (4) The Commissioner is to make a determination of the *effective life*
10 of a *depreciating asset in accordance with subsections (5) and (6).

11 (5) Firstly, estimate the period (in years, including fractions of years)
12 the asset can be used by any entity for one or more of the following
13 purposes:

14 (a) a *taxable purpose;

15 (b) the purpose of producing *exempt income or *non-assessable
16 non-exempt income;

17 (c) the purpose of conducting *R&D activities, assuming that
18 this is reasonably likely.

19 (6) Secondly, if relevant for the asset:

20 (a) assume the asset will be subject to wear and tear at a rate that
21 is reasonable for the Commissioner to assume; and

22 (b) assume the asset will be maintained in reasonably good order
23 and condition; and

24 (c) have regard to the period within which the asset is likely to
25 be scrapped, sold for no more than scrap value or abandoned.

26 However, for paragraph (c), disregard reasons attributable to the
27 technical risk in conducting *R&D activities if it is reasonably
28 likely that the asset will be used for such activities.

29 **19 Subsections 40-105(1), (2) and (3)**

30 Repeal the subsections, substitute:

31 (1) You work out the *effective life* of a *depreciating asset yourself in
32 accordance with this section.

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

24 **20 Subsection 40-215(1)**

25 Omit “(1)”.

26 **21 At the end of subsection 40-215(1)**

27 Add:

28 Note: This section does not apply to notional deductions under
29 section 355-300 or 355-515 (about R&D), because those provisions
30 are about deducting the asset’s decline in value, not its cost.

31 **22 Subsection 40-215(2)**

32 Repeal the subsection.

33 **23 Section 40-292**

1 Repeal the section, substitute:

2 **40-292 Adjustments—assets used for both general tax purposes and**
3 **R&D activities**

- 4 (1) This section applies if:
- 5 (a) a *balancing adjustment event happens in an income year (the
6 *event year*) for a *depreciating asset you *held and:
- 7 (i) whose decline in value you worked out under
8 Subdivision 40-B; or
- 9 (ii) whose decline in value you could have worked out
10 under that Subdivision if you had used the asset; and
- 11 (b) you were entitled under section 355-100 to *tax offsets for
12 one or more income years for deductions under
13 section 355-300 for the asset.

14 *Section 40-290 to be applied as if use for carrying on R&D*
15 *activities were use for a taxable purpose*

- 16 (2) You must, in applying section 40-290 (including references in that
17 section to the reduction of deductions under section 40-25) in
18 relation to the asset, assume that when you used it either for:
- 19 (a) a *taxable purpose; or
- 20 (b) the purpose of conducting *R&D activities associated with
21 your entitlements referred to in paragraph (1)(b);
22 you used it for a taxable purpose.

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

- 24 (3) If the total of the amounts you can deduct for the event year for the
25 purposes of subsection 355-100(1) is at least \$20,000, any amount
26 (the *section 40-285 amount*) you can deduct for the asset under
27 section 40-285 (after applying subsection (2) of this section) is
28 increased by:
- 29 (a) if your *aggregated turnover for the income year is less than
30 \$20 million—¹/₂ of the amount worked out under
31 subsection (5) of this section; and
- 32 (b) otherwise—¹/₃ of the amount worked out under
33 subsection (5) of this section.

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

- 2 (4) Any amount (the **section 40-285 amount**) that is included in your
3 assessable income for the asset under section 40-285 (after
4 applying subsection (2) of this section) is increased by $\frac{1}{3}$ of the
5 amount worked out under subsection (5) of this section.

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

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

8
$$\frac{\text{Sum of R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

9 where:

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

- 11 (a) if the section 40-285 amount is a deduction—the amount of
12 the deduction; or
13 (b) if the section 40-285 amount is an amount included in your
14 assessable income—so much of the section 40-285 amount as
15 does not exceed the formula component **total decline in**
16 **value**.

17 **sum of R&D deductions** means the sum of the amounts that you
18 deducted under section 355-300 for the asset in respect of your
19 entitlements referred to in paragraph (1)(b).

20 **total decline in value** means the cost of the asset less its
21 *adjustable value.

22 **24 Subsection 40-425(8)**

23 Repeal the subsection, substitute:

24 *Exception: research and development*

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

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2 **Part 4—Capital works**

3 ***Income Tax Assessment Act 1997***

4 **25 Section 43-35**

5 Repeal the section, substitute:

6 **43-35 Requirement for registration under the Industry Research**
7 **and Development Act**

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

- 11 (a) you are registered under section 27A (registering R&D
12 activities) of the *Industry Research and Development Act*
13 *1986* for the R&D activities for an income year; or
14 (b) if you are an *R&D partnership—an *R&D entity, who was a
15 partner of the R&D partnership at some time while the R&D
16 activities were conducted, is registered under that section of
17 that Act for the R&D activities for an income year.

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

21 **26 Paragraph 43-70(2)(g)**

22 Repeal the paragraph, substitute:

- 23 (g) expenditure on property for which a *tax offset under
24 section 355-100 (about R&D) is available, or would be
25 available, if the property were for use for conducting *R&D
26 activities; or

27 **27 Subsection 43-70(2) (note)**

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

30 **28 Section 43-90**

31 Omit “carry on *research and development activities”, substitute
32 “conduct *R&D activities”.

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29 Section 43-90

Omit “for carrying on research and development activities”, substitute “to conduct R&D activities”.

30 Section 43-90 (note)

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

31 Section 43-100

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

32 At the end of section 43-100

Add:

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

33 Subsection 43-140(1)

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

34 Subsection 43-140(1) (note 1)

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

35 Subsection 43-140(1) (note 2)

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

36 Section 43-195 (heading)

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

37 Section 43-195

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

38 Section 43-210 (step 4)

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

3 **39 Section 43-210 (note to step 4)**

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

6 **40 Section 43-215 (step 3)**

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

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2 **Part 5—Other amendments**

3 ***Income Tax Assessment Act 1936***

4 **41 Sections 73A to 73Z**

5 Repeal the sections.

6 **42 Section 94J**

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

9 **43 After subsection 102T(8)**

10 Insert:

11 (9) A reference in section 355-40 of the *Income Tax Assessment Act*
12 *1997* to a body corporate is to be read as including a reference to a
13 body corporate acting in its capacity as trustee of a public trading
14 trust.

15 **44 Subsection 136AB(2)**

16 After “70-20,”, insert “355-400,”.

17 **45 Subsection 170(10A)**

18 Repeal the subsection.

19 **46 Subsection 262A(4AC)**

20 Omit “73E(1), 73F(1) or 73G(1),”.

21 **47 Paragraph 262A(4AC)(a)**

22 Omit “73E, 73F or 73G,”.

23 **48 Subsection 245-140(1) in Schedule 2C (table item 8)**

24 Repeal the item.

25 **49 Subsection 57-85(3) in Schedule 2D (table item 13)**

26 Repeal the item.

1 **50 Subsection 57-110(2) in Schedule 2D (table item 7)**

2 Repeal the item.

3 ***Income Tax Assessment Act 1997***

4 **51 Section 10-5 (table item headed “balancing adjustment”)**

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

6 **52 Section 10-5 (table item headed “industrial property”)**

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

8 **53 Section 10-5 (after table item headed “quarrying”)**

9 Insert:

R&D

balancing adjustment	40-292, 355-310
return on	355-410

10 **54 Section 10-5 (table item headed “research &**
11 **development”)**

12 Repeal the item.

13 **55 Section 12-5 (table item headed “balancing adjustment”)**

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

15 **56 Section 12-5 (table item headed “industrial property”)**

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

17 **57 Section 12-5 (after table item headed “qualifying**
18 **securities”)**

19 Insert:

R&D

Division 355

20 **58 Section 12-5 (table item headed “research &**
21 **development”)**

22 Repeal the item.

23 **59 Section 12-5 (table item headed “scientific research”)**

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

2 **60 Section 13-1 (after table item headed “public unit trust”)**

3 Insert:

R&D

Division 355

4 **61 Section 13-1 (table item headed “research and
5 development”)**

6 Repeal the item.

7 **62 Section 20-5 (table items 5 and 6)**

8 Repeal the items.

9 **63 Section 20-5 (at the end of the table)**

10 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.

11 **64 Subsection 20-30(1) (after table item 1.19)**

12 Insert:

1.19 Division 355 R&D
A

13 **65 Subsection 20-30(2) (table item 2.8)**

14 Repeal the item.

15 **66 Subsection 41-10(2)**

1 Repeal the subsection, substitute:

2 (2) Subsection 355-710(2) (tax offset for assets used for R&D
3 activities) does not apply to a deduction under subsection (1).

4 **67 Paragraph 41-10(3)(c)**

5 Repeal the paragraph, substitute:

6 (c) disregard subsection 355-710(2) (tax offset for assets used
7 for R&D activities).

8 **68 Section 104-235 (heading)**

9 Omit “section 73BA depreciating assets”, substitute “**certain assets**
10 **used for R&D**”.

11 **69 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 **70 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 **71 Paragraph 104-235(4)(a)**

23 Repeal the paragraph, substitute:

- 24 (a) the *depreciating asset covered by subsection (1) or (1B) is a
25 *pre-CGT asset; or

26 **72 Subsection 104-240(1)**

27 Omit “or the section 73BA depreciating asset”, substitute “covered by
28 subsection 104-235(1) or (1B)”.

29 **73 Subsection 104-240(1) (paragraph (a) of the definition of**
30 ***sum of reductions*)**

31 Omit “in the case of the *depreciating asset”, substitute “if the
32 *depreciating asset is covered by subsection 104-235(1)”.

33 **74 Subsection 104-240(1) (paragraph (b) of the definition of**
34 ***sum of reductions*)**

35 Repeal the paragraph, substitute:

- 1 (b) if the depreciating asset is covered by subsection
2 104-235(1B)—the reductions that would have been required
3 under section 40-25 on the assumption that when you used
4 the asset either for:
5 (i) a *taxable purpose; or
6 (ii) the purpose of conducting *R&D activities;
7 you used it for a *taxable purpose.

8 **75 Subsection 104-240(1) (definition of *total decline*)**

9 Omit “or the section 73BA depreciating asset”.

10 **76 Subsection 104-240(2)**

11 Omit “or the section 73BA depreciating asset”, substitute “covered by
12 subsection 104-235(1) or (1B)”.

13 **77 Subsection 108-55(1) (before the example)**

14 Omit all the words after “if”, substitute “Subdivision 40-D applies to the
15 building or structure (whether or not there is a balancing adjustment)”.

16 **78 Paragraph 110-45(2)(b) (note)**

17 Repeal the note.

18 **79 Subsection 110-45(2) (table item 3)**

19 Repeal the item.

20 **80 Section 118-24 (heading)**

21 Omit “and section 73BA depreciating assets”.

22 **81 Subsection 118-24(1)**

23 Omit “or a section 73BA depreciating asset (within the meaning of
24 section 73BB of the *Income Tax Assessment Act 1936*)”.

25 **82 Subsection 118-24(1)**

26 After “Division 40”, insert “(including that Division as it applies under
27 Division 355)”.

28 **83 Section 118-35**

29 Repeal the section, substitute:

1 **118-35 Research and development**

2 Disregard a *capital gain or *capital loss from a *CGT event if an
3 amount is included in your assessable income in any income year
4 under section 355-410 (about disposal of R&D results) because of
5 that CGT event.

6 **84 Subsection 205-15(1) (table items 1 and 2)**

7 After “that part of the payment that is attributable to the period during
8 which the entity was a franking entity”, insert “, less any reduction
9 under subsection (4)”.

10 **85 At the end of section 205-15**

11 Add:

12 (4) An entity’s *franking credit for a payment mentioned in item 1 or 2
13 of the table in subsection (1) is reduced by the amount (if any)
14 worked out as follows, but not below zero.

15 *Method statement*

16 Step 1. Identify any income years ending before the payment was
17 made for which the entity has *received a refund of
18 income tax.

19 Step 2. Add up the part (if any) of each of those refunds that is
20 attributable to a *tax offset that is subject to the
21 refundable tax offset rules because of section 67-30
22 (about R&D).

23 Step 3. Subtract any reduction under this subsection of a
24 *franking credit for any earlier payment by the entity.
25 (For this purpose, assume a credit reduced to zero is still
26 a franking credit.)

27 **86 Subsection 205-30(2)**

28 Repeal the subsection, substitute:

29 (2) Despite item 2 of the table in subsection (1), no debit arises on that
30 part of the refund that is attributable to any of the following:

- 1 (a) a payment of income tax in relation to either or both of the
2 following:
3 (i) an *FHSA component;
4 (ii) an *RSA component;
5 (b) a *tax offset that is subject to the refundable tax offset rules
6 because of section 67-30 (about R&D).

7 **87 Paragraph 205-35(1)(b)**

8 Repeal the paragraph, substitute:

- 9 (b) the refund of the amount, or the application of the credit,
10 represents in whole or in part:
11 (i) a return to the entity of an amount paid or applied to
12 satisfy the entity's liability to pay income tax; or
13 (ii) the amount remaining after applying a *tax offset that is
14 subject to the refundable tax offset rules because of
15 section 67-30 (about R&D) against the entity's basic
16 income tax liability.

17 **88 Subsection 205-35(2)**

18 After "return", insert ", or amount remaining,".

19 **89 Paragraph 230-515(2)(b)**

20 Repeal the paragraph.

21 **90 Subsection 295-85(4) (table item 7)**

22 Omit "Research and development", substitute "R&D".

23 **91 Subsection 328-175(9)**

24 Repeal the subsection, substitute:

25 *Exception: assets for which previously entitled to a tax offset under*
26 *the R&D provisions*

- 27 (9) You cannot deduct amounts for a *depreciating asset for any period
28 under this Subdivision if you are entitled under section 355-100 to
29 a *tax offset for a deduction under section 355-300 for the asset for
30 the same or an earlier period.

31 **92 Subsection 345-10(4) (table item 7)**

1 Omit “Research and development”, substitute “R&D”.

2 **93 Section 701-5 (note 2)**

3 Repeal the note.

4 **94 Subsection 701-40(1) (note)**

5 Repeal the note.

6 **95 Paragraph 701-40(2)(d)**

7 Repeal the paragraph, substitute:

8 (d) any registration under section 27A of the *Industry Research*
9 *and Development Act 1986* for particular *R&D activities;

10 **96 Subsection 701-55(2)**

11 Omit “Subdivision 328-D, and sections 73BA and 73BF of the *Income*
12 *Tax Assessment Act 1936*,” substitute “Subdivisions 328-D and 355-E”.

13 **97 Subsection 995-1(1) (paragraph (e) of the definition of**
14 ***capital allowance*)**

15 Omit “films); or”, substitute “films).”.

16 **98 Subsection 995-1(1) (paragraph (f) of the definition of**
17 ***capital allowance*)**

18 Repeal the paragraph.

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

20 **99 Subsection 118-24A(1)**

21 Before “subsection 73B(1)”, insert “former”.

22 ***Taxation Administration Act 1953***

23 **100 Paragraph 14ZW(1)(bc)**

24 Repeal the paragraph.

25 **101 Subsection 286-75(3) in Schedule 1**

26 Repeal the subsection.

1
2 **Schedule 4—Application and transitional**
3 **provisions**
4

5 **1 Application provision**

- 6 (1) The amendments made by Schedules 1 and 3 apply in relation to:
7 (a) expenditure incurred in income years commencing on or after
8 1 July 2010; and
9 (b) the use of tangible depreciating assets in income years
10 commencing on or after 1 July 2010.
- 11 (2) Subject to subitem (3), the amendments made by Schedule 2 apply in
12 relation to income years commencing on or after 1 July 2010.
- 13 (3) Section 29F of the *Industry Research and Development Act 1986* (as
14 inserted by Schedule 2) applies in relation to financial years
15 commencing on or after 1 July 2010.

16 **2 Transitional provision—Australian research agencies**

- 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 **3 Other transitional provisions**

27 *to be drafted later*

28