

# R&D Tax Incentive Roundtable

## MEETING RECORD

<b>Meeting Date</b>	10 March 2022
<b>Time:</b>	1:00pm – 3:00pm AEDT
<b>Co-Chairs:</b>	Jade Hawkins, Assistant Commissioner, ATO Tim Myatt, Manager, Data Intelligence and Insights Section, R&D Tax Incentive Branch, AusIndustry, Department of Industry, Science, Energy and Resources (DISER)
<b>Attendees:</b>	Russell Ascott (AB & H Technology Services) Louise McGrath (Australian Industry Group) Ron Gauci (Australian Information Industry Association) Robyn Tolhurst (Australian Investment Council) Nicola Purser (BDO) Emma Westaway (Boeing) Pero Stojanovski (Business Council of Australia) Kimberley Simpson (Cochlear) Paul McMullan (Compliance Group Pty Limited) Paul Supprey (Corporate Tax Association) Jamie Munday (EY) Sam Ung (Hall Chadwick) Michael Webb (Indirect Tax Consulting) Ross Lyons (Minerals Council of Australia) Gary Shapiro (Rimon Advisory) Jessica Olivier (RSM Australia) Kate Pounder (Technology Council of Australia) Mariana von Lucken (The Tax Institute)
<b>Guest Speaker:</b>	Kate Pounder (Technology Council of Australia)
<b>Apologies</b>	Kirsty Gowans, General Manager R&D Tax Incentive Branch, AusIndustry, DISER

## AGENDA

Item	Speaker	Chair
<b>1. Welcome</b> 1.1. Roll-call for WebEx dial ins 1.2. House keeping 1.3. Acknowledgement of country 1.4. Action Items from September Roundtable	Jade Hawkins	ATO
<b>2. AusIndustry Update</b> 2.1. Questions arising from program updates 2.2. Roundtable working groups	Tim Myatt	AusIndustry
<b>3. ATO Update</b>	Jade Hawkins	ATO
<b>4. Program Guidance</b> 4.1. New software guide – an industry perspective  4.2. Discussion: impact of COVID-19 on business R&D and innovation	<i>Guest Speaker</i> Kate Pounder, CEO, Technology Council of Australia  Jade Hawkins & Tim Myatt	ATO
<b>5. Open Discussion</b> 5.1. Impact of COVID-19 on business R&D and innovation	Jade Hawkins & Tim Myatt	ATO & AusIndustry
<b>6. Other business and close</b> 6.1. Other business raised by members 6.2. Call for agenda items for the next meeting	Jade Hawkins	ATO
<b>Meeting Close</b>		

## Welcome from chair (Jade Hawkins)

- The chair welcomed attendees and Tim Myatt (AusIndustry) as co-chair for the meeting.
- Apologies were conveyed for Kirsty Gowans who was unable to attend.
- Action item arising from the September 2021 Roundtable:
  - To provide a response on a member request to lodge extension of time requests via email to AusIndustry for the first year or two following the launch of the new portal.
  - Response sent to Roundtable members on 3 September 2021 advising that all extension of time requests must be made through the portal in order to be processed. Email requests will not be accepted.

## AusIndustry Update (Tim Myatt)

- Tim Myatt advised that a R&D Tax Incentive (R&DTI) program update was presented in a new format for the Roundtable (refer to appendix A) which had been provided in a written format and sent to Roundtable members ahead of the meeting. He sought feedback and welcomed questions on this document.
- The Board of Taxation review of the R&DTI evaluated the dual-agency administration model and identified opportunities to reduce duplication. The final report was provided to the Government in November 2021. No decision has been made by the Government on when or if the report will be released.
- The Australian National Audit Office (ANAO) examined the R&DTI with regard to effective registration, eligibility review and compliance arrangements. This report was published in November 2021. There were three recommendations and a number of findings for the joint administrators to consider. The full report is available on the ANAO website.
- For entities with a financial year ending on 30 June 2021 the registration deadline is Tuesday, 3 May 2022. This date has been amended as 30 April falls on a Saturday and the following Monday is a public holiday in Queensland and the Northern Territory.
- In late February, updates and enhancements were made to the R&DTI customer portal. No further major updates are planned for the remainder of 2022 financial year.
- Large business reviews are undertaken to understand how they self-assess and address any compliance issues. The reviews are undertaken in close collaboration with the ATO to avoid duplication with their Justified Trust Program. A member requested further discussion. Jade Hawkins agreed to add this to the agenda for the next meeting so that an ATO representative from the Justified Trust area could be in attendance to answer questions.

## Roundtable Working Groups (Tim Myatt)

- Roundtable members will be invited to engage in two separate working groups for a detailed discussion and input on improvement projects; one related to the advance and overseas finding application process, and the other regarding Research Service Providers (RSPs).
- A formal invitation for expressions of interest will be sent to all Roundtable members.
- The working groups will likely be held in late-April/May 2022.

## ATO Update (Jade Hawkins)

- The chair, Jade Hawkins, acknowledged the impact of flooding in Queensland and New South Wales. Information about ATO support is available on [ato.gov.au](http://ato.gov.au). Members were also invited to contact Brett Challans directly if specific assistance was required.

- Taxation ruling TR 2021/5, the “At Risk” rule has been published along with determination TD 2021/9 which focuses on notional deductions for R&D activities subsidised by Job Keeper.
- The ATO are working on implementing the recommendation from the ANAO report regarding the monitoring of compliance approach.
- Further guidance on the legislative reforms that take effect from 1 July 2022 will be published on [ato.gov.au](http://ato.gov.au).
- The ATO is reviewing its website content including guidance products. The website will be restructured to present information in a modular format and search functions will be improved. Guidance will be presented on the website to enable real-time updates. Additional guidance will be offered on record keeping, payments to associates, apportionment, and the nexus between expenditure and activities.

## Program Guidance (Jade Hawkins, Tim Myatt & Kate Pounder)

- The chair welcomed Kate Pounder, CEO, Tech Council Australia (TCA). The TCA has been working closely with DISER and the ATO in the developing new software guidance 'Software-related activities and the Research & Development Tax Incentive' which is expected to be released late-March 2022.
- Kate Pounder shared an industry perspective on the new guide and its development process. The key points were:
  - It can be difficult to apply traditional definitions of R&D to software-related development
  - The aim of this guidance was to provide more clarity around the requirements where companies consistently struggle.
  - The process started by identifying innovative companies and working out the points of confusion.
  - The revised guide aims to use plain English, provide practical examples and speak to industry.
  - The collaborative process focused on addressing the areas of uncertainty.
  - The TCA believes a review of the definition of ‘R&D activities’, particularly in regard to the systematic progression of work would be beneficial. Kate suggested that a minor change could be made that does not dilute the intent of the current legislation but could provide more clarity.
  - Kate thanked AusIndustry and the ATO for their collaboration.
- The co-chairs and guest speaker facilitated a discussion on the revised software guidance and other areas of guidance. A summary of the discussion points follow:
  - Many large companies have big projects with embedded software. The hybrid between hardware and software was taken into consideration in developing the new guidance.
  - Large companies and SMEs were included in the working groups convened to improve the guidance on software providing broad representation of program users interested in software-related R&D activities.
  - Open source software can be the starting point of development for some companies and genuine R&D can be required to advance it. As this is becoming more prevalent, it is possible that multiple organisations could be doing the same thing simultaneously and could be an area where further guidance is needed.
  - AusIndustry noted that the process of co-designing updated software guidance involved industry discussions to understand the kind of R&D undertaken within the sector and identify key issues. Open source software has been raised from consultations to date. This and other prominent classes of software-related activities could be referred to a future working groups.
  - Future guidance modules for software-related activities currently being planned will cover expenditure and record keeping.

- The Senate Select Committee on Australia as a Technology and Financial Centre tabled its final report on 20 October 2021. It was suggested that the enquiry illustrated the challenges of fitting the current legal definition of R&D with the development approach used for some modern-day and emerging technologies.
- While potential changes to the legal definition of R&D activities is of interest to some members of the tech sector, the TCA acknowledged that the revised software guidance must work with the bounds of the current legislation. The main objective was to identify the areas requiring clarity and use plain English to improve understanding and self-assessment.
- It was suggested that the definition of R&D activities may have aged since it was introduced 10 years ago and that it can be challenging to apply to evolving technologies and development methods. Nevertheless, it is generally possible to identify a systematic progression of work for eligible R&D activities. A more significant area of focus in determining eligibility can often be whether the activities meet the 'unknown outcome' test.
- While the potential for reform is of interest to the tech sector, stakeholders acknowledged that the revised software guidance must work with the bounds of the current legislation. More clarification was sought by companies in the manufacturing sector to guide them on the acceptable length of production trials undertaken to test repeatability and consistency.

## Open Discussion (Jade Hawkins & Tim Myatt)

- The co-chairs facilitated a discussion on the impact of COVID-19 on business R&D and innovation. A summary of points raised by members:
  - Innovations in information technology has allowed many organisations to survive, if not thrive in pandemic conditions.
  - The skills shortage has massively impacted many industry sectors. Restrictions to skilled migration have exacerbated existing issues. The resulting issues include:
    - Many projects have been stalled
    - High labour costs have applied significant pressure to SMEs
    - Job vacancies cannot be filled creating an intense competition for talent prompting some industries to offering incentives like free accommodation
    - Talent shortages have placed emphasis on skill development, cross-skilling and micro-credentials to get people into the workforce.
  - Supply chain issues have significantly impacted industry particularly when equipment and material is required from overseas. The conflict in Europe has exacerbated pandemic pressures. Domestic supply chains have also been impacted by recent flooding in Australia.
  - There is a level of fatigue in the healthcare system and that is impacting businesses that rely on surgical capacity and hospital services. At the same time, this has been a catalyst to direct R&D resources to cloud-based customer support and interaction with the medical industry.
  - The impact of COVID-19 is still a concern to be managed, especially heading into winter and with the potential impacts of a flu season.

## Action Items

- ATO representatives from the Justified Trust Program to attend the next meeting to provide information and answer related questions
- AusIndustry to include observations on registrations and claims at the next meeting

## Other business and close

- ATO and AusIndustry thanked members for attending and sharing valuable insights on their Covid-19 experiences
- Members were encouraged to propose agenda items or topics for discussion for future Roundtable meetings
- Feedback is welcome at [rdti.engagement@industry.gov.au](mailto:rdti.engagement@industry.gov.au)

End of Summary

## Appendix A



Program  
Update.pdf