

The R&D Tax Incentive is jointly administered by:



AusIndustry



www.business.gov.au/RDTI
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R&D Tax Incentive Stakeholder Reference Groups

March 2023

AGENDA

Item	Speaker/s
1. Welcome 1.1. Acknowledgement of country 1.2. Welcome	Facilitator
2. DISR Insights 2.1. Customer portal 2.2. Advance finding pilot 2.3. Registrations update 2.4. Data insights 2.5. Litigation insights 2.6. Policy update 2.7. Introduction of new managers	Anneliese Appleton, Assistant Manager, Business Support Anneliese Appleton, Assistant Manager, Business Support Joanne Taylor, Acting Manager, Registrations Mark Muir, Manager, Administrative Review Chiara Cirillo, Manager, Administrative Review Lyndall Milward-Bason, Manager, Business R&D Policy Elizabeth Minogue, Manager, Governance Rachael Lawrence, Manager, Business Support
3. ATO Insights	Brett Challans, Senior Director, Innovation Taxes
4. ATO Guidance Updates	Brett Challans, Senior Director, Innovation Taxes
5. Compliance Insights 5.1. Unknown outcome vs new knowledge 5.2. Competent professional	Tom Gilbert, Manager, National Assessment Team
6. Digital Games Tax Offset	Penelope Sherburn, Digital Games and Business Development, Office for the Arts, Department of Infrastructure, Transport, Regional Development, Communications and the Arts
7. Other business and close	Facilitator

1. Welcome

The meeting commenced with an Acknowledgement of Country and welcome to attendees.

2. DISR insights

2.1 Customer portal

- Over 20,000 applications have now been submitted through the portal since it launched on 4 July 2021.
- There have been no portal updates in the last 6 months and no further major updates planned at this point in time.
- Accessing the portal for the first time involves additional steps which can take time to work through.
- To avoid registration delays:
 - Ensure the ABN displayed in the top left corner is that of the head entity for tax purposes.
 - Select the correct income period as the income period and income year cannot be changed after the application has been submitted.
 - Ensure authorisation to access the portal on behalf of an ABN has not expired. Authorisations can only be extended by a representative from the R&D entity.

2.2 Advance Finding pilot

- Advance Findings (AFs) provide companies with certainty around the eligibility of their R&D projects for up to three income years and may help them raise funds, secure finance, recruit and retain talent through longer-term contracts and make important investment decisions.
- DISR has recently streamlined the administration of processing AF applications, significantly reducing the timeframes for assessment.
- DISR has also been working with the Technology Council of Australia to deliver an AF 'pilot' to software-related companies that want to access the R&DTI Program. The pilot aims to address software and tech companies' requests for enhanced certainty and guidance when applying for the R&DTI program.
- Small group consultation sessions were conducted by DISR Case Managers with software sector expertise throughout March 2023. The consultations were designed to provide the 23 participating companies with information on the R&DTI program, an understanding of the purpose of advance findings and details on how to apply via the R&DTI portal.
- These companies now have until 26 April 2023 to submit their AF application.
- Company feedback is being collected throughout the process to measure effectiveness of this form of guidance.

2.3 Registrations update

R&DTI registrations

- The registration deadline for the income year that ended on 30 June 2022 has been amended from 30 April 2023 to 2 May 2023 as the next business day in all states.
- This is a peak period for registration applications. Up to 30% of the 12,000 plus applications received each year are submitted during the last week of April. As a result, registration processing times will be extended significantly.

Key points to assist in preparing applications:

- Ensure all parts to each question are answered, particularly as some are asked in two parts.
- Ensure that you state your hypothesis in terms of how the outcome is unknown or unknowable.

RSP applications

- From 30 June 2023, all RSP application forms will be moved to the customer portal. This includes New RSP Applications, RSP Variation Applications and RSP Annual Renewal Applications.
- RSP registrations for the 2023-24 financial year will be submitted through an online Smart Form, which will be available from Monday 1 May 2023 to 31 May 2023.
- More information about the Smart Form will be provided in the annual renewal communications which will be sent to RSPs in the coming weeks.

2.4 Data insights

- During the 2020-21 income year, there were 12,403 registrations and total registered R&D expenditure of \$13.4 billion.
- R&D expenditure has increased approximately \$800 million increase since the 2019-20 income period.
- Small-to-Medium Enterprises (SMEs) with a turnover of less than \$20 million comprised the majority of registrations (88%) and accounted for slightly less more than half (51%) of R&D expenditure.
- Large companies with turnover greater than \$20 million comprised 12% of registrations and 48% of R&D expenditure.
- ICT registrations constituted 45% of all R&D Registrations and 37% of R&D Expenditure in 2019-20.
- Registrations from the services sector constituted 53% of all R&D expenditure, with the manufacturing sector comprising 30%.

2.5 Litigation insights

Determinations

- Over 121 applications have relied on the Industry Research and Development (Clinical Trials) Determination since it commenced on 1 April 2022, covering over 763 individual activities.
- A determination framework is being established to support the development of future Determinations.
- Future determinations will:
 - align with Government priorities
 - demonstrate high value to the economy
 - strengthen the intent of the program
 - resolve uncertainty and provide clarity
 - deliver savings for applicants and for the administration of the program
 - be supported by data

Approach to litigation

- Industry Innovation and Science Australia's (IISA) litigation approach is to assist the Administrative Appeals Tribunal (AAT) to reach the correct or preferable decision on the facts and information before it.
- Companies are encouraged to provide further information or evidence early in the AAT review process so that IISA can review its position on eligibility of the claimed activities.
- Should the IISA come to a view that there are grounds to reverse a decision under review in whole or in part, it will act quickly to reach agreement with the applicant to resolve the matter.
- While the IISA considers AAT decisions when forming policy positions, these decisions are not precedential as they are always based on the specific facts of a case and are not necessarily applicable to the program more broadly. AAT decisions are reviewed in light of internal policy and operations to build best practice administration.
- As evidence and record-keeping are key to the process, it is essential that all registrants keep contemporaneous records and evidence to support their claims. In the absence of any evidence, IISA may find it difficult to determine eligibility.
- R&D entities are encouraged to actively engage with IISA when involved in compliance activities. Early engagement can often lead to narrowing the issues in dispute and help to ascertain what records may be required to establish eligibility.

2.6 Policy update

- The Government released the Board of Taxation (BoT)'s Review of the R&D Tax Incentive Dual Agency Administration Model report on 29 March 2022. Recommendations included:
 - Reviewing how the performance of the R&DTI is measured against its legislated objectives, especially regarding additionality and spillover goals
 - The improvement of information sharing between relevant agencies
- An additional policy focus is determining how the R&DTI can better support business-research collaboration through both its Registered Research Service Provider (RSP) provisions and the number of innovation active businesses participating in the program, potentially through:
 - Expanding cross-promotion with other programs
 - Improving website offerings
 - Other outreach, engagement, and communication services
 - Improved linkages with other initiatives

2.7 Introduction of new managers

New members of the R&DTI Branch at DISR were introduced to attendees. Elizabeth Minogue, Manager of Governance and Stewardship and Rachel Lawrence, Manager of Business Support

3. ATO Insights

4. Changes to legislation effective since 1 July 2022 have gone smoothly. General and specific advice requests on uniform clawback provision and feedstock adjustment have increased. Information on feedstock calculation is on the website and new guidance has been released which should help with responding to the advice requests. The ATO is happy to assist in reviewing feedstock calculations, but will require the actual calculations to be sent through so we can follow the methodology and provide feedback.
5. An additional legislative change will occur after 1 July 2024. The ATO will publish R&D claimant information for the 2022 year and this will be an ongoing annual publishing process. This will include R&D entity name, ABN and R&D notional deduction claimed less feedstock.

6. ATO Guidance updates

- The ATO website has been updated with new guidance content and improvements to website functionality. Further updates are ongoing with additional content to be released.
 - Issues are arising with claims for payment to associates. Payments are not considered made when:
 - payment is converted to a loan
 - 'round robin' payments are made where payment is returned so the next payment can be made in a cyclical nature
 - loans are being used as contingent payments where payment is expected after an anticipated future event (for example, listing on a stock exchange)
 - shares are being issued as payment, which is disallowed by TR 2008/5.
- Another issue observed is the use of one apportionment rate for all overhead expenditure claims (for example, a percentage of the profit/loss statement). This is an estimate, correct calculation can only be used for overheads on R&D and the most appropriate apportionment rate.
- Record keeping remains a key issue for the program.
- The ATO offers support to companies and consultants in the program and is open to queries.

7. Compliance insights

7.1 Unknown outcome vs new knowledge

- R&DTI entities typically conduct activities for the purpose of generating new knowledge in the form of new or improved materials, products, devices processes or services.
- Conducting activities for this purpose does not necessarily mean that the activities have an outcome that cannot be known or determined in advance on the basis of current knowledge, information and experience.
- R&D entities must ensure that they have established that the outcome being pursued is, on a world-wide basis, beyond the scope of competent professional expertise to predict.
- Records must be kept evidencing the steps taken to establish this understanding, such as details of literature or resources reviewed or information on experts consulted.
- When articulating the unknown outcome in the registration form, if there is insufficient space to provide the required level of detail then the activity may need to be broken down further.
- DISR seeks to understand the unknown outcome of each registered core activity.
- The scientific uncertainty at the heart of an experiment can be unclear at the project level however is often easier to identify at the activity level. This approach is consistent with the legislation which refers to activities, not projects.
- If an activity does not meet the unknown outcome requirement, it will be reviewed within the overall program of work and considered for eligibility as a supporting activity.

7.2 Competent professional

- Competent professional is a notional concept describing a hypothetical person who has access to the knowledge, skills and qualifications needed to demonstrate expertise in an appropriate field. Having kept up with their continuing professional development they have access to all of the current knowledge available in the relevant field from anywhere in the world, provided that the information or experience is publicly available or reasonably accessible.
- Proprietary knowledge and expertise, that is restricted by NDAs and other intellectual property protection measures would not be considered publicly available or reasonably accessible.
- In cases where a staff member within the R&D entity is the pre-eminent authority in a field, records or evidence of this is compelling. This could include presentations to industry associations or published papers.
- This staff member will need to evidence that they have used their own knowledge and expertise and sought out the knowledge and expertise of others to establish that the only way to determine the outcome of the hypothesis is to conduct scientific experimentation.

8. Digital Games Tax Offset

Legislation for The Digital Games Tax Offset (DGTO) is currently before Parliament and is subject to change. This information is provisional only. The program will be established under Division 378 of the *Income Tax Assessment Act 1997*.

- Penelope Sherburn from Digital Games and Business Development, Office of the Arts provided an overview of the program and advised that the DGTO is:
 - a refundable tax offset designed to support the growth of the digital games industry in Australia by providing concessional tax treatment for Australian expenditure on developing games
 - intended to make Australia a more attractive and competitive destination for international digital games development and support investment and highly skilled transferable jobs in Australia
 - claimable for expenditure incurred from 1 July 2022, providing a 30% refundable tax offset which will be applied retrospectively.
- To be eligible, a business must:
 - be an Australian resident company or a foreign resident company with a permanent establishment in Australia

- spend a minimum of \$500,000 on Qualifying Australian Development Expenditure (QADE).
- An eligible company, or group of related eligible companies, can claim a maximum offset of \$20 million rebate per year.
- There is no limit on how many claims a company can make in a single income year.
- Eligible games must be publicly available through the internet and be made for educational or entertainment purposes.
- Ineligible games include those which are designed for industrial, corporate, institutional or advertising purposes. Games with gambling elements and those unable to achieve classification by the classification Board are also ineligible.
- There are three certificates available under the DGTO:
 - Completion Certificate: for the development of a new game.
 - Porting Certificate: for the movement of a game from one platform to another.
 - Ongoing Work Certificate: for ongoing post release work.
- Applications will be submitted assessed by the Office for the Arts with the assistance of independent industry experts.
- Every application will be reviewed by the Digital Games Tax Offset Advisory Board. The membership of the board will comprise of one departmental executive and two industry members.
- The Arts Minister will be responsible for issuing certificates of eligibility, including determining the amount of qualifying spend.
- Once issued, the certificate entitles the applicant company to claim the offset through its income tax return relevant to the year in which the certificate is issued.
- Qualifying Australian Development Expenditure (QADE):
 - development expenditure incurred for, or reasonably attributable to, goods and services provided, or acquired, in Australia on the development of the game
 - includes salary and wages for employees and contractors who work on the game expenditure and research, prototyping, testing, debugging, collecting user data, updating and adapting the game, and achieving and maintaining classification.
- Costs, which are specifically excluded from qualifying spend as per the legislation are:
 - Any activities not directly related to the development of the game.
 - General business overheads, travel and entertainment marketing and promotion, hardware and distribution.
 - Expenditure incurred in connection to a transaction where the applicant company and another party are associates as defined in section 318 of the *Income Tax Assessment Act 1936*.
 - There is a very limited exception to this rule, where influential employees perform work on the game. This exception relates to circumstances where a game studio founder or CEO is also a lead developer.
 - The salary of this influential employee would not pass this associate's integrity test as the individual, as the founder, could set their own salary.
 - It is acknowledged that this type of business structure is very common in the digital games industry and in in start-ups, and it is not the intention of this provision or the DGTO to rule out such transactions.
 - The legislation provides that expenditure incurred on the remuneration of an influential employee for eligible activities can be claimed up to a limit of \$65,000 per employee per year.
- The department will be releasing a detailed handbook of eligible and ineligible DGTO expenditure which will assist applicants working in this space navigate this new legislation.
- Further information will be available on arts.gov.au once the legislation has received Royal assent.
- Questions can be directed to digitalgames@arts.gov.au or 02 6271 1006.

Action Items

The following action items were collated over the course of all four meetings:

- DISR to consider a deep-dive workshop or deeper discussion at future SRG meetings on how to better understand technical uncertainties of company R&D activities.
- DISR to review clarity of guidance on applying determinations to activities.
- DISR to review customer portal guidance, including clarifying access tile instructions.
- ATO to raise with Tax Practitioners Board that R&D Advisors can't provide advice on programmes in innovation space.
- DISR to provide data at future SRG meetings on:
 - numbers of R&DTI claimants
 - correlation of company revenue growth with R&DTI claims
 - average R&DTI claims values for companies under 2 years old
- DISR and ATO to consider communication improvements around information updates

End of Summary

R&D Tax Incentive Program Update – March 2023

1. Departmental Changes
2. Registrations updates
 - 30 April deadline
 - Registration insights
3. Program guidance
 - Information sessions
 - Website updates
4. Advance finding pilot
5. Research service providers
 - Guidance
 - Registration updates
6. Registrations and claims data

Departmental Changes

The Department of Industry Science and Resources recently underwent a restructure. This included the integration of the R&DTI branch with Venture Capital and Entrepreneurship and the Office of Industry Innovation and Science Australia in the Commercialisation Division led by Nick Purtell. This division sits within Industry and Commercialisation under the purview of Deputy Secretary Julia Pickworth.

For more information, please see the full organisation chart available at industry.gov.au.

Registrations updatesmarch

30 April deadline

The R&DTI registration deadline for applicants with a financial year that ended on 30 June 2022 is **2 May 2023**. This deadline has been amended from 30 April 2023 as this date falls on a Sunday and the next business day is a public holiday in Queensland and the Northern Territory.

To avoid significant processing delays created by numerous extension of time requests in the peak April period, we are advising applicants to establish portal access well ahead of the 2 May deadline. We also ask that tax agents and R&D consultants remind their clients that the principal authority for an R&D entity must first establish access to the portal before they are able to grant authority for others to access the portal on their behalf.

Registration insights

There are several common mistakes made by applicants that can cause a delay in their registration.

Tax agent is given authorised access to the incorrect ABN

The ABN used must be that of the head entity for taxation purposes, not any of the subsidiaries. This should be checked before the application is started as it's not possible for the ABN to be changed in the portal after an application has been drafted or submitted.

Incorrect financial year selected

This is particularly an issue with substituted accounting periods as the portal includes both early and late options. The income period and income year cannot be changed after the application is submitted, the application must be withdrawn and resubmitted for the correct financial year.

Tax agent portal access has expired

Customer portal authorisation access is granted for a set period of time, if this expires it's no longer possible for the tax agent to access the portal on behalf of the company.

Individual authorisation is established via ATO's Relationship Authorisation Manager (RAM). The authorisation details in RAM will show the end date for each ABN's authorisation.

Tax agency authorisation is established via the 'Manage Access' tile in the customer portal. Go to 'Switch Business' to view the end date for each authorisation.

Incorrect project/activity end date

Pre-filling for the next income year will only work for projects/activities that have an end date that continues into the next income year.

Delay in establishing customer portal access

Companies can miss the lodgement deadline if insufficient time is allowed for portal access. Setting up a portal account for the first time can take longer than expected, please encourage clients to commence this process well in advance of the deadline.

Program guidance

Information sessions

DISR and the ATO offer regular online information sessions to explain program requirements and assist companies to self-assess their R&D activities. These sessions are tailored to entities that are new to the program and provide guidance on requirements for both activities and related expenditure, together with information on how and when to apply, and advice on record-keeping.

To assist with accessing the customer portal, DISR offer information sessions which show attendees how to complete the authorisation process, login to the portal for the first time and authorising access for others such as staff, individual tax agents and a tax agency.

All upcoming information sessions are listed on business.gov.au/rdti.

Website updates

You can keep up with major changes to R&DTI website content at business.gov.au/rdti by visiting this page: [latest updates to the R&D Tax Incentive content](#). We recommend that you regularly check this page to ensure any content you reference on your website is up to date.

Advance finding pilot

Industry feedback highlights the importance of providing program participants with upfront certainty before they register and obtain the tax offset. In response to this feedback, DISR has worked diligently over the past year to streamline the advance finding process and deliver faster decisions. As part of this effort, DISR is now conducting a pilot program with software companies to showcase the progress that has been made to date and to test further improvements.

The pilot team held a webinar on 8 February 2023 to educate potentially eligible companies about advance findings, their benefits, and how to participate in the pilot. Interested companies have until 10 March 2023 to register for small group consultation sessions with an R&DTI software expert. These sessions will provide clarity on eligible R&D activities and allow for two-way communication to learn more about advance findings in the software context.

Participants in the pilot program will then have until 26 April 2023 to submit their advance finding applications. The DISR team will conduct a full assessment and release decisions before 30 June 2023.

Companies interested in participating in the pilot should contact rdti.engagement@industry.gov.au for more information.

Research service providers

Guidance

We continue to use feedback gathered at the 2022 Roundtable working group on Research Service Providers (RSPs) to inform our communication and education strategy.

We have found that RSPs and companies who collaborate with RSPs are willing to share their experiences through customer stories. We released a short video sharing various stories from companies who have worked with RSPs, and a university professor involved in collaboration with companies. More customer stories are in production for release later in the year.

We have updated the business.gov.au webpage advising companies through a step-by-step guide on how to collaborate with RSPs.

Registration updates

The deadline is approaching for Research Service Providers to renew their registration for the 2023/24 financial year. An online Smart Form, developed to provide a better and consistent user experience for all RSPs, will be available from **Monday 1 May 2023**. This form will be distributed to all RSPs currently registered with the program through our annual renewal communication.

What you need to know

- Registrants can review their existing *Fields of Research* on the [online register](#) and reflect updates to their *Fields of Research* in the RSP application.
- Applications are due by 31 May 2023 and the smart form will be decommissioned at 11:59pm (AEST) on 30 June 2023. The [online register](#) will be updated in July 2023.
- With the decommissioning of our Smart Forms, this renewal process will migrate to the R&DTI Customer Portal which will align RSP registrations with registrations for the R&DTI program.
- From 1 July 2023, all RSP application forms will be available in the R&DTI Customer Portal. This will include New RSP Applications, RSP Variation Applications and RSP Annual Renewal Applications.
- New users of the R&DTI Customer Portal can view a walk-through of the customer portal on the customer portal help and support page at business.gov.au/rdti.

The RSP team can be contacted at rsp@industry.gov.au for assistance.

Registration and claims data

The below figures demonstrate R&D Tax Incentive registrations for the 2020/2021 income period. This is the most recent complete dataset due to the application period closing 10 months after the end of the financial year.

Please note that where the count of registrations for a metric is less than 5, or expenditure is below 1 million dollars, the information is not presented.

Table 1: Overall registrations

R&D TAX INCENTIVE PROGRAM REGISTRATIONS	
Number of Registrations	12,403
R&D Expenditure (billion)	\$13.40

Table 2: Comparison of registrations and expenditure by organisation size

REGISTRATIONS/EXPENDITURE	SMES	LARGE COMPANIES
Number of Registrations	10,871	1,532
R&D Expenditure (billion)	\$6.91	\$6.49

Table 3: Overall claims for the full 2020/21 financial year (ATO)

CLAIMS	REFUNDABLE	NON-REFUNDABLE
Number of Claims	10,513	1,209
Offset paid or applied (billion)	\$2.7	\$2.0

Table 4: Comparison by sector – Australia-wide

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	7,671	3,524	515	412	281
R&D Expenditure (million)	\$7,213	\$3,956	\$671	\$1,216	\$346

Table 5: Comparison by sector – NSW

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	3,036	1,074	113	51	92
R&D Expenditure (million)	\$3,348	\$1,554	\$218	\$116	\$180

Table 6: Comparison by sector – VIC

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	2,287	1,066	107	30	58
R&D Expenditure (million)	\$2,307	\$1,259	\$88	\$206	\$98

Table 7: Comparison by sector – QLD

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	1,198	736	126	90	46
R&D Expenditure (million)	\$734	\$623	\$107	\$158	\$29

Table 8: Comparison by sector – WA

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
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Number of Registrations	629	366	78	213	61
R&D Expenditure (million)	\$456	\$272	\$69	\$676	\$27

Table 9: Comparison by sector – SA & NT**

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	328	226	50	21	18
R&D Expenditure (million)	\$239	\$183	\$58	\$56	\$6

Table 10: Comparison by sector – ACT

	SERVICES	MANUFACTURING	AGRICULTURE, MINING** AND E,G,W & WS*
Number of Registrations	144	20	10
R&D Expenditure (million)	\$103	\$39	\$6

Table 11: Comparison by sector – TAS

	SERVICES	MANUFACTURING	AGRICULTURE	MINING** AND E,G,W & WS*
Number of Registrations	49	36	36	8
R&D Expenditure (million)	\$26	\$26	\$130	\$5

* Electricity, Gas, Water & Waste Services

** Combined for confidentiality reasons.

Comparison of registrations by States and Territories

