

The R&D Tax Incentive is jointly administered by:



Australian Government
Department of Industry,
Science and Resources

AusIndustry



Australian Government
Australian Taxation Office

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

9 November 2023
1.00pm – 4.00pm AEDT

Time	Item	Speaker/s
1.00pm – 1.05pm	1. Welcome 1.1. Acknowledgement of Country 1.2. House keeping	Facilitator
1.05pm – 1.30pm	2. ATO Insights 2.1. ATO program update 2.2. The R&DTI program of work 2.3. Current observations 2.4. Litigation update 2.5. ATO expectations	Brett Challans, Senior Director, Innovation Taxes, ATO
1.30pm – 2.00pm	3. DISR Insights 3.1. Customer portal 3.2. Advance Finding Software Pilot 3.3. Registrations insights 3.4. Litigation insights 3.5. Joint program charter 3.6. Compliance insights 3.7. Insider Plus newsletter	Rachael Lawrence, Manager, Business Support Rachael Lawrence, Manager, Business Support Emily Hodges, Manager, Registrations and Early Engagement Chiara Cirillo, Manager, Administrative Review Elizabeth Minogue, Manager, Governance and Regulatory Stewardship Tom Gilbert, Manager, National Assessment Trish Ivar, Manager, Stakeholder Engagement
2.00pm – 2.15pm	4. Tax Transparency Measure	Leisa Letheby, ATO
2.15pm – 2.55pm	5. Determinations Discussion	Chiara Cirillo, Manager, Administrative Review
2.55pm – 3.00pm	Break	
3.00pm – 3.15pm	6. Joint Review	Brett Challans, Senior Director, Innovation Taxes, ATO
3.15pm – 3.55pm	7. Advance Findings Discussion	Tom Gilbert, Manager, National Assessment
3.55pm – 4.00pm	8. Meeting close	Facilitator

1. Welcome

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

The program update included with the agenda papers (**Attachment 1**) was taken as read.

2. ATO Insights

The ATO is focussed on the tax transparency measure, where data related to the R&DTI will be released publicly from September 2024. Communications have commenced and the ATO is developing an information sheet. This will ensure that all claimants are informed of the measure before it comes into effect and have had the opportunity to correct any errors in claims.

The ATO and DISR as co-administrators are working together on a joint review which will provide vital information about the integrity of the program.

A public advice and guidance program is in place for the next 12 months which will result in updated guidance being released. Members are encouraged to make submissions on areas where updated guidance would be most valuable.

Guidance has recently been released clarifying R&DTI program integrity rules and further communications are planned for the remainder of the 2023-24 financial year.

The ATO noted that some expenditure claims being made lack the required substantiation, resulting in a high number of voluntary disclosures when claims are reviewed.

R&D entities may be under the impression that registering activities with DISR means they are automatically entitled to an R&D offset. However, claiming is a two-step process and evidence is also required to support the expenditure. The ATO will monitor expenditure and request to see this evidence if risk criteria are met.

3. DISR Insights

3.1 Customer portal

Work is underway to establish a forward plan to prioritise future system enhancements for the customer portal, focussing on the needs of program users.

In the immediate period, the Advance and Overseas Finding form is being redeveloped to address stakeholder feedback and ANAO recommendations. The updated form will be live from 1 July 2024 and will gather more information upfront to reduce assessment timeframes.

A targeted stakeholder consultation process occurred with businesses and tax consultants that have previously used the form.

The scope of the project is restricted to redeveloping the form, funding for the project does not extend to further enhancements such as automation.

3.2 Advance Finding software pilot

The objective of this pilot, which has now concluded, was to demonstrate the benefits of advance findings for software companies and to determine the effectiveness of small group consultation sessions for companies looking to apply for an advance finding.

Seven applications were assessed following the pilot, with all deemed eligible, assuring eligibility for three years.

The average assessment timeframe for these advance findings was 28 business days.

3.3 Registrations insights

As of 31 August 2023, 12,943 applications had been registered for the 2021-22 financial year, a 4% increase compared to the previous financial year.

Registrations in the Professional, Scientific and Technical Services accounted for approximately one-third of total registrations. This is a 12% increase on the previous financial year.

Service level agreements were met for the 2021-22 income year, this means 95% of applications were processed within:

- 40 business days for first-time registrants
- 20 business days for registrants that applied within 6 months after the end of the income period
- 80 business days for applications submitted from 6 to 10 months after the end of the income period.

Key points related to time extension requests:

- Time extension requests can be approved for up to 92 days after the statutory deadline.
- Requests can only be submitted and processed through the customer portal; any requests submitted via email cannot be approved.
- A 14-day extension is granted to all applicants unless otherwise requested. If a longer extension is required, this information must be included within the request.

Research Service Provider (RSP) application forms are now available on the customer portal. The online register of RSPs on the business.gov.au website has been updated for the 2023-24 year.

3.4 Litigation insights

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.

AAT decisions are based on the specific facts of the case and are not necessarily applicable to the R&DTI program more broadly.

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 considering internal policy and operations to build best practice administration.

As IISA's focus is to ascertain eligibility and uphold the integrity of the program settlements will not occur if there is insufficient evidence to establish eligibility.

Evidence

As evidence and record-keeping are key, 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.

Most Recent AAT Decision - Lakes Oil

AAT handed down its decision in *Lakes Oil v Innovation and Science Australia* (now *Industry Innovation and Science Australia*) on 14 April 2023.

The activities related to proposed fracking (i.e. work associated with determining the potential of hydraulic fracturing to achieve commercial flow rates at certain depths).

AAT affirmed IISA's decision that none of Lakes Oil's claimed activities were eligible R&D activities in certain income years as the activities fell within an excluded category of activities that included exploring, prospecting or drilling (section 355.25(2)(b) of the Income Tax Assessment Act).

AAT found that 'prospecting, exploring or drilling for minerals or petroleum for the purposes of one or more of discovering deposits, determining more precisely the location of deposits, and/or determining the size or quality of deposits' is expressly excluded from the definition of core R&D activities.

AAT's decision focussed on the importance of a valid hypothesis (which must have a scientific basis) as the starting point in determining whether claimed activities are experimental and follow a systematic progression of work.

The decision also focussed on the importance of contemporaneous documentation to establish that the claimed activities are eligible, which is consistent with IISA's position. IISA expects companies to provide evidence that they undertook the claimed activities.

3.5 Joint Program Charter

The 2022 Board of Taxation Review of the R&D Tax Incentive Dual Agency Administration Model recommended the two agencies publish a joint charter setting out the expectations and roles of all parties that participate in the R&DTI program.

This Charter will complement rather than replace existing charters, including the ATO's recently published 'Our Charter'.

The Charter is due for release by the end of 2023 and will be a regularly reviewed and updated, living document.¹

3.6 Compliance insights

Advance and Overseas Findings Assessment

Approximately 75% of the advance and overseas finding applications submitted in the 2022-23 have been assessed.

These findings were completed following the new 'shorter findings approach' that was piloted last year, resulting in an average processing time of 70 business days at the time of the meeting.

DISR continues to utilise the services of Canberra-based Proximity Advisory Services to provide support to its assessment capability during the annual advance and overseas finding peak. Feedback from advance and overseas finding applicants who have worked with Proximity remains positive.

Most advance and overseas findings applications are found eligible, which is partially because applicants who cannot demonstrate eligible R&D activities often withdraw from the assessment process after discussion with assessors.

Recent instances of advance and overseas findings being found ineligible include:

- an Australian core activity which could not be evidenced

¹ The program charter is now due for publication in early 2024.

- activities claimed as being conducted wholly within Australia but were in fact being partially conducted overseas
- supporting activities subject to the dominant purpose test that did not meet the relevant requirements.

Compliance Risk Reviews and Examinations

Throughout and in the wake of the COVID pandemic, DISR conducted education and guidance focussed compliance engagements with R&D entities. As these entities return to the program in subsequent financial years, compliance activities will be completed to ensure this guidance has been adhered to and if not, full compliance examinations will be undertaken.

DISR and the ATO continue to engage with individual R&D entities who are at risk of non-compliance with program requirements. Engagement has now also commenced with tax agents and R&D advisers whose clients' registrations display similar compliance risks. This work helps to increase the integrity of the program.

DISR continue to approach each compliance engagement with an open mind, an attitude of suspended judgement, and an appreciation of the importance of procedural fairness. However, matters of non-compliance will be escalated through the appropriate processes.

3.7 R&D Tax Incentive Insider Plus

R&D Tax Incentive Insider Plus will shortly be launching to complement DISR's monthly *R&D Tax Incentive Insider*.²

This collaboration between DISR and the ATO will be released multiple times a year and take a deeper dive into R&DTI content, intended for readers that already understand the program. The aim of this newsletter is to share key messages with tax agents and consultants more broadly and to provide an additional platform to ask questions and provide feedback on the program.

4. Tax Transparency Measure

The ATO is required to publish publicly certain information regarding entities who claim the R&DTI. The first year to be published is the 2022 income year where the income year starts at or after 1 July 2021. The first release of the data is planned for September 2024.

ATO is undertaking a communication strategy to increase the awareness about the measure and seeking entities claiming the R&DTI to review the labels to be published to ensure they are correct and to lodge an amendment to correct any errors. The first outbound email communication to tax agents was issued in October 2023. There will be another email communication to tax agents in February 2024 to remind entities to review the labels and lodge amendments prior to 31 March 2024. The third email communication is planned to issue in July 2024 confirming when the data will be released and other information to help understand the data.

5. Determinations

The background brief on determinations (**Attachment 2**) included with the agenda papers was taken as read.

The IISA Board can make a determination that states how it will exercise its powers under Part III of the IR&D Act.

The aim of determinations is to improve the efficiency and effectiveness and user satisfaction with the R&DTI program.

The first determination on clinical trials came into effect on 1 April 2022. DISR are currently measuring the effectiveness of this first determination through feedback sessions with users and non-users of the determination.

² The first edition of the *R&D Tax Incentive Insider Plus* was launched in November 2023.

These feedback sessions focus on understanding the time and cost savings for applicants and advisers as a result of relying on the determination. Respondents have reported:

- An estimated time saving ranging from 25% up to 75% for clinical trials applications with a CTN and a basic level of complexity
- A reduction in the amount of evidence consultants need to request from their clients
- The determination did not create additional interest in the R&DTI program, but it has confirmed Australia's reputation as an attractive place to conduct R&D in the life sciences.

Attendees were invited to suggest topics that would benefit from a future determination based on their experience of the program. This feedback was gathered and will be used to inform the development process.

6. Joint Review

DISR and the ATO are conducting a joint review of around 170 R&DTI applications and claims that were made during the 2021-2022 income year.

The review will assess the eligibility of R&DTI activities and/or expenditure and identify any potential issues with R&DTI registrations and claims.

DISR and the ATO will work together to limit the impact on companies included in the review. No specific areas of concern have been targeted. All companies have been randomly selected and the review will include refundable and non-refundable claims industry wide.

This new process will help to ensure program integrity and identify any gaps in current guidance products.

The review will commence in November 2023 and conclude mid-2024.

7. Advance Findings

Advance findings are binding on the Commissioner of Taxation and provide R&D entities with up to three years certainty that their R&D activities are eligible.

Despite the availability of advance findings as a mechanism that provides certainty, users of the program have consistently, over many years, provided feedback that we as regulators should provide more certainty.

Over the 12-year history of the program, around 300 applications for advance findings have been received.

While R&D entities appreciate the self-assessment aspect of the program, the prospect of retrospective compliance action after registration and receipt of the associated tax offset can be a cause for concern.

The 2021 ANAO audit of the R&DTI recommended that DISR undertake analysis to better understand why R&D entities do and do not apply for advance findings.

Results from a 2022 survey show that advance findings have been valuable for those few R&D entities that use them and were viewed as unnecessary by those that didn't.

R&D entities more likely to have submitted an advance finding were:

- the applying R&D entity themselves
- R&D entities in their conception or start-up life stage
- R&D entities conducting biotechnology R&D activities
- R&D entities with estimated expenditure of over \$1m

Reasons R&D entities do not apply for advance findings include:

- they are sure that their R&D activities are eligible
- they are unaware of the advance finding offering
- they don't see the need for an advance finding
- time commitment involved in applying
- perceived complexity of applying.

Following this survey, DISR has established an Advance Finding Strategy team to review potential opportunities to increase the uptake of advance findings.

Attendees were invited to discuss what factors, circumstances, or barriers influence the decision not to seek an advance finding and potential improvements that could be made to the process. Key themes raised included the cost/benefit of procuring an advance finding, streamlining the administrative process for advance finding applications, and the adoption of mechanisms used in similar programs by other jurisdictions. This feedback will be used in the development of the Advance Finding Strategy.

Attachments

[Attachment 1 – R&D Tax Incentive program update](#)

[Attachment 2 – Determinations background brief](#)

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AusIndustry



www.business.gov.au/RDTI
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Attachment 1

R&D Tax Incentive Program Update

1. Joint review of R&DTI claims
2. Tax transparency measure
3. Tax Determination 2023/5
4. Advance and Overseas Finding form
5. Joint Program Charter
6. Business expenditure on R&D
7. Service level agreements
8. R&D notional deductions updates
9. DISR Registration update
 - Application insights
 - Registration trends
 - Registration and claims data

The Department of Industry, Science and Resources (DISR) and the Australian Taxation Office (ATO) wish to provide the following Research and Development Tax Incentive (R&DTI) program updates:

1. Joint review of R&DTI claims

DISR and the ATO are conducting a joint compliance review of a random selection of R&DTI registrations and claims made for the 2021-2022 income year.

The purpose of this review is to assess the eligibility of registered R&D activities and expenditure, to provide vital information on the integrity of the program, and inform the development of updated, contemporary risk indicators for use in future integrity assurance activities.

This will allow us to better direct education and guidance activities towards companies that would benefit from greater assistance in meeting the program's obligations.

The review commenced in October and is occurring alongside other integrity and compliance activities. It is expected to be complete by mid-2024.

2. Tax transparency measure

The ATO will soon be required to publish information about R&D entities and the R&D expenditure claimed by those entities, 2 years after the end of the financial year of the claim. The first publication of this information is for R&D entities that lodged a 2022 company tax return with a R&D Tax Offset and their income year began on or after 1 July 2021. The ATO expects to publish this information in September 2024 and will then be publishing this information on an annual basis.

The ATO is publishing this information to improve public accountability for R&D claimants and to encourage voluntary compliance with the R&D program. More information about this new requirement is available on our website ato.gov.au by searching for 'QC 70867'.

The information published from the forms lodged will be the:

- name of the entity claiming the R&D tax incentive
- Australian business number (ABN) or Australian company number (ACN)
- the entity's total expenditure on R&D (known as total notional deductions claimed – label Z in Part A of the R&D tax incentive schedule) less any feedstock adjustments (label B in Part B of the R&D tax incentive schedule).

This will be based on what you provided in your company tax return or, if you amended your company tax return, your amended return.

If the Commissioner amended the labels, we're required to publish, the total expenditure on R&D based on the company return lodged prior to the Commissioner-initiated amendment.

3. Tax Determination 2023/5

In September 2023, the ATO issued a public ruling Taxation Determination TD 2023/5 *Income tax: aggregated turnover and connected entities – Commissioner's discretion that an entity does not 'control' another entity*.

Aggregated turnover is an entity's turnover, plus the annual turnovers of any business entities that are affiliated or connected. Aggregated turnover is used to determine if an R&D entity is entitled to a refundable offset (less than \$20m of aggregated turnover) or non-refundable offset (in excess of \$20m of aggregated turnover).

This determination addresses issues that arise when the ATO considers whether to exercise the Commissioner's discretion to determine that one entity (the first entity) doesn't 'control' another entity (the test entity).

The question of 'control' is central to determining who is connected with an entity. These connected or affiliated entities may be based in Australia or overseas. More information on TD 2023/5 can be found at ato.gov.au.

4. Advance and Overseas Finding form

DISR is currently reviewing the Advance and Overseas (AOF) application form to be more user friendly while also reducing application processing times. This review has been informed by recommendations of the 2021 ANAO Administration of the R&D Tax Incentive Audit, the 2022 Board of Taxation's Review of the R&D Tax Incentive Dual Agency Administration Model Report, and feedback received from program users.

The revised application form will include questions from the existing R&DTI Registration Application form, offering greater consistency across the program.

Existing questions will be updated to provide a better user experience and additional questions have been included to reduce the need to request further information from the applicant. This is anticipated to improve assessment processing times for applications.

It's anticipated that companies will be able to access the new form in the R&DTI Customer Portal from 1 July 2024.

5. Joint Program Charter

In March 2022, the Government published the Board of Taxation's Review of the R&D Tax Incentive Dual Agency Administration Model Report. The Review considered issues relating to potential improvements to the governance of the R&DTI program and recommended a Joint Program Charter be developed.

The purpose of the Joint Program Charter is to provide clarity and consistency to companies participating in the R&DTI program and set out expectations and roles of DISR and the ATO. We are currently developing the Program Charter with a view to publication in November 2023.

6. Business expenditure on R&D

On 25 August 2023, the Australian Bureau of Statistics (ABS) released data on Business Expenditure on R&D (BERD) as part of its Research and Experimental Development, Businesses, Australia, 2021-22 publication. The publication draws from biennial surveys and represents the latest available expenditure data on research and experimental development.

BERD grew significantly to \$20.6 billion in 2021-22, up 14 per cent from 2019-20 in the previous publication reference period. In chain volume terms, a measure that better accounts for changes to price relativities from one year to the next, BERD grew by 8 per cent. This increase is supported by an increase in human resources devoted to R&D in the business sector to 91,414 in 2021 (measured in person years of effort), up 18 per cent from 2019-20.

In terms of R&D expenditure as a share of GDP, BERD has broadly kept pace with overall economic growth, maintaining its share of GDP at 0.9 per cent (since 2017-18). This result indicates BERD is now stabilising following a trend of decline since 2008-09, when BERD as a share of GDP peaked at 1.37 per cent.

The positive signs of growth in business R&D are also reflected through the R&DTI. It is forecast to grow by 6.1 per cent to \$3.2 billion in 2022-23, as described in DISR's Science Research and Innovation Budget Tables published 28 April 2023.

7. Service level agreements

DISR's Corporate Plan 2022-23 outlines a performance measure for the delivery of the R&DTI program. It outlines that 95% of applications for registration of R&D activities are processed within: 40 days for first-time registrants, 20 business days for registrants that have applied within 6 months after the end of the income period, and 80 business days for registrations submitted from 6 to 10 months after the end of the income period.

These target performance standards were met for 2021-22 financial year applications, with more than 95% of applications being processed within the target timeframes. By processing registrations within these timeframes, the flow-on effects for companies from the R&DTI can flow quicker into the economy.

8. R&D notional deductions updates

The ATO has identified a number of ongoing issues with a number of the integrity rules of the R&D program. The ATO is seeking voluntary compliance with these and other integrity rules of the program. Where there is doubt, please contact the ATO for certainty.

Payments to Associates

For Payments to Associates to be claimed in the year it is incurred it must also be paid in the current year (paragraph 355-205(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997). Section 355-480 of the ITAA 1997 provides for the company being able to claim the amount paid to associates in later years when payment occurs, unless the company

has made an irrevocable election to claim a general or other specific provision deduction in the year of the expenditure, which **precludes** a future R&D notional deduction.

The ATO has identified arrangements where it has been argued that payment has been made. The ATO has reviewed these arrangements and regard the arrangements as not resulting in payments made to the associate.

- **Arrangement 1 – Converting the amount owing to an associate as a loan:**
Converting an amount owed to associate to a loan, usually for a term of a number of years, is not payment to the associate. All that is occurring is converting a current liability to a deferred liability. The amount remains unpaid, and therefore a liability, but with a longer period to repay.
- **Arrangement 2 – Offsetting the amount owed to an associate for a fee that the associate owes for the use of the intellectual property being developed that is the R&D project:**
The R&D entity and the associate have entered into a licencing agreement so the associate can exploit the R&D being developed. The licence fee payable by the associate is offset against the amount that the R&D entity owes the associate for R&D services. The concern we have with these arrangements is that the R&D is still under development, resulting in the question of what is being exploited commercially. In other non-arm's length arrangements, the amount being transacted is often more than market value.
- **Arrangement 3 – Round robin transactions:**
The associate lends money at the end of the financial year to the R&D entity to pay the amounts owed to the associate. Usually, the amounts lent are small amounts and occur over several repeated transactions. These transactions are repeated until the whole amount to the associate has been 'paid'. The circular transactions are considered artificial in nature and contrived to receive a taxation benefit. These arrangements are being closely scrutinised and may attract a greater penalty by the ATO.

“Conducted For”

An R&D entity is only entitled to the R&D tax offset if the R&D activities are conducted for their benefit under s 355-210 of ITAA 1997, otherwise known as the 'on own behalf' rule. Expenditure on R&D activities cannot be notionally deducted if they are not conducted for the R&D entity or are conducted 'to a significant extent' for another entity.

To determine if the 'conducted for' rule is satisfied, an 'on balance' assessment is made of which entity benefits from the R&D activities and requires consideration of who bears the financial risk, has effective ownership of the results of the R&D activities and has control over the conduct of the R&D activities.

Aggregated Turnover

An R&D entity's entitlement to the refundable R&D tax offset is dependent on their 'aggregated turnover' being less than AUD\$20 million. Section 355-100 of the ITAA 1997 deals with the entitlement to the refundable or non-refundable R&D tax offset for a particular income year. Aggregated turnovers of \$20 million or more are not entitled to a refundable tax offset and will be entitled to the non-refundable R&D tax offset. Entities that are 50% controlled by exempt entities, regardless of their aggregated turnover are entitled to the non-refundable R&D tax offset.

Turnover is defined in ss 328-120 (1) as "ordinary income derived in the course of ordinary course of carrying on a business".

The aggregated turnover is calculated from the perspective of the R&D entity and includes its turnover and the turnover of any entities that are 'connected' and/or 'affiliated' with it, on a worldwide group basis, at any time during the income year. It is based on ordinary income and not assessable income so it does not matter if the turnover of connected or affiliated entities would be subject to taxation in Australia.

Overseas Expenditure

An R&D entity can only claim expenditure for activities conducted overseas where the entity has obtained an overseas finding from the Department Industry, Science and Resources and meet the following conditions:

- the overseas activity must be an eligible R&D activity
- there must be a significant scientific link to an Australian core R&D activity
- the overseas activity must not be able to be conducted in Australia
- the costs for overseas R&D activities must be less than the costs of related R&D activities undertaken solely in Australia.

In the absence of an Overseas Finding, claimants must be able to demonstrate the work was carried out in Australia and not subcontracted out or otherwise performed overseas. The physical location of where the work is being conducted is relevant and needs to be considered.

If R&D activities are conducted for a related foreign entity, expenses incurred on overseas R&D activities cannot be claimed irrespective of whether a positive overseas finding is obtained. Australian supporting R&D activities also cannot be claimed if the corresponding core R&D activity was conducted overseas.

Expenditure Not At Risk

An R&D entity cannot notionally deduct expenditure under the R&D tax incentive if the expenditure is not at risk pursuant to section 355-405 of the ITAA 1997. Expenditure is not at risk to the extent that when it is incurred the R&D entity could reasonably be expected to receive an amount of consideration:

- As a direct or indirect result of the expenditure being incurred (the nexus to expenditure test), and
- Regardless of the results of the activities on which you incur the expenditure (regardless of the results test).

TR 2021/5: *Income tax: Research and development tax offsets – the ‘at risk’ rule*, provides guidance on the tests in determining whether your expenditure is at risk under section 355-405 of the ITAA 1997. If the R&D entity has received a grant to undertake the activities, the expenditure is not at risk. Similarly, if the R&D entity has a contract to undertake the activities, the expenditure is not at risk.

9. Registration updates

Application insights

The following insights are based on DISR observations of recent applicant experience, including over the 2023 peak registrations period.

Time extension requests

Time extension requests can be approved for up to 92 days after the statutory deadline. Requests can only be submitted and processed through the R&DTI customer portal; any requests submitted via email cannot be approved.

Many companies submitted time extension requests because insufficient time was assigned to establish access to the R&DTI customer portal. It is important that companies are aware that setting up a portal account for the first time can take longer than expected. This process should commence well ahead of the deadline to avoid any issues with lodgement.

Unless otherwise requested, a 14-day extension is granted to all applicants who submit an extension of time request. If companies require a longer extension this information should be included within the request to prevent the need for multiple time extension requests.

Completing the application form

Pre-filled registration application forms in the R&DTI customer portal do not pre-fill all the fields for multi-year activities. The tasks performed and outcomes achieved in each activity need to be updated each year.

All details in the application form should be checked to ensure they are correct before submission. Contact details and estimated R&D expenditure amounts are fields that are often incorrectly entered. Any amendments made after submission will require a variation to be completed before the application can be registered.

The primary contact must be a company representative with their correct email address and not the email for a tax agent or R&D consultant. Contact details for advisors are accommodated elsewhere in the application form. Correct entry of the primary R&D contact field is important for our registration workflows.

As outlined in DISR's service level standards, application processing times increase during peak period (April-June). Companies should be aware of these processing times and consider the due date of their tax return when submitting their application form.

Application support is available by contacting rdtaxincentive@industry.gov.au or calling 13 28 46

Registration trends

Although the number of registrations has remained broadly comparable in recent years, there has been a gradual change in industry sector participation:

- The Professional, Scientific and Technical Services industry has now topped R&DTI registrations for the second year running. Registrations in this sector for the 2021-22 period were 12% higher than the last, accounting for around one-third of all registrations in the program.
- Closely behind was the Manufacturing industry with the second highest number of registrations in the most recent period, followed by the Information, Media and Telecommunications industry.
- Manufacturing, Mining, and Finance have continued to decline as a share of the program. Expenditure has declined dramatically for these three sectors since 2012-13 – Manufacturing (-35%), Mining (-71%) and Finance (-70%)

Registration and claims data

The below figures demonstrate R&D Tax Incentive registrations for the 2021-2022 income period. This dataset is almost complete as at 31 August 2023 (with late balancing applications closing 31 October), 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	12,943
R&D Expenditure (billion)	\$15.47

Table 2: Comparison of registrations and expenditure by organisation size

REGISTRATIONS/EXPENDITURE	SMES	LARGE COMPANIES
Number of Registrations	11,340	1,603
R&D Expenditure (billion)	\$8.70	\$6.77

Table 3: Overall claims for the full 2021-22 financial year (ATO)

CLAIMS	REFUNDABLE	NON-REFUNDABLE
Number of Claims	10,309	1,432
Offset paid or applied (billion)	\$2.8	\$2.2

Table 4: Comparison by sector – Australia-wide

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	8,230	3,489	510	416	298
R&D Expenditure (million)	\$8,718	\$4,178	\$772	\$1,318	\$480

Image 1: Comparison of registrations by States and Territories

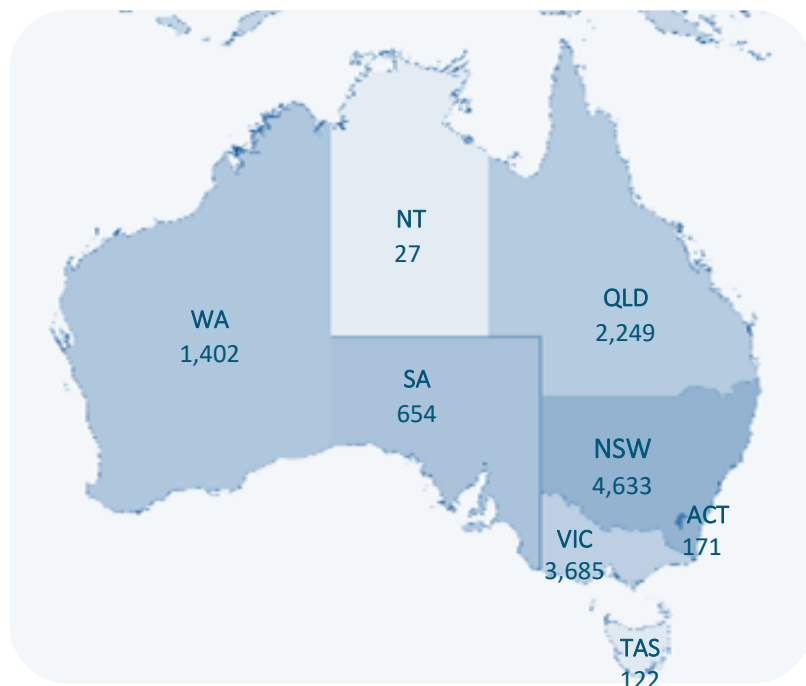


Table 5: Comparison by sector – NSW

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	3,304	1,051	122	56	100
R&D Expenditure (million)	\$4,117	\$1,555	\$337	\$268	\$214

Table 6: Comparison by sector – VIC

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	2,409	1,094	86	28	68
R&D Expenditure (million)	\$2,812	\$1,345	\$98	\$138	\$168

Table 7: Comparison by sector – QLD

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	1,283	710	129	85	42
R&D Expenditure (million)	\$920	\$706	\$107	\$149	\$29

Table 8: Comparison by sector – WA

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	684	351	83	219	65
R&D Expenditure (million)	\$584	\$307	\$64	\$658	\$48

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

	SERVICES	MANUFACTURING	AGRICULTURE	MINING	E,G,W & WS*
Number of Registrations	367	222	55	22	15
R&D Expenditure (million)	\$330	\$202	\$81	\$103	\$13

Table 10: Comparison by sector – ACT

	SERVICES	MANUFACTURING	AGRICULTURE, MINING** AND E,G,W & WS*
Number of Registrations	143	20	8
R&D Expenditure (million)	\$147	\$34	\$6

Table 11: Comparison by sector – TAS

	SERVICES	MANUFACTURING	AGRICULTURE	MINING** AND E,G,W & WS*
Number of Registrations	41	41	32	8
R&D Expenditure (million)	\$19	\$30	\$84	\$6

* Electricity, Gas, Water & Waste Services reasons.

** Combined for confidentiality

The R&D Tax Incentive is jointly administered by:



Australian Government
Department of Industry,
Science and Resources

AusIndustry



Australian Government
Australian Taxation Office

www.business.gov.au/RDTI
www.ato.gov.au/RDTI

Attachment 2

R&D Tax Incentive - Determinations

The Department of Industry, Science and Resources (the department) is currently reviewing potential topics for future determinations and is eager to receive input from key stakeholders on where they believe this instrument could be most beneficial. The Stakeholder Reference Group is a key forum for discussing potential future topics and receiving valuable feedback. We kindly ask for you to consider your response in advance of the session.

Background

Under section 31D of the *Industry Research and Development Act 1986* (IR&D Act), Industry Innovation and Science Australia (the Board) can, through a notifiable instrument, make a determination that sets out how it will exercise its powers and perform its functions and duties under Part III of the IR&D Act.

Determinations supplement the department's guidance products by publicly stating how the Board will perform its functions and duties, or interpret the legislation. The overall objective of determinations is to enhance the efficiency and effectiveness of the R&D Tax Incentive (R&DTI) program while providing clarity and certainty for program users. This is tested by measuring the effectiveness of issued determinations.

Future Determinations Topics

In addition to feedback from key stakeholders, other activities being undertaken across the R&DTI branch will feed into this development process for future determinations topics including the Advanced Findings Strategy and Software Project. Potential synergies with the National Reconstruction Fund (NRF) are currently being explored via ongoing discussions with the NRF team, specifically in relation to priority sectors and opportunities for future determinations.

Clinical Trials Determination

The *Industry Research and Development (Clinical Trials) Determination 2022* (the Clinical Trials determination) came into effect on 1 April 2022. The aim of the Clinical Trials determination is to simplify applications to the R&DTI program and provide certainty for companies whose activities fall within the scope of the determination.

The department's internal data has provided insights into the usage and performance of the Clinical Trials determination. This data has been analysed to quantify the impact of the determination, plan data-driven stakeholder engagement activities and inform the development of future determinations. Initial insights include:

- The majority of clinical trials applicants (>95%) relied on the support of a tax agent or consultant in submitting an R&DTI registration.
- 59% (300 out of 511) of clinical trials applications (received after release of the determination on 1 April 2022) relied on the determination

We are currently undertaking feedback sessions with users of the Clinical Trials determination to measure its effectiveness.