



## MINUTES: R&D Tax Incentive Roundtable

Meeting	R&D Tax Incentive Roundtable		
Meeting Date	7 March 2019	Start Time: 1:30pm	End Time: 4:00pm
Co-Chairs	Martin Jacobs (ATO) Joanne Mulder (DIIS)	Secretariat	DIIS
Attendees	Mark Chan (Ernst & Young) Richard Gregg (PricewaterhouseCoopers) Damian Smyth (Swanson Reed) Stephen Carroll (RSM Australia) Kris Gale (Michael Johnson Associates) Paul McMullan (Compliance Group Pty Limited) Donna Bagnall (Chartered Accountants Australia and New Zealand) Paul Suppree (Corporate Tax Association) Kishwar Rahman (Australian Information Industry Association) Vicki Gardiner (Medicines Australia) Jonathan Russell (Engineers Australia) Kimberley Simpson (Cochlear) Anna Schulze (CSL) Rebecca Schot-Guppy (FinTech Australia) Rod Marshall (Telstra) Ben Eade (Manufacturing Australia)		
Apologies	Caroline Giles (Boeing) Lorraine Chiroiu (AusBiotech)		
Guest Speakers	Wayne Calder (DIIS)		

Agenda Item	Presenter
1. Opening and Welcome	Martin Jacobs (ATO) / Joanne Mulder (DIIS)
2. Update on R&D Tax Incentive legislation	Wayne Calder (DIIS)
3. Program integrity and performance	Martin Jacobs (ATO) / Joanne Mulder (DIIS)
4. Software Guidance	Joanne Mulder (DIIS)
5. ATO Update	Martin Jacobs (ATO)
6. Brief update from panel members on the state of R&D in their sectors <ul style="list-style-type: none"> <li>• Australian Information Industry Association (AIIA)</li> <li>• FinTech Australia</li> <li>• Manufacturing Australia</li> <li>• Medicines Australia</li> <li>• AusBiotech</li> <li>• Engineers Australia</li> </ul>	Industry Associations
7. Any outstanding items and close	Martin Jacobs (ATO) / Joanne Mulder (DIIS)
<b>Meeting Close</b>	

## **1. Opening and Welcome**

### Draft Terms of Reference

- The draft Terms of Reference were provided to panel members.
- Aspects of the Terms of Reference were discussed, including future co-chair arrangements and feedback on the draft Terms of Reference was invited.
- Panel members were asked to respond to the draft Terms of Reference with their views for finalisation at the next meeting.

### The expectations of members of the Roundtable were discussed:

- The co-administrators asked that members actively contribute and participate in the discussion of the agenda items. It was acknowledged that a two-way exchange would facilitate the most beneficial outcome from the Roundtable meetings. It was also acknowledged, that at times there will be differing views on a range of issues. It is important is to discuss these differences in a professional and respectful manner.
- Attendance at the Roundtable will consist of panel members rotated through the panel based on relevance to the agenda for a particular meeting.
- As outlined in the Terms of Reference, DIIS and ATO noted that the Roundtable is not a forum for policy issues. However, industry members highlighted that they see this as an opportunity to filter issues to those with policy responsibilities.
- The State Reference Groups (SRGs) are being re-shaped to align with the national forum and are continuing.

## **2. Update on R&D Tax Incentive legislation**

- DIIS is working with Treasury to consider the recommendations from the Senate Economic Legislative Committee.
- Industry members sought further clarification on the start date of the measures outlined in the “Making sure multinationals pay their fair share of tax in Australia and other measures” legislation and were advised that the date of commencement is 1 July 2018, although the current law remains in effect until the legislation is passed and enacted.
- Industry members sought information on the modelling used by the Treasury to inform the R&D Tax Incentive reforms.
  - DIIS advised this was a matter for Treasury.

## **3. Program Integrity and performance**

### New compliance process

- DIIS discussed the new streamlined compliance process that was implemented at the beginning of the 2018 financial year.
  - DIIS confirmed every registration is initially looked at and then further compliance activities may be conducted using a risk-based approach.

- When a company's registration or application for registration is selected for examination, they are provided with a Notification of Examination and a Statement of Issues.
- A company has 30 days to provide the records kept during the time they conducted their R&D. Extensions of time to respond may be requested.
- Industry members provided feedback:
  - Some companies have limited resources to respond to the Statement of Issues in the timeframe provided.
  - Some industry members felt the compliance process changes had not been sufficiently publicised.
  - The tone of the letter gives some companies the impression that their finding has already been determined.
  - Some industry members commented that companies would prefer to be notified that they are being considered for compliance activity by the co-administrators.
- DIIS will take this feedback into consideration and will continue to work with stakeholders to seek further feedback and to continually improve and refine processes.

#### Update on Program

- ATO/DIIS provided a presentation on R&D Tax Incentive registration numbers and expenditure in the 2016/17 income year.
- Industry Members sought additional information and detail, on:
  - Adverse findings
  - Groups which register but do not claim
  - Data around cases before the Administrative Appeals Tribunal and how they progress
- DIIS will consider these program integrity data release requests.

#### **4. Software Guidance**

- DIIS led a discussion on the two software guidance documents (Software activities in the R&D Tax Incentive & Guide to common errors) released on 21 February 2019.
- Industry members provided feedback on the software guidance, including:
  - Referencing the 2015 Frascati Manual, rather than the 2002 Frascati Manual.
    - DIIS confirmed that this is appropriate, as activities that may have been considered R&D in 2002 may no longer be considered R&D in 2015, as this no longer represents new knowledge.
  - Software iterates quickly in a way that makes it hard to clearly articulate a hypothesis and keep contemporaneous records.
    - DIIS agreed to continue to work with industry members on how best to support industry concerns.
- DIIS confirmed for industry members that the software guidance is the source material that should be used to understand the eligibility requirements of the program in relation to software development.
- It was agreed that software guidance would be an agenda item for the next roundtable meeting, with the R&D Incentives Committee (R&DIC) Chair to be in attendance.

## 5. ATO Update

- ATO are looking to work with companies to find the best solution around debt recovery.
- Tax returns lodged with the R&D Tax Incentive Schedule will need to contain the current registration number provided by AusIndustry, including for non-refundable companies.
- Industry members commented that this change and future change to the administrative practices could have a large effect on business. ATO were encouraged by industry members to advertise the change more extensively.
- Companies with extensive and/or unique claims should work with the ATO early to seek advice and guidance to support their claims.
- There is an appetite from industry for practical guidance on financial documentation.

## 6. Brief update from panel members

Key issues raised by panel members from industry associations:

- Some industry members acknowledged that the software guidance was a good starting point, however they also sought further clarity and information and indicated their willingness to be involved in any future discussions.
- Some industry members suggested a working group be established to further explore any outstanding issues around the software guidance and to identify whether further material may be needed.
- Some industry members noted that a continuing challenge for R&D in Australia is to ensure Australia is not losing its competitive advantage to other countries.
- Members expressed the desire to ensure Australia is an attractive country to undertake R&D activities.
- The challenges faced by the different sectors and the support they need from the co-administrators was raised – such as transparency of data, sector knowledge and the capability of the assessors.

## 7. Outstanding Items and close

- Next meeting in July 2019

Action Items	Ownership	Due Date
Provide “registration numbers and expenditure” presentation to panel members	DIIS	March 2019
Provide feedback on the draft terms of reference for the R&D Tax Incentive Roundtable	All Panel Members	March 2019
Add “software development” to the agenda for the next Roundtable meeting	Secretariat	July 2019
Add “the registration form” to the agenda for the next Roundtable meeting	Secretariat	July 2019
Determine co-chair arrangements for the next Roundtable meeting	Secretariat	July 2019
Provide an update on guidance products in development by the ATO	ATO	TBC