

# SUMMARY: R&D Tax Incentive Roundtable

Meeting	R&D Tax Incentive Roundtable			
Meeting Date	Thursday 5 November 2020	Secretariat: AusIndustry	Start Time: 1030	End Time: 1200
Co-Chairs	Kelley Wiggins - General Manager – Research and Development Tax Incentive <b>Department of Industry, Science, Energy &amp; Resources (AusIndustry)</b> Jade Hawkins - Assistant Commissioner – Private Wealth <b>Australian Taxation Office (ATO)</b>			
Attendees	Nicola Purser ( <b>BDO</b> ) Jessica Oliver ( <b>RSM Australia</b> ) Damian Smyth ( <b>Swanson Reed</b> ) Cheryl Kut ( <b>Group of Eight (Go8)</b> ) Jamie Munday ( <b>EY</b> ) Sophia Varelas ( <b>PwC</b> ) Paul McMullan ( <b>Compliance Group</b> ) Robert Krigsman ( <b>Krigsman Partners</b> ) Donna Bagnall ( <b>Chartered Accountants Australia and New Zealand</b> ) Leigh Conlan ( <b>CPA Australia</b> ) James Orr ( <b>CBG Systems</b> )			
Apologies	Alex McCauley ( <b>StartupAus</b> ) Rebecca Schot-Guppy ( <b>FinTech Australia</b> )			
Guest Speakers	Lyndall Milward-Bason ( <b>DISER</b> ) Bernadine Caruana ( <b>AusIndustry</b> ) Tim Myatt ( <b>AusIndustry</b> ) Monica Sapa ( <b>AusIndustry</b> ) Brett Challans ( <b>ATO</b> )			

Agenda Items	Presenter(s)
<b>1. Welcome</b> 1.1. Roll-call for WebEx Dial ins 1.2. Action Items from August Roundtable 1.3. Update on State Reference Groups	Kelley Wiggins (AusIndustry)
<b>2. Policy Update</b> 2.1. Legislation Reforms	Lyndall Milward-Bason (DISER)
<b>3. AusIndustry – Upcoming Reforms Jan 2021</b> 3.1. ISA Determination Reform 3.2. Extension of Time Reform 3.3. Upcoming Delegations Reform	Kelley Wiggins (AusIndustry)
<b>4. ATO – Upcoming Reforms (on or after) July 2021</b> 4.1. Change to refundable and non-refundable offset rates 4.2. Non-refundable R&D intensity 4.3. \$150m expenditure threshold 4.4. Transparency 4.5. Other measures 4.6. What the ATO is doing to help companies and consultants 4.7. Online tools	Jade Hawkins and Brett Challans(ATO)
<b>5. R&amp;DTI – Access to Guidance Materials</b> 5.1. Discuss prepared responses to pre-meeting questionnaire	Bernadine Caruana (AusIndustry)

Agenda Items	Presenter(s)
<b>6. Program Updates</b> 6.1. Integrity Framework 6.2. Lodgement dates Update	Tim Myatt & Monica Sapra (AusIndustry)
<b>7. Any outstanding items and close</b>	Kelley Wiggins (AusIndustry)

**Meeting Close**

Action Items from August 2020 Roundtables	Ownership	Due Date
Extending this conversation – understanding concerns in the program from participants	AUSINDUSTRY /ATO	Survey following Nov Roundtable
Joint podcast between ATO and AUSINDUSTRY	AUSINDUSTRY /ATO	November 2020 & March 2021
Evaluating the success of the Roundtables against their intent	AUSINDUSTRY /ATO	Survey following Nov Roundtable
Joint guidance products from ATO and AUSINDUSTRY	AUSINDUSTRY /ATO	April 2021
Determine if the Department can share number of current legal cases active with ISA	AUSINDUSTRY	Answer by Nov 2020 Roundtable
The department to confirm whether the new registration and advance/overseas finding applications that will be made available by the online portal will have version control tracking to enable users to monitor edits being made by contributors to the form.	AUSINDUSTRY	November 2020

**1. Welcome, Action Items from the August 2020 Roundtable, Update from the State Reference Groups**

- The Chair opened the meeting, welcomed attendees and welcomed Jade Hawkins from ATO as co-chair for the meeting.
- Action items from the August 2020 Roundtable included;
  - Extending this conversation – understanding concerns in the program from participants
    - To better understand participant concerns, AusIndustry sent a follow up survey to members after the August Roundtable, and will again after this Roundtable.
    - This will assist in measuring sentiment, and evaluating how the Roundtables are meeting member’s needs.
  - Joint podcast, and other joint communications products between ATO and AUSINDUSTRY
    - A Joint Podcast between ATO and AUSINDUSTRY as well as a number of other joint communications products will be coming in the next few months.
    - Roundtable members are welcome to submit topics they would like discussed to [rdti.engagement@industry.gov.au](mailto:rdti.engagement@industry.gov.au)
  - Evaluating the success of the Roundtables against their intent
    - The follow up survey from the August and November Roundtables will be used in order to measure success of the Roundtables against their intent.
  - Determine if the Department can share the number of current legal cases active with Innovation Science Australia (ISA).
    - AusIndustry shared that as at 26 October 2020, there were 24 matters before the Administrative Appeals Tribunal (AAT) seeking a review of RDTI program decisions by ISA.
    - There were 18 matters actively before the AAT. There were 4 matters in abeyance and 2 matters are awaiting AAT decision.

- Participants were advised that the Department does not comment on individual matters before the Court or Administrative Appeals Tribunal.
  - The department to confirm whether the new registration and advance/overseas finding applications that will be made available by the online portal will have version control tracking to enable users to monitor edits being made by contributors to the form.
    - The Department is investigating whether this functionality can be added to the forms in the customer portal.
    - Options are being scoped for feasibility and delivery within the project schedule.
    - The Department can provide a further update at the next roundtable meeting.
- There were a number of offline action items, which came out of the follow up survey after the August Roundtable;
  - Questions were raised with regards to WebEx, and whether we could use ZOOM for future presentations
    - WebEx is the preferred platform available across both the ATO and AUSINDUSTRY.
  - Feedback that our Roundtable was update heavy, and didn't generate questions.
    - AUSINDUSTRY reduced the number of updates, and time will be available for discussion.
  - A large number of attendees at the August Roundtables
    - Effective from this Roundtable, we will be returning to a rotating attendee list; one session with a small number of participants.
- State Reference Groups (SRGs) were held in NSW, VIC, QLD, SA and WA throughout September and October 2020. The main items for discussion at the SRGs were:
  - coming updates to the legislation
  - businesses performance during COVID-19
  - AUSINDUSTRY application of the Integrity Framework.
- Feedback AusIndustry received from the SRGs on each of the consultation items included:
  - Positive reception of the updated application form
  - Positive reception to the provision of draft Internal Review Reports prior to decision
  - Questions regarding the provision of updated ATO Public Guidance
  - Updates from SRG members regarding their ability to conduct R&D during COVID-19.
- The next round of SRGs are planned to be held virtually early 2021, with dates to be confirmed.

## **2. Policy Update**

- The Policy team offered an explanation of the Government announced enhanced reforms to the R&D Tax Incentive as part of the 2020 21 Budget.
  - The enhanced reforms to the R&D Tax Incentive will better encourage firms to undertake additional R&D activities, generating benefits for the wider Australian economy in a post-COVID world.
  - The 2016 Review of the R&D Tax Incentive found the program could better meet its stated objectives: to encourage businesses to spend more on R&D than they otherwise would and generate benefits that would spill-over to the rest of the economy.
    - The enhanced reforms were informed by the findings of the 2016 R&D Tax Incentive Review, feedback from stakeholders and the impact of COVID-19 on business R&D.
- The enhanced R&D Tax Incentive reform measures include:
  - No cap on cash refunds for SMEs in tax-loss
  - A refundable R&D tax offset set at 18.5 percentage points above the prevailing company tax rate for small and medium entities (SMEs) with turnover of below \$20 million

- A non-refundable tax offset based on R&D intensity for larger companies with turnover of \$20 million or more with:
  - a base rate of 8.5 percentage points above the prevailing company tax rate for R&D expenditure up to 2 per cent R&D intensity
  - an enhanced rate of 16.5 percentage points above the prevailing company tax rate for R&D expenditure over 2 per cent R&D intensity.
- The remaining measures are unchanged from those in the superseded ***Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019***, consisting of:
  - An increase in the existing annual R&D expenditure threshold from \$100 million to \$150 million
  - Administrative changes aimed at improving the integrity and transparency of the program.
- The enhanced R&D Tax Incentive reforms generally apply from 1 July 2021, and form part of the ***Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020***, which will enact many of the Government’s major 2020-21 Budget tax reforms.
- Previous reforms, contained in the *Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019*, have been superseded by the enhanced R&DTI reforms.
- A Factsheet explaining the updates is available for download from Business.gov.au [here](#).

### **3. AusIndustry: Upcoming Reforms Jan 2021**

- The ***Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Bill 2020*** (‘the Act’), received Royal Assent on 14 October 2020.
  - The Act includes some administrative measures to come into effect from 1 January 2021, and will support the administration of the R&D Tax Incentive program.
- AusIndustry spoke of three key changes to the legislation from AusIndustry: the ISA Determination Reform, the Extension of Time reform and the Upcoming Delegations Reform.
- ISA Determination Reform:
  - The Act will allow the ISA Board to “*make general determinations about the circumstances or way in which it will exercise its powers, or perform its functions or duties.*”
    - AusIndustry is currently considering the requirements for the publishing of general determinations.
    - AusIndustry cannot yet offer a schedule for when it will begin publishing general determinations.
  - A Roundtable member raised whether AusIndustry can share the topics for determinations, and if they will be available in draft form ahead of publication.
    - AusIndustry is unable to share the determinations topics at present, and will likely seeking feedback from the R&D community.
- Extension of Time Reform
  - The *Industry Research and Development Decision-making Principles 2011* previously allowed for the ISA Board to allow an extension of time for 14 days, or a further period of time where the person could demonstrate that “*the act, omission or event that led to the need for the further period was not the fault of the interested person and was not within the interested person’s control.*”
  - The Act has included an additional sub-section to limit this further extension of time to not exceed three months, unless the extension is granted to allow an applicant to wait for the outcome of a separate pending decision.
    - AusIndustry is in the process of updating procedures, forms and guidance material to reflect this change
    - AusIndustry will continue to work with companies through the Integrity Framework to ensure that they are supported in getting their registrations right.
  - A Roundtable member requested clarification on the 14 day extension period.

- AusIndustry confirmed there would be no change to the current 14 day extension period.
  - There may be an additional extension of up to 3 months, if this has been granted while the company waits for a finding outcome.
- Upcoming Delegations Reform
  - The Act includes an amendment to omit the words “who is an SES employee, or acting SES employee” from *Paragraph 21(1)(e)* and *Subsection 22A(1)* of the *Industry Research and Development Act 1986*.
    - This amendment to the legislation allows AusIndustry to have non-SES officers undertake delegated functions on behalf of the IISA Board.
    - AusIndustry has not yet determined how these delegations will be assigned for integrity activities, and is working with IISA to ensure that these delegations are issued appropriately within the program.
  - A Roundtable member asked what level of the APS will be able to exercise delegated functions or powers:
    - AusIndustry confirmed that although delegated functions or powers will no longer be exclusively exercised by SES officers, they will still be exercised by appropriate, higher-level APS staff.

#### **4. ATO Upcoming reforms (on or after) July 2021**

- The ATO Chair spoke about 5 major updates and changes to the R&D program, and the tiered approach to implementation.
- In the 2020-21 income year, implementation will involve:
  - the replacement of the current 43.5%, which will be replaced with a refundable offset of 18% above the company’s relevant tax rate, up to the expenditure threshold
  - The replacement of the current 38.5% non-refundable offset with a two tier intensity premium linked to the company tax rate
  - There will be amendments made to the feedback and clawback rates
  - ATO will build these changes into its online calculator
- **PART IVA** means the tax offset will be considered a tax benefit for the purposed of the anti-avoidance provision.
  - This will take place from the 2021 income year.
- The ATO will be progressively updating its guidance products to ensure the publications are in line with the years they effect.
- There will be changes to the company tax return and R&D schedule. Instructions will come into effect ahead of the 2021-22 income year, prior to lodgement.
- of the ATO will publish the details of the individual company’s claimed R&D expenditure.
  - The first publications will be required 2 years after the end of the claimed financial year.
  - As this will not be in effect until the end of 2021-22 FY, this will be published in 2024.
- In order to reduce the impact to businesses during COVID-19, the ATO implemented a number of strategies.
- This included:
  - Contacting companies who were subject to compliance activities for their R&D claims to ask them whether they’d like their compliance activities to be placed on hold.
    - The only cases which proceeded were more egregious cases or where the company agreed for action to continue compliance activities.
  - A case call of all R&D cases to ensure a consistent approach was being applied and to consider a partial or full release of the R&D refund with compliance action continue post-issue.
- Questions were raised from Roundtable members including;

- Whether all guidance products proposed will be published
  - The ATO is unable to give a certain answer and there have been delays due to COVID-19 with staff being reassigned to critical COVID-19 Stimulus roles and the need for publishing of COVID-19 content.
  - Some material has been drafted and other material is still under development.
  - The ATO has protocols for publishing guidance products. We hope to be in a position to provide a clearer timeframe at the next Roundtable.
- How will the publishing of information be used in relation to the Incentive, and what level of granularity will this go to, specifically for the University sector to seek partnerships.
  - The publishing of R&D companies information is mandated by legislation now.
  - The publishing of the information also has a benefit of providing transparency of how the Government's, and ultimately, the communities' tax dollars are being spent in the R&DTI.
  - The details published regarding the R&D Company will be the company name, ABN and the notional R&D expenditure.
- Whether anyone had taken advantage of COVID and used the reduced touch points as an opportunity to do the wrong thing by the incentive.
  - The ATO introduced a triage process which has assisted with identifying and mitigating risks of opportunist claims.
  - The ATO continues to publish areas of concern on their website.

## **5. Access to guidance materials – questionnaire discussion**

- AusIndustry has been updating its guidance materials, and released three new communications products, an At a Glance Brochure, an Animation video, and a Podcast.
  - A Second podcast is being developed with the ATO, due for release later November.
- The Software Guidance on Business.gov.au was updated to remove references to the Frascati Manual
  - Members noted this, and requested to know why this was done.
    - In response to the ASFBE0 Report, AusIndustry have removed references to Frascati to ensure that members didn't feel the definition of eligible R&D was becoming narrowed.
    - Examples have been added to Software Guidance to offer assistance to participants.
- A Refreshed Guide to Interpretation was released this morning – see more detail below in Program updates.
- Participants were emailed questions ahead of this Roundtable for discussion:
  - What are the key R&DTI guidance documents that you find most useful on the www.business.gov.au and www.ato.gov.au websites?
    - industry guidance material or AAT case summaries are of most use to members
    - ATO guidance on apportionments and overheads unlikely to eligible
  - What guidance material do you feel is currently missing?
    - Members wished to be offered guidance materials on building expenditure, at risk, for whom test, incurred 'on' R&D activities
  - In which formats do you find guidance materials easier to digest, i.e. audio, animation, documents?
    - Written documents were the most popular request amongst Tax Agent and Consultants
    - There was a consensus that other audiences may need alternate formats.
  - What are the key issues with locating specific guidance materials on these websites?
    - Members raised that it is difficult to locate and access guidance materials from the menu options, and sub-menus available.
    - The BGA & ATO websites were described as 'unfriendly' and search-engines are not optimised

- A lack of direct links from external or internal search functions
      - Both the ATO and AusIndustry are aware of their website limitations, and are undergoing a website refresh to become easier to navigate, and fix broken links with updated content.
  - What changes would you like to see to the websites and guidance material to make them more user friendly and accessible to Companies and intermediaries?
    - Members raised that they would like to see more menu options and contents pages
- Roundtable members were encouraged to send any further discussion points by emailing [rdti.engagement@industry.gov.au](mailto:rdti.engagement@industry.gov.au), Or for ATO matters by emailing [R&DandVCLiaison@ato.gov.au](mailto:R&DandVCLiaison@ato.gov.au)
  - A member requested to know if there were any updates to the Draft Tax Determination regarding JobKeeper payments and the R&DTI
    - The ATO is working through feedback received from the draft, but doesn't have a date for finalisation yet.
    - Advice from the current Tax Determination should be followed until a final version is released.
  - Members requested an update on the ATO's progress on overheads and rulings
    - The ATO acknowledged that the release of their public guidance has been delayed due to COVID, and reallocation of resources, and don't have an update at present.

## 6. AusIndustry Administrative Program Updates

- In line with the Integrity Framework, AusIndustry have been trialling new ways to engage with companies who would benefit from feedback on their registrations.
  - AusIndustry is increasing its engagement with clients particularly through a tailored guidance approach. Company representatives will be included in this engagement.
  - AusIndustry advised that preliminary analysis of the Internal Draft Report process has found that companies appreciate the transparency of the decision making.
    - In a small number of cases, AusIndustry have faced the issue of extended delay in company responses.
  - Companies were able to lodge a provisional Advance Overseas Findings application by 30 June with receipt of outstanding information required to assess their application due by 30 September.
    - Some provisional application companies were unable to complete the process as their overseas activities did not occur due to the pandemic COVID-19.
  - Roundtable members praised the transparency in the decision making and adjustments to the stakeholder informed compliance processes.
- Over COVID 19, AusIndustry offered an extended deadline to the R&D Application lodgement dates.
  - The extended deadline for standard balances to 30 September 2020 has now passed.
  - There is a further extension available for non-standard balancers to 31 March 2021.
    - A high level factsheet is available on [business.gov.au](http://business.gov.au) covering the key changes
- The ATO also offered extensions for lodgement of returns.
- The Refreshed Guide to Interpretation was launched 4 November, and is available on [Business.gov.au](http://Business.gov.au)
  - Prior to launch, AusIndustry conducted an open consultation process, including the consideration of Roundtable member's previous suggestions regarding the draft Guide.
  - AusIndustry encourages agents to recommend their clients use the new Guide
    - A [summary of changes](#) from the previous version to the refreshed version is available alongside the Guide.
- AusIndustry offered an update regarding the online portal which will allow businesses and tax agents to submit registration and advance and overseas finding applications.

- The new portal will be available from May 2021 to allow time for people to become familiar with how the new portal functions and the structure and questions in the revised forms. This will allow people to prepare their 2020/21 registrations ready for submission from 1 July 2021
- The portal will be the only way to register for the R&D Tax Incentive from 1 July 2021. At that time, the current SmartForm will no longer be available for use.
  - A member requested to know if there is any information regarding rolling prior year's returns and data into the new financial year's portal.
    - The Department has investigated the feasibility of migrating previous years applications to the new portal. This will not be undertaken as the work is resource intensive and the changes to the registration form would not facilitate prefilling information from SmartForm applications.
    - Information about the company that is prefilled from existing sources (i.e. ABN) will be available when first using the portal. Information which is prefilled from previous applications can only function from the second year of completing the revised registration form within the portal.

**Item 7 – Any Outstanding Items and Close**

- AusIndustry and the ATO thanked members for attending, and invited them to fill in the follow-up survey
- Minutes from the November Roundtable will be available on BGA in the next four weeks.
- The ATO will host the next R&D Tax Incentive Roundtable, in late February/early March 2021

Action Items from August 2020 Roundtables	Ownership	Due Date
The department to confirm whether the new registration and advance/overseas finding applications that will be made available by the online portal will have version control options	AUSINDUSTRY	March 2021

*--End of Summaries--*