

R&D TAX INCENTIVE – ARE YOUR CLAIMS DEFENSIBLE?

ATO and AusIndustry clamp down on non-compliant R&D Tax applications – are your claims defensible?

Contemporaneous record keeping – what records should a software R&D company maintain to substantiate its R&D Tax claims?

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ATO AND AUSINDUSTRY CLAMP DOWN ON NON-COMPLIANT R&D TAX APPLICATIONS – ARE YOUR CLAIMS DEFENSIBLE?

As an outcome of the ever increasing number of R&D Tax Incentive claimants (over 15,000) and annual benefits paid (over \$3 billion), the Government announced further reductions to the R&D Tax benefits in the May budget and has further ramped up their audit and review activities to ensure proper integrity measures are applied after rejecting many claims and seeking repayment of benefits paid in prior years.

Whilst the Australian based Incentive continues to provide the most generous rate of return anywhere in the world for companies under \$20m in annual revenue, it has become increasingly important to seek the right guidance to gain a proper understanding of the complex web of legislative requirements when claiming the Incentive. If you are incorrectly self-assessing the nature of your R&D activities or overstating expenditure you are in danger of finding your company on the radar.

Following the release of four earlier ATO Taxpayer Alerts specifically targeting ineligible activities and expenses being claimed, the joint administrators of R&D Tax Incentive (ATO and AusIndustry) have established new audit teams and processes to crackdown on R&D Tax compliance. This is evidenced by the recent upsurge in both pre and post registration reviews from AusIndustry and tax return audits conducting by the ATO who, recently stated that "it will take legal action against those who wilfully misuse the R&D Tax Incentive".

Over the past year or more we have observed:

- A much harder line emerging from multiple ATO Tax alerts being issued targeting non-compliant R&D activity and expenditure claims
- ATO working more closely with AusIndustry to identify taxpayers and consultants involved in aggressive R&D Tax Incentive arrangements
- A new initiative staffed with a new team at AusIndustry conducting pre-registration reviews
- A new initiative staffed with a new team at the ATO conducting far more strenuous and extensive ATO audits on registered R&D activities causing refund delays.
- The ATO successfully winning cases at AAT against companies who could not substantiate the nature of their R&D activities or expenditure claims via proper record keeping
- A high rejection rate for advance or overseas findings applications.
- A number of R&D tax agents being de-registered or liquidated by multiple retrospectively rejected clients seeking fee reimbursements.
- One of the 'big four' accountants is understood to have written several cheques refunding commission to clients whose R&D claims have been retrospectively rejected.
- An 80% claim rejection rate from the first round of ATO audits conducted under the new audit regime

WHAT RECORDS SHOULD A SOFTWARE R&D COMPANY MAINTAIN IN ORDER TO SUBSTANTIATE ITS CLAIMS?

As a starting point, both bodies acknowledge that the “records kept by individual claimants will vary depending on the nature of their business and their R&D activities.” Contemporaneous means keeping records “as you go”.

To ensure that claiming entities meet the eligibility requirements and show the activities undertaken satisfy the definition of **core R&D**, AusIndustry expect records such as the following to be maintained:

- o Records demonstrating “the state of knowledge or technology that existed prior to the proposed R&D activities and what new knowledge was being sought through the R&D”.
- o Evidence that the knowledge was not already publicly available through literature reviews, patent/other searches, scientific/technology reviews/articles and trade journals.
- o Documents that describe the hypotheses, experiments, results, evaluation and revised hypotheses.

Similarly, documents that demonstrate how supporting R&D directly relate to core R&D activities must also be maintained. It is equally important that claiming entities maintain adequate records that sufficiently quantify the dollars associated with eligible core and supporting R&D activities.

As the greatest cost generally claimed under the R&D Tax Incentive is employment costs, employee records should be maintained in the form of contemporaneous timesheets recording the time, date, number of hours and description of the task on a weekly basis against eligible core, supporting and ineligible R&D activities. Similarly, contractor invoices should contain the date R&D activities occurred and “sufficient detail to ascertain the amount of expenditure on the R&D activities, and a description of the activities performed by the contractor to link the fee with a particular R&D activity.”

I have a software company, what process should I undertake to ensure I meet the eligibility criteria and what records should I maintain to demonstrate that the activities and related costs being claimed relate to core and supporting R&D activities?

Firstly, establish and maintain a R&D Project plan which documents that you have ticked off all of the requirements of the scheme, the Plan should be updated each year and include:

- **Knowledge gap** – undertake research to determine the “current (worldwide) state of knowledge” in your particular tech field, include international competitors, possibly universities as well as reports from reputable technical journals, blogs, forums, wikis, etc.
- **Technical uncertainty** – explain your business objective and how experimental activities will seek to solve the technical uncertainty required to automate your product, process or service. Only financial risk associated with technical risk is eligible to claim under the R&D Tax Incentive so don’t confuse business risk with technical risk.
- **Competent professional in the field** – describe why your CTO and dev team would be considered “experts in your particular tech field” (include technical qualifications and experience) and why the technical uncertainty subject to the R&D activities is beyond the “current state of knowledge”.
- **Hypotheses** – describe your “theories” or “assumptions” on how you might investigate, design, test and determine an operable technical solution. Include the ‘measurable technical goal’ you will attempt to achieve via experiments, in order to prove the hypothesis. To be eligible you must be using the “scientific method” as your approach to R&D which differs from the agile approach as it does require an extra layer of reporting.

- **Design of experiment** – explain how you will undertake the experiment/s to test the hypothesis, describe the variables/ data being tested and the “measurable technical goal” you are attempting to achieve (e.g. via proprietary algorithms or formulas). This may be demonstrated via a project planning document (e.g. GANTT chart)
- **Break up your R&D project into discreet activities** – as the R&D Tax Incentive is an activity-based program it requires all claimants to undertake eligible “core” R&D activities before its “supporting” R&D activities also become eligible, it also requires you to break out any “ineligible” activities to evidence that a “whole of project” approach is not being claimed. As such, each claimant should break down its project/s into core, supporting and ineligible activities which is the basis under which they will track staff time and allocate R&D expenses.
- **Establish a weekly timesheet process** within your task tracking system that links each commit entered by a dev team member against selected epics/ stories that have been identified as eligible core and supporting R&D activities for the purpose of evidencing the apportionment of time being claimed by each development staff member at the end of each financial year.
- **Maintain a weekly technical report** on the progress of your R&D activities that describes the observations and analyses the results from each of the experimental processes the company engaged in and the pivots to your R&D direction. Retain the results of test runs on the algorithms and documenting the results of running these prototypes on test data.
- **Maintain version repository logs** with sufficiently detailed comments on the prototypes indicating the iterative development, testing and improvement of the algorithm including weaknesses that were identified and rectified in successive versions.
- **Maintain a R&D file which lists any other internal records you keep** – examples may include project scoping documents, functional specifications, architecture schema, error/ issue logs, data models, minutes of technical meetings, presentations on functionality etc

How can I use my task tracking systems to keep contemporaneous records?

It's common for software developers to use task tracking systems and

code repository's when undertaking any development work, therefore it is far easier to customize those systems to meet the requirements of the scheme as opposed to overlaying a whole new layer of record keeping. Popular examples of commonly used task tracking systems are Trello, Asana, Atlassian products: Jira/Confluence/Bitbucket, Monday, Aha and Harvest. These systems generally use the following hierarchy to breakdown the project into smaller tasks and workflows:

- **Themes** are large focus areas that span an organization
- **Initiatives** are collections of epics that drive toward a common goal
- **Epics** are large bodies of work that are broken down into a number of smaller tasks called stories
- **Stories** are shorts requirements or requests written from the perspective of an end user

It is highly recommended that claimants clearly use these task tracking programs to identify and track their core, supporting and ineligible R&D activities. Epics are generally few in number and are usually completed within a quarter of a year whereas stories are generally completed within a short 1 to 2 week sprints, epics indicate where R&D activities will lie and stories are the actual activities that should be tracked and used to capture eligible core, supporting and ineligible activities. As the epics constantly change on a quarterly basis they can also reflect a pivot to the project and which is why your CTO should also write a weekly technical report which puts into perspective the progress, evaluation, learnings and any pivots to the formulation of new epics/ stories.

Don't get caught out by poor advice?

Many R&D Tax advisors exclude a documentation review or provide record keeping solutions within their limited scope of work, this is a serious issue as the R&D Tax Incentive is a self-assessment scheme which requires claimants to substantiate their claim when audited. Poor supporting documentation is the main source of dispute at audit and can catch out even good R&D claimants with eligible R&D activities, if R&D companies are not prepared to keep compliant records they are simply not eligible to claim the benefits.

WHAT IS THE FRASCATI MANUAL AND WHY IS IT RELEVANT IN DETERMINING ELIGIBILITY FOR SOFTWARE COMPANIES UNDER THE R&D TAX INCENTIVE?

The Frascati Manual is widely recognised as a cornerstone of internationally accepted definitions of R&D and classifications of its component activities. The Manual contributes to intergovernmental discussions on “best practices” for science and technology policies, and its pertinence to the Australian policy framework was reaffirmed in last year’s Review of the R&D Tax Incentive (4 April 2016) authored by Mr Bill Ferris AC, Chair, Innovation Australia, Dr Alan Finkel AO, Chief Scientist and Mr John Fraser, Secretary to the Treasury. In the Review, the panel found that:

“...the definition of [eligible R&D] mirrors the principles in the OECD Frascati Manual which is regarded internationally as setting the benchmark for identifying R&D activities.”

Below we set out excerpts taken from the Manual, which may assist R&D software companies better understand when software development qualifies as R&D.

• Routine software development

77. Software-related activities of a routine nature are not considered to be R&D. Such activities include work on system-specific or programme-specific advances which were publicly available prior to the commencement of the work. Technical problems that have been overcome in previous projects on the same operating systems and computer architecture are also excluded. Routine computer maintenance

is not included in R&D (see Section 2.4.1 for a more detailed discussion of borderline problems between software development and R&D).

• Section 2.4.1. Identifying R&D in software development

135. For a software development project to be classified as R&D, its completion must be dependent on a scientific and/or technological advance, and the aim of the project must be the systematic resolution of a scientific and/or technological uncertainty.

136. In addition to the software that is part of an overall R&D project, the R&D associated with software as an end product should also be classified as R&D.

137. The nature of software development is such as to make identifying its R&D component, if any, difficult. Software development is an integral part of many projects which in themselves have no element of R&D. The software development component of such projects, however, may be classified as R&D if it leads to an advance in the area of computer software. Such advances are generally incremental rather than revolutionary. Therefore, an upgrade, addition or change to an existing programme or system may be classified as R&D if it embodies scientific and/or technological advances that result in an increase in the stock of knowledge. Use of software for a new application or purpose, however, does not by itself constitute an advance.

2 BASIC DEFINITIONS AND CONVENTIONS

138. A scientific and/or technological advance in software may be achieved even if a project is not completed, because a failure can increase knowledge of the technology of computer software by showing, for example, that a particular approach will not succeed.

139. Advances in other fields resulting from a software project do not determine whether an advance in computer software has occurred.

140. The following examples illustrate the concept of R&D in software.

Should be included in R&D:

- R&D producing new theorems and algorithms in the field of theoretical computer science.
- Development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools.
- Development of Internet technology.
- Research into methods of designing, developing, deploying or maintaining software.
- Software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information.
- Experimental development aimed at filling technology knowledge gaps as necessary to develop a software programme or system.
- R&D on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and other areas).

141. Software-related activities of a routine nature which do not involve scientific and/or technological advances or resolution of technological uncertainties are not to be included in R&D. Examples are:

- Business application software and information system development using known methods and existing software tools.

- Support for existing systems.
- Converting and/or translating computer languages.
- Adding user functionality to application programmes.
- Debugging of systems.
- Adaptation of existing software.
- Preparation of user documentation.

142. In the systems software area, individual projects may not be considered as R&D but their aggregation into a larger project may qualify for inclusion. For example, changes in file structure and user interfaces in a fourth-generation language processor may be made necessary by the introduction of relational technology. The individual changes may not be considered R&D if viewed in their own right, but the entire modification project may result in the resolution of scientific and/or technological uncertainty and thus be classified as R&D.

• Examples illustrating differences between basic, applied and experimental research

256. Examples from software development:

- Search for alternative methods of computation, such as quantum computation and quantum information theory, is **basic research**.
- Investigation into the application of information processing in new fields or in new ways (e.g. developing a new programming language, new operating systems, programme generators, etc.) and investigation into the application of information processing to develop tools such as geographical information and expert systems are **applied research**.
- Development of new applications software, substantial improvements to operating systems and application programmes, etc., are **experimental development**.

R&D TAX INCENTIVE – ATO REVIEW QUESTIONS REVEALED

The ATO have historically conducted R&D audits that request records to substantiate the R&D expenditure claimed before they release the refund to you. These audits often require you to produce basic things such as:

- A breakdown of what R&D labour costs comprises including names, ABNs, brief descriptions of their R&D role and how the eligible costs are allocated to eligible R&D activities;
- A breakdown of direct R&D costs and/or overhead costs;
- Records to substantiate the above (including invoices, agreements, contracts, copies of job sheets, work sheets, diaries and time sheets).

However, the ATO have upped the ante and are now intelligently identifying businesses and advisers that are incorrectly claiming expenditure associated with ineligible ordinary business activities, claiming 'whole projects' as opposed to eligible R&D activities and not maintaining adequate records to substantiate R&D expenditure claimed.

The audits have also escalated in size from a few simple questions to dozens of onerous questions and requests for documentation (in excess of 80 queries in some cases). Although some questions simply require a written response, most items require deep documentary evidence; examples include, copies of all employment contracts/roles and duty statements, tax file declaration forms, samples of payslips/bank statements, timesheets, records that show the basis for allocation of salary between R&D and business as usual and records (plans, budgets, meeting minutes) demonstrating how R&D activities were proposed/actually financed.

When a R&D Tax applicant is selected for a ATO review they have the opportunity to review their records and make a voluntary disclosure which can result in a reduction of any shortfall penalty related to the voluntary disclosure by 80%.

The vast majority of these ATO reviews have resulted in R&D applicants either having their refunds refused or required to be paid back, in some cases claimants have also been requested to pay back receipts from prior year claims as well.

What records am I expected to provide under an ATO review

Financial information

1. Copies of the following financial records for the years ended 30 June 20XX and 30 June 20XX:

- a. Statements of comprehensive income with notes (also known as a statement of financial performance or profit and loss statement).
- b. Statements of financial position with notes (also known as a balance sheet).
- c. Detailed general ledgers.
- d. Depreciation/Decline in Value schedules and/or asset register.

Background

2. Explain the general business activities you undertook in the years ended 30 June 20XX and 30 June 20XX, including:

- a. A description of the products or services that you sold.
- b. The nature of the premises from which you operated, for example, warehouse, manufacturing plant, office or shop.
- c. A general description of your customer base, including the types and number of customers you dealt with.

3. What prompted you to undertake R&D activities?

Overview of R&D

4. Provide the name of the person(s) who initiated the R&D project.

5. What research was undertaken to evaluate whether the knowledge existed?

6. Provide an explanation, in lay terms, of the R&D activities undertaken, including:

- a. What is being developed.
- b. How it will be used.
- c. Who will use it.
- d. How it will enhance business operations.

7. Provide a description of the intellectual property being developed, including an explanation of:

- a. Who will own it.
- b. How any rights might be assigned.
- c. The safe guards that are in place to protect the ownership and rights.

8. Did you undertake the research and development yourself or did you rely on a service provider? If you used a service provider, provide:

- a. The name, address and ABN of the service provider.
- b. A detailed explanation of the services they provided.
- c. An explanation as to how you were updated regarding the progress of the research and development and the milestones that were met.
- d. Provide all relevant documentation to support this information - this might include but is not limited to, contracts, invoices and bank statements.
- e. Name and contact details of your primary contact(s) at the contracting entity.

9. Did you use a R&D Consultant for the years ended 30 June 20XX and 30 June 20XX to assist you with your R&D Tax Incentive claim? If you used a R&D Consultant, provide:

- a. The name, address and ABN of the R&D Consultant.
- b. A detailed explanation of the services they provided.
- c. What payments were or will be made to any R&D Consultant in relation to the R&D incentive?
- d. Were there any contracts or agreements made with any R&D Consultant in relation to any assistance with the R&D incentive?
- e. Provide all relevant documentation to support this information - this might include but is not limited to, contracts, invoices and bank statements.

R&D Expenditure

Salary expenditure

10. The R&D Schedule you provided in your tax return showed the following amounts for the 20XX and 20XX years in respect of "R&D Salary":

ITEM	20XX	20XX
Salary Expenses	\$\$\$	\$\$\$

- a. For each employee, provide:
 - i. the name(s) and salaries incurred/paid;
 - ii. the amount of their salaries that was included in the R&D expenditure claim for each employee;
 - iii. the periods each employee was employed in respect of the R&D activities; and
 - iv. description of work undertaken in relation to R&D activities.
- b. Details and records used for the basis of allocating costs between their salaries between eligible R&D activities and other non-R&D activities.
- c. Documentation supporting your claim - this might include, but is not limited to, diaries, time sheets, and job sheets.

Other R&D expenditure

11. The R&D Schedule you provided in your tax return showed the following amounts for the 20XX and 20XX years in respect of "Other R&D Expenditure":

ITEM	20XX	20XX
Other R&D Expenditure	\$\$\$	\$\$\$

Provide the following:

- An itemised list for each year and the amounts of R&D expenditure incurred.
- Description of the expenditures.
- Connection to the R&D activity.
- Schedules or similar documents showing how much was charged in relation to the R&D activity.
- An explanation of the basis used to allocate costs between R&D and non-R&D activities.
- Documents supporting your claim - this might include, but is not limited to, diaries, time sheets, job sheets, minutes of meetings, invoices and motor vehicle log books.

R&D expenditure – Paid to Associates

13. The R&D Schedules you provided in your tax returns showed the following amounts for each year in respect of "R&D expenditure - Paid to Associates in the current year":

ITEM	20XX	20XX
Paid to Associates in the current year	\$\$\$	\$\$\$

For any amounts claimed under R&D expenditure that were paid to associates (as defined in section 318 of the Income Tax Assessment Act 1936), provide:

- A break up of the R&D expenditure paid to associates amounts incurred for each of the projects outlined in your AusIndustry Tax Incentive applications
- The name, address and ABN, if applicable, of the associate(s) to whom the amount relates.
- An explanation of the relationship between you and the associate(s)
- A description of the work undertaken by associates in relation to each R&D activity
- An explanation I description of the services (and/or goods) provided and the connection to the registered R&D activities.
- Documents substantiating the connection between each of the payment to Associate expenditure and the registered R&D activities
- A schedule, or similar document, showing how much was charged in relation R&D activities and the basis used to calculate the amount charged
- Documents supporting your claim, if not already provided above
- Evidence that the amount has been paid. If the amount has not been paid, what agreements are in place?

Financing the R&D activities

14. In relation to the financing of the R&D activities, provide:

- An explanation of how the R&D activities were financed, including who you obtained loans from and the amount of the loans.
- Lists of trade creditors and other creditors as at 30 June 20XX and 30 June 20XX, including the amounts owed by each creditor.
- Documents supporting the proposed and actual financing of the R&D activities, including but not limited to, copies of any plans, budgets, minutes of meetings with prospective investors and financiers, and loan agreements.

Loans

15. If applicable, provide the following details regarding any loans between XXX Pty Ltd and its associated entities in respect of the R&D work carried out during the period 1 July 20XX to 30 June 20XX, including:

- a. Name of recipient and provider of loan.
- b. Date of commencement and term of the loan.
- c. Date and amount of each transaction.
- d. Terms and conditions of the loan including the interest rate.

16. If applicable, provide the following details regarding any loans forgiven in respect of the R&D work carried out between the periods 1 July 20XX to 30 June 20XX, including:

- a. The name of recipient and provider of loan
- b. The date and amount forgiven.
- c. The reason for the forgiveness.



RAMIFICATIONS, FINES AND PENALTIES – WHAT ARE THE POTENTIAL CONSEQUENCES IF I GET IT ALL WRONG?

Common misconceptions that can get you into trouble

- 1) The development of a new product, process or service does not necessarily mean you are undertaking eligible R&D activities for the purposes of the R&D Tax Incentive. The incentive is not designed to reimburse your business for learning something new or to offset normal business development costs, in absence of high levels of technical or scientific risk requiring experimental activities to generate new knowledge the development work would not be considered eligible.
- 2) A software start-up with no revenue is trying to automate a process and therefore believes it's all eligible R&D. If the automation requires the development of new algorithms which are deducible and within the scope of a competent professional in the field based upon existing knowledge it is not eligible R&D, in this instance the only risk being undertaken by the start-up is associated with the potential success of the business, business model risk is not to be confused with high levels of technical or scientific risk.
- 3) A new R&D company is incorporated to undertake R&D activities which involve high levels of technical or scientific risk and assume that everything cost associated with the business is eligible, the R&D Tax Incentive is a activity based program which excludes any activities that are not deemed eligible as either "core" or "supporting" R&D

activities, any activities that relate to administration of the business, accounting, capital raising, patenting, marketing etc are ineligible.

- 4) My company has successfully claimed benefits under the R&D Tax Incentive for many years but the project activities today are merely customisations, bug fixes and minor upgrades etc – every time a new update or version is released on the market requires a claimant to meet the eligibility criteria again as if its starting a new project with eligible activities, you cannot simply continue to claim so called supporting activities which are broadly linked to a core activity which occurred in prior year/s.

What type of audits or reviews are conducted by AusIndustry or the ATO?

1) AusIndustry

(a) Pre-registration review

Your application for registration is analysed against possible indicators of non-compliance risk by the department. The department may or may not contact you during this process. This could be by reference to industry averages,

(b) Registration review

Applications are being reviewed at the time of lodgement.

Previously this was a relatively pro forma process. There has been a significant increase in the requirements to justify the eligibility of applications at this stage. Oddly, this is the best time to get picked up as there are no financial penalties incurred if you need to withdraw an application at this stage. During peak process times earlier this, the ATO actually provided staff to the AusIndustry processing team to ensure that reviews during this time were not too slowly processed however, once questions are raised the audit process can take up to 2-3 months before an outcome is reached.

(c) AusIndustry desk reviews

AusIndustry can also review applications after the lodgement process is complete. They are called "Requests for Information" (RFI) which they highlight are not audits. However, if you don't successfully answer all questions in an RFI then it will escalate into a fuller review. RFI's can often lead to a review of a claimant's prior year/s applications if found wanting, if claimants fail these reviews they will be required to amend all prior year tax returns and repay incorrectly claimed amounts with interest and penalties.

(d) AusIndustry activity reviews

Further reviews can be undertaken to get clarification of your R&D activities. This can include a site visit

2) Australian Tax Office reviews/audits

ATO R&D Tax specific reviews have evolved into something much more comprehensive than those originally envisaged. Traditionally, these audits were only concerned with reviews of expenditure. Now, they are reviewing the eligibility of expenditure associated with eligible activities which allows them to indirectly look at the activities as well. These audits can be very intensive and involve responding to over 80 information request questions as outlined in the "ATO review questions revealed". The ATO may also review your participation in claiming benefits under the R&D Tax Incentive under a general tax audit so if you are caught out on another matter you may find your R&D claims also on the radar.

Penalties and Interest

If a claim is found to be ineligible, not only do you need to adjust your tax return and repay the funds provided over how many years the matter relates to but you will also find that the following penalties may apply depending upon the ATO's view on the level of intent:

- 1) **Failure to take reasonable care:** The base penalty is 25% of the shortfall amount. Generally, you fail to take reasonable care if you have not done what a reasonable person in the same circumstances would have done.
- 2) **Recklessness:** The base penalty is 50% of the shortfall amount. You are reckless if a reasonable person in your circumstances would have been aware that there was a real risk of a shortfall amount arising and you disregarded, or showed indifference to, that risk.
- 3) **Intentional disregard:** The base penalty is 75% of the shortfall amount. You intentionally disregard the law if you are fully aware of a clear tax obligation and you disregard the obligation with the intention of bringing about certain results (underpaying tax or over-claiming an entitlement).

What about safe harbour?

Firstly, what is it? Safe Harbour applies when an error is caused by your tax agent. You may not be liable to an administrative penalty for making a false or misleading statement that results in a shortfall amount if all the following apply:

- the statement was made by your registered agent
- you gave your agent all the relevant tax information to enable the statement to be made correctly (you or your agent will need to prove that this information was provided)
- the shortfall amount was due to your agent's lack of reasonable care

Sounds good! However, most agents are much more familiar with safe harbour provisions than their clients. If your R&D Tax or external accountant relies on the information provided by the client and lodges it on your behalf on that basis then safe harbour provisions will not apply.

R&D TAX INCENTIVE HEALTH CHECK DO YOU NEED A SECOND OPINION?

Given the high level of audit activity resulting in claimants receiving demands to pay back cash benefits it raises concerns for many R&D applicants who rely on the program to offset early stage risk, do you need a second opinion?

Self assessment - how can I be sure?

- Are you certain that you understand the intricacies of the program?
- Are you approaching your R&D activities using the scientific method?
- What are eligible core and supporting activities?
- When do eligible R&D activities start and finish?
- How does the dominant purpose test affect your claim?
- What records should I keep to substantiate my claims?

It's fine. My accountant does it for a few of his clients and I'm happy with the outcome.

While all accountants are definitely not the same, the ATO reports the highest error rates for R&D claims are made by accountants that lodge less than five claims a year.

The carrot and the stick. With a 43.5% cash refund at stake, claimants need to be sure they don't get it wrong and have to repay the benefits plus penalties of up to 80%.

Undertaking a R&D Tax Health check is a great way to sort things out and get some peace of mind as you need to know whether your claims are defensible.

After a site tour or presentation about the opportunities and challenges facing your business, we address the key issues facing firms claiming the R&D Tax Incentive.

- Am I claiming eligible R&D activities?
- Am I claiming eligible R&D expenditure?
- What records link eligible R&D activities to the expenditures claimed?
- Does my approach to R&D follow the scientific method?
- What is involved in preparing an R&D claim?
- What records will the ATO or AusIndustry require if selected for an audit?
- Are my claims defensible?

This is combined with a review of your last claim, your record keeping system and the results you have achieved to date. Health Check participants expand their understanding of the activities which can be claimed and how to capture them on an ongoing basis to bolster their compliance.

They've raised the bar! We have created templates to help you get up to speed quickly and satisfy the scheme's compliance requirements. These include for example, a R&D Project Plan template for software and engineered products, weekly technical reporting templates and labour tracking solutions.

We are celebrating our 27th anniversary as government grant advisors and look forward to assisting you to legitimately claim benefits under the R&D Tax Incentive – call us today for an obligation free chat.

WHAT'S IN STORE?

R&D TAX INCENTIVE EFFECTIVE RATES OF RETURN POST MAY 2018 BUDGET

Tax Year	Aggregated Annual Turnover (ATA)	Company Tax Rate	Effective Refundable Benefit (ATA under \$20m)	Effective R&D Non-refundable Tax Offset
2017-18	< \$20m	27.5%	43.5% / 16.0%	n/a
2017-18	\$20m - \$25m	27.5%	n/a	11%
2017-18	\$25m - 50m	30%	n/a	8.5%
2017-18	> \$50m	30%	n/a	8.5%
2018-19	< \$20m	27.5%	41.0% / 13.5%	n/a
2018-19	\$20m - \$50m	27.5%	n/a	*
2018-19	> \$50m	30%	n/a	*

2018-19 rates above apply to tax years ending 2020; 2021; 2022 and 2023

* Proposed effective rates of return based on intensity thresholds for 2018/19 and beyond:

- 4% for R&D expenditure up to 2% of total expenditure
- 6.5% for R&D expenditure between 2% to 5% of total expenditure;
- 9% for R&D expenditure between 5% to 10% of total expenditure, and
- 12.5% for R&D expenditure above 10% of total expenditure.

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