

TAX INSIGHTS

R&D UPDATE



30 APRIL 2020 DEADLINE APPROACHING

A general reminder for year-ended 30 June 2019 companies planning on accessing the R&D Tax Incentive program that you must lodge your R&D Application Form with AusIndustry within ten (10) months of the relevant financial year end.

This means that the deadline for 30 June 2019 year-end companies will be 30 April 2020. We would encourage all companies who have not yet started the process to contact us as soon as possible to ensure there is sufficient time before the deadline to properly assess all eligibility requirements of the program (including the requirement to keep contemporaneous documentation) and avoid the last minute rush.

REMINDER ABOUT RECORD KEEPING REQUIREMENTS

As the R&D Tax Incentive program is a self-assessment program, it is incumbent on the taxpayer to ensure that their registered R&D activities and associated expenditure meets all eligibility requirements set forth in the legislation.

A key requirement is that companies keep adequate records to demonstrate to both AusIndustry and the ATO that the requirements are met. Records must generally be kept for a minimum of five years and a failure to do so may mean that R&D Offsets must be repaid, and penalties may be imposed in certain circumstances. RSM has been working collaboratively with our clients and the administrators to ensure optimal knowledge flow in relation to best practice, and we have assisted our new clients with governance and documentation processes to ensure maximum value from the R&D program is obtained.

Please contact RSM if you require more information as to the type of records required, or if you would like us to undertake a full documentation review. A fact sheet can be found [here](#).

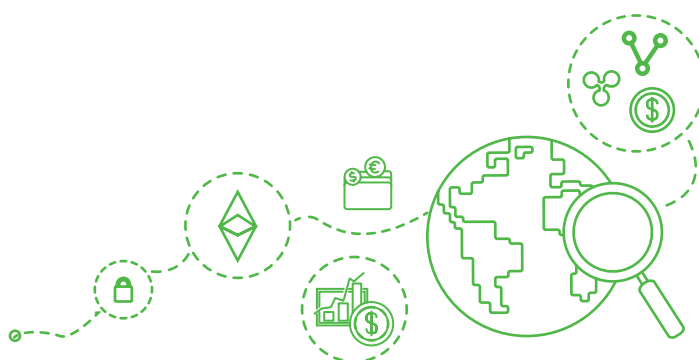
OMBUDSMAN REPORT INTO THE ADMINISTRATION OF THE R&D TAX INCENTIVE

On 12 December 2019, the Australian Small and Family Enterprise Ombudsman (ASBFEO) released their report into administration and compliance activities being undertaken by the regulators of the R&D Tax Incentive program (AusIndustry and the ATO).

The report put forward some deep concerns from the business community in relation to the actions of the program administrators and made 24 sweeping recommendations to overhaul the way in which the program is regulated. This included the integration of AusIndustry and ATO administration, the implementation of a more collaborative compliance process with industry, the development of improved guidance materials and the provision of assistance for companies in the identification and retention of responsible R&D consultants.

The administrators have been positive in responding to the recommendations and are currently considering options to improve the program.

The full report is available for viewing by clicking [here](#).



NEW R&D TAX INCENTIVE INTEGRITY FRAMEWORK

In the month prior to the release of the Ombudsman's report, AusIndustry published details of a revamped R&D Tax Incentive Integrity Framework, signalling a more collaborative and real-time approach to administration of the program. As part of this, AusIndustry has released a User Journey document detailing how they will engage with applicants throughout their R&D Tax Incentive journey, and tailor compliance activities based on the categorisation of companies into risk categories based on the new Integrity Framework. A flowchart detailing the typical steps on this User Journey can be found [here](#).

INTRODUCTION OF NEW ZEALAND R&D TAX INCENTIVE PROGRAM

New Zealand's recently introduced R&D Tax Incentive program offers some of the most generous R&D funding benefits available across Asia Pacific, providing a 15% tax credit for eligible applicants, which can be taken as a refund in certain circumstances.

The program was introduced from 1 April 2019, so standard balancers (31 March 2020 year end) will soon be able to submit an R&D return.

The ability exists to couple an R&D claim under the new R&D Tax Incentive program with the existing R&D tax loss cash-out regime (under IAS 38) if the relevant criteria is satisfied.

If your business undertakes R&D activities in New Zealand and you would like to discuss this opportunity further, please contact us.

More details can be found by [clicking here](#).

INTRODUCTION OF REVISED CHANGES TO THE R&D TAX INCENTIVE

On 5 December 2019, the Government re-introduced a Bill containing changes to the R&D Tax Incentive program. The Bill (the Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019) is largely the same as the prior Bill (based on changes proposed in the 2018 Federal Budget) that was previously referred to the Senate Economics Legislation Committee. In November 2018, RSM was one of three firms which attended the Committee Hearing as a witness, where a large number of concerns were raised by the bipartisan panel and expert witnesses. The revised bill appears to have been reintroduced in a manner which largely ignores the previous industry concerns. It is unclear at this stage whether the new measures are likely to pass however it is important to note that if passed, this would apply retrospectively **from 1 July 2019**.

The revised Bill seeks to make the following changes to the program:

1. Increase the R&D expenditure threshold from \$100m to \$150m;
2. Link the R&D tax offset for refundable R&D tax offset claimants to claimants' corporate tax rates plus a 13.5 percentage point premium;
3. Cap the refundability of the R&D tax offset at \$4m per annum (excluding clinical trials);
4. Introduce a marginal intensity premium for claimants with non-refundable offsets; and
5. Introduce measures to improve the integrity, administration and transparency of the program.

The full Bill, along with supporting documentation such as the Explanatory Memorandum, can be found by [clicking here](#).



THE MORETON RESOURCES CASE

Thursday, 25 July 2019 became a significant day for the R&D Tax Incentive in Australia, as the landmark decision of *Moreton Resources Ltd v Innovation and Science Australia* [2019] FCAFC 120 ("**Moreton**") was handed down by the Full Bench of the Federal Court. The *Moreton* judgement became the first judicially binding precedent in relation to the meaning of "eligible R&D activities" contained within Division 355 of the Income Tax Assessment Act 1997 ("Cth") ("**ITAA 1997**") and indeed, the first in relation to the R&D tax incentive legislation. The decision provided a departure from the manner in which some of the concepts were being applied within industry and by the AAT prior to this matter. Innovation and Science Australia has confirmed that it will not seek special leave to appeal to the High Court. It should be noted that some fact based matters have been referred back to the Administrative Appeals Tribunal ("**AAT**"), and it is uncertain when the outcome of these issues will be known.

On the day of release, RSM Australia was one of the first firms to discuss the case and share our preliminary views on the significant impact of the decision. The publication can be found by [clicking here](#).



FOR FURTHER INFORMATION

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