The R&D Tax Incentive

The R&D Tax Incentive is the Australian Government’s principal measure to encourage industry investment in research and development (R&D). It is a broad-based, market-driven program that aims to boost company competitiveness, improve productivity and deliver economy-wide benefits to Australia. The R&D Tax Incentive replaces the R&D Tax Concession from 1 July 2011 and is jointly administered by AusIndustry (on behalf of Innovation Australia) and the Australian Taxation Office (ATO).

Can I receive a benefit for R&D conducted overseas?

Generally only R&D activities conducted in Australia or the external Territories qualify for the R&D Tax Incentive. However in certain circumstances, R&D activities conducted overseas may also qualify. To be eligible for this benefit, companies must apply to Innovation Australia for a finding about activities occurring overseas.

This feature of the program recognises the fact that Australia does not always have all the necessary R&D expertise and facilities to meet industry needs, and that research is increasingly global in nature.

Who can apply for an overseas finding?

The following entities can apply:
- a company incorporated under an Australian law;
- a company incorporated under foreign law that is an Australian resident for tax purposes; or
- a company incorporated under a foreign law that is a resident of a foreign country with a double tax agreement with Australia that carries on a business in Australia through a permanent establishment of the body corporate in Australia.

A body corporate acting as trustee of a public trading trust is also eligible to apply. If you are in doubt as to whether you are an eligible entity, please contact the ATO.

Note that for consolidated groups, the head company of the group must apply for the advance finding on behalf of their subsidiary member who conducted or will conduct the R&D activities.

What are the conditions for a finding that activities conducted overseas are eligible?

There are four conditions to be met for a finding to be made that R&D activities conducted overseas are eligible under the R&D Tax Incentive.

Condition 1
1. The overseas activity must be covered by an advance finding that the activity in question is an eligible R&D activity.

Condition 2
2. The overseas activity must have a significant scientific link to one or more core R&D activities conducted in Australia (Australian core activities). Those Australian core activities must be registered with Innovation Australia, or reasonably likely to be conducted and registered in the future.

Condition 3
3. The overseas activity cannot be conducted solely in Australia because:
   a. conducting it requires access to a facility, expertise or equipment not available in Australia;
   b. conducting it in Australia would contravene a law relating to quarantine;
   c. conducting it requires access to a population (of living things) not available in Australia; or
   d. conducting it requires access to a geographical or geological feature not available in Australia.

Condition 4
4. The total amount (actual and reasonably anticipated) to be spent in all income years by the company and any other entities on:
   - the overseas activities that meet the four conditions; and
   - each other activity conducted wholly or partly outside Australia that has a significant scientific link to the Australian core activities,
   is less than the total amount (actual and reasonably anticipated) to be spent in all income years on:
   - the Australian core activities; and
   - the activities conducted within Australia that are supporting R&D activities in relation to the Australian core activities.
R&D Tax Incentive: Overseas R&D

Information sheet

When should I apply for a finding for activities conducted overseas?
To successfully obtain an overseas finding, a company must also have an advance finding that the activities are eligible.

The application must be made in the first income year that the overseas activities are conducted. The application can also be made in advance of the company conducting the activity outside Australia.

The application cannot be for activities conducted in previous income years.

How do I apply for a finding?
Applications for an overseas finding must be made using the approved form. Approved forms will be available on the AusIndustry website after the Regulations have been made.

Applicants should use the form that allows an overseas and advance finding to be made in the one application. That form incorporates questions about overseas activities; where they are identified, the applicant will be taken to be applying for a finding on overseas activities as well.

What is the effect of an overseas finding?
A company can only claim a tax offset available under the R&D Tax Incentive in respect of expenditure on activities conducted overseas if:

- it has an overseas finding from Innovation Australia stating that all or part of the overseas activities meet the conditions in the legislation; and
- the activities have been registered with AusIndustry for the relevant income year.

A tax offset cannot be claimed in relation to the overseas activity if Innovation Australia:

- finds that the overseas activity does not meet one or more of the four conditions; or
- refuses to make a finding in accordance with the Decision-making Principles.

Ancillary and incidental expenditure does not require Innovation Australia’s approval
The ATO will accept deductions of certain minor amounts of expenditure on overseas R&D activities without a company needing an overseas finding from Innovation Australia.

The kinds of expenditure accepted for this purpose are expenditures on overseas R&D activities that are insignificant in the context of the Australian R&D activities. Such activities could include sending R&D staff overseas to observe techniques or to attend relevant seminars.

Where do I go for more information?
For information on registration and eligibility of R&D activities, contact AusIndustry

- Visit the website | www.ausindustry.gov.au
- Call the AusIndustry hotline | 13 28 46
- Email the AusIndustry hotline | hotline@ausindustry.gov.au

1. Within this information sheet, a reference to Australia should also be taken to be a reference to Australia or the external Territories.

2. See the AusIndustry website for more information.