Research and development tax incentive – expenditure incurred to an associate

How the research and development tax incentive applies to expenditure you incur to an associate

The research and development (R&D) tax incentive provides a targeted tax offset to encourage certain companies (R&D entities) to conduct R&D activities that benefit Australia.

It provides generous benefits for companies performing eligible R&D activities and has the following two core components:

- a 45% refundable tax offset for eligible entities with an aggregated turnover of less than $20 million – unless they are controlled by tax exempt entities
- a 40% non-refundable tax offset for all other eligible entities.

The tax incentive replaces the R&D tax concession and is jointly administered by Innovation Australia (assisted by AusIndustry) and us.

Under the R&D tax incentive, R&D entities can only obtain the incentive for expenditure they incur to an associated entity when they actually pay the amount.

CAN YOU CLAIM A NOTIONAL DEDUCTION FOR EXPENDITURE YOU INCUR TO AN ASSOCIATE?

If you incur an amount of expenditure to an associate and you pay the amount in the same year, you can claim a notional deduction for that amount in that year (provided you meet all other eligibility requirements for the R&D tax incentive).

WHAT IF YOU DO NOT PAY THE AMOUNT UNTIL A LATER YEAR?

If you do not pay the amount until a later income year, you can choose to do either of the following:

- claim a deduction under the normal income tax provisions – for example, the general deduction provision, section 8-1 of the Income Tax Assessment Act 1997 – for the income year in which the amount was incurred. This choice, (which can be made in your return or as an amendment) must be made by the time you lodge your return for the income year before the one in which the payment is made
- claim a notional R&D deduction in the year you make the payment.

If you claim the deduction (or obtain a non-R&D tax offset) for this expenditure under the first choice, you will no longer be entitled to claim a notional R&D deduction in the year you make the payment. This cannot be reversed – for example, you cannot later request an amendment of the assessment to disallow the deduction you claimed.

Paying an amount to an associate can include making a constructive payment, where you apply or deal with the amount on their behalf or as they direct.
WHO IS MY ASSOCIATE?

In broad terms, associates are those entities that, by reason of family or business connections, might appropriately be regarded as being associates of a particular entity.

For a more detailed definition of ‘associate’, refer to section 318 of the Income Tax Assessment Act 1936.

Some examples of an associate of a company, other than a company in the capacity of trustee, include:

- a partner of the company or a partnership in which the company is a partner
- a trustee of a trust estate under which the company or associate benefits
- another entity (including a natural person) that, acting alone or with another entity or entities, sufficiently influences the company
- an entity (including a natural person) that, either alone or together with associates, holds a majority voting interest in the company
- a second company that is sufficiently influenced by the company or the company's associate
- a second company in which a majority voting interest is held by the company or the company's associate.

WHAT DOES ‘SUFFICIENTLY INFLUENCE’ MEAN?

Under the associate rules, a company is sufficiently influenced by an entity or entities if the company, or its directors, are accustomed or under an obligation to act (or might reasonably be expected to act) in accordance with the directions, instructions or wishes of that entity or entities.

The influence by another entity could be either formal or informal and the directions, instructions or wishes of the influencing entity can be communicated directly or through interposed companies, partnerships or trusts.

WHAT DOES ‘MAJORITY VOTING INTEREST’ MEAN?

Under the associate rules, majority voting interest means the ability to cast, or to control the casting of, more than 50% of the maximum number of votes that may be exercised at a general meeting of the company.
MORE INFORMATION
For more information about the eligibility of R&D activities, contact AusIndustry by:
- phoning them on 13 28 46
- emailing them at hotline@ausindustry.gov.au
- visiting their website at www.ausindustry.gov.au
For more information about eligible entities and amounts you can claim:
- phone us on 13 28 66
- email us at innovationtax@ato.gov.au
- visit our website at www.ato.gov.au/randdtaxincentive
If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on 13 14 50.
If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:
- TTY users, phone 13 36 77 and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone 1300 555 727 and ask for the ATO number you need
- internet relay users, connect to the NRS on www.relayservice.com.au and ask for the ATO number you need.

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If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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