



## Transition from the R&D tax concession to the R&D tax incentive

About the R&D tax concession that applied prior to 1 July 2011.

**Last updated** 28 February 2017

We jointly administer the research and development (R&D) tax concession and R&D tax incentive with AusIndustry.

Before 1 July 2011, the R&D tax concession allowed companies to claim a tax deduction in their income tax return of up to 125% (and in some cases up to 175%) of eligible expenditure on R&D activities.

The R&D tax concession continues to apply and be administered for income years starting before 1 July 2011. As a result, R&D expenditure incurred, and the use of depreciating assets in an income year starting before 1 July 2011, must continue to be claimed under the R&D tax concession.

The former R&D tax concession provisions were contained in Division 3A of *Income Tax Assessment Act 1936* (Sections 73A to 73Z). They were repealed by *Tax Laws Amendment (Research and Development) Act 2011*.

The R&D tax incentive provides tax offsets to encourage more companies to engage in R&D and has two core components:

- a 43.5% refundable tax offset for certain eligible R&D entities with an aggregated turnover of less than \$20 million per annum
- a 38.5% non-refundable tax offset for all other eligible R&D entities. Unused offset amounts may be able to be carried forward for use in future income years.

The rate of the R&D tax offset is reduced to the company tax rate (currently 30%) for that portion of an entity's notional R&D deductions that exceeds \$100 million for an income year. This change applies to assessments for income years starting on or after 1 July 2014 and before 1 July 2024.

Rules and provisions were introduced with the R&D tax incentive to:

- ensure that, despite the repeal of the R&D tax concession provisions, those provisions can still apply to certain things done (for example, expenditure that has been incurred) before they were repealed
- establish special transitional arrangements to broadly address some situations that extend over income years where the R&D tax concession provisions and the R&D tax incentive provisions apply.

AusIndustry provides information about transitional arrangements for:

- registering activities
- assessments by AusIndustry and decisions by Innovation Australia
- existing certificates or determinations
- registering research service providers (previously known as a registered research agency)

Visit the 'Contact Us' page on the business.gov.au website for details on how to contact AusIndustry via phone (**13 28 46**), email or web chat.

#### See also

- Research and development tax incentive – claiming

### **ATO assessments, decisions and rulings for the R&D tax concession**



How to amend or object an assessment and information on our advice and guidance.

### **Special transitional rules**



~~When special transitional rules apply:~~

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## ATO assessments, decisions and rulings for the R&D tax concession

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### Amendments and objections

#### Amending or objecting to an assessment for a year of income starting prior to 1 July 2011

The introduction of the R&D tax incentive included amendments to ensure that although the R&D tax concession provisions in sections 73B to 73Z of the *Income Tax Assessment Act 1936* (ITAA 1936) ceased to apply from 1 July 2011, they will still apply to years of income commencing prior to this date.

As such, if your assessment relates to a year of income commencing prior to 1 July 2011, sections 73B to 73Z of the ITAA 1936 will continue to apply to those years. Your assessment for those years can be amended if it is necessary to adjust a claim made under those sections. Under section 175A of the ITAA 1936, you can also object to an assessment in relation to a claim made under sections 73B to 73Z of the ITAA 1936, unless it is a 'nil' assessment to which subsection 175A(2) of the ITAA 1936 applies.

A notice issued under section 73IA of the ITAA 1936 previously gave objection rights in relation to R&D tax offset claims, where you would otherwise have been prevented from objecting under subsection 175A(2) of the ITAA 1936. Although section 73IA of the ITAA 1936 has been repealed for years of income commencing on or after 1 July 2011, the Commissioner may continue to issue these notices for years of income starting prior to 1 July 2011. Subject to meeting objection timeframes, your right to object to a notice issued under section 73IA of the ITAA 1936 will also be maintained.

There are time limits for making amendments to your tax return, generally two years for small businesses and four years for other taxpayers. To give you certainty about your tax affairs, the law does not allow amendments (initiated by us or by you) outside the time limit, but you may be able to lodge an objection instead.

Time limits for lodging objections vary. In most cases it is at least 60 days from receipt of the related notice and, in the case of income tax assessments, it is two or four years after the lodgment date for the return (two years for most small businesses, four years for all other taxpayers).

## **Objecting to an assessment for income years starting on or after 1 July 2011**

For income years starting on or after 1 July 2012, section 175A of the ITAA 1936 give rights against an assessment made for an R&D entity, to the extent that the refundable R&D tax offset.

For income years starting on or after 1 July 2011, former section 355-700 of the ITAA 1997 modifies section 175A of the ITAA 1936 to give objection rights against an assessment made for an R&D entity, to the extent that the assessment relates to the refundable R&D tax offset.

All other assessments are subject to the rules set out in section 175A of the ITAA 1936.

### **See also:**

- [Dispute or object to an ATO decision](#)

## **Rulings and advice issued prior to 1 July 2011**

### **Advice and guidance**

We offer different types of advice and guidance that give our view on how the laws we administer apply. These range from published guidance about how the law generally applies to advice given to a taxpayer about how the law applies to their particular circumstances.

Our advice is binding and provides the highest level of protection for taxpayers who rely on it. However, guidance is not binding as it

provides more general information that assists taxpayers in a wide variety of circumstances to deal with their tax affairs.

If a taxpayer follows our advice or guidance that turns out to be incorrect or misleading, and they make a mistake as a result, they are entitled to certain levels of protection under the law.

The provisions introduced with the R&D tax incentive ensure that the R&D tax concession provisions continue to apply for years of income beginning prior to 1 July 2011. This means that if you have received advice or guidance from us in relation to sections 73B to 73Z of the ITAA 1936, you may continue to rely on this advice or guidance in relation to the prior years to which the advice or guidance relates.

## **ATO Interpretative Decision**

An ATO Interpretative Decision (ATO ID) is a summary of a decision on an interpretative issue and sets out the Commissioner's view on the interpretation of the law on that particular issue. ATO IDs are produced to assist ATO officers to apply the law consistently and accurately to particular factual situations.

Although they are available on our website, they are not published as a form of advice. They are being made available for your inspection to meet freedom of information (FOI) requirements, because they may be used by an officer in making another decision. Although sections 73B to 73Z of the ITAA 1936 have now been repealed, an ATOID may still be relied on by an officer in making a decision in relation to years of income starting prior to 1 July 2011.

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## **Special transitional rules**

When special transitional rules apply.

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Special transitional rules apply for situations that extend over income years where the R&D tax concession provisions and the R&D tax incentive provisions apply.

The R&D tax incentive provisions are primarily contained in **Division 355** of the ITAA 1997 and apply to work out eligibility for a R&D tax offset for an income year commencing on or after 1 July 2011.

You may be eligible for a tax offset under the new provisions for:

- expenditure incurred in an income year commencing on or after 1 July 2011
- the use of depreciating assets in an income year commencing on or after 1 July 2011.

The general result of the transitional provisions accompanying the R&D tax incentive is that:

- the R&D tax concession provisions apply to expenditure incurred, and to the use of depreciating assets, in an income year commencing before 1 July 2011
- the R&D tax incentive provisions apply to expenditure incurred, and to the use of depreciating assets, in an income year commencing on or after 1 July 2011.

However, there are special rules for situations that extend over income years where the R&D tax concession provisions applied and the R&D tax incentive provisions now apply (transitional rules).

## Substituted accounting periods

Under the *Income Tax Assessment Act 1936* (ITAA 1936), an accounting period is generally a period of 12 months ending on 30 June. However, the Act allows for a substituted accounting period (SAP) to balance on some other date.

The start date for the R&D tax incentive is determined by when your income year begins, not when it ends. If your 2011 income year begins before 1 July 2011, you cannot claim the R&D tax incentive. You may be able to claim the R&D tax incentive from your first year of income beginning on or after 1 July 2011.

### Example

Company A has a late-balancing September SAP. Company A's 2011 tax return will be lodged for the period 1 October 2010 to 30 September 2011. As its 2011 income year begins on 1 October

2010, which is before 1 July 2011, it will not be able to claim the R&D tax incentive until its 2012 income year, beginning on 1 October 2011.

If your 2012 income year begins before 1 July 2011, you will not be able to claim the R&D tax incentive in your 2012 tax return. You may be able to claim the R&D tax incentive from your first income year beginning on or after 1 July 2011.

### Example

Company B has an early-balancing December SAP. Company B's 2012 tax return will be lodged for the period 1 January 2011 to 31 December 2011. As its 2012 income year begins on 1 January 2011, which is before 1 July 2011, it will not be able to claim the R&D tax incentive until its 2013 income year, beginning on 1 January 2012.

### See also:

- [expenditure reduced to reflect intra-group mark-ups](#)
- [undeducted core technology expenses](#)
- [clawback as a result of recoupments received](#)
- [decline in value of depreciating assets](#)

## Expenditure reduced to reflect group mark-ups

A transitional rule ensures that for the purposes of the rule about intra-group mark-ups in section 355-415 of the ITAA 1997, if you have already taken a particular intra-group mark-up amount into account under the R&D tax concession, you disregard this amount when calculating your notional deduction under the R&D tax incentive.

### See also:

- section 355-415 of the IT(TP) Act 1997

## Undeducted core technology expenditure

There are transitional provisions in place to ensure that if you have core technology expenditure (within the meaning of former section 73B of the ITAA 1936) that cannot be deducted prior to 1 July 2011, it may be eligible for a deduction in an income year beginning after 1 July 2011.

If your core technology is a depreciating asset (for example, a patent), the R&D depreciating asset provisions will apply on the basis that the opening adjustable amount is the amount of undeducted expenditure in relation to your asset.

**See also:**

- section 355-605 of the IT(TP) Act 1997

If your core technology is not a depreciating asset, your undeducted expenditure is deductible in equal proportions over five income years, starting in your first income year commencing on or after 1 July 2011.

Undeducted core technology expenditure will not form part of your notional R&D deductions for income years commencing on or after 1 July 2011, but will be deductible against your assessable income when calculating your taxable income or loss.

**See also:**

- section 355-610 of the IT(TP) Act 1997

## **Recoupment received after 1 July 2011 which relates to expenditure incurred under the R&D tax concession**

If you have received a grant or recoupment in an income year starting on or after 1 July 2011, in respect of expenditure incurred on registered R&D activities prior to 1 July 2011, you need to recalculate and apply your initial clawback amount in accordance with section 73C of the ITAA 1936.

This does not apply if you have received a recoupment of expenditure for which you have claimed a tax offset under Division 355 of the ITAA 1997. For further information in relation to recoupments of expenditure for which you have claimed a tax offset refer to **Research and development tax incentive - clawback adjustment**



## Decline in value of depreciating assets

Under the R&D tax concession, a R&D deduction was allowed for decline in value of a tangible depreciating asset used for R&D activities. If that asset is also used for R&D activities in an income year starting on or after 1 July 2011, the R&D tax incentive provisions about notional deductions for the decline in value of R&D depreciating assets will apply. Accordingly, tangible depreciating assets are covered by the R&D tax incentive provisions, regardless of when they were acquired. A number of special provisions are necessary to ensure that:

- the normal rules that limit the ability of a R&D entity to change the method of calculating decline in value apply
- a determination or calculation of effective life that was made in relation to the R&D tax concession continues to apply
- a R&D entity cannot allocate a depreciating asset to a low value pool or one of the small business pools after the previous R&D tax concession decline in value provisions have applied to the asset.

### See also:

If you have used a depreciating asset for R&D activities under the R&D tax concession and will continue to use this asset under the R&D tax incentive, refer to the following provisions for more information:

- section 40-67 of the IT(TP) Act 1997
- section 40-105 of the IT(TP) Act 1997
- section 40-430 of the IT(TP) Act 1997

### Transitional balancing adjustment provisions

There are also transitional balancing adjustment provisions to cover cases where:

- a R&D entity or a R&D partnership used a depreciating asset for R&D activities when the R&D tax concession provisions are applied and continues to use the depreciating asset under the R&D tax incentive
- a balancing adjustment event happens in an income year starting on or after 1 July 2011.

These rules provide differing treatment dependant on whether the assets were used:

- solely for R&D activities

- partly for R&D activities.

**Next steps:**

If you have used a depreciating asset for R&D activities under the R&D tax concession, continued to use that asset under the R&D tax incentive, and a balancing adjustment event has occurred, refer to the following provisions for more information.

- Assets used solely for R&D activities
  - section 355-320 of the IT(TP) Act 1997
  - section 355-325 of the IT(TP) Act 1997.
- Assets used partly for R&D activities
  - section 40-285 of the ITAA 1997
  - section 40-292 of the IT(TP) Act 1997
  - section 40-293 of the IT(TP) Act 1997.

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**Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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