R&D Tax Incentive – Update on proposed law changes

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In brief

In the May 2018 Federal Budget the Government announced their intention to introduce changes to reform the Research and Development (R&D) Tax Incentive, and a consultation process was completed in July 2018.

On Thursday 20 September 2018, legislation seeking to give effect to the proposal was introduced into the Federal Parliament. These changes, if enacted, will apply for income years starting on or after 1 July 2018.

In detail

Various measures were proposed by the Government in the May 2018 Federal Budget to reform the R&D tax incentive to better target the program and improve its effectiveness, integrity and fiscal affordability. A consultation process followed with draft legislation and associated explanatory materials that closed in July 2018.

On Thursday 20 September 2018, the *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018* was introduced into the House of Representatives, which includes a number of the changes as originally outlined in the draft legislation. These measures, if passed by both Houses of Parliament, will apply for income years starting on or after 1 July 2018.

A summary of the changes include:

- For R&D entities with aggregated annual turnover below AUD 20 million:
  - the benefit now will come via a refundable tax offset including a 13.5 percentage point premium above the entity's corporate tax rate
  - an AUD 4 million refund cap will apply (other than for clinical trials which are exempt from the cap)
  - The Board will be allowed to make findings about whether something is a clinical trial
- For R&D entities with aggregated annual turnover of at least AUD 20 million:
  - a sliding "R&D Intensity" scale has been incorporated into the determination of the amount of the non-refundable offset (as proposed in the draft legislation)
  - further detail about how "R&D Intensity" will be calculated is provided in the law – the intensity is based on the R&D entity's accounting expenses plus R&D expenditure

to the extent it is not already included in accounting expenses. Clarity has been attempted to be provided by linking this to total expenses in the company tax return.

- A number of changes will be made to the calculation and inclusion of feedstock adjustments, clawback adjustments and balancing adjustments.

- In line with the proposal to make public the details of all R&D claimants and the amount of R&D expenditure claimed, the first publication of this data by the Australian Taxation Office will be approximately two years after the relevant income year for the claim.

The takeaway

The Government's proposed legislative changes in the Bill introduced into Parliament seek to better target the R&D Tax Incentive program, improve its effectiveness, integrity and fiscal affordability. Debate on the Bill by the House of Representatives will resume the next week of sitting commencing on 15 October 2018. After the Bill is passed by the House, the Bill will proceed to the Senate for debate. If passed into law, the Bill will have effect for income years starting on or after 1 July 2018.

If you would like to discuss any of these matters further or how these changes will impact on your business, please contact your PwC R&D contact.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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