



Who can claim

Who is eligible to claim the tax incentive and the rules that apply.

Last updated 23 March 2023

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Eligible R&D entities

Assess whether your entity is eligible to register R&D activities and claim R&D tax offsets in any given year.

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About this guide

This guide will help you work out whether you are an eligible R&D entity, and when R&D activities are conducted for you (or another relevant entity).

When we say 'you' in this guide we are referring to an entity that is working out whether it is eligible to claim the R&D tax incentive.

You can only claim the R&D tax incentive if you are an R&D entity. You are an R&D entity if you are a corporation that is incorporated under any of the following:

- an Australian law
- a foreign law, but you are an Australian resident for income tax purposes
- a foreign law and you are both

- a resident of a country with which Australia has a double-tax agreement that includes a definition of 'permanent establishment'
- carrying on business in Australia through a permanent establishment as defined in the double-tax agreement.

Eligibility for R&D

You are not eligible for the R&D tax incentive if you are:

- an individual
- a corporate limited partnership
- an exempt entity (where your entire income is exempt from income tax).

Trusts are not generally R&D entities, except a body corporate in the capacity of trustee for a public trading trust.

There are special rules to consider if you are a member of a [consolidated group or multiple entry consolidated \(MEC\) group](#) or a [partner in a R&D partnership](#).

For the definition of:

- 'R&D entity', refer to section 355-35 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- 'Australian law', 'foreign law' and 'Australian resident', refer to section 995-1 of the ITAA 1997.

Further information can be found by referring to Taxation Ruling TR 2018/5 *Income tax: central management and control test of residency* and Permanent establishments.

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Consolidated or multiple entry consolidated (MEC) groups

Read about how subsidiary members are treated whilst part of a consolidated group for income tax purposes.

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About consolidated groups

If you are the head company of a consolidated group or MEC group, your subsidiary members are treated as part of you (the head company) while they are part of the consolidated or MEC group for income tax purposes. Therefore, the R&D tax incentive applies to your consolidated group or MEC group as if it is a single entity.

This is known as the single entity rule and it means that:

- the actions and transactions of a subsidiary member are treated as having been undertaken by you, the head company
- dealings that are solely between members of your consolidated or MEC group will not result in ordinary or statutory income or a deduction to you, the head company
- expenditure a subsidiary member incurs on R&D activities is taken to be incurred by you, the head company
- R&D activities conducted for your subsidiary member by a third party are taken to have been conducted for you, the head company
- R&D activities conducted by your subsidiary member for another member of the same group (or vice versa) are taken to have been conducted for you, the head company
- you (and not your subsidiary member) may be entitled to the R&D tax incentive for expenditure on R&D activities undertaken by a subsidiary member while it was in your consolidated or MEC group.

Registration if you are the head company of a consolidated or MEC group

You must register your own R&D activities undertaken **including** those undertaken by subsidiary members of your consolidated or MEC group while they were part of your consolidated or MEC group. Subsidiary members should not register if they were members of your consolidated or MEC group for the full income year.

If you are a subsidiary member:

- that joined a consolidated or MEC group during the income year, you may be entitled to claim the R&D tax incentive for expenditure incurred on R&D activities undertaken in the period before joining the group.
- for only part of the income year because you left that group during the year, you may be entitled to claim the R&D tax incentive for expenditure incurred on R&D activities undertaken in the period after you left the consolidated or MEC group.

Registration if you are a subsidiary member of a consolidated or MEC group for only part of the income year

In order to qualify for the R&D tax incentive for R&D activities undertaken while you were not part of a consolidated or MEC group, you must register your R&D activities undertaken in the period that you were not a member of that group.

More information can be found by going to [Consolidation](#) and for the single entity rule, refer to:

- [section 701-1 of the ITAA 1997](#)
- [Taxation Ruling TR 2004/11 *Income tax: consolidation: the meaning and application of the single entity rule in Part 3-90 of the Income Tax Assessment Act 1997*](#)

R&D partnerships

There are special rules in Subdivision 355-J of the ITAA 1997 regarding the R&D tax incentive for certain types of partnerships known as R&D partnerships. If you are in a partnership and you and each of the other partners are R&D entities, then the partnership is an R&D partnership.

Generally, a partnership is an association of persons (other than a company or limited partnership) carrying on business as partners or in receipt of ordinary or statutory income jointly. A limited partnership is also a partnership, although it is not an eligible R&D entity.

Note: An R&D partnership cannot register for the R&D tax incentive. Instead, each partner wishing to claim the R&D tax incentive must register.

If you are a partner of an R&D partnership, the amount you can claim is based on your 'proportion' (as a partner) of the notional R&D deductions of the partnership. This proportion is based on your interest (as a partner) in the net income or loss of the R&D partnership, unless the partners have agreed that the partners should bear or be entitled to a different proportion.

Similarly, as a partner you may also have to pay your proportion of extra tax or include your proportion of additional amounts in your assessable income in certain circumstances. Examples of these circumstances may be where:

- recoupments are received that relate to expenditure on R&D activities by the R&D partnership and you have claimed the R&D tax incentive for these activities (clawback adjustment)
- amounts are received by the R&D partnership for the disposal of any R&D results.

In addition, any R&D activities conducted by or for the R&D partnership are taken to be conducted by or for each partner instead of the partnership.

The R&D partnership does not take into account any of the following when working out its net income or partnership loss:

- R&D expenditure taken to be incurred by you and the other partners as a result of subdivision 355-J of the ITAA 1997
- an amount you and the other partners can deduct as a result of subdivision 355-J of the ITAA 1997
- a recoupment taken to be received by you and the other partners as a result of subdivision 355-J of the ITAA 1997.
- Subdivision 355-J of the ITAA 1997 gives information about R&D partnerships and the R&D tax incentive. Refer to:
- section 355-505 for the definition of R&D partnership
- section 355-510 for the treatment of R&D partnership expenditure on R&D activities

- section 355-520 for the decline in value of depreciating assets of the R&D partnership
- section 355-535 for disposal of R&D results of an R&D partnership
- section 355-540 for R&D partnership recoupment rules
- section 355-545 for net income or partnership loss calculation rules
- For information to help you to work out whether a business is carried on in partnership refer to **Taxation Ruling TR 94/8** *Income tax: whether business is carried on in partnership (including 'husband and wife' partnerships)*.

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Who R&D activities are conducted for

Explanation of who is entitled to the R&D tax offset resulting from incurring expenditure on R&D activities.

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Entitlement of R&D tax incentive

Entitlement to the R&D tax incentive is based, in part, on you having incurred expenditure on R&D activities that you can notionally deduct. You generally must satisfy the conditions in **section 355-210** of the ITAA 1997, which sets out for whom R&D activities can be conducted. In general, you can only claim a notional deduction and, therefore, the R&D tax incentive for expenditures on R&D activities conducted for you and not to a significant extent for some other entity (with some exceptions concerning foreign corporations – see below).

R&D activities may be conducted for you if you conduct the activities for yourself or if another entity conducts these R&D activities for you.

Like the 'on own behalf' rule from the former R&D tax concession, this requirement generally limits claims to the R&D tax incentive to cases where you are the person who receives the majority of benefits arising

from expenditure on R&D activities. In some cases, this rule will also prevent the duplication of claims by different entities where essentially the same R&D activities are involved.

Under **subsection 355-210(1)** of the ITAA 1997, you may also qualify for the R&D tax incentive if:

- your [R&D activities are conducted for an associated foreign corporation](#) that is a resident of a country with which Australia has a comprehensive double-tax agreement – if certain conditions are met
- you are a [foreign corporation carrying on your business through a permanent establishment in Australia and the R&D activities are conducted for you and not for the permanent establishment](#) – if certain conditions are met.

In most cases, however, expenditure incurred on R&D activities conducted to a significant extent for another entity cannot be claimed by you under the R&D tax incentive (refer to **subsection 355-210(2)** of the ITAA 1997). Whether or not that other entity is entitled to claim the R&D tax incentive will depend on whether it satisfies the various eligibility and expenditure conditions.

If you are claiming the R&D tax incentive for a monetary contribution you have made under the CRC program, it is not necessary to determine for whom R&D activities are conducted in order to determine eligibility to the R&D tax incentive for that expenditure.

When determining who activities are conducted for, special rules apply if you are a partner of an R&D partnership or are part of a consolidated or MEC group.

Refer to **section 355-580** of the ITAA 1997 for notional deductions for the CRC program.

R&D partnerships

If you are a partner in an R&D partnership, special rules apply when working out who the R&D activities of the partnership are carried out for. Also, in an R&D partnership, the R&D tax incentive rules treat:

- R&D activities conducted by or for the R&D partnership as if they were conducted by or for the partner in a corresponding way

- relationships that the R&D partnership has with other entities that relate to the R&D activities as if the partner had corresponding relationships with those other entities
- things done by or for the R&D partnership that relate to the R&D activities as if they were instead done by or for the partner.

The R&D activities are also treated as if they are not conducted by or for the R&D partnership, or for any other partner of the R&D partnership.

These deeming rules mean an R&D entity that is a partner of an R&D partnership can satisfy the requirement that the R&D activities are conducted for that R&D entity and not for another.

For more information refer to:

- **subsection 355-210(1)** of the ITAA 1997 about who the R&D activities can be conducted for
- **section 355-515** of the ITAA 1997 about R&D partnerships and who the R&D activities are conducted for.

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R&D activities conducted for you

Information about claiming a notional deduction under the R&D tax incentive.

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Claiming a notional deduction under the R&D tax incentive

Usually, before you can claim a notional deduction under the R&D tax incentive, an R&D activity must be conducted for you either:

- solely within Australia or an external territory
- overseas if the R&D activity is covered by a finding from Industry Innovation and Science Australia (under paragraph 28C(1)(a) of the

Industry Research and Development Act 1986).

If parts of an R&D activity conducted for you are within Australia or an external Territory and parts are overseas, you must have a relevant finding from Industry Innovation and Science Australia for those parts conducted overseas.

Working out whether R&D activities are carried out for you involves working out the extent to which those activities are conducted for your benefit rather than the benefit of another entity.

Relevant factors to consider in working this out include who:

- has effective ownership of results from the R&D activities
- has an appropriate degree of control over the R&D activities
- bears the financial burden or risk of conducting the R&D activities.

Whether an R&D activity is conducted for you is a matter of fact. It is determined by whether the activity is conducted, in substance, to provide the majority of knowledge benefits arising from the activity, such as access to know-how or intellectual property, to you.

This requires a weighing up of all the relevant factors.

In some situations, you can claim a notional deduction for expenditure incurred on eligible R&D activities conducted for an associated foreign corporation. However, you cannot claim a notional deduction for expenditure incurred on either:

- overseas R&D activities
- supporting R&D activities that correspond with an overseas core R&D activity.

See [R&D activities conducted for an associated foreign corporation](#).

Example 1: R&D activities conducted for an R&D entity

Under the terms of an agreement Company U, a company incorporated in the United States of America (USA), agrees to conduct R&D activities solely in the USA for Company A, an Australian company. The agreement specifies that Company A will benefit from all of the intellectual property obtained from the activities and will control how the activities are conducted.

Before the agreement begins, Company A obtains a favourable finding from Industry Innovation and Science Australia that those R&D activities could not be conducted in Australia, under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986*.

As Company A will benefit from all of the intellectual property obtained from the activities, and controls the conduct of those R&D activities, the activities are being conducted solely for Company A. Therefore, if Company A meets the other eligibility criteria, they will be able to claim a notional deduction under the R&D tax incentive.

Example 2: R&D activities conducted for an R&D entity

Company Z is an R&D entity undertaking its business and R&D activities solely in its factory in Adelaide, South Australia. It is conducting R&D activities for itself solely within Australia and may be entitled to the R&D tax incentive.

Due to commercial reasons, Company Z decides to outsource its R&D activities to Company B, an R&D entity based in Melbourne, Victoria. Under the terms of the agreement between Company Z and Company B, Company B agrees to carry out the R&D activities for Company Z. The agreement provides Company B with broad direction about the specifications Company Z wants achieved by the work. Company Z is obliged to pay Company B for the cost of these services, irrespective of the results obtained. Company Z receives the major benefit of the R&D expenditure it has incurred through being the only entity which can access intellectual property arising from the R&D activities for its own commercial purposes. Company B does not benefit at all.

Although Company B is not an agent for Company Z, Company B conducts the R&D activities for Company Z and not to any extent for its own purposes.

Therefore, Company B cannot claim the R&D tax incentive. If Company Z meets the other eligibility criteria, they will be able to claim a notional deduction under the R&D tax incentive.

Effective ownership of results

To work out whether you have effective ownership of the results you must look at the circumstances in which the R&D activities are conducted and what practical, as well as formal, rights you have to the results from those activities, such as the intellectual property, the know-how, or similar results arising from your R&D activities.

This does not necessarily mean that you must be the proprietor of a piece of intellectual property in any formal sense. These rights may not be available, or the formal owner of the resulting intellectual property may hold it on terms that you have all the advantages of ownership. For example, you may not be the formal holder of the patent but have the right (without further fee or payment) to:

- use a patent
- require the patent to be licensed
- restrict or direct further development based on the patent.

In most cases, a company with all those rights would have effective ownership of the results in question.

You may give some nominal rights of ownership to intellectual property or results to others without denying your effective ownership of them. For example, you might completely control results of R&D activities, yet permit the contract researcher some exclusive scientific publication rights.

In some cases, use of results may only be possible in limited ways or for limited purposes, so that limited rights may amount to effective ownership. For example, exclusive rights of commercial use and development for only a few years might amount to full effective ownership in an area of R&D that is short-term.

Example: effective ownership of results

Company C is an R&D entity carrying out its business and R&D activities solely in Australia. Company C enters into a contract with a buyer, Company Z, to supply a new product meeting certain specifications. Both companies know that Company C will need a program of R&D to fulfil its contract. In fulfilling the supply contract, Company C is under no obligation to supply working papers or background research to Company Z.

Even if Company Z is the sole purchaser, or one of only a few potential purchasers, of the intended product, Company C effectively owns the results of the R&D. This is because Company C alone controls and uses the R&D results. Therefore, Company C can claim the R&D tax incentive, subject to meeting other requirements.

Funding a project as an R&D partnership

If you fund a project of R&D together with other eligible R&D entities as an R&D partnership, there are special rules about who the R&D activities of the partnership are conducted for.

If you are one of a number of entities that funds an R&D project as a group, but not as an R&D partnership, in order to satisfy the effective ownership test it is essential for each contributor to the project to have a proper and effective interest in the R&D results. Examples of situations where a number of entities may fund a R&D project include members of industry associations or members of certain a joint ventures.

Each member of the group eligible to claim the R&D tax incentive must separately register with AusIndustry.

Contributions to R&D activities can take many forms. For example, a contribution may be of money, services (provided free or for less than a proper fee), or the use of depreciating assets or premises. A contribution may also take the form of existing research results. The key to comparing contributions in money and in-kind is that contributions in-kind are valued when contributed, not in hindsight after the contributions have been used in R&D activities.

If you and a number of other entities share results of an R&D project or their use, when working out if the effective ownership test is satisfied

you must consider whether each party's individual share in those results equates to their contribution made.

Whether each party's individual share in those results equates to their contribution made is a question of fact which will depend on the individual circumstances of the arrangement.

Example 1: R&D conducted jointly

Company X and Company Y both operate in the same industry and decide to pool their resources and undertake R&D activities jointly in a field of common interest. They both contribute equally to a pool of funds to fund the R&D activities. They agree that they will both have the same right to use the results of those activities in their businesses on completion of the activities.

Despite conducting R&D activities jointly, Company X and Company Y are not partners for income tax purposes. They do not carry on a business in common and are not in receipt of any income jointly.

The interests of Company X and Company Y in the 'know-how' (developed from the expenditure on the R&D activities) are the same and equate with their respective expenditures. As a result, both entities have effective ownership of the results arising from their own expenditure.

The expenditure of each company is not a recoupment or reimbursement of the other's expenditure, so Company X and Company Y each bear their share of the financial burden of the R&D activities. While the R&D activities might be said in one sense, to be conducted for them both, their joint input into what activities are carried on, their sharing of the financial burden and the nature of their respective interests in the results, where neither can restrict use by the other, means that their individual contributions are not on R&D activities conducted to a significant extent for the other.

Example 2: members of industry associations

Members of industry associations may effectively be co-owners of the R&D results obtained on their behalf. Free individual use of results is practical for them. Co-ownership of this kind is consistent with the R&D having been carried out for the members, with each having a proper and effective separate interest in the results. If each member makes a contribution, even if the contributions vary somewhat, those contributions would not usually be regarded as having been made for the purpose of carrying out R&D activities for another.

Example 3: shareholders of a company conducting R&D activities

A number of Australian companies establish and become shareholders of another company (also incorporated in Australia). This jointly owned company conducts R&D activities, or has them carried out. Those activities may be funded by the shareholder companies. The fact that shareholders expect an indirect benefit by way of dividends does not mean that the shareholder companies effectively own the results of the R&D. Further, it does not mean that the company in which they hold shares conducts its R&D activities for them.

Appropriate degree of control

An appropriate degree of control over the conduct of R&D activities exists where you can:

- choose the project of R&D activities
- decide on major changes in direction of those activities
- stop an unproductive line of research
- decide whether to follow up (or not) an unexpected result
- decide to end a project.

If a researcher carries out a program of R&D activities for several companies as a group, these companies must maintain control over

the conduct of the R&D activities. Any terms of the arrangement between the companies and the researcher that regulate how control is exercised must not preclude the companies' control in practice.

In some circumstances activities undertaken for a group of companies are overseen by a committee. Where companies have R&D activities carried out for them, they may be able to exercise proper control over the conduct of those activities through a committee they have chosen (which includes people selected by each company to represent their interests).

Financial burden or risk

You do not bear the financial burden or risk of conducting R&D activities if your expenditure on them is reimbursed by another party or recouped (including where you have received a government grant for that expenditure).

However, if you do not bear the financial burden of the R&D activities, it might still be correct to conclude that they have been conducted for you (and not to a significant extent for someone else), because you effectively own the results and control the conduct of those R&D activities. In such cases, though, you may not be able to claim the R&D tax incentive or only be able to claim a reduced R&D tax incentive if the 'expenditure not at risk' provisions apply. You may also need to apply the clawback adjustment provisions, resulting in an extra amount of income tax applying.

Example 1: supply of a product for a fixed price

Company G is an Australian company that carries on business in Australia. Company G carries out R&D activities that are incidental to the supply of a saleable product for a fixed price. The fixed price bears no relationship to the extent of the R&D activities the company may need to conduct in order to produce the product. Company G bears the financial burden for R&D activities.

Example 2: fee for design and testing of a product

Company E is an Australian company that carries on business in Australia. Company E supplies a saleable product to another company, Company F. Company E receives a fee for the design and testing of the product. The associated R&D expenditure is recouped wholly or in part by this fee. In these circumstances, Company E does not bear the financial burden for the R&D activities.

More information can be found by referring to:

- section 355-405 of the ITAA 1997 for expenditure not at risk
- section 355-435 of the ITAA 1997 for clawback
- Clawback guide – government grants and reimbursements

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R&D activities conducted by a permanent establishment

Information about R&D entities that are a foreign body corporate carrying on business through a permanent establishment.

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R&D activities can be conducted for a foreign corporation by a permanent establishment it has in Australia if certain conditions are met.

If you are an R&D entity that is a foreign body corporate carrying on business through a permanent establishment in Australia, and R&D activities are conducted for you but not for the purposes of that permanent establishment, you must first consider whether you meet the further conditions for R&D activities conducted by a permanent establishment for other parts of the body corporate. These further conditions are that:

- the R&D activity must be conducted solely within Australia or an external territory

- if the R&D activity is a supporting R&D activity, each corresponding core activity (that you, the body corporate has registered for an income year) must be an activity conducted solely within Australia or an external territory
- there must be written evidence that the R&D activity is conducted for you (the body corporate) and not for the purposes of the permanent establishment.

These conditions are in addition to other requirements that must be satisfied in order to claim the R&D tax incentive (for example, those about notional deductions for expenditure, registration and having eligible R&D activities).

When working out whether the R&D activity is conducted for you (the foreign body corporate), you must also consider the extent to which the R&D activity is conducted for the benefit of any other entity to whom the conditions in **subsection 355-210(1)** do not apply. If the R&D activity is also conducted to a significant extent for such another entity, the R&D tax incentive cannot be claimed (refer to **subsection 355-210(2)**).

You can assess if the R&D activity is conducted to a significant extent for the benefit of another entity by considering the extent to which that other entity:

- has effective ownership of the results from the R&D activities
- has a degree of control over the R&D activities
- bears the financial burden or risk arising from the R&D activities.

More information can be found by referring to:

- **Section 355-210** of the ITAA 1997 for who R&D activities can be conducted for.
- **Section 355-215** of the ITAA 1997 for conditions that must be satisfied for a permanent establishment carrying out R&D activities for other parts of the body corporate.

R&D activities conducted for an associated foreign corporation

R&D activities can be conducted for an associated foreign corporation if certain conditions are met.

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About R&D activities

R&D activities can be conducted for an associated foreign corporation if certain conditions are met.

If you are an R&D entity conducting R&D activities for one or more foreign corporations, each being a resident of a foreign country that has a double tax agreement with Australia, you must first consider whether you meet the following further conditions:

- The R&D activity must be conducted solely in Australia or an external territory.
- If the R&D activity is a supporting activity, each corresponding core activity must be conducted solely within Australia or an external territory and be an activity for which you have registered or could register for the R&D tax incentive for the income year.
- When the R&D activity is conducted, each foreign resident must be either:
 - connected with you
 - an affiliate of you or you must be an affiliate of each foreign resident.
- The R&D activity must be conducted in accordance with a written agreement binding only on you and each foreign resident, specifying that the R&D activities are to be conducted either:
 - directly by you
 - indirectly by another entity under an agreement binding on you (for example conducting the R&D activity under a subcontract).

Any R&D entities conducting these activities as a subcontractor under a contract with a related R&D entity are ineligible for the R&D tax incentive.

These conditions are in addition to other requirements that must ordinarily be satisfied in order to claim the R&D tax incentive (for example, those about notional deductions for expenditure, registration and having eligible R&D activities).

You cannot claim a notional deduction for R&D activities conducted for a foreign entity that is not a foreign corporation.

When working out whether the R&D activity is conducted for one or more foreign corporations, you must also consider the extent to which the R&D activity is conducted for the benefit of any other entity to whom the conditions in **subsection 355-210(1)** do not apply. If the R&D activity is also conducted to a significant extent for such another entity, then it is ineligible for the purposes of the R&D tax incentive (refer to **subsection 355-210(2)**).

You can assess the extent the R&D activity is conducted for the benefit of the foreign corporation by considering the extent the foreign corporation has:

- effective ownership of the results from the R&D activities
- a degree of control over the R&D activities
- borne the financial burden or risk arising from the R&D activities.

Expenses incurred on overseas R&D activities

Expenses incurred on overseas R&D activities cannot be claimed if the R&D activities are conducted for a foreign resident corporation.

Australian supporting R&D activities also cannot be claimed if the corresponding core R&D activity was conducted overseas. If a subsidiary incurs these kinds of R&D expenses, it is essential to correctly identify if the R&D is conducted for the subsidiary or for its foreign parent or another related entity.

These expenses cannot be claimed where contractual arrangements show a foreign corporation has the major benefit of the R&D. These expenses also cannot be claimed if in substance a foreign corporation

will benefit from the ownership or exploitation of the results of the R&D, and funds and/or controls the conduct of the R&D activities.

Aggregated turnover

If you have foreign residents that are connected or affiliated with you, their income must be taken into account when you calculate your aggregated turnover to determine if you can claim the refundable or non-refundable tax offset. For more information see **Step 3 – Calculate your aggregated turnover**.

Example 1: R&D activity for a foreign company

Company J is a company incorporated in the UK. Company J establishes an Australian subsidiary. The subsidiary, Company K, is an Australian company wholly owned by Company J and qualifies as an R&D entity.

Under an agreement between the two parties, Company K agrees to undertake R&D activities in its Perth office solely for the benefit of Company J. The consideration is at arm's length and will be paid even if the R&D is not successful. Company J is legally entitled to all intellectual property arising from the R&D activities.

Company J is a foreign resident incorporated under foreign law and a resident of the UK, being a country Australia has a double tax agreement with. Company J is also connected with Company K, as Company J controls Company K.

The R&D activities are being conducted solely for Company J. Therefore, Company K may be able to claim the R&D tax incentive provided all other requirements for claiming the R&D tax incentive are also satisfied.

Example 2: R&D conducted for a foreign corporation

Company O is a large company incorporated in the UK with an annual turnover that exceeds \$50m. Company O establishes an Australian subsidiary on 1 July 2020. The subsidiary, Company A,

is an Australian company wholly owned by Company O and qualifies as an R&D entity. Most directors of Company A are also directors of Company O.

Under an agreement between the two parties:

- Company A agrees to undertake R&D activities for Company O
- Company O funds the R&D activities
- Company O legally owns all intellectual property arising from the R&D activities and benefits from the use and exploitation of the R&D results
- Key decisions regarding the conduct of the R&D activities are to be made by Company O.

Company A has no other business activities and subcontracts out all the R&D activities to other unrelated parties with other agreements. Core R&D activities 1 and 2 and supporting R&D activity 3 are undertaken in Australia and other activities are undertaken overseas.

Expenditure incurred on the R&D activities by Company A in the 2021 income year are as follows:

- Australian core R&D activities – \$2,500,000
- Australian supporting R&D activity – \$20,000
- Overseas activities – \$800,000.

Company O is incorporated and a resident of the UK, with which Australia has a double tax agreement. Company O is also connected with Company A, as Company O controls Company A.

The R&D activities are being conducted solely for the benefit of foreign Company O because Company O has effective ownership of the results, controls the conduct of the R&D activities and bears the financial risk of the R&D activities. Company A can claim the R&D tax incentive for core R&D activities 1 and 2 undertaken in Australia provided all other requirements for claiming the R&D tax incentive are satisfied.

As the R&D activities are conducted for a foreign company:

- Company A cannot claim the R&D tax incentive for expenditure incurred on overseas activities.

- the expenditure incurred on the Australian supporting activity can only be claimed if it corresponds to the Australian core R&D activities and other requirements for claiming the R&D tax incentive are met.

When working out Company A's aggregated turnover to determine if it can claim the refundable or non-refundable R&D tax offset, Company A must include:

- Company A's annual turnover
- Company O's annual turnover – as it is a connected entity
- the annual turnover of any other connected or affiliated entities.

This results in Company A's aggregated turnover being greater than \$20 million and therefore it cannot claim the refundable R&D tax offset. Instead, Company A can claim the non-refundable R&D tax offset for expenditure on eligible R&D activities.

More information can be found by referring to:

- **section 355-210** of the ITAA 1997 for who R&D activities can be conducted for
- **section 355-220** of the ITAA 1997 for conditions that must be satisfied for R&D activities to be conducted for one or more foreign entities

For the definition of:

- 'connected with' refer to **section 328-125** of the ITAA 1997
- 'affiliate' refer to **section 328-130** of the ITAA 1997.

QC 71854

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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