



Tax Laws Amendment (Research and Development) Act 2015

No. 13, 2015

**An Act to amend the law relating to taxation, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Tax Laws Amendment (Research and Development) Act 2015

No. 13, 2015

An Act to amend the law relating to taxation, and for related purposes

[Assented to 5 March 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Research and Development) Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 5 March 2015 |
| 2. Schedule 1, Part 1 | The day this Act receives the Royal Assent. | 5 March 2015 |
| 3. Schedule 1, Part 2 | 1 July 2024. | 1 July 2024 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Reduced tax offset rate for expenditure above \$100 million

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Subsection 67-30(1)

Before “the amount”, insert “all or part of”.

2 Section 67-30 (note 2)

Repeal the note, substitute:

Note 2: This subsection can apply to an entitlement under any subsection of section 355-100.

3 Subsection 355-100(1) (heading)

Repeal the heading, substitute:

If notional deductions are between \$20,000 and \$100 million

4 At the end of section 355-100

Add:

If notional deductions exceed \$100 million

- (3) Despite subsection (1), if the total of those amounts exceeds \$100 million, the *R&D entity is instead entitled to a *tax offset for the income year equal to the sum of:
- (a) that percentage of \$100 million; and
 - (b) the product of the excess and the *corporate tax rate.

Note: The R&D entity may be able to reduce related amounts that would otherwise be:

- (a) included in its assessable income because of a balancing, or feedstock, adjustment; or
- (b) payable as extra income tax because of an R&D recoupment; (see section 355-720).

5 At the end of section 355-525

Add:

Amount to be included in assessable income may be reduced if notional deductions exceeded \$100 million

- (4) For the purposes of subsection (3), the partner may choose to reduce the adjusted section 40-285 amount in that subsection if:
 - (a) subsection 355-100(3) applied to the partner for an earlier income year or the event year (the *excess year*); and
 - (b) the partner's deductions for the excess year included deductions covered by paragraph (1)(c) of this section for the asset.
- (5) Subsection 355-720(3) applies to the partner as if a reduction under subsection (2) of that section for the present year included a reduction under subsection (4) of this section for the event year.
- (6) The way the partner prepares its income tax returns is sufficient evidence of the making of a choice under subsection (4).
- (7) A choice under subsection (4) is irrevocable.

6 At the end of Subdivision 355-W

Add:

355-720 Certain related amounts may be reduced if notional deductions exceeded \$100 million

- (1) The object of this section is to prevent the portion of a *tax offset worked out using the *corporate tax rate being clawed back in later income years.

Note: This applies when the R&D entity's notional deductions exceed \$100 million (see subsection 355-100(3)).

- (2) For the purposes of working out a matter referred to in column 1 of an item of this table for an income year (the *present year*), the *R&D entity may choose to reduce the amount referred to in column 3 of that item if:
 - (a) subsection 355-100(3) applied to the R&D entity for an earlier income year or the present year (the *excess year*); and

- (b) the R&D entity's deductions for the excess year included deductions covered by a provision referred to in column 2 of that item.

| Reducing extra income tax or amounts included in assessable income | | | |
|---|--|--|---|
| Item | Column 1 For the purposes of working out this matter: | Column 2 If its excess year deductions included those covered by: | Column 3 This can be reduced: |
| 1 | any amount to include in the *R&D entity's assessable income for the present year because of a *balancing adjustment event happening for an asset it *held | (a) paragraph 40-292 (1)(b); or (b) paragraph 355-315(1)(c); for the asset | its adjusted section 40-285 amount (see subsection 40-292(5) or 355-315(3)) for the present year, the asset and the *balancing adjustment event |
| 2 | any amount of extra income tax payable by the *R&D entity under section 355-435 for the present year | subsection 355-450(1) | those excess year deductions |
| 3 | any amount to include in the *R&D entity's assessable income for the present year under section 355-465 | paragraph 355-465(1) (b) | those excess year deductions |

Note 1: Item 2 is about R&D recoupments and item 3 is about feedstock adjustments.

Note 2: Reducing the amount in column 3 will reduce the amount in column 1.

- (3) The *R&D entity's circumstances may allow it to choose multiple reductions under subsection (2) for the present year. The total of any reductions cannot be more than the amount of its excess under subsection 355-100(3) for the excess year.
- (4) The way an *R&D entity prepares its income tax returns is sufficient evidence of the making of a choice under this section.
- (5) A choice under this section is irrevocable.

355-750 Review of rate when notional deductions exceed \$100 million

- (1) The Minister must cause a review of the operation of subsection 355-100(3) (about the rate of tax offset when notional deductions exceed \$100 million) to be undertaken as soon as possible after the fifth anniversary of the commencement of that subsection.
- (2) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of receiving it.

Income Tax (Transitional Provisions) Act 1997

7 After subsection 355-325(4)

Insert:

Amount to be included in assessable income may be reduced if notional deductions exceeded \$100 million

- (4A) For the purposes of subsection (4), the partner may choose to reduce the adjusted section 40-285 amount in that subsection if:
 - (a) subsection 355-100(3) of the *Income Tax Assessment Act 1997* applied to the partner for an earlier income year or the event year (the *excess year*); and
 - (b) the partner's deductions for the excess year included deductions covered by paragraph (1)(c) of this section for the asset.
- (4B) Subsection 355-720(3) of the *Income Tax Assessment Act 1997* applies to the partner as if a reduction under subsection (2) of that section for the present year included a reduction under subsection (4A) of this section for the event year.
- (4C) The way the partner prepares its income tax returns is sufficient evidence of the making of a choice under subsection (4A).
- (4D) A choice under subsection (4A) is irrevocable.

8 At the end of Division 355

Add:

Subdivision 355-W—Other matters

Table of sections

355-720 Certain related amounts may be reduced if notional deductions exceeded \$100 million

355-720 Certain related amounts may be reduced if notional deductions exceeded \$100 million

Section 355-720 of the *Income Tax Assessment Act 1997* also applies as if the table in subsection (1) of that section included the following item:

| | | | |
|----|--|---|---|
| 1A | any amount to include in the *R&D entity's assessable income for the present year because of a *balancing adjustment event happening for an asset it *held | (a) paragraph 40-292 (1)(b) of the <i>Income Tax (Transitional Provisions) Act 1997</i> ; or (b) paragraph 355-320(1)(c) of that Act | its adjusted section 40-285 amount (see subsection 40-292(3) or 355-320(4) of that Act) for the present year, the asset and the *balancing adjustment event |
|----|--|---|---|

9 Application of amendments

The amendments made by this Part apply in relation to an R&D entity's assessments for income years commencing on or after 1 July 2014.

Part 2—Amendments commencing on 1 July 2024

Income Tax Assessment Act 1997

10 Subsection 67-30(1)

Omit “all or part of”.

11 Subsection 355-100(1) (heading)

Repeal the heading, substitute:

If notional deductions are at least \$20,000

12 Subsection 355-100(3)

Repeal the subsection.

13 Subsections 355-525(4) to (7)

Repeal the subsections.

14 Sections 355-720 and 355-750

Repeal the sections.

Income Tax (Transitional Provisions) Act 1997

15 Subsections 355-325(4A) to (4D)

Repeal the subsections.

16 Subdivision 355-W

Repeal the Subdivision.

17 Application of amendments

The amendments made by this Part apply in relation to an R&D entity’s assessments for income years commencing on or after 1 July 2024.

*[Minister's second reading speech made in—
House of Representatives on 14 November 2013
Senate on 10 December 2013]*

(195/13)
