CR 2025/45 - ACARP - research and development membership funding

Status: **legally binding**

Class Ruling

ACARP – research and development membership funding

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out tax consequences for research and development (R&D) entities who are liable for levy contributions under ACARP to Australian Coal Research Limited (ACR).

2. Full details of this scheme are set out in paragraphs 14 to 48 of this Ruling.

Note: by issuing this Ruling, the ATO is not endorsing this product. Potential participants must form their own view about the product.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to 'R&D entities', as defined by section 355-35, who are liable for levy contributions under the ACARP to ACR, and who:

- are registered with Industry Innovation and Science Australia (IISA), in accordance with the requirements of subparagraph 355-205(1)(a)(i), for the relevant income years
- have notional deductions identified by reference to paragraphs 355-100(1)(a) to (g) for the relevant income years, and
- are not a small business entity as defined in section 328-110.

Status: **legally binding**

5. In this Ruling, the term 'Contributor' is used to refer to those companies that are ultimately obliged to pay levy contributions to ACR under the ACARP. In the Deed of Agreement discussed in paragraphs 27 to 34 of this Ruling, those companies are either the 'mine owners' or 'operators of coal producing assets' or 'contributors' where no separate mine owners are identified in the Deed of Agreement.

6. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 14 to 48 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

7. This Ruling applies to entities that enter into the scheme from 1 July 2025 to 30 June 2030. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

When this Ruling does not apply

8. This Ruling does not apply to R&D entities that are not registered for the relevant income years with IISA. The publication of this Ruling does not relieve companies making contributions to the ACARP of the obligation to make separate applications for registration of their activities under section 27A of the *Industry Research and Development Act 1986* (IR&D Act 1986).

Ruling

Subdivision 355-C – entitlement to a tax offset

9. For the income years ending 30 June 2026 to 30 June 2030 inclusive (or equivalent substituted accounting periods), Contributors will be entitled to a tax offset calculated in accordance with section 355-100, to the extent that a Contributor pays levies in an income year that:

- are for R&D activities as defined in section 355-20, and
- represent expenditure as defined by reference to section 355-205.

10. Further, subsection 355-210(2) will not preclude a notional deduction arising under section 355-205.

11. A notional deduction is not allowable under section 355-205 to a Contributor for any part of the contributions incurred on:

- activities that are not R&D activities, as defined in section 355-20, or
- R&D activities for which the Contributor is not registered under section 27A of the IR&D Act 1986 for each of the income years in question.

12. We acknowledge that any opinion formed about the R&D activities referred to in this Ruling can be overridden by IISA.[1] Therefore, we do not express an opinion about

[1] Subdivision 355-W.

these activities and whether they are R&D activities as defined in section 355-20. This Ruling is made on the presumption (unless told otherwise by IISA) that the activities are R&D activities as defined under section 355-20.

Section 82KZMD of the ITAA 1936 and section 355-205

13. Where expenditure is notionally deductible under section 355-205, and the R&D activities to which the expenditure relates are not carried out in the current income year, section 82KZM or 82KZMD of the *Income Tax Assessment Act 1936* (ITAA 1936) applies, such that the timing and amount of the deduction is allocated over the relevant eligible service period in accordance with the applicable section.

Scheme

14. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Memorandum of Understanding

15. The ACARP was formed in accordance with a Memorandum of Understanding (MOU) between the Australian Coal Association (ACA) and the Australian Government.

16. The original MOU between the chairman of the ACA and the then-Minister for Primary Industries and Energy was signed on 22 January 1992. The arrangement set out in the MOU has been extended on 7 occasions beyond its original expiration date of 30 June 1996. The current extension will conclude on 30 June 2030.

17. The ACA's responsibility for the ACARP was transferred to the Minerals Council of Australia (MCA) as a result of a decision to wind up the ACA and integrate its functions with the MCA.

18. The current extension of the MOU between the Department of Industry, Science, and Resources (Department of Industry) and the MCA commenced on 1 July 2025 and continues until 30 June 2030, with an optional extension to 30 June 2035 and further extensions from 30 June 2030 at 5-year intervals. The extensions are subject to the MCA confirming in writing to the Department of Industry that all Australian black coal producers are committed to continuing to pay a voluntary levy, capped at 5 cents per tonne of saleable black coal produced.[2]

19. The purpose of the MOU is to provide for the continuation of the ACARP. The arrangement is designed to provide for collective and integrated research on coal for the purpose of:

- providing strategic leadership to industry R&D within the coal and its associated industries
- improving the management and application of coal research in Australia

[2] MOU between the Commonwealth Minister for Resources and the Minerals Council of Australia supplied with the class ruling application for the period 1 July 2025 to 30 June 2030.

- ensuring the more effective use of Australia's black coal resources, and
- increasing the economic, environmental, safety and social benefits of that research to the industry and wider community and furthering the competitiveness of the Australian black coal industry.

20. The MOU explains that in the pursuit of these objectives, the MCA undertakes to allocate research funds so raised, including interest earned, exclusively for the administration and execution of coal R&D activities.

Australian Coal Research Limited

21. ACR was established to carry out all ACARP management (including financial and statutory responsibilities) on behalf of the MCA. ACR will continue to carry out these responsibilities on the MCA's behalf pursuant to the terms of the MOU and the Performance Deed between the MCA and ACR.

22. ACR's Constitution[3] describes its objects, many of which mirror those in the MOU.

23. The ACR Board comprises senior industry personnel nominated by Contributors. In addition, ACR also has an executive director. The ACR Board has the ultimate authority for approval of all project commitments.

24. The ACARP's Research Committee has overview of technical direction and 5 Technical Committees with specific technical focus that undertake detailed considerations of the ACARP, including research objective priorities, project selection and ongoing monitoring. All committees are comprised of industry personnel nominated by the Contributors.

25. ACR is an income tax exempt entity.

26. ACR is not an 'associate' of any Contributors as defined in section 318 of the ITAA 1936.

Deed of Agreement between Australian Coal Research Limited and each operator of coal producing assets

27. Each affected coal producer (referred to in the deed of agreement between ACR and each operator of coal producing assets (Deed of Agreement) as an 'operator of coal producing assets') enters into a Deed of Agreement with ACR under which they are liable to make contributions or levies (Contributions). Agency clauses are present in the Deed of Agreement, which indicate that in some circumstances the operator of coal-producing assets is entering into the Deed of Agreement on behalf of each of the mine owners.

28. Contributions are calculated at the rate of 5 cents per tonne of coal produced by the operator during the term of the agreement, on a monthly basis. All Contributions paid to ACR become the property of ACR.

29. The Deed of Agreement defines 'research and development' as follows:

> **Research and Development** means scientific, technical or economic research in connection with the exploration, mining, beneficiation and use of coal or products derived from coal, including the demonstration and development thereof, and includes:
>
> (a) the training of persons for the purpose of any such research and development;

[3] Constitution of Australian Coal Research Limited, dated June 2022.

(b) the publication of reports, periodicals, books and papers in connection with such research and development;

(c) the dissemination of information and advice in connection with scientific, technical or economic matters related to exploration, mining, beneficiation and use of coal or products derived from coal;

(d) any matters incidental or relating to a matter referred to in this definition;

(e) any matters incidental or relating to the obligations of ACR under this deed including costs incurred in collection of Contributions.

30. In the Deed of Agreement, ACR promises that contributions will be applied exclusively in respect of 'research and development'. It is noted that the definition of 'research and development' in the Deed of Agreement between ACR and the operator of coal producing assets is different to the definition of 'R&D activities' in section 355-20. However, the applicant advises that levies are directed only to those activities meeting the requirements of the definition of 'research and development' under the Deed of Agreement.

31. In the Deed of Agreement, ACR also promises '… that the results of the research and development will be made available for the benefit of the Operator to the extent possible under the terms of the Agreements' entered into by ACR in relation to the ACARP. There is also potential for Contributors to obtain benefit from the commercialised results of the R&D activities.

32. Each party has the right to terminate the Deed of Agreement if, among other things, the other party commits a breach of their obligations under the Deed of Agreement and the breach cannot be or is not rectified.

33. The Deed of Agreement and the manner in which the ACARP is executed provide rights to coal producers in relation to the R&D to be undertaken, such that control of the R&D resides with the Contributors. Contributors participate in the nomination of research priorities, the selection of successful research applications and oversight of the ongoing conduct of research projects, including their termination. According to the Deed of Agreement, Contributors also have the right to access final research reports upon request.

34. All black coal producers in Australia are expected to enter into the Deed of Agreement and thus become liable to make contributions to ACR for the period 1 July 2025 to 30 June 2030.

ACARP's funding and operations

35. Levies paid to ACR by Contributors that are directed towards R&D activities, as defined in the Deed of Agreement, constitute 'expenditure incurred' for the purposes of section 355-205.

36. The R&D activities which ACR arranges to be conducted for the Contributors are, and will be, consistent with its Constitution and the Deed of Agreement. Specific R&D activities will vary from project to project. Whether or not these specific activities are covered by section 27 of the IR&D Act 1986 and Division 355 will depend on the terms of sections 355-20, 355-25 and 355-30 (the respective definitions of R&D activities, core R&D activities and supporting R&D activities) being met.

37. The majority of levy contributions are accepted as being used for R&D activities, as defined in the Deed of Agreement. The levies fund projects carried out under 'Fundamental', 'Applied' and 'Commissioned Study' R&D agreements to which ACR is a party. Other activities are funded by interest earned on funds held for future commitments

and royalties. A minor part of the levy is applied to the administration costs of ACR which ACR informs Operators has not been incurred on R&D activities.

38. It is uncommon that any projects are completely funded under the ACARP. These projects are carried out on a collaborative basis with cash and in-kind contributions made by other parties (including researchers).

39. Benefits received by Contributors from R&D projects, including their interest in the results of the projects concerned, are commensurate with the contributions made.

40. While ACR has obtained some commercialisation proceeds, this has been negligible and is not expected to become a major benefit.

41. The ACARP provides outcomes with general solutions to all aspects of concern to the Australian black coal industry as specified in the MOU, being the agreed purpose of the research program. It is a condition of ACARP funding that the outcomes of every project must be available for use by Contributors. Each Contributor participates in common with all Contributors in the predominant benefits of the research program. Contributors will individually decide whether they implement the outcomes of each project based on a wide range of commercial and other factors, given that not all projects funded by the ACARP have the same degree of immediate relevance to every Contributor and each mine.

Research and development agreements – fundamental, applied and commissioned study

42. ACR enters into formal agreements by which it engages researchers to carry out R&D activities, including:

- Fundamental R&D agreements
- Applied R&D agreements, and
- Commissioned study agreements.

43. ACR also enters into other agreements (whether or not in collaboration or cooperation with others), which result in the undertaking of R&D.

44. ACR produces an ACARP Annual Report, which documents:

- the specific research projects funded by the ACARP levy during the year
- the people involved in those projects, and
- statistical and financial information.

45. Common to all 3 formal agreements referred to in paragraph 42 of this Ruling are the following conditions:

- All funding is to be used by the researcher for the sole purpose of performing its obligations under the funding and project agreement and must not be used for any other purpose.
- A critical objective of the project is to make the results and outcomes of the research readily available to ACR on behalf of the Australian coal industry.
- The researcher must submit a final report to ACR (describing all work done in connection with the project).
- ACR may publish the final report in any form that it considers desirable.

- ACR and coal industry representatives will meet with the researcher to monitor the progress of the project and to consider amendments to the conduct of the project or the project objectives.

46. Typically, these agreements are entered into for the purpose of generating knowledge benefits for Contributors and this is the dominant benefit arising out of these agreements.

Registration and levy-collecting research service provider

47. ACR is registered as a levy-collecting research service provider (RSP) under section 29A of the IR&D Act 1986, reflecting the criteria in subregulations 3.01(2), (3) and (7) of the *Industry Research and Development Regulations 2001*. ACR will have its registration extended for the years relevant to this Ruling. The requirements and intent of these regulations is relevant to the application of Division 355 to levy-collecting RSPs and Contributors.

48. As a levy-collecting RSP, ACR reports to the Contributors about how much of the levy was used on R&D activities and how much was not, and a ratio for working out the apportionment between core R&D activities and supporting R&D activities. ACR also reports to IISA about the R&D activities it conducted and how much of the levy was used in relation to these activities.

Commissioner of Taxation
9 July 2025

Page status: **not legally binding**

Appendix – Explanation

This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

Table of Contents **Paragraph**

Meaning of research and development activities and other terms

49. R&D activities are defined in section 355-20. This Ruling applies only to expenditure incurred on R&D activities being undertaken by ACR where Contributors are registered.

50. A Contributor cannot rely on this Ruling if IISA determines that:

- a Contributor is not eligible for registration in relation to the activities that ACR conducts in relation to the ACARP project, or

- the activities of the ACARP project do not constitute core R&D activities (within the meaning of section 355-25) or supporting R&D activities (within the meaning of section 355-30).

Research and development entities

51. R&D entities are defined in section 355-35 as:

(1) Each of the following is an ***R & D entity***:

(a) a body corporate incorporated under an Australian law;

(b) a body corporate incorporated under a foreign law that is an Australian resident.

…

(2) A body corporate incorporated under a foreign law that:

(a) is a resident of a foreign country for the purposes of an agreement in force between that country and Australia that:

(i) is a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*); and

(ii) includes a definition of ***permanent establishment***; and

(b) carries on business in Australia through a permanent establishment (within the meaning of that definition) of the body corporate in Australia;

is an ***R & D entity*** to the extent that it carries on business through that permanent establishment.

(3) However, an exempt entity cannot be an ***R & D entity***.

52. The class of persons to which this Ruling applies (Contributors) are R&D entities within the meaning of section 355-35. Therefore, this requirement is satisfied for the class of persons to which this Ruling applies.

Entitlement to research and development tax offset

53. A tax offset will be available in an income year under Subdivision 355-C to the extent that an R&D entity:

- incurs expenditure on one or more R&D activities (within the meaning of section 355-205) in the income year or can claim other notional deductions
- is registered under section 27A of the IR&D Act 1986 for the income year
- has notional deductions of at least $20,000 for that income year (unless incurred to a registered research service provider), and
- is entitled to those notional deductions and is not precluded by any other provision of Division 355.

54. The R&D entity's entitlement to a tax offset is determined by reference to the tables contained in section 355-100.

When notional deductions for research and development expenditure arise

55. For the purposes of this Ruling, when calculating a Contributor's entitlement to an R&D tax offset, it is necessary to first ascertain that they have notional deductions (for the purposes of Subdivision 355-C) for the income year.

Whether the contributions are incurred on one or more research and development activities

56. Contributors pay contributions to ACR in accordance with the Deed of Agreement. Therefore, they incur expenditure when these payments are made.

57. Paragraph 355-205(1)(a) states that in order to deduct expenditure for an income year, the expenditure needs to have been '… incurred on one or more R&D activities'. The nature of the connection between the expenditure and the R&D activities expressed by the word 'on' in this context is governed by its place in the overall scheme of Division 355.

58. In Division 355, subsection 355-5(1) provides that the object of Division 355 concerns encouraging industry to conduct particular R&D activities. Paragraph 355-205(1)(b) envisages that an R&D entity might incur expenditure within paragraph 355-205(1)(a); that is, incurring that expenditure 'on' an R&D activity by incurring an amount to an 'associate' of theirs. That associate might be the entity which conducts the R&D activity or it might, in turn, pay its employees, an agent or an independent contractor to conduct this activity. The requirement that the expenditure be linked to the conduct of particular R&D activities is also found in subsection 355-210(1), concerning whether the expenditure coming within paragraph 355-205(1)(a) has also been incurred on activities which have been 'conducted for' the R&D entity (see paragraph 355-210(1)(a)).

59. Also in Division 355, section 355-110 provides for the spreading of an R&D entity's deductions under section 355-205 or section 355-480, where the prepaid expenditure rules in Subdivision H of Division 3 of Part III of the ITAA 1936 apply to spread the deduction to years other than the year it was incurred (or paid to an associate). Section 355-110 thus contemplates that there may be expenditure which comes within paragraph 355-205(1)(a), where there is a lapse in time between when that expenditure is incurred on particular R&D activities and when those activities begin to be conducted.

60. The fact that the expenditure in question might be incurred to an intermediary, or that there might be a gap in time between the expenditure being incurred and when the R&D activities begin, will not mean that the expenditure fails the requirement of needing to have been 'incurred on one or more R&D activities'. However, having regard to the object of Division 355, expenditure that is 'on' an activity which is not an R&D activity, where that expenditure is not integral to the conduct of any R&D activity, cannot be said to be sufficiently connected to the conduct of any R&D activity in a way which would bring it within paragraph 355-205(1)(a).

61. Factors to consider in determining whether this sufficient connection exists include:

- the terms and conditions of any contract under which the expenditure in question has been incurred
- how those terms and conditions relate to the conduct of any R&D activities
- how many intermediaries there might be between the R&D entity and this conduct
- any lapse in time between when the expenditure is incurred and when the R&D activities begin to be conducted, and

- whether the expenditure can reasonably be expected to produce results 'for' the R&D entity incurring it from the R&D activities the expenditure is said to have been incurred on.

62. The information provided by the applicant demonstrates that the amounts identified as relating to R&D activities for the purposes of section 355-20 are appropriately recognised in the reports prepared by the ACARP for its Contributors. This enables a Contributor to correctly ascertain the amount of their levy contribution which has been expended on particular R&D activities identified as part of the relevant projects. Therefore, the first requirement is satisfied.

Registration under section 27A of the IR&D Act 1986

63. In accordance with subparagraph 355-205(1)(a)(i), an R&D entity's entitlement to a notional deduction in an income year will only arise if (among other requirements) it is registered (for the activities to which the expenditure relates) under section 27A of the IR&D Act 1986.

64. The class of entities to which this Ruling applies comprises companies registered in relation to specific R&D activities in accordance with the requirements of subparagraph 355-205(1)(a)(i). Therefore, this requirement is satisfied for the class of entities to which this Ruling applies.

65. ACR is required to provide IISA with details of the services provided for which it was registered as a levy-collecting RSP. This ensures that the activities conducted by ACR accord with those claimed by the Contributors for the purpose of those activities.

Notional deductions of at least $20,000

66. Ordinarily, to be eligible for an R&D tax offset, an R&D entity must have total notional deductions of at least $20,000 in the income year. Where the expenditure is incurred to a registered research service provider, it is not subject to the $20,000 threshold requirement (table item 1 of subsection 355-100(2)).

67. As the class of entities to which this Ruling applies are R&D entities that have incurred expenditure to a registered research service provider[4], the $20,000 notional deduction threshold requirement need not be met.

Preclusion by other provisions

68. Subsection 355-205(2) provides that a notional deduction arising under subsection 355-205(1) will be subject to the effect of:

- section 355-225 (excluded expenditure)
- Subdivision 355-F (integrity rules), and
- subsection 355-580(3) (Cooperative Research Centres contributions).

Excluded expenditure

69. Section 355-225 excludes certain types of expenditure from giving rise to a notional deduction under section 355-205 and subsequent inclusion in the calculation of any

[4] Registered under section 29A of the *IR&D Act 1986*.

entitlement to a tax offset under section 355-100. Levies paid to the ACARP that are claimed by Contributors do not cover any of these excluded expenditure types in section 355-225, for the following reasons:

- Levies that are claimed are not paid to acquire or construct a building or part of a building; or an extension, alteration or improvement to a building as a result of making contributions.
- Contributors are not the holder of any Division 40 depreciating assets under section 40-40 as a result of their contributions to ACARP and therefore the expenditure is not for the acquisition or construction, nor does it otherwise form part of the cost of such depreciating assets.
- Levies that are claimed are not paid towards interest or an amount in the nature of interest incurred in the financing of R&D activities.
- Levies that are claimed are not acquiring, or acquiring the right to use, any existing technology wholly or partly for the purposes of R&D activities.

70. In the event that these kinds of expenses may at any time be met out of levies, they are excluded from the levy apportioned by ACR to R&D activities and from the levy claimed by Contributors.

Integrity rules

71. Subdivision 355-F sets out various rules which are intended to preserve the integrity and operation of the R&D tax incentive.

72. This Ruling does not consider whether any of the integrity rules identified in Subdivision 355-F operate in such a way as to either prevent (or alter) a notional deduction that would otherwise arise under subsection 355-205(1).

73. A Contributor who wants to ensure that Subdivision 355-F does not apply to their circumstances should request a private ruling.

Cooperative Research Centres contributions

74. Contributions are not being paid to any entity that is part of the Australian Government's Cooperative Research Centres program and therefore Subdivision 355-K does not apply to this Ruling.

Research and development activities conducted 'for' the research and development entity and not 'to a significant extent' for other entities

75. A Contributor's entitlement to a notional deduction under subsection 355-205(1) is subject to section 355-210 being satisfied. Section 355-210 provides specific conditions that must be satisfied before an activity will be regarded as an R&D activity to which subsection 355-205 applies. For the purposes of this Ruling, those conditions are that the R&D activities:

- that give rise to the expenditure are being conducted 'for' the R&D entity (paragraph 355-210(1)(a))[5], and

[5] Paragraphs 355-210(1)(b) to (e) consider various circumstances where the R&D activities are being conducted for entities under other specific qualifying conditions. This Ruling only applies to R&D activities which satisfy the condition specified in paragraph 355-210(1)(a).

- are not being conducted, to a significant extent, for one or more other entities not covered by any paragraph of subsection 355-210(1).

76. In explaining when expenditure on R&D will give rise to a notional deduction, paragraphs 3.52 to 3.55 of the Explanatory Memorandum to the Tax Laws Amendment (Research and Development) Bill 2010 (EM) explain:

> 3.52 Generally, an R&D entity is only entitled to a tax deduction in relation to R&D activities conducted for the entity (whether by the R&D entity for itself or by another entity for it). Also, an entity cannot deduct its expenditure on R&D activities if it conducts those activities to a significant extent for another entity. ***[Schedule 1, item 1, section 355-210]***
>
> 3.53 This retains a key rule from the existing law commonly known as the 'on own behalf' rule. This rule is intended to limit eligibility for a notional R&D deduction to where an R&D entity is the major benefactor from the expenditure it incurs on the R&D activities. In certain situations, the rule also prevents duplication of claims by different R&D entities. ***[Schedule 1, item 1, section 355-210]***
>
> 3.54 Determining the major benefactor of expenditure on R&D activities involves examining the extent to which R&D activities are carried out for the R&D entity compared to the extent to which they are carried out for any other entity. This is tested by weighing up three key criteria, namely who:
>
> - 'effectively owns' the know-how, intellectual property or other similar results arising from the R&D entity's expenditure on the R&D activities;
> - has appropriate control over the conduct of the R&D activities; and
> - bears the financial burden of carrying out the R&D activities.
>
> In short, the question of whether an R&D activity is conducted for an R&D entity is a question of fact, determined by whether the activity is conducted in substance to provide the majority of knowledge benefits resulting from the activity, such as access to intellectual property, to this entity.
>
> 3.55 Whether an R&D entity has effective ownership involves reviewing all the circumstances surrounding the conduct of the relevant activities and the ownership and control of, and/or ability to utilise, the intellectual property or similar results obtained from the expenditure on the R&D activities.

77. These 3 key criteria in paragraph 3.54 of the EM apply to both of the relevant conditions in section 355-210. The first condition concerns whether, in a positive sense, the R&D activities in question have been conducted 'for' the R&D entity (paragraph 355-210(1)(a)). The second condition concerns whether, in a negative sense, those R&D activities have been conducted 'to a significant extent' 'for one or more other entities not covered by any paragraph of subsection (1)' (subsection 355-210(2)). Applying these key criteria from the EM to a particular case requires weighing them up against the relevant facts and circumstances of that case.

78. The activities in question are not conducted by the Contributors. However, the legislative framework for the R&D tax incentive makes specific provision for levy-collecting RSPs. This demonstrates a legislative intention that, under these levy-collecting arrangements, a contributor can be capable of satisfying the requirements under which they can claim the R&D tax offset. This includes being able to meet the 'conducted for' requirements. The provisions do not deem these requirements to be met. However, these provisions are to be interpreted in a way that allows contributors in levy-collecting arrangements to satisfy these requirements in section 355-205 and section 355-210.

Effective ownership

79. A company effectively owning results of the relevant R&D activities is the first identifying criterion in determining whether the R&D activities are being carried out for that company. However, it is recognised that this does not necessarily require that the company must be the proprietor of a piece of intellectual property (IP), as formal regimes of IP may not be available to protect the results. Further, it is possible that the formal owner of the IP may hold it on such terms that the company has all advantages of ownership.

80. If a number of companies fund an R&D project together on their behalf, it is necessary that each must have a proper and effective interest in the R&D results which is commensurate with their contributions.

81. In order to determine whether Contributors' interests in the results of the R&D activities funded by their levies are commensurate with their contributions, it is necessary to consider the benefits that flow from the expenditure to the Contributors.

82. ACR uses levies paid by Contributors to fund the R&D activities of the projects which are undertaken in accordance with the relevant R&D agreements and the levy-collecting RSP regulations. Under these agreements, Contributors benefit from the results of the R&D activities, including receiving access to final reports. Contributors also have rights to use the results of the R&D activities associated with each project directly in connection with a business that they carry on.

83. An examination of the benefits that Contributors are expected to gain and their individual interests in the results of the R&D activities conducted in connection with the arrangement to which this Ruling applies, in comparison to their relevant expenditure, leads to the conclusion that the expenditure is commensurate with the benefits to be gained and the kind of results that the R&D activities produce.

84. The fact that ACR may receive minimal commercialisation proceeds does not alter this conclusion.

85. While any IP generated as a result of the relevant R&D activities will not be legally owned by the Contributors, Contributors hold a common interest in all of the results of the R&D conducted under the ACARP arrangement and therefore it is considered that they have effective ownership of the results.

Control

86. The second identifying criterion is the nature and extent of control that the Contributors have over the R&D activities.

87. The Deed of Agreement sets the parameters under which the R&D is to be undertaken and the underlying philosophies which ACR is bound to follow. The Contributors have the ability to compel ACR to perform in accordance with the Deed of Agreement. In addition, the manner in which the program is executed supports the conclusion that the Contributors have sufficient control over the R&D activities.

88. Consequently, Contributors as a group sufficiently control the R&D activities that they have contracted ACR to provide to satisfy this criterion.

Financial risk

89. The final identifying criterion is the degree of financial risk that Contributors are assuming when the R&D activities are undertaken.

90. In accordance with the Deed of Agreement, Contributors pay contributions which are calculated at a rate of 5 cents per tonne of coal produced and sold over the term of the agreement. Payments are required on a monthly basis. The Deed of Agreement makes it clear that these contributions become the property of ACR. These contributions cannot be refunded to Contributors.

91. As Contributors pay non-refundable levies, they bear the financial risk associated with the R&D activities undertaken. Each Contributor also can only claim R&D expenditure under the arrangement to the extent of its own levy contribution is applied to R&D activities under the arrangement. Accordingly, the financial risk criterion is commensurate with the levy paid by each contributor and the extent of their interest in the R&D activities.

Summary

92. The terms of the Deed of Agreement show that contributions to ACR will be applied exclusively in respect of R&D. The funding and project agreements specify that contributions can only be used for the purposes of the relevant project. Each Contributor will be advised by ACR of the extent to which levies have been incurred on eligible R&D activities. Amounts that cannot be claimed as R&D expenditure are not included in the levy amount that Contributors may claim.

93. For the purposes of paragraph 355-210(1)(a), the Deed of Agreement and the manner in which the projects are conducted supports the conclusion that the R&D activities are 'conducted for' the Contributors, with the Contributors sufficiently:

- owning the results of the R&D activities
- controlling the R&D activities, and
- assuming the financial risk of the R&D activities.

94. Further, subsection 355-210(2) will not preclude any entitlement to a notional deduction on the basis that the R&D activities are not being conducted to a significant extent for another entity.

Prepayment

95. The timing of any entitlement to a tax offset available under section 355-100 can be affected by the prepayment rules.

96. Section 82KZMA of the ITAA 1936 provides that the rules in section 82KZMD of the ITAA 1936 will apply for expenditure that a taxpayer incurs in a year of income (expenditure year), if:

- apart from section 82KZMD of the ITAA 1936, a deduction under section 8-1, or section 355-205 (R&D expenditure) or section 355-480 (earlier-year associate R&D expenditure), in respect of the expenditure, would be allowable to the taxpayer, and
- the requirements in subsections 82KZMA(2) to (5) of the ITAA 1936 are met.

Whether subsections 82KZMA(2) to (5) of the ITAA 1936 are satisfied

82KZMA(2) of the ITAA 1936

97. Subsection 82KZMA(2) of the ITAA 1936 is satisfied if the taxpayer:

- carries on a business or is not an individual and does not carry on a business, and
- is a small business entity for the expenditure year and they have chosen to apply section 82KZMD of the ITAA 1936 to the expenditure (subject to timing requirements).

98. Subsection 82KZL(3) of the ITAA 1936 states that the Subdivision has effect as if conducting R&D activities were carrying on a business. Further, taxpayers to whom paragraph 82KZMA(2)(b) of the ITAA 1936 (concerning small business entities) apply are outside the class of entities covered by this Ruling. A Contributor that is a medium business entity covered by subsection 82KZMA(2A) can choose for section 82KZMD to apply and, if this choice is not made, the prepayments rules in section 82KZM will instead apply. Consequently, either the requirements of subsection 82KZMA(2) of the ITAA 1936 are satisfied for the Contributors or regard will be instead had to the prepayment rule in section 82KZM.

82KZMA(3) of the ITAA 1936

99. Subsection 82KZMA(3) of the ITAA 1936 requires that the expenditure is incurred:

- in carrying on a business or incurred otherwise than in carrying on a business by a taxpayer that is not an individual (paragraph (a))
- under an agreement (paragraph (b)), and
- in return for doing something under the agreement that is not to be wholly done within the expenditure year.

100. For the reasons explained in paragraphs 96 to 97 of this Ruling in respect to subsection 82KZMA(2) of the ITAA 1936, paragraph 82KZMA(3)(a) of the ITAA 1936 is satisfied. Further, the expenditure is incurred under an agreement as required by paragraph 82KZMA(3)(b) of the ITAA 1936.

101. Under paragraph 82KZMA(3)(c) of the ITAA 1936, the expenditure must also be in return for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

102. The expenditure in question is, and will continue to be, incurred on an ongoing basis over the course of several years. The application of the expenditure and the means by which it delivers benefits to the Contributors depends on the interaction between several agreements, none of which precisely prescribe when various activities are to start being done, and when they are to stop being done. However, in practice the expenditure will typically relate to activities to be carried out at some future time, on the basis that ACR requires funds in advance in order to see that the activities which are the subject of the relevant project are begun.

103. Therefore, in respect of expenditure incurred over any one year, it will generally not be possible to conclude that it has all been incurred in return for doing things (R&D activities) that are all to be completed by the end of that year. Consistent with the proposition that contributions will be applied progressively over the life of the ACARP to carry out budgeted activities on behalf of the Contributors is the notion that each contribution is intended to fund only so much of these activities at any one time.

104. Accordingly, the condition in paragraph 82KZMA(3)(c) of the ITAA 1936 will also be satisfied. Identification of when the various activities are to start and stop is best done by reference to the underlying planning and budgetary documentation that guides the relevant project and ACR's actions. Determination of these stop and start times will necessarily, in the circumstances, be one of reasonable estimation, rather than something that occurs with absolute precision.

82KZMA(4) of the ITAA 1936

105. Subsection 82KZMA(4) of the ITAA 1936 requires that none of the expenditure is excluded expenditure as defined in subsection 82KZL(1) of the ITAA 1936. It is not expected that any of the expenditure will be excluded expenditure as defined in subsection 82KZL(1) of the ITAA 1936. In particular, we note that the contributions made by the Contributors is not considered to be capital in nature.

82KZMA(5) of the ITAA 1936

106. Subsection 82KZMA(5) of the ITAA 1936 must not meet the pre-RBT obligation, which is defined in subsection 82KZL(1) of the ITAA 1936 as:

> ***pre-RBT obligation*** means a contractual obligation that:
>
> (a) exists under an agreement at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and
>
> (b) requires the payment of an amount for the doing of a thing under the agreement; and
>
> (c) requires the payment to be made before the doing of the thing; and
>
> (d) cannot be escaped by unilateral action by the party bound by the obligation to make the payment.

107. The expenditure does not fall within the definition contained in paragraph 105 of this Ruling.

Amount and timing of deduction

108. Subsection 82KZMD(2) of the ITAA 1936 provides that for each year of income containing all or part of the eligible service period for the expenditure, the taxpayer may deduct the amount under section 8-1 or notionally deduct the amount under section 355-205 by applying this formula:

$$\text{Expenditure} \times \frac{\text{number of days in the eligible service period for the year of income}}{\text{total number of days of eligible service period}}$$

109. Under subsection 82KZL(1) of the ITAA 1936, the:

> ***eligible service period***, in relation to an amount of expenditure incurred under an agreement, means the period from the beginning of:
>
> (a) the day, or the first day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to commence being done; or
>
> (b) if the expenditure is incurred on a later day – the day on which the expenditure is incurred;

until the end of:

(c) the day, or the last day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to cease being done; or

(d) if that day or last day ends more than 10 years after the beginning of the period – 10 years after the beginning of the period.

110. Where the prepayment rules in section 82KZM instead apply to a Contributor, the amount that can be deducted is worked out in accordance with the requirements of that section.

111. Relevant to the task of determining the eligible service period are the Deed of Agreement, the funding and project agreements and any other relevant agreements entered into for the purposes of the relevant projects. In addition, quarterly reports, annual reports and annual budgets provided to ACR for the purposes of the relevant project will also be of assistance.

112. There is an inherent or expected degree of imprecision when applying the calculation required under section 82KZMD of the ITAA 1936. However, by reference to ACR's underlying planning and budgetary documentation which guide its actions, it should be possible to calculate the amount identified in section 82KZMD of the ITAA 1936 with reasonable estimation.

113. Analysis of the relevant project's spending to date, in conjunction with the budget details for the planned spending, should provide a suitable indicator as to how much of the contributions paid to date have actually been applied to the activities of the ACARP project and what the typical 'lag' is in this respect. This produces a broad, but still reasonable reflection of the extent to which each quarter's sum of contributions relates to activities to be performed in the future.

114. Note that in circumstances in which the last day of the eligible service period would exceed 10 years after the eligible period's start date, the eligible service period is limited to a period of 10 years (refer to the definition of 'eligible service period' in subsection 82KZL(1) of the ITAA 1936).

Page status: **not legally binding**

References

Related rulings and determinations:

TR 2006/10; CR 2005/9; CR 2009/45; CR 2012/82; CR 2014/93

Legislative references:

- ITAA 1936 82KZL(1)
- ITAA 1936 82KZL(3)
- ITAA 1936 Subdiv H Pt III
- ITAA 1936 82KZM
- ITAA 1936 82KZMA
- ITAA 1936 82KZMA(2)
- ITAA 1936 82KZMA(2)(b)
- ITAA 1936 82KZMA(2A)
- ITAA 1936 82KZMA(3)
- ITAA 1936 82KZMA(3)(a)
- ITAA 1936 82KZMA(3)(b)
- ITAA 1936 82KZMA(3)(c)
- ITAA 1936 82KZMA(4)
- ITAA 1936 82KZMA(5)
- ITAA 1936 82KZMD
- ITAA 1936 82KZMD(2)
- ITAA 1936 318
- ITAA 1997 8-1
- ITAA 1997 Div 40
- ITAA 1997 40-40
- ITAA 1997 Div 230
- ITAA 1997 328-110
- ITAA 1997 Div 355
- ITAA 1997 355-5(1)
- ITAA 1997 355-20
- ITAA 1997 355-25
- ITAA 1997 355-30
- ITAA 1997 355-35
- ITAA 1997 Subdiv 355-C
- ITAA 1997 355-100
- ITAA 1997 355-100(1)(a)
- ITAA 1997 355-100(1)(b)
- ITAA 1997 355-100(1)(c)
- ITAA 1997 355-100(1)(d)
- ITAA 1997 355-100(1)(e)
- ITAA 1997 355-100(1)(f)
- ITAA 1997 355-100(1)(g)
- ITAA 1997 355-100(2)
- ITAA 1997 355-110
- ITAA 1997 355-205
- ITAA 1997 355-205(1)
- ITAA 1997 355-205(1)(a)
- ITAA 1997 355-205(1)(a)(i)
- ITAA 1997 355-205(1)(b)
- ITAA 1997 355-205(2)
- ITAA 1997 355-210
- ITAA 1997 355-210(1)
- ITAA 1997 355-210(1)(a)
- ITAA 1997 355-210(1)(b)
- ITAA 1997 355-210(1)(c)
- ITAA 1997 355-210(1)(d)
- ITAA 1997 355-210(1)(e)
- ITAA 1997 355-210(2)
- ITAA 1997 355-225
- ITAA 1997 Subdiv 355-F
- ITAA 1997 355-480
- ITAA 1997 Subdiv 355-K
- ITAA 1997 355-580(3)
- ITAA 1997 Subdiv 355-W
- Industry Research and Development Act 1986 27
- Industry Research and Development Act 1986 27A
- Industry Research and Development Act 1986 29A
- Industry Research and Development Regulations 2011 3.01(2)
- Industry Research and Development Regulations 2011 3.01(3)
- Industry Research and Development Regulations 2011 3.01(7)

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (Research and Development) Bill 2010

ATO references

NO:	1-16M115Z9
ISSN:	2205-5517
BSL:	PW
ATOlaw topic:	Income tax ~~ Research and development ~~ Expenditure ~~ Expenditure incurred to an association