CR 2013/35 - Income tax: research and development tax incentive: membership funding for the ACA Low Emissions Technology Program

Class Ruling

Income tax: research and development tax incentive: membership funding for the ACA Low Emissions Technology Program

Contents Para

This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 355-100 of the ITAA 1997;
- section 355-205 of the ITAA 1997;
- section 355-210 of the ITAA 1997;
- section 355-435 of the ITAA 1997;
- section 82KZL of the Income Tax Assessment Act 1936 (ITAA 1936);
- section 82KZMA of the ITAA 1936; and
- section 82KZMD of the ITAA 1936.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies comprises 'R&D entities', as defined by section 355-35, who are liable for levy contributions under the ACA Low Emissions Technologies Program, and who:

- are registered with Innovation Australia, in accordance with the requirements of subparagraph 355-205(1)(a)(i) for the relevant years of income;
- have notional deductions identified by reference to paragraphs 355-100(1)(a)-(g) for the relevant years of income which equal or exceed $20,000; and
- are not a small business entity as defined in section 328-110.

4. In this ruling the term 'Contributor 'is used to refer to the companies that are ultimately obliged to pay contributions to ACA Low Emissions Technologies Limited (ACALET). In the Contribution Deed discussed below, the Contributors are either the 'mine owner(s)' or 'operator(s) of coal producing assets'/contributor(s)' where no separate 'mine owner(s)' are identified in the Contribution Deed.

5. This Ruling **does not apply** to eligible companies that are not registered for the relevant years of income with Innovation Australia. The publication of this Ruling does not relieve companies making ACALET contributions of the obligation to make separate applications for registration of their activities under section 27A of the *Industry Research and Development Act 1986*.

Qualifications

6. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling. This Ruling only applies to contributions used to fund projects which fall within the parameters of the scheme identified in this ruling. Further, this ruling does not apply to any contributions made in a relevant year of income that are less than $1,000 (in total for that year of income).

7. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 52 of this Ruling.

8. The description of the scheme in this Ruling is a generic one, capable of applying to a number of specific projects funded, or to be funded, by ACALET. However, the Commissioner does not provide any guarantee that any actual project does fall within this description. Contributors will need to confer with ACALET to obtain this assurance.

9. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

Date of effect

11. This Ruling applies from 1 July 2011 to 30 June 2017. The Ruling continues to apply after 30 June 2017 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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).

Scheme

12. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- application for Class Ruling dated 19 November 2012;
- letter from the applicant dated 28 February 2013 and accompanying attachments; and

- minutes of meeting that took place on 4 March 2013 between representatives of the Australian Taxation Office and the Applicant.

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

Background

13. The Coal21 National Action Plan was formally issued on March 2004 by the Minister for Industry Tourism and Resources, highlighting the national challenge facing Australia with substantial greenhouse gas emission impact from fossil fuel use. The plan identified options to address the greenhouse gas emissions impact by an intensive program of R&D and demonstration in the areas of low emissions technologies associated with the use of coal.

14. The Australian black coal industry accepted the need to arrange a new program consistent with the Coal21 National Action Plan. A new program, the ACA Low Emissions Technologies Program (ACALET Program) was established to support research, development and demonstration aimed at developing clean coal technologies. Funding for the ACALET Program will be provided by way of voluntary levies.

ACALET

15. ACALET has been established to manage the ACALET Program. ACALET is not a registered service provider under Part III, Division 4 of the *Industry Research and Development Act 1986*.

16. Clause 4 of ACALET's Constitution describes its objects, which include:

- providing for the collective and integrated research of coal for the purpose of providing strategic leadership to the coal and associated industries, with particular regard to development and application of potential low emissions technologies applicable to the use of coal;
- allocating the funds raised among registered research agencies, other research agencies and Demonstration Project agencies chosen by the Company to undertake R&D and/or Demonstration Projects;
- acting as a catalyst to stimulate R&D and Demonstration Project interest within the coal and associated industries;
- improving the management and application of coal R&D and Demonstration Projects in Australia;

- liaising with other R&D and Demonstration Project administrative bodies;
- entering into contracts with and engage organisations to manage R&D projects and/or Demonstration Projects on behalf of groups of companies;
- education of the public in relation to the sustainable use of Australia's coal resources and the role of coal, including in relation to:
  - coal as a steel feedstock;
  - Australia's energy mix; and
  - the use and production of energy in Australia.
- ensuring a more efficient use of Australia's black coal resources;
- promoting the use of coal both within Australia and overseas;
- promoting the competitiveness of Australia's coal production;
- promoting the sustainable development of the Australian coal mining industry and use of coal;
- promoting the economic and social benefits of the coal industry to the wider community;
- facilitating and promoting the cost effectiveness and environmental sustainability of coal as an energy and metallurgical feedstock for the 21st Century; and
- preparing, editing, publishing, issuing and circulating books papers periodicals gazettes circulars and other publications relating to activities associated with the coal and associated industries.

17. Each black coal producer group operating in Australia has the opportunity to be a member of ACALET. The Board of ACALET comprises of up to 15 directors.

18. Clause 6 of ACALET's Constitution governs membership of the company. In particular clause 6.10 provides that:

> [each] Member must enter into an agreement with the Company to pay contributions or levies to the Company which will be applied towards the promotion of the objects of the Company set out in clause 4.

19. Any payments made by a Contributor under this scheme, who is also a member of ACALET, are taken to be made voluntarily, and not in its capacity as a member of ACALET.

Contribution Deed relating to the ACALET Program between ACALET and the Contributors (Contribution Deed)

20. Each Contributor enters into a Contribution Deed with ACALET under which they are liable to make contributions.

21. The Contribution Deed sets out the rights and obligations of ACALET and the Contributor, in particular the:

- agreement to pay contributions, clause 2;
- amount of the contributions, clause 3; and
- actual payment of contributions, clause 4.

22. The Contributor agrees to pay the levies to ACALET in consideration for its promise that those funds will be applied exclusively in respect of:

- 'research and development' (R&D);
- demonstration projects'; and
- management and administration expenses in respect of 'R&D' and/or 'demonstration projects' as defined in the Contribution Deed.

23. The Contribution Deed requires that the results of the R&D must be made available to a Contributor, to the extent possible under the terms of the various agreements entered into by ACALET in relation to the ACALET Program.

24. A Contributor accrues a liability to pay the levy calculated at the rate of up to $0.20 per tonne of coal produced. The Contributor must pay to ACALET a contribution equal to the accrual balance (which increases by quarterly sales multiplied by the rate of contribution and decreases by any payments made), unless a payment notice has issued. If it has then the Contributor must only pay the amount on the Payment Notice. Contributions are made on a quarterly basis.

25. All contributions paid to ACALET become property of ACALET and cannot be refunded.

26. The Contribution Deed defines R&D to mean scientific, technical or economic research in connection with the beneficiation and use of coal or products derived from coal, including the demonstration and development of the results of that research and includes:

(a) the training of persons for the purpose of any such R&D;

(b) the publication of reports, periodicals, books and papers in connection with such R&D;

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

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

(e) any matters incidental or relating to the obligations of ACALET under this Deed including costs incurred in collection of contributions.

27. ACALET provides expenditure statements to Contributors pursuant to clause 9(d) of the Contribution Deed. ACALET provides biannual reports to Contributors indicating the apportionment of the expenditure of contributions to R&D. ACALET will also provide quarterly reports to Contributors, as it recognises that they have a range of tax year-end dates. These quarterly reports are derived from a 'contributor reporting spreadsheet' developed by ACALET, and set out the Contributor's percentage of the eligible research and development expenditure (R&D expenditure) and other expenditure spent on the project and related overheads for the quarter. A relevant contributor's entitlement to a tax offset under Division 355 of the ITAA 1997, in relation to expenditure incurred to ACALET for a particular income year, may be compiled by taking the appropriate details from the quarterly reports for the four quarters falling within that contributor's particular income year.

28. The Contribution Deed commences on the effective date and will be reviewed by the parties during the three month period expiring on 30 June 2017, and will continue to the later of such date the parties agree or the date upon which the accrual balance is nil, unless earlier terminated. The effective date will vary for Contributors depending on when they enter into the Contribution Deed.

29. The Contribution Deed and the manner in which each project is executed provide rights to the Contributors in relation to the R&D to be undertaken, such that control of the R&D resides with those Contributors.

30. The expenditure is not a 'pre-RBT obligation' as defined in subsection 82KZL(1) of the ITAA 1936.

ACALET's funding and operations

31. Contributions paid to ACALET by Contributors are used to fund various research projects, which have been identified as suitable candidates for funding by ACALET through the ACALET Program.

32. In relation to a particular project (or body of projects) ACALET has entered into, or will enter into, a funding agreement with either a single party, or a number of parties (**Funding Agreement**). The Funding Agreement embodies the contractual basis upon which ACALET has agreed to fund that project (or body of projects).

33. In addition to the Funding Agreement, ACALET enters into a range of agreements with companies and other entities who participate in these projects in varying ways (**Project Agreements**). These agreements are the contractual means by which the Contributor's funds are applied to the performance of research and development and other activities.

34. All Project Agreements require that the funds provided by ACALET will be used for the sole purpose of performing the project and must not be used for any other purpose.

35. Where ACALET carries out a project on a collaborative basis with other parties, then the Funding Agreement and Project Agreements which regulate the contractual relationship between those parties make provision for:

- project decision making;
- statutory responsibilities;
- ownership of tangible and intangible property; and
- ownership of project outcomes.

36. All Funding Agreements and Project Agreements require that:

- ACALET have decision making powers proportional to the value of its contribution to the project. The decision making powers in respect of which ACALET will have a proportionate right to vote will not extend to operational aspects, but will typically include matters such as the right to approve or veto changes to project plans, and decisions to continue or terminate the project if it is not achieving its objectives;
- ACALET has no statutory obligations to fulfil in relation to the project;
- Neither ACALET nor its contributors directly or indirectly own any tangible property associated with the project (except, potentially, where a contributor is also a project proponent, in which case its rights will not result from the terms of ACALET's Funding Agreement.);
- Neither ACALET nor its contributors will acquire any existing intellectual property (except, potentially, where a contributor is also a project proponent in which case its rights will not result from the terms of ACALET's Funding Agreement.); and
- ACALET's contributors will have ownership of the project outcomes consistent with the value of their contribution to the project.

37. Where the project is directly controlled by an entity other than ACALET (the project entity), then the agreement executed between ACALET and that project entity specifies that ACALET has a degree of control over the project which is directly proportional to the value which ACALET has committed to the project (taking into account cash and in-kind contributions from the project proponents and other funders). ACALET's control is at the project steering level, rather than the day to day operational level. The project proponent will typically be responsible for day to day operational control, in order to deliver the project as required.

38. ACALET will not enter into a Funding Agreement before determining who is responsible for the preparation of an annual project program and annual budgets for the relevant project. The project steering committee of which ACALET is a member will typically be responsible for approving annual plans for the project, and the annual budget. ACALET's level of control over decisions of the project steering committee is typically proportional to the value which ACALET commits to the project, although in some projects, each member of the steering committee may have an equal right to vote. Some decisions will require a unanimous vote of all members of the steering committee.

39. Further, all Funding and Project Agreements which ACALET enters into make adequate provision for access to various other reports by ACALET representatives. As a minimum, all of those agreements require that the responsible project entity provide ACALET with:

- an estimate of the proposed expenditure relating to the project for the next quarter, apportioned between R&D expenditure which is eligible to be notionally deducted under section 355-205;
- a statement reconciling expenditure (including apportionment between R&D expenditure as determined by reference to section 355-205) actually incurred during the immediately proceeding quarter and the previous estimate of the proposed expenditure relating to the project for the quarter;
- quarterly reports showing the progress of the project against the operating plan and quarterly accounts;
- annual reports prepared for each financial year providing details including the annual accounts, the annual project program and the status of the project conducted pursuant to that program and the annual budget for the following year; and
- a final report which describes all work done in connection with the project (this report must demonstrate that the project undertaken was consistent with ACALET’s overall objectives as identified in its constitution).

40. Funding and Project Agreements entered into by ACALET allow it to cease funding a project without penalty (except in relation to funds already committed by the project proponent), if the reports referred to in the preceding paragraph are not provided in a timely manner. Further, they also ensure that:

- ACALET may publish the final report which must also be made available to each of the Contributors;
- ACALET contributors receive benefits, including an interest in the results of the project, which is commensurate with the contributions made by ACALET; and
- ACALET contributors receive rights in relation to the use of project intellectual property.

41. The Funding and Project Agreements which support a project separate IP into two categories, and all projects contain these categories. For the purposes of this Ruling these are described as **'Foreground IP**' and '**Background IP**'.

Foreground IP

42. Foreground IP is determined by reference to what knowledge and/or learning arises from or is produced by the project. As a general proposition, all Contributors acquire a perpetual, irrevocable, worldwide, royalty free, non-exclusive licence to utilise, reproduce, adapt and modify any part of that knowledge and/or learning which arises from the project.

43. In some circumstances a licence to utilise Foreground IP will only be granted to a Contributor if it has made contributions to the project which exceed a specified amount. Where these restrictions exist, all Contributors are entitled to a licence to utilise the Foreground IP for their own use provided they make a further contribution. This further contribution must be directly referable to the various amounts contributed by all parties to the project which produced the Foreground IP.

44. Alternatively, a Contributor may be entitled to use the Foreground IP by paying a royalty or licence fee, the cost of which will be discounted by reference to that Contributor's contribution to the project. This will involve a comparison of the total contributions of other participants, including in-kind contributions and contributions of Background IP.

Background IP

45. Background IP is all other IP which is not Foreground IP. This includes IP that is owned and brought to the project by another participant. It may also include IP acquired during the project for the purposes of carrying out the project.

46. All Contributors receive a right to use Background IP where that is necessary to make use of the Foreground IP. The Background IP will be made available to all Contributors at a commercial rate, such a rate will be determined by an independent body.

47. Levies paid to ACALET by Contributors constitutes 'expenditure incurred' for the purposes of calculating an entitlement to:

- a 'notional deduction' within the meaning of section 355-205 of the ITAA 1997; or
- a deduction under section 8-1 of the ITAA 1997.

48. Contributions do not produce any enduring benefit or advantage to the Contributors, but rather are intended to assist them in marketing of their products.

R&D activities

49. The R&D activities which ACALET arranges to be conducted for its Contributors are, and will be, consistent with its Constitution. Specific R&D activities will vary from project to project[1]. Whether or not these specific activities are covered by Division 355 and section 27 of the *Industry Research and Development Act 1986* (the IR&D Act 1986), will depend on the terms of sections 355-20, 355-25 and 355-30 (being the definitions respectively, of R&D activities, Core R&D activities and Supporting R&D activities) being met. Registration under section 27A of the IR&D Act 1986 occurs under a self assessment regime. However, action taken by Innovation Australia under the IR&D Act 1986 can alter the eligibility of certain activities registered under section 27A , which will affect what expenditure may ultimately qualify under Division 355 (see further paragraph 55 below).

No research service provider or CRC contributions

50. Contributions are not expenditure incurred to a research service provider (**RSP**) within the meaning of the IR&D Act 1986, or a Cooperative Research Centre (**CRC**) under the Commonwealth CRC program.

Government funding

51. The Commonwealth, a State or Territory Government may agree to provide grant funding for the purposes of any project which ACALET also intends to fund.

[1] For example, R&D activities carried out in the 'ANLEC Project' are described in paragraphs 54 to 58 of Class ruling CR 2012/119

52. Any receipt of the Government funding in relation to the project by a Contributor is outside the scope of this ruling. If any Contributor in these circumstances wants to know whether subdivision 355-G applies to them they should apply for a private ruling on this matter.

Ruling

R&D expenditure giving rise to a tax offset

53. For the years of income ending 30 June 2012 to 30 June 2017 inclusive (or equivalent substituted accounting periods), to the extent that a Contributor pays levies in an income year that:

- amount to $1,000 or more;
- are for R&D activities as defined in section 355-20; and
- represent expenditure arising under section 355-205;

they will be entitled to a tax offset calculated in accordance with section 355-100. Further, subsection 355-210(2) will not preclude a notional deduction arising under section 305-205.[2]

54. 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;
- for any part of the contributions incurred on 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; or
- if the notional deductions used in calculating their entitlement to a tax offset under section 355-100 total less than $20,000.

55. The Commissioner acknowledges that any opinion formed about the R&D activities referred to in this Ruling can be overridden by Innovation Australia. Therefore, the Commissioner does not express an opinion about 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 Innovation Australia) that the activities are R&D activities as defined under section 355-20.

[2] Subdivision 355-F may prevent a notional deduction arising under section 355-205. As discussed in paragraphs 85 to 87, this Ruling does not consider the application of Subdivision 355-F to the scheme described in paragraphs 12 to 60.

Section 82KZMD

56. 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 82KZMD of the ITAA 1936 applies, such that the timing and amount of the deduction is allocated over the relevant eligible service period.

Clawback - Subdivision 355-G

57. Subdivision 355-G does not apply to any expenditure incurred by a Contributor if the requirements in section 355-440 are not met. Contributors are not recipients of any funds (or other form of recoupment):

- paid under the Commonwealth Funding Agreement; or
- from an Australian government agency, or a State/Territory body (STB) within the meaning of Division 1AB of Part III of the ITAA 1936.

58. As participation in the a Project does not result in a Contributor receiving any of these funds, they will not be required to pay extra income tax under section 355-435 in relation to this participation.

59. If a Contributor is a recipient of the funds referred to in paragraph **57**, and wants to know whether Subdivision 355-G applies to them they should apply for a private ruling.

Section 8-1

60. For the years of income ending 30 June 2012 to 30 June 2017 inclusive (or equivalent substituted accounting periods), the portion of the levy paid by a Contributor to the ACALET Program, which does not qualify for a notional deduction under section 355-205, will be deductible under section 8-1.

Section 82KZMD

61. Where expenditure deductible under section 8-1 relates to activities which are not carried out in the current income year, section 82KZMD of the ITAA 1936 applies, such that the timing and amount of the deduction is allocated over the relevant eligible service period.

Commissioner of Taxation
5 June 2013

Appendix 1 – Explanation

This Appendix 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.

Meaning of R&D activities and other terms

62. R&D activities are defined in section 355-20. This Ruling applies only to those Contributors who are correctly registered with Innovation Australia, so that the activities being undertaken in accordance with the Funding Agreements for a project are regarded as being 'R&D activities' undertaken by the Contributors.

63. A Contributor cannot rely on this Ruling if Innovation Australia determines that:

- a Contributor is not eligible for registration in relation to the activities which a recipient of funding (Recipient) conducts as part of a project; or
- the activities of a 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).

R&D Entities

64. 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; and

(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.

65. 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.

66. Where an R&D entity is entitled to deduct an amount under:

- section 355-205 (R&D expenditure);
- section 355-305 (decline in value of R&D assets);
- section 355-315 (balancing adjustment for R&D assets);
- section 355-480 (earlier year associate R&D expenditure);
- section 355-520 (decline in value of R&D partnership assets);
- section 355-525 (balancing adjustment for R&D partnership assets); or
- section 355-580 (CRC contributions);

then that amount is used in calculating the R&D entity's entitlement to a tax offset, which is determined by reference to the tables contained in section 355-100.

When notional deductions for R&D expenditure arise

67. A tax offset will be available in a year of income 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 year of income;
- is registered under section 27A of the IR&D Act 1986; and
- has notional deductions of at least $20,000 for that year of income, and is entitled to those notional deductions, and is not precluded by any other provision of Division 355.

*Whether the contributions are incurred 'on one or more *R&D activities'*

68. Paragraph 355-205(1)(a) says 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.

69. In Division 355 section 355-5 provides that the object of the Division concerns encouraging the conduct of 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, or 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)).

70. 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. 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.

71. 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, therefore will not in themselves, mean that the expenditure fails the requirement of needing to have been 'incurred on one or more R&D activities'. On the other hand, 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).

72. 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.

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

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

74. The class of entities to which this Ruling applies comprise 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.

Notional deductions of at least $20,000

75. The class of entities that this Ruling applies to comprises R&D entities with notional deductions for the purposes of calculating entitlement to a tax offset under section 355-100 of at least $20,000. Therefore, the third requirement is satisfied.

Preclusion by other provisions

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

- section 355-255 (excluded expenditure);
- Subdivision 355-F (integrity rules); and
- subsection 355-580(3) (CRC contributions).

Excluded expenditure

77. Section 355-255 excludes certain types of expenditure from giving rise to a notional deduction under section 355-205, and subsequent inclusion in the calculation of any entitlement to a tax offset under section 355-100. The contributions to the ACALET Program do not result in Contributors having any of the excluded expenditure types in section 355-255, for the following reasons:

- Contributors neither acquire, construct, alter, nor improve any building etc 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 the ACALET Program, and therefore the expenditure is not for the acquisition or construction, nor does it otherwise form part of the cost of such depreciating assets;

- contributions are not interest or an amount in the nature of interest incurred in the financing of R&D activities; and
- the Contributor is not acquiring or acquiring the right to use any existing technology for the purposes of R&D activities.

Integrity rules

78. Subdivision 355-F sets out various rules which are intended to preserve the integrity and operation of the R&D tax incentive. Paragraph 3.155 of the Explanatory Memorandum to the Tax Laws Amendment (Research and Development) Bill 2010 (**EM**) explains that Subdivision 355-F corresponds to the integrity provisions in former sections 73B and 73CA of the ITAA 1936.

79. 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).

80. A Contributor who wants to ensure that Subdivision 355-F does not have application to their circumstances should apply for a private ruling.

CRC contributions

81. Contributions are not being paid to any entity that is part of the Commonwealth government's CRC program.

R&D partnerships

82. Given that there is no partnership between Contributors; Subdivision 355-J does not apply to this Ruling.

Conditions for R&D activities

83. 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(1) 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)); and
- the R&D activities are not being conducted, to a significant extent, for one or more other entities not covered by any paragraph of subsection 355-210(1).

84. Whether R&D activities are to be carried out 'for' a Contributor as required by paragraph 355-210(1)(a), and not 'to a significant extent' for any other persons besides the Contributors, as provided by subsection 355-210(2), is considered in paragraphs 85 to 101 of this Ruling.

R&D activities conducted 'for' the R&D entity and not 'to a significant extent' for other entities

85. Entitlement to a notional deduction under section 355-205 for the payment of levies to ACALET will only arise if that expenditure is incurred on R&D activities, and those R&D activities are conducted 'for' the R&D entity. Further, the R&D activities which give rise to any notional deduction under section 355-205 must not be 'conducted, to a significant extent' for any other entity which does not satisfy the qualifying condition in paragraph 355-210(1)(a)[3].

86. In explaining when expenditure on R&D will give rise to a notional deduction, the EM explains (at paragraphs 3.52 – 3.55):

> 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.
>
> 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.
>
> 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.

[3] Paragraphs 355-210(1)(b)-(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).

> 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.
>
> 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.

87. These three key criteria apply then to two of the 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 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 to a particular case requires weighing them up against the relevant facts and circumstances of that case.

Effective ownership

88. 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 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 the advantages of ownership.

89. 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.

90. ACALET uses levies paid by Contributors to fund the activities of the relevant projects which are undertaken in accordance with the relevant funding agreements. Any IP generated as a result of the relevant projects will not be legally owned by the Contributors. However, the Commissioner is more concerned with effective ownership of the results of the R&D projects and whether the benefits obtained by the Contributors are such that they have an interest in the results of the relevant projects that is commensurate with their contributions.

91. The Contribution Deed between ACALET and the Contributor 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’.

92. In order to determine whether the 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.

93. 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 scheme 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.

Control

94. The second identifying criterion is the nature and extent of control that the Contributors have over the R&D activities. Both the relevant funding agreements and the Contribution Deed result in the Contributors, as a group, having sufficient control of the R&D activities that they have contracted ACALET to provide. The Contribution Deed has set the parameters for the R&D to be undertaken and the underlying philosophies which ACALET is bound to follow. The Contributors have effective legal control, as they have the ability to compel ACALET to perform in accordance with the Contribution Deed. The manner in which the relevant projects are executed also supports the conclusion that the Contributors have sufficient control over the R&D activities.

Financial risk

95. The final identifying criterion is the degree of financial risk that Contributors are assuming when the R&D activities are undertaken. In accordance with the Contribution Deed, Contributors pay contributions which are calculated at a rate of up to $0.20 per tonne of coal produced over the term of the agreement. Payments are required on a quarterly basis. The Contribution Deed makes it clear that these contributions become the property of ACALET. These contributions cannot be refunded to the Contributors.

96. As Contributors pay non-refundable levies, they bear the financial risk associated with the R&D activities undertaken.

Summary

97. The terms of the Contribution Deed show that contributions will be applied exclusively for R&D, demonstration projects and also for management and administration expenses relating to the above. The relevant funding agreements specify that contributions can only be used for the purposes of the relevant project. Some of the contributions will therefore be directed towards R&D activities identified above.

98. Similar to other parties to the relevant projects, Contributors benefit from the results of the R&D activities, including receiving final reports. They also have the same rights in relation to the use of the relevant project's IP for internal purposes as other parties to that relevant project. This shows there is a practical link between the expenditure and the activities and the results to be produced from the activities.

99. Therefore, this illustrates that there is a sufficiently close connection between the portion of contributions used to fund the carrying on of R&D activities for the relevant project, such that this expenditure qualifies as being 'for' the activities identified as R&D activities. The extent to which this is so will depend on the fairness and reasonableness of the apportionment methodology used. As discussed in paragraph 71, the fact that payments are made to an intermediary does not preclude those payments from being on particular R&D activities.

100. 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 scheme 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.

101. Contributions incurred by Contributors to ACALET are expenditures on conducting R&D activities 'for' them, for the purposes of determining whether the Contributors are entitled to deduct amounts under section 355-205. Subsection 355-210(2) will not preclude any entitlement to a notional deduction on the basis that the R&D activity is being conducted to a significant extent for another entity, which itself does not satisfy section 355-210.

Subdivision 355-G – Clawback

102. Section 355-435 requires that an entity pay extra income tax when the requirements of section 355-440 and section 355-445 are met. The condition identified in section 355-440 requires that the entity receive (or becomes entitled to receive) a recoupment from:

- an Australian government agency; or
- an STB (as defined in Division 1AB of Part III of the ITAA 1936);

otherwise than under the CRC program.

103. Under section 355-445, the entitlement to a recoupment referred to in the preceding paragraph must then be:

- received during an income year (referred to as the trigger year); and
- be incurred on or in relation to certain activities; or

- require that expenditure (referred to as project expenditure), to have been or to be incurred on certain activities.

104. The Commonwealth has agreed or may agree to provide grant funding for some of the projects to which this Ruling applies. However, both ACALET and the Commonwealth's funds can only be utilised for the relevant projects in accordance with the terms of the relevant funding agreements. The Commonwealth funding cannot be utilised or returned to any Contributor.

105. Whilst the relevant entity which incurs the expenditure referred to in section 355-445 will be different depending upon the relevant project, ACALET will not be the entity incurring that expenditure.

106. Any receipt of the Commonwealth funding by a Contributor in relation to the relevant projects is outside the scope of this Ruling. If a Contributor in this position wants to know whether Subdivision 355-G applies to them they should apply for a private ruling.

Section 8-1 – general deduction

Entitlement to a deduction for payments made under the Contribution Deed which are not payments that can be notionally deducted under section 355-205

107. To the extent that a payment made by a Contributor is not expenditure which can be notionally deducted under section 305-205, it may nevertheless be deductible under section 8-1. To be entitled to a deduction under section 8-1, a Contributor will need to satisfy subsection 8-1(1), and also not be precluded by any part of subsection 8-1(2).

108. Generally, this means that the payment will need to be:

- capable of being characterised as a 'working or operating expense' of the business of the Contributor; and
- necessarily incurred in carrying on the business of the Contributor.

Taxation Ruling TR 95/14

109. Taxation Ruling TR 95/1 considers whether advertising costs associated with opposing legislation will be a deductible expense. TR 95/1 was issued as a result of the decision in *Federal Commissioner of Taxation v. Rothmans of Pall Mall (Aust) Ltd* (1992) 37 FCR 582; 92 ATC 4508; (1992) 23 ATR 620 (*Rothmans)*.

[4] Taxation Ruling TR 95/1 Income tax: deductibility of advertising that opposes the passing of legislation.

110. The decision in *Rothmans* provides some assistance in determining a Contributor's entitlement to a deduction under the scheme set out in this Ruling. Rothmans concerned a claim for a deduction by a member of the Tobacco Institute of Australia (the Institute). That member claimed their contribution to the Institute as a deduction from their assessable income. At paragraph 10 of TR 95/1, the Commissioner notes that:

> The Court decided that the nature of the expenditure incurred by the company was, *in the present commercial environment, an ongoing part of the circumstances in which companies carry on business. Accordingly, it was incidental to the carrying on of its business and did not involve the acquisition of an enduring asset.* Lockhart J relied upon the decisions of the High Court in *FC of T v. Snowden & Willson Pty Ltd* (1958) 99 CLR 431 and of the Federal Court in *Magna Alloys and Research Pty Ltd v. FC of T* 80 ATC 4542; (1980) 11 ATR 276. His Honour found that the company was not seeking to maintain or preserve an existing capital asset by paying the levy to the Tobacco Institute. [emphasis added]

111. The principle established in *Rothmans* can be extended to include any portion of the levy payment (that is not eligible to be notionally deducted under section 355-205), which can be properly characterised as being incidental to the Contributor's business.

112. Where a Contributor makes a payment to ACALET, which enables it to promote its involvement with the relevant projects, it will be appropriate to characterise a portion of that payment as being in the nature of a marketing expense. The contributions are regular payments that do not produce any enduring benefit or advantage to the Contributors, but rather are intended to assist them in marketing their product.

113. Accordingly, in these circumstances, the payment will be deductible under subsection 8-1(1), and will not be precluded by any part of subsection 8-1(2).

Prepayments

114. The timing of any entitlement to a tax offset available under section 355-100, or a deduction under section 8-1 can be affected by the prepayment rules. Section 82KZMA of the ITAA 1936 sets the amount and timing of deductions for expenditure that a taxpayer incurs in a year of income (the expenditure year), if:

- apart from those sections, 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 from the Contributor's assessable income; and
- the requirements in subsections 82KZMA(2) to (5) of the ITAA 1936 are met.

115. As discussed above, the requirements of section 355-205 (R&D expenditure) will be met for expenditure incurred on R&D activities, and those for section 8-1 will be met for any remaining expenditure incurred by Contributors to ACALET under the Contribution Deed. Whether the requirements of subsections 82KZMA(2) to (5) of the ITAA 1936 are satisfied also needs to be considered.

Whether subsections 82KZMA(2) to (5) are satisfied

116. Subsections 82KZMA(2) to (5) of the ITAA 1936 are satisfied for the reasons outlined below:

- subsections 82KZMA(2) will be satisfied irrespective of whether the Contributors are carrying on a business or not;[5]
- paragraph 82KZMA(3)(a) will be satisfied irrespective of whether the expenditure is incurred in carrying on a business or otherwise than in carrying on a business;
- the expenditure is incurred under an agreement as required by paragraph 82KZMA(3)(b);
- for reasons discussed in paragraph 125 of this Ruling, the expenditure is not capital in nature, and therefore is not excluded expenditure[6] as required by subsection 82KZMA(4). Further, none of the other excluded expenditure categories apply to the contributions made by the Contributors; and

[5] Paragraph 82KZMA(2)(a) requires that the taxpayer must either be carrying on a business, or be a taxpayer that is not an individual and that does not carry on a business. Further, taxpayers to who paragraph 82KZMA(2)(b) applies are outside the class of entities covered by this Ruling.

[6] Excluded expenditure, as defined in subsection 82KZL(1) to mean:
an amount of expenditure:
(a) less than $1,000; or
(b) required to be incurred by a law, or by an order of a court, of the Commonwealth, a State or a Territory; or
(c) under a contract of services : or
(d) to the extent that it is of a capital, private or domestic nature; or
(e) that has been or is incurred after 21 September 1999 by a general insurance company in connection with the issue of a general insurance policy and was related or relates to the gross premiums derived by the company in respect of the policy; or
(f) that has been or is incurred after 21 September 1999 by a general insurance company in payment of reinsurance premiums in respect of the reinsurance of risks covered by general insurance policies, other than reinsurance premiums that were or are paid in respect of a particular class of insurance business where, under the contract of reinsurance, the reinsurer agrees, in respect of a loss incurred by the company that is covered by the relevant policy, to pay only some or all of the excess over an agreed amount.

- in accordance with subsection 82KZMA(5), the expenditure is not a pre-RBT obligation.[7]

117. Under paragraph 82KZMA(3)(c), 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. 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 complex 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.

118. The substance of these agreements however, is that the expenditure will typically relate to activities to be carried out at some future time, on the basis that relevant supervisory body requires funds in advance in order to see that the activities which are the subject of the relevant project are begun.

119. In respect of expenditure incurred over any one year it will generally not be possible to conclude therefore that it has all been incurred in return for doing things (the 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 relevant project 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.

120. 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 its supervisory body'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.

[7] 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.

Amount and timing of deduction

121. In accordance with section 82KZMD(2) of the ITAA 1936, 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:

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

122. 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 date – 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 the last day ends more than 10 years after the beginning of the period – 10 years after the beginning of the period.

123. Relevant to the task of determining the eligible service period are the Contribution Deed, the relevant funding agreement, and any other agreements entered into for the purposes of the relevant projects. In addition, financial reports, annual reports and annual budgets provided to ACALET for the purposes of the relevant project will also be of assistance.

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

125. Analysis of the various relevant projects 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 relevant project, and what the typical 'lag' is in this respect, so as to produce 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.

126. 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 83KZL(1) of the ITAA 1936.

Appendix 2 – Detailed contents list

127. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; CR 2010/44;
CR 2009/45; CR 2012/109,
CR 2012/110, CR 2012/119
TR 95/1

Subject references:

- research & development expenditure on own behalf
- research & development tax incentive

Legislative references:

- ITAA 1936 Div 1AB of Part III
- ITAA 1936 82KZL
- ITAA 1936 82KZL(1)
- ITAA 1936 82KZMA
- ITAA 1936 82KZMA(2)
- 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)
- TAA 1953
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(2)
- ITAA 1997 Div 40
- ITAA 1997 40-40
- ITAA 1997 328-110
- ITAA 1997 Div 355
- ITAA 1997 355-5
- 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 355-110
- ITAA 1997 Subdiv 355-D
- 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 355-210
- ITAA 1997 355-210(1)
- ITAA 1997 355-210(1)(a)
- ITAA 1997 355-210(2)
- ITAA 1997 355-305
- ITAA 1997 355-315
- ITAA 1997 Subdiv 355-F
- ITAA 1997 Subdiv 355-G
- ITAA 1997 355-435
- ITAA 1997 355-440
- ITAA 1997 355-445
- ITAA 1997 355-480
- ITAA 1997 Subdiv 355-J
- ITAA 1997 355-520
- ITAA 1997 355-525
- ITAA 1997 355-580
- ITAA 1997 355-580(3)
- Copyright Act 1968
- Industry Research and Development Act 1986 Section 27A
- Industry Research and Development Act 1986 Div 4

Case references:

- Federal Commissioner of Taxation v. Rothmans of Pall Mall (Aust) Ltd (1992) 37 FCR 582; 92 ATC 4508; (1992) 23 ATR 620
- FC of T v. Snowden & Willson Pty Ltd (1958) 99 CLR 431
- Magna Alloys and Research Pty Ltd v. FC of T 80 ATC 4542; (1980) 11 ATR 276

Other references:

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

ATO references
NO: 1-4EAO0RV
ISSN: 1445-2014
ATOlaw topic: Income Tax ~~ Tax offsets, credits and benefits ~~ research and development tax incentive