Tax Laws Amendment (Research and Development) Act 2011

No. 93, 2011

An Act to amend the law relating to taxation and research and development, and for other purposes

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

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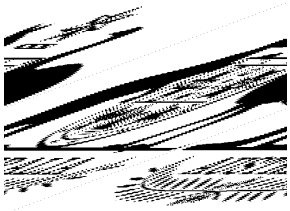

Tax Laws Amendment (Research and Development) Act 2011

No. 93, 2011

An Act to amend the law relating to taxation and research and development, and for other purposes

[*Assented to 8 September 2011*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Research and Development) Act 2011*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	8 September 2011
2. Schedules 1 and 2	The day this Act receives the Royal Assent.	8 September 2011
3. Schedule 3, Parts 1 to 4	The day this Act receives the Royal Assent.	8 September 2011
4. Schedule 3, Part 5, Division 1	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 3, Part 5, Division 2	The day this Act receives the Royal Assent. However, if Schedule 2 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010* commences on or before that day, the provision(s) do not commence at all.	
6. Schedule 3, Part 6	The day this Act receives the Royal Assent.	8 September 2011
7. Schedules 3A and 4	The day this Act receives the Royal Assent.	8 September 2011

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

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

Schedule 1—Main components of new R&D incentive

Income Tax Assessment Act 1997

1 After Division 345

Insert:

Division 355—Research and Development

Table of Subdivisions

	Guide to Division 355
355-A	Object
355-B	Meaning of R&D activities and other terms
355-C	Entitlement to tax offset
355-D	Notional deductions for R&D expenditure
355-E	Notional deductions for decline in value of depreciating assets used for R&D activities
355-F	Integrity Rules
355-G	Clawback of R&D recoupments
355-H	Feedstock adjustments
355-I	Application to earlier income year R&D expenditure incurred to associates
355-J	Application to R&D partnerships
355-K	Application to Cooperative Research Centres
355-W	Other matters

Guide to Division 355

355-1 What this Division is about

An R&D entity may be entitled to a tax offset for R&D activities. The tax offset may be a refundable tax offset if the R&D entity's aggregated turnover is less than $20 million.

To be entitled to the tax offset, the R&D entity needs one or more notional deductions under this Division.

There are 2 main kinds of notional deductions. One is for expenditure on R&D activities. The other is for the decline in value of tangible depreciating assets used for R&D activities.

Note: All of these notional deductions require the R&D entity to be registered for the R&D activities under Part III of the *Industry Research and Development Act 1986*.

Subdivision 355-A—Object

Table of sections

355-5 Object

355-5 Object

(1) The object of this Division is to encourage industry to conduct research and development activities that might otherwise not be conducted because of an uncertain return from the activities, in cases where the knowledge gained is likely to benefit the wider Australian economy.

(2) This object is to be achieved by providing a tax incentive for industry to conduct, in a scientific way, experimental activities for the purpose of generating new knowledge or information in either a general or applied form (including new knowledge in the form of new or improved materials, products, devices, processes or services).

Subdivision 355-B—Meaning of R&D activities and other terms

Table of sections

355-20 *R&D activities*
355-25 *Core R&D activities*
355-30 *Supporting R&D activities*
355-35 *R&D entities*

355-20 *R&D activities*

R&D activities are *core R&D activities or *supporting R&D activities.

355-25 *Core R&D activities*

(1) ***Core R&D activities*** are experimental activities:

(a) whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience, but can only be determined by applying a systematic progression of work that:

(i) is based on principles of established science; and

(ii) proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions; and

(b) that are conducted for the purpose of generating new knowledge (including new knowledge in the form of new or improved materials, products, devices, processes or services).

(2) However, none of the following activities are ***core R&D activities***:

(a) market research, market testing or market development, or sales promotion (including consumer surveys);

(b) prospecting, exploring or drilling for minerals or *petroleum for the purposes of one or more of the following:

(i) discovering deposits;

(ii) determining more precisely the location of deposits;

(iii) determining the size or quality of deposits;

(c) management studies or efficiency surveys;

(d) research in social sciences, arts or humanities;

(e) commercial, legal and administrative aspects of patenting, licensing or other activities;

(f) activities associated with complying with statutory requirements or standards, including one or more of the following:

(i) maintaining national standards;

(ii) calibrating secondary standards;

(iii) routine testing and analysis of materials, components, products, processes, soils, atmospheres and other things;

(g) any activity related to the reproduction of a commercial product or process:

(i) by a physical examination of an existing system; or

(ii) from plans, blueprints, detailed specifications or publically available information;

(h) developing, modifying or customising computer software for the dominant purpose of use by any of the following entities for their internal administration (including the internal administration of their business functions):

(i) the entity (the ***developer***) for which the software is developed, modified or customised;

(ii) an entity *connected with the developer;

(iii) an *affiliate of the developer, or an entity of which the developer is an affiliate.

355-30 *Supporting R&D activities*

(1) ***Supporting R&D activities*** are activities directly related to *core R&D activities.

(2) However, if an activity:

(a) is an activity referred to in subsection 355-25(2); or

(b) produces goods or services; or

(c) is directly related to producing goods or services;

the activity is a ***supporting R&D activity*** only if it is undertaken for the dominant purpose of supporting *core R&D activities.

355-35 *R&D entities*

(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.

Note: Each of the above paragraphs extends to a body corporate acting in its capacity as trustee of a public trading trust (see subsection 102T(9) of the *Income Tax Assessment Act 1936*).

(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***.

Subdivision 355-C—Entitlement to tax offset

Table of sections

355-100 Entitlement to tax offset
355-105 Deductions under this Division are notional only
355-110 Notional deductions include prepaid expenditure

355-100 Entitlement to tax offset

If notional deductions are at least $20,000

(1) An *R&D entity is entitled to a *tax offset for an income year equal to the percentage, set out in the table, of the total of the amounts (if any) that the entity can deduct for the income year under any or all of the following provisions:

(a) section 355-205 (R&D expenditure);
(b) section 355-305 (decline in value of R&D assets);
(c) section 355-315 (balancing adjustment for R&D assets);
(d) section 355-480 (earlier year associate R&D expenditure);
(e) section 355-520 (decline in value of R&D partnership assets);
(f) section 355-525 (balancing adjustment for R&D partnership assets);
(g) section 355-580 (CRC contributions).

Rate of R&D tax offset

Item	In this case:	The percentage is:
1	the *R&D entity's *aggregated turnover for the income year is less than $20 million (and item 2 of this table does not apply)	45%

Rate of R&D tax offset		
Item	**In this case:**	**The percentage is:**
2	an *exempt entity, or combination of exempt entities, would control the *R&D entity in a way described in section 328-125 (connected entities) if: (a) references in section 328-125 to 40% were references to 50%; and (b) subsection 328-125(6) were ignored	40%
3	any other case	40%

Note: The tax offset will be a refundable tax offset if the percentage applicable to the entity is 45% (see section 67-30).

If notional deductions are less than $20,000

(2) However, if the total of those amounts is less than $20,000, the *R&D entity is instead entitled to a *tax offset for the income year equal to that percentage of the total of the following kinds of expenditure (if any):

Expenditure not subject to $20,000 threshold	
Item	**Kind of expenditure**
1	Expenditure: (a) that the *R&D entity can deduct under section 355-205 (R&D expenditure) for the income year; and (b) that was incurred to a research service provider (within the meaning of the *Industry Research and Development Act 1986*) that is not an *associate of the R&D entity or of the relevant *R&D partnership (as appropriate); and (c) that was for the provider to provide services, within a research field for which the provider is registered under Division 4 of Part III of that Act, applicable to one or more of the *R&D activities to which the deduction relates
2	Expenditure that the *R&D entity can deduct under section 355-580 (CRC contributions) for the income year

355-105 Deductions under this Division are notional only

An amount (the ***notional amount***) that an *R&D entity can deduct under this Division is disregarded except for the purposes of:

(a) working out whether the R&D entity is entitled under section 355-100 to a *tax offset; and

(b) a provision (of this Act or any other Act) that refers to an entitlement of the R&D entity under section 355-100 to a tax offset; and

(c) a provision (of this Act or any other Act) that:

(i) prevents some or all of the notional amount from being deducted; or

(ii) changes the income year for which some or all of the notional amount can be deducted; and

Note: Examples are Divisions 26 and 27 of this Act, Subdivision H of Division 3 of Part III of the *Income Tax Assessment Act 1936* and Part IVA of that Act.

(d) a provision (of this Act or any other Act) that includes an amount in assessable income wholly or partly because of the notional amount; and

Note: An example is Subdivision 20-A, which may include in assessable income a recoupment of a loss or outgoing if the entity can deduct an amount for the loss or outgoing.

(e) a provision (of this Act or any other Act) that excludes expenditure from:

(i) the *cost base or *reduced cost base of a *CGT asset; or

(ii) an element of that cost base or reduced cost base.

Note: An example is section 110-45, which may exclude deductible expenditure from elements of the cost base of an asset.

355-110 Notional deductions include prepaid expenditure

For the purposes of this Division, if:

(a) apart from Subdivision H (prepaid expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936*, an *R&D entity can deduct an amount under section 355-205 or 355-480 for an income year (the ***present year***) or an earlier income year; and

(b) that Subdivision applies to the calculation of that amount; and

(c) the entity can deduct an amount, as a result of that application of that Subdivision, for the present year;

the entity is taken to be able to deduct under section 355-205 or 355-480 (as appropriate) the amount referred to in paragraph (c) for the present year.

Note: Section 355-205 is about deductions for R&D expenditure. Section 355-480 is about deductions for earlier year associate R&D expenditure.

Subdivision 355-D—Notional deductions for R&D expenditure

Table of sections

355-200 What this Subdivision is about
355-205 When notional deductions for R&D expenditure arise
355-210 Conditions for R&D activities
355-215 R&D activities conducted by a permanent establishment for other parts of the body corporate
355-220 R&D activities conducted for a foreign entity
355-225 Expenditure that cannot be notionally deducted

355-200 What this Subdivision is about

An R&D entity can notionally deduct its expenditure on registered R&D activities for which certain conditions are met.

There are special conditions for R&D activities conducted for foreign residents.

355-205 When notional deductions for R&D expenditure arise

(1) An *R&D entity can deduct for an income year (the ***present year***) expenditure it incurs during that year to the extent that the expenditure:

(a) is incurred on one or more *R&D activities:

(i) for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year; and

(ii) that are activities to which section 355-210 (conditions for R&D activities) applies; and

(b) if the expenditure is incurred to the R&D entity's *associate—is paid to that associate during the present year.

Note 1: If the matters in subparagraphs (a)(i) and (ii) are not satisfied until a later income year, the R&D entity will need to wait until then before it can deduct the expenditure for the present year.

Note 2: The R&D activities will need to be conducted during the income year the R&D entity is registered for those activities (see sections 27A and 27J of the *Industry Research and Development Act 1986*).

Note 3: The entity may also be able to deduct expenditure incurred to an associate in an earlier income year (see section 355-480).

Note 4: Expenditure incurred in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

(2) This section has effect subject to section 355-225 (excluded expenditure), Subdivision 355-F (integrity rules) and subsection 355-580(3) (CRC contributions).

355-210 Conditions for R&D activities

(1) An *R&D activity covered by one or more of the following paragraphs is an activity to which this section applies:

(a) the R&D activity is conducted for the *R&D entity solely within Australia or an external Territory;

(b) if the R&D entity is a body corporate carrying on business through a permanent establishment (as described in subsection 355-35(2))—the R&D activity is conducted:

(i) for the body corporate; but

(ii) not for the purposes of that permanent establishment;

and the conditions in section 355-215 (activities conducted for a body corporate by its permanent establishment) are met for the R&D activity;

(c) the R&D activity is conducted for one or more foreign residents who are each:

(i) incorporated under a *foreign law; and

(ii) a resident of a foreign country for the purposes of an agreement of a kind described in subsection 355-35(2);

and the conditions in section 355-220 (activities conducted for a foreign entity) are met for the R&D activity;

(d) the R&D activity is:

(i) conducted for the R&D entity solely outside Australia and the external Territories; and

(ii) covered by a finding in force under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986*;

(e) the R&D activity consists of several parts, with:

(i) some parts being conducted for the R&D entity solely within Australia or an external Territory; and

(ii) the other parts being conducted for the R&D entity outside Australia and the external Territories while covered by a finding in force under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986*.

Note: An activity can be covered by a finding under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986* if the activity cannot be conducted in Australia or the external Territories.

(2) However, an *R&D activity is not an activity to which this section applies if the activity is conducted, to a significant extent, for one or more other entities not covered by any paragraph of subsection (1).

Note: An entity would not be covered by, for example, paragraph (1)(c) if the conditions in section 355-220 were not met for the R&D activity in relation to that entity.

355-215 R&D activities conducted by a permanent establishment for other parts of the body corporate

For the purposes of paragraph 355-210(1)(b), the conditions for an *R&D activity are as follows:

(a) the R&D activity is conducted solely within Australia or an external Territory;

(b) if the R&D activity is a *supporting R&D activity, each corresponding *core R&D activity must be:

(i) an activity conducted, or to be conducted, solely within Australia or an external Territory; and

(ii) an activity for which the *R&D entity is or has been registered under section 27A of the *Industry Research and Development Act 1986*, or could be registered for an income year if that core R&D activity were conducted during the income year;

(c) there is written evidence that the R&D activity is conducted for the body corporate but not for the purposes of that permanent establishment.

Note: The body corporate is the R&D entity to the extent that it carries on business through that permanent establishment (see subsection 355-35(2)).

355-220 R&D activities conducted for a foreign entity

(1) For the purposes of paragraph 355-210(1)(c), the conditions for an *R&D activity conducted for one or more foreign residents are as follows:

(a) the R&D activity is conducted solely within Australia or an external Territory;

(b) if the R&D activity is a *supporting R&D activity, each corresponding *core R&D activity must be:

(i) an activity conducted, or to be conducted, solely within Australia or an external Territory; and

(ii) an activity for which the *R&D entity is or has been registered under section 27A of the *Industry Research and Development Act 1986*, or could be registered for an income year if that core R&D activity were conducted during the income year;

(c) when the R&D activity is conducted:

(i) each foreign resident is *connected with the R&D entity; or

(ii) for each foreign resident—either the foreign resident is an *affiliate of the R&D entity or the R&D entity is an affiliate of the foreign resident;

(d) the R&D activity is conducted:

(i) in accordance with a written agreement binding on only the R&D entity and each foreign resident; and

(ii) either directly by the R&D entity, or indirectly by another entity under an agreement binding on the R&D entity;

(e) the R&D activity is not conducted in connection with an agreement covered by subsection (2).

Note: An example of conducting an R&D activity indirectly under a contract is conducting the R&D activity under a subcontract, or one of a chain of subcontracts, under the contract.

(2) An agreement is covered by this subsection if:

(a) the agreement is binding on the R&D entity (the ***first entity***) and an R&D entity that:

(i) is *connected with the first entity; or

(ii) has the first entity as an *affiliate, or is an affiliate of the first entity;

while the *R&D activity is conducted; and

(b) the R&D activity is to be conducted under the agreement by the first entity or by an entity:

(i) who is not bound by the agreement; and

(ii) who is to conduct the R&D activity directly or indirectly under another agreement to which the first entity is, or will become, bound.

Note: One effect of this subsection is that, even if the R&D entity has an agreement with the foreign resident for conducting the R&D activity, the R&D entity cannot deduct expenditure incurred:

(a) for conducting the R&D activity as a subcontractor under a subcontract with an affiliated R&D entity; or

(b) if the R&D entity is a subcontractor to an affiliated R&D entity—for further subcontracting the conducting of the R&D activity.

355-225 Expenditure that cannot be notionally deducted

Expenditure on buildings, certain assets and interest

(1) Sections 355-205 (deductions for R&D expenditure) and 355-480 (deductions for earlier year associate R&D expenditure) do not apply to the following expenditure:

(a) expenditure incurred to acquire or construct:

(i) a building or a part of a building; or

(ii) an extension, alteration or improvement to a building;

(b) expenditure included in the *cost of a tangible *depreciating asset for the purposes of Division 40 (as that Division applies as described in section 355-310 or otherwise);

(c) expenditure incurred for interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) payable to an entity.

Note 1: Expenditure covered by paragraph (a) may be deductible under Division 43 (capital works).

Note 2: The decline in value of an asset covered by paragraph (b) may be notionally deductible under section 355-305.

Note 3: Expenditure covered by paragraph (c) may be deductible under section 8-1.

Expenditure on core technology

(2) Sections 355-205 (deductions for R&D expenditure) and 355-480 (deductions for earlier year associate R&D expenditure) do not apply to expenditure incurred in acquiring, or in acquiring the right to use, technology wholly or partly for the purposes of one or more *R&D activities if:

(a) a purpose of the R&D activities was or is:

(i) to obtain new knowledge based on that technology; or

(ii) to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or

(b) the R&D activities were or are an extension, continuation, development or completion of the activities that produced that technology.

Subdivision 355-E—Notional deductions for decline in value of depreciating assets used for R&D activities

Table of sections

355-300 What this Subdivision is about
355-305 When notional deductions for decline in value arise
355-310 Notional application of Division 40
355-315 Balancing adjustments—assets only used for R&D activities

355-300 What this Subdivision is about

An R&D entity can notionally deduct the decline in value of a tangible depreciating asset used for R&D activities.

If a balancing adjustment event later happens for the asset, the R&D entity may be able to notionally deduct a further amount. Alternatively, an amount may be included in the R&D entity's assessable income.

355-305 When notional deductions for decline in value arise

(1) If:

(a) an *R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year (the ***present year***) for one or more *R&D activities that are activities to which section 355-210 (conditions for R&D activities) applies; and

(b) while a tangible *depreciating asset is *held by the R&D entity during the present year, the asset is used for the purpose of conducting one or more of those R&D activities; and

(c) the R&D entity could deduct an amount under section 40-25 for the asset for the present year if Division 40 applied with the changes described in section 355-310; and

(d) the R&D entity cannot deduct an amount for the asset for:

(i) an earlier income year under Subdivision 328-D (capital allowances for small business entities); or

(ii) an earlier income year under Division 40 (as that Division applies apart from this Division), in a case where section 40-440 (low-value pools) applied;

the R&D entity can deduct the amount referred to in paragraph (c) for the present year.

(2) This section has effect subject to subsection 355-580(4) (CRC contributions).

355-310 Notional application of Division 40

(1) In addition to its application apart from this section, Division 40 also applies with the changes set out in this section for the purposes of:

(a) paragraph 355-225(1)(b) (excluded expenditure); and

(b) paragraph 355-305(1)(c); and

(c) section 355-315 (balancing adjustments).

(2) Firstly, substitute the following for references to a *taxable purpose in Subdivisions 40-A to 40-D (other than for the purposes of sections 40-100, 40-105 and 40-110):

Replacing references to a taxable purpose		
Item	**If this application of Division 40 is for the purposes of:**	**Substitute a reference to:**
1	paragraph 355-225(1)(b) or 355-305(1)(c)	the purpose of conducting one or more of the *R&D activities covered by paragraph 355-305(1)(b)
2	section 355-315	the purpose of conducting one or more of the *R&D activities to which the R&D deductions (within the meaning of that section) relate

Note: Sections 40-100, 40-105 and 40-110 are about working out an asset's effective life. Those sections already refer to the use of the asset for R&D activities.

(3) Secondly, assume that Division 40 does not apply to a building, nor to an extension, alteration or improvement to a building, (the ***building works***) for which the *R&D entity:

(a) can deduct amounts under Division 43 (capital works); or

(b) could deduct amounts under Division 43:

(i) apart from expenditure being incurred, or the building works being started, before a particular day; or

(ii) had the R&D entity used the building works for a purpose relevant to those building works under section 43-140 (using an area in a deductible way).

(4) Finally, assume that the following provisions had not been enacted:

(a) subsection 40-25(7) (meaning of taxable purpose);

(b) subsection 40-45(2) (assets to which Division 40 does not apply);

(c) section 40-425 (low-value pools);

(d) Subdivision 328-D (capital allowances for small business entities).

Note: Subsection (3) and paragraph (4)(b) mean that deductions under section 355-305 may be available for capital works other than building works.

355-315 Balancing adjustments—assets only used for R&D activities

(1) This section applies to an *R&D entity if:

(a) a *balancing adjustment event happens in an income year (the ***event year***) for an asset *held by the R&D entity; and

(b) the R&D entity cannot deduct an amount under section 40-25, as that section applies apart from:

(i) this Division; and

(ii) former section 73BC of the *Income Tax Assessment Act 1936*;

for the asset for an income year; and

(c) the R&D entity is entitled under section 355-100 to *tax offsets for one or more income years for deductions (the ***R&D deductions***) under section 355-305 for the asset; and

(d) the entity is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities for the event year; and

(e) if Division 40 applied with the changes described in section 355-310:

(i) the entity could deduct for the event year an amount under subsection 40-285(2) for the asset and the balancing adjustment event; or

(ii) an amount would be included in the entity's assessable income for the event year under subsection 40-285(1) for the asset and the balancing adjustment event.

Note 1: This section applies in a modified way if the entity also has deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 355-320 of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: Section 40-292 applies if the entity can deduct an amount under section 40-25, as that section applies apart from this Division and former section 73BC of the *Income Tax Assessment Act 1936*.

Notional deduction

(2) If the *R&D entity could deduct for the event year an amount under subsection 40-285(2) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the R&D entity can deduct that amount for the event year.

Amount to be included in assessable income

(3) If an amount (the ***section 40-285 amount***) would be included in the *R&D entity's assessable income for the event year under subsection 40-285(1) for the asset and the event if Division 40

applied as described in paragraph (1)(e), the sum of that amount and the following amount is included in the R&D entity's assessable income for the event year:

$$\text{Adjusted section 40-285 amount} \times \frac{1}{3}$$

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the asset's *cost, less its *adjustable value, worked out under Division 40 as it applies as described in paragraph (1)(e).

Subdivision 355-F—Integrity Rules

Table of sections

355-400 Expenditure incurred while not at arm's length
355-405 Expenditure not at risk
355-410 Disposal of R&D results
355-415 Reducing deductions to reflect mark-ups within groups

355-400 Expenditure incurred while not at arm's length

If:

(a) an *R&D entity incurs expenditure to another entity on all or part of an *R&D activity; and

(b) either:

(i) when the R&D entity incurs the expenditure, the R&D entity and the other entity do not deal with each other at *arm's length; or

(ii) the other entity is the R&D entity's *associate; and

(c) the expenditure exceeds the *market value of the relevant R&D activity or part (as appropriate);

for the purposes of this Division, the R&D entity is treated as if the amount of expenditure it incurred on the relevant R&D activity or part (as appropriate) were equal to that market value.

Note 1: For the purposes of a deduction under section 355-305 or 355-520 for an asset's decline in value, the arms' length rules in Division 40 apply as part of the notional application of that Division under that section.

Note 2: In the application of Division 13 of Part III of the *Income Tax Assessment Act 1936* (about international transfer-pricing arrangements), this section is disregarded (see subsection 136AB(2) of that Act).

355-405 Expenditure not at risk

(1) An *R&D entity cannot deduct expenditure under section 355-205 or 355-480 if:

(a) when it incurs the expenditure, the R&D entity or its *associate had received, or could reasonably be expected to receive, consideration:

(i) as a direct or indirect result of the expenditure being incurred; and

(ii) regardless of the results of the activities on which the expenditure is incurred; and

(b) that consideration is equal to or greater than the expenditure.

Note: Section 355-205 is about deductions for R&D expenditure. Section 355-480 is about deductions for earlier year associate R&D expenditure.

(2) If:

(a) when an *R&D entity incurs expenditure, the R&D entity or its *associate had received, or could reasonably be expected to receive, consideration:

(i) as a direct or indirect result of the expenditure being incurred; and

(ii) regardless of the results of the activities on which the expenditure is incurred; and

(b) that consideration is less than the expenditure;

the R&D entity cannot deduct under section 355-205 or 355-480 so much of the expenditure as is equal to the consideration.

(3) For the purposes of paragraphs (1)(a) and (2)(a), have regard to:

(a) anything that happened or existed before or at the time the expenditure is incurred; and

(b) anything that is likely to happen or exist after that time.

(4) This section does not apply to expenditure incurred on *R&D activities covered by paragraph 355-210(1)(b) or (c).

Note: Those paragraphs cover R&D activities conducted for foreign residents.

355-410 Disposal of R&D results

(1) This section applies to an *R&D entity if:

(a) the R&D entity is entitled under section 355-100 to a *tax offset because it can:

(i) deduct under section 355-205 or 355-480 expenditure incurred on *R&D activities; or

(ii) deduct under section 355-305 or 355-520 an amount for an asset (the ***R&D asset***) used for the purpose of conducting one or more R&D activities; and

(b) the R&D entity receives or becomes entitled to receive one or more of the following amounts (the ***results amounts***) in an income year (the ***results year***):

(i) an amount for the results of any of the R&D activities;

(ii) an amount from granting access to, or the right to use, any of those results;

(iii) an amount attributable to the R&D entity having incurred the expenditure, including an amount it is entitled to receive regardless of the results of the R&D activities;

(iv) an amount attributable to the R&D asset being used for the purpose mentioned in subparagraph (a)(ii), including an amount the R&D entity is entitled to receive regardless of the results of the R&D activities;

(v) an amount from *disposing of a *CGT asset, or from granting a right to occupy or use a CGT asset, where the disposal or grant resulted in another person acquiring a right to access or use any of those results.

Note: This section also applies with changes to the partners of an R&D partnership (see section 355-535).

(2) For each results amount, the following amount is included in the *R&D entity's assessable income for the results year:

(a) if the results amount is only a results amount because of subparagraph (1)(b)(v), and the asset referred to in that

subparagraph is a *depreciating asset—an amount equal to the extent (if any) that the results amount exceeds the asset's *cost just before the disposal or grant;

(b) if the results amount is only a results amount because of subparagraph (1)(b)(v), and the asset referred to in that subparagraph is not a depreciating asset—an amount equal to the extent (if any) that the results amount exceeds the asset's *cost base just before the disposal or grant;

(c) otherwise—the results amount.

(3) For the purposes of paragraph (2)(a), assume that subsection 40-45(2) did not, except in the case of buildings and extensions, alterations and improvements to buildings, prevent Division 40 from applying to certain capital works.

355-415 Reducing deductions to reflect mark-ups within groups

(1) This section applies to an *R&D entity if:

(a) the R&D entity can deduct an amount under section 355-205 or 355-480 for an income year for one or more *R&D activities; and

(b) one or more other entities (the ***grouped entities***) incurred expenditure during the income year, or an earlier income year, on one or more of those *R&D activities; and

(c) when each grouped entity incurred the expenditure:

(i) the grouped entity was *connected with the R&D entity; or

(ii) the grouped entity was an *affiliate of the R&D entity or the R&D entity was an affiliate of the grouped entity.

Note: Section 355-205 is about deductions for R&D expenditure. Section 355-480 is about deductions for earlier year associate R&D expenditure.

Reducing deductions by group mark-ups

(2) The amount the *R&D entity can deduct, apart from this section, under section 355-205 or 355-480 for the income year is reduced by the amount (the ***reduction amount***) worked out as follows:

Method statement

Step 1.	For each grouped entity, work out the sum of the amounts derived during the income year, or an earlier income year, by the grouped entity for goods or services relating to one or more of the *R&D activities while: (a) the grouped entity was *connected with the *R&D entity; or (b) the grouped entity was an *affiliate of the R&D entity or the R&D entity was an affiliate of the grouped entity.
Step 2.	From the sum of those amounts, subtract the actual cost to each grouped entity of providing the goods or services that correspond to those amounts.

If R&D entity has deductions for both R&D expenditure and earlier year associate R&D expenditure

(3) However, if the *R&D entity can deduct amounts under both sections 355-205 and 355-480 for the income year, those amounts are reduced as follows:

(a) apply the reduction amount to reduce the amount otherwise deductible under section 355-205 (but not below zero); and

(b) then apply any remainder of the reduction amount to reduce the amount otherwise deductible under section 355-480 (but not below zero).

Disregard mark-ups already taken into account

(4) For the purposes of step 1 of the method statement in subsection (2), disregard any of the amounts from that step that have already been taken into account under this section for the *R&D entity and the *R&D activities for an earlier income year.

Subdivision 355-G—Clawback of R&D recoupments

Table of sections

355-430 What this Subdivision is about
355-435 When extra income tax is payable
355-440 Entity receives government recoupment

355-445 Recoupment could relate to R&D activities
355-450 Amount on which extra income tax is payable

355-430 What this Subdivision is about

An entity must pay extra income tax on its recoupments from government of expenditure on R&D activities for which it has obtained tax offsets under this Division.

355-435 When extra income tax is payable

An entity must pay extra income tax on a *recoupment if the conditions in sections 355-440 and 355-445 are met for the recoupment.

Note 1: Section 355-450 sets out how much of the recoupment is subject to extra income tax.

Note 2: A recoupment includes a grant (see subsection 20-25(1)).

355-440 Entity receives government recoupment

The condition in this section is met if the entity receives or becomes entitled to receive the *recoupment from:

(a) an *Australian government agency; or

(b) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*);

otherwise than under the *CRC program.

355-445 Recoupment could relate to R&D activities

The condition in this section is met if:

(a) the *recoupment is received, or the entitlement to receive the recoupment arises, during an income year (the ***trigger year***); and

(b) either:

(i) the recoupment is of expenditure incurred on or in relation to certain activities; or

(ii) the recoupment requires expenditure (the ***project expenditure***) to have been incurred, or to be incurred, on certain activities.

Note: Paragraph (b) includes expenditure incurred in purchasing a tangible depreciating asset to be used when conducting R&D activities.

355-450 Amount on which extra income tax is payable

Amount on which extra income tax is payable

(1) The extra income tax is payable for the trigger year on an amount (the ***R&D expenditure***) equal to the sum of:

(a) so much of the expenditure referred to in section 355-445 that is deducted under this Division; and

(b) for each asset (if any) for which expenditure referred to in section 355-445 is included in the asset's *cost—each amount (if any) equal to the asset's decline in value that is deducted under this Division;

in working out *tax offsets under section 355-100 obtained by the entity (the ***recipient***), or an entity mentioned in subsection (4), for one or more income years.

Note 1: Section 12B or 31 of the *Income Tax Rates Act 1986* sets the rate at which the entity must pay extra income tax on this amount.

Note 2: Paragraphs (a) and (b) of this subsection refer to amounts notionally deducted under this Division (see section 355-105).

Amount is reduced by any repayments of the recoupment

(2) For the purposes of subsection (1), reduce the expenditure referred to in subparagraph 355-445(b)(i) by any repayments of the *recoupment during an income year.

Cap on extra income tax if recoupment relates to a project

(3) Despite subsection (1), if the *recoupment is covered by subparagraph 355-445(b)(ii), the amount of extra income tax payable for the trigger year on the recoupment cannot exceed the following amount:

$$\text{Net amount of the recoupment} \times \frac{\text{R\&D expenditure}}{\text{Project expenditure}}$$

where:

net amount of the recoupment means the total amount of the *recoupment, less any repayments of the recoupment during an income year.

Related entities

(4) The other entities for the purposes of subsection (1) are as follows:

(a) an entity *connected with the recipient;

(b) an *affiliate of the recipient or an entity of which the recipient is an affiliate.

Subdivision 355-H—Feedstock adjustments

Table of sections

355-460 What this Subdivision is about
355-465 Feedstock adjustment to assessable income
355-470 *Feedstock revenue*
355-475 Application to connected entities and affiliates

355-460 What this Subdivision is about

An amount is included in an R&D entity's assessable income if it can deduct under this Division expenditure on goods, materials or energy used during R&D activities to produce:

(a) marketable products; or

(b) products applied to the R&D entity's own use.

355-465 Feedstock adjustment to assessable income

(1) This section applies to an *R&D entity for an income year (the ***present year***) if:

(a) it incurs expenditure in one or more income years in acquiring or producing goods, or materials, (the ***feedstock inputs***) transformed or processed during *R&D activities in producing one or more tangible products (the ***feedstock outputs***); and

(b) it obtains under section 355-100 *tax offsets for one or more income years for deductions under this Division:

(i) for the expenditure; or

(ii) for expenditure it incurs on any energy input directly into the transformation or processing; or

(iii) for the decline in value of assets used in acquiring or producing the feedstock inputs; and

(c) during the present year, a feedstock output, or a transformed feedstock output, (the ***marketable product***) is:

(i) *supplied by the R&D entity to another entity; or

(ii) applied by the R&D entity to the R&D entity's own use, other than use for the purpose of transforming that product for supply.

(2) The *R&D entity's assessable income for the present year includes an amount equal to 1/3 of the lesser of:

(a) the *feedstock revenue for the feedstock output; and

(b) so much of the total of the amounts deducted as described in paragraph (1)(b) that is reasonably attributable to the production of the feedstock output.

Note: This subsection applies separately for each of the feedstock outputs.

(3) Subsection (2) does not apply to the feedstock output if:

(a) it becomes, or is transformed into, a feedstock input; or

(b) that subsection already applies to the feedstock output because of the application of paragraph (1)(c) to:

(i) an earlier time during the present year; or

(ii) an earlier income year.

355-470 *Feedstock revenue*

The ***feedstock revenue***, for the feedstock output, is worked out as follows:

$$\text{*Market value of the marketable product} \times \frac{\text{Cost of producing the feedstock output}}{\text{Cost of producing the marketable product}}$$

where:

market value of the marketable product means the marketable product's *market value at the time it is:

(a) *supplied by the *R&D entity to the other entity; or

(b) first applied by the R&D entity to the R&D entity's own use, other than use for the purpose of transforming that product for supply.

355-475 Application to connected entities and affiliates

This Subdivision applies to a *supply or use of the marketable product by:

(a) an entity *connected with the *R&D entity; or

(b) an *affiliate of the R&D entity or an entity of which the R&D entity is an affiliate;

as if it were by the R&D entity.

Subdivision 355-I—Application to earlier income year R&D expenditure incurred to associates

Table of sections

355-480 Notional deductions for expenditure incurred to associate in earlier income years

355-480 Notional deductions for expenditure incurred to associate in earlier income years

Notional deductions for earlier year associate expenditure

(1) An *R&D entity can deduct for an income year (the ***present year***) expenditure it incurred to its *associate during an earlier income year to the extent that:

(a) the expenditure was incurred on one or more *R&D activities:

(i) for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year; and

(ii) that are activities to which section 355-210 (conditions for R&D activities) applies; and

(b) the expenditure is paid to that associate during the present year; and

(c) subsection (2) applies to the expenditure.

Note 1: This section applies in a modified way to R&D partnership expenditure (see sections 355-510 and 355-515).

Note 2: Expenditure paid in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

Expenditure cannot have been otherwise deducted etc.

(2) This subsection applies to the expenditure if:

(a) the *R&D entity can deduct the expenditure, or is entitled to a *tax offset for the expenditure, under any other Division of this Act for an earlier income year; and

(b) by the time of lodging its *income tax return for the most recent income year before the present year, the R&D entity had neither:

(i) deducted the expenditure; nor

(ii) obtained a tax offset for the expenditure;

as described in paragraph (a).

(3) The entitlement to the deduction, or *tax offset, described in paragraph (2)(a) ceases to the extent that subsection (2) applies to the expenditure.

Example: If, by the time mentioned in paragraph (2)(b), an R&D entity chose to deduct only a third of the expenditure it could have deducted under another Division, then the remaining 2 thirds of that expenditure:

(a) can be deducted under this section; but

(b) can no longer be deducted under the other Division.

Notional deduction is subject to integrity rules etc.

(4) This section has effect subject to section 355-225 (excluded expenditure), Subdivision 355-F (integrity rules) and subsection 355-580(3) (CRC contributions).

Subdivision 355-J—Application to R&D partnerships

Table of sections

355-500 What this Subdivision is about
355-505 Meaning of *R&D partnership* and *partner's proportion*
355-510 R&D partnership expenditure on R&D activities
355-515 R&D activities conducted by or for an R&D partnership
355-520 When notional deductions arise for decline in value of depreciating assets of R&D partnerships
355-525 Balancing adjustments for R&D partnership assets only used for R&D activities
355-530 Implications for partner's aggregated turnover
355-535 Disposal of R&D results—assets of R&D partnerships
355-540 Application of recoupment rules

355-545 Relevance for net income, and losses, of the R&D partnership

355-500 What this Subdivision is about

This Subdivision modifies the rules in this Division for partners of R&D partnerships.

In particular, the rules about deducting R&D expenditure are modified to allow a partner to deduct the partner's proportion of the R&D partnership's expenditure on R&D activities.

A partner of an R&D partnership may also be able to deduct under this Subdivision the decline in value of partnership assets used for R&D activities.

355-505 Meaning of *R&D partnership* and *partner's proportion*

(1) A partnership is an ***R&D partnership*** at a particular time if, at that time, each of the partners is an *R&D entity.

(2) For an amount attributable to an *R&D partnership for an income year, each partner of the R&D partnership is taken to bear or be entitled to (as appropriate) this proportion (the ***partner's proportion***) of the amount:

(a) the proportion the partners agreed the partner should bear or be entitled to (as appropriate); or

(b) if there is no such agreement—the proportion of the partner's interest in the *net income or *partnership loss of the R&D partnership for the income year.

355-510 R&D partnership expenditure on R&D activities

If an *R&D partnership incurs expenditure on one or more R&D activities during an income year, this Division applies in relation to each *R&D entity that is a partner of the R&D partnership at some time during the income year as if:

(a) the partner incurred the partner's proportion of that expenditure when the R&D partnership incurred that expenditure; and

(b) neither the R&D partnership, nor any other partner of the R&D partnership, incurred expenditure during the income year on the R&D activities; and

(c) such other changes were made to this Division as are appropriate having regard to that partner's proportion of amounts attributable to the R&D partnership.

Note: This section and section 355-515 may result in:

(a) the partner being able to deduct the partner's proportion of the partnership expenditure under section 355-205 (R&D expenditure) or 355-480 (earlier year associate R&D expenditure) for the R&D activities; and

(b) the partner being affected by the integrity rules in Subdivisions 355-F, 355-G and 355-H.

355-515 R&D activities conducted by or for an R&D partnership

If one or more *R&D activities are conducted by or for an *R&D partnership during an income year, this Division applies in relation to each *R&D entity that is a partner of the R&D partnership at some time during the income year as if:

(a) the R&D activities were conducted by or for the partner in a corresponding way to the way the R&D activities were conducted by or for the R&D partnership; and

(b) the partner had relationships with other entities in relation to the R&D activities that corresponded to the relationships the R&D partnership had with those other entities in relation to the R&D activities; and

(c) a thing done by, or in relation to, the R&D partnership in relation to the R&D activities were a thing done by, or in relation to, the partner; and

(d) the R&D activities were neither:

(i) conducted by or for the R&D partnership; nor

(ii) conducted by or for any other partner of the R&D partnership; and

(e) such other changes were made to this Division as are appropriate having regard to that partner's proportion of amounts attributable to the R&D partnership.

Note 1: For the purposes of this Division, entities that are associates or affiliates of, or connected with, the R&D partnership are taken to be associates or affiliates of, or connected with, the partner (see paragraph (b)).

Note 2: For the purposes of this Division, payments and agreements made by the R&D partnership for the R&D activities are taken to be made by the partner (see paragraph (c)).

355-520 When notional deductions arise for decline in value of depreciating assets of R&D partnerships

When notional deductions arise

(1) If:

(a) an *R&D entity is a partner of an *R&D partnership at some time during an income year (the ***present year***); and

(b) the partner is registered under section 27A of the *Industry Research and Development Act 1986* for the present year for one or more *R&D activities that are activities to which section 355-210 (conditions for R&D activities) applies; and

Note: Section 355-210 applies with changes for this paragraph (see section 355-515).

(c) while a tangible *depreciating asset is *held by the R&D partnership during the present year, the asset is used for the purpose of conducting one or more of those R&D activities; and

(d) the R&D partnership could deduct an amount under section 40-25 for the asset for the present year if Division 40 applied with the changes described in section 355-310; and

Note: Section 355-310 applies with changes for this paragraph (see subsection (2) of this section).

(e) the R&D partnership cannot deduct an amount for the asset for:

(i) an earlier income year under Subdivision 328-D (capital allowances for small business entities); or

(ii) an earlier income year under Division 40 (as that Division applies apart from this Division), in a case where section 40-440 (low-value pools) applied;

the partner can deduct the partner's proportion of the amount referred to in paragraph (d) for the present year.

Changed application of Division 40 for this Subdivision

(2) For the purposes of this Subdivision, section 355-310 applies as if the following changes were made:

Changes to be made		
Item	**For a reference in section 355-310 to...**	**substitute a reference to...**
1	paragraph 355-305(1)(c)	paragraph 355-520(1)(d)
2	section 355-315	section 355-525
3	paragraph 355-305(1)(b)	paragraph 355-520(1)(c)
4	*R&D entity	*R&D partnership

Disregard certain assets held because of CRC contributions

(3) This section has effect subject to subsection 355-580(4) (CRC contributions).

355-525 Balancing adjustments for R&D partnership assets only used for R&D activities

(1) This section applies to an *R&D entity (the ***partner***) if:

(a) a *balancing adjustment event happens in an income year (the ***event year***) for an asset *held by an *R&D partnership; and

(b) the R&D partnership cannot deduct an amount under section 40-25, as that section applies apart from:

(i) this Division; and

(ii) former section 73BC of the *Income Tax Assessment Act 1936*;

for the asset for an income year; and

(c) the partner is entitled under section 355-100 to *tax offsets for one or more income years for deductions (the ***R&D deductions***) under section 355-520 for the asset; and

(d) the partner is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities for the event year; and

(e) if Division 40 applied with the changes described in section 355-310 (as affected by subsection 355-520(2)):

(i) the R&D partnership could deduct for the event year an amount under subsection 40-285(2) for the asset and the balancing adjustment event; or

(ii) an amount would be included in the R&D partnership's assessable income for the event year under subsection

40-285(1) for the asset and the balancing adjustment event.

Note 1: This section applies in a modified way if the partner has deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 355-325 of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: Section 40-293 applies if the R&D partnership can deduct an amount under section 40-25, as that section applies apart from this Division and former section 73BC of the *Income Tax Assessment Act 1936*.

Notional deduction

(2) If the *R&D partnership could deduct for the event year an amount under subsection 40-285(2) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the partner can deduct the partner's proportion of that amount for the event year.

Amount to be included in assessable income

(3) If an amount (the ***section 40-285 amount***) would be included in the *R&D partnership's assessable income for the event year under subsection 40-285(1) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the partner's proportion of the sum of:

(a) that amount; and

(b) the following amount;

is included in the partner's assessable income for the event year:

$$\text{Adjusted section 40-285 amount} \times \frac{1}{3}$$

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the asset's *cost, less its *adjustable value, worked out under Division 40 as it applies as described in paragraph (1)(e).

355-530 Implications for partner's aggregated turnover

For the purposes of sections 40-292 (balancing adjustments for decline in value) and 355-100 (tax offsets for R&D), if:

(a) an *R&D entity is a partner of an *R&D partnership at some time during an income year; and

(b) the partner's *aggregated turnover for the income year does not include the R&D partnership's *annual turnover for the income year;

the partner's aggregated turnover for the income year includes the *partner's proportion of the R&D partnership's annual turnover for the income year.

355-535 Disposal of R&D results for R&D partnerships

In addition to its application apart from this section, section 355-410 (disposal of R&D results) also applies to each partner of an *R&D partnership with such changes as are appropriate having regard to:

(a) amounts (the ***results amounts***) of a kind set out in subparagraphs 355-410(1)(b)(i) to (v) that the R&D partnership receives or becomes entitled to receive in an income year; and

(b) the principle that any amount to be included in the partner's assessable income for the income year for a results amount should be the partner's proportion of the amount arising under subsection 355-410(2) for the results amount.

Note: The ordinary application of section 355-410 will apply to any of the partner's deductions under this Division that do not relate to the R&D partnership.

355-540 Application of recoupment rules

(1) If:

(a) an *R&D partnership incurs expenditure (the ***partnership expenditure***) on *R&D activities; and

(b) an *R&D entity (the ***partner***) is entitled under section 355-100 to a *tax offset because it can, under section 355-205 or 355-480, deduct some or all of that expenditure; and

(c) the R&D partnership receives an amount as a *recoupment of any or all of the partnership expenditure;

the partner is taken, for the purposes of Subdivisions 20-A and 355-G:

(d) to have incurred the partner's proportion of the partnership expenditure when the R&D partnership incurred that expenditure; and

(e) to have received the partner's proportion of the recoupment when the R&D partnership received the recoupment.

(2) If:

(a) an *R&D entity (the ***partner***) is entitled under section 355-100 to a *tax offset because it can, under section 355-520, deduct an amount for an income year for an asset; and

(b) the applicable *R&D partnership receives an amount as a *recoupment of any or all of the R&D partnership's expenditure included in the *cost of the asset for the purposes of the application of Division 40 as described in paragraph 355-520(1)(d);

the partner is taken, for the purposes of Subdivisions 20-A and 355-G:

(c) to have incurred the partner's proportion of that expenditure when the R&D partnership incurred that expenditure; and

(d) to have received the partner's proportion of the recoupment when the R&D partnership received the recoupment.

355-545 Relevance for net income, and losses, of the R&D partnership

For an *R&D entity that is a partner of an *R&D partnership, none of the following:

(a) any expenditure the R&D entity is taken to have incurred because of this Subdivision;

(b) any amount the R&D entity can deduct under this Subdivision;

(c) any *recoupment the R&D entity is taken to have received because of this Subdivision;

are to be taken into account in determining the *net income of the R&D partnership, or any *partnership loss of the R&D partnership, for an income year.

Subdivision 355-K—Application to Cooperative Research Centres

Table of sections

355-580 When notional deductions for CRC contributions arise

355-580 When notional deductions for CRC contributions arise

Monetary contributions are deductible

(1) An *R&D entity can deduct for an income year expenditure it incurs during that year to the extent that:

(a) the expenditure is in the form of monetary contributions under the *CRC program; and

(b) the contributions have been or will be spent under the CRC program on one or more *R&D activities for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year.

Note 1: The R&D activities will need to be conducted during the income year the R&D entity is registered for those activities (see sections 27A and 27J of the *Industry Research and Development Act 1986*).

Note 2: Expenditure incurred in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

(2) Subsection (1) does not apply to expenditure to the extent that it is incurred out of Commonwealth funding.

No other deductions arise for monetary contributions etc.

(3) Neither:

(a) a contribution an *R&D entity can deduct under subsection (1); nor

(b) expenditure incurred under the *CRC program, to the extent that the expenditure is incurred out of:

(i) a contribution an R&D entity can deduct under subsection (1); or

(ii) Commonwealth funding;

can be deducted by any R&D entity under any other provision of this Division for any income year.

(4) If an asset's *cost includes expenditure incurred under the *CRC program out of:

(a) a contribution an *R&D entity can deduct under subsection (1); or

(b) Commonwealth funding;

an amount equal to the asset's decline in value cannot be deducted under this Division by any R&D entity for any income year.

Subdivision 355-W—Other matters

Table of sections

355-700 Objecting to assessment of refundable tax offset
355-705 Effect of findings by Innovation Australia
355-710 Amendment of assessments
355-715 Implications for other deductions and tax offsets

355-700 Objecting to assessment of refundable tax offset

(1) An *R&D entity may object under subsection 175A(1) of the *Income Tax Assessment Act 1936* against an assessment made in relation to the R&D entity to the extent that the assessment relates to the amount of a *tax offset under section 355-100 that is subject to the refundable tax offset rules.

Note: See section 67-30 for when a tax offset under section 355-100 is subject to the refundable tax offset rules.

(2) This section does not limit subsection 175A(1) of that Act, and has effect despite subsection 175A(2) of that Act.

Note: Subsection 175A(2) of that Act prevents objections if the taxpayer has no taxable income, or if there is no tax payable on the taxpayer's taxable income.

355-705 Effect of findings by Innovation Australia

Findings about registration or core technology

(1) If:

(a) a certificate given to the Commissioner under the *Industry Research and Development Act 1986* sets out:

(i) a finding under section 27B of that Act about an *R&D entity's application for registration under section 27A of that Act for an income year; or

(ii) a finding under section 27J of that Act about an R&D entity's registration under section 27A of that Act for an income year; or

(iii) a finding under section 28E of that Act about an R&D entity and one or more *R&D activities conducted or to be conducted during one or more income years; and

(b) the finding was made within 4 years after the end of the income year or the last of the income years (as appropriate);

the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year or years (as appropriate).

Note: Section 28E of the *Industry Research and Development Act 1986* deals with findings that technology is core technology for particular R&D activities. Expenditure incurred in acquiring such technology is not deductible under this Division (see subsection 355-225(2)).

Advance findings about activities yet to be completed

(2) If:

(a) an activity is being conducted, or is yet to be conducted, in an income year; and

(b) an *R&D entity applies in the income year for a finding under section 28A of the *Industry Research and Development Act 1986* about the activity; and

(c) Innovation Australia makes the finding and gives the Commissioner a certificate under that Act setting out the finding;

the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year and the next 2 income years.

Advance findings about completed activities

(3) However, if:

(a) an activity is completed during an income year; and

(b) an *R&D entity applies in the income year for a finding under section 28A of the *Industry Research and Development Act 1986* about the activity; and

(c) Innovation Australia makes the finding and gives the Commissioner a certificate under that Act setting out the finding;

the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year.

355-710 Amendment of assessments

Dealing with findings of Innovation Australia

(1) If:

(a) a certificate given to the Commissioner under the *Industry Research and Development Act 1986* sets out:

(i) a finding under section 27B of that Act about an *R&D entity's application for registration under section 27A of that Act for an income year; or

(ii) a finding under section 27J of that Act about an R&D entity's registration under section 27A of that Act for an income year; or

(iii) a finding under section 28A or 28C of that Act made on application by an R&D entity during an income year; or

(iv) a finding under section 28E of that Act about an R&D entity and one or more R&D activities conducted or to be conducted during one or more income years; and

(b) the finding was made within 4 years after the end of the income year or the last of the income years (as appropriate);

despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend the R&D entity's assessment for an income year affected by the finding at any time for the purposes of giving effect to the finding.

(2) However, the Commissioner may only do so within 2 years after the Commissioner is given the certificate if giving effect to the finding would increase the R&D entity's liability.

Dealing with key decisions of Innovation Australia and others

(3) If:

(a) an internal review decision (the ***key decision***) under subsection 30D(2) of the *Industry Research and Development Act 1986* relates to an *R&D entity; or

(b) a decision (also the ***key decision***) under the *Administrative Appeals Tribunal Act 1975*:

(i) varies a decision covered by paragraph (a); or

(ii) sets aside a decision covered by paragraph (a), whether or not that key decision also includes a decision made in substitution for the decision covered by paragraph (a); or

(c) a decision (also the ***key decision***) of a court is about:

(i) a decision under Part III of the *Industry Research and Development Act 1986* relating to an R&D entity; or

(ii) a decision covered by paragraph (b);

despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend the R&D entity's assessment for an income year affected by the key decision at any time for the purposes of giving effect to that decision.

355-715 Implications for other deductions and tax offsets

(1) If an *R&D entity is entitled under section 355-100 to a *tax offset for an income year for expenditure it can deduct under section 355-205, 355-480 or 355-580, that expenditure:

(a) cannot be taken into account by any entity in working out a deduction under any other Division of this Act for any income year; and

(b) cannot be taken into account by any entity in working out a tax offset under any other Division of this Act for any income year.

Note: Section 355-205 is about R&D expenditure, section 355-480 is about earlier year associate R&D expenditure, and section 355-580 is about CRC contributions.

(2) If an *R&D entity is entitled under section 355-100 to a *tax offset for an income year for a deduction under section 355-305, 355-315, 355-520 or 355-525 of an amount equal to the decline in value of an asset, that decline in value:

(a) cannot be taken into account by any entity in working out a deduction under any other Division of this Act (other than section 40-292 or 40-293) for any income year; and

(b) cannot be taken into account by any entity in working out a tax offset under any other Division of this Act for any income year;

to the extent that the decline in value is attributable to the use of the asset for the purpose of conducting one or more of the *R&D activities to which the deduction relates.

Note 1: A deduction may be available under section 40-25 to the extent that the asset's decline in value is attributable to another purpose. If so, that deduction under section 40-25 will not take into account the asset's decline in value to the extent that it is attributable to the R&D activities (see also subsection 40-25(2)).

Note 2: Section 355-305 is about the decline in value of R&D assets, section 355-315 is about balancing adjustments for R&D assets, section 355-520 is about the decline in value of R&D partnership assets, and section 355-525 is about balancing adjustments for R&D partnership assets.

Note 3: Sections 40-292 and 40-293 deal with balancing adjustments when deductions have been available for the asset's decline in value both under this Division and section 40-25.

2 Subsection 995-1(1)

Insert:

core R&D activities has the meaning given by section 355-25.

3 Subsection 995-1(1)

Insert:

CRC program means the program administered by the Commonwealth known as the Cooperative Research Centres Program.

4 Subsection 995-1(1)

Insert:

feedstock revenue has the meaning given by section 355-470.

5 Subsection 995-1(1)

Insert:

partner's proportion has the meaning given by subsection 355-505(2).

6 Subsection 995-1(1)

Insert:

R&D activities has the meaning given by section 355-20.

7 Subsection 995-1(1)

Insert:

R&D entity has the meaning given by section 355-35.

8 Subsection 995-1(1)

Insert:

R&D partnership has the meaning given by subsection 355-505(1).

9 Subsection 995-1(1) (definition of *research and development activities*)

Repeal the definition.

10 Subsection 995-1(1)

Insert:

supporting R&D activities has the meaning given by section 355-30.

Schedule 2—Innovation Australia's role

Part 1—Main amendment

Industry Research and Development Act 1986

1 After Part II

Insert:

Part III—Functions relating to the R&D tax offset

Division 1—Introduction

26 Objects

The objects of this Part are:

(a) to provide integrity for the working out of tax offsets under Division 355 (about R&D) of the *Income Tax Assessment Act 1997*; and

(b) to increase certainty through findings about matters relevant to the working out of those tax offsets; and

(c) to improve access for small and medium R&D entities to quality research services by maintaining a register of research service providers.

Note: The integrity mentioned in paragraph (a) is provided, for example, by:

(a) the Board registering entities seeking these tax offsets; and

(b) the Board conducting compliance checks on those entities.

26A Simplified outline

The following is a simplified outline of this Part:

- The Board may, on application by an R&D entity, register the R&D entity for R&D activities. This registration is needed before the R&D entity can be entitled to a tax offset (an ***R&D tax offset***) under Division 355 of the *Income Tax Assessment Act 1997* for the R&D activities.

- The R&D entity can seek an advance finding to get early notice about whether an activity is considered to be an R&D activity.
- The R&D entity can seek a finding that an activity cannot be conducted in Australia. The finding is needed before expenditure incurred on the activity can count towards an R&D tax offset.
- The Board may register entities as research service providers capable of providing research services to R&D entities.
- Internal and external review can be sought for certain decisions under this Part.

Division 2—Registering for the R&D tax offset

Subdivision A—Introduction

27 Simplified outline

The following is a simplified outline of this Division:

- The Board may register an R&D entity for R&D activities conducted during an income year.
- The Board may make findings about the nature of an R&D entity's activities both before and after registration. This includes findings made on application by the R&D entity after registration.
- These findings bind the Commissioner for the purposes of any entitlement of the R&D entity to a tax offset under Division 355 of the *Income Tax Assessment Act 1997* for the activities.
- The Board will register an R&D entity's activities consistently with any findings made about the entity's application. Any findings made about these activities after registration will, if necessary, automatically vary the entity's registration.

- Registrations can also be varied and revoked.

Subdivision B—Registering R&D entities for R&D activities

27A Registering R&D entities for R&D activities

(1) The Board must, on application by an R&D entity, decide whether to register or refuse to register the entity for either or both of the following for an income year:

(a) one or more specified activities as core R&D activities conducted during the income year;

(b) one or more specified activities as supporting R&D activities conducted during the income year.

Note 1: A decision under this subsection is reviewable (see Division 5).

Note 2: For requirements of applications, see section 27D.

(2) If the Board decides under subsection (1) to register the R&D entity, the Board must do so consistently with:

(a) any findings already in force under subsection 27B(1) in relation to the application; and

(b) any findings already in force under subsection 28A(1) (advance findings about the nature of activities) in relation to the R&D entity.

(3) For each activity registered under subsection (1) as a supporting R&D activity for an R&D entity for an income year, the registration is to also specify:

(a) one or more activities as the corresponding core R&D activities; and

(b) if any of those activities specified as a core R&D activity is not registered under paragraph (1)(a) for the R&D entity for the income year—each income year for which that core R&D activity:

(i) was registered under paragraph (1)(a) for the R&D entity; or

(ii) is proposed to be registered under paragraph (1)(a) for the R&D entity.

27B Findings about applications for registration

(1) The Board may make one or more findings to the following effect when considering an R&D entity's application for the purposes of subsection 27A(1):

(a) that all or part of an activity mentioned in the application was a core R&D activity conducted during the income year;

(b) that all or part of an activity mentioned in the application was not an activity of a kind covered by paragraph (a);

(c) that all or part of an activity mentioned in the application was a supporting R&D activity conducted:

(i) during the income year; and

(ii) in relation to one or more specified core R&D activities for which the entity has been or could be registered under section 27A for an income year;

(d) that all or part of an activity mentioned in the application was not an activity of a kind covered by paragraph (c).

Note 1: A finding is reviewable (see Division 5).

Note 2: The Board could make a finding under paragraph (b) if, for example, the Board has insufficient information to make a finding under paragraph (a). Similarly, the Board could make a finding under paragraph (d) if it has insufficient information to make a finding under paragraph (c).

Note 3: The Board may also make findings after registration (see subsection 27J(1)).

(2) If the Board makes a finding under subsection (1) in relation to the R&D entity's application, the Board may specify in the finding the times to which the finding relates.

Example: A finding under paragraph (1)(a) could specify the times during the income year that an activity was a core R&D activity.

(3) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

27C Notice of decision about registration

(1) The Board must notify an applicant in writing of the Board's decision under subsection 27A(1) about the application.

(2) The notice must include a certificate for each finding (if any) made under subsection 27B(1) for the application. The certificate must set out:

(a) a description of the finding; and

(b) the Board's reasons for the finding; and

(c) the activity affected by the finding; and

(d) the matters (if any) specified in regulations made for the purposes of this paragraph.

The notice and certificate may set out other matters.

Note: The notice could also mention the applicant's right to have the finding reviewed under Division 5 (see section 30B).

(3) The Board must give the Commissioner a copy of the notice if the notice includes one or more certificates.

(4) A failure to comply with this section does not affect the validity of the decision or finding.

Subdivision C—Applying to register R&D activities

27D Applying to register R&D activities

An application to register activities under section 27A for an income year must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section; and

(c) made within:

(i) 10 months after the end of the income year; or

(ii) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32 deals with approved forms.

Note 3: Section 32A deals with the decision-making principles.

27E Board may request further information

(1) The Board may request the applicant in writing to give specified information, or specified kinds of information, to the Board about the application.

(2) The request may be for the information or kinds of information to be given within:
  (a) 30 days after the request was made; or
  (b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

Note 3: A failure by the entity to give the information may result in a finding under paragraph 27B(1)(b) or (d).

(3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

(4) Subsections (2) and (3) do not limit subsection (1).

Subdivision D—Examining registrations

27F Examining a registration

(1) The Board may conduct one or more examinations of all or part of an R&D entity's registration under section 27A for an income year for the purposes of making one or more findings under subsection 27J(1).

Note: A finding under subsection 27J(1) will support the entity's registration, or cause the variation of that registration.

(2) The Board may examine an R&D entity's registration on its own initiative.

(3) The Board must examine an R&D entity's registration if:
  (a) requested by the Commissioner; or
  (b) the R&D entity has applied for one or more findings under subsection 27J(1) about the registration.

Note: A finding under subsection 27J(1) can only bind the Commissioner for the purposes of the R&D entity's income tax assessment for the income year if the finding is made within 4 years after the end of the income year (see subsection 355-705(1) of the *Income Tax Assessment Act 1997*).

(4) If the R&D entity applies for a finding under subsection 27J(1) about the registration, the Board must:

(a) make one or more findings under subsection 27J(1) about the registration; or

(b) if justified in accordance with the decision-making principles—refuse to make a finding under subsection 27J(1) about the registration.

Note 1: The Board may make a finding that differs from that sought by the R&D entity.

Note 2: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 3: Section 32A deals with the decision-making principles.

27G Applying for findings

An application for one or more findings under subsection 27J(1) must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note 1: An application can seek findings for several activities.

Note 2: Section 32 deals with approved forms.

27H Board may request information during an examination

(1) When examining an R&D entity's registration, the Board may request the entity in writing to give specified information, or specified kinds of information, to the Board about the entity's registration.

(2) The request may be for the information or kinds of information to be given within:

(a) 30 days after the request was made; or

(b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

Note 3: A failure by the entity to give the information may result in a finding under paragraph 27J(1)(b) or (d).

(3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

(4) Subsections (2) and (3) do not limit subsection (1).

27J Findings about a registration

(1) The Board may make one or more findings to the following effect about an R&D entity's registration under section 27A for an income year (the ***registration year***):

(a) that all or part of a registered activity was a core R&D activity conducted during the registration year;

(b) that all or part of a registered activity was not an activity of a kind covered by paragraph (a);

(c) that all or part of a registered activity was a supporting R&D activity conducted during the registration year and in relation to:

(i) one or more specified registered core R&D activities; or

(ii) one or more specified core R&D activities for which the entity has been registered in an earlier income year; or

(iii) one or more specified core R&D activities yet to be conducted for which the entity could be registered in the registration year if those activities were conducted during the registration year; or

(iv) several specified core R&D activities, each covered by subparagraph (i), (ii) or (iii);

(d) that all or part of a registered activity was not an activity of a kind covered by paragraph (c).

Note 1: A finding is reviewable (see Division 5).

Note 2: The Board could make a finding under paragraph (b) if, for example, the Board has insufficient information to make a finding under paragraph (a). Similarly, the Board could make a finding under paragraph (d) if it has insufficient information to make a finding under paragraph (c).

(2) If the Board makes a finding under subsection (1) in relation to the R&D entity's registration, the Board may specify in the finding the times to which the finding relates.

Example: A finding under paragraph (1)(a) could specify the times during the registration year that a registered activity was a core R&D activity.

(3) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

27K Notice of findings or of decisions refusing to make findings

(1) The Board must notify the R&D entity, and the Commissioner, in writing of any findings under subsection 27J(1) about the entity's registration under section 27A.

(2) The notice must include a certificate for each finding. The certificate must set out:

(a) a description of the finding; and

(b) the Board's reasons for the finding; and

(c) the registered activity affected by the finding; and

(d) the effect of the finding on the entity's registration; and

(e) the matters (if any) specified in regulations made for the purposes of this paragraph.

The notice and certificate may set out other matters.

Note 1: For the effect of the finding on the entity's registration, see section 27L (about automatic variations to registrations).

Note 2: The notice could also mention the applicant's right to have the finding reviewed under Division 5 (see section 30B).

(3) The Board must notify the R&D entity in writing of any decision under paragraph 27F(4)(b) refusing to make a finding under subsection 27J(1) in response to an application under section 27G by the R&D entity.

(4) A failure to comply with this section does not affect the validity of a finding or decision.

27L Automatic variations so registration is consistent with findings

(1) If an R&D entity is registered under section 27A for an income year, then while a finding is in force:

(a) under subsection 27B(1) in relation to the application for the registration; or

(b) under subsection 27J(1) in relation to the registration;

the registration is taken always to have existed in a form consistent with the finding.

Note 1: This subsection will cease to apply if the finding is set aside on review (see Division 5).

Note 2: A finding has no effect to the extent of any inconsistency with a finding already in force under this Part in relation to the R&D entity (see section 32B).

(2) If:

(a) a finding under subsection 28A(1) (advance findings about the nature of activities) comes into force for an R&D entity about an activity conducted during an income year; and

(b) the R&D entity is later registered under section 27A for the activity for the income year;

then, after registration and while the finding is in force, the registration is taken to exist in a form consistent with the finding.

Note 1: This subsection will cease to apply if the finding is set aside on review (see Division 5).

Note 2: A finding has no effect to the extent of any inconsistency with a finding already in force under this Part in relation to the R&D entity (see section 32B).

(3) This section has effect for the purposes of this Act and the *Income Tax Assessment Act 1997*.

27M Varying registrations on application

(1) The Board may, by notice in writing given to an R&D entity, vary the entity's registration under section 27A for an income year if:

(a) the entity applies for the variation; and

(b) the variation is consistent with the Board's findings (if any) in force under this Part in relation to the R&D entity; and

(c) making the variation is justified in accordance with the decision-making principles.

Note 1: A decision not to vary is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

(2) An application for a variation must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

(3) Section 27E applies to an application under this section in a way corresponding to the way that section applies to an application under section 27D.

Note: This means the Board may request further information about the application for variation.

(4) For the purposes of this Act and the *Income Tax Assessment Act 1997*, the effect of a variation is that the entity's registration under section 27A for the income year is taken always to have existed as varied.

27N Revoking registrations

(1) The Board may, by notice in writing given to an entity, revoke the entity's registration under section 27A for an income year if the Board is satisfied that the entity was not an R&D entity at any time when an activity covered by the registration was conducted during the income year.

Note: A decision to revoke under this subsection is reviewable (see Division 5).

(2) The Board may, by notice in writing given to an R&D entity, revoke the entity's registration under section 27A for an income year if the entity requests the Board to do so.

(3) A request for a revocation under subsection (2) must be:
(a) in the approved form; and
(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

(4) For the purposes of this Act and the *Income Tax Assessment Act 1997*, the effect of a revocation under this section is that the entity is taken never to have been registered under section 27A for the income year.

Note: This subsection will cease to apply if a revocation under subsection (1) is set aside on review (see Division 5).

(5) The Board must notify the Commissioner of a revocation under this section.

Division 3—Other findings

Subdivision A—Introduction

28 Simplified outline

The following is a simplified outline of this Division:

- An R&D entity can seek a finding (an ***advance finding***) about whether an activity is an R&D activity.
- An advance finding binds the Commissioner for the purpose of working out tax offsets (***R&D tax offset***s) under Division 355 of the *Income Tax Assessment Act 1997*.
- An R&D entity can seek a finding that an activity cannot be conducted in Australia.
- An R&D tax offset will only be available for expenditure incurred on an activity conducted outside Australia if a finding that the activity cannot be conducted in Australia has come into force.
- The Board may also make a finding about whether particular technology is core technology for R&D activities.
- An effect of a finding that the technology is core technology for the R&D activities is that an R&D tax offset will not be available for expenditure incurred in acquiring, or in acquiring the right to use, the technology for the R&D activities.

Subdivision B—Advance findings about the nature of activities

28A Advance findings about the nature of activities

(1) The Board must, on application by an R&D entity for a finding under this subsection about an activity, do one or more of the following:

(a) find that all or part of the activity is a core R&D activity;

(b) find that all or part of the activity is a supporting R&D activity in relation to one or more specified core R&D activities for which the entity has been or could be registered under section 27A for an income year;

(c) make a finding to the effect that all or part of the activity is neither:

(i) a core R&D activity; nor

(ii) a supporting R&D activity of a kind covered by paragraph (b);

(d) if justified in accordance with the decision-making principles—refuse to make a finding about all or part of the activity.

Note 1: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 2: For requirements of applications, see section 28G.

Note 3: A finding binds the Commissioner for the purposes of income tax assessments for certain income years (see subsections 355-705(2) and (3) of the *Income Tax Assessment Act 1997*).

Note 4: Section 32A deals with the decision-making principles.

(2) The Board must not make a finding under subsection (1) about an activity unless the Board is satisfied that the activity:

(a) is being conducted, or has been completed, during the income year in which the application is made; or

(b) is yet to be conducted, but that it is reasonable to expect that the activity will be conducted in any or all of the following income years:

(i) the income year in which the application is made;

(ii) either of the next 2 income years.

(3) If the Board makes a finding under subsection (1) about an activity that is being conducted, or has been completed, during the income year in which the application is made, the Board may specify in the finding the times to which the finding relates.

(4) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

28B Applications made on behalf of R&D entities

(1) An application for a finding under subsection 28A(1) may be made on behalf of an R&D entity by an entity who:

(a) is specified in regulations made for the purposes of this subsection; and

(b) is acting with the R&D entity's written consent.

The application is taken to be made by the R&D entity.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(2) If:

(a) an entity could, under subsection (1), make an application on behalf of more than one R&D entity for the same finding for the same activity; and

(b) the entity applies (the ***joint application***) under subsection 28G(2) for the finding on behalf of those R&D entities;

the joint application is taken to be a separate application under subsection 28G(1) for the finding by each of those R&D entities.

Subdivision C—Findings about activities to be conducted outside Australia

28C Findings about activities to be conducted outside Australia

(1) The Board must, on application by an R&D entity for a finding under this subsection about an activity, do one or more of the following:

(a) find that all or part of the activity is an activity (the ***overseas activity***) that meets the conditions in section 28D;

(b) find that all or part of the activity is not an activity that meets the conditions in section 28D;

(c) if justified in accordance with the decision-making principles—refuse to make a finding about all or part of the activity.

Note 1: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 2: For requirements of applications, see section 28G.

Note 3: An effect of a finding under paragraph (a) is that a tax offset may be available for expenditure incurred on the overseas activity after the finding comes into force (see Division 355 of the *Income Tax Assessment Act 1997*, in particular paragraphs 355-210(1)(d) and (e) of that Act).

Note 4: Section 32A deals with the decision-making principles.

(2) For the purposes of this Act and the *Income Tax Assessment Act 1997*, a finding under subsection (1) comes into force at the start of the income year in which the application for the finding is made.

(3) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

28D Conditions for a finding that an overseas activity cannot be conducted in Australia etc.

Must be an R&D activity

(1) The first condition is that the overseas activity is covered by a finding under paragraph 28A(1)(a) or (b) (findings that activities are R&D activities).

Must have significant scientific link to Australian core activities

(2) The second condition is that the overseas activity has a significant scientific link to one or more core R&D activities (the ***Australian core activities***):

(a) that are conducted or to be conducted solely within Australia or an external Territory; and

(b) that:

(i) are registered under section 27A for the R&D entity for an income year; or

(ii) are reasonably likely to be conducted and be registered under section 27A for the R&D entity for an income year.

(3) The overseas activity has a ***significant scientific link*** to the Australian core activities if:

(a) the Australian core activities cannot be completed without the overseas activity being conducted; and

(b) the conditions (if any) specified in regulations made for the purposes of this subsection are met.

Must be unable to be conducted within Australia etc.

(4) The third condition is that the overseas activity cannot be conducted solely in Australia or the external Territories because:

(a) conducting it requires access to a facility, expertise or equipment not available in Australia or the external Territories; or

(b) conducting it in Australia or the external Territories would contravene a law relating to quarantine; or

(c) conducting it requires access to a population (of living things) not available in Australia or the external Territories; or

(d) conducting it requires access to a geographical or geological feature not available in Australia or the external Territories; or

(e) it meets a condition (if any) specified in regulations made for the purposes of this subsection.

Expenditure must be less than that incurred on Australian core activities

(5) The fourth condition is that the total actual and reasonably anticipated expenditure of any entity in all income years on:

(a) the overseas activity; and

(b) each other activity (if any) conducted wholly or partly outside Australia and the external Territories that has a significant scientific link to the Australian core activities;

is less than the total actual and reasonably anticipated expenditure of any entity in all income years on:

(c) the Australian core activities; and

(d) activities conducted solely within Australia and the external Territories that are supporting R&D activities in relation to the Australian core activities.

Subdivision D—Findings about whether technology is core technology

28E Findings about whether technology is core technology

(1) If an R&D entity has acquired, or has acquired the right to use, particular technology wholly or partly for the purposes of one or more R&D activities conducted, or to be conducted, during one or more income years, the Board may:

(a) find that the technology is core technology for the R&D activities; or

(b) find that the technology is not core technology for the R&D activities; or

(c) if justified in accordance with the decision-making principles—refuse to make a finding about the technology and the R&D activities.

Note 1: A finding, or a refusal to make a finding, is reviewable (see Division 5).

Note 2: A finding under paragraph (a) means that a tax offset will not be available for expenditure incurred in acquiring, or in acquiring the right to use, the technology for the R&D activities (see subsection 355-225(2) of the *Income Tax Assessment Act 1997*).

Note 3: Section 32A deals with the decision-making principles.

(2) Particular technology is ***core technology*** for one or more R&D activities if:

(a) a purpose of the R&D activities was or is:

(i) to obtain new knowledge based on that technology; or

(ii) to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or

(b) the R&D activities were or are an extension, continuation, development or completion of the activities that produced that technology.

(3) The Board must make a finding under paragraph (1)(a) or (b) if requested by the Commissioner to make a finding under this section.

(4) In addition to subsection (3), the Board:

(a) may make a finding under subsection (1) on its own initiative; and

(b) must make a decision under subsection (1) if the R&D entity applies for a finding under this section.

Note: For requirements of applications, see section 28G.

(5) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

Subdivision E—Matters relevant to findings under this Division

28F Notice of decision about findings

(1) The Board must notify an applicant in writing of each of the Board's decisions under subsection 28A(1) or 28C(1) about the application.

(2) The Board must notify an R&D entity in writing of each of the Board's decisions under subsection 28E(1) that relates to the R&D entity.

(3) A notice under subsection (1) or (2) must include a certificate for each finding (if any) to which the decision relates. The certificate must set out:

(a) a description of the finding; and

(b) the Board's reasons for the finding; and

(c) a description of the activity affected by the finding; and

(d) for a finding under subsection 28E(1)—a description of the technology affected by the finding; and

(e) the matters (if any) specified in regulations made for the purposes of this paragraph.

The notice and certificate may set out other matters.

Note: The notice could also mention the applicant's right to have the finding reviewed under Division 5 (see section 30B).

(4) The Board must give the Commissioner a copy of the notice if the notice includes one or more certificates.

(5) A failure to comply with this section does not affect the validity of a decision or finding.

28G Applying for findings

Applications for findings

(1) An application for one or more findings under this Division must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this subsection.

Note 1: An application can seek findings for several activities.

Note 2: Section 32 deals with approved forms.

Joint applications for identical advance findings

(2) An application for identical findings under subsection 28A(1) on behalf of several R&D entities must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this subsection.

Note: The application is taken to be a separate application under subsection (1) of this section for the finding by each of those R&D entities (see subsection 28B(2)).

28H Board may request further information

(1) The Board may request in writing:

(a) for an application taken to be made by an R&D entity because of section 28B—the entity that acted on behalf of the R&D entity in relation to the application; or

(b) otherwise—the applicant;

to give specified information, or specified kinds of information, to the Board about the application.

(2) The request may be for the information or kinds of information to be given within:

(a) 30 days after the request was made; or

(b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

Note 3: A failure by the entity to give the information may result in a refusal to make the finding.

(3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

(4) Subsections (2) and (3) do not limit subsection (1).

Division 4—Research service providers

Subdivision A—Introduction

29 Simplified outline

The following is a simplified outline of this Division:

- The Board may register entities as research service providers capable of providing research services to R&D entities.

- Near the end of each financial year, registered research service providers will be asked if they want their registrations to continue for the next financial year.
- Registrations can be varied and revoked.
- Details of registrations are set out in a register available on the internet.

Subdivision B—Registering research service providers

29A Registering research service providers

(1) The Board must, on application by an entity, decide whether to register or refuse to register the entity as a research service provider capable of providing services in one or more specified research fields to R&D entities registered under section 27A.

Note: A decision under this subsection is reviewable (see Division 5).

(2) The Board must not register the entity under subsection (1) unless the Board is satisfied that the entity meets the criteria specified in regulations made for the purposes of this subsection.

(3) A registration under this section is subject to the conditions (if any) specified in regulations made for the purposes of this subsection.

Subdivision C—Applying for registration

29B Applying for registration

An application to be registered under section 29A must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

29C Board may request further information about an application

(1) The Board may request the applicant in writing to give specified information, or specified kinds of information, to the Board about the application.

(2) The request may be for the information or kinds of information to be given within 30 days after the request was made.

(3) The request may be for the information or kinds of information to be given in the approved form.

Note: Section 32 deals with approved forms.

(4) Subsections (2) and (3) do not limit subsection (1).

(5) The Board may refuse to consider the application if the applicant fails to give the information within:

(a) the 30 days referred to in subsection (2); or

(b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

29D Board may need to make inquiries about an application

(1) The Board may notify the applicant in writing that the Board:

(a) needs to make inquiries in order to determine whether the applicant meets the criteria for registration referred to in subsection 29A(2); and

(b) requires the applicant to pay the Board a specified amount towards the cost of those inquiries.

(2) The Board may refuse to consider the application until the applicant pays the Board that amount.

(3) An amount specified in a notice under subsection (1) must not exceed the higher of:

(a) $1,000; and

(b) the amount (if any) specified in regulations made for the purposes of this subsection;

and must not be such as to amount to taxation.

Subdivision D—Varying or revoking registrations

29E Duration of registrations

(1) At least 2 months before the end of each financial year, the Board must give each research service provider a notice:

(a) asking the provider if it wishes to continue to be registered under section 29A; and

(b) attaching an approved form to be completed by the provider and returned to the Board if the provider wishes to continue to be registered.

This subsection does not apply to a provider who becomes registered under section 29A in May or June of that financial year.

Note: Section 32 deals with approved forms.

(2) The Board may, by notice in writing given to the provider, revoke the provider's registration under section 29A if the provider does not return the completed form within:

(a) 30 days after the notice under subsection (1) was given; or

(b) a further period allowed by the Board in accordance with the decision-making principles.

Note 1: A decision to revoke under this subsection is reviewable (see Division 5).

Note 2: Section 32A deals with the decision-making principles.

(3) For the purposes of this Act and the *Income Tax Assessment Act 1997*, the revocation takes effect at the end of that financial year.

Note: This subsection will cease to apply if the revocation is set aside on review (see Division 5).

29F Varying registrations—on application

(1) The Board may, by notice in writing given to a research service provider, vary the provider's registration under section 29A if:

(a) the provider applies for the variation; and

(b) the Board is satisfied that the provider would still meet the criteria for registration referred to in subsection 29A(2) were the application to be successful.

Note: A refusal to vary is reviewable (see Division 5).

(2) An application for a variation must be:

(a) in the approved form; and

(b) accompanied by the fee (if any) specified in regulations made under section 48A for the purposes of this section.

Note: Section 32 deals with approved forms.

(3) Sections 29C and 29D apply to applications under this section in a way corresponding to the way those sections apply to applications under section 29B.

Note: This means the Board may request further information about the application for variation, and make inquiries about the application for variation.

29G Varying registrations—otherwise than on application

(1) The Board may, by notice in writing given to a research service provider, vary the provider's registration under section 29A so that the provider ceases to be registered to provide services in one or more specified research fields.

Note 1: A decision to vary is reviewable (see Division 5).

Note 2: This subsection will cease to apply if the variation is set aside on review (see Division 5).

(2) The Board may do so if the Board is satisfied that the provider does not meet the criteria for registration referred to in subsection 29A(2) in so far as those criteria relate to those research fields.

29H Revoking registrations

(1) The Board may, by notice in writing given to a research service provider, revoke the provider's registration under section 29A if the Board is satisfied:

(a) that the provider has ceased to meet the criteria for registration referred to in subsection 29A(2); or

(b) that the provider has breached a condition, referred to in subsection 29A(3), of the registration.

Note 1: A decision to revoke under this subsection is reviewable (see Division 5).

Note 2: This subsection will cease to apply if the revocation is set aside on review (see Division 5).

Note 3: Revocation can also happen under subsection 29E(2) if the provider does not appropriately indicate that it wishes to continue to be registered for the next financial year.

(2) The Board may, by notice in writing given to a research service provider, revoke the provider's registration under section 29A if the provider requests the Board to do so.

(3) A request for a revocation under subsection (2) must be in the approved form.

Note: Section 32 deals with approved forms.

Subdivision E—Register of research service providers

29J Register of research service providers

(1) The Board is to make available for inspection on the internet a register that includes details of:

(a) registrations in force under this Division; and

(b) registrations that have been revoked under this Division during the current financial year or the previous financial year.

Note 1: A registration in force under this Division includes the research fields for which the provider is registered.

Note 2: A registration in force under this Division is that registration as varied under section 29F or 29G.

(2) The register is not a legislative instrument.

Division 5—Review

30 Simplified outline

The following is a simplified outline of this Division:

- An entity affected by a reviewable decision may ask the Board to conduct an internal review of that decision.
- The entity, or another entity affected by the resulting internal review decision, may ask the Administrative Appeals Tribunal to review the internal review decision.

30A *Reviewable decisions*

Each of the following decisions of the Board is a ***reviewable decision***:

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
1	Registering or refusing to register an entity for activities	Subsection 27A(1)
2	A finding made when considering an application for registration of activities	Subsection 27B(1)
3	Refusing to allow a further period for making an application for registration of activities	Paragraph 27D(c)
4	Refusing to allow a further period for giving further information about an application for registration of activities	Paragraph 27E(2)(b)
5	Refusing to make a finding about a registration of activities	Paragraph 27F(4)(b)
6	Refusing to allow a further period for giving further information about an examination of a registration of activities	Paragraph 27H(2)(b)
7	A finding made about a registration of activities	Subsection 27J(1)
8	Refusing to vary on application a registration of activities	Subsection 27M(1)
9	Refusing to allow a further period for giving further information about an application for variation of a registration of activities	Paragraph 27E(2)(b), as that paragraph applies because of subsection 27M(3)
10	Revoking a registration of activities	Subsection 27N(1)
11	An advance finding, or refusing to make an advance finding, about the nature of an activity	Subsection 28A(1)
12	A finding, or refusing to make a finding, about an activity to be conducted outside Australia	Subsection 28C(1)
13	A finding, or refusing to make a finding, about particular technology	Subsection 28E(1)
14	Refusing to allow a further period for giving further information about an application for: (a) an advance finding about the nature	Paragraph 28H(2)(b)

Reviewable decisions		
Item	**Decision**	**Provision under which decision is made**
	of an activity; or (b) a finding about an activity to be conducted outside Australia; or (c) a finding that technology is core technology	
15	Registering or refusing to register an entity as a research service provider	Subsection 29A(1)
16	Refusing to allow a further period for giving further information about an application for registration as a research service provider	Subsection 29C(3)
17	Revoking a research service provider's registration for not returning a completed form about continuing that registration	Subsection 29E(2)
18	Refusing to vary on application a research service provider's registration	Subsection 29F(1)
19	Refusing to allow a further period for giving further information about an application for variation of a research service provider's registration	Subsection 29C(3), as that subsection applies because of subsection 29F(3)
20	Varying a research service provider's registration otherwise than on application	Subsection 29G(1)
21	Revoking a research service provider's registration	Subsection 29H(1)
22	Refusing to allow a further period for making an application for review of a decision	Subsection 30C(3)

30B Notice of reviewable decision and internal review rights

(1) When making a reviewable decision relating to an entity, the Board must give written notice to the entity of the following things:
  (a) the making of the decision;
  (b) the reasons for the decision;
  (c) the entity's right to have the decision reviewed under this Division.

(2) If written notice of any of these things is given to the entity under another provision of this Part, notice of the thing does not have to be given twice.

Note: Other provisions of this Part require notice to be given about decisions covered by item 2, 7 or 11 of the table in section 30A.

(3) A failure to comply with this section does not affect the validity of the decision.

30C Applications for internal review of reviewable decisions

Applications by affected entities

(1) An application for review of a reviewable decision may be made by or on behalf of any entity whose interests are affected by the reviewable decision.

(2) An application under subsection (1) must be in the approved form.

Note: Section 32 deals with approved forms.

(3) An application under subsection (1) for review of a reviewable decision must be made within:

(a) 28 days after the entity to which the decision relates is notified of the decision under this Part; or

(b) such further period as the Board allows in accordance with the decision-making principles.

Note 1: A refusal to allow a further period is reviewable (see section 30A).

Note 2: Section 32A deals with the decision-making principles.

Applications by Commissioner

(4) The Commissioner may, at any time, apply to the Board for review of a reviewable decision.

30D Internal review of reviewable decisions

(1) After receiving an application for review of a reviewable decision, the Board must review the decision.

Making internal review decisions

(2) After reviewing the reviewable decision, the Board must make a decision (an ***internal review decision***):

(a) confirming the reviewable decision; or

(b) varying the reviewable decision; or

(c) setting aside the reviewable decision and substituting a new decision.

Note: An internal review decision is reviewable by the Administrative Appeals Tribunal (see section 30E). Under the *Administrative Appeals Tribunal Act 1975*, notice of the internal review decision must be given to any person whose interests are affected by the decision.

Deemed internal review decisions

(3) If the Board does not make a decision under subsection (2) before the end of the period of 90 days after the day on which the Board received the application for review, the Board is taken, at the end of that period, to have made a decision (also an ***internal review decision***) confirming the reviewable decision.

Note: Under the *Administrative Appeals Tribunal Act 1975*, notice must be given to any person whose interests are affected by the internal review decision taken to be made under this subsection.

(4) However, an internal review decision (the ***deemed decision***) is taken not to have been made under subsection (3) if:

(a) after the end of the period referred to in that subsection, the Board makes a decision under subsection (2) about the applicable reviewable decision; and

(b) an application has yet to be made under section 30E to the Administrative Appeals Tribunal for review of the deemed decision.

Matters relevant to all internal review decisions

(5) For the purposes of this Act and the *Income Tax Assessment Act 1997*, an internal review decision takes effect on the day on which the reviewable decision took effect.

(6) The Board must notify the Commissioner in writing of:

(a) the making of an internal review decision; and

(b) the reasons for that decision.

30E External review by AAT of internal review decisions

(1) Application may be made to the Administrative Appeals Tribunal for review of an internal review decision of the Board.

(2) Subsection 43(6) of the *Administrative Appeals Tribunal Act 1975* has effect for the purposes of this Act and the *Income Tax Assessment Act 1997* for:

(a) an internal review decision as varied by the Tribunal under section 43 of the *Administrative Appeals Tribunal Act 1975*; or

(b) a decision made by the Tribunal under that section in substitution for an internal review decision.

Note: This means that the varied or substituted decision takes effect from the day on which the reviewable decision took effect (see subsection 30D(5)).

(3) If an internal review decision is taken to be made under subsection 30D(3), section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if:

(a) paragraph 29(1)(d) of that Act applied to the internal review decision; and

(b) the prescribed time for the purposes of that paragraph were the end of the period of 28 days starting on the day on which the internal review decision is taken to be made.

(4) Despite section 35 of the *Administrative Appeals Tribunal Act 1975*:

(a) hearings of proceedings for review of an internal review decision are to be held in private; and

(b) during the proceedings, the Tribunal may, by order:

(i) give directions as to the persons who may be present during all or part of a hearing of the proceedings; and

(ii) give directions of a kind mentioned in paragraph 35(2)(aa), (b) or (c) of that Act.

Division 6—Consolidated groups and MEC groups

31 Registrations and findings not effective for subsidiary members for group R&D activities

(1) An R&D entity's registration under section 27A for an income year has no effect to the extent that the registration is for an activity conducted during a period that the R&D entity is a subsidiary member of a consolidated group or MEC group, of which the head company is an R&D entity.

Example: If an activity is conducted by the R&D entity during all of an income year, and part way through the income year the R&D entity becomes a subsidiary member of a consolidated group:

(a) the R&D entity can apply to be registered for the activity for the income year, and that registration will be effective in respect of the first part of the income year; and

(b) the head company of the group can apply to be registered for the activity for the income year in respect of the second part of the income year.

(2) If:

(a) a finding is made under this Part on application by an R&D entity that is a subsidiary member of a consolidated group or MEC group; and

(b) the head company of the group is also an R&D entity;

the finding has no effect to the extent that the finding is for an activity conducted during a period that the R&D entity is a subsidiary member of the group.

31A What happens to findings if R&D entity joins a group

(1) If a finding (the ***actual finding***) under this Part:

(a) is in force for an R&D entity immediately before the time (the ***joining time***) it becomes a subsidiary member of a consolidated group or MEC group, of which the head company is an R&D entity; and

(b) is for an activity to be conducted wholly or partly after the joining time;

a corresponding finding (the ***deemed finding***) in the same terms is taken to come into force at the joining time for the head company and the activity.

(2) The deemed finding ceases to be in force if the R&D entity ceases to be a subsidiary member of the group.

(3) The result of any review (see Division 5) of an actual finding is taken to apply in a corresponding way to the deemed finding.

(4) Neither section 28F (notice of decision about findings) nor Division 5 (review) applies to the deemed finding.

31B What happens to findings if R&D entity leaves a group

(1) The consequences in subsection (2) apply if a finding (the ***group finding***) under this Part:

(a) is for an R&D entity that is the head company of a consolidated group or MEC group; and

(b) is in force immediately before the time (the ***leaving time***) another R&D entity ceases to be a subsidiary member of the group; and

(c) is for an activity to be conducted by or for the other R&D entity wholly or partly after the leaving time; and

(d) is not a deemed finding.

(2) The consequences are as follows:

(a) a corresponding finding (the ***continuing finding***) in the same terms is taken to come into force at the leaving time for the other R&D entity and the activity;

(b) everything that happened under this Part before the leaving time in relation to the group finding is taken to have happened in relation to the continuing finding;

(c) the group finding ceases to be in force at the leaving time.

Division 7—Other matters

32 Approved forms

(1) This section applies if a provision of this Part requires a thing to be in the approved form.

(2) To be in the approved form for the provision, the thing must:

(a) be in writing in a form approved by the Board; and

(b) include the information required by the form; and

(c) include any other material (including documents) required by the form.

(3) The Board may approve, in writing, a form for the purposes of paragraph (2)(a). When doing so, the Board must ensure the form requires the production of information, or other material (including documents), specified in regulations made for the purposes of this subsection.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

32A *Decision-making principles*

The Minister may, by legislative instrument, make principles (the ***decision-making principles***) that the Board must comply with when deciding the following:

(a) whether to allow a thing to be given under this Part within a further period than that specified in this Part;

(b) whether refusing to make a finding sought under this Part is justified;

(c) whether making a variation sought under section 27M is justified.

32B General rules about findings under this Part

(1) A finding made under this Part in relation to an R&D entity has no effect to the extent of any inconsistency with a finding already in force under this Part in relation to the R&D entity.

Example: A finding under subsection 27J(1) in relation to an R&D entity's registration has no effect to the extent of any inconsistency with:

(a) a finding already in force under that subsection in relation to that registration; or

(b) a finding already in force under subsection 27B(1) in relation to the application for that registration; or

(c) a finding already in force under subsection 28A(1) (advance findings about the nature of activities) in relation to the R&D entity.

(2) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply to the power to make a finding under this Part.

Note: This means the power to make a finding does not itself include the power to vary or revoke that finding. A finding can only be varied or revoked on review under Division 5.

32C Alternative constitutional basis

(1) Without limiting its effect apart from this subsection, this Part also has the effect it would have if:

(a) subsection (2) had not been enacted; and

(b) each reference in this Part to an R&D entity were, by express provision, confined to an R&D entity that:

(i) is a constitutional corporation; or

(ii) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.

(2) Without limiting its effect apart from this subsection, this Part also has the effect it would have if:

(a) subsection (1) had not been enacted; and

(b) this Part, by express provision, confined applications, registrations, findings and decisions under this Part to be in relation to activities, or parts of activities, conducted or to be conducted:

(i) solely in a Territory; or

(ii) solely outside of Australia; or

(iii) solely in a Territory and outside of Australia; or

(iv) for the dominant purpose of supporting core R&D activities conducted, or to be conducted, solely in a Territory.

Part 2—Other amendments

Industry Research and Development Act 1986

2 Section 3

Omit "research and development activities", substitute "R&D activities".

3 Subsection 4(1)

Insert:

approved form has the meaning given by section 32.

4 Subsection 4(1) (definition of *approved research institute*)

Repeal the definition.

5 Subsection 4(1)

Insert:

Commissioner has the same meaning as in the *Income Tax Assessment Act 1997*.

6 Subsection 4(1) (definition of *company*)

Repeal the definition.

7 Subsection 4(1)

Insert:

consolidated group has the same meaning as in the *Income Tax Assessment Act 1997*.

8 Subsection 4(1)

Insert:

constitutional corporation has the same meaning as in the *Income Tax Assessment Act 1997*.

9 Subsection 4(1)

Insert:

core R&D activities has the same meaning as in the *Income Tax Assessment Act 1997*.

10 Subsection 4(1)

Insert:

core technology has the meaning given by subsection 28E(2).

11 Subsection 4(1)

Insert:

decision-making principles has the meaning given by section 32A.

12 Subsection 4(1)

Insert:

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

13 Subsection 4(1) (definition of *finance scheme guidelines*)

Repeal the definition.

14 Subsection 4(1)

Insert:

head company has the same meaning as in the *Income Tax Assessment Act 1997*.

15 Subsection 4(1)

Insert:

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

16 Subsection 4(1)

Insert:

internal review decision has the meaning given by section 30D.

17 Subsection 4(1)

Insert:

MEC group has the same meaning as in the *Income Tax Assessment Act 1997*.

18 Subsection 4(1)

Insert:

R&D activities has the same meaning as in the *Income Tax Assessment Act 1997*.

19 Subsection 4(1)

Insert:

R&D entity has the same meaning as in the *Income Tax Assessment Act 1997*.

20 Subsection 4(1) (definition of *research and development activities*)

Repeal the definition.

21 Subsection 4(1) (definition of *researcher*)

Repeal the definition, substitute:

researcher means an entity that the Board believes is capable of carrying out a project of R&D activities or innovation activities.

22 Subsection 4(1)

Insert:

research field means a research field specified in regulations made for the purposes of this definition.

23 Subsection 4(1)

Insert:

research service provider means an entity registered under section 29A.

24 Subsection 4(1)

Insert:

reviewable decision has the meaning given by section 30A.

25 Subsection 4(1)

Insert:

significant scientific link has the meaning given by subsection 28D(3).

26 Subsection 4(1)

Insert:

subsidiary member has the same meaning as in the *Income Tax Assessment Act 1997*.

27 Subsection 4(1)

Insert:

supporting R&D activities has the same meaning as in the *Income Tax Assessment Act 1997*.

28 Subsection 4(2)

Repeal the subsection.

29 Paragraph 7(aa)

Repeal the paragraph.

30 Paragraph 7(ca)

Omit "Commissioner of Taxation", substitute "Commissioner".

31 Subsection 11(1)

Omit "(1)".

32 Subsection 11(2)

Repeal the subsection.

33 Subsection 22(9)

Repeal the subsection.

34 Part IIIA

Repeal the Part.

35 Subparagraph 46(2)(b)(iv)

Omit "research and development activities", substitute "R&D activities".

36 Paragraph 46(2)(ca)

Repeal the paragraph, substitute:

(ca) must set out:

(i) the total number of applications during the year for registration under section 27A for a tax offset under Division 355 of the *Income Tax Assessment Act 1997*; and

(ii) the total amounts of the offsets involved; and

(iii) an analysis of the operation of the R&D tax offset scheme for the year; and

37 At the end of subsection 46(2)

Add:

; and (f) must set out a copy of the register mentioned in section 29J as it exists at the end of the year.

38 Subsection 47(1)

Omit "except for the purposes of this Act, of the *Census and Statistics Act 1905* or of the *Income Tax Assessment Act 1936* or".

39 Subsection 47(1)

Omit "supply protected information to a person if the supplying", substitute "disclose protected information to a person if disclosing".

40 Subsection 47(2)

Omit "Subsection (1) does not apply to the supply of", substitute "An official to whom this section applies may disclose".

41 After subsection 47(2)

Insert:

(2A) An official to whom this section applies may disclose protected information if the disclosure is made:

(a) in the course of performing a duty or function, or exercising a power, under this Act; or

(b) for the purposes of enabling another person to perform duties or functions, or exercise powers, under this Act; or

(c) for the purposes of enabling a person to perform duties or functions, or exercise powers, under the *Census and Statistics Act 1905* or the *Income Tax Assessment Act 1997*.

42 Subsection 47(3)

Insert:

disclose means divulge or communicate.

43 Section 48A

Repeal the section, substitute:

48A Fees for making applications under Part III

(1) The regulations may specify:

(a) fees for making applications to the Board under Part III; and

(b) a method for indexing the fees.

(2) The fees must not be such as to amount to taxation.

Schedule 3—Other amendments relating to new R&D incentive

Part 1—Tax offset rules

Income Tax Assessment Act 1997

1 Subsection 63-10(1) (after table item 30)

Insert:

35	A *tax offset under Division 355 (about R&D) that is not covered by section 67-30	You may carry it forward to a later income year (under Division 65)

2 Section 67-23 (table item 35)

Repeal the item.

3 At the end of section 67-23

Add:

Note 3: For the tax offsets available under Division 355 (about R&D), see section 67-30.

4 At the end of Division 67

Add:

67-30 Refundable tax offsets—R&D

(1) A *tax offset to which an *R&D entity is entitled under section 355-100 (about R&D) for an income year is subject to the refundable tax offset rules if the amount of the tax offset is worked out using the percentage in item 1 of the table in subsection 355-100(1).

Note 1: Otherwise, the tax offset will be a non-refundable tax offset (see item 35 of the table in subsection 63-10(1)).

Note 2: This subsection can apply to an entitlement under subsection 355-100(1) or (2).

(2) Without limiting its effect apart from this subsection, subsection (1) also has the effect it would have if:

(a) subsection (3) had not been enacted; and

(b) the reference in subsection (1) to an *R&D entity were, by express provision, confined to an R&D entity that:

(i) is a *constitutional corporation; or

(ii) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.

(3) Without limiting its effect apart from this subsection, subsection (1) also has the effect it would have if:

(a) subsection (2) had not been enacted; and

(b) this Act applied so that *tax offsets under section 355-100 could only be worked out in respect of *R&D activities conducted or to be conducted:

(i) solely in a Territory; or

(ii) solely outside of Australia; or

(iii) solely in a Territory and outside of Australia; or

(iv) for the dominant purpose of supporting *core R&D activities conducted, or to be conducted, solely in a Territory.

Part 2—Prepayments of expenditure

Income Tax Assessment Act 1936

5 Subsection 82KZL(1) (paragraph (d) of the definition of *excluded expenditure*)

Repeal the paragraph, substitute:

(d) to the extent that it is of a capital nature and cannot be deducted under:

(i) section 355-205 (R&D expenditure); or

(ii) section 355-480 (earlier year associate R&D expenditure);

of the *Income Tax Assessment Act 1997*; or

(da) to the extent that it is of a private or domestic nature; or

6 Subsection 82KZL(1)

Insert:

R&D activities has the same meaning as in the *Income Tax Assessment Act 1997*.

7 Subsection 82KZL(1) (definition of *research and development activities*)

Repeal the definition.

8 Subsection 82KZL(3)

Omit "carrying on research and development activities", substitute "conducting R&D activities".

9 After section 82KZLA

Insert:

82KZLB How this Subdivision applies to deductible R&D expenditure incurred to associates in earlier income years

In addition to its application apart from this section, this Subdivision applies to expenditure deductible under section 355-480 of the *Income Tax Assessment Act 1997* as if:

(a) references in this Subdivision to incurring the expenditure were references to paying the expenditure; and

(b) references in this Subdivision to the expenditure year were references to the payment year.

10 Paragraph 82KZM(1)(c)

Repeal the paragraph, substitute:

(c) apart from this section, a deduction under:

(i) section 8-1; or

(ii) section 355-205 (R&D expenditure) or 355-480 (earlier year associate R&D expenditure);

of the *Income Tax Assessment Act 1997*, in respect of the expenditure, would be allowable from the taxpayer's assessable income for the year of income in which the expenditure is incurred;

11 Paragraph 82KZMA(1)(a)

Repeal the paragraph, substitute:

(a) apart from that section, the taxpayer could deduct the expenditure for the expenditure year under:

(i) section 8-1; or

(ii) section 355-205 (R&D expenditure) or 355-480 (earlier year associate R&D expenditure);

of the *Income Tax Assessment Act 1997*; and

12 Paragraph 82KZME(1)(a)

Repeal the paragraph, substitute:

(a) apart from that section, the taxpayer could deduct the expenditure for the expenditure year under:

(i) section 8-1; or

(ii) section 355-205 (R&D expenditure) or 355-480 (earlier year associate R&D expenditure);

of the *Income Tax Assessment Act 1997*; and

13 Paragraph 82KZMF(2)(a)

Omit "section 73B, 73BA, 73BH, 73QA, 73QB or former section 73Y of this Act or".

14 At the end of subsection 82KZMF(2)

Add:

Note: Deductions under section 355-205 or 355-480 of the *Income Tax Assessment Act 1997* for R&D expenditure are subject to this section (see subsection 8-5(2) and section 355-105 of that Act).

Part 3—Capital allowances

Income Tax Assessment Act 1997

15 Subsection 40-25(7) (note)

Omit "Note", substitute "Note 1".

16 At the end of subsection 40-25(7)

Add:

Note 2: When this Division notionally applies under section 355-310 (about depreciating assets used for R&D activities), the taxable purpose is sometimes only the purpose of conducting R&D activities.

17 Subsection 40-65(6)

Repeal the subsection, substitute:

Exception: also notionally deductible under R&D provisions

(6) If:

(a) only one of the following events has happened:

(i) you have deducted one or more amounts under this Division for an asset;

(ii) you have been entitled under section 355-100 (about R&D) to one or more *tax offsets because you can deduct one or more amounts under section 355-305 for an asset; but

(b) later, the other event happens for the asset;

then, for the purposes of working out the deduction for the later event, you must choose the same method that you chose for the first event.

Note 1: Deductions under section 355-305 (about decline in value of tangible depreciating assets used for R&D activities) are worked out using a notional application of this Division.

Note 2: This subsection applies with changes if you have or could have deducted an amount under former section 73BA of the *Income Tax Assessment Act 1936* for the asset (see section 40-67 of the *Income Tax (Transitional Provisions) Act 1997*).

(7) If:

(a) the events in paragraph (6)(a) could both arise for the same period for an asset; and

(b) neither event has already arisen for the asset;

then you must choose the same method for the purposes of working out the deduction for each event.

18 Subsection 40-95(9) (note)

Repeal the note.

19 Subsection 40-100(4)

Repeal the subsection, substitute:

Criteria for making a determination

(4) The Commissioner is to make a determination of the ***effective life*** of a *depreciating asset in accordance with subsections (5) and (6).

(5) Firstly, estimate the period (in years, including fractions of years) the asset can be used by any entity for one or more of the following purposes:

(a) a *taxable purpose;

(b) the purpose of producing *exempt income or *non-assessable non-exempt income;

(c) the purpose of conducting *R&D activities, assuming that this is reasonably likely.

(6) Secondly, if relevant for the asset:

(a) assume the asset will be subject to wear and tear at a rate that is reasonable for the Commissioner to assume; and

(b) assume the asset will be maintained in reasonably good order and condition; and

(c) have regard to the period within which the asset is likely to be scrapped, sold for no more than scrap value or abandoned.

However, for paragraph (c), disregard reasons attributable to the technical risk in conducting *R&D activities if it is reasonably likely that the asset will be used for such activities.

20 Subsections 40-105(1), (2) and (3)

Repeal the subsections, substitute:

(1) You work out the ***effective life*** of a *depreciating asset yourself in accordance with this section.

(1A) Firstly, estimate the period (in years, including fractions of years) the asset can be used by any entity for one or more of the following purposes:

(a) a *taxable purpose;

(b) the purpose of producing *exempt income or *non-assessable non-exempt income;

(c) the purpose of conducting *R&D activities, assuming that this is reasonably likely.

(1B) Secondly, if relevant for the asset:

(a) have regard to the wear and tear you reasonably expect from your expected circumstances of use; and

(b) assume that the asset will be maintained in reasonably good order and condition.

(2) If, in working out that period, you decide that the asset would be likely to be:

(a) scrapped; or

(b) sold for no more than scrap value or abandoned;

before the end of that period, its ***effective life*** ends at the earlier time. However, when making your decision, disregard reasons attributable to the technical risk in conducting *R&D activities if it is reasonably likely that the asset will be used for such activities.

(3) You work out the period mentioned in subsection (1A) or (2) beginning at the *start time of the *depreciating asset.

21 Subsection 40-215(1)

Omit "(1)".

22 At the end of subsection 40-215(1)

Add:

Note: This section does not apply to notional deductions under section 355-305 or 355-520 (about R&D) because those provisions are about deducting the asset's decline in value, not its cost.

23 Subsection 40-215(2)

Repeal the subsection.

24 Section 40-292

Repeal the section, substitute:

40-292 Adjustments—assets used for both general tax purposes and R&D activities

(1) This section applies if:

(a) a *balancing adjustment event happens in an income year (the ***event year***) for an asset you *held and for which:

(i) you can deduct, for an income year, an amount under section 40-25, as that section applies apart from Division 355 and former section 73BC of the *Income Tax Assessment Act 1936*; or

(ii) you could have deducted, for an income year, an amount as described in subparagraph (i) if you had used the asset; and

(b) you are entitled under section 355-100 to *tax offsets for one or more income years for deductions (the ***R&D deductions***) under section 355-305 for the asset.

Note: This section applies in a modified way if you have deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 40-292 of the *Income Tax (Transitional Provisions) Act 1997*).

Section 40-290 to be applied as if use for conducting R&D activities were use for a taxable purpose

(2) In applying section 40-290 (including references in that section to the reduction of deductions under section 40-25) in relation to the asset, assume that using the asset for a *taxable purpose includes using it for the purpose of conducting the *R&D activities to which the R&D deductions relate.

Increase in amounts deductible under section 40-285

(3) If you are entitled under section 355-100 to a *tax offset for the event year in respect of deductions under Division 355 totalling at least $20,000, any amount (the ***section 40-285 amount***) you can deduct for the asset under section 40-285 (after applying subsection (2) of this section) for the event year is increased by:

(a) if your *aggregated turnover for the event year is less than $20 million—1/2 of the amount worked out under subsection (5) of this section; and

(b) otherwise—1/3 of the amount worked out under subsection (5) of this section.

Increase in amounts assessable under section 40-285

(4) Any amount (the ***section 40-285 amount***) that is included in your assessable income for the asset under section 40-285 (after applying subsection (2) of this section) for the event year is increased by 1/3 of the amount worked out under subsection (5) of this section.

Component of any increase in amounts deductible or assessable

(5) The amount is worked out as follows:

$$\frac{\text{Sum of your R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of the deduction; or

(b) if the section 40-285 amount is an amount included in your assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the *cost of the asset less its *adjustable value.

40-293 Adjustments—partnership assets used for both general tax purposes and R&D activities

(1) This section applies to an *R&D partnership if:

(a) a *balancing adjustment event happens in an income year (the ***event year***) for a *depreciating asset *held by the R&D partnership and for which:

(i) the R&D partnership can deduct, for an income year, an amount under section 40-25, as that section applies

apart from Division 355 and former section 73BC of the *Income Tax Assessment Act 1936*; or

(ii) the R&D partnership could have deducted, for an income year, an amount as described in subparagraph (i) if it had used the asset; and

(b) one or more partners of the R&D partnership are entitled under section 355-100 to *tax offsets for one or more income years for deductions (the ***R&D deductions***) under section 355-520 for the asset.

Note: This section applies in a modified way if the partners have deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 40-293 of the *Income Tax (Transitional Provisions) Act 1997*).

Section 40-290 to be applied as if use for conducting R&D activities were use for a taxable purpose

(2) In applying section 40-290 (including references in that section to the reduction of deductions under section 40-25) in relation to the asset, assume that using the asset for a *taxable purpose includes using it for the purpose of conducting the *R&D activities to which the R&D deductions relate.

Increase in amounts deductible or assessable under section 40-285

(3) Any amount (the ***section 40-285 amount***):

(a) that the *R&D partnership can deduct for the asset under section 40-285 (after applying subsection (2) of this section) for the event year; or

(b) that is included in the R&D partnership's assessable income for the asset under section 40-285 (after applying subsection (2) of this section) for the event year;

is increased by $^1/_3$ of the following amount:

$$\frac{\text{Sum of all R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of the deduction; or

(b) if the section 40-285 amount is an amount included in the *R&D partnership's assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the *cost of the asset less its *adjustable value.

25 Subsection 40-425(8)

Repeal the subsection, substitute:

Exception: R&D

(8) You cannot allocate a *depreciating asset to a low-value pool if you are entitled under section 355-100 to a *tax offset for a deduction under section 355-305 for the asset for an income year starting before, or at the same time as, the allocation has effect.

Note: A similar rule applies if you deducted or could have deducted amounts under former 73BA of the *Income Tax Assessment Act 1936* (see section 40-430 of the *Income Tax (Transitional Provisions) Act 1997*).

Part 4—Capital works

Income Tax Assessment Act 1997

26 Section 43-35

Repeal the section, substitute:

43-35 Requirement for registration under the Industry Research and Development Act

You may deduct an amount under this Division on the basis of using capital works for the purpose of conducting *R&D activities only if:

(a) you are registered under section 27A (registering R&D activities) of the *Industry Research and Development Act 1986* for the R&D activities for an income year; or

(b) if you are an *R&D partnership—an *R&D entity, who was a partner of the R&D partnership at some time while the R&D activities were conducted, is registered under that section for the R&D activities for an income year.

Note 1: R&D activities must be conducted in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

Note 2: You may still deduct an amount under this Division if you were registered for the R&D activities under former section 39J (Registration of eligible companies) of the *Industry Research and Development Act 1986* (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

27 Paragraph 43-70(2)(g)

Repeal the paragraph, substitute:

(g) expenditure on property for which a deduction under section 355-305 or 355-520 is allowable for the property, or would be allowable if the property were for use for conducting *R&D activities; or

28 Subsection 43-70(2) (note)

Repeal the note.

29 Section 43-90

Omit "*research and development activities", substitute "research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*)".

30 Section 43-90

After "research and development activities", insert "(within the meaning of that former section)".

31 Section 43-90 (note)

Repeal the note, substitute:

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example, certain facilities that are not commonly provided in a hotel, motel or guest house in Australia are taken not to be used or for use to operate a hotel, motel or guest house, see subsection 43-180(6).

32 Section 43-100

Omit "*research and development activities", substitute "*core R&D activities or *supporting R&D activities".

33 At the end of section 43-100

Add:

Note: Core R&D activities and supporting R&D activities are kinds of R&D activities.

34 Subsection 43-140(1)

Omit "carrying on *research and development activities" (wherever occurring), substitute "conducting *R&D activities".

35 Subsection 43-140(1) (note 1)

Omit "Research and development activities must be carried on", substitute "R&D activities must be conducted".

36 Subsection 43-140(1) (note 2)

Omit "carrying on research and development activities", substitute "conducting R&D activities".

37 Section 43-195 (heading)

Repeal the heading, substitute:

43-195 Use for R&D activities must be in connection with a business

38 Section 43-195

Omit "*research and development activities", substitute "*R&D activities".

39 Section 43-210 (step 4)

Omit "carrying on *research and development activities", substitute "conducting *R&D activities".

40 Section 43-210 (note to step 4)

Omit "research and development activities", substitute "R&D activities".

41 Section 43-215 (step 3)

Omit "carrying on *research and development activities", substitute "conducting *R&D activities".

Part 5—Forgiveness of commercial debts

Division 1—Amending the new law

Income Tax Assessment Act 1997

42 Subsection 245-145(1) (table item 4)

Repeal the item, substitute:

4	Expenditure deductible under Division 355 (R&D)	Division 355 of this Act

Note: This item will not commence unless Schedule 2 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010* commences.

Division 2—Amending the old law

Income Tax Assessment Act 1936

43 Subsection 245-140(1) in Schedule 2C (table item 8 of the definition of *table of deductible expenditure*)

Repeal the item, substitute:

8	Expenditure deductible under Division 355 (R&D) of the *Income Tax Assessment Act 1997*	Division 355 of that Act

Note: This item will not commence if Schedule 2 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010* has already commenced.

Part 6—Other amendments

Income Tax Assessment Act 1936

44 Sections 73B to 73Z

Repeal the sections.

45 Section 94J

After "this Act", insert "and other than Division 355 of the *Income Tax Assessment Act 1997*".

46 After subsection 102T(8)

Insert:

(9) A reference in section 355-35 of the *Income Tax Assessment Act 1997* to a body corporate is to be read as including a reference to a body corporate acting in its capacity as trustee of a public trading trust.

47 Subsection 136AB(2)

After "*Income Tax Assessment Act 1997*", insert ", and of section 355-400 of that Act,".

48 Subsection 170(10A)

Repeal the subsection.

49 Subsection 262A(4AC)

Omit "73E(1), 73F(1) or 73G(1),".

50 Paragraph 262A(4AC)(a)

Omit "73E, 73F or 73G,".

51 Subsection 57-85(3) in Schedule 2D (table item 13)

Repeal the item, substitute:

13	R&D	Division 355

52 Subsection 57-110(2) in Schedule 2D (table item 7)

Repeal the item, substitute:

7	R&D	Sections 40-292, 40-293, 355-315 and 355-525	Section 40-25, 355-305 or 355-520

53 At the end of subsection 57-110(2) in Schedule 2D

Add:

Note: Item 7 of the table is expanded by section 355-340 of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax Assessment Act 1997

54 Section 4-25

Repeal the section, substitute:

4-25 Special provisions for working out your basic income tax liability

The following provisions may increase your basic income tax liability beyond the liability worked out simply by applying the income tax rates to your taxable income:

(a) Subdivision 355-G;

(b) subsection 392-35(3).

Note 1: Subdivision 355-G increases some entities' tax liability by requiring them to pay extra income tax on government recoupments relating to R&D activities for which entitlements to tax offsets arise under Division 355.

Note 2: Subsection 392-35(3) increases some primary producers' tax liability by requiring them to pay extra income tax on their averaging components worked out under Subdivision 392-C.

55 Subsection 9-5(1) (after table item 4)

Insert:

4A	An entity is liable to pay extra income tax on government recoupments relating to R&D activities for which entitlements to tax offsets arise under Division 355.	Subdivision 355-G

56 Section 10-5 (table item headed "balancing adjustment")

Omit "*research & development*", substitute "*R&D*".

57 Section 10-5 (table item headed "industrial property")

Omit "*research and development*", substitute "*R&D*".

58 Section 10-5 (after table item headed "quarrying")

Insert:

R&D		
	balancing adjustment	40-292, 40-293, 355-315 and 355-525
	disposal of R&D results	355-410
	feedstock adjustment	355-465

59 Section 10-5 (table item headed "research & development")

Repeal the item.

60 Section 12-5 (table item headed "balancing adjustment")

Omit "*research & development and*", substitute "*R&D* and".

61 Section 12-5 (table item headed "industrial property")

Omit "*research* and *development*", substitute "*R&D*".

62 Section 12-5 (after table item headed "qualifying securities")

Insert:

R&D	Division 355

63 Section 12-5 (table item headed "research & development")

Repeal the item.

64 Section 12-5 (table item headed "scientific research")

Omit "*research & development*", substitute "*R&D*".

65 Section 13-1 (after table item headed "public unit trust")

Insert:

R&D	Division 355

66 Section 13-1 (table item headed "research and development")

Repeal the item.

67 Section 20-5 (table items 5 and 6)

Repeal the items.

68 Section 20-5 (at the end of the table)

Add:

9	An R&D entity receives or becomes entitled to receive an amount: • for, or relating to, the results of R&D activities; or • attributable to it incurring expenditure on R&D activities or to its use of a depreciating asset for the purpose of conducting R&D activities; and the entity is entitled under Division 355 to a tax offset relating to those R&D activities. The amount is included in its assessable income.	355-410
10	You receive a recoupment from government relating to R&D activities for which entitlements to tax offsets under Division 355 arise. Extra income tax is payable on the recoupment.	Subdivision 355-G

69 Subsection 20-30(1) (after table item 1.19)

Insert:

1.19A	Division 355	R&D

70 Subsection 20-30(2) (table item 2.8)

Before "**73B, 73BA or 73BH**", insert "Former".

71 Subsection 41-10(2)

Repeal the subsection, substitute:

(2) Subsection 355-715(2) (tax offset for assets used for R&D activities) does not apply to a deduction under subsection (1).

72 Paragraph 41-10(3)(c)

Repeal the paragraph, substitute:

(c) disregard subsection 355-715(2) (tax offset for assets used for R&D activities).

73 Section 104-235 (heading)

Repeal the heading, substitute:

104-235 Balancing adjustment events for depreciating assets and certain assets used for R&D: CGT event K7

74 Paragraph 104-235(1A)(a)

Repeal the paragraph, substitute:

(a) you are an *R&D entity and you could deduct an amount under section 40-25 for the *depreciating asset if the following assumptions were made:

(i) despite paragraph 40-30(1)(c) and subsection 40-30(2), all intangible assets were excluded from the definition of ***depreciating asset*** in section 40-30;

(ii) subsection 40-45(2) did not, except in the case of buildings, prevent Division 40 from applying to capital works to which Division 43 applies, or to which Division 43 would apply but for expenditure being incurred, or capital works being started, before a particular day;

(iii) you satisfied any relevant requirement for deductibility under Division 40; or

75 Subsection 104-235(1B)

Repeal the subsection, substitute:

(1B) ***CGT event K7*** also happens if:

(a) you are an *R&D entity; and

(b) a *balancing adjustment event occurs for a *depreciating asset you *held; and

(c) when you held the asset, you could deduct an amount under section 40-25 for the asset if the assumptions set out in paragraph (1A)(a) were made; and

(d) at some time when you held the asset:

(i) you used it other than for a taxable purpose or for the purpose of conducting *R&D activities for which you were registered under section 27A of the *Industry Research and Development Act 1986*; or

(ii) you had it installed ready for use other than for a taxable purpose.

76 At the end of subsection 104-235(1B)

Add:

Note: For subparagraph (d)(i), disregard any use of the asset for the purpose of carrying on research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*): see section 104-235 of the *Income Tax (Transitional Provisions) Act 1997*.

77 Paragraph 104-235(4)(a)

Repeal the paragraph, substitute:

(a) the *depreciating asset covered by subsection (1) or (1B) is a *pre-CGT asset; or

78 Subsection 104-240(1)

Omit "or the section 73BA depreciating asset", substitute "covered by subsection 104-235(1) or (1B)".

79 Subsection 104-240(1) (paragraph (a) of the definition of *sum of reductions*)

Omit "in the case of the *depreciating asset", substitute "if the *depreciating asset is covered by subsection 104-235(1)".

80 Subsection 104-240(1) (paragraph (b) of the definition of *sum of reductions*)

Repeal the paragraph, substitute:

(b) if the depreciating asset is covered by subsection 104-235(1B)—the reductions that would have been required under section 40-25 on the assumption that using the asset for a *taxable purpose included using it for the purpose of

conducting *R&D activities for which you were registered under section 27A of the *Industry Research and Development Act 1986*.

81 Subsection 104-240(1) (definition of *total decline*)

Omit "or the section 73BA depreciating asset".

82 Subsection 104-240(1) (note)

Repeal the note, substitute:

Note 1: This subsection applies in a modified way if you used the asset for the purpose of carrying on research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*): see section 104-235 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: The CGT concepts of cost base and capital proceeds are not relevant for this event.

83 Subsection 104-240(2)

Omit "or the section 73BA depreciating asset", substitute "covered by subsection 104-235(1) or (1B)".

84 Paragraphs 108-55(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) Subdivision 40-D; or

(b) section 355-315 or 355-525 (about R&D).

85 Paragraph 110-45(2)(b) (note)

Repeal the note.

86 Subsection 110-45(2) (table item 3)

Repeal the item.

87 Section 118-24 (heading)

Repeal the heading, substitute:

118-24 Depreciating assets

88 Subsection 118-24(1)

Omit "or a section 73BA depreciating asset (within the meaning of section 73BB of the *Income Tax Assessment Act 1936*)".

89 Subsection 118-24(1)

After "Division 40", insert "(including that Division as it applies under Division 355)".

90 Section 118-35

Repeal the section, substitute:

118-35 R&D

Disregard a *capital gain or *capital loss from a *CGT event if an amount is included in your assessable income in any income year under section 355-410 (about disposal of R&D results) because of that CGT event.

91 Subsection 205-15(1) (table items 1 and 2)

After "that part of the payment that is attributable to the period during which the entity was a franking entity", insert ", less any reduction under subsection (4)".

92 At the end of section 205-15

Add:

(4) An entity's *franking credit for a payment mentioned in item 1 or 2 of the table in subsection (1) is reduced by the amount (if any) worked out as follows, but not below zero.

Method statement

Step 1. Identify any income years ending before the payment was made for which the entity has *received a refund of income tax.

Step 2. Add up the part (if any) of each of those refunds that is attributable to a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).

Step 3. Subtract any reduction under this subsection of a *franking credit for any earlier payment by the entity.

(For this purpose, assume a credit reduced to zero is still a franking credit.)

93 Subsection 205-30(2)

Repeal the subsection, substitute:

(2) Despite item 2 of the table in subsection (1), no debit arises on that part of the refund that is attributable to any of the following:

(a) a payment of income tax in relation to either or both of the following:

(i) an *FHSA component;

(ii) an *RSA component;

(b) a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).

94 Paragraph 205-35(1)(b)

Repeal the paragraph, substitute:

(b) the refund of the amount, or the application of the credit, represents in whole or in part:

(i) a return to the entity of an amount paid or applied to satisfy the entity's liability to pay income tax; or

(ii) the amount remaining after applying a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D) against the entity's basic income tax liability.

95 Subsection 205-35(2)

After "return", insert ", or amount remaining,".

96 Paragraph 230-515(2)(b)

Repeal the paragraph.

97 Paragraph 250-290(2)(c)

Omit "and 40-292", substitute ", 40-292 and 40-293".

98 Subsection 295-85(4) (table item 7)

Omit "Research and development", substitute "R&D".

99 Subsection 328-175(9)

Repeal the subsection, substitute:

Exception: assets for which previously entitled to a tax offset under the R&D provisions

(9) You cannot deduct amounts for a *depreciating asset for any period under this Subdivision if you are entitled under section 355-100 to a *tax offset for a deduction under section 355-305 for the asset for the same or an earlier period.

100 Subsection 345-10(4) (table item 7)

Omit "Research and development", substitute "R&D".

101 Section 701-5 (note 2)

Repeal the note.

102 Subsection 701-40(1) (note)

Repeal the note.

103 Paragraph 701-40(2)(d)

Repeal the paragraph.

104 Subsection 701-55(2)

Omit "Subdivision 328-D, and sections 73BA and 73BF of the *Income Tax Assessment Act 1936*,", substitute "Subdivisions 328-D and 355-E".

105 Before Subdivision 716-Z

Insert:

Subdivision 716-V—Research and Development

Table of sections

716-500 Head company bound by agreements binding on subsidiary members
716-505 History for entitlement to tax offset: joining entity
716-510 History for entitlement to tax offset: leaving entity

716-500 Head company bound by agreements binding on subsidiary members

Section 355-220 (about R&D activities conducted for a foreign entity) applies to the *head company of a *consolidated group as if the head company were bound by an agreement during any period that a *subsidiary member of the group is bound by the agreement.

716-505 History for entitlement to tax offset: joining entity

If:

(a) a company becomes a *subsidiary member of a *consolidated group; and

(b) apart from this section, things happening in relation to the company before it became a subsidiary member would, because of section 701-5 (the entry history rule), be taken into account as things happening in relation to the *head company for working out the head company's *aggregated turnover for the purposes of section 355-100 (tax offsets for R&D);

the things happening are not to be taken into account as mentioned in paragraph (b).

716-510 History for entitlement to tax offset: leaving entity

If:

(a) a company ceases to be a *subsidiary member of a *consolidated group; and

(b) while the company was a subsidiary member, things happened in relation to an entity which, if section 701-1 (the single entity rule) were disregarded:

(i) would be *connected with the company; or

(ii) would be an *affiliate of the company; or

(iii) would have the company as an affiliate; and

(c) those things would, if section 701-1 were disregarded, have been taken into account in working out the company's *aggregated turnover for the purposes of section 355-100 (tax offsets for R&D); and

(d) the things are not also things that, because of section 701-40 (the exit history rule), are taken into account as things

happening in relation to an eligible asset etc. (within the meaning of that section) of the company in working out for the entity core purposes the company's aggregated turnover for the purposes of section 355-100;

the things are to be taken into account in working out the company's aggregated turnover for the purposes of section 355-100.

106 Subsection 995-1(1) (paragraph (e) of the definition of *capital allowance*)

Omit "films); or", substitute "films).".

107 Subsection 995-1(1) (paragraph (f) of the definition of *capital allowance*)

Repeal the paragraph.

Income Tax (Transitional Provisions) Act 1997

108 Subsection 118-24A(1)

Before "subsection 73B(1)", insert "former".

Taxation Administration Act 1953

109 Paragraph 14ZW(1)(bc)

Repeal the paragraph.

110 Subsection 286-75(3) in Schedule 1

Repeal the subsection.

111 Paragraph 286-80(2)(b) in Schedule 1

Repeal the paragraph.

Schedule 3A—Quarterly credits

Part 1—Introduction

1 Definitions

(1) In this Schedule:

net refund assessment position: an entity is in a ***net refund assessment position*** for an income year if:

(a) an excess remains after the entity's tax offsets for the income year are applied against its basic income tax liability for the income year; and

(b) that excess is wholly or partly refundable.

Note: The excess will be wholly or partly refundable if some or all of the tax offsets are refundable tax offsets.

quarterly credit means a credit referred to in item 3.

refundable R&D tax offset: an entity is entitled to a ***refundable R&D tax offset*** for an income year if:

(a) the entity is an R&D entity that is entitled under section 355-100 of the *Income Tax Assessment Act 1997* to a tax offset for the income year; and

(b) that tax offset is a refundable tax offset.

refundable tax offset means a tax offset that is subject to the refundable tax offset rules.

relevant Acts means the following Acts:

(a) the *Income Tax Assessment Act 1936*;

(b) the *Income Tax Assessment Act 1997*;

(c) the *Industry Research and Development Act 1986*;

(d) the *Taxation Administration Act 1953.*

total credits: an entity's ***total credits*** for an income year is an amount equal to the sum of the entity's quarterly credits for the income year.

(2) Subject to subitem (1), an expression used in this Schedule that is also used in the *Income Tax Assessment Act 1997* has the same meaning in this Schedule as it has in that Act.

Part 2—Power to make regulations to modify operation of Acts

2 Regulations may modify operation of Acts to allow quarterly credits

(1) The Governor-General may make regulations modifying the operation of one or more of the relevant Acts for the purpose of achieving the objectives set out in this Part. The regulations have effect accordingly.

(2) The Minister must recommend to the Governor-General that the Governor-General make regulations under subitem (1) before 1 January 2014.

3 First objective—quarterly credits in anticipation of refundable tax offset

(1) The first objective is that an R&D entity will be credited by the Commissioner quarterly amounts for an income year if particular requirements are satisfied.

Note 1: These requirements include the R&D entity satisfying eligibility criteria and other matters (for example, see Part 3).

Note 2: Receiving quarterly credits may result in the R&D entity being paid an amount out of the Consolidated Revenue Fund (see section 16 of the *Taxation Administration Act 1953*).

(2) Three of the eligibility criteria for a quarterly credit for an income year are:

(a) that it is reasonable to expect that the R&D entity will be entitled to a refundable R&D tax offset for the income year relating to R&D activities conducted during the income year; and

(b) if Innovation Australia makes one or more findings about the R&D activities or purported R&D activities—that those findings are positive; and

(c) that the quarter begins on or after 1 January 2014.

Note: There may be additional eligibility criteria (for example, see subparagraph 5(1)(a)(ii)).

4 Second objective—tax neutral consequences

(1) The second objective is that, as far as practicable, there be tax-neutral consequences for an R&D entity receiving quarterly credits.

Note 1: This objective is for the R&D entity to be in the same position, for income tax purposes, whether:

(a) the R&D entity receives quarterly credits for an income year; or

(b) the R&D entity does not receive those quarterly credits, and becomes entitled, after the end of the income year, to the refundable R&D tax offset for the income year.

Note 2: Achieving this objective could include providing for a reconciliation and other integrity measures (for example, see paragraphs 5(1)(l) and (p) and subitem 5(4)).

(2) For the purposes of subitem (1), disregard consequences relating to time.

Part 3—Modified Acts may provide for certain matters

5 Some matters the modified Acts may provide for

(1) As a result of the regulations, the collective operation of the relevant Acts may provide for any or all of the following matters:

(a) eligibility criteria for quarterly credits, including:

(i) matters relevant to working out when paragraph 3(2)(b) is satisfied; and

(ii) additional criteria to those mentioned in subitem 3(2);

(b) how applications for quarterly credits may be made, including that:

(i) applications must be in an approved form; and

(ii) applications may be varied;

(c) that Innovation Australia may make findings (the ***IA findings***) about the activities that relate to an application, or proposed application, for quarterly credits;

(d) how IA findings may be made, including that IA findings may be made on application in an approved form;

(e) fees relating to applications for quarterly credits or applications for IA findings, and a method for indexing the fees;

(f) how applications for quarterly credits or IA findings are considered (and approved or rejected);

(g) that applicants for quarterly credits or IA findings are notified of specified decisions or matters;

(h) that further information may be requested from applicants for quarterly credits or IA findings;

(i) deadlines for doing things in relation to quarterly credits or the making of IA findings;

(j) how amounts of quarterly credits are worked out;

(k) that each quarterly credit is a credit the R&D entity is entitled to under a taxation law for the purposes of Part IIB of the *Taxation Administration Act 1953*;

(l) that an R&D entity's total credits for an income year become a debt due to the Commonwealth at a specified time after the end of the income year;

(m) that each of the following may be varied or revoked:

(i) an approval of an application for quarterly credits;

(ii) an IA finding;

(n) that internal review may be sought of specified decisions relating to quarterly credits or the making of IA findings;

(o) that review by the Administrative Appeals Tribunal may be sought of internal review decisions relating to quarterly credits or the making of IA findings;

(p) integrity measures;

(q) that specified findings, decisions or requests made by Innovation Australia relating to quarterly credits are binding on the Commissioner (or vice versa);

(r) that Innovation Australia is authorised to disclose to the Commissioner (or vice versa) information relating to quarterly credits or the making of IA findings;

(s) matters of a transitional, application or saving nature;

(t) matters of a consequential, ancillary or incidental nature.

Note 1: Innovation Australia's findings (see paragraph (c)) could be made before, during or after the consideration of an application for quarterly credits.

Note 2: Innovation Australia could make decisions on its own initiative or on application. For example, Innovation Australia could make a finding, or vary a finding or an approval, on its own initiative.

(2) Without limiting paragraph (1)(a), examples of additional eligibility criteria include the following:

(a) that it is reasonable to expect that the R&D entity will be in a net refund assessment position for the income year;

(b) that the R&D entity has been assessed as being entitled under section 355-100 of the *Income Tax Assessment Act 1997* to a tax offset (whether a refundable tax offset or not) for an earlier income year.

(3) Fees referred to in paragraph (1)(e) must not be such as to amount to taxation.

(4) Without limiting paragraph (1)(p), examples of integrity measures include the following:

(a) if an R&D entity's total credits for an income year exceeds the amount of the R&D entity's entitlement to a refundable R&D tax offset for the income year—that the R&D entity may be liable to pay a penalty on the excess;

(b) if the approval of an R&D entity's application for quarterly credits for an income year is revoked—that the R&D entity's total credits for the income year become a debt due to the Commonwealth at a specified time.

(5) As a result of the regulations, the collective operation of the relevant Acts may provide that a disclosure referred to in paragraph (1)(r) may be made despite:

(a) subsection 47(1) of the *Industry Research and Development Act 1986*; and

(b) sections 355-25, 355-155 and 355-265 in Schedule 1 to the *Taxation Administration Act 1953*.

(6) This item does not limit item 2.

6 Other matters the modified Acts may provide for

(1) As a result of the regulations, the collective operation of the relevant Acts may make different provision for a matter for different kinds of entities.

Note: For example, different provision could be made for members of consolidated groups or MEC groups.

(2) As a result of the regulations, the collective operation of the relevant Acts may make provision for a matter by:

(a) empowering a person to make a decision of an administrative character; and

(b) if appropriate, requiring the person to make that decision in accordance with decision-making principles.

Any decision-making principles must be legislative instruments.

(3) This item does not limit item 2.

Part 4—Alternative constitutional basis

7 Alternative constitutional basis

(1) Without limiting its effect apart from this subitem, the modified operation of each relevant Act as a result of the regulations has the effect it would have if:

(a) subitem (2) had not been enacted; and

(b) the relevant Act applied so that quarterly credits could only be worked out for an R&D entity that:

(i) is a constitutional corporation; or

(ii) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.

(2) Without limiting its effect apart from this subitem, the modified operation of each relevant Act as a result of the regulations has the effect it would have if:

(a) subitem (1) had not been enacted; and

(b) the relevant Act applied so that quarterly credits could only be worked out in respect of activities, or parts of activities, conducted or to be conducted:

(i) solely in a Territory; or

(ii) solely outside of Australia; or

(iii) solely in a Territory and outside of Australia; or

(iv) for the dominant purpose of supporting core R&D activities conducted, or to be conducted, solely in a Territory.

Part 5—Other matters

8 Varying the regulations

The Governor-General may vary, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, regulations made under item 2. However, the Governor-General must not repeal those regulations.

Note: Those regulations may be varied on or after 1 January 2014.

9 Another way of dealing with transitional, application or saving matters

(1) The Governor-General may make regulations dealing with matters of a transitional, application or saving nature relating to the making of regulations under item 2.

Note: This is another way of dealing with these kinds of matters. These kinds of matters could also be dealt with under item 2. That is, as a result of regulations made under item 2, the collective operation of the relevant Acts could make provision for some or all of these kinds of matters (see paragraph 5(1)(s)).

(2) Item 7 applies to regulations made under subitem (1) in a corresponding way to the way it applies to the modified operation of a relevant Act.

Schedule 4—Application, savings and transitional provisions

Part 1—Application provisions

1 Application of repeals and amendments

(1) The repeals and amendments made by this Act apply:

(a) so far as they affect assessments—to assessments for income years commencing on or after 1 July 2011; and

(b) so far as they relate to income years but do not affect assessments—to income years commencing on or after 1 July 2011; and

(c) otherwise—to acts done or omitted to be done, states of affairs existing, or periods ending on or after the commencement of the first income year commencing on or after 1 July 2011.

Note: For the purposes of an assessment for an income year commencing on or after 1 July 2011, regard may still be had to acts done or omitted to be done, states of affairs existing, or periods ending during an earlier income year. For example, regard may be had to expenditure incurred by other entities in income years commencing before 1 July 2011 for the purposes of paragraph 355-415(1)(b) of the *Income Tax Assessment Act 1997*.

(2) However, each of the following applies in relation to the 2011-12 financial year and all later financial years:

(a) section 29E of the *Industry Research and Development Act 1986* (as inserted by Schedule 2);

(b) the repeal of paragraph 39H(b) of the *Industry Research and Development Act 1986*;

(c) section 46 of the *Industry Research and Development Act 1986* (as amended by this Act).

Part 2—General savings provisions

2 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

(a) any act done or omitted to be done; or

(b) any state of affairs existing; or

(c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

3 Making and amending assessments, and doing other things etc., in relation to past matters

(1) Even though a provision is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

(a) making or amending an assessment (including under a provision that is itself repealed or amended);

(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Note: Examples of things covered by this subitem are as follows:

(a) an eligible company may object under Part IVC of the *Taxation Administration Act 1953* in an income year commencing on or after 1 July 2011 about a notice given under former section 73I of the *Income Tax Assessment Act 1936* for an income year commencing before 1 July 2011;

(b) an eligible company seeking registration under former section 39J of the *Industry Research and Development Act 1986* for an income year commencing before 1 July 2011 may do so during an income year commencing on or after 1 July 2011;

(c) Innovation Australia may give a certificate under former section 39M of the *Industry Research and Development Act 1986*

in an income year commencing on or after 1 July 2011 about research and development activities registered for an income year commencing before 1 July 2011.

(2) Even though a provision is repealed or amended by this Act, the repeal or amendment is disregarded so far as it relates to a state of affairs:

(a) that exists after the repeal or amendment applies; and

(b) that relates to:

(i) an act done or omitted to be done; or

(ii) a state of affairs existing; or

(iii) a period ending;

before the repeal or amendment applies.

Note: Examples of things covered by this subitem are as follows:

(a) an amount may be included in an eligible company's assessable income under former subsection 73BF(4) of the *Income Tax Assessment Act 1936* for an income year commencing on or after 1 July 2011 if the company receives in that income year an amount for the results of research and development activities for which the company had deductions under former section 73BA of that Act in an income year commencing before 1 July 2011;

(b) an eligible company's deduction under section 73B of the *Income Tax Assessment Act 1936* for expenditure incurred during an income year commencing before 1 July 2011 is reduced because of section 73C of that Act if, in an income year commencing on or after 1 July 2011, the company receives a recoupment of that expenditure from the Commonwealth.

(3) To avoid doubt, this item extends to the repeal of subsection 286-75(3), and paragraph 286-80(2)(b), in Schedule 1 to the *Taxation Administration Act 1953*. In particular, if, in a particular case, the period in respect of which an administrative penalty is payable under subsection 286-75(3) in that Schedule:

(a) has not begun; or

(b) has begun but not ended;

when those provisions are repealed, then, despite the repeal, those provisions continue to apply in the particular case until the end of the period.

4 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

5 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the ***subject provision***) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on a provision that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

6 Schedule does not limit operation of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of the *Acts Interpretation Act 1901*.

Part 3—Transitional provisions appearing as amendments of other Acts

Income Tax Assessment Act 1997

7 Subsection 40-75(2) (note)

Omit "Note", substitute "Note 1".

8 At the end of subsection 40-75(2)

Add:

Note 2: You may also adjust the formula for an income year if you had undeducted core technology expenditure for the asset at the end of your last income year commencing before 1 July 2011 (see section 355-605 of the *Income Tax (Transitional Provisions) Act 1997*).

9 Subsection 40-85(2) (note)

Repeal the note, substitute:

Note: The opening adjustable value of a depreciating asset may be modified by one of these provisions:

(a) Subdivision 27-B;
(b) subsection 40-90(3);
(c) subsection 40-285(4);
(d) paragraph 40-365(5)(b);
(e) section 775-70;
(f) section 775-75;
(g) section 355-605 of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax (Transitional Provisions) Act 1997

10 After section 40-65

Insert:

40-67 Methods for working out decline in value

(1) Subsections 40-65(6) and (7) of the *Income Tax Assessment Act 1997* apply with the changes set out in this section if either or both of the following events have happened:

(a) you have deducted one or more amounts under former section 73BA of the *Income Tax Assessment Act 1936* for an asset;

(b) you could have deducted one or more amounts under that former section for the asset if you had not chosen tax offsets under former section 73I of that Act.

(2) Assume:

(a) paragraph 40-65(6)(a) of the *Income Tax Assessment Act 1997* included both events set out in subsection (1) of this section; and

(b) subsections 40-65(6) and (7) of that Act deal with all 4 kinds of events in a corresponding way to the way that they deal with 2 kinds of events.

11 At the end of Subdivision 40-B

Add:

40-105 Calculations of effective life

(1) This section applies to the following (the ***instrument***):

(a) a determination under section 40-100 of the *Income Tax Assessment Act 1997* of the effective life of an asset;

(b) a calculation under section 40-105 of that Act of the effective life of an asset;

if the instrument was in force immediately before the commencement of Schedule 1 to the *Tax Laws Amendment (Research and Development) Act 2011*.

(2) The instrument has effect, after that commencement, as if it had been made under that section as amended by the *Tax Laws Amendment (Research and Development) Act 2011*.

12 After section 40-290

Insert:

40-292 Balancing adjustment—assets used for both general tax purposes and R&D activities

R&D entity has old law R&D decline in value deductions

(1) This section applies to an R&D entity if:

(a) a balancing adjustment event happens in an income year (the ***event year***) commencing on or after 1 July 2011 for an asset held by the R&D entity and:

(i) the R&D entity can deduct, for an income year, an amount under section 40-25 of the *Income Tax Assessment Act 1997* (the ***new Act***), as that section applies apart from Division 355 of that Act and former section 73BC of the *Income Tax Assessment Act 1936* (the ***old Act***); or

(ii) the R&D entity could have deducted, for an income year, an amount as described in subparagraph (i) if it had used the asset; and

(b) either or both of the following subparagraphs apply:

(i) the R&D entity can deduct (the ***old law deductions***) under former section 73BA or 73BH of the old Act an amount for one or more income years for the asset;

(ii) the R&D entity chooses tax offsets under former section 73I of the old Act instead of deductions (also the ***old law deductions***) under those former sections for one or more income years for the asset.

Note: This section applies even if the R&D entity is entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions under section 355-305 of that Act for the asset.

Section 40-290 to be applied as if use for carrying on R&D activities were use for a taxable purpose

(2) In applying section 40-290 of the new Act (including references in that section to the reduction of deductions under section 40-25 of that Act) in relation to the asset, assume that using the asset for a taxable purpose includes using it for:

(a) the purpose of the carrying on, by or on behalf of the R&D entity, of the research and development activities (within the meaning of former section 73B of the old Act) to which the old law deductions relate; or

(b) if the R&D entity is entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions (the ***new law deductions***) under section 355-305 of that Act for the asset—the purpose of conducting the R&D activities to which the new law deductions relate.

Increase in amounts deductible or assessable under section 40-285

(3) Any amount (the ***section 40-285 amount***):

(a) that the R&D entity can deduct for the asset under section 40-285 of the new Act (after applying subsection (2) of this section) for the event year; or

(b) that is included in the R&D entity's assessable income for the asset under section 40-285 of the new Act (after applying subsection (2) of this section) for the event year;

is taken to be increased under section 40-292 of the new Act by the following amount:

$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of the deduction; or

(b) if the section 40-285 amount is an amount included in the R&D entity's assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

old law 1.25 rate deductions means the sum of the R&D entity's notional Division 40 deductions, and notional Division 42 deductions, (if any) for the asset that were multiplied by 1.25 in working out the old law deductions.

total decline in value means the cost of the asset less its adjustable value.

Normal rules do not apply for the asset and the event

(4) Neither of the following sections:

(a) section 40-292 of the new Act (as amended by the *Tax Laws Amendment (Research and Development) Act 2011*);

(b) section 40-292 of the new Act (as that section applies because of Part 2 of Schedule 4 to the *Tax Laws Amendment (Research and Development) Act 2011*);

to the extent that they would otherwise apply apart from this section to the R&D entity for the event, do so apply to the R&D entity for the event.

Note 1: The section 40-292 of the new Act mentioned in paragraph (a) would otherwise apply for the event in a case where the R&D entity had new law deductions.

Note 2: The section 40-292 of the new Act mentioned in paragraph (b) would otherwise apply for the event in respect of the old law deductions.

40-293 Balancing adjustment—partnership assets used for both general tax purposes and R&D activities

Partners have old law R&D decline in value deductions

(1) This section applies to an R&D partnership if:

(a) a balancing adjustment event happens in an income year (the ***event year***) commencing on or after 1 July 2011 for an asset held by the R&D partnership and:

(i) the R&D partnership can deduct, for an income year, an amount under section 40-25 of the *Income Tax Assessment Act 1997* (the ***new Act***), as that section applies apart from Division 355 of that Act and former section 73BC of the *Income Tax Assessment Act 1936* (the ***old Act***); or

(ii) the R&D partnership could have deducted, for an income year, an amount as described in subparagraph (i) if it had used the asset; and

(b) either or both of the following subparagraphs apply:

(i) one or more partners of the R&D partnership can deduct (the ***old law deductions***) under former section 73BA or 73BH of the old Act amounts for one or more income years for the asset;

(ii) one or more partners of the R&D partnership choose tax offsets under former section 73I of the old Act instead of deductions (also the ***old law deductions***) under those former sections for one or more income years for the asset.

Note: This section applies even if the partners are entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions under section 355-520 of that Act for the asset.

Section 40-290 to be applied as if use for carrying on R&D activities were use for a taxable purpose

(2) In applying section 40-290 of the new Act (including references in that section to the reduction of deductions under section 40-25 of that Act) in relation to the asset, assume that using the asset for a taxable purpose includes using it for:

(a) the purpose of the carrying on, by or on behalf of the R&D partnership, of the research and development activities (within the meaning of former section 73B of the old Act) to which the old law deductions relate; or

(b) if one or more partners of the R&D partnership are entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions (the ***new law deductions***) under section 355-520 of that Act for the asset—the purpose of conducting the R&D activities to which the new law deductions relate.

Increase in amounts deductible or assessable under section 40-285

(3) Any amount (the ***section 40-285 amount***):

(a) that the R&D partnership can deduct for the asset under section 40-285 of the new Act (after applying subsection (2) of this section) for the event year; or

(b) that is included in the R&D partnership's assessable income for the asset under section 40-285 of the new Act (after applying subsection (2) of this section) for the event year;

is taken to be increased under section 40-293 of the new Act by the following amount:

$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of all new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of the deduction; or

(b) if the section 40-285 amount is an amount included in the R&D partnership's assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

old law 1.25 rate deductions means the sum of the partners' notional Division 40 deductions, and notional Division 42 deductions, (if any) for the asset that were multiplied by 1.25 in working out the old law deductions.

total decline in value means the cost of the asset less its adjustable value.

Normal rules do not apply for the asset and the event

(4) Section 40-293 of the new Act, to the extent that it would otherwise apply apart from this section to the R&D partnership or its partners for the event, does not so apply to the R&D partnership and the partners for the event.

Note: Section 40-293 of the new Act would otherwise apply for the event in a case where the partners had new law deductions.

13 After section 40-420

Insert:

40-430 Allocating assets to low-value pools

For the purposes of Subdivision 40-E of the *Income Tax Assessment Act 1997*, you cannot allocate a depreciating asset to a low-value pool if:

(a) you can deduct an amount for the asset under former section 73BA of the *Income Tax Assessment Act 1936*; or

(b) you could so deduct an amount if you had not chosen a tax offset under former section 73I of that Act;

for a period before, or starting at the same time as, the allocation has effect.

14 After section 104-205

Insert:

104-235 CGT event K7: asset used for old law R&D activities

Section applies if asset used for old law R&D activities

(1) This section applies to an R&D entity if:

(a) a balancing adjustment event happens in an income year commencing on or after 1 July 2011 for an asset held by the R&D entity; and

(b) at some time when the R&D entity held the asset, it used the asset for the purpose of the carrying on by or on its behalf of research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*).

Changed application of sections 104-235 and 104-240

(2) Sections 104-235 and 104-240 of the *Income Tax Assessment Act 1997* (the ***new Act***) apply to the R&D entity for the event as if:

(a) a reference in those sections to the purpose of conducting R&D activities for which you were registered under section 27A of the *Industry Research and Development Act 1986*;

included:

(b) a reference to the purpose described in paragraph (1)(b) of this section.

Normal rules do not apply for the asset and the event

(3) Neither of the following sections:

(a) sections 104-235 and 104-240 of the new Act (as amended by the *Tax Laws Amendment (Research and Development) Act 2011*);

(b) sections 104-235 and 104-240 of the new Act (as those sections apply because of Part 2 of Schedule 4 to the *Tax Laws Amendment (Research and Development) Act 2011*);

to the extent that they would otherwise apply apart from this section to the R&D entity for the event, do so apply to the R&D entity for the event.

Note 1: The sections described in paragraph (a) would otherwise apply for the event in a case where the R&D entity had used the asset for the purpose of conducting R&D activities for which it was registered under section 27A of the *Industry Research and Development Act 1986*.

Note 2: The sections described in paragraph (b) would otherwise apply in respect of the purpose described in paragraph (1)(b) of this section.

15 After Division 328

Insert:

Division 355—Research and Development

Table of Subdivisions

355-D Registration for activities before 2011-12 income year
355-E Balancing adjustments for decline in value deductions for assets used in R&D activities
355-F Integrity rules
355-K Modified application of the old R&D law
355-M Undeducted core technology expenditure

Subdivision 355-D—Registration for activities before 2011-12 income year

Table of sections

355-200 Registration for activities before 2011-12 income year

355-200 Registration for activities before 2011-12 income year

A reference in each of the following provisions of the *Income Tax Assessment Act 1997* to a registration under section 27A of the *Industry Research and Development Act 1986* includes a reference to a registration under former section 39J of that Act:

(a) paragraph 43-35(a);
(b) subparagraph 355-205(1)(a)(i);
(c) subparagraph 355-215(b)(ii);
(d) subparagraph 355-220(1)(b)(ii);
(e) subparagraph 355-480(1)(a)(i);
(f) paragraph 355-580(1)(b).

Subdivision 355-E—Balancing adjustments for decline in value deductions for assets used in R&D activities

Table of sections

355-320 Balancing adjustment—assets only used for R&D activities
355-325 Balancing adjustment—R&D partnership assets only used for R&D activities

355-320 Balancing adjustment—assets only used for R&D activities

R&D entity has old law R&D decline in value deductions

(1) This section applies to an R&D entity if:
(a) a balancing adjustment event happens in an income year (the ***event year***) commencing on or after 1 July 2011 for an asset held by the R&D entity; and
(b) the R&D entity cannot deduct an amount under section 40-25 of the *Income Tax Assessment Act 1997* (the ***new Act***), as that section applies apart from:
(i) Division 355 of that Act; and
(ii) former section 73BC of the *Income Tax Assessment Act 1936* (the ***old Act***);
for the asset for an income year; and
(c) either or both of the following subparagraphs apply:
(i) the R&D entity can deduct (the ***old law deductions***) under former section 73BA or 73BH of the old Act an amount for one or more income years for the asset;
(ii) the R&D entity chooses tax offsets under former section 73I of the old Act instead of deductions (also the ***old law deductions***) under those former sections for one or more income years for the asset; and

(d) the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for one or more R&D activities for the event year; and

(e) if Division 40 of the new Act applied as described in subsection (2) of this section:

(i) the R&D entity could deduct for the event year an amount under subsection 40-285(2) of that Act for the asset and the balancing adjustment event; or

(ii) an amount would be included in the R&D entity's assessable income for the event year under subsection 40-285(1) of that Act for the asset and the balancing adjustment event.

Note 1: This section applies even if the R&D entity is entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions (the ***new law deductions***) under section 355-305 of that Act for the asset.

Note 2: Section 40-292 of this Act may apply if paragraph (c), but not paragraph (b), of this subsection is satisfied.

Changed application of Division 40

(2) For the purposes of paragraph (1)(e), assume that Division 40 of the new Act applied with the changes described in section 355-310 of that Act, but with these changes to that section:

Changes to be made to section 355-310 of the new Act

Item	For a reference in section 355-310 to...	substitute a reference to...
1	section 355-315	this section
2	the purpose of conducting one or more of the R&D activities to which the R&D deductions (within the meaning of that section) relate	both: (a) the purpose of conducting one or more of the research and development activities (within the meaning of former section 73B of the old Act) to which the old law deductions relate; and (b) the purpose of conducting one or more of the R&D activities to which the new law deductions (if any) relate

Notional deduction

(3) If the R&D entity could deduct for the event year an amount under subsection 40-285(2) of the new Act for:

(a) the asset; and

(b) the event;

if Division 40 of that Act applied as described in subsection (2) of this section, the R&D entity is taken to be able to deduct under subsection 355-315(2) of the new Act that amount for the event year.

Note: The R&D entity may be entitled to a tax offset under section 355-100 (about R&D) of the new Act for the deduction.

Amount to be included in assessable income

(4) If an amount (the ***section 40-285 amount***) would be included in the R&D entity's assessable income for the event year under subsection 40-285(1) of the new Act for the asset and the event if Division 40 of that Act applied as described in subsection (2) of this section, the sum of:

(a) that amount; and

(b) the following amount;

is taken to be included in the R&D entity's assessable income for the event year under subsection 355-315(3) of the new Act:

$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

old law 1.25 rate deductions means the sum of the R&D entity's notional Division 40 deductions, and notional Division 42 deductions, (if any) for the asset that were multiplied by 1.25 in working out the old law deductions.

total decline in value means the asset's cost, less its adjustable value, worked out under Division 40 of the new Act as it applies as described in subsection (2).

Normal rules do not apply for the asset and the event

(5) Neither of the following sections:

(a) section 355-315 of the new Act;

(b) former section 73BF of the old Act (as that section applies because of Part 2 of Schedule 4 to the *Tax Laws Amendment (Research and Development) Act 2011*);

to the extent that they would otherwise apply apart from this section to the R&D entity for the event, do so apply to the R&D entity for the event.

Note 1: Section 355-315 of the new Act would otherwise apply for the event in a case where the R&D entity had new law deductions.

Note 2: Former section 73BF of the old Act would otherwise apply for the event in respect of the old law deductions.

355-325 Balancing adjustment—R&D partnership assets only used for R&D activities

Partner has old law R&D decline in value deductions

(1) This section applies to an R&D entity (the ***partner***) if:

(a) a balancing adjustment event happens in an income year (the ***event year***) commencing on or after 1 July 2011 for an asset held by an R&D partnership; and

(b) the R&D partnership cannot deduct an amount under section 40-25, as that section applies apart from:

(i) Division 355 of the *Income Tax Assessment Act 1997* (the ***new Act***); and

(ii) former section 73BC of the *Income Tax Assessment Act 1936* (the ***old Act***);

for the asset for an income year; and

(c) either or both of the following subparagraphs apply:

(i) the partner can deduct (the ***old law deductions***) under former section 73BA or 73BH of the old Act an amount for one or more income years for the asset;

(ii) the partner chooses tax offsets under former section 73I of the old Act instead of deductions (also the ***old law deductions***) under those former sections for one or more income years for the asset; and

(d) the partner is registered under section 27A of the *Industry Research and Development Act 1986* for one or more R&D activities for the event year; and

(e) if Division 40 of the new Act applied as described in subsection (2) of this section:

(i) the R&D partnership could deduct for the event year an amount under subsection 40-285(2) of that Act for the asset and the balancing adjustment event; or

(ii) an amount would be included in the R&D partnership's assessable income for the event year under subsection 40-285(1) of that Act for the asset and the balancing adjustment event.

Note 1: This section applies even if the partner is entitled under section 355-100 of the new Act to tax offsets for one or more income years for deductions (the ***new law deductions***) under section 355-520 of that Act for the asset.

Note 2: Section 40-293 of this Act may apply if paragraph (c), but not paragraph (b), of this subsection is satisfied.

Changed application of Division 40

(2) For the purposes of paragraph (1)(e), assume that Division 40 of the new Act applied with the changes described in section 355-310 of that Act, but with these changes to that section:

Changes to be made to section 355-310 of the new Act

Item	For a reference in section 355-310 to...	substitute a reference to...
1	section 355-315	this section
2	the purpose of conducting one or more of the R&D activities to which the R&D deductions (within the meaning of that section) relate	both: (a) the purpose of conducting one or more of the research and development activities (within the meaning of former section 73B of the old Act) to which the old law deductions relate; and (b) the purpose of conducting one or more of the R&D activities to which the new law

Changes to be made to section 355-310 of the new Act		
Item	**For a reference in section 355-310 to...**	**substitute a reference to...**
		deductions (if any) relate
3	R&D entity	R&D partnership

Notional deduction

(3) If the R&D partnership could deduct for the event year an amount under subsection 40-285(2) of the new Act for:

(a) the asset; and

(b) the event;

if Division 40 of that Act applied as described in subsection (2) of this section, the partner is taken to be able to deduct under subsection 355-525(2) of the new Act the partner's proportion of that amount for the event year.

Note: The partner may be entitled to a tax offset under section 355-100 (about R&D) of the new Act for the deduction.

Amount to be included in assessable income

(4) If an amount (the ***section 40-285 amount***) would be included in the R&D partnership's assessable income for the event year under subsection 40-285(1) of the new Act for the asset and the event if Division 40 of that Act applied as described in subsection (2) of this section, the sum of:

(a) the partner's proportion of that amount; and

(b) the following amount;

is taken to be included in the partner's assessable income for the event year under subsection 355-525(3) of the new Act:

$$\text{Adjusted section 40-285 amount} \times \left(\left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \times \frac{1}{4} \right) + \left(\frac{\text{Sum of all new law deductions}}{\text{Total decline in value}} \times \frac{1}{3} \right) \right)$$

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

old law 1.25 rate deductions means the sum of the partner's notional Division 40 deductions, and notional Division 42 deductions, (if any) for the asset that were multiplied by 1.25 in working out the old law deductions.

total decline in value means the asset's cost, less its adjustable value, worked out under Division 40 of the new Act as it applies as described in subsection (2).

Normal rules do not apply for the asset and the event

(5) Neither of the following sections:

(a) section 355-525 of the new Act;

(b) former section 73BF of the old Act (as that section applies because of Part 2 of Schedule 4 to the *Tax Laws Amendment (Research and Development) Act 2011*);

to the extent that they would otherwise apply apart from this section to the partner for the event, do so apply to the partner for the event.

Note 1: Section 355-525 of the new Act would otherwise apply for the event in a case where the partner had new law deductions.

Note 2: Former section 73BF of the old Act may otherwise apply for the event in respect of the old law deductions.

355-340 Balancing adjustment—tax exempt entities that become taxable

Item 7 of the table in subsection 57-110(2) in Schedule 2D to the *Income Tax Assessment Act 1936* applies as if the deduction rules set out in the final column of that item also included former sections 73BA and 73BH of the *Income Tax Assessment Act 1936*.

Subdivision 355-F—Integrity rules

Table of sections

355-415 Expenditure reduced to reflect group mark-ups

355-415 Expenditure reduced to reflect group mark-ups

For the purposes of step 1 of the method statement in subsection 355-415(2) of the *Income Tax Assessment Act 1997*, also disregard amounts that have already been taken into account under former subsection 73B(14AA) of the *Income Tax Assessment Act 1936* for the R&D entity, the grouped entity and the R&D activities for an earlier income year.

Subdivision 355-K—Modified application of the old R&D law

Table of sections

355-550 Prepayments of R&D expenditure extending into the 2011-12 income year

355-550 Prepayments of R&D expenditure extending into the 2011-12 income year

Advance R and D expenditure

(1) This section applies if, apart from former paragraph 73B(10)(a) of the *Income Tax Assessment Act 1936*, an eligible company could deduct advance R and D expenditure in one or more income years commencing on or after 1 July 2011.

Note: That deduction would be under former section 73B of that Act as that former section applies because of Part 2 of Schedule 4 to the *Tax Laws Amendment (Research and Development) Act 2011*.

Other prepayments of R&D expenditure

(2) This section also applies if:

(a) apart from Subdivision H (prepaid expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936*, an eligible company can deduct an amount under former section 73B, 73BA, 73BH, 73QA, 73QB or 73Y of that Act for an income year commencing before 1 July 2011; and

(b) that Subdivision applies to the calculation of that amount; and

(c) apart from former paragraph 73B(10)(a) of that Act, the eligible company could deduct an amount, as a result of that application of that Subdivision, for an income year commencing on or after 1 July 2011.

Note: That deduction would be under that Act as it applies because of Part 2 of Schedule 4 to the *Tax Laws Amendment (Research and Development) Act 2011*.

Changed registration requirement

(3) Former paragraph 73B(10)(a) of that Act is taken to apply to those income years commencing on or after 1 July 2011 as if the reference in that former paragraph to section 39J of the *Industry Research and Development Act 1986* were a reference to section 27A of that Act.

Meaning of expressions

(4) An expression used in this section that is also used in former section 73B of the *Income Tax Assessment Act 1936* has the same meaning in this section as it has in that former section.

Subdivision 355-M—Undeducted core technology expenditure

Table of sections

355-600 Scope
355-605 Core technology that is a depreciating asset
355-610 Core technology that is not a depreciating asset

355-600 Scope

This Subdivision applies to core technology (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*) if:

(a) you incurred core technology expenditure (within the meaning of that former section) in an income year commencing before 1 July 2011 in relation to the core technology under one or more contracts entered into at or after the time referred to in former subsection 73B(12) of that Act; and

(b) that expenditure (the ***undeducted expenditure***) cannot be deducted for the last income year commencing before 1 July 2011.

355-605 Core technology that is a depreciating asset

This section only applies for deductions under Division 40

(1) This section applies for the purposes of Division 40 of the *Income Tax Assessment Act 1997*, other than sections 40-292 and 40-293 of that Act, if the core technology (the ***asset***) is a depreciating asset.

(2) Disregard this section, including its effect on the amount you can deduct under section 40-25 of that Act for the asset, for the purposes of working out:

(a) a deduction under any other Division of that Act for any income year; and

(b) a tax offset under any other Division of that Act for any income year.

Changes made by this section

(3) The asset's opening adjustable value for the first income year that commences on or after 1 July 2011 (the ***first new income year***) is equal to the amount of the undeducted expenditure.

(4) Subsection 40-75(2) of the *Income Tax Assessment Act 1997* applies to the asset as if the first new income year were a change year (within the meaning of that subsection).

355-610 Core technology that is not a depreciating asset

If the core technology is not a depreciating asset, you can deduct the undeducted expenditure in equal proportions over a period of 5 income years starting in the first income year commencing on or after 1 July 2011.

Part 4—Other savings and transitional provisions

16 R&D activities registered under the old law

A reference in each of the following provisions of the *Industry Research and Development Act 1986* (as amended by this Act) to a registration under section 27A of that Act includes a reference to a registration under former section 39J of that Act:

(a) subparagraph 27A(3)(b)(i);
(b) subparagraph 27B(1)(c)(ii);
(c) subparagraph 27J(1)(c)(ii);
(d) paragraph 28A(1)(b);
(e) paragraph 28D(2)(b).

Note: For each of these provisions, the R&D activity registered under former section 39J will need to be a core R&D activity within the meaning of the amendments made by this Act.

17 Australian research agencies registered under the old law

(1) This item applies to an entity registered, immediately before the commencement of this item, under section 39F of the *Industry Research and Development Act 1986* as an Australian research agency in respect of one or more classes (the ***research classes***) of Australian research and development activities.

(2) The entity is taken, immediately after the commencement of this item, to be registered under section 29A of that Act as a research service provider qualified to provide services in research fields corresponding to those research classes.

18 Regulations

(1) The Governor-General may make regulations prescribing matters:
(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Governor-General may make regulations dealing with matters of a transitional, savings or application nature relating to the repeals and amendments made by this Act.

[*Minister's second reading speech made in—*
House of Representatives on 30 September 2010
Senate on 23 November 2010]

(166/10)