Tax Alert: ATO Taxpayer Alerts warn of incorrect R&D claims related to specific industries or activities

The ATO has released four Taxpayer Alerts (TAs) concerning the R&D Tax Incentive program, highlighting certain arrangements they are seeing in the market which they do not agree with. The ATO will seek to disallow incorrect R&D claims relating to activities, expenditure or arrangements described in the TAs or variations thereof: these relate to the building and construction industry, software development, agricultural or general business activities. We understand there may be another R&D related TA released in the coming weeks.

The TAs confirm significant ATO compliance focus on the detail of R&D activities, expenditure and arrangements. The TAs are designed to influence and change taxpayer behaviour such as incorrectly self-assessing the nature of R&D activities or overstating R&D expenditure. The types of arrangements and activities described in these TAs are:

**TA 2017/2** in relation to building and construction industry participants that are incorrectly claiming the R&D tax incentive: The ATO and AusIndustry are reviewing arrangements where the expenditure is incurred on building or construction activities which are expressly excluded from being taken into account in calculating an R&D tax offset, or does not otherwise relate to eligible R&D activities.

**TA 2017/3** in relation to some companies that are incorrectly claiming R&D tax incentive for some of their business expenditure: Some or all of the activities registered are broadly described and non-specific, eg projects may be registered instead of the specific activities undertaken. Some or all of the activities are ordinary business activities or were undertaken in the course of their ordinary business activities and recharacterised as R&D activities at a later time.

**TA 2017/4** in relation to some incorrect claims for R&D tax incentive for agricultural business activity expenditure: An agricultural business is being carried on, often by an entity that is not eligible for the R&D Incentive, for example a family trust. The operators are approached by a promoter/R&D consultant advising that the farming activities that are being carried on are eligible for the R&D Tax Incentive.

- A company registers one or more activities for the R&D Tax Incentive: where necessary, a new special purpose R&D company may be incorporated.
- The registered activities involve the application of farm products or practices across all or a significant part of a farm or farms.
- Some or all of the registered activities have the character of ordinary farming activities whose main purpose is the production of crops.

**TA 2017/5** in relation to software development and the incorrect claiming the R&D tax incentive in the following circumstances.

- A company undertakes a software development project that involves developing new software, modifying, customising or upgrading existing software, and acquiring and modifying off-the-shelf software. The software development project includes one or more of:
  - activities that use existing software development knowledge and expertise to achieve the required technical outcomes
  - activities that involve business risk rather than technical uncertainty
  - activities to replace manual work processes using software technologies that are available in the market and adapted to the requirements of the company, and
  - using existing software technologies as they were intended to be used.

- Some or all of the registered R&D activities are broadly described and non-specific. For example, they may describe project objectives or business and system requirements that the company is seeking to design and implement.
- All of the project, or a substantial part of it, is registered as R&D activities.

The EY R&D team is available to discuss or answer any questions you may have in relation to arrangements and activities described in these TAs. Please contact the relevant EY Research & Development team in your state.
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