

Tax Alert

Government releases draft legislation to significantly reshape the Australian R&D Tax Incentive

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Research and development (R&D) in the context of the R&D Tax Incentive refers to experimental activities conducted to generate new knowledge, where the outcome cannot be known or determined in advance and can only be established through a systematic progression of work based on established scientific principles.

At a glance

- ▶ Refundable R&D tax offset turnover threshold proposed to increase from \$20 million to \$50 million.
- ▶ R&D benefit rates proposed to increase by 4.5 percentage points.
- ▶ Threshold proposed for accessing the higher non-refundable R&D premium to reduce from 2% to 1.5%.
- ▶ Maximum annual eligible R&D expenditure cap proposed to increase from \$150 million to \$200 million.
- ▶ Minimum annual expenditure threshold proposed to increase from \$20,000 to \$50,000.
- ▶ Supporting R&D activities proposed to be removed.
- ▶ New 10-year age restriction proposed for refundable claimants, with an extension for up to 15 years for therapeutic goods R&D.
- ▶ Consultation closes: 28 September 2026.

The Australian Government has released exposure draft legislation and an accompanying exposure draft explanatory memorandum proposing changes to the Research and Development (R&D) Tax Incentive following the announcements made in the 2026 Federal Budget and recommendations arising from the Ambitious Australia Strategic Examination of R&D.

Consultation on the draft legislation "Treasury Laws Amendment (Tax Reform No. 5) Bill 2026: Better targeting the Research and Development Tax Incentive", opens for a limited period, with submissions due by 28 September 2026.

The proposed reforms contain substantial changes to the R&D Tax Incentive that are expected to impact a significant number of current claimants. While the Government has proposed increases to the rates of assistance available under the program, several new eligibility restrictions and exclusions have also been introduced.

Subject to enactment, the changes are expected to apply from the first full income year commencing after 1 July 2028.

Key proposed changes

▪ Expanded access to refundable offset

The aggregated turnover threshold for access to the refundable R&D tax offset would increase from \$20 million to \$50 million.

This change may enable a broader group of SMEs (small to medium enterprises) to access the refundable R&D tax offset, although entities would still need to satisfy the new proposed age-based eligibility rules discussed below.

▪ Enhanced benefits through a rate increase

The Government has proposed increasing the rate of benefit available for eligible R&D activities by an additional 4.5 percentage points.

For companies eligible for the refundable R&D tax offset, the current premium benefit of 18.5% above the corporate tax rate would increase to 23% above the corporate tax rate.

For most eligible SME claimants, this would increase the effective benefit rate from 43.5% to 48%.

▪ Increased non-refundable R&D tax offset rates

For entities claiming the non-refundable R&D tax offset:

- The base premium would increase from 8.5% to 13% above the company tax rate.
- The higher intensity premium would increase from 16.5% to 21% above the company tax rate.

For larger claimants, these changes represent significant increases in the value of the incentive, particularly for expenditure above the R&D intensity threshold.

▪ Reduced R&D intensity threshold

The threshold for accessing the higher non-refundable R&D premium would be reduced from 2% to 1.5%.

This change may allow more companies to access the enhanced premium rate for a greater proportion of their qualifying expenditure.

▪ Increased R&D expenditure cap

The maximum annual eligible R&D expenditure cap would increase from \$150 million to \$200 million.

While only a limited number of taxpayers are expected to benefit from this change, it would increase access to R&D tax benefits for some of Australia's largest R&D investors.

▪ Increased minimum R&D expenditure threshold

The minimum annual R&D expenditure threshold would increase from \$20,000 to \$50,000.

The Government has indicated that an exception would continue to apply to eligible expenditure incurred through Cooperative Research Centres (CRCs) and Registered Research Service Providers (RSPs).

▪ Removal of supporting R&D activities

One of the most significant proposed reforms is the removal of eligibility for supporting R&D activities.

Supporting activities currently include activities directly related to conducting experimental core R&D activities. Under the draft legislation, these activities would no longer be eligible for the R&D Tax Incentive unless they independently satisfy the requirements of the existing definition of a core R&D activity. The changes clarify that an activity will not qualify merely because it is directly related to or supports another R&D activity.

This proposed change may have a significant impact on the ability to claim R&D activities and increase the requirement of organisations to update systems to record and delineate organisational R&D processes.

New age-based restriction for refundable claimants

A significant new eligibility condition has been proposed in the draft legislation that would limit access to the refundable R&D tax offset for companies that are more than 10 years old.

An extension of up to 15 years would apply for certain entities undertaking qualifying R&D activities related to therapeutic goods and related technologies.

Importantly, the proposed exclusion would also take into account the age of certain affiliates and connected entities.

This measure has the potential to affect a broad range of structures, including:

- Groups that have undertaken reverse takeovers
- Serial entrepreneurs with existing corporate structures
- Companies within larger connected groups.

The 10-year limit has been set by the anniversary of the R&D entities start day being the earlier of:

- The day on which the R&D entity, or a connected or affiliated entity, first started carrying on an enterprise
or
- The day on which the R&D entity, or a connected or affiliated entity, first registered R&D activities.

Where entities reach the 10-year anniversary part way through an income year the entity will cease to be eligible for the refundable offset and instead be eligible for the non-refundable offset.

The exposure draft provides an extension of refundability to 15 years for R&D entities that conduct R&D activities of the dominant purpose of generating new knowledge about therapeutic goods or their therapeutic use. To be qualify for the extension of time, the entity must have registered its R&D activity for an income year within a 10-year time frame from the entities "start date".

The Therapeutic Goods Act 1989 has been used to provide the meaning of "therapeutic good" and "therapeutic use".

Transitional rules

The exposure draft legislation includes transitional provisions that may affect existing claimants, including entities with current Advance Findings.

Businesses should review existing arrangements and assess whether any transitional measures could affect future claims.

Government policy objectives

The Government has stated that the proposed reforms are intended to:

- Simplify the R&D Tax Incentive
- Better target government support
- Increase the economic impact of R&D investment
- Reduce compliance costs and complexity
- Implement recommendations arising from the *Ambitious Australia Strategic Examination of R&D*

While the overall level of support available for core R&D activities would increase, several elements of the package depart from recommendations that were understood to have emerged from the strategic review process.

What does this mean for taxpayers?

The proposed reforms create opportunities and risks.

On the positive side, higher incentive rates, broader access to refundable benefits through the increased turnover threshold, and a lower intensity threshold are expected to increase benefits for many claimants.

However, the removal of supporting R&D activities and the introduction of new eligibility restrictions could substantially reduce the value of claims for some taxpayers.

Potential areas of concern include:

- Reduced eligibility for activities that currently form a significant component of many claims.
- Increased complexity in determining whether an activity constitutes a core R&D activity.
- Additional uncertainty associated with affiliate and connected entity tests.
- Potential distortions across industry sectors arising from the proposed refundable offset age restrictions.
- Impacts on start-up and scale-up businesses as they transition through the innovation lifecycle.

Next steps

Consultation on the exposure draft legislation closes on 28 September 2026.

Given the breadth of the proposed reforms and their potential impact on both existing and future R&D claims, companies should consult with EY's specialist R&D and Government Incentive team or consider making a submission during the consultation period.

How EY can help

EY can assist companies to assess the potential impact of the proposed reforms, including by:

- Helping companies identify and assess the potential impacts of the proposed reforms.
- Reviewing current claim methodologies and activity classifications.
- Assessing the extent to which current claims rely on supporting R&D activities.
- Considering the impact of the proposed age-based restrictions on refundable eligibility.
- Reviewing corporate group structures and connected entity arrangements.
- Supporting companies in articulating areas of concern during the consultation period.

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