



Frequently Asked Questions

R&D Tax Incentive

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ELIGIBLE R&D ACTIVITIES

What must companies do to ascertain if the knowledge being sought is new? What does AusIndustry require?

The definition of core R&D activities requires activities to be conducted for the purpose of generating new knowledge. This means your core R&D activity must do more than confirm what is already known. Knowledge is 'new' where it is not available in the public arena on a reasonably accessible worldwide basis at the time the activities were conducted.

There is no mandatory list of what a company must do to determine if the knowledge sought through their experimental activities is new. AusIndustry recognises that the types of searches and records kept by individual companies will vary depending on the nature of their business and their R&D activities.

Companies must keep records showing how they established that the knowledge or information sought was not already publicly available at the time they undertook their R&D activity. For example, reports generated during literature or patent searches should be retained to demonstrate the company's efforts to evidence whether the knowledge was 'new'.

Further information on the definition of core and supporting R&D activities and the types of records that participants in the *R&D Tax Incentive* are required to keep can be found on our [website](#).

For supporting R&D activities, what records will a company need to show to establish the activity was either directly related or for the dominant purpose of supporting a core R&D activity? For example, are time sheets necessary to show the proportion of an employee's time allocated to R&D?

Companies should actively consider and recognise the purpose of conducting an

activity, especially in cases where the dominant purpose test applies (such as production trials). They should also consider how that purpose changes over time, and document that in their records.

Keeping time sheets is one way to substantiate this. The hours an employee works on R&D will vary depending on a company's business operations. Companies should have a process in place to record time spent on R&D activities and non-R&D activities. Apportionment is particularly important where the expenditure is associated with an activity that also has a non-R&D component (such as a production or commercial component over and above an R&D purpose).

Further information on the definition of core and supporting R&D activities, and information to assist in determining if an activity is a supporting R&D activity is available in the online [Customer Information Guide](#).

My project involves software development. What should I consider in determining whether the software development activities are eligible?

Projects involving software development are subject to the same definition of R&D activities as other forms of R&D. However, certain types of software activities are excluded from being core R&D activities and may only be supporting R&D activities where they are undertaken for the dominant purpose of supporting core R&D activities. This exclusion covers activities related to the development, modification or customisation of software where the software is for the dominant purpose of 'internal administration' by the entity (or connected entities or affiliates) for which it was developed, modified or customised.

Software for 'internal administration' includes management information systems, and enterprise resource planning software that is for use in the day-to-day

administration of a business. The software exclusion does not apply to software developed in-house that is of an applied nature, forming an integral part of an electrical or mechanical device (such as home appliances or industrial equipment).

Further information on the eligibility requirements of the *R&D Tax Incentive* can be found in the [Eligibility of Activities Information Sheet](#) and the online Customer Information Guide under '[Eligibility](#)'.

Are activities relating to patenting eligible under the *R&D Tax Incentive*?

The 'commercial, legal and administrative aspects of patenting, licensing or other activities' are excluded from being considered core R&D activities under the *R&D Tax Incentive*. However, they may still be eligible as supporting R&D activities where they are undertaken for the dominant purpose of supporting a core R&D activity. For example, you may need to conduct literature reviews or patent searches in order to demonstrate that the knowledge or information was not publicly available.

If the activities do not meet the definition of supporting R&D activities, expenditure incurred in relation to those activities is not eligible to be claimed under the *R&D Tax Incentive*.

Further information on supporting R&D activities is available in the [Eligibility of Activities Information Sheet](#) and the online Customer Information Guide under '[Eligibility](#)'.

What is core technology?

Technology is considered to be 'core technology' if it is for one or more research and development (R&D) activities in the following circumstances:

Where the purpose of the R&D activities is to obtain new knowledge based on that technology;

Where the purpose of the R&D activities is to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or

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

Core technology can be either tangible or intangible property so long as it meets the circumstances set out above.

Further information on core technology is available in the [Core Technology Information Sheet](#).

ADVANCE FINDINGS

How long will AusIndustry take to assess an application for an advance finding?

The time it takes to assess advance finding applications will vary depending on a number of factors including the complexity of the R&D activities, the level of information provided and the time it takes for Innovation Australia or its delegate to make a decision. When we receive an application for an Advance Finding, we will review the application and estimate how much time it will take us to process the application. We will communicate this estimate to the applicant.

Is it in a company's interests to apply for an advance finding? Does having an advance finding reduce the compliance burden on registered companies?

Advance findings are an optional feature available under the *R&D Tax Incentive*. They are not a precondition of registration nor do they replace the registration process. As a self assessment program companies who are confident that their activity meets the eligibility criteria should not need to apply for an advance finding.

In order for a company to receive an advance finding, Innovation Australia needs to make a determination on the eligibility of activities. While an advance finding provides a company with certainty about the eligibility of their activities, Innovation Australia needs to be satisfied of the company's intention to carry out the activities. In this sense, the examination of activities could be viewed as bringing forward some of the compliance responsibility up-front prior to registration.

If the activities actually undertaken change, a company will need to assess whether the conducted activities are materially different from those described in the advance finding. Activities which materially differ may still be eligible; however, a company cannot rely on the advance finding that has been given.

Further information on:

what a company should consider before deciding to apply for an advance finding is available in the [Guide to Findings](#); and

how a company may be selected for a compliance review is available in the online [Customer Information Guide](#).

OVERSEAS RESEARCH AND DEVELOPMENT

When must I apply for an overseas finding? Will I be penalised because I have already commenced my overseas activities?

A company must apply for an overseas finding prior to the end of the income year in which the overseas activity is conducted. The activity can have already commenced when the application is made, or it can be made prior to the company conducting the activity outside Australia. A company cannot apply for an overseas finding for activities conducted in previous income years.

If the company receives a certificate confirming the eligibility of their overseas activities, the finding applies from the start of the income year in which the application is made (not from the time the application is made). For example, companies that have already started their overseas activities in the 1 July 2011- 30 June 2012 income year, can apply for the finding at any time prior to the end of that income year.

An overseas finding is a pre-condition of registration for overseas activities. However it does not replace registration. The overseas activities need to be registered in order for the company to claim a tax offset relating to those activities.

The closing dates for overseas finding applications depend on a company's income year.

Company's income year (income year in which the overseas activity is undertaken)	Overseas findings applications close (the end of the income year in which the overseas activity is undertaken)
1 July 2011 - 30 June 2012	30 June 2012
1 January 2012 – 31 December 2012	31 December 2012

What are the conditions for overseas activities to be eligible?

The *R&D Tax Incentive* supports eligible activities conducted overseas in certain circumstances. The conditions for obtaining an overseas finding are set out in the:

- [Overseas R&D Information Sheet](#); and
- [Guide to Findings](#) available on the AusIndustry website.

Would 'getting a cheaper price overseas' be a reason that the activity cannot be conducted in Australia? What if a facility exists in Australia but the operator declines access?

One of the eligibility conditions for overseas activities requires that the activity must not be able to be conducted in Australia because of a listed reason (see the Guide to Findings). Price is not listed as an eligible reason for not conducting the activity in Australia. Nor is the situation in which Australian industry suppliers decline to provide a company with expertise or facilities.

Where a company intends to conduct activities overseas and claim the *R&D Tax Incentive* it must apply for an overseas finding. It is also a pre-condition that the company also have an advance finding stating that those activities are eligible as part of obtaining an overseas finding.

Companies can apply for both of these findings through a single application form. The application form is available on the [AusIndustry website](#).

What would happen if I receive an overseas finding stating my activities are eligible, but my overseas expenditure becomes greater than my Australian expenditure?

If the increase in expenditure is due to the nature of your overseas and/or Australian activities changing, a question arises as to whether that change is a material change. Any material changes will mean that the advance finding for these activities will no longer apply.

More information on what happens if activities are carried out differently after the advance finding is provided in the [Guide to Findings](#).

What if I'm undertaking R&D overseas where the expenditure is greater than the expenditure in Australia? Am I still able to claim up to 50% of the Australian expenditure?

One of the eligibility conditions for overseas activities requires that overseas expenditure must be less than that incurred on Australian core activities in all income years. Therefore, where your overseas R&D expenditure is greater than Australian expenditure on core R&D activities it would not be eligible under the *R&D Tax Incentive*. The intent of the legislation is to support Australian R&D projects that may have an overseas component and not overseas projects that have an Australian component.

I currently have a provisional overseas certificate under the R&D Tax Concession, can I rely on this under the R&D Tax Incentive?

The result of the new *R&D Tax Incentive* legislation is that provisional certificates granted under the R&D Tax Concession will only apply to activities conducted in income years that started before 1 July 2011.

Companies can rely on the provisional certificate to register activities under the R&D Tax Concession for activities undertaken before 1 July 2011. However, the certificate will not apply or carry over to activities conducted on or after that date as these will need to be claimed under the *R&D Tax Incentive*.

Companies will need to apply under the *R&D Tax Incentive* for a finding relating to overseas R&D activities conducted or proposed to be conducted on or after 1 July 2011 (or future income years).

REGISTRATION

When can I apply to register my activities now that the *R&D Tax Incentive* has started?

Companies need to register activities annually at the end of each income year in which their activities were conducted. Companies have a ten month window in which to lodge their registrations after the end of their income year.

The opening and closing dates for registrations depend on a company's income year and are listed below.

Company's income year	Registrations open (after income year ends)	Registrations close (10 months after income year end)
1 July 2011 – 30 June 2012	1 July 2012	30 April 2013
1 January 2012 – 31 December 2012	1 January 2013	31 October 2013

Companies with substituted accounting periods should apply the same rules to calculate their registration open and close dates (see the example below).

Example of a substituted accounting period (SAP)	Registration opens after the SAP ends	Registration closes 10 months after the SAP ends
1 October 2011 – 31 December 2011	1 January 2012	31 October 2012

Note that the *R&D Tax Incentive* only applies to income years beginning on or after 1 July 2011. If your income year started before 1 July 2011, you will need to register for the R&D Tax Concession

What is involved in the registration process and when will the registration form be available?

Applications for registration will be through an electronic form and should be submitted online to AusIndustry. The form can be saved at any time while it is being completed. If necessary, the form can be printed and submitted in paper form, however this is not the preferred option.

The registration form is currently in development and is expected to be finalised early in 2012. Registrations for companies with a standard income year will open on 1 July 2012.

I am currently registered under the *R&D Tax Concession*, can I carry forward activities currently underway?

Activities carried out in income years that begin on or after 1 July 2011 will need to be registered under the *R&D Tax Incentive*.

If an activity previously registered under the R&D Tax Concession continues after 1 July 2011, then the company will need to assess whether the activity is eligible under the *R&D Tax Incentive*. If the activity is eligible then that part conducted in an income year on or after 1 July 2011 will need to be registered under the *R&D Tax Incentive*.

More information on what are eligible activities can be found in the [Eligibility of Activities Information Sheet](#) and the online Customer Information Guide under '[Eligibility](#)'.

More information on transitioning from the R&D Tax Concession is available in the Customer Information Guide under '[Transition from the R&D Tax Concession](#)'.

Will fees or the possibility of fees be introduced for registration?

The Government does not currently charge fees on registration under the *R&D Tax Incentive*.

AusIndustry has powers to refuse registration or to make a finding that activities are ineligible at registration. When will AusIndustry do this?

AusIndustry may choose to examine a company's application for registration in detail prior to registration. This examination may lead to a finding on the eligibility of all or some of the activities detailed in the application. The finding may also re-categorise activities (for example, a core R&D activity may be re-categorised as a supporting R&D activity). In the event that AusIndustry has a query regarding activity descriptions contained in their application for registration the company will be contacted to discuss their application. Companies will also be notified if a finding is made about their application for registration.

See the [Guide to Findings](#) for more information about findings about registration applications. Guidance as to what happens at registration is available in the Customer Information Guide under '[Registering](#)'.

Will registration require expenditures per activity?

In accordance with the Industry Research and Development Regulations 2011 (Regulations) the application for registration form will require a company to provide a reasonable estimate of how total expenditure was apportioned between core and supporting R&D activities.

ADMINISTRATION

The ATO has powers to appeal a finding made by Innovation Australia. Does the ATO intend to use its powers, and in what circumstances?

The ATO can apply for an internal review of findings by Innovation Australia at any time.

AusIndustry and the ATO minimise the need for the ATO to appeal findings by sharing, knowledge and information. The ATO may be consulted during the process within which a finding is made and if they have any concerns these will be raised with AusIndustry before a finding is made.

More information on internal reviews can be found in the online Customer Information Guide under '[Correcting mistakes and disputing decisions](#)'.

Will templates be available, for example on R&D planning or record-keeping for the program?

R&D plans are not formally required for registration under the *R&D Tax Incentive*.

As part of its ongoing effort to develop further guidance and support for companies, AusIndustry is currently considering the development of templates for R&D planning and record keeping. These will be made available on the AusIndustry website.

RESEARCH SERVICE PROVIDERS (RSPS)

I understand that the requirements for RSPs are not yet finalised. In the meantime can I get assistance on how to apply?

As the Regulations have now been executed by Government, the [application form](#) and [information sheet on how to register as a RSP](#) are now available on the AusIndustry website. More information will be available on the eligibility criteria and conditions for

registration as a RSP in the online Customer Information Guide early in 2012.

You can subscribe to [email updates](#) from AusIndustry to be informed when the form and guidance will be available. Please subscribe specifically for the *R&D Tax Incentive* and any other AusIndustry programs of interest.

I was a Registered Research Agency (RRAs) under the R&D Tax Concession, what happens to my registration under the R&D Tax Incentive?

If your organisation was registered as a Registered Research Agency (RRA) under the R&D Tax Concession, it has automatically been registered as a Research Service Provider (RSP) under the *R&D Tax Incentive* for the 2011-12 financial year. You can check to see if your registration has carried over by looking at the [RSP register](#) on the AusIndustry website. RSPs are required to renew their registration annually before the end of each financial year.

Information on the eligibility criteria and conditions for RSPs is now available in the [RSPs Information Sheet](#) and from early 2012 will be available in the online Customer Information Guide under '[RSPs](#)'.

FURTHER INFORMATION

[Subscription to 'Email Updates'](#) for **customers** wishing to be kept informed on the *R&D Tax Incentive*.

Innovation Australia's website provides information on the [R&D Tax Concession](#) and the [R&D Tax Incentive](#) or telephone the Innovation Australia Hotline on 13 28 46.

More information on tax offsets is available at www.ato.gov.au.

Disclaimer: This document is general information only, and is not intended as legal or business advice. Before making any business decisions relating to benefits

under the program, companies should consult the relevant legislative provisions in the Bill or seek professional advice from registered tax agent.