



## TECHNICAL UPDATE

### TAXPAYER ALERT: ACCESSING THE R&D TAX INCENTIVE

As you may be aware, the ATO and AusIndustry have jointly published a series of taxpayer alerts (TA 2017/2 to TA 2017/5) targeting taxpayers accessing the R&D Tax Incentive. These recent alerts have resulted in the circulation of misleading information relating to the programme. Accordingly, we would like to take this opportunity to provide some clarity and reassurance about the activities that are eligible.

The law has not changed in respect of the eligible R&D activities. When assisting clients with their R&D Tax Incentive claims, BDO carefully considers the law and recent guidance published by the ATO and AusIndustry.

#### Purpose of the alerts

The recent alerts represent an attempt to deter applicants and advisers that are intending to claim activities that do not meet the eligibility requirements under the law. However, the ATO and AusIndustry has taken a 'one size fits all' approach with their guidance. As a result, the guidance fails to consider the variability of R&D activities undertaken by different companies.

The recent addendum to TA 2017/5 which carefully rewords a large section of the alert relating to 'routine software testing', demonstrates that the original interpretations are not necessarily consistent with the law, and that all activities need to be considered on a case by case basis.

While there may be some inconsistencies between how the ATO and AusIndustry perceive the scope of an eligible R&D activity in comparison to industry, it is important to note that the legal definitions for eligible activities are broad and are designed to accommodate R&D activities in a range of industries. Recent legal precedent has confirmed that the legislation is to be interpreted in accordance with the ordinary meaning of the words used. Accordingly it is considered that where there is any inconsistency between what the terms of the legislation and the wording in the ATO/AusIndustry guidelines, the terms of the legislation constitute the preferred guidance on eligibility.

#### SECTOR

Tax

#### CONTACT

##### NICOLA PURSER

Partner, Brisbane  
Tel: +61 7 3237 5999  
[nicola.purser@bdo.com.au](mailto:nicola.purser@bdo.com.au)

##### CHRIS VITTAS

Partner, Melbourne  
Tel: +61 3 9603 1733  
[chris.vittas@bdo.com.au](mailto:chris.vittas@bdo.com.au)

##### NATALIE MILNE

Partner, Perth  
Tel: +61 8 6382 4860  
[natalie.milne@bdo.com.au](mailto:natalie.milne@bdo.com.au)

##### GRAHAM WAKEMAN

Partner, Sydney  
Tel: +61 2 9240 9901  
[graham.wakeman@bdo.com.au](mailto:graham.wakeman@bdo.com.au)

## What does it mean?

The alerts warn taxpayers against claiming what the ATO and AusIndustry deem to be 'ordinary business' activities or taking a 'whole of project' approach. These are both issues that have been raised by AusIndustry in its own publications, and BDO has already considered these issues when assisting clients with their claims.

The underlying message of these alerts is that claimants should be comfortable that the activities they are seeking to claim are consistent with the eligibility criteria. That is, they involved a degree of uncertainty that can only be overcome through experimentation, and that they are undertaken for the purpose of generating new knowledge in the form of new or improved products, processes or services.

Furthermore the alerts highlight that claimants should ensure they have supporting documentation to substantiate the intention to generate new knowledge, and the process undertaken to generate that new knowledge to ensure they comply with the programme.

Companies should not be overly concerned if they have not classified some of their activities directly in line with the alerts, or undertaken some experimental testing in an 'ordinary business' environment.

Provided claimants can substantiate that the activity was undertaken for the purpose of generating new knowledge through an experimental approach and the activities are not one of the excluded R&D activities, they should have eligible R&D activities that would comply with the R&D tax legislation.

### **National expertise**

*The BDO Tax team is one of the largest and most dynamic tax practices in Australia, with 30 partners and more than 150 specialists located in each major city across the country.*

### **MORE INFORMATION**

1300 138 991  
[www.bdo.com.au](http://www.bdo.com.au)

**NEW SOUTH WALES  
NORTHERN TERRITORY  
QUEENSLAND  
SOUTH AUSTRALIA  
TASMANIA  
VICTORIA  
WESTERN AUSTRALIA**

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact the BDO member firms in Australia to discuss these matters in the context of your particular circumstances. BDO Australia Ltd and each BDO member firm in Australia, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO East Coast Partnership ABN 83 236 985 726 is a member of a national association of independent entities which are all members of BDO Australia Ltd ABN 77 050 110 275, an Australian company limited by guarantee. BDO East Coast Partnership and BDO Australia Ltd are members of BDO International Ltd, a UK company limited by guarantee, and form part of the international BDO network of independent member firms. Liability limited by a scheme approved under Professional Standards Legislation other than for the acts or omissions of financial services licensees.

BDO is the brand name for the BDO network and for each of the BDO member firms.

© 2017 BDO East Coast Partnership. All rights reserved.