



Monthly Information Newsletter – Tax & Super

August 2023

R&D reminder

The ATO has issued a reminder for companies wishing to claim a tax offset for their R&D (research and development) activities. The reminder was issued in the context of the ATO's success in the Federal Court decision *T.D.S. Biz Pty Ltd v FCT*¹.

By way of background, the research and development tax incentive (R&DTI) helps companies innovate and grow by offsetting some of the costs of eligible R&D.

The incentive aims to boost competitiveness and improve productivity across the Australian economy by:

- encouraging industry to conduct R&D that they may not otherwise have conducted
- improving the incentive for smaller firms to undertake R&D
- providing business with more predictable, less complex support.

Broadly speaking, your eligibility to claim the tax offsets will depend on whether you:

- are an R&D entity
- incurred notional deductions of at least \$20,000 on eligible R&D activities.

You are not eligible for an R&D tax offset if you are either:

- an individual
- a corporate limited partnership
- an exempt entity (where your entire income is exempt from income tax)
- a trust (with the exception of a public trading trust with a corporate trustee).

For income years commencing on or after 1 July 2021, entities engaged in R&D may be entitled to:

- A refundable offset of 18.5% above the company's tax rate.

- A flat non-refundable offset based on a progressive marginal tiered R&D intensity threshold. Increasing rates of benefit apply for incremental research and development expenditure by intensity:
 - 0 to 2% intensity: an 8.5% premium to the company's tax rate
 - greater than 2% intensity: a 16.5% premium to the company's tax rate.

Turning back to the aforementioned case, the ATO successfully contended that the taxpayer conducted significant R&D activities outside Australia by purchasing components designed, developed and fabricated overseas without an Advance Overseas Finding from the Department of Industry, Science and Resources.

The ATO states that, while companies can claim an offset for R&D expenditure incurred by them on R&D activities conducted overseas, there is a requirement to hold an Advance Overseas Finding for those activities.

If your company is conducting R&D, contact us to determine if you are eligible for the offset.

DISCLAIMER

All information provided in this article is of a general nature only and is not personal financial or investment advice. Also, changes in legislation may occur frequently. We recommend that our formal advice be obtained before acting on the basis of this information.

Our liability may be limited by a scheme approved under Professional Standards Legislation.

¹ [2023 FCA 710]