



RSM AUSTRALIA'S RESPONSE TO:
THE BOARD OF TAXATION REVIEW OF R&D TAX
INCENTIVE DUAL-AGENCY ADMINISTRATION MODEL

SEPTEMBER 2021

CONTENTS

1.	INTRODUCTION.....	1
2.	CONSULTATION QUESTIONS	2
3.	CONCLUSION	6

1. INTRODUCTION

RSM Australia (RSM) is one of the largest nationally owned accounting firms and forms part of RSM International, which is the sixth largest international accounting and consulting organisation worldwide. In Australia, RSM is one of the fastest growing mid-tier firms with over 115 Directors and Principals and over 1,200 employees operating from 30 locations throughout Australia. Our staff operate across a range of industries, public, private, Government and not-for-profit-sectors.

RSM appreciates the opportunity to make a submission in response to the “The Board of Taxation Review of R&D Tax Incentive Dual-Agency Administration Model”

RSM provides audit, tax, and a wide variety of corporate financial and advisory accounting services. This includes R&D Tax services for a broad array of industries and technologies, and assists entities ranging from start-ups to SMEs through to multinationals.

2. CONSULTATION QUESTIONS

Current administration model

1. *Do you consider that the roles and responsibilities of the two administrators (ATO and IISA/DISER) are distinct and clearly understood? If not, how might they be enhanced?*

R&D advisers, for the most part, clearly understand the distinct roles of the two administrators of the R&D tax incentive.

On the other hand, many companies are far from clear about the different roles and often confuse or conflate the regulators or, usually, are unaware that AusIndustry is involved and think the program is only administered by the ATO.

Many companies also misunderstand the nature of the program and speak of it in terms of a government grant rather than a tax incentive.

In our view, guidance material and other publications on the administrators' websites should clearly spell out the distinct roles of each body.

Dealings with the current administration model

2. *From your experiences, are there any aspects of the current registration, eligibility review and compliance arrangements which impede or hinder your dealings with the current administration system? What works well?*

From our experience of reviewing other adviser and company registrations as part of due diligence engagements, it is clear that many poorly prepared and marginally eligible applications and expenditure calculations are getting through unreviewed. For responsible advisers, this is intensely frustrating when we go to great lengths to ensure that companies submit thorough and high quality registrations, hound our clients to improve their record keeping and filter activities carefully to ensure no ineligible activities are registered.

From experience, it is apparent that AusIndustry and the ATO have challenges attracting the necessary expertise (scientific, technical and tax/legislative) and resourcing. This creates a variety of problems that we note below including lengthy delays in processing advance and overseas findings, reviews with repetitive and spurious questions, inconsistency in what is accepted as eligible (particularly between Overseas / Advance findings, site visits and desk reviews) and poor claims that go unreviewed, as noted above.

There is a pressing need is to increase the skilled resourcing of both the ATO and AusIndustry so they can tackle the large number of claims in an expert and consistent fashion.

3. *Have you experienced any difference in the way the program has been administered in response to previous reviews? We would like to hear what has been improved and/or any additional challenges that have been experienced.*

AusIndustry's most recent compliance regime ("New Integrity Framework – User Journey") with their "traffic light" approach has been a good step forward. It has resulted in better engagement with industry and a less adversarial approach from AusIndustry.

The new online registration form has improved some things but introduced other issues such as the unannounced appearance of the ANZSIC based risk warnings at the point of lodgement, which was not flagged or discussed with participants involved in trialling the portal as part of the pilot. Some companies have struggled with the MyGov based authentication and authorisation of R&D advisers but that is probably a transitional teething issue.

One curious change in the move to the new registration form has been the loss of the sections dedicated to New Knowledge/Knowledge Gap. In any core R&D activity, it is fundamental to be able to clearly identify and articulate the knowledge gap. This sets the scene for defining the hypothesis or hypotheses and then the experimental design naturally follows from that. The absence of these sections from the new form is a significant omission.

4. *What is the cost to businesses in claiming the R&DTI? Where have businesses encountered complexity in the process?*

The main costs to business in the program are:

- Record keeping expectations that don't easily align with other priorities and processes in the business
- Tedious and lengthy review processes for otherwise clearly eligible activities and expenditure
- Lengthy delays and multiple rounds of requests for information for advance and overseas findings, often resulting in additional time required to update R&D expenditure calculations and amend Income Tax Return(s) once these are approved
- Complexity of application of the eligibility rules, particularly with interactions with other parts of the Tax Act, and in application to disciplines such as engineering and software development where the eligibility rules don't easily map onto the way R&D is undertaken in those disciplines.

5. *Would you provide any real-life examples of businesses that have recently navigated the R&DTI application process? Were there issues, challenges or frustrations encountered in the process?*

We have experienced instances during processing of Advanced and Overseas Findings or during claim reviews where case officers change midway through the process. This results in the process becoming unduly time consuming and advisors/clients find themselves repeating their response(s) to requests for information.

6. *Does the current administrative process impact the decision to apply for the R&DTI? How has it affected the decision to apply?*

During the process of consultation or meeting representatives from companies (a number of which used to prepare R&D claims by themselves or with the help of standard accountants or boutique advisors), we have encountered a number of businesses who used to access the program and have not been doing so

for a number of years due to previous audit issues encountered with both AusIndustry and/or the ATO. Many of these businesses may be able to re-access the R&D Tax Incentive with better education and record keeping which we have advised them on, however are sometimes unwilling to even consider this given their previous experiences). Other companies have been scared off from claiming due to the negative press that surrounded the R&D Tax Incentive in recent years. This is particularly prevalent among smaller companies where resources and time are in short supply. The tragedy is that these companies are the ones that the program should be supporting the most.

7. *How easy or otherwise have applicants found the Advanced Findings process and the Overseas Findings process with DISER?*

As touched on earlier, the Advanced and Overseas Finding process is very challenging. The application requires substantial time to complete with detailed information requirements. The subsequent review process at least doubles and sometimes triples the initial investment in the application. In addition, we have experienced many applications that have taken months and almost up to a year to be completed successfully. The BellChambers Barrett outsourcing experiment was not successful and only added an additional layer to the process where information was requested and supplied, processed by BellChambers Barrett, sent to AusIndustry for review, AusIndustry then relayed further queries back through BellChambers Barrett for response by the applicant. Each step created delays and misunderstandings. As noted above for the review process, changes of AusIndustry staff midway through application reviews and lack of technical expertise of AusIndustry staff has caused further frustrating delays. Other examples of difficulties include:

- Requests for information that had already been provided in either the applications or previous correspondence
- Requests for inappropriate or irrelevant information, e.g. full drug dossiers that can run to thousands of pages
- The online application form for Advance and Overseas Findings does not allow sufficient information to be provided so, inevitably, additional information is requested leading to delays and additional burdens on applicants

Improvements and efficiencies

8. *What changes could be made to simplify the administrative and compliance obligations for taxpayers, whilst maintaining the integrity of the program?*

An alternative dispute resolution process, such as mediation, prior to AAT hearings could help substantially.

9. *What opportunities can you identify to reduce duplication between the two administrators?*

The major point of potential duplication that currently exists is that the ATO, technically, can query the eligibility of R&D activities, a role normally understood to be the responsibility of AusIndustry. This can create a situation where companies are facing double jeopardy and subjectivity from different personnel within the different administrators with regard to the eligibility of their activities if they don't have approved Advance or Overseas Findings. While normally the ATO would refer claims back to AusIndustry, it would add certainty if the roles of the two agencies could be more clearly formalised.

-
10. *Reflecting on recent updates to guidance provided by the administrators, we would like to hear about its effectiveness/usefulness. What improvements could be made (if any)?*

One of the most accessible guides for claiming companies has been the Guide to Common Errors related to software R&D claims published in February 2019 by AusIndustry. Similar guides for other industry sectors in this style would be very helpful.

There has not been any replacement for the withdrawn Tax ruling No. IT 2552. The ATO has gone to significant efforts to publish additional guidance, including the Job Keeper ruling (TD 2020/D1), the expenditure not at risk ruling (TR 2021/D3) and the building expenditure ruling in progress (3922 under development per the ATO website for Advice Under Development). However, for general guidance, there are no binding pieces of guidance which can give certainty to the taxpayer such as the case of IT 2552. It would be very helpful if the ATO could release updated ATOID(s) to cover similar issues as were dealt with in that previous document.

International models and experience

11. *Our review includes an examination of the international R&D administration models. From your international experiences with similar programs abroad, is there any jurisdiction in particular that you consider to be appropriate for us to focus on for further analysis?*

We have had limited experience of working with similar programs overseas, as typically our colleagues in the relevant RSM member firms have their own R&D divisions which support that jurisdiction. Our understanding is that programs in the UK, Canada and New Zealand are similar to Australia, although we understand that the UK does not have a dual agency administration model.

3. CONCLUSION

Thank you for providing opportunities for RSM to contribute to this review, both in the consultation sessions and with this submission. We trust that you find our contributions helpful however, please do let us know if you would like to discuss any aspects of this submission further.

For further information – Contact Details

Richard Wraith
Principal
RSM
Australia
richard.wraith@rsm.com.au

Jessica Olivier
Partner
RSM
Australia
jessica.olivier@rsm.com.au

THE POWER OF BEING UNDERSTOOD AUDIT | TAX | CONSULTING

RSM Australia Pty Ltd is a member of the RSM network and trades as RSM.
RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, 2nd Floor, London EC4N 6JJ.

The brand and trademark RSM and other intellectual property rights used by