

28 September 2026

The Treasury
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Dear Sir or Madam,

RE: Better targeting the Research and Development Tax Incentive - Exposure Draft Legislation

Thank you for the opportunity to provide feedback on the exposure draft legislation, explanatory materials and legislative instrument to implement the proposed reforms to better target the R&D Tax Incentive (**RDTI**). RSM supports the Government's objective of better targeting the RDTI, maintaining program integrity and directing refundable support towards innovative companies with genuine cash-flow needs.

Collectively, the reform proposals from the 2026-27 Federal Budget are commendable and go some way towards achieving these policy objectives. There is of course a balancing act across the 7 points announced in the Budget, which seeks to reduce incentives in some areas whilst lifting the incentive in other areas. As our submission will outline, this delicate balance to achieve the well-intentioned policy objectives will be obscured by the manner in which the proposed legislative updates have been drafted.

More specifically, we would like to urgently bring to your attention several aspects of the proposed Exposure Draft which have wide-spread unintended consequences for the innovation ecosystem in Australia. If enacted, some of these measures will lead to an outcome which will result in far reaching negative consequences for start-ups, scale-up businesses, investors and the capital markets. We are confident that almost all submissions on this Exposure Draft from sophisticated stakeholders will address these points:

1. The detrimental impact from new table item 1A (i.e. **the 10-year or 15-year refundability rule**); and
2. the complete removal of eligibility for supporting R&D activities, which appear well intentioned however have the unintended consequence of excluding R&D activities which are integral to core R&D activities and critical to ongoing project success and commercialisation.

In combination, these measures will reduce and, in some cases, completely eliminate cashflow support for genuine Australian R&D for some start-ups and small businesses, create new classification and expenditure attribution disputes, and disproportionately affect all priority sectors. In some cases, the proposals will decimate sectors with long, regulated and interdependent development pathways.

We believe these matters ought to be discussed in an open forum such as a Senate Economics Committee Enquiry (similar to 2018 / 2019) to ensure that Government, Legislature and all key stakeholders are able to work collaboratively to achieve the policy objectives set out in the 2026-27 Budget.

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RSM Australia would welcome the opportunity to appear in any such forum to discuss any aspect of this submission. For background, RSM Australia appeared in the 2018 Senate Economics Committee Inquiry into the R&D Tax Incentive reforms led by Senator Hume and Senator Carr.

Yours sincerely,

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RSM AUSTRALIA SUBMISSION

Contents

Part 1	4
Table item 1A — the 10-year and 15-year refundability rule	5
Recommendations	6
Removal of eligibility for supporting R&D activities	6
Recommendations	6
Part 2	8
Alignment with the Ambitious Australia – Strategic Examination of R&D	9
New 10-year / 15-year Refundability Rule and Updated Aggregated Turnover Threshold (New Table Item 1A, Subsection 355-100(1))	10
1. Preliminary comments	11
2. “First started carrying on an enterprise” is an impractical basis for a start-day test	12
3. The “connected with” test is inappropriate to achieve the policy objective	12
4. The exposure draft and the explanatory materials describe different tests, and the interaction with item 2 is unresolved	12
Recommendations relating to Table item 1A	13
Recommendation 1: Target the number of refundable R&D claims, rather than number of years, or provide an ongoing renewal pathway with KPIs	13
Recommendation 2: Address entity churning through a targeted successor rule	13
Recommendation 3: Clarify paragraph (b) of item 1A	13
Recommendation 4: Reconcile the explanatory materials with the legislation	13
Recommendation 5: Resolve the interaction with item 2	14
Removal of supporting R&D activities	14
5. A core-only activity test does not reflect how experimental R&D is conducted	14
6. The higher core rate does not necessarily compensate for the lost claim base	14
7. Certain sectors are disproportionately exposed	14
Recommendations relating to supporting R&D activities	15
Recommendation 1: Constrain the supporting activity limb by strengthening the dominant purpose test (similar to New Zealand)	15
Recommendation 2: Introduce a statutory exclusions list	15
Recommendation 3: Introduce a capped supporting expenditure ratio or deemed rate (as proposed in the SERD Report)	16
9. Further analysis on impact of complete removal of supporting R&D activities	16

PART ONE

Executive Summary

Key practical issues arising from the Exposure Draft and RSM
Australia suggestions

The reform proposals announced in the 2026-27 Federal Budget are commendable and directed to objectives RSM supports, these being better targeting the R&D Tax Incentive (RDTI), maintaining program integrity and directing refundable support towards innovative companies with genuine cash-flow needs.

However, two particular aspects of the Exposure Draft are drafted in a manner which appears to produce outcomes contrary to those objectives, and contrary to the *Ambitious Australia Strategic Examination of R&D* ("**SERD Report**") to which the measures respond. Those aspects are new table item 1A of subsection 355-100(1), being the 10-year or 15-year refundability rule, and the complete removal of eligibility for supporting R&D activities.

In combination, these measures will reduce and, in some cases, completely eliminate cashflow support for genuine Australian R&D, create new classification and expenditure attribution disputes, and disproportionately affect priority sectors with long, regulated and interdependent development pathways.

Our concern in each case is not with the policy objective, but with the mechanics by which the Exposure Draft seeks to give effect to it. The matters raised are, in our view, capable of correction without disturbing the announced policy, and we have set out below the specific defects we have identified together with the recommendations made throughout this submission.

Table item 1A — the 10-year and 15-year refundability rule

The most concerning aspect of the Exposure Draft, and the aspect which in our view requires urgent attention, is subsection 355-100(6). The start day which governs item 1A is fixed not by reference to the R&D entity, but to the earliest day on which the R&D entity **or any entity connected with it, which are its affiliate or of which it is an affiliate**, first started carrying on an enterprise. This imports the commercial history of investors, founders and other unrelated entities into the eligibility of the R&D entity. Instances include (but not limited to) a founder's earlier and unrelated sole-trader activity or family trust, a venture capital or ESVCLP fund holding 40% or more of the equity, a university co-owner, or a foreign parent which commenced business offshore decades ago each fixing the start day.

A newly incorporated Australian company may therefore fall outside item 1A on the day it is formed, notwithstanding that it has never conducted R&D, and the arrival of institutional capital may itself extinguish refundability at precisely the point in a company's life at which the Government's other announced measures are designed to encourage that capital to arrive.

Independently of subsection 355-100(6), we consider 'carrying on an enterprise' to be an impractical basis for a start-day test. The concept extends to preparatory and commencement activity, so the start day may precede the existence of any business and indeed the incorporation of the R&D entity itself; it is a question of fact rather than a registrable event, and therefore inherently more contestable for taxpayers and the Commissioner alike; and it carries no Australian nexus, such that offshore activity by an offshore connected entity can fix the start day. We would further observe that having previously carried on an enterprise is, if anything, a positive indicator of successful commercialisation rather than a marker properly associated with reduced eligibility.

Two further defects arise. Because connection is tested only as at the relevant time, refundability may be lost and regained without any change in the entity's own activities, which is an inappropriate basis on which to determine access to a cash-flow measure. Separately, the explanatory materials and the legislation describe different tests for the anniversary year, and the interaction between item 1A and item 2 of the table is unresolved.

Recommendations relating to Table item 1A

Considering the foregoing, we make the following five recommendations.

Recommendation 1: Target the number of refundable R&D claims available to a company in totality, rather than number of years, or provide an ongoing renewal pathway with KPIs

Neither the start date of the R&D entity, whether for “carrying on a business” or “enterprise” nor an “earlier of” test should impact when the R&D activities should receive the incentive. Instead, we would recommend:

- Utilising an Export Market Development Grant style limit on the number of refundable R&D tax claims, rather than number of years; or
- In line with the SERD Report, provide for a preliminary number of years for access to the refundable R&D tax offset, followed by the ability to apply for ongoing eligibility depending on KPIs such as average annual revenue growth rate (as stated in the SERD Report) or other measurable metrics.

Recommendation 2: Address entity churning through a targeted successor rule

Address entity churning through a targeted successor rule (suggested drafting in the body of this submission), rather than through the broad “connected with” entity / affiliate mechanism in subsection 355-100(6).

Recommendation 3: Clarify paragraph (b) of item 1A

Clarify the operation of paragraph (b) of item 1A and, if retained, replace the reference to the day of first registration with a reference to the first income year for which the entity is or was registered under section 27A of the *Industry Research and Development Act 1986* (Cth) (“IRDA”).

Recommendation 4: Reconcile the explanatory materials with the legislation

Reconcile the explanatory materials with the legislation on the treatment of the anniversary year and test the anniversary at a single point in time rather than by reference to ‘any day during the income year’.

Recommendation 5: Resolve the interaction with item 2

Express item 1A to apply only if item 2 of the table does not apply.

Removal of eligibility for supporting R&D activities

The Exposure Draft removes the existing category of supporting R&D activities so that only activities satisfying the core R&D requirements will remain eligible. The announced 4.5 percentage point increase in the offset rate for core R&D expenditure does not resolve the threshold issue: expenditure on an activity which is necessary to enable, conduct or evaluate a core R&D activity becomes ineligible altogether, so a higher rate applied to a reduced base will not compensate claimants whose experimental programs require substantial enabling work.

A “core R&D activity” test does not reflect how experimental R&D is in fact conducted, activities such as experimental design, test environments, data generation, test-article preparation and validation being ordinarily inseparable from the systematic progression of the work.

Nor, in our view, is complexity removed. Current disputes around whether core or supporting R&D activities are eligible will be replaced by disputes as to whether an activity is core or supporting, and by disputes as to whether expenditure was incurred on a core activity. Sectors with long, regulated and interdependent development pathways

are disproportionately exposed, and we note that the Exposure Draft itself acknowledges those longer pathways through the fifteen-year extension available to qualifying therapeutic-goods innovators.

In our view the same policy rationale supports calibrated treatment of supporting expenditure which is necessary and integral to those pathways. The complete removal of supporting R&D activities also appears to misapprehend the SERD Report, which recognised their importance and proposed that access be simplified rather than withdrawn.

Recommendations relating to supporting R&D activities

RSM recognises that retaining the supporting R&D activity rules entirely unchanged may not align with the Government's announced policy. We nevertheless consider that complete removal is unnecessarily blunt. We recommend that Treasury adopts a proportionate model that excludes remote, routine and commercially oriented activity while preserving a pathway for expenditure and activities with a direct and demonstrable experimental nexus.

Recommendation 1: Constrain the supporting activity limb by strengthening the dominant purpose test (similar to New Zealand)

Retain a supporting activity category, but require the activity to have the dominant purpose of supporting an eligible core R&D activity (i.e. use the wording already in s355-30 and simply removing the "directly related" test, which is consistent with the law in New Zealand for supporting R&D activities). This would target the expenditure identified by Treasury while avoiding the administrative complexity and litigation risk associated with attempting to distinguish experimental and enabling activities solely through the definition of core R&D.

Recommendation 2: Introduce a statutory exclusions list

Retain the concept of a supporting activity however, legislate a closed list of activities that can never qualify as supporting activities (for example, routine administration, sales, marketing, commercialisation, market testing and ordinary production). This approach is already adopted for core R&D Activities under s355-25 in the existing legislation and works well.

Recommendation 3: Introduce a capped supporting expenditure ratio or deemed rate (as proposed in the SERD Report)

As suggested in the SERD Report, permit supporting activity expenditure up to a prescribed percentage of core R&D expenditure, or allow a fixed uplift on eligible core expenditure in lieu of specific supporting activity substantiation. If Treasury's concern is excessive claims for supporting activities, a cap directly targets the quantum of expenditure rather than removing eligibility entirely and will provide simplicity of administration.

We also recommend providing a higher deemed percentage, carve-out or prescribed-activity pathway for qualifying therapeutic goods, biotechnology, medical technology and other priority-sector activities with demonstrably long, regulated and interdependent development pathways.

Finally, we propose that any changes be applied only to R&D projects commenced after the commencement date of the legislation, rather than to existing programs already underway. This would preserve commercial certainty for investment decisions made under the current regime while still allowing Treasury to achieve its policy objectives on a prospective basis.

PART TWO

Detailed Submission

Alignment with the Ambitious Australia – Strategic Examination of R&D

We understand from various government publications that the 2026-27 Budget Announcements were intended to be the government's response to the SERD Report. This is explicitly stated at <https://consult.treasury.gov.au/c2026-792804>.

As noted in our Cover letter, RSM Australia is supportive of measures which better target government R&D Incentives investment and capital and simplify the system. However, as a preliminary point, it would appear that a number of announced measures possibly misinterpret the outcomes of the SERD Report, and we would welcome open discussion to ensure that this is the intention of government. Furthermore, as it is outlined throughout this submission, the mechanics of the Exposure Draft will result in practical outcomes which are often against the recommendations in the SERD Report.

Some key comparisons are in the table below:

SERD recommendations	Exposure Draft	Commentary
Recommendation 5a: introduce a deemed rate for supporting R&D activities. Recommendation 5b: For the “start-up” stream, eligible R&D expenditure should be based on “R&D Project” instead of the core and supporting R&D definitions that still apply to the non-startup RDTI streams. Additionally, eligible expenditure should be extended to include development and deployment, early commercialisation, and allow for user testing and adoption research.	Remove eligibility of supporting R&D Activities	The blanket removal of supporting R&D activities eliminates the RDTI benefit for expenditure on those activities altogether, including those targeted towards the high growth start-ups and scale-ups, which appear contrary to the SERD Report. The SERD Report recommendations acknowledge the importance of supporting R&D activities, however seeks to balance this with simplicity. The SERD Report recommendations are targeted towards: 1. Removing complexities with the delineation between core and supporting R&D activities which have caused issues for claimants for no benefit. 2. Have an automatic deemed rate for supporting R&D activities. 3. Ensure that there is targeted approach for companies with high growth potential, provide a higher offset rate and improve ability to secure capital. 4. Provide an easy calculation for supporting R&D activities via a deemed rate.
Recommendation 5c: Increase the turnover threshold for the refundable R&D tax offset from \$20 million turnover to \$50 million.	Increase the turnover threshold for the refundable offset from \$20m to \$50m	Consistent with SERD Report.

SERD recommendations	Exposure Draft	Commentary
A combination of recommendations which are aimed at <i>“once businesses are scaling, it is critical that they are supported to continue to grow. Currently, the refundable offset benefits only apply to businesses that generate a turnover of less than \$20 million. The panel heard from many scaling companies that removal of the refundable offset at a significant growth point can cause real issues.”</i> (SERD Report, page 62), including: • Recommendation 5b: Access to startup stream limited to 3 years, with ability to apply for a further 3-year period for certain deep techs and pharmaceutical businesses. • Recommendation 5c: Once the company reaches certain scale, ongoing eligibility for the refundable tax offset to be pegged against KPIs such as average annual revenue growth rate. • No “connected with” or affiliate test.	Limit refundability to firms up to 10 years of age, with an extension of up to 15 for therapeutic goods	Whilst a blanket 10-year or 15-year rule may appear prima facie to achieve greater administrative certainty and simplicity, it fails to differentiate one R&D business from another, or different industries. This would appear to be contrary to the most important theme of SERD, which is to provide the most support for the highest Return On Investment innovation businesses. In some ways, the proposed rule treats every business equally and therefore dilutes the support the most promising businesses receive. Furthermore, as noted in detail below, the “connected with” and affiliate tests, in conjunction with the “earlier of” start time test, will lead to significant additional complexity which a majority of businesses will fail to ever fully understand or correctly apply. More critically, this will preclude a number of businesses from ever accessing the refundable R&D tax offset, and certainly not for the whole 10-years. This will also lead to significant administrative issues for regulators. For example, the ATO would need to, every year, trace through every connected with, or affiliate entity of the R&D entity, and trace those other entities’ start of enterprise date. The current aggregated turnover test already poses these administrative challenges and that test simply requires identifying the annual turnover of the connected or affiliate entity in that year. The new test would require a tracing back to the start of enterprise date.

New 10-year / 15-year Refundability Rule and Updated Aggregated Turnover Threshold (New Table Item 1A, Subsection 355-100(1))

We commend Government for the proposed policy measures to better target the refundable R&D tax offset. As announced in the budget, it is our view that whilst there are different perspectives on the appropriate time limit for the refundable R&D tax offset, collectively the new measures do provide greater support for growth R&D businesses.



In this regard, we support the policy intent underlying new table item 1A of confining the refundable R&D tax offset, for R&D entities with aggregated turnover of less than \$50 million, to companies within the first ten years of their life, in recognition that this cohort is most in need of cash-flow support.

This objective also sits consistently alongside other measures announced in the same Budget directed at early-stage and growing companies, including the expanded tax incentives for venture capital schemes and the Innovative Business CGT Concession (**IBCC**).

Our concern is not with this policy objective, but with specific features of the current drafting that we consider are apparently unintended and are likely to produce outcomes contrary to it. We address these in turn below, and set out eleven recommendations, including suggested drafting, that we consider would resolve the difficulty while preserving the policy as announced.

1. Preliminary comments

Table item 1A only applies where the R&D entity's aggregated turnover is less than \$50 million. Because the aggregated turnover test already consolidates the turnover of connected and affiliated entities, an entity to which item 1A can apply is, by definition, already a member of a small group. We acknowledge that the use of the "connected with" and affiliate test for these purposes is to prevent related parties potentially overcoming the 10-year or 15-year rule, however as noted below there are several critical, unintended consequences. We have provided recommendations which may better serve the intended policy objectives.

The most concerning aspect of the Exposure Draft and which needs urgent attention is that subsection 355-100(6) extends the start-day test in item 1A to any entity connected with the R&D entity, or of which the R&D entity is an affiliate, or where the other entity or entities is an affiliate of the R&D entity. This is coupled with the fact that the start-day test is the **earlier** of when the R&D entity (or connected/affiliate entity) **first started** carrying on an **enterprise**.

This imports the commercial history of investors, founders and other group members (none of whom need ever have conducted, funded, or held any interest in R&D activity, and in many cases would not even know the R&D entity) into the determination of a single R&D entity's access to the refundable offset, without any corresponding integrity benefit.

The following examples (not exhaustive) illustrate how the proposed legislation might practically apply:

- Person A, whilst at University, carries on an enterprise of selling eBay products. 15 years later Person A is a founder at an AI start-up business. The AI start-up business would be precluded as Person A, as a connected with entity, first carried on an enterprise 15 years earlier.
- Investor A (either an individual or a Venture Capital firm), who holds 45% voting rights in Company A, invests in a new AI start-up business (company B). Company A has been operating for 10 years and currently has annual turnover of \$10m. Company A had claimed R&D for 3 of those years. The operation of the "connected with" test which treat Company A and Company B as connected. Company B would never be able to access the refundable R&D tax offset.
- Person A is an affiliate of his wife (Wife A) as he respects her business acumen and will listen to her directions and wishes in relation to his own business. Wife A has operated a florist business for 20 years (non-R&D). Person A founds Company A. The operation of the "connected with" test, being affiliate inclusive, will connect the florist business with Company A. Any business which Person A is connected to will never be able to access the refundable R&D tax offset.

We would also observe that this mechanism works against other measures announced on the same day. The expanded venture capital tax incentives and the Investment Boost/IBCC are both directed at attracting institutional capital into early-stage, high-growth companies. Because subsection 355-100(6) reaches any entity connected with, or an affiliate of, the R&D entity, the arrival of an institutional investor (who becomes “connected with” the R&D entity through its equity stake) can itself import that investor’s own enterprise history into the start-day calculation, potentially extinguishing the R&D entity’s access to the refundable offset at precisely the point in the company’s life that the Government’s other measures are designed to encourage institutional capital to arrive.

Finally, we note that having previously carried on an enterprise is, if anything, a positive indicator of the likelihood of successful commercialisation, rather than a marker properly associated with reduced eligibility for incentives. A mechanism that reduces refundable-offset access by reference to a founder’s or investor’s prior, unrelated commercial experience does not appear calibrated to the stated objective of directing support to high-potential young companies.

2. “First started carrying on an enterprise” is an impractical basis for a start-day test

Independently of the subsection 355-100(6) issue, we consider “carrying on an enterprise” in paragraph (a) of item 1A to perhaps not be the best statutory test for fixing a start date for accessing refundable R&D tax offsets. Reasons are as follows:

- The concept extends to the commencement of an enterprise, meaning preparatory or commencement activity is sufficient to fix the start day. The start day can therefore precede the existence of any actual business, and indeed the incorporation of the R&D entity itself.
- Because commencement activities count, the start day is not a single ascertainable date fixed by an objective record (such as an ASIC registration), rather it is a question of fact as to when preparatory steps commenced. Arguably a matter inherently more difficult, and more contestable, for both taxpayers and the Commissioner to determine with confidence than a registrable event.
- The concept has no Australian nexus. Offshore activity conducted by an offshore connected or affiliated entity can fix the start day, notwithstanding that the activity has no connection to Australia or to the R&D entity’s own operations.

If the policy intent is that refundable-offset access should be confined to young companies, we consider the date of the R&D entity’s incorporation to be a substantially more direct and readily ascertainable proxy. We note there is already precedent for using date of incorporation as a bright-line test of this kind elsewhere in ITAA 1997, see subsection 83A-33(3).

3. The “connected with” test is inappropriate to achieve the policy objective

Subsection 355-100(6) provides for connection to be tested only as at the relevant time, not by reference to any point since the R&D entity’s incorporation. This produces two related but distinct problems.

First, the provision is over-inclusive: an entity can be disqualified by the unrelated commercial history of a founder or investor who happens to be connected with it, with no bearing on the R&D entity’s own age or genuine circumstances. If a founder incorporated a company fifteen years ago and has long since ceased trading, the eligibility of a newly incorporated R&D entity for the refundable offset would, on the current drafting, appear to depend on whether that founder has taken the administrative step of deregistering the earlier company with ASIC (for example, by lodging a Form 6010).

Second, the provision is under-inclusive against the restructuring it is presumably designed to prevent. Because connection is tested only at the relevant time, an R&D entity's refundability can change from year to year based solely on whether a disqualifying connection happens to still exist, without any change in the entity's own activities. An entity connected to an entity past its own tenth anniversary could be refundable one year, lose that status the next while still connected, and regain it in a subsequent year simply by severing the connection before the relevant income year, the opposite of the considered, one-off youth test the policy appears to intend. We do not consider this an appropriate basis on which the availability of the refundable tax offset should turn.

4. The exposure draft and the explanatory materials describe different tests, and the interaction with item 2 is unresolved

Paragraph 1.15 and Table 1.1 of the explanatory materials (EM) describe the test as being satisfied where a day in the income year falls before, or on, the tenth anniversary of the start day. Item 1A as drafted instead disqualifies the entity where any day in the income year falls on or after that anniversary. These two formulations produce different results in the anniversary year itself. The worked example at paragraph 1.33 of the EM follows the drafted legislation rather than the test as described in the EM's own narrative, which in our view confirms the inconsistency lies in the drafting of the EM rather than in the legislation, however, this should be corrected before introduction, given the EM will be relied upon as an aid to interpretation.

Separately, item 1A is not expressed as being subject to item 2 of the same table. As drafted, an R&D entity with aggregated turnover under \$50 million that is past its tenth anniversary, and that also falls within item 2, does not appear to be tie-broken between the two items.

Recommendations relating to Table Item 1A

Considering the foregoing, we make the following five recommendations.

Recommendation 1: Target the number of refundable R&D claims, rather than number of years, or provide an ongoing renewal pathway with KPIs

The start date of the R&D entity, whether for "carrying on a business" or "enterprise" should not impact when the R&D activities should receive the incentive. Instead, we would recommend:

- Utilising an Export Market Development Grant style limit on the number of refundable R&D tax claims, rather than number of years; or
- In line with the SERD Report, provide for a preliminary number of years for access to the refundable R&D tax offset, followed by the ability to apply for ongoing eligibility depending on KPIs such as average annual revenue growth rate (as stated in the SERD Report) or other measurable metrics.

Recommendation 2: Address entity churning through a targeted successor rule

Address entity churning through a targeted successor rule (suggested drafting below), rather than through the broad "connected with" entity / affiliate mechanism in subsection 355-100(6).

Suggested drafting for consideration:

Replace subsection 355-100(6) with the following successor rule:

'(6) For the purposes of table item 1A in subsection (1), if: (a) another entity (the predecessor) carried on activities; and (b) all or a substantial part of the assets, employees or research and development activities of the predecessor were transferred (directly or indirectly) to the R&D entity; and (c) at the time of the transfer, the predecessor was connected with the R&D entity or was an affiliate of the R&D entity, or the R&D entity was an affiliate of the predecessor; the start day of the R&D entity is taken to be the earlier of the R&D entity's start day and the day on which the predecessor was incorporated or otherwise came into existence.'

Recommendation 3: Clarify paragraph (b) of item 1A

Clarify the operation of paragraph (b) of item 1A and, if retained, replace the reference to the day of first registration with a reference to the first income year for which the entity is or was registered under section 27A of the *Industry Research and Development Act 1986* (Cth) (**IRDA**).

Recommendation 4: Reconcile the explanatory materials with the legislation

Reconcile the explanatory materials with the legislation on the treatment of the anniversary year, and test the anniversary at a single point in time rather than by reference to 'any day during the income year'.

Recommendation 5: Resolve the interaction with item 2

Express item 1A to apply only if item 2 of the table does not apply.

Detailed Comments and Recommendations relating to supporting R&D activities

5. A core-only activity test does not reflect how experimental R&D is conducted

The exposure draft removes the existing category of supporting R&D activities so that only activities satisfying the core R&D requirements will remain eligible. The announced 4.5 percentage point increase in the offset rate for core R&D expenditure does not resolve the threshold issue: expenditure on an activity that is necessary to enable, conduct or evaluate an experiment may become wholly ineligible merely because that activity does not, viewed in isolation, satisfy the core activity definition.

In practice, eligible experimentation is rarely undertaken as an isolated laboratory or technical step. It commonly relies on preparatory work, experimental design, the creation and maintenance of test environments, specialist data generation and collection, prototype or test article preparation, trial coordination, quality controls, safety monitoring, analysis and validation. These activities may be inseparable from the systematic progression of work even where they are not themselves the step through which new knowledge is directly generated.

A complete removal may therefore create a false distinction between the experiment and the work necessary to make that experiment technically valid, safe and capable of producing interpretable results. It is also likely to shift, rather than remove, compliance complexity. Claimants and regulators will need to determine whether personnel, consumables, facilities, equipment, contractors and other costs are incurred "on" the core activity or relate to a separate ineligible activity. This creates new boundary and apportionment disputes and may encourage inconsistent characterisation of the same real-world work.

6. The higher core rate does not necessarily compensate for the lost claim base

The economic effect of the reform will depend on the proportion of a claimant's existing expenditure that remains attributable to core R&D activities. The higher rate may compensate claimants whose supporting activity expenditure is small, but it may materially reduce the effective benefit for claimants whose experimental programs require substantial enabling work. The reform should therefore be assessed by reference to the effective incentive across representative project profiles, not solely by reference to the headline increase in the core offset rate.

A reduction in the effective incentive is particularly significant where the excluded work is not ordinary commercialisation or routine administration, but expenditure without which the eligible experiment could not be properly designed, conducted, monitored or evaluated. In those circumstances, removal may reduce additionality and influence whether, when or where the wider R&D program proceeds.

7. Certain sectors are disproportionately exposed

The proposed change will not affect all industries equally. Sectors characterised by long development cycles, complex testing environments, significant regulatory requirements or integrated development pathways are likely to be disproportionately affected. This includes biotechnology, pharmaceuticals, medical devices, advanced manufacturing, defence, clean technology, mining technology and agritech (non-exhaustive). In these industries, experimentation commonly relies on a broader ecosystem of enabling activities that may not themselves satisfy the core activity definition but are nevertheless necessary to design, conduct, monitor, validate and interpret experimental outcomes.

These activities are often not peripheral to experimentation. They may be necessary to protect participants, maintain the integrity of the test article and experimental environment, satisfy scientific and regulatory standards, and generate data capable of supporting valid conclusions. Treating all such activities as ineligible may disproportionately reduce support for biotechnology, pharmaceuticals, medical devices, defence and advanced manufacturing, notwithstanding these are stated areas of national priority.

The exposure draft also recognises that qualifying therapeutic-goods innovators may require a longer refundable period by providing a potential extension from ten to fifteen years. That sector-specific recognition reflects the longer development and regulatory pathways faced by these innovators.

More broadly, it demonstrates an acknowledgement that certain activities and industries may require tailored treatment where innovation occurs through long, complex and interdependent development pathways. In our view, the same policy rationale supports calibrated treatment of supporting expenditure that is necessary and integral to those pathways.

8. RSM recommends a proportionate compromise rather than complete removal

RSM recognises that retaining the supporting activity rules entirely unchanged may not align with the Government's announced policy. We nevertheless consider that complete removal is unnecessarily blunt.

Treasury should adopt a proportionate model that excludes remote, routine and commercially oriented activity while preserving a pathway for expenditure and activities with a direct and demonstrable experimental nexus. We provide further details below on the potential impact of the current proposal. In terms of RSM Australia's suggested solutions, our preferred suggestions (all easily implemented) are as follows:

Recommendation 1: Constrain the supporting activity limb by strengthening the dominant purpose test (similar to New Zealand)

Retain a supporting activity category, but require the activity to have the dominant purpose of supporting an eligible core R&D activity (i.e. use the wording already in s355-30 and simply removing the “directly related” test). This would target the expenditure identified by Treasury while avoiding the administrative complexity and litigation risk associated with attempting to distinguish experimental and enabling activities solely through the definition of core R&D.

Recommendation 2: Introduce a statutory exclusions list

Retain the concept of a supporting activity however, legislate a closed list of activities that can never qualify as supporting activities (for example, routine administration, sales, marketing, commercialisation, market testing and ordinary production). This approach is already adopted for core R&D Activities under s355-25 in the existing legislation and works well.

Recommendation 3: Introduce a capped supporting expenditure ratio or deemed rate (as proposed in the SERD Report)

Permit supporting activity expenditure up to a prescribed percentage of core R&D expenditure, or allow a fixed uplift on eligible core expenditure in lieu of specific supporting activity substantiation. If Treasury's concern is excessive claims for supporting activities, a cap directly targets the quantum of expenditure rather than removing eligibility entirely and will provide simplicity of administration.

We also recommend providing a higher deemed percentage, carve-out or prescribed-activity pathway for qualifying therapeutic goods, biotechnology, medical technology and other priority-sector activities with demonstrably long, regulated and interdependent development pathways.

Finally, we propose that any changes be applied only to R&D projects commenced after the commencement date of the legislation, rather than to existing programs already underway. This would preserve commercial certainty for investment decisions made under the current regime while still allowing Treasury to achieve its policy objectives on a prospective basis.

9. Further analysis on impact of complete removal of supporting R&D activities

At the outset, it is noted that complete removal of supporting R&D activities appears to be misunderstanding the outcome of the SERD Report, which recognised the importance of supporting R&D activities. The SERD Report proposed that the process of accessing the RDTI should be simplified for supporting R&D activities and greater support should be provided to certain high growth businesses or those with higher probability of return on investment. The removal of supporting R&D activities achieves none of these objectives.

The proposed amendments risk creating an artificial separation between activities that generate new knowledge and activities that are necessary to support, enable, evaluate and translate that knowledge into practical outcomes. Innovation rarely occurs in discrete stages. Rather, the generation of new knowledge, development of prototypes, manufacture of trial materials, validation activities and related technical work often form part of an integrated innovation process.

While supporting activities may not themselves constitute experimental activities, they frequently provide the technical foundation upon which experimental activities depend. Activities such as background research,

prototype preparation, trial manufacture, validation testing and related technical work are often undertaken not because outcomes are known, but because they are necessary to enable, inform or evaluate the corresponding experimental activities.

This is particularly relevant in sectors such as biotechnology, medical technology, advanced manufacturing and defence, where experimental activities cannot readily be separated from validation, trial production, process optimisation and other activities required to determine whether an innovation can be successfully applied in practice. In many cases, these activities are undertaken because further uncertainty remains regarding whether the outcomes of the experimental activities can be successfully realised at scale.

The proposed exclusions therefore risk reducing the economic return generated from Government support for R&D by creating a sharper distinction between the generation of new knowledge and the activities necessary to apply that knowledge in practice. This concern is particularly relevant in light of broader Australian innovation policy objectives, which increasingly emphasise the importance of research translation, commercialisation, sovereign capability, productivity growth and the development of new industries.

The SERD Report repeatedly highlights the importance of strengthening the connections between knowledge creation, innovation, scale-up and commercial outcomes, and notes that Australia's longstanding challenge is not simply generating research, but converting that research into economic and societal value.

The purpose of the RDTI is not merely to encourage experimentation in isolation. Rather, it is intended to support innovation activities that generate broader economic benefits for Australia, including investment, skilled employment, capability development, sovereign capability and commercial outcomes. Where activities are integral to enabling, supporting or evaluating experimental activities, their exclusion may diminish the effectiveness of public investment in achieving these broader policy objectives.

Internationally, several innovation systems have recognised that innovation extends beyond activities satisfying a strict R&D definition and have adopted complementary mechanisms to support innovation, translation and technology deployment activities. While approaches differ between jurisdictions, the common objective is not merely to increase R&D expenditure, but to maximise the economic and societal value created from that investment. Australia should carefully consider whether the proposed amendments inadvertently reduce support for activities that are necessary to achieve those same outcomes.
