

31 January 2012

Dear AusIndustry

AusBiotech Submission on R&D Tax Incentive Implementation – Consultation on Discussion Paper

Please find following a submission from AusBiotech, encompassing feedback from its 3000-strong membership base, the majority of which are small to medium-sized biotechnology companies with high levels of research and development (R&D).

AusBiotech has been actively involved in campaigning for the R&D Tax Incentive policy, making a number of submissions throughout the years of the policy's development. The biotechnology industry has welcomed the legislation as good for Australian innovation and for the growth of the biotechnology sector. As a Ministerial appointment to the R&D Tax Incentive Advisory Committee, I look forward to being actively involved in the implementation phase of the R&D Tax Incentive.

AusBiotech has responded directly to Section 8 of the Discussion Paper, with its consolidated list of issues for comment and a synopsis of the context in which the issues arise (see attached).

The responses form major themes that have commonality across the facets of this discussion paper. To summarise, AusBiotech recommends the following:

- Industry-specific case studies of typical scenarios would be of great assistance to small and medium biotechnology companies. Ideally the de-identification and publication of Advanced Finding, along with a rationale, would make excellent guides for industry.
- The tracking and publication of claim data, measuring the benefit to specific sectors (including biotechnology) as well as to Australian innovation overall, would be of great assistance.
- Education forms a major theme, and this submission recommends it on two levels: delivery of information to industry via relevant associations, such as AusBiotech; and training programs for those administering the R&D Tax Incentive on unfamiliar sectors such as biotechnology.

AusBiotech is available and committed to working with the Government to achieve the intended result of the R&D Tax Incentive. Please contact me on alavelle@ausbiotech.org or on 03 9828 1404 if I can assist further.

Yours sincerely



Dr Anna Lavelle
CEO, AusBiotech

8. Appendix 5: Consolidated list of Issues for Comment

This Discussion Paper targets a wide range of audiences and provides them with the opportunity to comment on important issues that will shape the program's future. Taken together the various themes explored in the paper invites comment on a guidance and education strategy that will both enable effective compliance and encourage broad participation in the R&D Tax Incentive. AusIndustry expects that the paper will promote robust discussion and foster strong engagement by industry. This will:

- assist companies transition from the old R&D Tax Concession;
- help participants assess their eligibility and meet compliance obligations under the program;
- enable industry to better protect and maximise their R&D investments.

The issues for comment raised throughout the paper are summarised below.

Theme 1 – Innovation Culture

Theme 1 talks about how competitive advantage comes from people and the ways they work together and why Australia's innovation culture should exemplify this. AusIndustry is keen to obtain feedback and comment that might enhance its capacity to help drive an innovation culture through its delivery of the R&D Tax Incentive.

1. Apart from encouragement, communication, interaction and transparency, as described in Theme 1, what other forms of guidance might be considered? Would your organisation like to participate in such other guidance?

Please use the response field below to provide comments.

Industry-specific case studies of typical scenarios would be of great assistance to small and medium biotechnology companies. AusBiotech would be pleased to assist in developing such case studies. It may also be possible to de-identify and publish pre-approvals, to be used as guides for what might be claimable.

2. How can the administration of the R&D Tax Incentive help to foster an innovation culture, and encourage collaboration within Australia's innovation community?

Please use the response field below to provide comments.

Tracking and publication of claim data, measuring the benefit to specific sectors as well as to Australian innovation overall, would be of great assistance. This information ought to be in the public domain as it will guide future efforts to educate and encourage companies which are eligible but did not participate.

Theme 2 – Prospective Customers

Theme 2 observes that reaching and connecting with the large number of organisations that are prospective participants, represents a significant challenge for AusIndustry. The paper therefore invites all interested parties to share their ideas and lend their weight to ensuring AusIndustry successfully connects with the large number of prospective participants in the new program - particularly SMEs. AusIndustry is seeking to identify the best means to increase participation in the R&D Tax Incentive:

3. Can you identify what you think is the most effective way to educate SMEs about the benefits of undertaking R&D?

Please use the response field below to provide comments.

Education delivered via relevant industry associations, such as AusBiotech, to educate the biotechnology sector, would be beneficial as organisations (such as AusBiotech) are close to the Program's desired users, and established as a trusted source of information. However, industry associations as not-for-profit organisations would need support (from AusIndustry) to be able to deliver comprehensive education programs, such as would be required in this case.

4. Can you identify the types of networks, industry associations or other communities of interest that could be utilised to encourage more Australian companies to participate in the R&D Tax Incentive?

Please use the response field below to provide comments.

AusBiotech has been assisting to date and is keen to take a greater role in this regard, however as a not-for profit organisation, resources are scarce. More could be done by AusBiotech with support.

5. Can you indicate if there are any specific measures that might streamline the registration and self assessment processes for SMEs?

Please use the response field below to provide comments.

To streamline the process, we recommend that AusIndustry:

(1) and ATO staff who will administer the program undergo training in the basics of life sciences and biotechnology, for example BioBasics - industry knowledge for the non-scientist, which is run on request by AusBiotech.

(2) be prepared for a pre-approval bottleneck, in the likely event of a rush of applicants.

(3) consider brokering a set price assessment by a list of tax specialist consultants. AusBiotech is aware that many small companies have not sought advice due to unknown costs of advice (which are assumed to be high and out of reach).

Theme 3 – Knowledge Management and Compliance Assurance

Theme 3 identifies that effective management, good planning and robust business systems are fundamental ingredients to successful innovation. It introduces new insights on how effective compliance under the new program may actually assist firms to realise best practice in knowledge management and record keeping. AusIndustry is focused on how to ensure the development and delivery of guidance can foster good knowledge management and record keeping:

6. What are the aspects of knowledge management and corporate governance that guidance could focus on in order to be relevant to your business or industry? For example should guidance focus on R&D planning and project management or some other dimensions to business governance?

Please use the response field below to provide comments.

R&D planning within the scope of the incentive will be vital for many companies who are the intended targets of this incentive. There is still some confusion about what will constitute an eligible claim, and sector-specific case studies and publication of pre-approved, de-identified claims would assist greatly.

We have also noted, from the implementation of previous government programs, that sound knowledge of the biotechnology industry within the government's administration, makes an enormous difference to the experiences of the applicants, and to the take-up of the program.

7. Do you feel there is a benefit to your business or industry from having access to sectoral benchmarks for knowledge management, records management and R&D governance?

Please use the response field below to provide comments.

Definitely. Quantification of sectorial benchmarks is always helpful, but in particular the sectorial benchmarks for the numbers of claims and a total claimed amounts for each sector would be especially helpful.

8. What are the communication channels that will most effectively deliver timely and accurate guidance and education to your industry or industry?

Please use the response field below to provide comments.

Via the national industry association, in this case AusBiotech, as such organisations are well positioned to provide such guidance and education - but as not-for-profit entities they would need support (from AusIndustry) to provide a comprehensive program.

Theme 4 – Transitions, Boundaries and Interdependencies

Theme 4 acknowledges the many challenges in education and guidance ahead. It promotes AusIndustry's intention to work collaboratively with industry to capture and translate the learnings in applying the new R&D activity definitions. AusIndustry will continue to be focused on delivering guidance that provides clarity and certainty about key or important definitions of core and supporting activities:

9. Can you identify the particular definitional issues relevant to your company or industry that require further clarification?

Please use the response field below to provide comments.

Biotechnology companies would appreciate some clarity regarding the definition of 'turnover' for the purposes of a claim.

The COT (continuing ownership test) is a particular problem for biotechnology given the typical model of 'spinning out' from universities. The legislation needs to be amended to better reflect this industry.

AusIndustry is keen to work together with program participants to identify viable guidance products and/or guidance processes that might meet the perceived needs of particular sectors and technologies.

10. Can you please indicate any relevant processes or products that you believe could better inform compliance in relation to particular technologies or challenges to interpretation faced by your industry sector?

Please use the response field below to provide comments.

Again case studies relevant to the various areas of biotechnology are key, publication of pre-approved, de-identified claims, sector-specific claim data and also the opportunity for a set price assessment by a specialist tax consultant would all be enormously helpful.

11. Can you please indicate how your company and or sector envisages the most effective use of the Advance Findings?

Please use the response field below to provide comments.

The ability to receive an Advance Finding will help create certainty, which is a very desirable outcome for business confidence, especially so in the current climate. Advance Findings will also assist in securing partnering arrangements, encourage planning and earlier investment. The speed of decision-making during this stage will be extremely important.

AusIndustry is interested in your understanding of key phrases in the definition of R&D activities or what you think they mean so as to inform its development of further guidance material. For example:

12. Can you tell us what you understand would be included as 'experimental activities'?

Please use the response field below to provide comments.

We understand an experimental activity to be an investigation where the outcome is not known in advance and cannot reasonably be accurately predicted by a relevant profession in the field.

13. Can you inform us of what 'scientific method' means to you, your company and/or industry sector more generally?

Please use the response field below to provide comments.

This is not an issue for the biotechnology sector, which understands the 'scientific method' very well.

14. Can you advise if there are any types of guidance products and/or guidance processes that will help you better understand the definitions of eligibility (this need not be limited to R&D activities)

Please use the response field below to provide comments.

Within the definition of eligibility there are some ambiguities and grey areas. It would be helpful if early projects pre-approved by AusIndustry could be de-identified and provided with a rationale for approval, to assist others.

The Guidance Outlook

The Discussion Paper is an important vehicle to determine the guidance outlook for the new program. Analysis of the feedback from this paper, together with discussions with key stakeholders and the ATO, will decide the overall approach, scope and timetable for a Guidance Agenda. The agreed approach will be widely disseminated and will describe:

- Strategies to consolidate industry-specific evidence and “sector-specific” information that can be used to extend the discussion around guidance and compliance for the R&D Tax Incentive.
- The various elements of the Guidance Agenda detailing identified roles and responsibilities of participants for the development of products, education and engagement mechanisms, and the channels for communication and distribution of guidance.

The Discussion Paper is thus an open invitation to all organisations with the potential to participate in the new R&D Tax Incentive to get involved. Such participation will be vital in developing an R&D Tax Incentive which can drive innovation and help to deliver social and economic benefits to the community. To this end:

15. Are you interested in being involved in the R&D Tax Incentive Guidance Agenda, and how would you like to be involved?

Please use the response field below to provide comments.

As a Ministerial appointment to the R&D Tax Incentive Advisory Committee, AusBiotech's CEO, Dr Anna Lavelle will be actively involved.

16. What types of additional guidance products/materials would you like to see?

Please use the response field below to provide comments.

As mentioned above, the ability of staff who are providing guidance and information to understand enquiries specific to the biotechnology sector is critical. Quality training is available on the basics of the biotechnology sector and would be a sound investment in the advancement of R&D in this sector.

17. Can you indicate whether the four key themes explored in this Discussion Paper are appropriate for progressing the Guidance Agenda between 2012 and 2013? If not, are there other themes that AusIndustry (and the ATO) should be pursuing through the Guidance Agenda?

Please use the response field below to provide comments.

Other themes that are recommended are:

- (1) Tracking complaints and problems by industry;
- (2) The establishment and ongoing use of a feedback loop for government with users and potential users will be useful and productive;
- (3) Identification of areas that impede the policy aim, and future strategies to remedy issues.

(4) Early warning mechanism for bottlenecks in the claim or pre-approval processes and a plan for remedy.