



# **Industry Research and Development Amendment Act 1996**

No. 82, 1996

***An Act to amend the *Industry Research and  
Development Act 1986* and the *Income Tax  
Assessment Act 1936*, and for related purposes***



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## ***An Act to amend the *Industry Research and Development Act 1986* and the *Income Tax Assessment Act 1936*, and for related purposes***

[Assented to 19 December 1996]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Industry Research and Development Amendment Act 1996*.

### **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Items 1, 2 and 3 of Schedule 1 are taken to have commenced on 19 December 1994, immediately after the commencement of Schedule 4 to the *Taxation Laws Amendment Act (No. 4) 1994*.
  - (3) Items 13 and 14 of Schedule 1 are taken to have commenced at 2.30 pm Australian Eastern Standard Time on 6 December 1995.
  - (4) Items 21, 22 and 23 of Schedule 1 are taken to have commenced on 15 June 1991, immediately after the commencement of section 17 of the *Industry, Technology and Commerce Legislation Amendment Act 1991*.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Industry Research and Development Act 1986**

### **1 Subsection 39ED(2)**

After “taken”, insert “(except for the purpose of subsection (3))”.

### **2 Subsection 39ED(3)**

Omit “before the eligible time”.

### **3 At the end of section 39ED**

Add:

- (7) A decision under subsection (1) is not invalid merely because it is made after the eligible time unless, before the decision is made, the applicant makes a request to the Board under subsection 39S(2).

Note: Subsection 39S(2) deals with requests to the Board to reconsider decisions.

### **4 After section 39HF**

Insert:

#### **39HG Applications for advance registration of eligible companies**

- (1) An eligible company may, during a year of income, apply to the Board for advance registration, in relation to its proposed research and development activities, in respect of all or any of the following years of income:
- (a) the first-mentioned year of income;
  - (b) the next 2 years of income.
- (2) The application must:
- (a) specify the name of the company; and
  - (b) specify the year or years of income in respect of which advance registration is sought; and
  - (c) describe the project to which its proposed research and development activities relate; and
  - (d) specify and describe the activities; and

- (e) specify the expenditure proposed to be incurred by the company in relation to the activities during the year or years of income; and
  - (f) specify when the activities will be undertaken.
- (3) The application must:
- (a) be in a form approved by the Board; and
  - (b) be accompanied by the appropriate fee (if any) prescribed under section 48A.

**39HH Advance registration of eligible companies**

- (1) Subject to section 39HI, if:
- (a) an eligible company applies to the Board for advance registration in accordance with section 39HG; and
  - (b) the company provides to the Board such information in relation to its proposed research and development activities as the Board reasonably requires;
- the Board must grant advance registration to the company, in relation to the activities, in respect of the year or years of income to which the application relates.
- (2) If the Board refuses to register a company in respect of a year or years of income, the Board must give notice in writing to the company stating the reasons for the refusal.

Note: Advance registration does not remove the need to be registered under section 39J or 39P in order to claim a deduction under section 73B of the *Income Tax Assessment Act 1936* for expenditure in relation to research and development activities.

**39HI Grounds for refusal of advance registration**

- (1) It is a ground on which the Board is entitled to refuse advance registration of an eligible company, in relation to particular research and development activities in respect of a year or years of income, that the activities are not research and development activities.
- (2) Subject to subsection (3), the regulations may specify other grounds on which the Board is entitled to refuse advance



registration of a company in respect of any year of income or in respect of a particular year or years of income.

- (3) The regulations may not specify a ground unless it relates to a matter the determination of which under this Part is a function of the Board.

**5 Subsection 39J(1)**

Omit “Where”, substitute “Subject to section 39K, if”.

**6 Paragraph 39J(1)(a)**

After “registration”, insert “in relation to its research and development activities”.

**7 At the end of paragraph 39J(1)(a)**

Add “and”.

**8 After paragraph 39J(1)(a)**

Insert:

(aa) the application is in accordance with section 39JD; and

**9 Paragraph 39J(1)(b)**

Omit “, or proposed research and development activities,”.

**10 Paragraph 39J(1)(b)**

Omit “and” (last occurring).

**11 Paragraph 39J(1)(c)**

Repeal the paragraph.

**12 Subsection 39J(1)**

Omit “in relation to” (last occurring), substitute “, in relation to those research and development activities, in respect of”.

**13 After subsection 39J(1)**

Insert:

- (1A) Subject to sections 39JA, 39JB, 39JC and 39JE, the Board cannot register a company under this section, in relation to the company's research and development activities, in respect of a year of income:
- (a) if the year is the 1992-93 year of income or an earlier year of income—after 2.30 pm Australian Eastern Standard Time on 6 December 1995; or
  - (b) if the year is the 1993-94 or 1994-95 year of income—unless the application for registration is made before 7 June 1996; or
  - (c) if the year is the 1995-96 year of income or a later year of income—unless the application for registration is made after the end of the year of income but within 6 months after the end of that year.

#### **14 After section 39J**

Insert:

##### **39JA Registration: eligible companies with a registration history**

- (1) For the purposes of this section, an eligible company is taken to have a registration history only if:
  - (a) the company has been registered under section 39J in respect of at least 2 years of income during the period starting at the beginning of the 1985-86 year of income and ending at the end of the 1992-93 year of income; and
  - (b) the company was so registered before the end of 12 months after the end of the 1992-93 year of income.
- (2) If an eligible company has a registration history, paragraph 39J(1A)(a) does not apply in relation to the company in respect of a year of income that occurred after the second year of income during the period mentioned in paragraph (1)(a), in respect of which the company was registered before the beginning of the 1993-94 year of income.
- (3) The Board cannot register under section 39J an eligible company that has a registration history in respect of a year of income that occurred after the second year of income during the period mentioned in paragraph (1)(a), in respect of which the company

was registered before the beginning of the 1993-94 year of income, unless the application for registration is made before 1 July 1997.

**39JB Registration: eligible companies with a claim history**

- (1) For the purposes of this section, an eligible company is taken to have a claim history only if:
  - (a) the company has claimed a deduction under section 73B of the *Income Tax Assessment Act 1936* (otherwise than by way of an application for an amendment of its assessment) in respect of the 1992-93 year of income, or an earlier year of income; and
  - (b) the company was not registered under section 39J in respect of that year of income; and
  - (c) an assessment of the amount of the company's taxable income for that year of income was made before 7 December 1995.
- (2) If an eligible company has a claim history, paragraph 39J(1A)(a) does not apply in relation to the company in respect of the year of income to which the deduction mentioned in paragraph (1)(a) related.
- (3) The Board cannot register under section 39J an eligible company that has a claim history in respect of the year of income mentioned in subsection (2) unless the application for registration is made before 1 July 1997.

**39JC Registration: eligible companies with a tax loss history**

- (1) For the purposes of this section, an eligible company is taken to have a tax loss history only if:
  - (a) the company makes an application for registration under section 39J in respect of the 1992-93 year of income, or an earlier year of income; and
  - (b) the company had no taxable income in that year of income, nor in every subsequent year of income that ended before 7 December 1995.

- (2) If an eligible company has a tax loss history, paragraph 39J(1A)(a) does not apply in relation to the eligible company in respect of the year of income that is the subject of the application mentioned in paragraph (1)(a).
- (3) The Board cannot register under section 39J an eligible company that has a tax loss history in respect of the year of income mentioned in subsection (2) unless the application for registration is made before 1 July 1997.

## **15 Before section 39K**

Insert:

### **39JD Applications under section 39J**

- (1) An application to the Board for registration under section 39J in respect of a year of income must:
  - (a) specify the name of the eligible company; and
  - (b) specify and describe the research and development activities in relation to which registration is sought; and
  - (c) specify the expenditure incurred by the company in relation to the activities during the year of income; and
  - (d) specify which (if any) of the activities have been the subject of advance registration in respect of that year; and
  - (e) include such other information as is specified in the regulations.
- (2) The application must:
  - (a) be in a form approved by the Board; and
  - (b) be accompanied by the appropriate fee (if any) prescribed under section 48A.
- (3) The company may amend its application at any time before the period under paragraph 39J(1A)(b) or (c) (as the case may be) for making the application ends.

### **39JE Application for extension of time**

- (1) The Board may, on a request made under this section by an eligible company, extend the period for making an application for

registration under section 39J in respect of the 1995-96 year of income, or a later year of income.

- (2) The Board must not grant a request made in respect of a year of income that occurs after the 1995-96 year of income if it has granted a request under this section in respect of the immediately preceding year of income.
- (3) A request must:
  - (a) be in writing; and
  - (b) set out the reasons why the company cannot make an application for registration under section 39J within 6 months after the end of the year of income to which it relates; and
  - (c) be received by the Board within that period of 6 months.
- (4) If the Board grants a request in respect of a year of income under this section, the company may make an application under section 39J in respect of that year of income within 9 months after the end of that year.
- (5) If a request in respect of a year of income is granted on, or as a result of, a review under section 39S or 39T, the company may make an application under section 39J in respect of that year of income within whichever of the following periods ends last:
  - (a) 9 months after the end of that year;
  - (b) 3 months after the day the decision on the review is made.

## **16 Subsection 39K(1)**

Repeal the subsection, substitute:

- (1) Subject to subsection (1A), it is a ground on which the Board is entitled to refuse to register an eligible company, in relation to particular research and development activities in respect of a year of income, that the activities are not research and development activities.

## **17 After subsection 39K(1)**

Insert:

- (1A) If advance registration has been granted to an eligible company, in relation to particular research and development activities in respect of a year of income, the Board must not refuse to register the company in relation to those activities in respect of that year on the ground that they are not research and development activities.

**18 At the end of section 39K**

Add:

- (4) The Board need not, before registering a company, satisfy itself that no grounds exist for refusing the registration.

**19 Paragraph 39P(3)(h)**

After “grounds”, insert “under section 39K”.

**20 Subsection 39S(1)**

Omit “39J”, substitute “39HH, 39J, 39JE”.

**21 Subsection 39S(5)**

After “taken”, insert “(except for the purpose of subsection (6))”.

**22 Subsection 39S(6)**

Omit “before the end of the period referred to in subsection (5)”.

**23 At the end of section 39S**

Add:

- (8) The confirmation, revocation or variation under subsection (4) of a decision is not invalid merely because it is done after the end of the period referred to in subsection (5) unless, before it is done, the applicant makes an application to the Administrative Appeals Tribunal under section 39T for review of the decision.

**24 After section 48**

Insert:

**48A Fees for making applications etc. under Part IIIA**

- (1) The regulations may prescribe fees for making applications or requests to the Board under Part IIIA.
- (2) The amount of a fee must not be such as to amount to taxation.

## **Schedule 2—Amendment of the Income Tax Assessment Act 1936**

### **1 Paragraph 73B(10)(a)**

After “year of income”, insert “and in relation to those activities”.

### **2 Application**

The amendment made by this Schedule applies in relation to a registration, under section 39J of the *Industry Research and Development Act 1986*, in respect of which an application was made under that Act on or after the day on which this Schedule commences.

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*[Minister’s second reading speech made in—  
House of Representatives on 26 June 1996  
Senate on 19 September 1996]*



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I HEREBY CERTIFY that the above is a fair print of the Industry Research and Development Amendment Bill 1996 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
December 1996

(89/96)