Industry Research and Development Board Guideline

ADEQUATE AUSTRALIAN CONTENT

INTRODUCTION

1. This Guideline is issued pursuant to section 39E of the Industry Research and Development Act 1986.

2. The Research and Development (R&D) Tax Concession is the cornerstone of the Government’s suite of innovation support programs designed to make Australian industry more internationally competitive.

3. This incentive enables eligible companies to claim up to 150% of eligible R&D expenditure as a tax deduction against assessable income.

ADEQUATE AUSTRALIAN CONTENT GUIDELINES

4. The purpose of this Guideline is to enable companies to ascertain whether proposed Australian R&D activities will be regarded as having adequate Australian content under part IIIA of the Industry Research and Development Act 1986 (the IRDA).

5. R&D comprises the first major activity of the innovation process. Successful innovation then proceeds through commercialisation and marketing to the sale of world competitive innovative products and services. To assess the benefits to the Australian economy of eligible R&D undertaken in Australia, the Industry Research and Development Board (the Board) expects companies to indicate how results will be converted into tangible benefits and how and to whom these benefits will be distributed.

6. If, for whatever reason, the R&D does not result in progress through all stages of the innovation process, then it is expected that there could still be significant benefits to the Australian economy, if there is adequate Australian content in the R&D. These spin-off benefits could include:

   - training and development of Australian specialist expert researchers and technicians;
   - the transfer of overseas technology and knowhow to Australian companies;
   - the development of support management and financial infrastructures for other R&D in Australia; and
   - the establishment of competitive Australian material, component and capital equipment suppliers.

7. The definition of Australian R&D activities in the Income Tax Assessment Act 1936 requires that the qualifying activities be carried out in Australia or in an Australian Territory. There is concern that foreign interests, while technically complying with this requirement, may exploit the assistance provided by the taxation concession contrary to the object of the IRDA.
8. Clearly by ”parking” R&D activities in Australia with no intention to follow through the innovation process in Australia, the company reduces the possible benefits of the R&D expenditure to Australian industry. For example, there could be such exploitation where the R&D activity involves:

- a disproportionate use of “fly-in fly-out” experts;
- the assembly of costly pilot plants composed largely of imported components; or
- the importation of expensive software or other technological items which form the preponderant part of the R&D expenditure.

9. In such cases the Board may issue a certificate if there is inadequate Australian content in the R&D activity.

**ASSESSMENT**

10. When a company makes a claim under this concession in respect of Australian R&D activity, the Board may require the company to provide all relevant information which will assist the Board in its assessment of whether the activity has adequate Australian content. Companies will be advised of an assessment by the Board and will be kept informed of progress in the assessment.

11. The Board may also seek independent, expert advice when considering the eligibility of a particular claim.

12. In assessing any case, the Board will have regard to, but not be limited to, the following:

- any key person engaged to undertake the Australian R&D activity shall be an Australian citizen or permanent resident of Australia, unless such expertise is not available to the company, as, when or where required, on normal commercial terms; and
- any major item of plant or of technology or of knowhow used in the Australian R&D activity shall be of Australian origin unless they are not available to the company, as, when or where required, on normal commercial terms.

**ACTION IF INADEQUATE AUSTRALIAN CONTENT**

13. The Board is empowered, by section 39M of the IRDA, to issue a certificate to the Commissioner of Taxation stating that an activity does not have adequate Australian content.

14. Where the Board proposes to issue a certificate, the Board is first required to notify the company of the basis for its proposed action, inviting the company to lodge a written submission with the Board within 90 days on the matter. The Board must have regard to any such submission in determining whether to issue a certificate.

15. If the Board considers that an Australian R&D activity appears, on the information provided to the Board, to have inadequate Australian content, it will, after providing the
company concerned an opportunity to show otherwise, issue a certificate advising of its opinion to the Taxation Commissioner.

16. The taxation consequence of such a certificate is that a deduction will not be allowed in respect of the expenditure incurred on that activity.

17. The Board will not give a certificate stating that it is of the opinion that those activities do not have adequate Australian content if, at the time when the expenditure was incurred, the activities complied with guidelines under section 39E of the IRDA in force at that time.

FURTHER INFORMATION

18. More detailed information can be found in:

- 150% Tax Incentive - Guide to Benefits
- Section 73B of the Income Tax Assessment Act 1936
- Part IIIA of the Industry Research and Development Act 1986

Or by contacting the Board either in writing or by telephone as set out below:

The General Manager
Tax Concession Program
Department of Industry, Science and Technology

GPO Box 2704 51 Allara Street
CANBERRA ACT 2601 CANBERRA ACT 2601

Phone: (06) 276 1190 Fax: (06) 276 1091
13 2846

Dated this 12th day of April 1995.

John Plunkett
Chairman
Industry Research and Development Board