

## Australia's Full Federal Court issues clarifying decision regarding R&D tax claims

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On 25 July 2019, Australia's Full Federal Court handed down a significant decision on Australia's research and development (R&D) tax incentive laws.

This is a positive development for taxpayers providing clarification of how the R&D tax incentive applies, to encourage and support industry to invest in activities that may not otherwise be undertaken due to their uncertain outcomes in order to generate new knowledge (whether that new knowledge is in a general or applied form). The decision should support settling a construction of the R&D provisions which attains that objective.

Key aspects of the lengthy judgment include:

- Endorsing a broader construction of the definition of "core R&D activities" in which the words "experimental activities" in the opening line of the definition do not operate to narrow the types of activities that can qualify. Rather, any activity that satisfies the requirements of both sub-paragraphs (1)(a) and (1)(b) of the definition is a "core R&D activity." A conclusion that can be drawn from this finding is that a core R&D activity can include more than a specific experiment undertaken, and the requirements need not necessarily be satisfied in respect of every specific experiment undertaken but rather in respect of the activity as a whole.
- Confirmation that an activity that is undertaken for the purpose of generating new knowledge with respect to the application of an existing technology at a new site can be a "core R&D activity."

- ▶ Support for the proposition that a test or trial undertaken for the purpose of discovering something unknown or testing a principle can be a "core R&D activity."
- ▶ Analysis of the taxpayer's circumstances that has regard not only to what could be proven or evidenced from the R&D entities' own contemporaneous documentation but also the surrounding circumstances.

The judgment should benefit taxpayers generally as the concepts apply beyond the taxpayer's specific industry and facts. It is important to note that the case may be subject to further action as some specific matters may be returned to the Administrative Appeals Tribunal for clarification and an appeal by Innovation and Science Australia to the High Court is still possible.

The judgment provides a positive endorsement of the R&D incentive for activities undertaken in Australia for generating new knowledge with uncertain outcomes. This will help resolve some of the uncertainty about R&D support in Australia and may encourage industry participants to revisit eligible activities. The decision will also give welcome support for taxpayers involved in current disputes.

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