



R&D Tax Incentive Branch
Department of Industry, Science, Energy and Resources
GPO Box 2013
Canberra, ACT, 2601

18 June 2021

To whom it may concern

Thank you for this opportunity to make a short submission in respect of the refreshed Guide, *Software development activities and the R&D Tax Incentive*.

About the AIIA

The Australian Information Industry Association (**AIIA**) is Australia's peak representative body and advocacy group for those in the digital ecosystem. We are a not-for-profit organisation to benefit members, and AIIA membership fees are tax deductible. Since 1978, the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity.

We do this by delivering outstanding member value by:

- providing a strong voice of influence
- building a sense of community through events and education
- enabling a network for collaboration and inspiration; and
- developing compelling content and relevant and interesting information.

We represent the end-to-end digital ecosystem in Australia, including:

- multinational companies
- large Australian technology, telecommunications and digital and cloud infrastructure companies; and
- a large number of small and medium businesses, start-ups, universities and digital incubators.

Introduction

As the Guide expresses, by encouraging research and development (R&D) activities that generate knowledge, the R&DTI yields significant benefits across the Australian economy. Software development is both an industry in itself and an enabler of other industries so has a remarkably diverse application and thus readership of this Guide.

It is important that government provide clear and exact guidance to industry and the R&D sector regarding eligible activities that address knowledge gaps, are genuinely experimental, and proceed on the basis of a testable hypothesis. This is especially important because of

the superficial or apparent resemblance of many core software development processes to R&D processes.

The AIIA submits that the Guide's content should be set out in a way to assist claimants with answering the specific questions contained inside the new R&D Application form, given that this is the key avenue through which potential claimants will interact with the R&DTI program at the outset.

In terms of tone, the Guide must be at once clear, deep, and useful. This is discussed further in the section below.

While there are several technical points provided to the AIIA by Members, if the Department would see value in the AIIA pulling together a representative group of members and Departmental advisers to take part in an iterative design process, our Association would be pleased to assist.

Tone, use and language

The internal Research and Development (R&D) team of one of our large corporate members have indicated to the AIIA that they would not extensively rely on the Guide as they do not perceive it to be user-friendly. The Guide appears to have been written for professionals who advise on the R&D Tax Incentive (**R&DTI**) or have a legal background, rather than professionals who undertake R&D themselves. Involving authors from industry, or preparing the guide with software developers or computer scientists in mind, could expand its readability.

Another member has pointed out that there is a lack of technical wording aligned to the Frascati manual. The resolution of scientific and/or technical unknowns and the generation of new knowledge, to which the manual refers, are not present in this Guide. This raises ambiguity over what is being sought in terms of objectives, outcomes and overarching principles for R&D activity.

Whilst the AIIA understands and emphasises the need for technical specificity it should also be easy to understand for someone seeking to understand eligibility. While not underestimating the sophistication and technical expertise of the likely audience of the Guide, it must be useful and arranged around eligibility requirements.

Examples

The Guide should use case studies and examples that take into account the fact that, more often than not, an "Agile" methodology is used in the software industry. For example, pages 13 and 14 list examples of evidence that are expected to be kept in case the application for the R&DTI is reviewed by AusIndustry. Members have advised that the substantiation requirements therein are high and not realistic in practice.

The Guide lacks specific examples of eligible hypotheses regarding what specifically makes a hypothesis a testable or falsifiable statement.

The Guide also lacks sufficient examples that are relatable to sophisticated claimants undertaking modern software development. The technology examples which *are* used are not aligned with current software development practices. The Guide should include

examples of modern practices and relevant current software practices, such as sprints, AGILE, or cascade processes.

The AIIA would note that cost examples featuring the use of raw materials are not relevant to software development. All expenditure examples should be focused on software and include reference to phenomena such as software subscriptions, cloud infrastructure and computing costs.

Substantial and structural points

Within the Guide, discussion is limited on the internal business administration exclusion, which is critical for the Guide to address. Although the guidance confirms that the double application of the dominant purpose test excludes these from being supporting activities, the Guide must provide guidance regarding what constitutes internal administration. The Guide should provide clarity on software with and without client touchpoints.

The Guide should provide clarity on software that will need to satisfy some compliance elements, or limited aspects of other exclusion elements. An example provided by a Member is:

claimants developing a platform to process credit and debit card payments might need to achieve DCI-PSS compliance for certain parts of the platform. The objective of this work wouldn't be to meet this compliance, but to create a platform with a new or improved architecture that validates their hypothesis, which is also PCI-DSS compliant.

The AIIA welcomes the removal of certain software tests deemed as ineligible activities, now indicated as eligible when they constitute part of a systematic progression of work.

Further clarity is needed regarding whether terminated activities can be claimed if the claimant can demonstrate the intent to conduct a core activity via documentation, even if the supporting activity does not lead to a core activity.

Further, the Guide's discussion of capitalised costs and depreciation is general and not focused on the differences in R&D income tax treatment between tangible and intangible depreciating assets which is relevant to claimants capitalising the costs associated with their software development into intangible assets.

Conclusion

Should the AIIA be able to assist the Department by expanding on any of the points raised in this submission, or by coordinating a working group of industry members and prominent consultancies to work with the Department on an iterative process, please do not hesitate to contact the AIIA's GM, Policy and Advocacy, Simon Bush, on 0417 642 200 or policy@aiia.com.au.

Yours sincerely



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