

28 September 2026

The Treasury
Langton Crescent
PARKES ACT 2600

By email: rdticonsultation@treasury.gov.au

Dear Treasurer,

Better targeting the Research and Development Tax Incentive – exposure draft legislation

The Tax Institute welcomes the opportunity to make a submission to the Treasury regarding its consultation on the exposure draft legislation on reforms to the Research and Development Tax Incentive (**R&DTI**).

The package of draft legislation released on 11 September 2026 comprises:

- Treasury Laws Amendment (Tax Reform No. 5) Bill 2026: Better targeting the Research and Development Tax Incentive (**the draft Bill**);
- accompanying draft explanatory materials – Treasury Laws Amendment (Tax Reform No. 5) Bill 2026 (**draft EM**);

The Tax Institute supports the Government's objective of ensuring that the R&DTI remains well targeted, fiscally sustainable and effective in encouraging R&D investment in Australia.

The Tax Institute welcomes the proposed:

- increase in the R&DTI premiums;
- increase in the aggregated turnover threshold for refundable treatment from \$20 million to \$50 million;
- reduction in the R&D intensity threshold from 2% to 1.5%; and
- increase in the expenditure cap attracting the R&DTI premium from \$150 million to \$200 million.

However, we have significant concerns regarding two aspects of the proposed design:

- removing supporting R&D activities as a separately eligible category; and
- limiting refundability by reference to a claimant's start day.

Our concern is not with better targeting as a policy objective. Rather, we do not consider that these measures are sufficiently connected to the problems they are intended to address.

A supporting activity is not necessarily low-value expenditure or an integrity risk. Similarly, the age of a business does not necessarily indicate whether it remains financing constrained or whether the R&DTI continues to influence its R&D investment decisions.

Summary of key recommendations

Measure	Position	Recommendation
Supporting R&D activities	Do not proceed in current form	Retain supporting R&D activities and address identified concerns through targeted nexus, purpose, apportionment and substantiation rules.
Start-day limitation on refundability	Do not proceed in current form	Retain the proposed \$50 million turnover threshold as the principal gateway to refundable treatment.
Evidence and modelling	Required before legislation	Publish the evidence, distributional modelling and behavioural analysis supporting the two principal restrictions.
\$50 million turnover threshold	Support	Proceed.
Increased R&DTI premiums	Support	Proceed.
1.5% R&D intensity threshold	Support	Proceed.
\$200 million expenditure cap	Support with review	Proceed, subject to post-implementation evaluation.
\$50,000 minimum expenditure threshold	Redesign	Retain/index \$20,000 or introduce a simplified regime for smaller claims.
Therapeutic-goods extension	Redesign if time limit retained	Base any extension on objective development characteristics rather than sector alone.
Connected-entity/start-day rules	Redesign if retained	Ensure unrelated historical activities do not determine the treatment of economically distinct new R&D.
Transition	Expand protection	Protect existing findings reasonably relied upon, binding commitments and material R&D project phases already underway.

Our detailed observations and recommendations are contained in **Appendix A**,

We would be pleased to work with the Government to discuss the points raised in our submission further. We can provide the Government with access to a range of tax technical and industry experts who have contributed to our submission.

We look forward to engaging with you further in the next stage of this consultation process.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, at (02) 9602 2003.

Yours faithfully,

Scott Treatt

Chief Executive Officer

Tim Sandow

President

APPENDIX A

We have set out below our detailed comments and observations on the exposure draft legislation.

Supporting R&D activities

We recommend that the proposed removal of supporting R&D activities not proceed in its current form.

Supporting activities are not automatically eligible under the existing Division 355 rules. They must have the required relationship with core R&D activities and, in relevant cases, satisfy the more demanding dominant-purpose test.

If Treasury has identified particular categories of supporting expenditure that present policy or integrity concerns, those areas should be addressed directly.

Experimental R&D often involves an integrated series of activities, including prototype construction, experimental materials, equipment configuration, testing, trial production, data collection and validation. Whether a particular activity qualifies depends on the statutory tests and the facts of the project. However, an activity can be closely connected with experimental R&D without independently satisfying the core R&D activity definition.

Removing supporting activities altogether may therefore exclude expenditure without distinguishing between expenditure that:

- is closely connected with experimental R&D;
- would not otherwise have been incurred; and
- is routine or insufficiently connected with the R&D.

The proposal may also shift, rather than reduce, complexity. Greater significance will be placed on determining exactly where a core R&D activity begins and ends, potentially creating new boundary disputes.

Recommendation

Treasury should retain supporting R&D activities and, where necessary, strengthen:

- nexus and dominant-purpose requirements;
- apportionment rules;
- contemporaneous substantiation; and
- targeted exclusions for expenditure presenting demonstrated integrity concerns.

This would address the underlying concern more directly than removing the category as a whole.

Start-day limitation on refundability

We also recommend that the proposed start-day limitation not proceed in its current form.

We understand the objective of directing refundable assistance toward businesses more likely to face financing constraints. However, enterprise age is not necessarily a reliable measure of those constraints or of R&D additionality.

A business may remain loss-making and capital constrained well beyond the proposed period, particularly where it is undertaking a lengthy or technically difficult development program.

For these businesses, refundability matters. A refundable offset provides cash while the R&D expenditure is being funded. A non-refundable offset may not provide an equivalent benefit until the business has sufficient tax capacity to use it.

That timing can affect whether further R&D proceeds, whether technical staff are retained, how much external capital is required and whether future R&D continues to be undertaken in Australia.

Recommendation

The proposed \$50 million aggregated turnover threshold should remain the principal gateway to refundable treatment.

If Treasury considers further fiscal targeting necessary, alternatives could include:

- an annual refundable cap;
- partial refundability with the balance carried forward;
- a phased reduction in refundability; or
- a mechanism linked more directly to the claimant's tax capacity.

These approaches are more closely connected to the policy rationale for refundability than enterprise age alone.

Other matters

Minimum expenditure threshold

We recommend reconsidering the proposed increase from \$20,000 to \$50,000.

While we recognise the administrative cost associated with smaller claims, expenditure size is not necessarily a reliable indicator of R&D additionality or spillovers.

Treasury could instead retain the \$20,000 threshold with prospective indexation or introduce a simplified substantiation regime for smaller claims.

Therapeutic-goods R&D

Our primary recommendation is that the start-day limitation should not proceed.

If a time-based restriction is retained, we support recognising longer therapeutic development pathways. However, similar development, testing and regulatory timelines can arise in other sectors.

Any extension should therefore be based on objective characteristics of the R&D development pathway, rather than sector classification alone.

Connected entities and transition

If the start-day framework is retained, acquisitions, restructures, older group entities or unrelated historical activities should not automatically determine the treatment of economically distinct new R&D.

Appropriate transitional protection should also apply to existing findings reasonably relied upon, binding commitments and material R&D project phases already underway.

Evidence before implementation

The supporting-activity exclusion and start-day restriction are significant structural changes to the R&DTI.

Before proceeding, Treasury should publish the evidence and modelling supporting these measures, including:

- the nature and scale of supporting R&D expenditure affected;
- the specific policy or integrity concerns being addressed;
- the claimant sizes and industries most affected;
- the relationship between enterprise age, financing constraints and R&D additionality;
- expected behavioural impacts on Australian R&D investment; and
- whether more targeted alternatives could achieve the same objectives.

The key question is not simply whether the measures reduce the cost of the R&DTI. It is whether those savings arise from better targeting assistance or from a broader reduction in eligibility for R&D that the incentive is intended to encourage.

Conclusion

We support the Government's objective of improving the targeting, integrity and fiscal sustainability of the R&DTI.

We also support the proposed higher R&DTI premiums, \$50 million turnover threshold, 1.5% R&D intensity threshold and \$200 million expenditure cap.

We recommend, however, that the proposed removal of supporting R&D activities and the start-day limitation on refundability not proceed in their current form.

In both cases, the issue is the same: the proposed proxy does not necessarily identify the underlying policy concern.

Supporting-activity status does not, by itself, demonstrate low additionality or integrity risk. Enterprise age does not, by itself, demonstrate that financing constraints have ceased or that refundable assistance no longer influences R&D investment.

We therefore recommend that Treasury address those concerns directly through more targeted measures.

The final reforms should be tested against a straightforward question:

Will the measure better direct support toward R&D that would otherwise occur at a lower level, later or outside Australia, or that generates material knowledge spillovers, while appropriately managing integrity, administration and fiscal cost?

Where the evidence does not support that conclusion, a more targeted approach should be preferred.