

DRAFT FOR DISCUSSION

Guidelines for Research and Development Plans 2009

I, [Insert name of Chairman], Chairman of Innovation Australia, acting on behalf of Innovation Australia, make these Guidelines under section 39KA of the *Industry Research and Development Act 1986*.

Dated

Chairman of Innovation Australia

D r a f t

Contents

Part 1	Introduction	3
1	Background to these Guidelines	3
2	Large and small claimants	3
3	Rationale for these Guidelines	3
4	Commencement and application	3
5	Repeal of existing Guidelines	4
6	Name of these Guidelines	4
7	Definitions and Interpretation	4
Part 2	Planning for R&D	5
8	Requirement to prepare an R&D Plan	5
9	Approval of R&D Plans	5
10	Form of R&D Plans	5
11	Record keeping	5
12	R&D Plans to be produced on request	6
13	Updating R&D Plans	6
Part 3	Content of R&D Plans	7
14	Required content	7
15	Describing R&D activities in future years	8

Part 1 Introduction

1 Background to these Guidelines

These Guidelines are issued by the Board under section 39KA of the *Industry Research and Development Act 1986* (Cth) (**IR&D Act**).

From 1 July 2002, companies which wish to claim a deduction relating to R&D activities under sections 73B to 73Z of the *Income Tax Assessment Act 1936* (Cth) (**ITAA**) must carry on those activities in accordance with a plan that complies with guidelines formulated by the Board (section 73B(2BA) ITAA).

The Board may replace or amend these Guidelines from time to time, in accordance with section 39KA(4) of the IR&D Act.

2 Large and small claimants

The requirement to prepare a plan applies to all companies irrespective of their expected level of expenditure on R&D activities. However, the level of detail to be included in the plan depends on the amount of expenditure to be incurred.

The Board expects a greater level of detail from large claimants (being companies whose expenditure on R&D activities is anticipated to exceed A\$5 million in an income year).

3 Rationale for these Guidelines

The development of a plan is intended to:

- (a) encourage companies to think strategically about their R&D activities as a critical and ongoing part of their business;
- (b) provide a structured way for companies to examine the criteria of “innovation” and “high levels of technical risk” in respect of their R&D activities. Satisfying these criteria is key to a company’s eligibility for the tax deductions provided under sections 73B to 73Z of the ITAA; and
- (c) foster successful management of R&D projects, providing focus and structure to R&D activities and thereby enhancing the likelihood of successful outcomes.

4 Commencement and application

These Guidelines commence on the date they are registered with the Federal Register of Legislative Instruments (“**Effective Date**”), and apply to R&D activities carried on by a company in the company’s next income

year commencing after that date, and to R&D activities carried on in each subsequent income year.

Existing plans developed prior to the commencement of these Guidelines will need to be updated to comply with these Guidelines (to the extent they relate to an income year commencing after the Effective Date).

5 Repeal of existing Guidelines

The Board repeals the *Guidelines for Research and Development Plans 2001* with effect from the Effective Date. Those Guidelines will, however, continue to apply to an income year that commenced before the Effective Date.

6 Name of these Guidelines

These Guidelines may be referred to as the *Guidelines for Research and Development Plans 2009*.

7 Definitions and Interpretation

In these Guidelines:

Board means Innovation Australia established under section 6 of the IR&D Act, and its successors and delegates.

income year has the meaning given in the ITAA.

IR&D Act has the meaning given in clause 1 of these Guidelines.

ITAA has the meaning given in clause 1 of these Guidelines and, where applicable, includes the *Income Tax Assessment Act 1997* (Cth).

large claimant means a company whose expenditure on R&D activities is anticipated to exceed \$5 million in an income year.

Project means a group of related activities which are identified as a single project by a company in its R&D Plan.

R&D activities means research and development activities as defined in section 73B of the ITAA.

Note The definition of “R&D activities” is central for the purposes of sections 73B to 73Z of the ITAA. This definition is relevant to a number of grounds on which deductions may be claimed under those sections, whether the research is conducted on behalf of Australian or foreign companies.

R&D Plan means a plan which is prepared in accordance with these Guidelines.

For the avoidance of doubt, the term “should” in these Guidelines indicates that compliance with a clause is not mandatory, but is recommended by the Board.

Part 2 Planning for R&D

8 Requirement to prepare an R&D Plan

- (1) A company **must** prepare an R&D Plan that complies with these Guidelines before carrying out R&D activities in an income year. This is a condition of eligibility for the various deductions relating to R&D activities under sections 73B to 73Z of the ITAA (see section 73B(2BA) of the ITAA).
- (2) It is the responsibility of a company to ensure its R&D Plans comply with these Guidelines.

9 Approval of R&D Plans

R&D Plans, and any amendments to R&D Plans, should be approved by a company's board of directors or an officer of the company who is authorised to do so.

Note Ideally, the Board would like R&D Plans to be approved by the board of directors of the company, as evidence that the R&D activities proposed are part of the strategic planning process of the company and that the company is fully committed to those activities.

10 Form of R&D Plans

- (1) The Board is interested in the substance, rather than the form, of R&D Plans. Accordingly, R&D Plans may be prepared in any written or electronic format.
- (2) Companies may prepare a separate R&D Plan for each Project, or one or more R&D Plans covering multiple Projects.
- (3) The information required by clause 14 may be included in an R&D Plan by reference to another document. However, that document must also be kept as part of the company's records and promptly produced to the Board on request.

11 Record keeping

- (1) R&D Plans are part of a company's tax records and therefore should be retained for the period required by the ITAA (a minimum of 5 years under section 262A of the ITAA).
- (2) However, as the Australian Taxation Office has the ability to amend tax assessments relating to deductions for R&D activities indefinitely, it may be prudent for companies to retain their R&D Plans with this in mind (see section 170(10A) of the ITAA).

12 R&D Plans to be produced on request

An R&D Plan does not require the approval of the Board. However, a company must promptly provide an R&D Plan, or a copy of the R&D Plan, to the Board on request.

13 Updating R&D Plans

R&D Plans should be kept up-to-date. The Board recommends that companies review their R&D Plans as frequently as appropriate, and at least annually.

Part 3 Content of R&D Plans

14 Required content

- (1) An R&D Plan must contain the following information for each Project:
- (a) the technical objective of the Project;
 - (b) how that objective relates to the strategic business objectives of the company;
 - (c) a description of the Project with indicative timing and, if appropriate, milestones;
 - (d) a list of the individual R&D activities that make up the Project for which the company intends to claim a deduction under sections 73B to 73Z (as relevant) of the ITAA;
 - (e) for each R&D activity listed:
 - (i) a statement as to whether the activity falls under paragraph (a) or paragraph (b) of the definition of “research and development activities” in section 73B of the ITAA, and brief reasons why the R&D activity satisfies the requirements of that paragraph; and
 - (ii) if the R&D activity falls under paragraph (b) of the definition of “Australian-centred research and development activities” in section 73B of the ITAA, brief reasons why the R&D activity satisfies the requirements of that paragraph;
 - (f) the company’s estimated expenditure on the Project, and a breakup of the estimated expenditure by R&D activity; and
 - (g) the resources allocated to the Project, in the form of personnel, plant and other facilities.

Note At the date of preparation of these Guidelines, “R&D activities” were defined by section 73B of the ITAA to mean:

- (a) systematic, investigative and experimental activities that involve innovation or high levels of technical risk and are carried on for the purpose of:
 - (i) acquiring new knowledge (whether or not that knowledge will have a specific practical application); or
 - (ii) creating new or improved materials, products, device, processes or services; or
- (b) other activities that are carried on for a purpose directly related to the carrying on of activities of the kind referred to in paragraph (a).

At the date of preparation of these Guidelines, “Australian centred research and development activities” were defined by section 73B of the ITAA to mean:

-
- (a) Australian research and development activities that are covered by paragraph (a) of the definition of *research and development activities*; or
 - (b) Australian research and development activities covered by all of the following:
 - (i) the activities are not covered by paragraph (a) of the definition of *research and development activities*;
 - (ii) the activities are carried on for a purpose directly related to the carrying on of other Australian research and development activities that are of the kind referred to in paragraph (a) of that definition;
 - (iii) that purpose is the sole or dominant purpose for which the activities are carried on.

Please note that these definitions may change, and companies should rely on the current definitions contained in the ITAA from time to time.

- (2) The level of detail included in an R&D Plan should be commensurate with the size and scale of the R&D activities. In particular, the Board would expect to see more detailed information from large claimants on the matters described in clauses 14(1)(c), (e), and (g).

Note “Large claimant” is defined in clause 7.

15 Describing R&D activities in future years

- (1) R&D Plans must include the information referred to in clauses 14(1)(d), (e) and (f) for each R&D activity for which they wish to claim a deduction in the relevant income year.
- (2) Detailed information on R&D activities to be undertaken in subsequent years of income may not always be available for the initial version of an R&D Plan for a particular Project(s). However, the R&D Plan must be updated in the later years to include the information referred to in clause 15(1) above before carrying out those R&D activities, as this is required in order to be eligible for deductions under sections 73B to 73Z of the ITAA (see clause 8(1) of these Guidelines).