KPMG

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Regular commentary from our experts on topical tax issues

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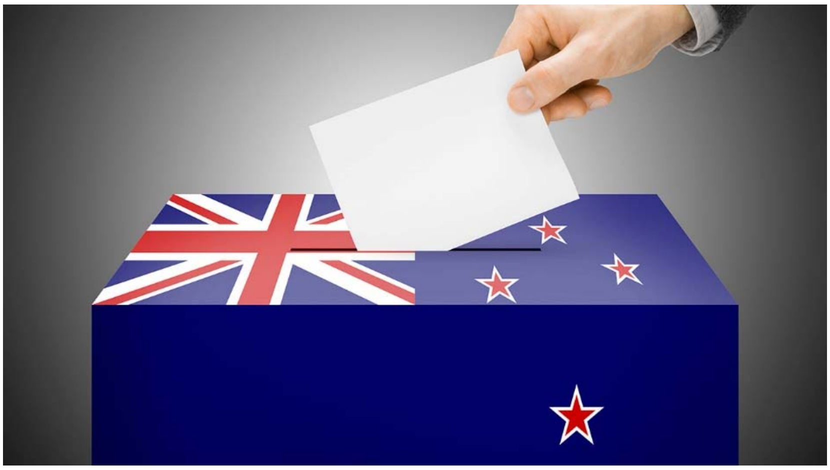

Government discussion document on R&D tax credits

Submissions on the discussion document are due by 1 June 2018

Legislation will be introduced to Parliament by September 2018

The regime is intended to take effect from 1 April 2019

Snapshot

The Government has released a **discussion document** on the re-introduction of R&D tax credits. A 12.5% credit is proposed to take effect from 1 April 2019. The regime will broadly be based on learnings from the 2008/2009 rules, R&D grants, and international experience. The credit will be non-refundable for loss making companies in the first year. However, targeted support for these businesses will be reviewed by Officials.

Callaghan Innovation Growth Grants, which the R&D tax credit is replacing, will continue as normal but will be phased out over time.

You should consider the proposals. If there are specific points which you would like clarity or to provide comments on, please contact us to discuss this further. Submissions will need to be made by **1 June**.

We will provide a further update on our thoughts on the discussion document prior to the closing of submissions.

Contact us

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Re-introduction of the R&D tax credit

The Government has released a discussion document setting out details on the re-introduction of the R&D tax credit. It is positive to see that the Government's policy intent is in alignment with the issues and concerns highlighted in our March **taxmail**, namely:

- Confirmation of the Government's commitment toward supporting innovative businesses, with R&D tax credits being only one lever amongst many.
- Signalling an intent to grow the package of targeted support for innovative businesses in the long term.
- Creating an R&D support regime which has broad reach across the economy, enabling access for a wider and more diverse range of businesses.
- Having a balanced system which has the potential for longevity to give businesses consistency and confidence.

We highlight below the key design features on which feedback is being sought.

Broad framework

The broad framework for the R&D tax credit is:

Timing: Legislation will be introduced in Parliament by September 2018, taking effect 1 April 2019. The legislation will be based on learnings from the 2008/2009 R&D tax credit regime, the current R&D grants regime and international experience.

Rate: This will be set at 12.5%.

Businesses in a tax loss position: Initially, businesses in a loss position will not be able to receive a refund of their R&D tax credit, but can carry this forward to subsequent years. Further work will be undertaken by Officials to review what support should be available for these businesses. The existing R&D tax loss cash-up regime will not be changed in the first year that the R&D tax credit comes into effect – i.e. the two schemes will run in parallel, at least during year one.

Transition from Callaghan Innovation Growth Grants: These will continue as normal and will be phased out over time once final decisions are made by Government. While the Growth Grant scheme will be closed to new applicants on 31 March 2019, businesses with an active Growth Grant on this date will continue receiving their grant until 31 March 2020. A temporary grant scheme mirroring the R&D tax credit will be introduced to provide support for loss making Growth Grant holders who may be unable to receive a refund of their R&D tax credit.

Core operating features

The following is a summary of the core operating features of the proposed regime:

Definition of R&D: Similar to the 2008/2009 regime, R&D will include activities:

> *"conducted using scientific methods that are performed for the purpose of acquiring new knowledge or creating new or improved materials, products, devices, processes or services; and that are intended to advance scientific or technology through the resolution of technological uncertainty"*

"Novelty" which was included as a separate limb in the previous regime has been removed. A specific list of "excluded activities" will again be included, covering the likes of commercialisation and market research.

Software: Officials anticipate varying the standard definition of R&D to ensure it captures R&D software activity to reflect its greater current importance. Accordingly, further work is being done to review how the R&D definition should apply to software.

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Eligible entities: Most business structures will be eligible. However it is possible that certain Government owned/funded organisations may be excluded, such as State Owned Enterprises, Crown Research Institutes, District Health Boards and Tertiary Education Organisations.

Overseas R&D: Up to 10% of the eligible costs can be claimed, provided that the overseas work is part of an R&D project based in New Zealand, and at least half the R&D expenditure within the project is for activities carried out locally.

Eligible expenditure: The discussion document contains two approaches. The first approach only allows direct labour costs as eligible expenditure. The second would allow direct and indirect costs, including labour, materials and overhead. The second approach is consistent with the previous regime and international experience.

Ineligible expenditure: This is proposed to be similar to the previous regime, with some adjustments. It will include costs such as interest and the acquisition of intangible assets.

Shareholder continuity: No specific proposal is made. The discussion document requests feedback on whether the shareholder continuity rules should be applied to the R&D tax credit regime.

Minimum expenditure: This is proposed to be set at NZ$100,000 of eligible R&D expenditure, which is higher than the 2008/2009 minimum of NZ$20,000 but lower than the minimum for Growth Grants (NZ$300,000).

Maximum expenditure: This is proposed to be set at NZ$120 million, with an option of a Ministerial waiver or pre-registration for larger claims.

Imputation: A credit to the company's imputation credit account will be allowed for an amount equal to the R&D tax credit, the same as under the previous regime.

Administration and reporting on R&D tax credit recipients

The scheme will be administered by Inland Revenue, with support from Callaghan Innovation (which has the technical expertise). Claims will only be able to be filed electronically, through Inland Revenue's *MyIR* portal, with businesses requiring to register as an "R&D business". Technical and financial information will need to be submitted through *MyIR*.

The Government is proposing to publish the names of recipients and the amounts of R&D support received (in bands rather than exact amounts). This will be published with a two year lag to protect commercially sensitive information.

The existing penalty will apply to false or misleading R&D tax credit claims. To address concerns of claims being inflated, the penalty rules may apply to advisors receiving a direct or indirect financial benefit through a contingent fee.

What you need to do

- Consider the proposals and the potential benefit to you and your business.
- Are the proposed rules sufficiently clear and certain for you to be able to make decisions?
- What areas should or should not be covered by the new rules?

For further information

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