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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Treasury Laws Amendment (Making
Sure Multinationals Pay Their Fair
Share of Tax in Australia and Other
Measures) Bill 2018**

No. , 2018

(Treasury)

**A Bill for an Act to amend the law in relation to
taxation, and for related purposes**

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1 **A Bill for an Act to amend the law in relation to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Treasury Laws Amendment (Making Sure*
6 *Multinationals Pay Their Fair Share of Tax in Australia and Other*
7 *Measures) Act 2018.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

1

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1, 2, 3, 4, 5, 6 and 7	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

2

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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3 Schedules

9

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Note: The provisions of the *Industry Research and Development Decision-making Principles 2011* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by an instrument made under section 32A of the *Industry Research and Development Act 1986* (see subsection 13(5) of the *Legislation Act 2003*).

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1 **Schedule 1—Better targeting the R&D Tax**
2 **Incentive**
3

4 *Income Tax Assessment Act 1997*

5 **1 Subsection 63-10(1) (at the end of the cell at table item 35,**
6 **column headed “Tax offset”)**

7 Add: “or is a tax offset to which subparagraph 67-30(1A)(a)(ii)
8 applies”.

9 **2 Subsection 67-30(1)**

10 Omit “if all or part of the amount of the tax offset is worked out using
11 the percentage in item 1 of the table in subsection 355-100(1)”,
12 substitute “if the amount of the tax offset is worked out in accordance
13 with item 1 of the table in subsection 355-100(1) (disregarding
14 subsection 355-100(3))”.

15 **3 Subsection 67-30(1) (notes)**

16 Repeal the notes, substitute:

17 Note: Otherwise, the tax offset will be a non-refundable tax offset (see
18 item 35 of the table in subsection 63-10(1)).

19 **4 After subsection 67-30(1)**

20 Insert:

21 (1A) Despite subsection (1), if, disregarding the part (the *clinical trial*
22 *component*) mentioned in subsection (1B) of the *tax offset (the
23 *original offset*), the amount of the tax offset exceeds \$4 million,
24 this Act applies as if:

25 (a) the *R&D entity were entitled under section 355-100 to:

26 (i) a tax offset equal to the sum of the clinical trial
27 component and \$4 million; and

28 (ii) another tax offset equal to the difference between the
29 original offset and the tax offset mentioned in
30 subparagraph (i); and

31 (b) the tax offset mentioned in subparagraph (a)(ii) were not
32 subject to the refundable tax offset rules.

1 (1B) The part is such amount of the *tax offset as is attributable to
2 amounts mentioned in subsection 355-100(1) that relate to *R&D
3 activities that are registered under paragraph 27A(1)(c) of the
4 *Industry Research and Development Act 1986* as activities that
5 formed part of a clinical trial conducted during the income year.

6 (1C) A *clinical trial* is a planned study of the safety or efficacy in
7 humans of an intervention (including a medicine, vaccine,
8 treatment, diagnostic procedure or medical device) with the aim of
9 achieving at least one of the following:

10 (a) the discovery, or verification, of clinical, pharmacological or
11 pharmacodynamic effects;

12 (b) the identification of adverse reactions or adverse effects;

13 (c) the study of absorption, distribution, metabolism or
14 excretion.

15 **5 Subsection 355-100(1) (heading)**

16 Repeal the heading, substitute:

17 *If notional deductions are between \$20,000 and \$150 million*

18 **6 Subsection 355-100(1) (cell at table item 1, column headed** 19 **“The percentage is:”)**

20 Repeal the cell, substitute:

the R&D entity’s *corporate tax rate for
the income year, plus 13.5 percentage
points

21 **7 Subsection 355-100(1) (table items 2 and 3, column headed** 22 **“The percentage is:”)**

23 Omit “38.5%”, substitute “the R&D entity’s *corporate tax rate for the
24 income year”.

25 **8 Subsection 355-100(1) (note)**

26 Repeal the note, substitute:

27 Note 1: The tax offset will generally be a refundable tax offset if item 1 of the
28 table applies (see section 67-30). However, if the amount of the tax
29 offset (disregarding any clinical trial component) exceeds \$4 million,

1 part of the tax offset will not be refundable (see subsections 67-30(1A)
2 and (1B)).

3 Note 2: The tax offset is increased under subsection (1A) of this section if
4 item 2 or 3 of the table applies.

5 **9 After subsection 355-100(1)**

6 Insert:

7 *R&D premium*

8 (1A) If item 2 or 3 of the table in subsection (1) applies to the *R&D
9 entity, the amount of the *tax offset for the income year is
10 increased by the sum of the amounts (if any) worked out for each
11 item of the following table for that entity:
12

Tiered offset rates		
Item	Work out the part of the total amount mentioned in subsection 355-100(1) that:	Multiply that part by this percentage:
1	exceeds nil but does not exceed 2% of the *R&D entity's total expenses for the income year worked out under section 355-115	4%
2	exceeds 2% but does not exceed 5% of the *R&D entity's total expenses for the income year worked out under section 355-115	6.5%
3	exceeds 5% but does not exceed 10% of the *R&D entity's total expenses for the income year worked out under section 355-115	9%
4	exceeds 10% of the *R&D entity's total expenses for the income year worked out under section 355-115	12.5%

1 **10 Subsection 355-100(2)**

2 Omit “However, if the total of those amounts is less than \$20,000, the
3 *R&D entity is instead entitled to a *tax offset for the income year equal
4 to that percentage of”, substitute “However, if the total amount
5 mentioned in subsection (1) is less than \$20,000, the *R&D entity is
6 instead entitled to a *tax offset for the income year, worked out in
7 accordance with subsections (1) and (1A), as if that amount were
8 instead”.

9 **11 Subsection 355-100(3)**

10 Repeal the subsection (including the note), substitute:

11 *If notional deductions exceed \$150 million*

12 (3) Despite subsections (1) and (1A), if the total amount mentioned in
13 subsection (1) exceeds \$150 million, the *R&D entity is instead
14 entitled to a *tax offset for the income year equal to the sum of:

15 (a) the amount worked out in accordance with those subsections
16 as if that amount were \$150 million; and

17 (b) the product of the excess and the R&D entity’s *corporate tax
18 rate for the income year.

19 **12 At the end of Subdivision 355-C**

20 Add:

21 **355-115 Working out an R&D entity’s total expenses**

22 (1) For the purposes of subsection 355-100(1A), an *R&D entity’s
23 total expenses for an income year is the sum of the amounts
24 covered by subsection (2).

25 (2) The following amounts are covered by this subsection:

26 (a) the *R&D entity’s total expenses for the income year worked
27 out in accordance with:

28 (i) the *accounting principles; or

29 (ii) if accounting principles do not apply in relation to the
30 R&D entity—commercially accepted principles relating
31 to accounting;

1 (b) any amount the R&D entity can deduct for the income year
2 as mentioned in subsection 355-100(1), to the extent the
3 amount is not covered by paragraph (a) for the income year.

4 *Amounts counted once only*

5 (3) For the purposes of subsection (2):

6 (a) disregard an amount to which paragraph (2)(a) otherwise
7 applies if paragraph (2)(b) has previously applied in relation
8 to the amount; and

9 (b) disregard an amount to which paragraph (2)(b) otherwise
10 applies if paragraph (2)(a) has previously applied in relation
11 to the amount.

12 **13 Section 355-750**

13 Repeal the section.

14 **14 Subsection 995-1(1)**

15 Insert:

16 *clinical trial* has the meaning given by subsection 67-30(1C).

17 ***Tax Laws Amendment (Research and Development) Act 2015***

18 **15 Subsection 2(1) (table item 3)**

19 Repeal the item.

20 **16 Part 2 of Schedule 1**

21 Repeal the Part.

22 **17 Application of amendments**

23 The amendments made by this Schedule apply in relation to
24 assessments for income years commencing on or after 1 July 2018.

1 **Schedule 2—Enhancing the integrity of the**
2 **R&D Tax Incentive**

3 **Part 1—Schemes to reduce income tax**

4 *Income Tax Assessment Act 1936*

5 **1 Subsection 177A(1)**

6 Insert:

7 *R&D tax offset* means a tax offset allowed under Division 355 of
8 the *Income Tax Assessment Act 1997*.

9 **2 After paragraph 177C(1)(bc)**

10 Insert:

11 or (bd) an R&D tax offset being allowable to the taxpayer in relation
12 to a year of income where the whole or a part of that R&D
13 tax offset would not have been allowable, or might
14 reasonably be expected not to have been allowable, to the
15 taxpayer in relation to that year of income if the scheme had
16 not been entered into or carried out;

17 **3 At the end of subsection 177C(1)**

18 Add:

19 ; and (h) in a case to which paragraph (bd) applies—the amount of the
20 whole of the R&D tax offset or of the part of the R&D tax
21 offset, as the case may be, referred to in that paragraph.

22 **4 At the end of subsection 177C(2)**

23 Add:

24 ; or (f) an R&D tax offset being allowable to the taxpayer in relation
25 to a year of income the whole or a part of which would not
26 have been, or might reasonably be expected not to have been,
27 allowable to the taxpayer in relation to that year of income if
28 the scheme had not been entered into or carried out, where:
29 (i) the allowance of the R&D tax offset to the taxpayer is
30 attributable to the making of a declaration, agreement,

1 election, selection or choice, the giving of a notice or
2 the exercise of an option by any person, being a
3 declaration, agreement, election, selection, choice,
4 notice or option expressly provided for by this Act; and
5 (ii) the scheme was not entered into or carried out by any
6 person for the purpose of creating any circumstance or
7 state of affairs the existence of which is necessary to
8 enable the declaration, agreement, election, selection,
9 choice, notice or option to be made, given or exercised,
10 as the case may be.

11 **5 Subsection 177C(3)**

12 Omit “or (e)(i)”, substitute “, (e)(i) or (f)(i)”.

13 **6 After paragraph 177C(3)(cb)**

14 Insert:

15 or (cc) the allowance of an R&D tax offset to a taxpayer;

16 **7 At the end of subsection 177C(3)**

17 Add:

18 ; or (i) the R&D tax offset would not have been allowable.

19 **8 At the end of subsection 177CB(1)**

20 Add:

21 ; (f) the whole or a part of an R&D tax offset not being allowable
22 to the taxpayer.

23 **9 After paragraph 177F(1)(e)**

24 Insert:

25 or (f) in the case of a tax benefit that is referable to an R&D tax
26 offset, or a part of an R&D tax offset, being allowable to the
27 taxpayer in relation to a year of income—determine that the
28 whole or a part of the R&D tax offset, or the part of the R&D
29 tax offset, as the case may be, is not to be allowable to the
30 taxpayer in relation to that year of income;

31 **10 After paragraph 177F(3)(f)**

32 Insert:

Schedule 2 Enhancing the integrity of the R&D Tax Incentive

Part 1 Schemes to reduce income tax

- 1 or (g) if, in the opinion of the Commissioner:
- 2 (i) an amount would have been allowed, or would be
- 3 allowable, to the relevant taxpayer as an R&D tax offset
- 4 in relation to a year of income if the scheme had not
- 5 been entered into or carried out, being an amount that
- 6 was not allowed or would not, apart from this
- 7 subsection, be allowable, as the case may be, as an
- 8 R&D tax offset to the relevant taxpayer in relation to
- 9 that year of income; and
- 10 (ii) it is fair and reasonable that the amount, or a part of the
- 11 amount, should be allowable as an R&D tax offset to
- 12 the relevant taxpayer;
- 13 determine that that amount or that part, as the case may be,
- 14 should have been allowed or is allowable, as the case may be,
- 15 as an R&D tax offset to the relevant taxpayer in relation to
- 16 that year of income;

1 **Part 2—R&D clawback and catch up amounts**

2 *Income Tax Assessment Act 1997*

3 **11 Section 4-25**

4 Repeal the section, substitute:

5 **4-25 Special provisions for working out your basic income tax**
6 **liability**

7 Subsection 392-35(3) may increase your basic income tax liability
8 beyond the liability worked out simply by applying the income tax
9 rates to your taxable income.

10 Note: Subsection 392-35(3) increases some primary producers' tax liability
11 by requiring them to pay extra income tax on their averaging
12 components worked out under Subdivision 392-C.

13 **12 Subsection 9-5(1) (table item 4A)**

14 Repeal the item.

15 **13 Section 10-5 (table item headed "R&D")**

16 Omit:

feedstock adjustment 355-465

17 substitute:

recoupments and feedstock adjustments 355-450

18 **14 Section 20-5 (table item 10)**

19 Repeal the item, substitute:

- 10 An R&D entity: Subdivision 355-G
- receives, or becomes entitled to receive, a recoupment from government relating to R&D activities; or
 - can deduct, under Division 355, expenditure on goods, materials or energy used during R&D activities to produce marketable products or

products applied to the R&D entity's
own use;

and the entity is entitled under
Division 355 to a tax offset relating to
those R&D activities.

An amount is included in its assessable
income.

1 **15 Subsection 40-292(1)**

2 After "Note", insert "1".

3 **16 At the end of subsection 40-292(1)**

4 Add:

5 Note 2: To the extent that any amount is included in your assessable income
6 under section 40-285 in relation to R&D activities, you may have an
7 additional amount included in your assessable income (see
8 section 355-447).

9 Note 3: To the extent any amount that you are entitled to as a deduction under
10 section 40-285 relates to R&D activities, you may have an additional
11 amount you can deduct (see section 355-466).

12 **17 Subsections 40-292(3) to (5)**

13 Repeal the subsections.

14 **18 Subsection 40-293(1)**

15 After "Note", insert "1".

16 **19 At the end of subsection 40-293(1)**

17 Add:

18 Note 2: To the extent any amount that is included in the R&D partnership's
19 assessable income under section 40-285 relates to R&D activities, a
20 partner may have an additional amount included in the partner's
21 assessable income (see section 355-449).

22 Note 3: To the extent any amount that the R&D partnership is entitled to as a
23 deduction under section 40-285 relates to R&D activities, a partner
24 may have an additional amount the partner can deduct (see
25 section 355-468).

26 **20 Subsection 40-293(3)**

27 Repeal the subsection.

1 **21 Paragraphs 355-100(1)(c) and (f)**

2 Repeal the paragraphs.

3 **22 Section 355-105**

4 Before “An amount”, insert “(1)”.

5 **23 At the end of section 355-105**

6 Add:

7 (2) Subsection (1) does not apply to amounts that the *R&D entity can
8 deduct under the following:

- 9 (a) subsection 355-315(2);
10 (b) subsection 355-475(1);
11 (c) subsection 355-525(2).

12 **24 Subdivision 355-E (heading)**

13 After “Notional deductions”, insert “etc.”.

14 **25 Section 355-300**

15 Omit “notionally deduct” (second occurring), substitute “actually
16 deduct”.

17 **26 Subsection 355-315(2) (heading)**

18 Repeal the heading.

19 **27 At the end of subsection 355-315(2)**

20 Add:

21 Note 1: A deduction under this subsection is not a notional deduction (see
22 subsection 355-105(2)).

23 Note 2: A deduction under this subsection results in a catch up amount for the
24 R&D entity (see section 355-465).

25 **28 Subsection 355-315(3)**

26 Repeal the subsection, substitute:

27 (3) If an amount would be included in the *R&D entity’s assessable
28 income for the event year under subsection 40-285(1) for the asset
29 and the event if Division 40 applied as described in

1 paragraph (1)(e), that amount is included in the R&D entity's
2 assessable income for the event year.

3 Note: Some or all of the amount included in the R&D entity's assessable
4 income may result in a clawback amount for the R&D entity (see
5 section 355-446).

6 **29 Subdivisions 355-G and 355-H**

7 Repeal the Subdivisions, substitute:

8 **Subdivision 355-G—Clawback of R&D recoupments, feedstock** 9 **adjustments and balancing adjustments**

10 **Guide to Subdivision 355-G**

11 **355-430 What this Subdivision is about**

12 An amount is included in an R&D entity's assessable income if:
13 (a) the R&D entity receives a recoupment from government
14 of expenditure on R&D activities for which it has
15 obtained tax offsets under this Division; or
16 (b) the R&D entity can deduct under this Division
17 expenditure on goods, materials or energy used during
18 R&D activities to produce marketable products or
19 products applied to the R&D entity's own use; or
20 (c) a balancing adjustment event happens for an asset held
21 by the R&D entity (or an R&D partnership in which the
22 R&D entity is a partner) for which tax offsets have been
23 obtained under this Division and for which an amount is
24 otherwise included in the R&D entity's (or R&D
25 partnership's) assessable income.

26 **Table of sections**

27 **Operative provisions**

28 355-435 When this Subdivision applies
29 355-440 R&D recoupments
30 355-445 Feedstock adjustments
31 355-446 Balancing adjustments for assets only used for R&D activities

Schedule 2 Enhancing the integrity of the R&D Tax Incentive
Part 2 R&D clawback and catch up amounts

- 1 (2) The amount is equal to the sum of:
2 (a) so much of the expenditure referred to in subsection (1) that
3 is deducted under this Division; and
4 (b) for each asset (if any) for which expenditure referred to in
5 subsection (1) is included in the asset's *cost—each amount
6 (if any) equal to the asset's decline in value that is deducted
7 under this Division;
8 that is taken into account in working out *tax offsets under
9 section 355-100 obtained by the *R&D entity for one or more
10 income years.

11 Note: Paragraphs (a) and (b) of this subsection refer to amounts notionally
12 deducted under this Division (see section 355-105).

13 *Amount is reduced by any repayments of the recoupment*

- 14 (3) For the purposes of subsection (2), reduce the expenditure referred
15 to in subparagraph (1)(c)(i) by any repayments of the *recoupment
16 during an income year.

17 *Cap on extra income tax if recoupment relates to a project*

- 18 (4) Despite subsection (2), if the *recoupment is covered by
19 subparagraph (1)(c)(ii), the amount mentioned in subsection (2) for
20 the present year cannot exceed the amount worked out using the
21 following formula:

22
$$\text{Net amount of the recoupment} \times \frac{\text{R\&D expenditure}}{\text{Project expenditure}}$$

23 where:

24 ***net amount of the recoupment*** means the total amount of the
25 *recoupment, less any repayments of the recoupment during an
26 income year.

27 ***R&D expenditure*** means the amount mentioned in subsection (2),
28 disregarding subsection (3).

29 *Related entities*

- 30 (5) The other entities for the purposes of paragraph (1)(a) are as
31 follows:
-

- 1 (a) an entity *connected with the *R&D entity;
2 (b) an *affiliate of the R&D entity or an entity of which the R&D
3 entity is an affiliate.

4 **355-445 Feedstock adjustments**

- 5 (1) The *R&D entity has an amount under this section if:
6 (a) it incurs expenditure in one or more income years in
7 acquiring or producing goods, or materials, (the *feedstock*
8 *inputs*) transformed or processed during *R&D activities in
9 producing one or more tangible products (the *feedstock*
10 *outputs*); and
11 (b) it obtains under section 355-100 *tax offsets for one or more
12 income years (each an *offset year*) for deductions under this
13 Division:
14 (i) for the expenditure; or
15 (ii) for expenditure it incurs on any energy input directly
16 into the transformation or processing; or
17 (iii) for the decline in value of assets used in acquiring or
18 producing the feedstock inputs; and
19 (c) during the present year, a feedstock output, or a transformed
20 feedstock output, (the *marketable product*), is:
21 (i) *supplied by the R&D entity to another entity; or
22 (ii) applied by the R&D entity to the R&D entity's own use,
23 other than use for the purpose of transforming that
24 product for supply.
- 25 (2) The amount is equal to the lesser of:
26 (a) the *feedstock revenue for the feedstock output; and
27 (b) so much of the total of the amounts deducted as described in
28 paragraph (1)(b) as is reasonably attributable to the
29 production of the feedstock output.
- 30 (3) Subsection (2) does not apply to the feedstock output if:
31 (a) it becomes, or is transformed into, a feedstock input; or
32 (b) that subsection already applies to the feedstock output
33 because of the application of paragraph (1)(c) to:
34 (i) an earlier time during the present year; or
35 (ii) an earlier income year.
-

1 (4) The *feedstock revenue*, for the feedstock output, is worked out
2 using the following formula:

3
$$\text{Market value of the marketable product} \times \frac{\text{Cost of producing the feedstock output}}{\text{Cost of producing the marketable product}}$$

4 where:

5 *market value of the marketable product* means the marketable
6 product's *market value at the time it is:

- 7 (a) *supplied by the *R&D entity to the other entity; or
8 (b) first applied by the R&D entity to the R&D entity's own use,
9 other than use for the purpose of transforming that product
10 for supply.

11 (5) This section applies to a *supply or use of the marketable product
12 by:

- 13 (a) an entity *connected with the *R&D entity; or
14 (b) an *affiliate of the R&D entity or an entity of which the R&D
15 entity is an affiliate;

16 as if it were by the R&D entity.

17 **355-446 Balancing adjustments for assets only used for R&D**
18 **activities**

19 (1) The *R&D entity has an amount under this section if:

- 20 (a) a *balancing adjustment event happens in the present year for
21 an asset *held by the R&D entity; and
22 (b) the R&D entity cannot deduct, for the asset for an income
23 year, an amount under section 40-25 as that section applies
24 apart from:
25 (i) this Division; and
26 (ii) former section 73BC of the *Income Tax Assessment Act*
27 *1936*; and
28 (c) the R&D entity is entitled under section 355-100 to *tax
29 offsets for one or more income years for deductions under
30 section 355-305 for the asset; and
31 (d) the R&D entity is registered under section 27A of the
32 *Industry Research and Development Act 1986* for one or
33 more *R&D activities for the present year; and
-

1 (e) an amount (the **section 40-285 amount**) is included in the
2 R&D entity's assessable income for the present year under
3 subsection 355-315(3) for the asset and the balancing
4 adjustment event.

5 Note 1: This section applies in a modified way if the entity also has deductions
6 for the asset under former section 73BA or 73BH of the *Income Tax*
7 *Assessment Act 1936* (see section 355-320 of the *Income Tax*
8 *(Transitional Provisions) Act 1997*).

9 Note 2: Section 40-292 applies if the entity can deduct an amount under
10 section 40-25, as that section applies apart from this Division and
11 former section 73BC of the *Income Tax Assessment Act 1936*.

12 (2) The amount is so much of an amount equal to the section 40-285
13 amount as does not exceed the difference between:
14 (a) the asset's *cost; and
15 (b) the asset's *adjustable value, worked out under Division 40
16 as if that Division applied with the changes described in
17 section 355-310.

18 **355-447 Balancing adjustments for assets partially used for R&D**
19 **activities**

20 (1) The *R&D entity has an amount under this section if:
21 (a) a *balancing adjustment event happens in the present year for
22 an asset *held by the R&D entity and for which:
23 (i) the R&D entity can deduct, for an income year, an
24 amount under section 40-25, as that section applies
25 apart from Division 355 and former section 73BC of the
26 *Income Tax Assessment Act 1936*; or
27 (ii) the R&D entity could have deducted, for an income
28 year, an amount as described in subparagraph (i) if the
29 R&D entity had used the asset; and
30 (b) the R&D entity is entitled under section 355-100 to *tax
31 offsets for one or more income years for deductions (the
32 **R&D deductions**) under section 355-305 for the asset; and
33 (c) an amount (the **section 40-285 amount**) is included in the
34 R&D entity's assessable income for the asset under
35 section 40-285 (after applying subsection 40-292(2)) for the
36 present year.

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1 Note: This section applies in a modified way if you have deductions for the
2 asset under former section 73BA or 73BH of the *Income Tax*
3 *Assessment Act 1936* (see section 40-292 of the *Income Tax*
4 *(Transitional Provisions) Act 1997*).

5 (2) The amount is worked out as follows:

6
$$\frac{\text{Total R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

7 where:

8 **adjusted section 40-285 amount** means so much of an amount
9 equal to the section 40-285 amount as does not exceed the total
10 decline in value.

11 **total decline in value** means the *cost of the asset less its
12 *adjustable value.

13 **355-448 Balancing adjustments for R&D partnership assets only**
14 **used for R&D activities**

- 15 (1) The *R&D entity (the *partner*) has an amount under this section if:
- 16 (a) the partner is a partner in an *R&D partnership; and
- 17 (b) a *balancing adjustment event happens in the present year for
- 18 an asset *held by the R&D partnership; and
- 19 (c) the R&D partnership cannot deduct, for the asset for an
- 20 income year, an amount under section 40-25, as that section
- 21 applies apart from:
- 22 (i) this Division; and
- 23 (ii) former section 73BC of the *Income Tax Assessment Act*
- 24 *1936*; and
- 25 (d) the partner is entitled under section 355-100 to *tax offsets
- 26 for one or more income years for deductions under
- 27 section 355-520 for the asset; and
- 28 (e) the partner is registered under section 27A of the *Industry*
- 29 *Research and Development Act 1986* for one or more *R&D
- 30 activities for the present year; and
- 31 (f) an amount (the **section 40-285 amount**) would, as mentioned
- 32 in subsection 355-525(3), be included in the R&D

1 partnership's assessable income for the present year for the
2 asset and the balancing adjustment event.

3 Note 1: This section applies in a modified way if the partner has deductions
4 for the asset under former section 73BA or 73BH of the *Income Tax*
5 *Assessment Act 1936* (see section 355-325 of the *Income Tax*
6 *(Transitional Provisions) Act 1997*).

7 Note 2: Section 40-293 applies if the R&D partnership can deduct an amount
8 under section 40-25, as that section applies apart from this Division
9 and former section 73BC of the *Income Tax Assessment Act 1936*.

10 (2) The amount is the partner's proportion of the amount that is so
11 much of an amount equal to the section 40-285 amount as does not
12 exceed the difference between:

- 13 (a) the asset's *cost; and
14 (b) the asset's *adjustable value, worked out under Division 40
15 as if that Division applied with the changes described in
16 section 355-310.

17 **355-449 Balancing adjustments for R&D partnership assets**
18 **partially used for R&D activities**

19 (1) The *R&D entity (the *partner*) has an amount under this section if:

- 20 (a) the partner is a partner in an *R&D partnership; and
21 (b) a *balancing adjustment event happens in the present year for
22 a *depreciating asset *held by the R&D partnership and for
23 which:
24 (i) the R&D partnership can deduct, for an income year, an
25 amount under section 40-25, as that section applies
26 apart from Division 355 and former section 73BC of the
27 *Income Tax Assessment Act 1936*; or
28 (ii) the R&D partnership could have deducted, for an
29 income year, an amount as described in subparagraph (i)
30 if it had used the asset; and
31 (c) one or more partners (including the partner) in the R&D
32 partnership are entitled under section 355-100 to *tax offsets
33 for one or more income years for deductions under
34 section 355-520 for the asset; and
35 (d) an amount (the *section 40-285 amount*) is included in the
36 R&D partnership's assessable income for the asset under

Schedule 2 Enhancing the integrity of the R&D Tax Incentive
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1 section 40-285 (after applying subsection 40-293(2)) for the
2 present year.

3 (2) The amount is the partner's proportion of the amount worked out
4 as follows:

5
$$\frac{\text{Total R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

6 where:

7 **adjusted section 40-285 amount** means so much of an amount
8 equal to the section 40-285 amount as does not exceed the total
9 decline in value.

10 **total decline in value** means the *cost of the asset less its
11 *adjustable value.

12 **total R&D deductions** means the sum of each partner's deductions
13 mentioned in paragraph (1)(c) of this section.

14 **355-450 Amount to be included in assessable income**

15 (1) The *R&D entity must include, in the entity's assessable income
16 for the present year, the sum of the following amounts for each
17 offset year relating to the clawback amount:

18
$$\frac{\text{Starting offset} - \text{Adjusted offset} - \text{Deduction amount}}{\text{R\&D entity's *corporate tax rate for the present year}}$$

19 where:

20 **adjusted offset** means the *tax offset the R&D entity would have
21 received under section 355-100 for the offset year if the total
22 amount mentioned in subsection 355-100(1) for that tax offset
23 were reduced by the portion of the clawback amount that is
24 attributable to the offset year.

25 **deduction amount** means the portion of the clawback amount that
26 is attributable to the offset year, multiplied by the R&D entity's
27 *corporate tax rate for the offset year.

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1	355-460	When this Subdivision applies
2	355-465	Assets only used for R&D activities
3	355-466	Assets partially used for R&D activities
4	355-467	R&D partnership assets only used for R&D activities
5	355-468	R&D partnership assets partially used for R&D activities
6	355-475	Amount that can be deducted

355-460 When this Subdivision applies

This Subdivision applies to an *R&D entity for an income year (the *present year*) if:

- (a) the R&D entity has an amount (a *catch up amount*) under section 355-465, 355-466, 355-467 or 355-468 for an asset for the present year; and
- (b) the R&D entity has received, or is entitled to receive, a *tax offset under section 355-100 for one or more income years (each an *offset year*) in relation to the asset.

355-465 Assets only used for R&D activities

- (1) The *R&D entity has an amount under this section if:
 - (a) a *balancing adjustment event happens in the present year for an asset *held by the R&D entity; and
 - (b) the R&D entity cannot deduct, for the asset for an income year, an amount under section 40-25 as that section applies apart from:
 - (i) this Division; and
 - (ii) former section 73BC of the *Income Tax Assessment Act 1936*; and
 - (c) the R&D entity is entitled under section 355-100 to *tax offsets for one or more income years for deductions under section 355-305 for the asset; and
 - (d) the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities for the present year; and
 - (e) the R&D entity can deduct, for the present year, an amount under subsection 355-315(2) for the asset and the balancing adjustment event.

1 Note 1: This section applies in a modified way if the entity also has deductions
2 for the asset under former section 73BA or 73BH of the *Income Tax*
3 *Assessment Act 1936* (see section 355-320 of the *Income Tax*
4 *(Transitional Provisions) Act 1997*).

5 Note 2: Section 40-292 applies if the entity can deduct an amount under
6 section 40-25, as that section applies apart from this Division and
7 former section 73BC of the *Income Tax Assessment Act 1936*.

8 (2) The amount is an amount equal to the amount mentioned in
9 paragraph (1)(e).

10 **355-466 Assets partially used for R&D activities**

- 11 (1) The *R&D entity has an amount under this section if:
- 12 (a) a *balancing adjustment event happens in the present year for
13 an asset *held by the R&D entity for which:
- 14 (i) the R&D entity can deduct, for an income year, an
15 amount under section 40-25, as that section applies
16 apart from Division 355 and former section 73BC of the
17 *Income Tax Assessment Act 1936*; or
- 18 (ii) the R&D entity could have deducted, for an income
19 year, an amount as described in subparagraph (i) if the
20 R&D entity had used the asset; and
- 21 (b) the R&D entity is entitled under section 355-100 to *tax
22 offsets for one or more income years for deductions (the
23 ***R&D deductions***) under section 355-305 for the asset; and
- 24 (c) the R&D entity can deduct an amount (the ***section 40-285***
25 ***amount***) for the asset under section 40-285 (after applying
26 subsection 40-292(2)) for the present year.

27 Note: This section applies in a modified way if you have deductions for the
28 asset under former section 73BA or 73BH of the *Income Tax*
29 *Assessment Act 1936* (see section 40-292 of the *Income Tax*
30 *(Transitional Provisions) Act 1997*).

31 (2) The amount is worked out as follows:

32
$$\frac{\text{Total R\&D deductions}}{\text{Total decline in value}} \times \text{Section 40-285 amount}$$

33 where:

- 1 (ii) the R&D partnership could have deducted, for an
2 income year, an amount as described in subparagraph (i)
3 if it had used the asset; and
- 4 (c) one or more partners (including the partner) in the R&D
5 partnership are entitled under section 355-100 to *tax offsets
6 for one or more income years for deductions under
7 section 355-520 for the asset; and
- 8 (d) the R&D partnership can deduct an amount (the
9 **section 40-285 amount**) for the asset under section 40-285
10 (after applying subsection 40-293(2)) for the present year.

11 Note: This section applies in a modified way if the partners have deductions
12 for the asset under former section 73BA or 73BH of the *Income Tax*
13 *Assessment Act 1936* (see section 40-293 of the *Income Tax*
14 *(Transitional Provisions) Act 1997*).

- 15 (2) The amount is the partner's proportion of the amount worked out
16 as follows:

17
$$\frac{\text{Total R\&D deductions}}{\text{Total decline in value}} \times \text{Section 40-285 amount}$$

18 where:

19 **total decline in value** means the *cost of the asset less its
20 *adjustable value.

21 **total R&D deductions** means the sum of each partner's deductions
22 mentioned in paragraph (1)(c) of this section.

23 **355-475 Amount that can be deducted**

- 24 (1) The *R&D entity can deduct, for the present year, the sum of the
25 following amounts for each offset year relating to the catch up
26 amount:

27
$$\frac{\text{Adjusted offset} - \text{Starting offset} - \text{Deduction amount}}{\text{R\&D entity's *corporate tax rate for the present year}}$$

28 where:

29 **adjusted offset** means the *tax offset the R&D entity would have
30 received under section 355-100 for the offset year if the total

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1 amount mentioned in subsection 355-100(1) for that tax offset
2 were increased by the portion of the catch up amount that is
3 attributable to the offset year.

4 **deduction amount** means the portion of the catch up amount that is
5 attributable to the offset year, multiplied by the R&D entity's
6 *corporate tax rate for the offset year.

7 **starting offset** means the amount of the *tax offset the R&D entity
8 has received, or is entitled to receive, under section 355-100 for the
9 offset year.

10 Note: A deduction under this subsection is not a notional deduction: see
11 subsection 355-105(2).

12 (2) However, if this section, or section 355-450, has previously applied
13 (whether in the present year or an earlier income year) in relation
14 to another catch up amount, or clawback amount, the *R&D entity
15 has that relates to the offset year, subsection (1) of this section
16 applies as if:

17 (a) the starting offset were the *tax offset the R&D entity would
18 have received under section 355-100 for the offset year if the
19 total amount mentioned in subsection 355-100(1) were:

20 (i) increased by the sum of the portions of any such other
21 catch up amounts that are attributable to the offset year;
22 and

23 (ii) decreased by the sum of the portions of any such other
24 clawback amounts that are attributable to the offset
25 year; and

26 (b) the reference to the "total amount" in the definition of
27 **adjusted offset** were a reference to that amount as so
28 adjusted.

29 **30 Subsection 355-525(2) (heading)**

30 Repeal the heading.

31 **31 At the end of subsection 355-525(2)**

32 Add:

33 Note 1: A deduction under this subsection is not a notional deduction (see
34 subsection 355-105(2)).

1 Note 2: A deduction under this subsection will result in a catch up amount for
2 the partner (see section 355-467).

3 **32 Subsections 355-525 (3) to (7)**

4 Repeal the subsections, substitute:

5 (3) If an amount would be included in the *R&D partnership's
6 assessable income for the event year under subsection 40-285(1)
7 for the asset and the event if Division 40 applied as described in
8 paragraph (1)(e), the partner's proportion of that amount is
9 included in the partner's assessable income for the event year.

10 Note: Some or all of the amount included in the partner's assessable income
11 may result in a clawback amount for the partner (see section 355-448).

12 **33 Section 355-530**

13 Omit "For the purposes of sections 40-292 (balancing adjustments for
14 decline in value) and", substitute "For the purposes of section".

15 **34 Subsection 355-715(2)**

16 Omit ", 355-315, 355-520 or 355-525", substitute "or 355-520".

17 **35 Subsection 355-715(2) (note 2)**

18 Repeal the note, substitute:

19 Note 2: Section 355-305 is about the decline in value of R&D assets and
20 section 355-520 is about the decline in value of R&D partnership
21 assets.

22 **36 Section 355-720**

23 Repeal the section.

24 **37 Subsection 360-40(2)**

25 Repeal the subsection, substitute:

26 (2) For the purposes of paragraph (1)(c), disregard any of the
27 following:

28 (a) an Accelerating Commercialisation Grant under the program
29 administered by the Commonwealth known as the
30 Entrepreneurs' Programme;

1 (b) an amount required to be included in the company's
2 assessable income under subsection 355-450(1).

3 **38 Subsection 995-1(1) (definition of *feedstock revenue*)**

4 Omit "section 355-470", substitute "subsection 355-445(4)".

5 ***Income Tax Rates Act 1986***

6 **39 Subsection 12(7)**

7 Omit "sections 12A and 12B" (wherever occurring), substitute
8 "section 12A".

9 **40 Sections 12B and 31**

10 Repeal the sections.

11 ***Income Tax (Transitional Provisions) Act 1997***

12 **41 Subsection 40-292(3) (formula)**

13 Repeal the formula (not including the definitions), substitute:

14
$$\text{Adjusted section 40-285 amount} \times \left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \right) \times \frac{1}{4}$$

15 **42 After subsection 40-292(3)**

16 Insert:

17 *Application of Division 355*

18 (3A) In applying Division 355 of the new Act in relation to the asset for
19 the income year, the R&D entity is taken to have:

20 (a) if the section 40-285 amount is an amount included in the
21 R&D entity's assessable income—a clawback amount under
22 section 355-447 of the new Act for the income year; or

1 (b) if the section 40-285 amount is a deduction—a catch up
2 amount under section 355-466 of the new Act for the income
3 year;
4 equal to the following amount:

$$\text{Adjusted section 40-285 amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}$$

5
6 where:

7 **adjusted section 40-285 amount** means:

- 8 (a) if the section 40-285 amount is a deduction—the amount of
9 the deduction; or
10 (b) if the section 40-285 amount is an amount included in the
11 R&D entity's assessable income—so much of the
12 section 40-285 amount as does not exceed the total decline in
13 value.

14 **total decline in value** means the cost of the asset less its adjustable
15 value.

16 **43 Subsection 40-293(3) (formula)**

17 Repeal the formula (not including the definitions), substitute:

$$\text{Adjusted section 40-285 amount} \times \left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \right) \times \frac{1}{4}$$

19 **44 After subsection 40-293(3)**

20 Insert:

21 *Application of Division 355*

- 22 (3A) In applying Division 355 of the new Act in relation to the asset for
23 the income year, an R&D entity (the **partner**) that is a partner in
24 the R&D partnership and is entitled to one or more new law

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- 1 deductions for one or more income years for the asset, is taken to
2 have:
- 3 (a) if the section 40-285 amount is an amount included in the
4 R&D partnership's assessable income—a clawback amount
5 under section 355-449 of the new Act for the income year; or
6 (b) if the section 40-285 amount is a deduction—a catch up
7 amount under section 355-468 of the new Act for the income
8 year;
- 9 equal to the partner's proportion of the following amount:

$$\text{Adjusted section 40-285 amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}$$

10
11

where:

12
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18

adjusted section 40-285 amount means:

- (a) if the section 40-285 amount is a deduction—the amount of the deduction; or
- (b) if the section 40-285 amount is an amount included in the R&D partnership's assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

19
20

sum of new law deductions means the sum of each partner's new law deductions mentioned in paragraph (2)(b) of this section.

21
22

total decline in value means the cost of the asset less its adjustable value.

23
24

45 Subsection 355-320(1) (note 1)

Omit “(the *new law deductions*)”.

25
26

46 Subsection 355-320(3) (heading)

Repeal the heading, substitute:

27

Deduction

28
29

47 Subsection 355-320(3) (note)

Repeal the note.

1 **48 Subsection 355-320(4) (formula)**

2 Repeal the formula (not including the definitions), substitute:

3
$$\text{Adjusted section 40-285 amount} \times \left(\frac{\text{Old law 1.25 rate deductions}}{\text{Total decline in value}} \right) \times \frac{1}{4}$$

4 **49 After subsection 355-320(4)**

5 Insert:

6 *Application of Division 355*

7 (4A) In applying Division 355 of the new Act in relation to the asset for
8 the income year, if the R&D entity is entitled under
9 section 355-100 of the new Act to tax offsets for one or more
10 income years for deductions (the *new law deductions*) under
11 section 355-305 for the asset, the R&D entity is taken to have

- 12 (a) if an amount is taken to be included in the R&D entity's
13 assessable income for the event year as mentioned in
14 subsection (4) of this section—a clawback amount under
15 section 355-446 of the new Act for the income year equal to
16 the amount mentioned in subsection (4B) of this section; or
17 (b) if the R&D entity is taken to be able to deduct an amount as
18 mentioned in subsection (3) of this section—a catch up
19 amount under section 355-465 of the new Act for the income
20 year equal to the amount of that deduction.

21 (4B) The amount is the following:

22
$$\text{Adjusted section 40-285 amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}$$

23 where:

- 1 (a) if an amount is taken to be included in the R&D entity's
2 assessable income for the event year as mentioned in
3 subsection (4) of this section—a clawback amount under
4 section 355-448 of the new Act for the income year equal to
5 the amount mentioned in subsection (4B) of this section; or
6 (b) if the partner is taken to be able to deduct an amount as
7 mentioned in subsection (3) of this section—a catch up
8 amount under section 355-467 of the new Act for the income
9 year equal to the amount of that deduction.

10 (4B) The amount is an amount equal to the partner's proportion of the
11 following:

$$\text{Adjusted section 40-285 amount} \times \frac{\text{Sum of new law deductions}}{\text{Total decline in value}}$$

12
13

where:

14 ***adjusted section 40-285 amount*** means so much of the
15 section 40-285 amount as does not exceed the total decline in
16 value.

17 ***sum of new law deductions*** means the sum of each partner's
18 deductions under section 355-520 of the new Act mentioned in
19 subsection (4A) of this section.

20 ***total decline in value*** means the asset's cost, less its adjustable
21 value, worked out under Division 40 of the new Act as it applies as
22 described in subsection (2) of this section.

23 **55 Section 355-720**

24 Repeal the section.

1 **Part 3—Application of amendments**

2 **56 Application of amendments**

- 3 (1) The amendments made by Part 1 of this Schedule apply on or after
4 1 July 2018 in connection with a scheme, whether or not the scheme
5 was entered into, or was commenced to be carried out, before that day.
- 6 (2) Despite subitem (1), the amendments made by Part 1 of this Schedule
7 do not apply in relation to tax benefits that a taxpayer derives before
8 that day.
- 9 (3) The amendments made by Part 2 of this Schedule apply in relation to
10 assessments for income years commencing on or after 1 July 2018.

1 **Schedule 3—Improving the administration of**
2 **the R&D Tax Incentive**

3 **Part 1—Reporting of information about research and**
4 **development tax offset**

5 *Taxation Administration Act 1953*

6 **1 At the end of Part IA**

7 Add:

8 **3G Reporting of information about research and development tax**
9 **offset**

- 10 (1) This section applies to an R&D entity in relation to an income year
11 if, according to information the entity gave the Commissioner, the
12 entity is entitled under Division 355 of the *Income Tax Assessment*
13 *Act 1997* to a tax offset for amounts it can deduct under that
14 Division for the income year.
- 15 (2) The Commissioner must, as soon as practicable after the second
16 30 June after the financial year corresponding to the income year,
17 make publicly available the information mentioned in
18 subsection (3).
- 19 (3) The information is as follows:
- 20 (a) the entity's name;
- 21 (b) the entity's ABN or, if the first information the entity gave
22 the Commissioner indicating the entity's entitlement to the
23 tax offset does not include the entity's ABN but does include
24 the entity's ACN (within the meaning of the *Corporations*
25 *Act 2001*), the entity's ACN;
- 26 (c) if, according to the first information the entity gave the
27 Commissioner indicating the entity's entitlement to the tax
28 offset, the total described in paragraph (4)(a) exceeds the
29 total described in paragraph (4)(b)—the excess.
- 30 (4) For the purposes of paragraph (3)(c), the totals are as follows:

Schedule 3 Improving the administration of the R&D Tax Incentive

Part 1 Reporting of information about research and development tax offset

- 1 (a) the total of what the entity can deduct for the income year as
2 described in subsection (1) of this section;
- 3 (b) the total of the amounts the entity has under section 355-445
4 of the *Income Tax Assessment Act 1997* for the income year.
- 5 (5) Subsection (6) applies if:
- 6 (a) the entity gives the Commissioner a notice in writing that the
7 information mentioned in paragraph (3)(c) contains an error;
8 and
- 9 (b) the notice contains information that corrects the error.
- 10 (6) The Commissioner may at any time make the information
11 mentioned in paragraph (5)(b) publicly available, in accordance
12 with subsection (2), in order to correct the error.
- 13 (7) To avoid doubt, if the Commissioner considers that information
14 made publicly available under subsection (2) fails to reflect all of
15 the information required to be made publicly available under that
16 subsection, the Commissioner may at any time make publicly
17 available other information in order to remedy the failure.
- 18 (8) An expression used in this section and in the *Income Tax*
19 *Assessment Act 1997* has the same meaning in this section as in
20 that Act.

21 **2 Subsection 355-50(1) in Schedule 1 (note 2)**

22 Omit “and 3E”, substitute “, 3E and 3G”.

23 **3 Application**

24 Section 3G of the *Taxation Administration Act 1953* applies to income
25 years that start on or after 1 July 2018.

1 **Part 2—Findings about clinical trials and**
2 **determinations about performance of**
3 **Board's functions**

4 ***Industry Research and Development Act 1986***

5 **4 Subsection 4(1)**

6 Insert:

7 *clinical trial* has the same meaning as in the *Income Tax*
8 *Assessment Act 1997*.

9 **5 At the end of section 26A**

10 Add:

- 11 • The Board may make general determinations about how it will
12 exercise its powers, and perform its functions and duties,
13 under this Part. The Board must act in accordance with such a
14 determination.

15 **6 Subsection 27A(1)**

16 Omit “either or both”, substitute “one or more”.

17 **7 After paragraph 27A(1)(b)**

18 Insert:

- 19 ; (c) one or more specified activities, for which the entity is or is
20 to be registered under another paragraph of this subsection,
21 as activities that formed part of a clinical trial conducted
22 during the income year.

23 **8 After paragraph 27B(1)(d)**

24 Insert:

- 25 ; (e) that all or part of an activity mentioned in the application
26 formed part of a clinical trial conducted during the income
27 year;

Schedule 3 Improving the administration of the R&D Tax Incentive

Part 2 Findings about clinical trials and determinations about performance of Board's functions

- 1 (f) that all or part of an activity mentioned in the application did
2 not form part of a clinical trial conducted during the income
3 year.

4 **9 Subsection 27B(1) (note 2)**

5 Repeal the note, substitute:

- 6 Note 2: The Board could make a finding under paragraph 27B(1)(b) if, for
7 example, the Board has insufficient information to make a finding
8 under paragraph 27B(1)(a). Similarly, the Board could:
9 (a) make a finding under paragraph 27B(1)(d) if it has insufficient
10 information to make a finding under paragraph 27B(1)(c); or
11 (b) make a finding under paragraph 27B(1)(f) if it has insufficient
12 information to make a finding under paragraph 27B(1)(e).

13 **10 Subsection 27E(2) (note 3)**

14 Omit “or (d)”, substitute “, (d) or (f)”.

15 **11 Subsection 27H(2) (note 3)**

16 Omit “or (d)”, substitute “, (d) or (f)”.

17 **12 After paragraph 27J(1)(d)**

18 Insert:

- 19 ; (e) that all or part of a registered activity formed part of a
20 clinical trial conducted during the registration year;
21 (f) that all or part of a registered activity did not form part of a
22 clinical trial conducted during the registration year.

23 **13 Subsection 27J(1) (note 2)**

24 Repeal the note, substitute:

- 25 Note 2: The Board could make a finding under paragraph 27J(1)(b) if, for
26 example, the Board has insufficient information to make a finding
27 under paragraph 27J(1)(a). Similarly, the Board could:
28 (a) make a finding under paragraph 27J(1)(d) if it has insufficient
29 information to make a finding under paragraph 27J(1)(c); or
30 (b) make a finding under paragraph 27J(1)(f) if it has insufficient
31 information to make a finding under paragraph 27J(1)(e).

32 **14 Section 28**

33 Omit “an R&D activity.”, substitute “an R&D activity or forms part of a
34 clinical trial.”.

1 **15 After paragraph 28A(1)(c)**

2 Insert:

- 3 (ca) find that all or part of the activity forms part of a clinical
4 trial;
- 5 (cb) find that all or part of the activity does not form part of a
6 clinical trial;

7 **16 After Division 6 of Part III**

8 Insert:

9 **Division 6A—Determinations about Board's powers,**
10 **functions and duties under this Part**

11 **31C Simplified outline**

- | | |
|----|---|
| 12 | • The Board may make general determinations about the |
| 13 | circumstances or way in which it will exercise its powers, or |
| 14 | perform its functions or duties, under this Part. |
| 15 | • The Board must act in accordance with such a determination. |
| 16 | • A determination cannot override the decision-making |
| 17 | principles. |

18 **31D Board may make a determination about its powers, functions**
19 **and duties**

- 20 (1) On its own initiative, the Board may, by notifiable instrument,
21 make a determination about the circumstances or way in which the
22 Board will exercise any of its powers, or perform any of its
23 functions or duties, under this Part (except this Division).
- 24 (2) The determination must not relate to the exercise of powers, or the
25 performance of functions or duties, in a particular case or in
26 relation to a particular entity.

Schedule 3 Improving the administration of the R&D Tax Incentive

Part 2 Findings about clinical trials and determinations about performance of Board's functions

- 1 (3) The Board must exercise its powers, and perform its functions and
2 duties, under this Part (except section 30D and this Division) in
3 accordance with the determination.

4 Note: Section 30D is about the Board reviewing a reviewable decision.

- 5 (4) The determination has no effect to the extent of any inconsistency
6 with this Act, the regulations or the decision-making principles.

7 Note: The Board must revoke or amend the determination to remove any
8 inconsistency: see section 31E.

9 **31E When Board must amend or revoke a determination**

- 10 (1) This section applies to a determination made under section 31D if:

11 (a) as a result of reviewing under section 30D a reviewable
12 decision that was made in accordance with the determination
13 because of section 31D, the Board is satisfied that the
14 determination is incorrect; or

15 (b) the determination is inconsistent with:

16 (i) a decision of a court; or

17 (ii) a decision of the Administrative Appeals Tribunal on
18 review of an internal review decision relating to a
19 reviewable decision that was made in accordance with
20 the determination because of section 31D; or

21 (iii) this Act, the regulations or the decision-making
22 principles.

23 (2) The Board must, by notifiable instrument, revoke the determination
24 or amend it so it is no longer incorrect or inconsistent.

25 (3) This section does not limit the application of subsection 33(3) of
26 the *Acts Interpretation Act 1901* in relation to the power to make a
27 determination under section 31D of this Act.

28 Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a
29 power to make an instrument includes the power to revoke or vary the
30 instrument.

31 **17 Application**

32 The amendments made by this Part apply in relation to the exercise of
33 powers, and the performance of functions and duties, by the Board after
34 the commencement of this Part.

1 **Part 3—Delegation by Board and committees**

2 ***Industry Research and Development Act 1986***

3 **18 Paragraph 21(1)(e)**

4 Omit “who is an SES employee, or acting SES employee”.

5 **19 Subsection 22A(1)**

6 Omit “who is an SES employee, or acting SES employee,”.

1 **Part 4—Extensions of time**

2 ***Industry Research and Development Decision-making***
3 ***Principles 2011***

4 **20 At the end of section 3.2**

5 Add:

6 (3) However, the total of further periods allowed under this Part for a
7 particular thing to be given by an interested person must not
8 exceed 3 months. This subsection has effect despite section 3.4.

9 (4) Subsection (3) does not apply if the thing to be given deals with a
10 matter that corresponds to the subject of a decision that:

11 (a) relates to the interested person; and

12 (b) has not been finalised;

13 but is not the subject of that decision.

14 Example: Subsection (3) does not apply to an application to register activities of
15 an R&D entity under section 27A of the Act for an income year if:

16 (a) the entity has previously applied for registration, or for variation
17 of the entity's registration, for corresponding activities for an
18 earlier income year; and

19 (b) a decision on the previous application either has not been made
20 or is subject to review under Division 5 of Part III of the Act.

1 **Schedule 4—Thin capitalisation**

2 **Part 1—Amendments**

3 *Income Tax Assessment Act 1936*

4 **1 Subsection 262A(2AA)**

5 Omit “, 820-980 or 820-985”, substitute “or 820-980”.

6 **2 Paragraph 262A(3)(d)**

7 Omit “; and”, substitute “.”.

8 **3 Paragraph 262A(3)(e)**

9 Repeal the paragraph.

10 *Income Tax Assessment Act 1997*

11 **4 Paragraph 820-583(5)(b)**

12 Omit “;”, substitute “.”.

13 **5 Subsection 820-583(5)**

14 Omit all the words after paragraph (b).

15 **6 Paragraph 820-583(6)(c)**

16 Omit “;”, substitute “.”.

17 **7 Subsection 820-583(6)**

18 Omit all the words after paragraph (c).

19 **8 Paragraph 820-680(1)(a)**

20 Omit “(including revaluing its assets for the purposes of that
21 calculation)”.

22 **9 Subsection 820-680(1) (note)**

23 Omit “, 820-682, 820-683 and 820-684”, substitute “and 820-682”.

1 **10 Subsection 820-680(1A) (note)**

2 Omit “sections 820-682 and 820-683”, substitute “section 820-682”.

3 **11 Subsections 820-680(2) to (2E)**

4 Repeal the subsections, substitute:

5 (2) If:

6 (a) an entity is required by an Australian law to prepare financial
7 statements for a period in accordance with the *accounting
8 standards; and

9 (b) a matter mentioned in subsection (1) is determined or
10 calculated in accordance with the accounting standards for
11 the purposes of the financial statements in relation to the
12 period;

13 then, for the purposes of this Division, the matter is to be
14 determined or calculated in relation to the period, or any part of the
15 period, in the same way as it is determined or calculated in the
16 financial statements.

17 (3) If:

18 (a) a period in relation to which a matter mentioned in
19 subsection (1) is determined or calculated (the *current*
20 *period*) is not the same as a period in relation to which
21 paragraphs (2)(a) and (b) are satisfied; and

22 (b) the current period overlaps with one or more periods in
23 relation to which paragraphs (2)(a) and (b) are satisfied;

24 then, for the purposes of this Division, the matter is to be
25 determined or calculated in relation to the current period in the
26 same way as it is determined or calculated in the financial
27 statements for the most recent of the overlapping periods.

28 **12 Subsections 820-682(1) and (2)**

29 Omit “subsections 820-680(1) and (1A)”, substitute
30 “subsections 820-680(1), (1A) and (2)”.

31 **13 Sections 820-683 and 820-684**

32 Repeal the sections.

1 **14 Paragraph 820-933(4)(b)**

2 Omit “, 820-682, 820-683 and 820-684”, substitute “and 820-682”.

3 **15 Group heading (before section 820-985)**

4 Repeal the heading.

5 **16 Section 820-985**

6 Repeal the section.

1 **Part 2—Application and transitional provisions**

2 **17 Revaluation of assets**

- 3 (1) The amendments made by items 1 to 3 and items 8 to 16 of this
4 Schedule apply in relation to any of the following carried out for the
5 purposes of Division 820 of the *Income Tax Assessment Act 1997* after
6 7.30 pm, by legal time in the Australian Capital Territory, on 8 May
7 2018 (the *transition time*):
- 8 (a) a determination that an asset or liability is an asset or liability
9 of an entity (including a determination that the entity has an
10 asset or liability at a particular time);
 - 11 (b) a calculation of:
 - 12 (i) the value of an entity's assets; or
 - 13 (ii) the value of an entity's liabilities (including its *debt
14 capital); or
 - 15 (iii) the value of an entity's *equity capital.
- 16 (2) If any of the matters mentioned in subitem (1) have been determined or
17 calculated before the transition time:
- 18 (a) only the most recent of those determinations or calculations
19 that comply with Division 820 of the *Income Tax Assessment*
20 *Act 1997*, as in force at the time the determination or
21 calculation was made, may be used by the entity for the
22 purposes of that Division on or after the transition time; and
 - 23 (b) those determinations or calculations may only be used by the
24 entity for the purposes of Division 820 of that Act for income
25 years beginning before 1 July 2019.

26 **18 Classification of head company**

- 27 The amendments made by items 4 to 7 of this Schedule apply in relation
28 to income years beginning on or after 1 July 2019.

1 **Schedule 5—Online hotel bookings**
2

3 *A New Tax System (Goods and Services Tax) Act 1999*

4 **1 Paragraph 83-5(2)(c)**

5 Omit “or (c)” (wherever occurring).

6 **2 Subsection 151-5(2)**

7 Omit “or (c)” (wherever occurring).

8 **3 Paragraphs 188-15(3)(c) and 188-20(3)(c)**

9 Repeal the paragraphs.

10 **4 Application**

11 The amendments made by this Schedule apply in relation to a supply:

- 12 (a) for which consideration is first received on or after 1 July
13 2019; or
14 (b) if, before any consideration is received for the supply, an
15 invoice is issued relation to the supply—for which an invoice
16 is issued on or after 1 July 2019.

1 **Schedule 6—Non-taxable re-importations of**
2 **refurbished luxury cars**
3

4 *A New Tax System (Luxury Car Tax) Act 1999*

5 **1 After subsection 7-20(1)**

6 Insert:

- 7 (1A) An *importation of a *car is a *non-taxable re-importation* if:
8 (a) the car was exported from the indirect tax zone and is
9 returned to the indirect tax zone; and
10 (b) the car has been subject to any treatment, industrial
11 processing, repair, renovation, alteration or any other process
12 since its export; and
13 (c) the ownership of the car has not changed in the period
14 beginning immediately before the car was exported and
15 ending at the time it is returned to the indirect tax zone.

16 **2 Application**

17 The amendment made by this Schedule applies in relation to
18 importations occurring on or after 1 January 2019.

1 **Schedule 7—Significant global entities**
2

3 *Income Tax Assessment Act 1997*

4 **1 Subdivision 815-E (heading)**

5 Repeal the heading, substitute:

6 **Subdivision 815-E—Reporting obligations for country by**
7 **country reporting entities**

8 **2 Section 815-350**

9 Omit “Significant global entities”, substitute “Country by country
10 reporting entities”.

11 **3 Paragraph 815-355(1)(a)**

12 Omit “*significant global entity”, substitute “*country by country
13 reporting entity”.

14 **4 Subparagraph 815-355(3)(a)(ii)**

15 Repeal the subparagraph, substitute:

- 16 (ii) if you were, or any other entity was, a *country by
17 country reporting entity during the preceding year
18 because of your membership of a group of entities
19 (including a *country by country reporting group)—the
20 other members of that group;

21 **5 At the end of Subdivision 815-E-H**

22 Add:

23 **815-370 Meaning of *country by country reporting entity*, *country by***
24 ***country reporting group* and *country by country parent***
25 ***entity***

- 26 (1) An entity is a ***country by country reporting entity*** if the entity is
27 not an individual and any of the following conditions are satisfied:

- 1 (a) the entity is controlled by an entity that is a country by
2 country reporting entity because of another operation of this
3 subsection;
- 4 (b) the entity:
- 5 (i) is a *country by country parent entity; and
6 (ii) would be a *significant global entity, assuming that
7 references in Subdivision 960-U (other than
8 section 960-575) to *notional listed company group
9 were instead references to *country by country reporting
10 group.
- 11 (2) A group of entities is a **country by country reporting group** if, on
12 the assumption that paragraph 960-575(4)(a) were disregarded, the
13 group would be a *notional listed company group.
- 14 Note: The effect of that assumption is that exceptions in accounting or other
15 principles to requirements to consolidate for accounting purposes are
16 taken into account in working out the membership of the country by
17 country reporting group. Where such exceptions apply, a country by
18 country reporting group may have fewer members than the equivalent
19 notional listed company group.
- 20 (3) Each entity in that group is a **member** of the *country by country
21 reporting group.
- 22 (4) An entity is a **country by country parent entity** if:
- 23 (a) it is *not* a *member of a *country by country reporting group;
24 or
25 (b) where it is a member of a country by country reporting
26 group:
27 (i) it is a *global parent entity; or
28 (ii) it would be a global parent entity if all entities that are
29 not members of that group were disregarded.

30 6 Paragraph 960-555(2)(a)

- 31 Repeal the paragraph, substitute:
- 32 (a) any of the following requirements are satisfied:
- 33 (i) the entity is a *member of a group of entities that are
34 consolidated for accounting purposes as a single group;
35 (ii) the entity is a member of a *notional listed company
36 group; and
-

7 Section 960-565

Before “The”, insert “(1)”.

8 After paragraph 960-565(a)

Insert:

- (aa) if the entity is a member of a *notional listed company group—the total annual income of all the members of the group (worked out on the assumption that all members of the group were consolidated for accounting purposes as a single group); or

9 At the end of section 960-565

Add:

(2) Subsection (3) applies if:

- (a) there are no *global financial statements for the *global parent entity for the period; or
- (b) there are no global financial statements for the global parent entity for the period that show the total annual income mentioned in subsection (1).

(3) Despite subsection (1), the *annual global income* of the *global parent entity for the period is the amount that would be, on the assumption that such statements had been prepared, the total annual income mentioned in subsection (1) shown in those statements.

10 At the end of Subdivision 960-U

Add:

960-575 Meaning of *notional listed company group*

- (1) A *notional listed company group* is a group of entities that would be required to be consolidated for accounting purposes as a single group, on the assumption that an entity (the *test entity*) were a listed company (within the meaning of section 26BC of the *Income Tax Assessment Act 1936*).
- (2) Each entity in that group is a *member* of the *notional listed company group.

- 1 (3) For the purposes of subsection (1), determine whether a group of
2 entities would be required to be consolidated for accounting
3 purposes as a single group according to:
4 (a) *accounting principles; or
5 (b) if accounting principles do not apply in relation to the test
6 entity—commercially accepted principles related to
7 accounting.
- 8 (4) In applying the *accounting principles or commercially accepted
9 principles referred to in subsection (3):
10 (a) disregard any exceptions in those principles to requirements
11 in those principles for entities to be consolidated as a single
12 group; and
13 (b) without limiting paragraph (a), disregard any rule in those
14 principles providing that one or more entities (the *excepted*
15 *entities*) are not required to be consolidated as a single group
16 with one or more other entities because the effect of such
17 consolidation would be immaterial as a result of:
18 (i) the size of the excepted entities; or
19 (ii) any other matter.

20 **11 Subsection 995-1(1)**

21 Insert:

22 *country by country parent entity* has the meaning given by
23 section 815-370.

24 *country by country reporting entity* has the meaning given by
25 section 815-370.

26 *country by country reporting group* has the meaning given by
27 section 815-370.

28 **12 Subsection 995-1(1) (after paragraph (bb) of the definition** 29 **of member)**

30 Insert:

31 (bc) in relation to a *notional listed company group—has the
32 meaning given by section 960-575; and

33 (bd) in relation to a *country by country reporting group—has the
34 meaning given by section 815-370; and

13 Subsection 995-1(1)

Insert:

notional listed company group has the meaning given by section 960-575.

Taxation Administration Act 1953**14 Subsection 2(1)**

Insert:

country by country reporting entity has the meaning given by section 815-370 of the *Income Tax Assessment Act 1997*.

significant global entity has the meaning given by section 960-555 of the *Income Tax Assessment Act 1997*.

15 Section 3CA (heading)

Repeal the heading, substitute:

3CA Reporting of information by corporate country by country reporting entities**16 Paragraph 3CA(1)(a)**

Omit “significant global entity”, substitute “country by country reporting entity”.

17 Application

- (1) The amendments made by this Schedule apply in relation to income years or other periods starting on or after 1 July 2018.
- (2) Subitem (3) applies if:
 - (a) an entity is a significant global entity for an income year or other period that starts:
 - (i) on or after 1 July 2018; and
 - (ii) before 1 July 2019; and

Schedule 7 Significant global entities

- 1 (b) disregarding the amendments made by this Schedule, the
2 entity would not be a significant global entity for that income
3 year or other period.
- 4 (3) For the purposes of Divisions 284 and 286 in Schedule 1 to the
5 *Taxation Administration Act 1953*, treat the entity as not being a
6 significant global entity for that income year or other period.