



**Administrative
Appeals Tribunal**

**DECISION AND
REASONS FOR DECISION**

**Royal Wins Pty Ltd and Innovation and Science Australia [2020] AATA 4320
(28 October 2020)**

Division: TAXATION AND COMMERCIAL DIVISION

File Number(s): **2019/2057**

Re: **Royal Wins Pty Ltd**

APPLICANT

And **Innovation and Science Australia**

RESPONDENT

DECISION

Tribunal: **Deputy President I R Molloy**

Date: **28 October 2020**

Place: **Sydney**

The decision under review is affirmed.

.....[SGD].....

Deputy President I R Molloy

CATCHWORDS

INDUSTRY RESEARCH AND DEVELOPMENT – whether activities core or supporting research and development activities within the meaning of Division 355 of the Income Tax Assessment Act 1997 (Cth) – where Applicant’s activities related to the integration of gaming algorithms to develop a gaming platform – whether activities displayed a systematic progression of work – whether outcomes could not have been known or determined in advance on the basis of current knowledge, information and experience – inadequate contemporaneous documentation – decision under review affirmed

LEGISLATION

Income Tax Assessment Act 1997 (Cth) ss 355-5, 355-25, 355-30, 355-205

Industry Research and Development Act 1986 (Cth) ss 6, 27A, 27J, 27L, 30C, 30D, 30E

CASES

DBTL and Innovation Australia [2013] AATA 573; (2013) 137 ALD 88

Rix’s Creek Pty Limited; Bloomfield Collieries Pty Limited and Innovation Australia [2017] AATA 645

SECONDARY MATERIALS

Explanatory Memorandum, Tax Laws Amendment (Research and Development) Bill 2010 and Income Rates Amendment (Research and Development) Bill 2010 (Cth)

REASONS FOR DECISION

Deputy President I R Molloy

28 October 2020

1. The Applicant operates a gaming platform for skill-based gaming applications that facilitate betting. By application dated 15 April 2019¹ the Applicant applies for review of an internal review decision of the Respondent dated 15 March 2019 (**the Decision**).² The Decision involves the Applicant’s activities related to the integration of gaming algorithms to develop a gaming platform.
2. The Decision confirmed the Respondent’s initial decision on 9 October 2018 under section 27J of the *Industry Research and Development Act 1986* (Cth) (**IRD Act**) that the activities allegedly undertaken by the Applicant in the 2015/16 and 2016/17 financial years were not

¹ Exhibit A at T1.

² Exhibit A at T33.

Core or Supporting research and development (**R&D**) activities for the purposes of the *Income Tax Assessment Act 1997* (Cth) (**ITAA**).³

3. The Decision was made under paragraph 30D(2)(a) of the IRD Act, on the basis that the Applicant's claimed R&D activities were not:
 - (a) Core R&D activities within the meaning of section 355-25 of the ITAA (**Core R&D Activities**); or
 - (b) Supporting R&D activities within the meaning of section 355-30 of the ITAA (**Supporting R&D Activities**).

Legislative framework

4. The Respondent is a body established under section 6 of the IRD Act and is administratively assisted by the Department of Industry, Science, Energy and Resources (the **Department**). The Department and the Commissioner of Taxation (the **Commissioner**) administer the Commonwealth's tax incentive scheme for entities engaged in R&D activities (**R&D Entities**), which is called the R&D Tax Incentive.
5. The operative rules for the R&D tax incentive are contained in Division 355 of the ITAA. Section 355-5 of the ITAA sets out the object of Division 355 in the following terms:
 - 1 *The object of this Division is to encourage industry to conduct research and development activities that might otherwise not be conducted because of an uncertain return from the activities, in cases where the knowledge gained is likely to benefit the wider Australian economy.*
 - 2 *This object is to be achieved by providing a tax incentive for industry to conduct, in a scientific way, experimental activities for the purpose of generating new knowledge or information in either a general or applied form (including new knowledge in the form of new or improved materials, products, devices, processes or services).*
6. Section 355-205 of the ITAA provides that an R&D Entity may deduct for a registration year expenditure incurred during that year to the extent that the expenditure, relevantly, is incurred on one or more R&D activities for which the R&D Entity is registered under section 27A of the IRD Act for a registration year.

³ Exhibit A at T25.

7. Section 27A of the IRD Act provides that the Respondent must, on application by an R&D Entity, decide whether to register or refuse to register the R&D Entity in relation to Core R&D Activities or Supporting R&D Activities for a registration year.
8. Core R&D Activities are defined in subsection 355-25(1) of the ITAA (subject to certain exceptions provided under subsection 355-25(2)) as experimental activities:
 - (a) whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience, but can only be determined by applying a systematic progression of work that:
 - (i) is based on principles of established science; and
 - (ii) proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions; and
 - (b) that are conducted for the purpose of generating new knowledge (including new knowledge in the form of new or improved materials, products, devices, processes or services).
9. Supporting R&D Activities are activities defined in subsection 355-30(1) of the ITAA (subject to certain exceptions set out in subsection 355-30(2)) as being directly related to Core R&D activities. If none of the claimed activities are Core R&D Activities, then no other claimed activity will fall within the definition of a Supporting R&D Activity.
10. Having regard to the Explanatory Memoranda which accompanied the legislation, for an activity to be a Core R&D Activity within the meaning of section 355-25 of the ITAA, it must be an experimental activity, the outcome of which cannot be known or determined in advance on the basis of current knowledge, which is assessed by the standard of a competent professional in the relevant area,⁴ but can only be determined by applying a systematic progression of work. The systematic progression of work must be:
 - based on the principles of established science;

⁴ Explanatory Memorandum, *Tax Laws Amendment (Research and Development) Bill 2010 and Income Rates Amendment (Research and Development) Bill 2010* (Cth) at 19, [2.13].

- proceed from hypothesis to experiment, observation and evaluation, and lead to logical conclusions. To satisfy this component, the Applicant needs to identify a testable scientific hypothesis that it is seeking to test, and conduct the testing of that hypothesis in a planned sequence which leads to logical conclusions;⁵
 - be conducted for the purpose of generating new knowledge; and
 - not come within any of the exceptions in subsection 355-25(2) of the ITAA.
11. Under section 27J of the IRD Act, upon examining an R&D Entity's registration, the Respondent may make findings about the registration including, relevantly, findings that all or part of an R&D activity in the application was not a Core R&D Activity or Supporting R&D Activity conducted during the registration year.
12. Under section 27L of the IRD Act, upon the making of a finding under subsection 27J(1), the R&D Entity's registration is taken always to have existed in a form consistent with the finding. A finding of the Respondent is binding on the Commissioner for the purposes of assessing the R&D Entity's entitlement to the R&D Tax Incentive under Division 355 of the ITAA.
13. Under section 30C of the IRD Act, a person whose interests are affected by a reviewable decision made under the IRD Act (which includes decisions made under section 27J of the IRD Act) may make an application for internal review of that decision. Subsection 30D(2) provides that the Respondent may confirm, vary or set aside the reviewable decision.
14. Section 30E of the IRD Act provides for applications to be made for review of internal review decisions to the Tribunal.

Factual background

15. The following summary of the factual background is taken from the Respondent's Amended Statement of Findings of Fact and Reasons dated 11 July 2019.

⁵ Ibid at 19, [2.11]-[2.12].

16. On 5 September 2016, the Applicant submitted an application to the Respondent for registration of R&D activities for the 2015/16 registration year. The project to which the activities related was titled “201601 Integrated Hybrid Gaming Algorithm and Platform” (the **Project**).⁶ The stated objective of the project was to “create a system based on a hybrid model game of skill and chance” and to “test and implement the individual standalone games, mathematical algorithms, global mechanical redistribution models and security features”.
17. In its application, the Applicant sought to register three Core R&D Activities and related Supporting R&D Activities, which were described as:

Core Activity 1.1: Research and Development of Skill and Chance Game RTP Mathematical Algorithm to normalise returns;

Supporting Activity 1.1.2: Development of social casino game server + back office for deployment of games to test RTP balancer, math models and gambling game mechanic theories;

Supporting Activity 1.1.3: Development of games to test RTP balancer, math models and gambling game mechanic theories;

Supporting Activity 1.1.4: Literature research and background reviews;

Supporting Activity 1.1.5: Project Management and administration;

Core Activity 1.2: Planning, design and mathematical models for skill-based difficulty balancer;

Supporting Activity 1.2.1: Literature research and background reviews;

Supporting activity 1.2.2: Project Management and administration;

Core Activity 1.3: Sample size analysis, determination and creation;

Supporting Activity 1.3.1: Research player profile of skill game players and player profile of online gambling players;

Supporting Activity 1.3.2: Development of social casino game server + back office for deployment of games to test RTP balancer, math models and gambling game mechanic theories;

Supporting Activity 1.3.3: Development of games to test RTP balancer, math models and gambling game mechanic theories;

Supporting Activity 1.3.4: Literature research and background reviews; and

Supporting Activity 1.3.5: Project Management and administration.

⁶ Exhibit A at T7.

18. On 6 September 2016, the Respondent made a decision to register the Applicant's activities for the 2015/2016 registration year under section 27A of the IRD Act.⁷
19. On 20 September 2017, the Applicant submitted an application to the Respondent for registration of R&D activities for the 2016/17 registration year. These activities also related to the Project.⁸ The Applicant sought to register three core activities which were supported by 10 supporting activities. The activities were the same as those in the application for registration in the 2015/16 year, save that they did not include Supporting Activity 1.3.1.
20. On 26 September 2017, the Respondent made a decision to register the Applicant's activities for the 2016/2017 registration year under section 27A of the IRD Act.⁹
21. Following the Respondent's decision of 26 September 2017, the Australian Taxation Office referred the Applicant's registered R&D activities for the 2015/16 and 2016/17 registration years to the Respondent for an Activity and Internal Review on 23 March 2018.¹⁰
22. On 9 October 2018, the Respondent made a post-registration finding in relation to the Applicant's R&D Activities in the 2015/16 and 2016/17 registration years under section 27J of the IRD Act (the **Initial Decision**).¹¹ The Initial Decision found that Activities 1.1, 1.2 and 1.3 were not Core R&D Activities within the meaning of the ITAA. As a consequence of that finding, the Respondent also held that the claimed Supporting R&D Activities were not Supporting R&D Activities within the meaning of the ITAA.
23. On 10 October 2018, the Applicant requested an internal review of the Initial Decision pursuant to section 30C of the IRD Act.¹²

⁷ Exhibit A at T8.

⁸ Exhibit A at T9.

⁹ Exhibit A at T12.

¹⁰ Exhibit A at T13.

¹¹ Exhibit A at T24.

¹² Exhibit A at T26.

The Decision

24. On 15 March 2019, the Respondent made the Decision pursuant to section 30D of the IRD Act. The Decision affirmed the Initial Decision.¹³ The reasons for the Decision were that:

- (a) Activities 1.1, 1.2 and 1.3 were not Core R&D Activities within the meaning of the ITAA because:
 - (i) the Applicant did not demonstrate that the activities were experimental;
 - (ii) the Applicant did not demonstrate that the outcome of the activities could not be known or determined in advance on the basis of current knowledge, information or experience;
 - (iii) the Applicant did not demonstrate a technical knowledge gap that could only be resolved by experimentation as part of a systematic progression of work;
 - (iv) the Applicant applied existing mathematical knowledge and models to attain its outcomes;
 - (v) the Applicant did not demonstrate a systematic progression of work, based on principles of established science, proceeding from hypothesis to experiment, observation and evaluation and leading to logical conclusions;
 - (vi) the Applicant did not demonstrate that it held relevant hypotheses; and
 - (vii) the Applicant did not demonstrate that the activities were carried out for the purpose of generating new knowledge; and
 - (viii) Activities 1.1.2, 1.1.3, 1.1.4, 1.1.5, 1.2.1, 1.2.2, 1.3.1, 1.3.2, 1.3.3, 1.3.4 and 1.3.5 were not Supporting activities within the meaning of the ITAA because the Applicant had not demonstrated any eligible Core R&D Activities to which these activities could be directly related.

¹³ Exhibit A at T33.

25. In the Decision, the Respondent found that:

- the Applicant had not demonstrated that the outcomes of the claimed R&D activities could not have been known or determined in advance on the basis of (then) current knowledge, information or experience. Specifically, the Respondent found that the claimed Core R&D Activities involved the application of existing knowledge and expertise, including through the use of standard software testing methods;
- the Applicant had not demonstrated that the claimed R&D Activities displayed a systematic progression of work that was based on the principles of established science, proceeding from hypothesis, to experiment, observation and evaluation, and leading to logical conclusions. Specifically, the Respondent found that:
 - (i) the solutions identified in the mathematical modelling undertaken by the Applicant were obtained by applying existing knowledge and using a “suite of standard testing”;
 - (ii) the Applicant had not shown that the claimed Core R&D Activities involved the identification of a knowledge gap that required the application of a systematic progression of work;
 - (iii) the Applicant had not demonstrated that the activities were driven by an hypothesis targeted to validate a specific technical or scientific proposition;
 - (iv) the Applicant had not demonstrated that the activities involved interventions designed to understand the assessment of variables in order to understand causal relationships; and
 - (v) the Applicant had not demonstrated that the activities were conducted for the purposes of generating new knowledge and that the knowledge sought by the Applicant did not go beyond the application of existing knowledge and expertise to enhance an existing software platform.

Issues

26. The Applicant informed the Tribunal (and previously the Respondent) that it agreed activity 1.3 should not be classed as a Core activity but rather as a Supporting R&D Activity.¹⁴
27. Broadly, the issues are:
- (a) whether activities 1.1 and 1.2, or any part of them, are Core R&D Activities within the meaning of section 355-25 of the ITAA; and
 - (b) if so, whether activities 1.1.2, 1.1.3, 1.1.4, 1.1.5, 1.2.1, 1.2.2, 1.3, 1.3.1, 1.3.2, 1.3.3, 1.3.4, and 1.3.5, or any part of them are Supporting R&D Activities within the meaning of section 355-30 of the ITAA.
28. Evidence was given on behalf of the Applicant by Lukie Ali, who represented the Applicant before the Tribunal. The Respondent called one witness, Associate Professor Shlomo Berkovsky, a computer scientist with expertise in game design, who also provided a written report.¹⁵ The evidence from Mr Ali, and not disputed by the Respondent, was that the Applicant had undertaken considerable work, over a number of years including the relevant years 2015/16 and 2016/17, on a project to develop a generic platform for games.
29. The work involved in claimed Core R&D Activity 1.1 was directed at optimising the return to player (**RTP**) when playing games on the Applicant's platform. RTP is a ratio of the amount a player pays to participate in the game and the amount of winnings the player receives.¹⁶ Factors relevant to the optimization of RTP include: (a) a desire to increase RTP to incentivize players to play the game; (b) a countervailing desire to reduce RTP to maximize returns to the operator of the game; and (c) regulatory requirements which may impose a minimum level of RTP.

¹⁴ Applicant's Statement of Issues dated 25 July 2019 at 3.

¹⁵ Exhibit B (Joint Bundle of Documents) at 4 to 42, Report of Associate Professor Shlomo Berkovsky dated 2 December 2019 ("Berkovsky Report").

¹⁶ Berkovsky Report at [2.3].

30. Claimed Core R&D Activity 1.2 focuses on the development of a model to balance the game difficulty in a player-dependent manner, specifically targeting dependency on the player's skills.¹⁷ Like the RTP ratio, the game difficulty is meant to stay within pre-defined limits. If the game difficulty is too low, the player will accomplish the game too easily and this will potentially reduce player engagement or, alternatively, result in an RTP that is too high. If the game difficulty is too high, the player will struggle to accomplish the game and this may reduce player engagement and may also result in an RTP that is too low.¹⁸
31. Claimed Core R&D Activity 1.2 involved the adjustment of various parameters aimed at keeping the difficulty of the game between too easy and too difficult. Accurately setting the game difficulty has an impact on the engagement of players, their enjoyment of playing, and additional metrics of the game play, for example, the number of times the player plays a game or the fee the player is prepared to pay for playing.¹⁹
32. The Applicant produced numerous simulations in the form of Python scripts and Excel worksheets which showed attempts to modify (or "tune") the game difficulty parameters. For each scenario, the simulations were executed many times (thousands to hundreds of thousands of times), such that the outcomes, the predicted RTP of each execution, as well as the overall RTP were calculated. The simulations allowed the Applicant to make conclusions regarding the values of the game parameters that would keep the game difficulty (and the RTP as a by-product) within the desired range.²⁰

Consideration

33. In the first place it is necessary to determine whether the alleged R&D activities, or what aspects of those activities, were conducted in the relevant years. As the Respondent points out, claims in respect of the same Core Activities were made over a number of years not limited to the relevant years for the purpose of this application. A threshold difficulty for the Applicant is the absence of documentation or records from which it can be determined what was done in each of the relevant years. This absence of documentation unfortunately permeates every aspect of this review.

¹⁷ Berkovsky Report at [2.22].

¹⁸ Berkovsky Report at [2.26].

¹⁹ Berkovsky Report at [2.27].

²⁰ Berkovsky Report at [2.28].

34. As Associate Professor Berkovsky says, there is an absence of adequate documentation, including of the hypothesis, experimentation testing the hypothesis, and the results of the experiment.²¹

35. Associate Professor Berkovsky reported:

I could generally understand the claimed project undertaken by Royal Wins. However, it should be noted that the collection of provided documents included very large volumes of irrelevant and/or barely documented information. For example, the documents describing the gaming industry were very generic and did not provide much information on the challenges and opportunities of the specific games developed by Royal Wins or skills-based wagering games. Likewise, the Python scripts and Excel worksheets included minimal to no documentation (that is, inline documentation of Python code, Excel formulas, and so on), which prevented me from fully understanding each and every decision made in the simulations. The lack of documentation is inconsistent with best practices in the industry and research alike, as this may slow down software development and complicate its maintenance.

36. Mr Ali pointed out, with some justification as Associate Professor Berkovsky acknowledged, that it could not be expected that industrial research and development would necessarily follow the same path as that undertaken in, for example, a university setting. Industry research and development can take different forms.

37. That said, I accept the Respondent's submission that it is an essential aspect of the systematic progression of research and development applications that there be adequate documentary evidence. What is required is documentary evidence of the application of a scientific method in a systematic progression of work from hypothesis to experiment, observation and evaluation, followed by logical conclusions.

38. In *Rix's Creek Pty Limited; Bloomfield Collieries Pty Limited and Innovation Australia* [2017] AATA 645, the Tribunal said of this requirement, at paragraph [20]:

*... Vague, generalised description of the claimed activities is not sufficient to establish that a hypothesis was formulated and that the activities claimed were carried out to test that hypothesis. An ex post facto attempt to construct or discover a hypothesis with the benefit of hindsight after the workers can [sic] carried out will not satisfy the requirement that the activities be "systematic, investigative and experimental"; see *Mount Owen Pty Ltd and Innovation Australia* [2013] AATA 573; (2013) 137 ALD 88 at [197], [209], [229] and [241].*

²¹ Berkovsky Report at [1.22].

39. The Tribunal went on to say, at paragraph [21] and [22]:

While the creation and provision of documentation is not a statutory requirement to substantiate the R&D activities, I agree with the submissions of the respondent that documentary evidence is an expected feature of an activity that is systematic, investigative and experimental. Documentation is necessary to record the activity undertaken, its purpose, progress and, of course, the results of the activities and the evaluation of those results. Without such documentation, it is near impossible to establish the progression of the activities undertaken and that the purpose of the activities was to generate new knowledge in the form of new or improved materials, products, devices, processes or services. It follows, that without such documentation, the experimental activity would have limited application or future use.

This is consistent with what the Tribunal has previously said in Docklands Science Park Pty Ltd and Innovation Australia [2015] AATA 973; (2015) 68 AAR 42 at [63]:

*...documentation is necessary to substantiate the R&D activities claimed by an applicant. It is the absence of documentation which has resulted in [the Tribunal's] findings. Such documents are required for the purpose of evidencing experimental activities whose outcome cannot be known or determined in advance but can only be determined by applying a systematic progression of work based on established science; and which proceeds from hypothesis to experiment, observation and evaluation and leads to logical conclusions. That process will establish that the purpose of conducting the activities is to generate new knowledge in the form of new or improved materials, products, devices, processes or services. **An applicant cannot succeed in establishing those requirements in the absence of detailed documentation recording the process of each activity as it develops.** [Emphasis added]*

40. I accept Associate Professor Berkovsky's evidence that the documentation relied on by the Applicant does not come near to satisfying these requirements. Associate Professor Berkovsky was of the opinion that the documentation exhibited a lack of structure, and an absence of ordered recording of activities and results. I cannot be satisfied on the evidence what work was undertaken in performance of the claimed activities or when it was carried out. It is not just a matter of when activities were undertaken, but on the documentation available, I cannot be satisfied that the Applicant's activities involved a systematic progression of work such as is required under the legislation.
41. Mr Ali contended that creating or designing software, releasing it on a platform like Facebook, then tinkering with the software that was released is a scientific method. He contended that the idea for the design of the software was the hypothesis and the experiment was testing it with live players, and allowing users to play it, providing the data from which the conclusions could be drawn:

You go from design, to development, to release, to analysing your data and your analytics (sic) and then going back to the start.

I would say that it's just natural for software development companies, even if it's not called a scientific method and even if they do not use the terminology of hypothesis experimentation, it's nature for us to do that anyway because that's the nature of building software.²²

42. The Applicant's purpose was to develop a generic games platform that could be applied to different games. It cannot be criticized for adopting the approach which best suited its purpose. The issues for me, however, require application of the legislation. Decisions under section 27J of the IRD Act are made in respect of activities. It is necessary to distinguish between an activity (which may be the subject of a finding under section 27J of the IRD Act) and a wider project undertaken by an applicant for registration.
43. Although the applications state an hypothesis in relation to each claimed Core R&D Activity, those hypotheses are not recorded in any contemporaneous material. Moreover, I accept the Respondent's submission that the hypotheses stated in the applications tend to be statements of objective (e.g. to "research and develop a dynamic algorithm which need to take into account the PRNG mathematics required to adjust to vary level of skill per player in the global ecosystem").
44. An hypothesis is a proposition to be tested by experiment. It is not merely a statement of the objective of a particular commercial project. Necessarily, the hypothesis must be identified before conducting the experiment (although the hypothesis may be refined to take into account the results of the experiment). An ex-post facto attempt to construct or discover an "hypothesis" with the benefit of hindsight after the work has been carried out will not satisfy the statutory criteria.²³
45. As the Respondent points out, the T-Documents include a number of short text documents with filenames including the words "hypothesis", "experiments" and "conclusions".²⁴ These documents lack detail and appear to be *ex post facto* reconstructions. The Respondent points to one example. The complete text of T21.143 (hypothesis), T21.145 (experiment), and T21.146 (conclusion) reads:

²² Transcript, 1 May 2020 at 71, lines 16-23.

²³ *DBTL and Innovation Australia* [2013] AATA 573; (2013) 137 ALD 88 at [197]; *Rix's Creek Pty Limited; Bloomfield Collieries Pty Limited and Innovation Australia* [2017] AATA 645 at [21].

²⁴ Exhibit A at T21.140 - T21-181.

We'd like to develop an effective method to mitigate extreme situations (highly skilled players winning too much or very low skilled players losing too much).

We have tested a sub balancer method to mitigate extreme situations (highly skilled players winning too much or very low skilled players losing too much).

We have developed a sub balancer method to mitigate extreme situations (highly skilled players winning too much or very low skilled players losing too much).

46. Associate Professor Berkovsky said:

Although [the Applicant] provided limited documentation regarding their hypotheses, these were typically formulated in a binary manner, such as "can we achieve X" (for example, "we assume that it's possible to develop an automatic system to design card and slot games for the whole range of RTP targets". These were not formulated as research hypotheses ("an expectation about how a particular process or phenomenon works" or "statement that presents the expected relationship between an independent and dependent variable", but rather as descriptions of an operational functionality of the system, referring to the target RTP range to be achieved (citations omitted).²⁵

47. I accept the Respondent's submission there was no relevant contemporaneous documentation to establish that any relevant hypothesis had been developed or tested. To the extent that any hypotheses are identified, they are properly characterized as "vague, generalised descriptions"²⁶ in the nature of a commercial objective as opposed to a proposition involving a degree of uncertainty that is formulated for the purpose of being either validated or invalidated by the conduct of an experiment. I am not able to conclude, not least because of inadequate documentation, what work was done or when it was done, that the Applicant commenced with an hypothesis (or hypotheses), or that the Applicant has undertaken a systematic progression of work based on the principles of established science.

48. I am not satisfied that either of claimed Core Activities 1.1 or 1.2 meets the statutory requirements of a Core R&D Activity. Consequently, the claimed Supporting R&D Activities do not qualify as Supporting R&D Activities.

²⁵ Berkovsky Report at [2.11].

²⁶ *DBTL and Innovation Australia* [2013] AATA 573; (2013) 137 ALD 88 at [197]; *Rix's Creek Pty Limited; Bloomfield Collieries Pty Limited and Innovation Australia* [2017] AATA 645 at [21].

Conclusion

49. The Decision under review is affirmed.

I certify that the preceding 49 (forty-nine) paragraphs are a true copy of the reasons for the decision herein of Deputy President I R Molloy

.....[SGD].....

Associate

Dated: 28 October 2020

Date(s) of hearing: **30 April 2020, 1 May 2020**

Advocate for the Applicant: **L Ali**

Counsel for the Respondent: **P Knowles**

Solicitors for the Respondent: **Clayton Utz**