

2013-2014

The Parliament of the  
Commonwealth of Australia

THE SENATE

## **Tax Laws Amendment (Research and Development) Bill 2013**

*(Amendment to be moved by the Leader of the Australian Greens, Senator Milne, in committee of the whole)*

- (1) Schedule 1, page 3 (line 1) to page 4 (line 13), omit the Schedule, substitute:

### **Schedule 1—Quarterly R&D credits**

#### **Part 1—Main amendment**

##### *Taxation Administration Act 1953*

#### **1 After Part 2-10 in Schedule 1**

Insert:

### **Part 2-15—Quarterly credits of refundable tax offsets**

#### **Division 48—Quarterly credits**

##### **Table of Subdivisions**

	Guide to Division 48
48-A	Object
48-B	Participating in the quarterly credits system
48-C	Tests for participation
48-D	Working out and paying quarterly credit amounts
48-E	End of year reconciliation
48-F	Ending participation
48-P	Special rules for consolidated groups etc.
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## Guide to Division 48

### 48-1 What this Division is about

You can apply to participate in the quarterly credits system for an income year if you expect to be entitled to refundable tax offsets for the income year that are covered by the system.

Participating gives you quarterly credits towards your likely refund from those tax offsets. These credits will either be based on your refund from a recent income year, or on a varied amount chosen by you after estimating your refund for the current year.

A reconciliation happens when the current year's assessment is made. General interest charge may be payable if you chose to base your credits on a varied amount and they are excessively high.

### Subdivision 48-A—Object

#### Table of sections

48-3 Object

#### 48-3 Object

The object of this Division is to benefit the Australian economy by improving entities' cash flow by enabling them to realise the benefit of certain expected refundable tax offsets on a quarterly basis during the income year.

### Subdivision 48-B—Participating in the quarterly credits system

#### Table of sections

48-5 Participating in the quarterly credits system

48-10 Refusing participation

48-15 Applying to participate

#### 48-5 Participating in the quarterly credits system

- (1) The Commissioner may, on application, allow you to participate in the \*quarterly credits system for:
  - (a) each of the \*instalment quarters in an income year, other than any excluded under subsection (3); and
  - (b) one or more specified \*tax offsets covered by section 48-100.

Note: If you are dissatisfied with a decision under this subsection, you may object against it in the manner set out in Part IVC (see section 48-800).
- (2) The Commissioner must notify you in writing of:
  - (a) the Commissioner's decision under subsection (1); and
  - (b) the reasons for the decision, if the decision refuses to allow you to participate as set out in your application.
- (3) An \*instalment quarter is excluded if the Commissioner receives your application after:

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- (a) if all or a part of a December falls within the last month of the instalment quarter—the next 14 February after the end of the instalment quarter; or
  - (b) otherwise—the 14th day after the end of the instalment quarter.

## 48-10 Refusing participation

- (1) The Commissioner must, under subsection 48-5(1), refuse to allow you to participate for:
  - (a) any of the \*instalment quarters, and a specified \*tax offset, if the Commissioner is aware that you fail a test in Subdivision 48-C necessary for that participation; or
  - (b) a specified instalment quarter, and a specified tax offset, if during that instalment quarter you have already withdrawn under section 48-400 from participating in the \*quarterly credits system for that tax offset.

Note 1: The Commissioner may allow you to participate to the extent that paragraph (a) or (b) does not prevent this.

Note 2: This subsection applies separately for each tax offset mentioned in your application.

- (2) The Commissioner may, under subsection 48-5(1), refuse to allow you to participate for one or more specified \*instalment quarters and \*tax offsets if:
  - (a) you fail to give the Commissioner, in accordance with section 48-15, information requested under that section; or
  - (b) for a tax offset listed in table item 20 (about R&D) in section 48-100—at any time you failed to give \*Innovation Australia, in accordance with section 28H of the *Industry Research and Development Act 1986*, information requested under that section of that Act.

## 48-15 Applying to participate

- (1) An application to participate in the \*quarterly credits system for one or more \*instalment quarters in an income year, and one or more \*tax offsets, must be given to the Commissioner in the \*approved form before:
  - (a) if all or a part of a December falls within the last month of the income year—the next 15 February after the end of the income year; or
  - (b) otherwise—the 15th day after the end of the income year.
- (2) The Commissioner may request you in writing to give specified information to the Commissioner about your application.
- (3) The request may be for the information to be given to the Commissioner in the \*approved form within:
  - (a) 14 days after the request was made; or
  - (b) a further period allowed by the Commissioner.

Note: A failure to give the information in accordance with this subsection may result in the Commissioner refusing to allow you to participate (see subsection 48-10(2)).

## Subdivision 48-C—Tests for participation

### Table of sections

48-100	Tests for participation
48-105	Reasonable receipt test
48-110	Complying taxpayer test

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## 48-100 Tests for participation

To participate in the \*quarterly credits system for one or more \*instalment quarters in an income year and a \*tax offset listed in the table, you must pass each of the following tests:

- (a) the reasonable receipt test in section 48-105;
- (b) the complying taxpayer test in section 48-110;
- (c) any extra test listed in the table for the tax offset.

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### Relevant tax offsets and any extra tests

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Item	Participating in the quarterly credits system for this tax offset:	requires you to pass these extra tests (if any):
20	the *tax offset to which entities become entitled under section 355-100 (about R&D) of the <i>Income Tax Assessment Act 1997</i>	you must have been entitled to a tax offset under that section for at least one of the last 5 income years

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## 48-105 Reasonable receipt test

It must be reasonable to expect that:

- (a) you will become entitled to the \*tax offset for the income year; and
- (b) the tax offset will be subject to the refundable tax offset rules.

## 48-110 Complying taxpayer test

- (1) You pass the complying taxpayer test if:
  - (a) no part of any of your \*tax-related liabilities remains unpaid after the time by which that liability is due to be paid; and
  - (b) during the current income year, and the 5 most recent income years, you have not been convicted of an offence against:
    - (i) a \*taxation law; or
    - (ii) a law relating to a taxation law; and
  - (c) you are complying with all of your obligations under taxation laws to provide documents or information to the Commissioner or another entity; and
  - (d) it is reasonable to expect that you will comply with your obligations under taxation laws in the future.
- (2) However, if this table applies to you, the corresponding entities mentioned in the table (your *managing entities*) must also satisfy the paragraphs in subsection (1).

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### Passing the complying taxpayer test if other entities act for you

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Item	If you are:	these entities must also satisfy the paragraphs in subsection (1)
1	a partnership	each of your partners
2	a *corporate limited partnership	each of your *general partners
3	a trust	your trustee
4	an unincorporated association	each member of your committee of management

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Note: This subsection only applies to each of your managing entities when it is in that capacity (see section 960-100 of the *Income Tax Assessment Act 1997*).

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## Subdivision 48-D—Working out and paying quarterly credit amounts

### Table of sections

48-200	Quarterly credit amounts
48-205	Standard amount
48-210	Choosing a varied amount
48-215	Disallowing proposed varied amounts
48-220	Notifying the Commissioner of proposed varied amounts
48-225	When quarterly credit amounts are payable to you
48-230	When quarterly credit amounts are payable by you
48-235	The amount's <i>quarterly credit due day</i>

### 48-200 Quarterly credit amounts

If you are participating in the \*quarterly credits system for an \*instalment quarter in an income year (the *present year*) and one or more \*tax offsets (the *present tax offsets*), your *quarterly credit amount* for the instalment quarter and the present tax offsets is:

- (a) any varied amount applying under section 48-210 for the instalment quarter and the present tax offsets; or
- (b) otherwise—the standard amount worked out under section 48-205.

Note: If you recommence participating in the quarterly credits system, paragraph (a) covers any varied amount applying for the instalment quarter under your earlier participation in the system.

### 48-205 Standard amount

(1) If:

- (a) for the most recent income year (the *reference year*) for which the Commissioner has made an assessment of your income tax, you were entitled to \*tax offsets of the same kinds as each of the present tax offsets; and
- (b) those reference year tax offsets were subject to the refundable tax offset rules; and
- (c) the reference year is one of the last 2 income years immediately before the present year;

the standard amount worked out under this section is  $\frac{1}{4}$  of the lesser of:

- (d) the total amount of those reference year tax offsets; and
- (e) the total of your \*tax offset refunds (for tax offsets of any kind) for the reference year.

Note: If the instalment quarter is the first in the present year, the reference year will usually be a different year to that for later instalment quarters.

(2) Otherwise, the standard amount worked out under this section is nil.

### 48-210 Choosing a varied amount

(1) You can choose to notify the Commissioner under section 48-220 of a proposed varied amount for the \*instalment quarter and the present tax offsets.

Note: If you do, your notice must include a proposed varied amount for each later instalment quarter in the income year (see paragraph 48-215(1)(a)). A later notice can propose a replacement varied amount for those later instalment quarters.

(2) An amount you so notify for an \*instalment quarter is the varied amount applying under this section for that instalment quarter and the present tax offsets if that amount is the most recent that:

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- (a) has been so notified for that instalment quarter; and
  - (b) has not been disallowed by the Commissioner.

That amount may be a nil or negative amount.

- (3) The Commissioner may disallow a proposed varied amount.

Note: If you are dissatisfied with a decision under this subsection, you may object against it in the manner set out in Part IVC (see section 48-800).

- (4) The Commissioner must notify you in writing of:
- (a) a decision under subsection (3) to disallow a proposed varied amount; and
  - (b) the reasons for the decision.

#### **48-215 Disallowing proposed varied amounts**

- (1) The Commissioner must, under subsection 48-210(3), disallow each proposed varied amount included in your notice given under section 48-220 if:

- (a) that notice does not include a proposed varied amount for each of the following \*instalment quarters in the present year for which you are participating in the \*quarterly credits system:

- (i) an instalment quarter that is yet to end when you gave that notice;
  - (ii) an instalment quarter for which the last month included all or a part of a December, if you gave that notice before the next 15 February;
  - (iii) an instalment quarter that ended less than 15 days before you gave that notice;
- or

- (b) for any of the proposed varied amounts included in that notice (the *test amount*), the sum of:

- (i) the test amount; and
- (ii) any of the other proposed varied amounts that are for earlier instalment quarters in the present year; and
- (iii) your \*quarterly credit amounts payable for any earlier instalment quarters in the present year;

is less than nil or exceeds the amount worked out under subsection (2).

- (2) Work out the amount from the following formula:

$$\frac{\text{Number of instalment quarters so far}}{4} \times \text{Estimated end of year amount}$$

where:

*estimated end of year amount* means the lesser of:

- (a) the likely total of the present tax offsets and any other \*tax offsets for which you are participating in the \*quarterly credits system for an earlier \*instalment quarter in the present year; and
- (b) the likely total of your \*tax offset refunds (for tax offsets of any kind) for the present year.

*number of instalment quarters so far* means the number of \*instalment quarters in the income year, up to (and including) the instalment quarter for which the test amount is proposed, for which you are participating in the \*quarterly credits system.

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- (3) The Commissioner may, under subsection 48-210(3), disallow each proposed varied amount included in your notice under section 48-220 if you fail to give the Commissioner, in accordance with that section, information requested under that section.
  - (4) The Commissioner must not, under subsection 48-210(3), disallow the proposed varied amounts included in your notice under section 48-220 if:
    - (a) none of the following provisions applies:
      - (i) paragraph (1)(a) or subsection (3);
      - (ii) paragraph (1)(b), if the sum in that paragraph is less than nil; and
    - (b) each of those proposed varied amounts is less than or equal to the amount that would otherwise be your \*quarterly credit amount for the relevant \*instalment quarter and the present tax offsets.

#### **48-220 Notifying the Commissioner of proposed varied amounts**

- (1) A notice of one or more proposed varied amounts must be given to the Commissioner in the \*approved form before:
  - (a) if all or a part of a December falls within the last month of the earliest of the \*instalment quarters to which the amounts relate—the next 15 February after the end of that instalment quarter; or
  - (b) otherwise—the 15th day after the end of the earliest of the instalment quarters to which the amounts relate.

Note: You must keep records in relation to the varied amount (see section 262A of the *Income Tax Assessment Act 1936*).

- (2) The Commissioner may request you in writing to give specified information to the Commissioner about the notice.
- (3) The request may be for the information to be given to the Commissioner in the \*approved form within:
  - (a) 14 days after the request was made; or
  - (b) a further period allowed by the Commissioner.

Note: A failure by you to give the information in accordance with this subsection may result in the Commissioner refusing to allow the proposed varied amounts (see subsection 48-215(3)).

#### **48-225 When quarterly credit amounts are payable to you**

##### *General rule*

- (1) The Commissioner must, on behalf of the Commonwealth, pay you your \*quarterly credit amount for an \*instalment quarter and the present tax offsets on or before this day:
  - (a) the 28th day of the calendar month after the end of the instalment quarter; or
  - (b) if all or a part of a December falls within the last month of the instalment quarter—the next 28 February.

##### *Delayed payment—varied amount under examination*

- (2) Despite subsection (1), if:
  - (a) your \*quarterly credit amount is a varied amount applying under section 48-210 that exceeds the amount otherwise payable to you; and
  - (b) the Commissioner is examining whether to disallow that varied amount;

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the Commissioner may, until the examination ends, delay paying you so much of that varied amount as is equal to the excess.

Note 1: If you are dissatisfied with a decision under this subsection to delay payment of the excess, you may object against it in the manner set out in Part IVC (see section 48-800).

Note 2: Interest accrues under Part IIIAB of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* while the Commissioner delays payment of the excess.

Note 3: The excess (and the interest) is not payable if the examination results in the varied amount being disallowed.

*Delayed payment—participation under examination*

- (3) Despite subsection (1), the Commissioner may delay paying you your \*quarterly credit amount if and while:
- (a) the Commissioner is examining whether your participation should be revoked; or
  - (b) the Commissioner is aware that a regulator mentioned in the table is examining a matter relevant to whether your participation should be revoked.

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**Other regulators whose examinations are relevant to your participation**

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<b>Item</b>	<b>If the present tax offsets include:</b>	<b>the other regulator is:</b>
20	the tax offset listed in table item 20 (about R&D) in section 48-100	*Innovation Australia.

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Note 1: If you are dissatisfied with a decision under this subsection to delay your payment, you may object against it in the manner set out in Part IVC (see section 48-800).

Note 2: Interest accrues under Part IIIAB of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* while the Commissioner delays your payment.

Note 3: Your payment (and the interest) is not payable if the examination results in your participation being revoked.

*Delayed payment—you cannot receive electronic payments etc.*

- (4) Despite subsection (1), the Commissioner must delay paying you your \*quarterly credit amount if and while the Commissioner is aware that your circumstances do not enable payments to be made to you in accordance with subsection 48-820(1) (about electronic payments etc.).

Note: Interest accrues under Part IIIAB of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner delays your payment more than 14 days after becoming aware that electronic payments can now be made to you.

*Matters relevant to delayed payments*

- (5) The Commissioner must notify you in writing of:
- (a) a decision under subsection (2), (3) or (4) to delay your payment; and
  - (b) the reasons for the decision.

*Payments cannot be made on or after assessment*

- (6) Despite subsection (1), your \*quarterly credit amount for an \*instalment quarter and the present tax offsets must not be paid to you on or after the assessment day (see paragraph 48-300(1)(b)) for the present year.

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## 48-230 When quarterly credit amounts are payable by you

- (1) However, if your \*quarterly credit amount for the \*instalment quarter and the present tax offsets is a negative amount, you are liable to pay the Commonwealth that amount (expressed as a positive amount).

Note: The amount will only be a negative amount if you choose a varied amount that is a negative amount.

- (2) That amount is due and payable on the \*quarterly credit amount's \*quarterly credit due day.

Note: For provisions about collection and recovery of the amount, see Part 4-15.

- (3) If any of that amount (the *varied amount*) remains unpaid after the \*quarterly credit amount's \*quarterly credit due day, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:

- (a) starts on the day after that due day; and
- (b) ends on the last day any of the following remains unpaid:
  - (i) the varied amount;
  - (ii) general interest charge on any of the varied amount.

- (4) This section does not apply if the \*quarterly credit amount's \*quarterly credit due day is on or after the assessment day (see paragraph 48-300(1)(b)) for the present year.

## 48-235 The amount's quarterly credit due day

The *quarterly credit due day* for a \*quarterly credit amount is:

- (a) if that amount is a positive amount—the day referred to in subsection 48-225(1); or
- (b) if that amount is a nil or negative amount—the day that would have been the day referred to in subsection 48-225(1) were that amount a positive amount.

## Subdivision 48-E—End of year reconciliation

### Table of sections

48-300	Debit equal to the total quarterly credits paid
48-305	When the debit is due
48-350	Liability to GIC on excess quarterly credits worked out using varied amounts
48-355	Benchmark amount for the variation quarter

## 48-300 Debit equal to the total quarterly credits paid

- (1) You are liable to pay the Commonwealth an amount (a *debit*) under this section if:
  - (a) you are participating in the \*quarterly credits system for one or more \*instalment quarters in an income year and one or more \*tax offsets; and
  - (b) on a particular day (the *assessment day*), the Commissioner makes an assessment:
    - (i) of the total of your \*tax offset refunds for the income year; or
    - (ii) that you can get no such refunds for the income year.

Note: The debit will be offset by a credit equal to the total of your tax offset refunds.

- (2) The debit is equal to the sum of your \*quarterly credit amounts for those \*instalment quarters and those \*tax offsets, disregarding so much of any of those amounts as:
  - (a) is a positive amount not paid before the assessment day; or

- 
- (b) is a negative amount with a \*quarterly credit due day that is on or after the assessment day.

Note: This debit only includes your quarterly credit amounts for those instalment quarters for which you are participating in the quarterly credits system. It does not include quarterly credit amounts for instalment quarters for which you (under Subdivision 48-F) have ceased to participate.

- (3) The Commissioner must give you notice of the debit, unless subsection 166A(3) of the *Income Tax Assessment Act 1936* applies to you for the income year.

Note 1: This could be done by including the debit in the notice of your assessment referred to in paragraph (1)(b).

Note 2: The debit is the debit as amended. So, if a previously notified debit is incorrect, notice of the debit (as amended) must also be given for this subsection to be satisfied.

#### **48-305 When the debit is due**

- (1) Parts of the debit may be due on different days.
- (2) So much of the debit as does not exceed the total of your \*tax offset refunds for the income year is due and payable on the assessment day.

Note: This part of the debit will be offset by the credit equal to the total of your tax offset refunds.

- (3) So much of the debit (if any) as exceeds the total of your \*tax offset refunds for the income year is due and payable on the day your income tax for the income year:
- (a) is due and payable; or
  - (b) would have been due and payable if you were liable to pay income tax for the income year.

Note 1: For the day income tax is due, see section 5-5 of the *Income Tax Assessment Act 1997*.

Note 2: For provisions about collection and recovery of this excess, see Part 4-15.

- (4) If so much of the debit as is covered by subsection (3) (the *excess*) remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:
- (a) starts on the day after the excess was due to be paid; and
  - (b) ends on the last day any of the following remains unpaid:
    - (i) the excess;
    - (ii) general interest charge on any of the excess.

#### **48-350 Liability to GIC on excess quarterly credits worked out using varied amounts**

- (1) You are liable to pay the \*general interest charge under this section if:
- (a) you are participating in the \*quarterly credits system for an \*instalment quarter (the *variation quarter*) in an income year and one or more \*tax offsets; and
  - (b) this is the case:

Benchmark amount < 85% of your total credits

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where:

**benchmark amount** means the amount worked out under section 48-355 for the variation quarter and those tax offsets.

**your total credits** means the sum of your \*quarterly credit amounts for the variation quarter and any earlier instalment quarters in the income year, disregarding so much of any of those amounts as:

- (i) is a positive amount not paid before the assessment day (see paragraph 48-300(1)(b)) for the income year; or
- (ii) is a negative amount with a \*quarterly credit due day that is on or after that assessment day.

Note: You will not be liable for this charge if your quarterly credit amounts have never been varied above the standard amounts, as your total credits will never exceed the benchmark amount (see section 48-355).

- (2) You are liable to pay the \*general interest charge on the difference between your total credits and the benchmark amount.
- (3) You are liable to pay the charge for each day in the period:
  - (a) starting on the \*quarterly credit due day for your \*quarterly credit amount for the variation quarter; and
  - (b) ending on the earlier of:
    - (i) if you have a quarterly credit amount for one or more later \*instalment quarters in the income year—the quarterly credit due day for the first of those later quarterly credit amounts; and
    - (ii) the assessment day (see paragraph 48-300(1)(b)) for the income year.

Note: Subparagraph (b)(i) includes the case where you have a nil or negative quarterly credit amount for a later instalment quarter.

- (4) The Commissioner must give you written notice of the \*general interest charge to which you are liable under subsection (2). You must pay the charge within 14 days after you are given that notice.

Note: The Commissioner may remit the charge (see section 8AAG).

- (5) If any of the \*general interest charge to which you are liable under subsection (2) (the **original GIC**) remains unpaid at the end of the 14 days referred to in subsection (4), you are also liable to pay the general interest charge on the unpaid amount for each day in the period that:
  - (a) starts on the day after those 14 days; and
  - (b) ends on the last day any of the following remains unpaid:
    - (i) the original GIC;
    - (ii) general interest charge on any of the original GIC.

#### **48-355 Benchmark amount for the variation quarter**

- (1) The amount worked out under this section for the variation quarter and those \*tax offsets is the greater of:
  - (a) the sum of the standard amounts worked out under section 48-205 for:
    - (i) the variation quarter; and
    - (ii) any earlier \*instalment quarters in the income year for which you are participating in the \*quarterly credits system; and
  - (b) the amount applying under subsection (2).

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(2) The amount applying under this subsection is as follows:

$$\frac{\text{Number of instalment quarters so far}}{4} \times \text{End of year amount}$$

where:

*end of year amount* means the lesser of:

(a) either:

(i) the total amount of those \*tax offsets and any other tax offsets for which you are participating in the \*quarterly credits system for an earlier \*instalment quarter in the income year; or

(ii) nil, if you are not entitled to any of the tax offsets referred to in subparagraph (i) for the income year; and

(b) the total of your \*tax offset refunds (for tax offsets of any kind) for the income year.

*number of instalment quarters so far* means the number of \*instalment quarters in the income year, up to (and including) the variation quarter, for which you are participating in the \*quarterly credits system.

## **Subdivision 48-F—Ending participation**

### **Table of sections**

48-400	Withdrawing participation
48-405	You must withdraw if you later fail a test etc.
48-410	Excusing noncompliance after you start participating
48-415	Applying for noncompliance to be excused
48-420	Revoking participation
48-425	Collecting and recovering quarterly credits paid to you for quarters for which you no longer participate
48-430	Recovering quarterly credits paid by you for quarters for which you no longer participate

### **48-400 Withdrawing participation**

(1) You may withdraw from participating in the \*quarterly credits system for any or all of the \*instalment quarters (whether past, current or future) in the income year and one or more \*tax offsets.

Note: You will need to repay any quarterly credit amounts paid to you for instalment quarters that you later withdraw from (see section 48-425).

(2) A withdrawal must be by notice given to the Commissioner in the \*approved form.

(3) The withdrawal takes effect, for the \*instalment quarters and \*tax offsets specified in it, when it is given to the Commissioner.

Note: You may apply to participate again in the quarterly credits system for later instalment quarters in the income year.

(4) A withdrawal is irrevocable.

### **48-405 You must withdraw if you later fail a test etc.**

*Failing a test necessary for participation*

(1) You contravene this subsection if:

- 
- (a) you are participating in the \*quarterly credits system for an \*instalment quarter in an income year and a \*tax offset; and
  - (b) during the instalment quarter, you (or any of your \*managing entities) fail a test in Subdivision 48-C necessary for that participation, other than paragraph 48-110(1)(a) or (c); and
  - (c) that participation is not revoked under section 48-420; and
  - (d) you do not, within 28 days after that failure happened or started, withdraw from participating in the quarterly credits system for the instalment quarter and the tax offset in accordance with section 48-400.

Note 1: This subsection applies separately for each instalment quarter and tax offset for which you are participating in the quarterly credits system.

Note 2: Your managing entities may contravene this subsection if you are a partnership, trust or unincorporated association or body (see Division 444).

#### *Failing to comply with a taxation obligation*

- (2) You contravene this subsection if:
  - (a) you are participating in the \*quarterly credits system for an \*instalment quarter in an income year and a \*tax offset; and
  - (b) during the instalment quarter, you (or any of your \*managing entities) fail to comply with an obligation under a \*taxation law (whether the obligation arises before, at or after the start of the instalment quarter); and
  - (c) that participation is not revoked under section 48-420; and
  - (d) none of the following happen within 28 days after that failure happened or started:
    - (i) that failure is excused under subsection 48-410(2);
    - (ii) you apply for that failure to be excused under subsection 48-410(2);
    - (iii) you withdraw from participating in the quarterly credits system for the instalment quarter and the tax offset in accordance with section 48-400.

Note 1: This subsection applies separately for each instalment quarter and tax offset for which you are participating in the quarterly credits system.

Note 2: Your managing entities may contravene this subsection if you are a partnership, trust or unincorporated association or body (see Division 444).

#### *Strict liability offence*

- (3) You commit an offence of strict liability if you contravene subsection (1) or (2).

Penalty: 60 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: Section 4K of the *Crimes Act 1914* applies to an offence against this subsection, so you commit an offence for each day after that 28 day period that you do not withdraw from the quarterly credits system.

#### *Administrative penalty*

- (4) You are liable to pay to the Commissioner a penalty of 20 penalty units if you contravene subsection (1) or (2).

Note 1: Division 298 in this Schedule contains machinery provisions for administrative penalties.

Note 2: This administrative penalty is not payable if you are prosecuted under subsection (3) for the same contravention (see section 8ZE).

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## 48-410 Excusing noncompliance after you start participating

- (1) This section applies if:
  - (a) you are participating in the \*quarterly credits system for one or more \*instalment quarters in an income year and a \*tax offset; and
  - (b) after you start participating, you (or any of your \*managing entities) fail to comply with an obligation under a \*taxation law (whether the obligation arises before, at or after the time you start participating).

Note: This subsection applies separately for each tax offset for which you are participating in the quarterly credits system for those instalment quarters.

- (2) For the purposes of this Division, the Commissioner may excuse that failure.

Note: If you are dissatisfied with a decision under this subsection, you may object against it in the manner set out in Part IVC (see section 48-800).

- (3) In deciding whether to excuse that failure, the Commissioner must have regard to:
  - (a) the consequences of that failure; and
  - (b) the consequences of any other failure for which this section applies in relation to that participation; and
  - (c) the likelihood of you (and your \*managing entities (if any)) complying in the future with obligations under taxation laws; and
  - (d) the likely consequences if you (or any of those managing entities) do not so comply.
- (4) That failure may be excused, under subsection (2), on the Commissioner's own initiative or on application.
- (5) The Commissioner may, under subsection (2), refuse to excuse that failure if you fail to give the Commissioner, in accordance with section 48-415, information requested under that section.
- (6) The Commissioner must notify you in writing of:
  - (a) the Commissioner's decision under subsection (2); and
  - (b) if the decision refuses to excuse that failure—the reasons for the decision.

## 48-415 Applying for noncompliance to be excused

- (1) An application for the Commissioner to excuse a failure must be given to the Commissioner in the \*approved form within:
  - (a) 28 days after the day that failure happened or started; or
  - (b) a further period allowed by the Commissioner.
- (2) The Commissioner may request you in writing to give specified information to the Commissioner about your application.
- (3) The request may be for the information to be given to the Commissioner in the \*approved form within:
  - (a) 14 days after the request was made; or
  - (b) a further period allowed by the Commissioner.

Note: A failure to give the information in accordance with this subsection may result in the Commissioner refusing to excuse that failure (see subsection 48-410(5)).

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## 48-420 Revoking participation

### *Mandatory revocation if fail a test when start participating*

- (1) The Commissioner must, by notice in writing given to you, revoke your participation in the \*quarterly credits system for:
  - (a) all of the \*instalment quarters (whether past, current or future) in an income year; and
  - (b) one or more \*tax offsets;

if the Commissioner is aware that, when you started participating, you (or any of your \*managing entities) failed a test in Subdivision 48-C necessary for that participation.

Note: If you are dissatisfied with a decision under this subsection, you may object against it in the manner set out in Part IVC (see section 48-800).

### *Revocation if default event happens*

- (2) The Commissioner may, by notice in writing given to you, revoke your participation in the \*quarterly credits system for any or all of the \*instalment quarters (whether past, current or future) in an income year and one or more \*tax offsets if:
  - (a) at any time during the income year after you start participating, you (or any of your \*managing entities) fail a test in Subdivision 48-C necessary for that participation, other than paragraph 48-110(1)(a) or (c); or
  - (b) at any time during the income year after you start participating:
    - (i) you (or any of your managing entities) fail to comply with an obligation under a \*taxation law (whether the obligation arises before, at or after the time you start participating); and
    - (ii) the failure has not been excused under subsection 48-410(2); or
  - (c) you do not lodge your \*income tax return for the income year with the Commissioner on or before the required day.

Note: If you are dissatisfied with a decision under this subsection, you may object against it in the manner set out in Part IVC (see section 48-800).

### *Matters relevant to revocations*

- (3) A revocation takes effect for:
  - (a) the \*tax offsets specified in the notice; and
  - (b) for a revocation under subsection (2)—the \*instalment quarters specified in the notice.
- (4) A notice under subsection (1) or (2) must include the reasons for the revocation.

## 48-425 Collecting and recovering quarterly credits paid to you for quarters for which you no longer participate

- (1) If:
  - (a) on a particular day (the **payment day**), you are paid all or part of a \*quarterly credit amount for an \*instalment quarter in an income year and one or more \*tax offsets; and
  - (b) under this Subdivision, you cease to participate in the \*quarterly credits system for that instalment quarter and one or more of those tax offsets;you are liable to repay the Commonwealth so much of that amount as you were paid (the **repayable amount**).

- 
- (2) The repayable amount is due and payable on the payment day.

Note: For provisions about collection and recovery of that amount, see Part 4-15.

- (3) If any of the repayable amount remains unpaid after the payment day, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:
- (a) starts on the day after the payment day; and
  - (b) ends on the last day any of the following remains unpaid:
    - (i) the repayable amount;
    - (ii) general interest charge on any of the repayable amount.

### **48-430 Recovering quarterly credits paid by you for quarters for which you no longer participate**

- (1) If:
- (a) on a particular day (the *payment day*), you pay an amount under section 48-230 for an \*instalment quarter in an income year and one or more \*tax offsets; and
  - (b) under this Subdivision, you cease to participate in the \*quarterly credits system for that instalment quarter and those tax offsets;

the Commissioner must, on behalf of the Commonwealth, repay that amount to you on or before the 14th day after the day the notice is given that causes that cessation.

Note: See Division 3A of Part IIB for the rules about how the Commissioner must pay that amount. Division 3 of Part IIB allows the Commissioner to apply that amount as a credit against tax debts that you owe to the Commonwealth.

- (2) However, the Commissioner must delay repaying you that amount if and while the Commissioner is aware that your circumstances do not enable payments to be made to you in accordance with subsection 48-820(1) (about electronic payments etc.).

Note: Interest accrues under Part IIIAB of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner delays the repayment more than 14 days after becoming aware that electronic payments can now be made to you.

### **Subdivision 48-P—Special rules for consolidated groups etc.**

#### **Table of sections**

48-700	Single entity rule
48-705	Entry rule
48-710	Exit rule
48-715	Effect of choice to continue group after shelf company becomes new head company
48-720	Effect of change of provisional head company of a MEC group
48-725	Conversions—MEC group to consolidated group
48-730	Conversions—consolidated group to MEC group
48-735	Giving notice if new group comes into existence

#### **48-700 Single entity rule**

For each \*instalment quarter starting during the period an entity is a \*subsidiary member of a \*consolidated group or \*MEC group:

- (a) that entity; and
  - (b) any other subsidiary member of the group;
- are taken for the purposes of this Division to be parts of the \*head company or \*provisional head company of the group (rather than separate entities).

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- Note 1: The entity will continue to have any quarterly credit amount payable for the instalment quarter in which it joins the group. However, the group will continue to have any quarterly credit amount payable for the instalment quarter in which the entity leaves the group.
- Note 2: Each entity that continues to have that quarterly credit amount will also have an end-of-year debit under section 48-300 that takes account of that amount.
- Note 3: Despite this single entity rule, a subsidiary member of the group is jointly and severally liable for a liability under this Division of the head company (see section 721-10 of the *Income Tax Assessment Act 1997*).

## 48-705 Entry rule

- (1) This section applies if an entity becomes a \*subsidiary member of a \*consolidated group or \*MEC group during an \*instalment quarter in an income year.
- (2) Except as set out in the table, for the purposes of this Division and future \*instalment quarters, everything that happened in relation to the entity before those future instalment quarters is taken to have happened instead in relation to the \*head company or \*provisional head company of the group.

<b>Things to which the entry rule does not apply</b>		
<b>Item</b>	<b>Any of these things that happened in relation to the entity before those future instalment quarters:</b>	<b>is not taken to have happened in relation to the head company or provisional head company of the group for these purposes:</b>
1	a failure to satisfy a paragraph in subsection 48-110(1)	whether the *head company or *provisional head company: (a) satisfies a paragraph in subsection 48-110(1); or (b) has failed to comply with an obligation under a *taxation law
2	participating in the *quarterly credits system for an *instalment quarter and a *tax offset	whether the *head company or *provisional head company is participating in the quarterly credits system for an instalment quarter and the tax offset
3	having *quarterly credit amounts	whether the *head company or *provisional head company has quarterly credit amounts
4	becoming entitled to *tax offsets for a previous income year	working out the *head company's or *provisional head company's standard amount under section 48-205

Note: Table item 1 does not prevent the entity's personnel, past practices and culture etc. from being relevant for working out, during future instalment quarters, whether the head company or provisional head company satisfies paragraph 48-110(1)(d) (about complying with future tax obligations).

## 48-710 Exit rule

- (1) This section applies if an entity ceases to be a \*subsidiary member of a \*consolidated group or \*MEC group during an \*instalment quarter in an income year.

- (2) Except as set out in the table, for the purposes of this Division and future \*instalment quarters, nothing that happened in relation to the \*head company or \*provisional head company of the group before those future instalment quarters, whether:
- (a) while the entity was a \*subsidiary member of the group; or
  - (b) because of the application of section 48-705 (about transferring the entity's earlier history to the group);
- is taken to have happened in relation to the entity.

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**Things to which the exit rule does not apply**

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Item	If the group's history includes:	then, for the purposes of this Division and those future instalment quarters:
1	the *head company or *provisional head company becoming entitled to a *tax offset for an income year	the entity is also taken to be entitled to a tax offset of the same kind for the income year, but not for the purposes of working out the entity's standard amount under section 48-205.

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- (3) For the \*head company or \*provisional head company:
- (a) any varied amount applying under section 48-210 at the start of the next \*instalment quarter (if any) in the income year; and
  - (b) the standard amount worked out under section 48-205;
- are taken to be nil for that next instalment quarter and any later instalment quarters in the income year.

Note: The head company or provisional head company may, after the start of that next quarter, choose to notify the Commissioner of further proposed varied amounts for that quarter and later quarters.

**48-715 Effect of choice to continue group after shelf company becomes new head company**

- (1) This section applies if:
- (a) immediately before a particular time (the **completion time**), a company (the **original company**) is the \*head company of a \*consolidated group; and
  - (b) another company (the **interposed company**) chooses under subsection 124-380(5) of the *Income Tax Assessment Act 1997* that the group is to continue in existence at and after the completion time.
- (2) For the purposes of this Division:
- (a) the group is taken not to have ceased to exist under subsection 703-5(2) of that Act because the original company ceases to be the \*head company of the group; and
  - (b) the interposed company is taken to have become the head company of the group at the completion time; and
  - (c) the original company is taken to have ceased to be the head company at that time.
- (3) For the purposes of this Division at and after the completion time, everything that happened in relation to the original company before the completion time:
- (a) is taken to have happened in relation to the interposed company instead of in relation to the original company; and
  - (b) is taken to have happened in relation to the interposed company instead of what would (apart from this section) be taken to have happened in relation to the interposed company before that time;

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just as if, at all times before the completion time, the interposed company had been the original company and the original company had been the interposed company.

Note: The original company and the interposed company have in effect exchanged identities throughout the period before the completion time for the purposes of the quarterly credits system.

Example: The original company is participating in the quarterly credits system for all 4 instalment quarters in an income year, but then the completion time happens during the third quarter. The interposed company will be paid the quarterly credit amounts for the third and fourth quarters, and will have a debit under section 48-300 for the amounts paid for all 4 quarters.

- (4) However, while subsection (3) applies to a negative \*quarterly credit amount having a \*quarterly credit due day that is before the completion time, that subsection does not apply to:
- (a) the original company's liability to pay that amount; or
  - (b) any other \*tax-related liability arising from this Division before the completion time.

Example: In the example from subsection (3), if the quarterly credit amount for the second quarter was a negative amount:

- (a) after the completion time, the original company will continue to be liable under section 48-230 to pay that amount; and
- (b) the interposed company's end-of-year debit under section 48-300 will take account of that amount.

#### **48-720 Effect of change of provisional head company of a MEC group**

- (1) This section applies if:
- (a) a company (the *old head company*) is the \*provisional head company of a \*MEC group just before a \*cessation event happens to the company; and
  - (b) a different company (the *new head company*) is the provisional head company of the group at the time (the *transition time*) just after that cessation event.
- (2) For the purposes of this Division at and after the transition time, everything that happened in relation to the old head company before the transition time:
- (a) is taken to have happened in relation to the new head company instead of in relation to the old head company; and
  - (b) is taken to have happened in relation to the new head company instead of what would (apart from this section) be taken to have happened in relation to the new head company before that time;

just as if, at all times before the transition time, the new head company had been the old head company and the old head company had been the new head company.

Note: The new head company and old head company have in effect exchanged identities throughout the period before the transition time for the purposes of the quarterly credits system.

- (3) However, while subsection (2) applies to a negative \*quarterly credit amount having a \*quarterly credit due day that is before the transition time, that subsection does not apply to:
- (a) the old head company's liability to pay that amount; or
  - (b) any other \*tax-related liability arising from this Division before the transition time.

Note: The examples to subsections 48-715(3) and (4) apply in a similar way to subsections (2) and (3) of this section.

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## 48-725 Conversions—MEC group to consolidated group

- (1) This section applies if, at a particular time (the *conversion time*), a \*consolidated group (the *new group*) is \*created from a \*MEC group (the *old group*).
- (2) For the purposes of this Division at and after the conversion time:
  - (a) the new group is taken to be a continuation of the old group; and
  - (b) everything that happened in relation to the \*provisional head company of the old group before the conversion time is taken instead to have happened in relation to that entity in its role as \*head company of the new group.

## 48-730 Conversions—consolidated group to MEC group

- (1) This section applies if, at a particular time (the *conversion time*), a MEC group (the *new group*) is created from a consolidated group (the *old group*).
- (2) For the purposes of this Division at and after the conversion time:
  - (a) the new group is taken to be a continuation of the old group; and
  - (b) everything that happened in relation to the \*head company of the old group before the conversion time is taken instead to have happened in relation to that entity in its role as \*provisional head company of the new group.

## 48-735 Giving notice if new group comes into existence

- (1) The \*head company of a \*consolidated group, or \*provisional head company of a \*MEC group, must notify the Commissioner if:
  - (a) the group comes into existence on a particular day in an income year; and
  - (b) just before that day, an entity that has become a \*subsidiary member of the group was participating in the \*quarterly credits system for one or more \*instalment quarters in the income year.

Note: The Commissioner must also be notified of other situations where the entity joins or leaves a group (see sections 703-60 and 719-80 of the *Income Tax Assessment Act 1997*).

- (2) The notice must be given to the Commissioner in the \*approved form within 28 days after the day the group comes into existence.
- (3) This section does not limit section 703-58 or 719-76 (about giving notice of a new group) of the *Income Tax Assessment Act 1997*.

## Subdivision 48-T—Other matters

### Table of sections

48-800	Objecting to decisions
48-820	How amounts are to be paid
48-840	Alternative constitutional basis

## 48-800 Objecting to decisions

A person who is dissatisfied with a decision of the Commissioner under any of the following provisions may object against it in the manner set out in Part IVC:

- (a) subsection 48-5(1);
- (b) subsection 48-210(3);
- (c) subsection 48-225(2);

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- (d) subsection 48-225(3);
  - (e) subsection 48-410(2);
  - (f) subsection 48-420(1);
  - (g) subsection 48-420(2).

#### **48-820 How amounts are to be paid**

- (1) Payments under this Division to or by you must be by:
  - (a) a means of \*electronic payment; or
  - (b) a method applying to you under subsection (2).

Note: You are liable to an administrative penalty if you fail to comply with paragraph (a) or (b) when making payments under this Division (see section 288-20).

- (2) The Commissioner may, in writing, approve a method by which payments under this Division to or by an entity may be made.

Note: Different methods can be approved for different classes of entities, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (3) An approval may be expressed to apply from a day before the approval is made.

#### **48-840 Alternative constitutional basis**

- (1) Without limiting its effect apart from this subsection, this Division has the effect it would have if:
  - (a) subsection (2) had not been enacted; and
  - (b) a \*quarterly credit amount could only be worked out for an entity that:
    - (i) is a \*constitutional corporation; or
    - (ii) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.
- (2) Without limiting its effect apart from this subsection, this Division has the effect it would have if:
  - (a) subsection (1) had not been enacted; and
  - (b) \*quarterly credit amounts could only be worked out in respect of activities, or parts of activities, conducted or to be conducted:
    - (i) solely in a Territory; or
    - (ii) solely outside of Australia; or
    - (iii) solely in a Territory and outside of Australia; or
    - (iv) for the dominant purpose of supporting \*core R&D activities conducted, or to be conducted, solely in a Territory.

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## Part 2—Innovation Australia’s role

### *Industry Research and Development Act 1986*

#### **2 Section 26A**

Omit “The R&D entity can seek an advance finding to get”, substitute “The Board may make an advance finding to give”.

#### **3 Section 26A**

Omit “The R&D entity can seek a”, substitute “The Board may make a”.

#### **4 Paragraph 27L(2)(a)**

Repeal the paragraph, substitute:

- (a) a finding in force under subsection 28A(1) (advance findings about activities) is about an activity conducted during an income year and is related to an R&D entity; and

#### **5 Section 28**

Omit “An R&D entity can seek” (wherever occurring), substitute “The Board may make”.

#### **6 Section 28A**

Repeal the section, substitute:

##### **28A Advance findings about the nature of activities**

- (1) The Board may make one or more findings to the following effect about an activity that is related to an R&D entity:
  - (a) that all or part of the activity is a core R&D activity;
  - (b) that all or part of the activity is a supporting R&D activity in relation to one or more specified core R&D activities for which the entity has been or could be registered under section 27A for an income year;
  - (c) that all or part of the activity is neither:
    - (i) a core R&D activity; nor
    - (ii) a supporting R&D activity of a kind covered by paragraph (b).

Note 1: A finding is reviewable (see Division 5).

Note 2: A finding binds the Commissioner for the purposes of income tax assessments and the provision of quarterly credits (see subsections 355-705(2) and (3) of the *Income Tax Assessment Act 1997*).

- (2) The Board must not make a finding under subsection (1) about an activity unless the Board is satisfied that the activity:
  - (a) is being conducted, or has been completed, during the income year applying under subsection (3); or
  - (b) is yet to be conducted, but that it is reasonable to expect that the activity will be conducted in any or all of the following income years:
    - (i) the income year applying under subsection (3);
    - (ii) either of the next 2 income years.
- (3) The income year applying under this subsection is either:

- 
- (a) the income year in which the process of considering whether to make the finding starts; or
  - (b) the previous income year, if this is preferred by the entity causing this process to start, and clearly stated as such:
    - (i) in any application or request (see subsection 28AA(1)) causing this process to start; or
    - (ii) in the Board's reasons for making, or not making, the finding, if the Board causes this process to start on its own initiative.

However, paragraph (b) does not apply if this process starts after the R&D entity has applied to register activities under section 27A for that previous income year.

Note: The process of considering whether to make the finding starts when the application or request is made, or when the Board starts considering whether to make the finding on its own initiative.

- (4) If the Board makes a finding under subsection (1) about an activity that is being conducted, or has been completed, during the income year applying under subsection (3), the Board may specify in the finding the times to which the finding relates.
- (5) This section has effect subject to section 32B (findings cannot be inconsistent with any earlier findings).

## **7 After section 28A**

Insert:

### **28AA Causing advance findings to be made**

- (1) If:
  - (a) an R&D entity applies for one or more findings under subsection 28A(1) about an activity; or
  - (b) the Commissioner:
    - (i) requests one or more findings under subsection 28A(1) about an activity that is related to an R&D entity; and
    - (ii) does not later withdraw the request;the Board must:
  - (c) make one or more findings under that subsection about all or part of the activity; or
  - (d) if justified in accordance with the decision-making principles—refuse to make a finding under that subsection about all or part of the activity.

Note 1: For requirements of applications by R&D entities, see section 28G.

Note 2: Refusing to make a finding is reviewable (see Division 5).

Note 3: Section 32A deals with the decision-making principles.

- (2) The Board may also make a finding under subsection 28A(1) on its own initiative in accordance with any applicable decision-making principles.

Note: Section 32A deals with the decision-making principles.

## **8 Subsection 28C(1)**

Repeal the subsection, substitute:

- (1) The Board may make one or more findings to the following effect about an activity that is related to an R&D entity:

- 
- (a) that all or part of the activity is an activity (the *overseas activity*) that meets the conditions in section 28D;
  - (b) that all or part of the activity is not an activity that meets the conditions in section 28D.

Note 1: A finding is reviewable (see Division 5).

Note 2: An effect of a finding under paragraph (a) is that a tax offset may be available for expenditure incurred on the overseas activity after the finding comes into force (see Division 355 of the *Income Tax Assessment Act 1997*, in particular paragraphs 355-210(1)(d) and (e) of that Act).

## 9 At the end of Subdivision C of Division 3 of Part III

Add:

### 28DA Causing overseas activity findings to be made

(1) If:

- (a) an R&D entity applies for one or more findings under subsection 28C(1) about an activity; or
- (b) the Commissioner:
  - (i) requests one or more findings under subsection 28C(1) about an activity that is related to an R&D entity; and
  - (ii) does not later withdraw the request;

the Board must:

- (c) make one or more findings under that subsection about all or part of the activity; or
- (d) if justified in accordance with the decision-making principles—refuse to make a finding under that subsection about all or part of the activity.

Note 1: For requirements of applications by R&D entities, see section 28G.

Note 2: Refusing to make a finding is reviewable (see Division 5).

Note 3: Section 32A deals with the decision-making principles.

(2) The Board may also make a finding under subsection 28C(1) on its own initiative in accordance with any applicable decision-making principles.

Note: Section 32A deals with the decision-making principles.

## 10 Subsection 28E(1)

Repeal the subsection, substitute:

- (1) If an R&D entity has acquired, or has acquired the right to use, particular technology wholly or partly for the purposes of one or more R&D activities conducted, or to be conducted, during one or more income years, the Board may make a finding to the effect:
  - (a) that the technology is core technology for the R&D activities; or
  - (b) that the technology is not core technology for the R&D activities.

Note 1: A finding is reviewable (see Division 5).

Note 2: A finding under paragraph (a) means that a tax offset will not be available for expenditure incurred in acquiring, or in acquiring the right to use, the technology for the R&D activities (see subsection 355-225(2) of the *Income Tax Assessment Act 1997*).

## 11 Subsections 28E(3) and (4)

Repeal the subsections.

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## 12 At the end of Subdivision D of Division 3 of Part III

Add:

### 28EA Causing core technology findings to be made

(1) If:

- (a) an R&D entity applies for a finding under subsection 28E(1) about the R&D entity, one or more R&D activities and particular technology; or
- (b) the Commissioner:
  - (i) requests a finding under subsection 28E(1) about one or more R&D activities, and particular technology, that are related to an R&D entity; and
  - (ii) does not later withdraw the request;

the Board must:

- (c) make a finding under that subsection about the R&D activities and the technology; or
- (d) if justified in accordance with the decision-making principles—refuse to make a finding under that subsection about the R&D activities and the technology.

Note 1: For requirements of applications by R&D entities, see section 28G.

Note 2: Refusing to make a finding is reviewable (see Division 5).

Note 3: Section 32A deals with the decision-making principles.

- (2) The Board may also make a finding under subsection 28E(1) on its own initiative in accordance with any applicable decision-making principles.

Note: Section 32A deals with the decision-making principles.

## 13 Section 28F (heading)

Repeal the heading, substitute:

### 28F Notice of findings or of decisions refusing to make findings

#### 14 Subsections 28F(1) and (2)

Repeal the subsections, substitute:

- (1) The Board must notify an R&D entity in writing of any findings, and of any decisions refusing to make findings, under this Division that are related to the R&D entity.

#### 15 Subsection 28F(3)

Omit “or (2)”.

#### 16 Subsection 28F(3) (note)

Omit “applicant’s”, substitute “R&D entity’s”.

#### 17 Subsection 28F(4)

Omit “the notice if the notice includes one or more certificates”, substitute “each notice under subsection (1) of a finding”.

#### 18 Subsection 28G(1) (heading)

Repeal the heading, substitute:

**19 Subsection 28G(2)**

Omit “An”, substitute “However, an”.

**20 Subsection 28H(1)**

Repeal the subsection, substitute:

- (1) The Board may request an R&D entity in writing to give such specified information, or specified kinds of information, to the Board as the Board believes could be relevant to the making of a finding under this Division that is related to the R&D entity.
- (1A) However, if as described in section 28B another entity applied for the finding on behalf of the R&D entity, the Board must first request in writing the information or kinds of information from that other entity.

**21 Subsection 28H(2)**

Omit “The request”, substitute “A request under subsection (1) or (1A)”.

**22 Subsection 28H(2) (note 3)**

Repeal the note, substitute:

Note 3: A failure to give the information may result in a refusal to make a finding.

**23 Subsection 28H(3)**

Omit “The request”, substitute “A request under subsection (1) or (1A)”.

**24 Subsection 28H(4)**

After “subsection (1)”, insert “or (1A)”.

**25 Section 30A (table items 11 to 13)**

Repeal the items, substitute:

11	An advance finding about the nature of an activity	Subsection 28A(1)
11A	Refusing to make an advance finding about the nature of an activity	Paragraph 28AA(1)(d)
12	A finding about an activity to be conducted outside Australia	Subsection 28C(1)
12A	Refusing to make a finding about an activity to be conducted outside Australia	Paragraph 28DA(1)(d)
13	A finding about particular technology	Subsection 28E(1)
13A	Refusing to make a finding about particular technology	Paragraph 28EA(1)(d)

**26 Subsection 30B(2) (note)**

Omit “or 11”, substitute “, 11, 12 or 13”.

**27 At the end of section 32A**

Add:

; (d) whether making a finding under Division 3 on its own initiative is justified.

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**28 Paragraph 47(2A)(c)**

Omit “or the *Income Tax Assessment Act 1997*”, substitute “, the *Income Tax Assessment Act 1997* or Division 48 in Schedule 1 to the *Taxation Administration Act 1953*”.

**29 At the end of subsection 47(2A)**

Add:

Note: Division 48 in Schedule 1 to the *Taxation Administration Act 1953* is about crediting the R&D tax offset on a quarterly basis.

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## Part 3—Other amendments

### *Income Tax Assessment Act 1936*

#### **30 After subsection 262A(2AAE)**

Insert:

- (2AAF) Subsection (1) applies to an entity for whom a varied amount applies under section 48-210 in Schedule 1 to the *Taxation Administration Act 1953* even if the entity is not carrying on a business.

### *Income Tax Assessment Act 1997*

#### **31 Subparagraph 355-705(1)(a)(iii)**

Omit “about”, substitute “relating to”.

#### **32 Subsection 355-705(1)**

Omit all the words after “the finding binds the Commissioner”, substitute:

for the purposes of:

- (c) assessments of the R&D entity for the income year or years (as appropriate); and
- (d) for a finding under section 28E of that Act—the R&D entity’s participation in the \*quarterly credits system for the \*instalment quarters in the income years.

#### **33 Subsections 355-705(2) and (3)**

Repeal the subsections, substitute:

*Advance findings about activities yet to be completed*

(2) If:

- (a) \*Innovation Australia makes a finding under subsection 28A(1) of the *Industry Research and Development Act 1986* relating to an \*R&D entity and all or part of an activity; and
- (b) Innovation Australia gives the Commissioner a certificate under that Act setting out the finding; and
- (c) the activity is being conducted, or is yet to be conducted, during the income year applying under subsection 28A(3) of that Act for the finding;

the finding binds the Commissioner for the purposes of:

- (d) assessments of the R&D entity for the income year and the next 2 income years; and
- (e) the R&D entity’s participation in the \*quarterly credits system for the \*instalment quarters in the income year or in the next 2 income years.

*Advance findings about completed activities*

(3) However, if that activity is completed during the income year applying under subsection 28A(3) of that Act for that finding, that finding binds the Commissioner for the purposes of:

- (a) assessments of the \*R&D entity for the income year; and

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(b) the R&D entity's participation in the \*quarterly credits system for the \*instalment quarters in the income year.

### 34 Subparagraph 355-710(1)(a)(iii)

Repeal the subparagraph, substitute:

(iii) a finding under section 28A or 28C of that Act relating to an R&D entity and all or part of an activity conducted or to be conducted during one or more income years; or

### 35 Subparagraph 355-710(1)(a)(iv)

Omit "about", substitute "relating to".

### 36 Subsection 721-10(2) (after table item 60)

Insert:

62	section 48-230 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (negative quarterly credit amounts)	the *instalment quarter to which the negative *quarterly credit amount relates
62A	section 48-300 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (debit equal to total quarterly credit amounts paid)	the income year to which the debit relates
62B	section 48-350 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (general interest charge on excess quarterly credits)	the *instalment quarter to which the general interest charge relates
62C	section 48-425 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (quarterly credit amounts for quarters for which you no longer participate)	the *instalment quarters for which you no longer participate

### 37 Subsection 995-1(1)

Insert:

*managing entity*, in relation to you, is an entity set out in a table item in subsection 48-110(2) in Schedule 1 to the *Taxation Administration Act 1953* that applies to you.

### 38 Subsection 995-1(1)

Insert:

*quarterly credit amount* has the meaning given by section 48-200 in Schedule 1 to the *Taxation Administration Act 1953*.

### 39 Subsection 995-1(1)

Insert:

*quarterly credit due day* has the meaning given by section 48-235 in Schedule 1 to the *Taxation Administration Act 1953*.

### 40 Subsection 995-1(1)

Insert:

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*quarterly credits system* means the system described in Division 48 in Schedule 1 to the *Taxation Administration Act 1953* for providing quarterly credits during an income year for certain \*tax offsets to which entities expect to be entitled for the income year.

## ***Taxation Administration Act 1953***

### **41 Subsection 8AAB(4) (after table item 44)**

Insert:

44A	48-230 in Schedule 1	<i>Taxation Administration Act 1953</i>	negative quarterly credit amounts
44B	48-305 in Schedule 1	<i>Taxation Administration Act 1953</i>	part of debit exceeding total tax offset refunds
44C	48-350 in Schedule 1	<i>Taxation Administration Act 1953</i>	excess quarterly credit amount worked out using varied amounts
44D	48-425 in Schedule 1	<i>Taxation Administration Act 1953</i>	quarterly credit amounts for quarters for which you no longer participate

### **42 Subsection 250-10(2) in Schedule 1 (after table item 135)**

Insert:

135A	negative quarterly credit amounts	48-230 in Schedule 1	<i>Taxation Administration Act 1953</i>
135B	debit equal to total quarterly credit amounts paid	48-300 in Schedule 1	<i>Taxation Administration Act 1953</i>
135C	quarterly credit amounts for quarters for which you no longer participate	48-425 in Schedule 1	<i>Taxation Administration Act 1953</i>

### **43 Subsection 286-75(2) in Schedule 1**

After “these Acts”, insert “or provisions”.

### **44 At the end of subsection 286-75(2) in Schedule 1**

Add:

; or (d) subsection 48-405(1) in this Schedule.

### **45 Paragraph 288-20(b) in Schedule 1**

Omit “electronically;”, substitute “electronically; or”.

### **46 After paragraph 288-20(b) in Schedule 1**

Insert:

(c) under subsection 48-820(1) in this Schedule is required to pay an amount electronically or by an approved method;

### **47 Paragraph 298-5(c) in Schedule 1**

After “Division 16”, insert “or 48”.



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- (a) if the amount is a quarterly credit amount (within the meaning of the *Income Tax Assessment Act 1997*)—the amount’s quarterly credit due day (within the meaning of that Act); or
  - (b) if the amount is an amount repayable under subsection 48-430(1) in Schedule 1 to the *Taxation Administration Act 1953*—the last day the amount is repayable under that subsection.
- (2) However, if on that day your circumstances do not enable the amount to be paid to you in accordance with subsection 48-820(1) in Schedule 1 to the *Taxation Administration Act 1953*, the amount’s **interest start day** is the 14th day after the day the Commissioner becomes aware that your circumstances have changed to enable the amount to be paid to you in accordance with that subsection.

Note: Subsection 48-820(1) in Schedule 1 to the *Taxation Administration Act 1953* is about electronic payments etc.

### **12BC Interest for late refunds of RBA surpluses after amounts become payable**

- (1) If:
- (a) disregarding subsections 48-225(2) and (3) in Schedule 1 to the *Taxation Administration Act 1953*:
    - (i) a quarterly credits system amount is payable to an entity; and
    - (ii) that amount is to be allocated to an RBA of the entity; and
    - (iii) on that amount’s interest start day, the Commissioner is required under subsection 8AAZLF(1) of the *Taxation Administration Act 1953* to refund to the entity an RBA surplus for that RBA; and
  - (b) all or part of the refund takes place after that interest start day;
- then interest is payable by the Commissioner to the entity on so much of the refund as takes place after that interest start day.
- (2) Interest under this Part is payable for the period:
- (a) starting on the day after that interest start day; and
  - (b) ending at the earlier of:
    - (i) the day the refund finishes taking place; and
    - (ii) the assessment day.

### **12BD Interest for late payments of amounts**

- (1) If:
- (a) disregarding subsections 48-225(2) and (3) in Schedule 1 to the *Taxation Administration Act 1953*:
    - (i) a quarterly credits system amount is payable to an entity; and
    - (ii) that amount is not allocated to an RBA of the entity; and
  - (b) the Commissioner pays all or part of that amount to the entity after that amount’s interest start day;
- then interest is payable by the Commissioner to the entity on so much of that amount as is paid after that interest start day.
- (2) Interest under this Part is payable for the period:
- (a) starting on the day after that interest start day; and
  - (b) ending at the earlier of:
    - (i) the day that amount is completely paid to the entity; and

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(ii) the assessment day.

**12BE Rate of interest**

Interest under this Part is payable at the base interest rate (within the meaning of the *Income Tax Assessment Act 1997*).

***Tax Laws Amendment (Research and Development) Act 2011***

**51 Subsection 2(1) (table item 7)**

Omit “Schedules 3A and 4”, substitute “Schedule 4”.

**52 Schedule 3A**

Repeal the Schedule.

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## Part 4—Application and transitional provisions

### 53 Application of amendments

- (1) The amendments made by Parts 1 and 3 of this Schedule apply in relation to instalment quarters starting on or after 1 January 2014.
- (2) The amendments made by Part 2 of this Schedule apply in relation to processes for making findings that start on or after the commencement of that Part.

Note: Part 2 relates to findings under Division 3 of Part III of the *Industry Research and Development Act 1986*.

### 54 Transitional—current findings of Innovation Australia

- (1) This item applies to a finding of the Board if:
  - (a) the finding was made under subsection 28A(1), 28C(1) or 28E(1) of the *Industry Research and Development Act 1986*; and
  - (b) the finding was in force immediately before the commencement of this item.
- (2) The finding has effect, after the commencement of this item, as if it had been made under that subsection as amended by this Schedule.

***[quarterly R&D credits]***