

9 September 2021

Board of Taxation Secretariat  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By email: RandD@taxboard.gov.au

Dear Sirs/Madam

### **Review of R&D Tax Incentive Dual Agency Administration Model**

Cochlear welcomes the opportunity to make a submission on the Board's review of the R&D Tax Incentive Dual Agency Administration Model.

Cochlear is the global leader in implantable hearing solutions. We commenced operations in 1981 as part of the Nucleus group and in 1995 listed on the Australian Securities Exchange (ASX). Today, Cochlear is a Top 50 ASX-listed company with annual global revenues of \$1.4 billion. Cochlear has a significant international footprint selling in over 180 countries and a global workforce of more than 4,000 people. Since 1981, Cochlear has provided more than 650,000 implantable devices, helping people of all ages around the world to hear.

While globally successful, Cochlear is also proudly Australian. With our global headquarters at Macquarie University (MQU) in Sydney and manufacturing facilities at MQU, Lane Cove and Brisbane, we currently undertake more than two thirds of our research & development (R&D), manufacture more than 85% of our products, and employ more than 1700 people in Australia. In FY21 we invested \$195 million in R&D, representing 13% of sales revenue, with eight new products and services achieving FDA approval over the past 18 months across all parts of the portfolio. Pre COVID, Cochlear's corporate income taxes paid in Australia also represented more than 80% of total corporate income taxes paid by the Cochlear Group and we expect that level of contribution to resume in future years.

### **Response to consultation paper**

We provide our responses to the key areas of the Board's review in summary below.

#### *Current administration model*

In general, it is acknowledged and understood that under the current administration model, AusIndustry manages the eligibility requirements of the RDTI with respect to what is eligible R&D and that the ATO is responsible for managing compliance over the expenditure claims against those eligible activities. However, in practice this distinction is often blurred particularly in the context of a review and therefore clearer accountabilities between AusIndustry and the ATO are required.

We suggest that an inter-departmental document (such as a Memorandum of Understanding) be established which clearly outlines the responsibilities and accountabilities of each of the administrators regarding their activities in administering the RDTI. It would also be important to document these accountabilities and responsibilities in the context of a review – whether it is a review by AusIndustry of the eligibility of activities or the ATO in the context of an expenditure review. This is particularly important when both administrators are conducting a review simultaneously. In

summary, his document should clearly outline how each administrator should interact with each other and with the taxpayer, including timelines and accountabilities during a review and should also be publicly available.

#### *Dealings with the current administration model*

The current administration model works reasonably well from a lodgement perspective for eligible activities with AusIndustry. Cochlear has not yet used the new online portal for activity registration with AusIndustry and therefore cannot comment on the new portal and its ease of use. The lodgement of eligible expenditure occurs via the tax return lodgement by completion of the relevant R&D schedule and this is straight forward.

The main area of complexity in the current model is the annual documentation of project plans and registration of those eligible activities upfront with AusIndustry prior to being able to include any expenditure within the tax return. It is rare for a company to have the technical experience internally either within a group tax function or within other areas of a business to wholly manage the preparation of the project plans for registration with AusIndustry. Most companies either fully or at least partially outsource some of this work to external advisors. This cost can be quite significant particularly where the work is wholly outsourced to advisors.

Furthermore, the process for obtaining an Advanced Finding from AusIndustry for eligible activities is also very time intensive yet, once obtained, does not reduce the taxpayer's administrative burden. There is still an ongoing annual requirement to document eligible activities and obtain registration from AusIndustry for those activities which are the subject of the Advanced Finding prior to inclusion of the expenditure in the tax return.

#### *Improvements and efficiencies*

There should be a more streamlined annual registration process for activities covered by an Advanced Finding (including Overseas Advanced Findings) so that the compliance requirements for those activities is reduced. It should be allowable for a company to refer to the Advanced Finding that covers the relevant eligible activities and re-affirm that the experimental activities as outlined under the Advanced Finding are applicable to the current year for registration of eligible R&D activities. Only new information would need to be provided or where there may be a material change from the Advanced Finding. This process would operate in the same way in which a Private Binding ruling operates when issued by the ATO, whereby the ruling is effective for the term of the ruling provided there are no material changes in the facts and circumstances under which the ruling was issued.

The Advanced Findings process may be used more readily by a company if there were clear benefits from reduced compliance during the period the Advanced Finding was in place.

In relation to expenditure calculations, clear guidance from the ATO on allocations for indirect spend and overheads is required. A suggested improvement may be to re-introduce safe harbours or standard calculation methodologies/formulas to determine the appropriate overhead allocations. Whilst a standard calculation/formula for overheads may not result in a perfect allocation across the use of the RDTI by many different companies (ie some could potentially benefit whilst some may have a reduced claim), if it meant the cost of compliance was reduced and the calculation was simple and straight forward to manage, this may be an acceptable compromise.

A final suggested improvement to the overall management of the RDTI would be to require guidance issued by AusIndustry on the eligibility of activities to be binding on AusIndustry as well as the taxpayer. Certainty from AusIndustry in the form of binding public guidance (whether by way of formal public rulings, practical compliance guides, interpretations and so on) is critical for companies to be able to evaluate their activities and have certainty in the treatment by AusIndustry of those activities. This would also assist taxpayers in the event of a dispute or review by AusIndustry over the eligibility of activities.

#### *International models and experience*

We have experience with R&D models in the UK and the US. In both jurisdictions, there is one administrator that manages the R&D claims and that is the revenue office. In those jurisdictions, the claim for R&D credits is managed through the annual tax return process. There is no requirement to seek advanced registration of the eligible activities. Taxpayers must of course maintain records of their activities in the event of a query raised by the revenue office however this is managed in the same way as any other tax matter that must be documented by the taxpayer in the event of a review.

If, for example, the RDTI was administered solely by the ATO, a taxpayer would maintain documentation to support the eligibility of activities (as required in the normal course of business under the self assessment regime) but would not need to seek registration of activities prior to including the eligible expenditure in the tax return.

Cochlear's Vice President Global Tax, Kimberley Simpson, is our key contact on this matter and can be contacted on 0498006956/ [ksimpson@cochlear.com](mailto:ksimpson@cochlear.com) for further information.

Yours faithfully



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