

The Senate

Economics
Legislation Committee

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

February 2019

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Chapter 1

Introduction

1.1 On 18 October 2018, the Senate referred the provisions of the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 to the Economics Legislation Committee for inquiry and report by 3 December 2018.¹ On 15 November 2018, the Senate granted an extension to report by 11 February 2019.²

1.2 This omnibus bill implements a number of measures announced in the 2018–19 Budget, including reforms to the Research and Development (R&D) tax incentive. The bill also proposes changes to: Australia's thin capitalisation rules; GST arrangements for offshore sellers of hotel bookings in Australia; tax payable on luxury cars being re-imported into Australia after refurbishment; and the definition of a 'significant global entity'.³

1.3 In his second reading speech, the Hon. Stuart Robert MP, Assistant Treasurer, commented that 'the government, through the measures in this bill, will continue to strengthen integrity rules and close loopholes while ensuring taxpayer funds are spent prudently, amending the R&D tax incentive to ensure it is well targeted and cost effective'.⁴

1.4 The Assistant Treasurer also noted that 'this bill will help ensure taxpayers pay their fair share of tax...and ensure programs delivered through the tax system give the greatest return for taxpayers, demonstrating the government's commitment to continually strengthening our tax system'.⁵

Conduct of the inquiry

1.5 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting written submissions by 5 November 2018. The committee received 75 submissions, which are listed at Appendix 1.

1.6 The committee held three public hearings for this inquiry:

- Canberra—16 November 2018;
- Melbourne—30 January 2019; and
- Melbourne—31 January 2019.

1 *Journals of the Senate*, No. 125, 18 October 2018, p. 3994.

2 *Journals of the Senate*, No. 129, 15 November 2018, p. 4148.

3 The Hon. Stuart Robert MP, Assistant Treasurer, Second Reading Speech, *House of Representatives Hansard*, 20 September 2018, pp. 35–37.

4 The Hon. Stuart Robert MP, Assistant Treasurer, Second Reading Speech, *House of Representatives Hansard*, 20 September 2018, p. 35.

5 The Hon. Stuart Robert MP, Assistant Treasurer, Second Reading Speech, *House of Representatives Hansard*, 20 September 2018, p. 36.

1.7 A list of witnesses who appeared at the hearings can be found at Appendix 2.

1.8 References to the Committee Hansard are to the Proof Hansard and page numbers may vary between Proof and Official Hansard transcripts.

1.9 The committee would like to thank all the individuals and organisations that made written submissions and participated in the public hearing.

Background

1.10 The bill contains seven schedules that introduce the following measures:

- Schedules 1–3 seek to better target the R&D tax incentive;
- Schedule 4 amends the *Income Tax Assessment Act 1997* (ITAA 1997) to tighten Australia's thin capitalisation rules;
- Schedule 5 seeks to level the playing field for online hotel bookings;
- Schedule 6 removes the luxury car tax on re-imported cars following refurbishment overseas; and
- Schedule 7 amends the definition of significant global entity in the ITAA 1997.

R&D tax incentive

1.11 Schedule 1 to the bill seeks to reform the R&D tax incentive to better target the program, and improve its effectiveness, integrity and fiscal affordability.⁶

1.12 Schedule 2 seeks to enhance the integrity of the R&D tax incentive by ensuring R&D entities cannot obtain inappropriate tax benefits and by clawing back the benefit of the R&D tax incentive to the extent an entity has received another benefit in connection with an R&D activity.⁷

1.13 Schedule 3 seeks to improve the administrative framework supporting the R&D tax incentive by making information about R&D expenditure claims transparent, enhancing the guidance framework to provide certainty to applicants, and streamlining administrative processes.⁸

R&D tax incentive overview

1.14 The R&D tax incentive was introduced in 2011 in its current form. It is the principle mechanism used by the Australian Government to stimulate industry investment in R&D; and does this by providing a tax offset for eligible R&D activities.

6 Explanatory Memorandum, p. 3.

7 Explanatory Memorandum, p. 3.

8 Explanatory Memorandum, p. 3.

1.15 Approximately 13 000 companies are registered in the R&D tax incentive scheme. Of these, approximately 10 000 companies claim the refundable tax offset, and the remaining 3000 companies claim the non-refundable tax offset.⁹

1.16 Eligible R&D activities include activities that might not otherwise be conducted, in cases where the new knowledge gained is likely to have a wider Australian economic benefit. The bill's Explanatory Memorandum (EM) notes that the incentive is 'intended to support additionality¹⁰ in R&D activities and spillover benefits to the broader economy'.¹¹

1.17 The two core components of the R&D tax incentive are:

- a refundable tax offset for certain eligible entities whose aggregated turnover is less than \$20 million; and
- a non-refundable tax offset for all other eligible entities.¹²

1.18 More specifically, for those R&D entities with an aggregated turnover of less than \$20 million, a refundable tax offset set at 43.5 per cent can be refunded as a cash payment, if the amount to be refunded exceeds the entity's income tax liability.

1.19 For larger entities, a 38.5 per cent non-refundable tax offset may be used to reduce an entity's income tax liability for an income year. Further, any remaining excess must be carried forward to be applied in future income years.¹³

1.20 The value of the R&D tax incentive is generally the difference between the R&D entity's corporate tax rate and the R&D tax offset rate. For example, the EM sets out that the incentive component of a large R&D entity receiving the 38.5 per cent non-refundable offset and paying the 30 per cent corporate tax rate is generally 8.5 per cent.¹⁴

1.21 The EM also noted that the value of the incentive has increased for some entities in recent years, due to the lowering of the corporate tax rate:

Under the Government's Enterprise Tax Plan, the corporate tax rate for corporate tax entities with an aggregated turnover of less than \$50 million has been reduced to 27.5 per cent. As this lower corporate tax rate has been

9 Department of the Treasury, answers to questions on notice, 31 January 2019 (received 4 February 2019).

10 Additionality refers to R&D investment that would not occur in the absence of the incentive program.

11 Explanatory Memorandum, p. 9.

12 Australian Taxation Office, 'Research and Development Tax Incentive', <https://www.ato.gov.au/Business/Research-and-development-tax-incentive/> (accessed 12 November 2018).

13 Explanatory Memorandum, p. 9.

14 Explanatory Memorandum, p. 10.

extended to more corporate tax entities in recent years, the value of the incentive component of the R&D tax offsets has increased.¹⁵

1.22 The R&D tax incentive is currently subject to a \$100 million expenditure threshold (expenditure cap). This means that expenditure on R&D activities in excess of \$100 million is not eligible for the full rate of the relevant R&D tax offset. Rather, these notional deductions give rise to an offset at the R&D entity's corporate tax rate. That is, excess notional deductions give rise to the same benefit as if the expenditure had instead been claimed as an ordinary tax deduction, eliminating any incentive component.¹⁶

1.23 The \$100 million expenditure threshold and some associated provisions are currently legislated to sunset on 1 July 2024 under Part 2 of Schedule 1 to the *Tax Laws Amendment (Research and Development) Act 2015*.¹⁷

1.24 Joint policy responsibility for the R&D tax incentive sits with the Department of Industry, Innovation and Science (DIIS) and the Department of the Treasury. AusIndustry, a division within DIIS, and the Australian Taxation Office jointly deliver the program with AusIndustry responsible for registration of R&D activities and the Australian Taxation Office responsible for expenditure claims made by R&D entities for tax offsets.

Review of the R&D tax incentive

1.25 In December 2015, Mr Malcom Turnbull, then Prime Minister, commissioned a review of the R&D tax incentive as part of the government's National Innovation and Science Agenda. The Review Panel was chaired by the then Chair of Innovation and Science Australia (ISA), Mr Bill Ferris AC, Australia's Chief Scientist, Dr Alan Finkel AO, and the then Secretary to the Treasury, Mr John Fraser. The review is often referred to by stakeholders as the 'Three F's' review. The purpose of the review was to 'identify opportunities to improve the effectiveness and integrity of the R&D Tax Incentive, including by sharpening its focus on encouraging additional R&D spending'.¹⁸

1.26 The Review Panel found that the 'programme falls short of meeting its stated objectives of additionality and spillovers'; and made six recommendations to be considered as a package of measures to improve the overall effectiveness and integrity of the programme while encouraging additional R&D.¹⁹

1.27 A short summary of the Review's recommendations is set out below:

15 Explanatory Memorandum, p. 10.

16 Explanatory Memorandum, p. 10.

17 Explanatory Memorandum, p. 10.

18 Mr Bill Ferris AC, Dr Alan Finkel AO, Mr John Fraser, *Review of the R&D Tax Incentive*, 4 April 2016, p. 1.

19 Mr Bill Ferris AC, Dr Alan Finkel AO, Mr John Fraser, *Review of the R&D Tax Incentive*, 4 April 2016, p. 1

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- Recommendation 1—Retain the current definition of eligible activities and expenses under the law, but develop new guidance, including plain English summaries, case studies and public rulings, to give greater clarity to the scope of eligible activities and expenses.
 - Recommendation 2—Introduce a collaboration premium of up to 20 per cent for the non-refundable tax offset to provide additional support for the collaborative element of R&D expenditures undertaken with publicly-funded research organisations.
 - Recommendation 3—Introduce a cap in the order of \$2 million on the annual cash refund payable under the R&D tax incentive, with remaining offsets to be treated as a non-refundable tax offset carried forward for use against future taxable income.
 - Recommendation 4—Introduce an intensity threshold in the order of 1 to 2 per cent for recipients of the non-refundable component of the R&D tax incentive, such that only R&D expenditure in excess of the threshold attracts a benefit.
 - Recommendation 5—If an R&D intensity threshold is introduced, increase the expenditure threshold to \$200 million so that large R&D-intensive companies retain an incentive to increase R&D in Australia.
 - Recommendation 6—That the government investigate options for improving the administration of the R&D tax incentive (e.g. adopting a single application process; developing a single programme database; reviewing the two-agency delivery model; and streamlining compliance review and findings processes) and additional resourcing that may be required to implement such enhancements. To improve transparency, the government should also publish the names of companies claiming the R&D tax incentive and the amounts of R&D expenditure claimed.²⁰

1.28 The EM notes that the reforms to the R&D tax incentive proposed in the bill are made in response to the above recommendations.²¹

Treasury Consultation

1.29 Following the announcement of the *Better targeting the Research and Development Tax Incentive* measure in the 2018–19 Budget, Treasury conducted a consultation process on the proposed changes to the R&D tax incentive from 29 June to 26 July 2018.²² The consultation paper sought feedback on the implementation of

20 Mr Bill Ferris AC, Dr Alan Finkel AO, Mr John Fraser, *Review of the R&D Tax Incentive*, 4 April 2016, pp. 2–4.

21 Explanatory Memorandum, p. 10.

22 The Treasury, *Consultation on the draft Treasury Laws Amendment (Research and Development Incentive) Bill 2018 and Explanatory Materials*, June 2018, p. 1, <https://static.treasury.gov.au/uploads/sites/1/2018/06/c2018-t289033-RnD-Consultation-Paper.pdf>, (accessed 1 November 2018).

the measure, and the proposed draft bill and Explanatory Materials of the then Treasury Laws Amendment (Research and Development Incentive) Bill 2018. Specifically, the consultation paper sought feedback on two new key elements in the proposed legislation:

- the calculation of R&D intensity under the R&D premium; and
- the process for implementing a 'clinical trials' exemption under the \$4 million cap on annual cash refunds.²³

1.30 The Treasury noted in its consultation paper that the 2018 *Innovation and Science Australia (ISA) 2030 Strategic Plan* (ISA 2030 plan) had also found that the R&D tax incentive had not induced business R&D expenditure beyond business as usual activities.²⁴ The ISA 2030 Plan also included a number of alternative recommendations to reform the R&D tax incentive.²⁵

1.31 Submissions made as part of Treasury's consultation process have not been made available online.²⁶

Provisions of the bill

Schedules 1–3—R&D Tax Incentive

1.32 Schedule 1 to the bill proposes the following reforms to the R&D tax incentive:

- increase the R&D expenditure threshold from \$100 million to \$150 million and make the threshold a permanent feature of the law;
- link the R&D tax offset for refundable R&D tax offset claimants to claimants' corporate tax rates plus a 13.5 percentage point premium;
- cap the refundable tax offset at \$4 million per annum (however, offset amounts that relate to expenditure on clinical trials do not count towards the cap); and
- change the way in which larger R&D entities calculate their R&D tax offset to an intensity based calculation.

1.33 As noted above, larger R&D entities are currently entitled to a 38.5 per cent non-refundable tax offset. The bill proposes to change this offset, such

23 The Treasury, *Consultation on the draft Treasury Laws Amendment (Research and Development Incentive) Bill 2018 and Explanatory Materials*, June 2018, p. 1. <https://static.treasury.gov.au/uploads/sites/1/2018/06/c2018-t289033-RnD-Consultation-Paper.pdf> (accessed 1 November 2018).

24 The Treasury, *Consultation on the draft Treasury Laws Amendment (Research and Development Incentive) Bill 2018 and Explanatory Materials*, June 2018, p. 1, <https://static.treasury.gov.au/uploads/sites/1/2018/06/c2018-t289033-RnD-Consultation-Paper.pdf>, (accessed 1 November 2018).

25 Explanatory Memorandum, p. 55.

26 The Treasury, *Research & Development Tax Incentive Amendments* <https://treasury.gov.au/consultation/c2018-t289033/> (accessed 12 November 2018).

that larger R&D entities would be entitled to an offset 'equal to their corporate tax rate plus marginal intensity premiums determined with reference to the R&D intensity of their R&D expenditure on an incremental basis'.²⁷

1.34 Intensity premiums apply to notional deductions within a range of R&D intensity for R&D expenditure where notional deductions are expressed as a proportion of the entity's total expenses.

Table 1: R&D tax offset intensity premiums²⁸

<i>Tier</i>	<i>R&D intensity range</i>	<i>Intensity premium</i>
1	Notional deductions representing up to and including 2 per cent of total expenses	4 percentage points
2	Notional deductions representing greater than 2 and up to and including 5 per cent of total expenses	6.5 percentage points
3	Notional deductions representing greater than 5 and up to and including 10 per cent of total expenses	9 percentage points
4	Notional deductions representing greater than 10 per cent of total expenses	12.5 percentage points

1.35 An entity's R&D intensity is calculated by dividing its expenditure on R&D activities (notional deductions) by its total expenses for that income year.²⁹

1.36 Schedule 2 to the bill aims to ensure that R&D entities cannot obtain inappropriate tax benefits by clawing back the benefit of the R&D tax incentive to the extent an entity has received another benefit in connection with an R&D activity. The bill proposes to achieve this by:

- extending the general anti-avoidance rules in the tax law to R&D tax offsets directly;
- making the rate at which the offset is recouped more accurate in situations where the offset would otherwise result in an additional or double benefit; and
- making that rate at which deductible balancing adjustment amounts incorporate the R&D tax incentive more accurate.³⁰

1.37 Schedule 3 to the bill makes a number of amendments to improve the administration and transparency of the R&D tax incentive by making information about R&D expenditure claims transparent, enhancing the guidance framework to provide certainty to applicants, and streamlining administrative processes. Specifically:

- publicising information about incentive claimants and their R&D expenditure;

27 Explanatory Memorandum, p. 17.

28 Explanatory Memorandum, p. 18.

29 Explanatory Memorandum, p. 18.

30 Explanatory Memorandum, p. 25.

- allowing the Board of ISA to make binding determinations;
- broadening the scope of the Board of ISA's delegation powers; and
- imposing a three-month limit on extensions of time.³¹

Schedule 4—Thin capitalisation

1.38 Schedule 4 to the bill amends the ITAA 1997 to tighten Australia's thin capitalisation rules by:

- requiring an entity to use the value of the assets, liabilities (including debt capital) and equity capital that are used in its financial statements;
- removing the ability for an entity to revalue its assets specifically for thin capitalisation purposes; and
- ensuring that non-ADI foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities.

1.39 A transitional rule will allow an entity to rely on revaluations of assets supported by the entity's most recent valuation made prior to the time of announcement of the measure on 8 May 2018. These revaluations can be used until the last day before the start of the income year commencing on or after 1 July 2019.³²

Schedule 5—Online hotel bookings

1.40 Schedule 5 to the bill amends the *A new Tax System (Goods and Services Tax) Act 1999* (GST Act) to require offshore suppliers of rights or options to use commercial accommodation in the indirect tax zone (broadly Australia) to include these supplies in working out their GST turnover. If the GST turnover of such offshore suppliers equals or exceeds the registration turnover threshold, then GST must be remitted for their taxable supplies.³³

1.41 Currently, unlike GST-registered businesses in Australia,³⁴ offshore suppliers of Australian hotel accommodation are exempt from including sales of hotel accommodation in their GST turnover. This means they are often not required to register for and charge GST on their mark-up over the wholesale price of the accommodation. The exemption was introduced in 2005, when most offshore sales of

31 Explanatory Memorandum, p. 44.

32 Explanatory Memorandum, p. 75.

33 Explanatory Memorandum, p. 84.

34 To be registered for GST, an entity's gross turnover must be \$150 000 or more during either the current month, plus the previous 11 months or the projected GST turnover is \$150 000 or more during the current month and the next 11 months. See the Australian Taxation Office, <https://www.ato.gov.au/non-profit/your-organisation/gst/gst-registration/> (accessed 4 February 2019).

Australian hotel rooms were to foreigners booking through offshore tour operators, and the online booking market was small.³⁵

1.42 The measure proposed in the bill follows the government's decision to extend the GST to digital products and other imported services, which was announced in the 2015–16 Budget and which commenced on 1 July 2017;³⁶ and following the *Treasury Laws Amendment (GST Low Value Goods) Act 2017* that extended the GST to the importation of low value goods under \$1000 which came into effect on 1 July 2018.³⁷

1.43 The measure will apply to sales made on or after 1 July 2019. Sales that occur before 1 July 2019 will not be subject to the measure even if the stay at the hotel occurs after this date.

1.44 The EM notes that this measure includes the following exemption:

The amendments do not apply to supplies of rights to hotel accommodation that are merely facilitated by an offshore entity acting as an agent on behalf of a hotel. Under an agency arrangement the hotel is the supplier to the customer and, as such, has the obligation to account for the GST on the total amount paid by the customer.³⁸

Schedule 6—Removing luxury car tax on re-imported cars refurbished overseas

1.45 Schedule 6 to the bill removes liability for luxury car tax from cars that are re-imported following service, repair or refurbishment overseas.

Schedule 7—Significant global entity

1.46 Schedule 7 to the bill amends the definition of 'significant global entity' in the ITAA 1997 so that it:

- applies to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company; and
- is not affected by the exceptions to requirements applying to consolidated or materiality rules in the applicable accounting rules.³⁹

1.47 The amendments also modify the rules that identify which entities must undertake country-by-country reporting under the tax law to ensure these rules are aligned with Australia's international commitments.

1.48 The current definition applies only to an entity which is a member of a group headed by a public company or a private company required to provide consolidated financial statements. The definition will be broadened to include members of large multinational groups headed by private companies, trusts and partnerships. It will also include members of groups headed by investment entities.

35 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2, 2018–19*, p. 29.

36 See *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*.

37 See *Treasury Laws Amendment (GST Low Value Goods) Act 2017*.

38 Explanatory Memorandum, p. 85.

39 Explanatory Memorandum, p. 91.

Legislative scrutiny

1.49 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) commented on two aspects of the bill; its retrospective application and the broad delegation of administrative powers.

1.50 Schedules 1 and 2 of the bill seek to make a number of amendments to the ITAA 1997, the *Tax Laws Amendment (Research and Development) Act 2015*, and the *Income Tax Assessment Act 1936* (ITAA 1936) in order to reform the R&D tax incentive. Both schedules contain items which apply these amendments to assessments for income years commencing on or after 1 July 2018.⁴⁰

1.51 The Scrutiny committee has a long-standing concern about provisions that apply retrospectively and has requested advice from the Minister as to the necessity of retrospectivity in this bill.⁴¹

1.52 The Scrutiny committee also noted that Items 18 and 19 of Schedule 3 of the bill seek to remove the existing requirement that powers or functions only be delegated to Senior Executive Service (SES) or acting SES employees, allowing the Board or committee to delegate functions or powers to a member of staff at any level.

1.53 The Scrutiny committee raised concerns that the bill would allow the 'delegation of administrative powers to a relatively large class of persons, with little or no specificity as to their qualifications or attributes'.⁴²

1.54 The Scrutiny committee considered 'it may be appropriate to amend the bill to require that the Innovation and Science Australia Board, or a committee appointed to advise the board, be satisfied that persons performing delegated functions and exercising delegated powers have the expertise appropriate to the function or power delegated, and requests the Treasurer's advice in relation to this matter'.⁴³

1.55 The Parliamentary Joint Committee on Human Rights noted that the bill did not raise any human rights concerns.⁴⁴

Financial impact

1.56 The 2018–19 Budget measure *Better targeting the research and development tax incentive* is estimated to have a net gain to the budget of \$2.4 billion in fiscal balance terms over the forward estimates period, comprising:

Table 1: Financial impact of the 2018–19 Budget measure Better targeting the research and development tax incentive⁴⁵

40 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, p. 56.

41 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, p. 57.

42 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, p. 58.

43 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2018*, p. 58.

44 Parliamentary Joint Committee on Human Rights, *Report 11 of 2018*, p. 72.

45 Explanatory Memorandum, p. 3.

<i>2018-19</i>	<i>2019-20</i>	<i>2020-21</i>	<i>2021-22</i>
\$314.1m	\$641.4m	\$763.7m	\$719.0m

1.57 As noted in the EM, the schedules in this bill implement most of the components of the 2018–19 Budget measure. Other components of the 2018–19 Budget measure that complement these legislative changes include additional resourcing for additional compliance and legal activity.⁴⁶

1.58 These reforms are estimated to result in a total average annual regulatory cost for businesses of \$25.2 million.⁴⁷

1.59 The remaining measures are estimated to have the following financial impacts:

- Thin capitalisation— gain to revenue of \$120 million in each of the 2020–21 and 2021–22 financial years;⁴⁸
- Online hotel bookings— gain to GST revenue of \$15 million over the forward estimates;⁴⁹
- Luxury car tax—nil or negligible impact;⁵⁰ and
- Significant global entity— nil or negligible impact.⁵¹

46 Explanatory Memorandum, p. 3.

47 Explanatory Memorandum, p. 3.

48 Explanatory Memorandum, p. 5.

49 Explanatory Memorandum, p. 5.

50 Explanatory Memorandum, pp. 6–7.

51 Explanatory Memorandum, pp. 6–7.

Chapter 2

Views on the bill

2.1 The Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 (the bill) contains seven schedules which propose changes to five distinct areas:

- Schedules 1–3 seek to provide for better targeting of the research and development (R&D) tax incentive;
- Schedule 4 amends the Income Tax Assessment Act 1997 (ITAA 1997) to tighten Australia's thin capitalisation rules;
- Schedule 5 seeks to level the playing field for online hotel bookings;
- Schedule 6 removes the luxury car tax on re-imported cars following refurbishment overseas; and
- Schedule 7 amends the definition of significant global entity in the ITAA 1997.

2.2 This chapter examines the evidence the committee received in relation to the bill and its seven schedules. In line with the level of engagement around the schedules, both through submissions and at the three public hearings the committee undertook, this chapter focuses its examination on the proposed changes to the R&D tax incentive (schedules 1–3), and the proposed changes to GST for online hotel bookings (schedule 5). A brief discussion is also included on thin capitalisation rules (schedule 4) and the definition of a significant global entity (schedule 7). The committee received no commentary on the removal of the luxury car tax on re-imported cars following refurbishment overseas (schedule 6).

R&D tax incentive

2.3 As noted in chapter 1, the bill proposes a number of changes to the R&D tax incentive, which were announced in the 2018–19 Budget measure *Better targeting the Research and Development Tax Incentive*.

2.4 The majority of submitters to the inquiry raised concerns about the proposed changes to the R&D tax incentive, particularly: the retrospective nature of the legislation; the reduction of the refundable tax offset; the introduction of a \$4 million cap on the refundable tax offset; the exemption of clinical trials from the \$4 million cap; the increase of the expenditure limit for the non-refundable tax offset to \$150 million; and a collaboration premium.

2.5 In explaining the purpose of the proposed changes to the R&D tax incentive set out in the bill, Mr Calder from the Department of Industry, Innovation and Science (DIIS) noted that the measures contained in the legislation were drafted in response to the recommendations of the 2016 Review of the R&D tax incentive (the Review), which found that the R&D tax incentive 'wasn't as effective in encouraging

additionality in R&D, which is spending above and beyond what a company would have done in the absence of the program'.¹

2.6 A significant number of submitters commented that the R&D tax incentive scheme, to date, had a positive impact on their business; however, should the proposed legislation be enacted, some indicated that they would need to consider either reducing their R&D effort or relocating it to another country where there is a more accommodating R&D tax incentive scheme.²

2.7 However, Treasury officials asserted that there would be no net behavioural response to the legislation should it be enacted:

There are companies who might have an incentive to increase R&D and claim a greater R&D tax incentive, versus companies who have a reduced incentive and may therefore claim a lower amount of incentive. When we considered that over the population, our judgement was that those two factors broadly offset each other. There is a large amount of uncertainty as to exactly what the effect will be, but we thought the best assumption available to us, on the evidence we had available, was no net behavioural effect.³

Retrospective legislation

2.8 Schedule 1 of the bill, which proposes the most significant changes to the R&D tax incentive, is due to apply from 1 July 2018. The bill's effect is therefore retrospective. Aside from the general concerns about retrospective legislation noted in chapter 1, some R&D entities affected by the bill have expressed concerns that the retrospective application of the bill will disrupt current and future investments in R&D activities that have already been scheduled, particularly noting that there are often long lag times in developing R&D initiatives.

2.9 Indeed, many submitters agreed that R&D entities have not had enough time to plan for the changes proposed in the bill and that the retrospective start date would have detrimental consequences for their R&D investments.⁴

2.10 For example, the Association of Mining and Exploration Companies Inc. (AMEC) noted that a large number of applicants would likely have already planned their activities for the 2018–19 financial year based on the existing R&D tax incentive

1 Mr Wayne Calder, General Manager, Business Environment Branch, Strategic Policy Division, Department of Industry, Innovation and Science, *Committee Hansard*, 16 November 2018, p. 52.

2 See, for example, 2cloudnine, *Submission 1*, p. 1; MYOB, *Submission 2*, p. 1; Rip Curl, *Submission 31*, p. 1; ATC Williams, *Submission 35*, p. 1; Clover Corporation Ltd., *Submission 55*, p.1.

3 Mr Robert Ewing, Acting Division Head, Tax Analysis Division, Revenue Group, Department of the Treasury, *Committee Hansard*, 16 November 2018, p. 57.

4 See, for example, BioMelbourne Network, *Submission 21*, p. 7; Swanson Reed, *Submission 26*, p. 2; BDO Australia, *Submission 25*, p. 8; Fastbrick Robotics Limited, *Submission 41*, p. 1; Australian Information and Industry Association, *Submission 61*, p. 5.

framework, prior to the announcement of this measure in the 2018–19 Budget. AMEC considered that:

The subsequent implementation of retrospective legislation which has the potential to change claimant eligibility, and reduce their allowable claim, will create extreme uncertainty, non-compliance and potential financial stress.⁵

2.11 The Australian Information Industry Association highlighted that the retrospective application of the proposed changes would add barriers to innovation for start-ups and small and medium-sized enterprises (SMEs) 'who do not have the in-house resources or the financial resources to ensure that they are abreast of the proposed changes and meet all the compliance requirements'.⁶

2.12 Many submitters recommended that the date for commencement should be reconsidered.⁷ In particular, BioMelbourne Network recommended that transitional arrangements be put in place with an appropriate phase-in period.⁸

2.13 Northern Minerals further proposed that for those projects where the current R&D arrangements have been used to finance the project, the legislation ought to be grandfathered in the 2018–19 financial year, noting that:

This would allow projects such as Northern Minerals to be completed according to their planned financing structure and protected from the retrospective nature of the Bill. This option would support advanced existing projects but not future projects.⁹

2.14 In response to concerns raised about the retrospective nature of the legislation, Mr Bede Fraser from the Department of the Treasury noted that:

The draft legislation was released before the start of the new financial year. The only other comment I'd make is that it's not uncommon for tax measures to start through the tax year, as long as they're in place before the end of the financial year. So it's not uncommon in the tax space.¹⁰

2.15 Further, Mr Fraser noted that 'companies have 10 months after the financial year to register activities, so they've still got some time to look at their plans and what they're undertaking'.¹¹

5 Association of Mining and Exploration Companies Inc., *Submission 14*, p. 10.

6 Australian Information and Industry Association, *Submission 61*, p. 5.

7 See, for example, BioMelbourne Network, *Submission 21*, p. 7; Swanson Reed, *Submission 26*, p. 2; BDO Australia, *Submission 25*, p. 8; Fastbrick Robotics Limited, *Submission 41*, p. 1; Australian Information and Industry Association, *Submission 61*, p. 5.

8 BioMelbourne Network, *Submission 21*, p. 7.

9 Northern Minerals, *Submission 36*, p. 9.

10 Mr Bede Fraser, Principal Adviser, Department of the Treasury, *Committee Hansard*, 16 November 2018, p. 63.

11 Mr Bede Fraser, Principal Adviser, Department of the Treasury, *Committee Hansard*, 16 November 2018, p. 63.

Reduction of the refundable tax offset

2.16 As noted in chapter 1, R&D entities with an aggregated turnover of less than \$20 million are eligible for a refundable tax offset set at 43.5 per cent that can be refunded as a cash payment, if the amount to be refunded exceeds the entity's income tax liability. The proposed amendment to the refundable tax offset will tie the offset rate to 13.5 per cent above the relevant corporate tax rate—which will be progressively lowered over the forward estimates.

2.17 Submitters noted that the proposed progressive reduction of the corporate tax rate from the current level of 30 per cent to 27.5 per cent, and then to 25 per cent, will result in the R&D offset being ultimately lowered from 43.5 per cent to 38.5 per cent.¹²

2.18 Submitters expressed concerns that this reduction would make Australia uncompetitive against such countries as Germany, United Kingdom, United States, Canada and Singapore.¹³ AMEC noted these countries are understood to be making their R&D initiatives more competitive, and not reducing them.¹⁴

2.19 Others also noted that for small innovative companies in their early stages, which are currently paying little or no tax, the reduction in the rate of the refundable R&D tax incentive is not offset by the reduction in the company tax rate, and results in a direct reduction in the support provided to when they need it most.¹⁵

2.20 Ms Lorraine Chiroiu, Chief Executive Officer of AusBiotech, explained:

For SMEs in the refundable space and in tax loss—that is that they don't pay tax—their immediate loss if the bill is passed is the 2.5 per cent cash refund. Their benefit drops from 43.5 per cent to 41 per cent. This is because the corporate tax rate has just dropped for SMEs, and this is not much help if you don't pay tax.¹⁶

2.21 Research Australia highlighted that part of the argument advanced for the reduction of the refundable R&D tax incentive is that small companies benefit from the reduction in the company tax rates:

On face value it appears that the reduction in the rate of the R&DTI offset would be revenue neutral for the companies involved; i.e. the benefit of the

12 See, for example, Association of Mining and Exploration Companies, *Submission 14.1*, p. 9; Deloitte, *Submission 18.1*, p. 2; BSI Innovation Pty Ltd, *Submission 29*, p. 1; Uniseed, *Submission 32*, p. 1.

13 See, for example, Association of Mining and Exploration Companies Inc., *Submission 14*; Xenith IP Group Limited, *Submission 37*; University of Melbourne, *Submission 48*; Chartered Accountants Australia and New Zealand, *Submission 54*.

14 Association of Mining and Exploration Companies Inc., *Submission 14*, p. 10.

15 See, for example, Ms Lorraine Chiroiu, Chief Executive Officer, AusBiotech, Committee Hansard, 16 November 2018, p. 34; Research Australia, *Submission 10*, p. 8.

16 Ms Lorraine Chiroiu, Chief Executive Officer, AusBiotech, Committee Hansard, 16 November 2018, p. 34.

R&DTI will be reduced but this loss will be made up by a corresponding reduction in tax paid.¹⁷

2.22 However, Research Australia explained in its submission that this reasoning is 'fundamentally flawed' because it assumes that the companies receiving the refundable tax offset are paying sufficient income tax to receive the benefit of the reduction in the tax rate:

This is clearly not the case for the small research-intensive companies in the start-up phase that are undertaking R&D activity to commercialise their prototype product; many of these companies are paying little or no income tax because they are operating at a loss for many years while they are in the process of developing products for market.

This fact is recognised in the design of the R&DTI Scheme, and is the reason why the refundable component is refundable i.e. it is expected that the value of the R&DTI may exceed the value of the tax payable. In this circumstance, the reduction in the rate of the R&DTI offset is not 'revenue neutral', and results in a direct reduction in the support provided to small innovative companies in their early stages when they need it most.¹⁸

2.23 Research Australia considered that this measure would have a direct impact on the capacity of companies to undertake research and development, including their ability to employ the staff they need; further, that it is occurring 'against the backdrop of a recent fall in private sector investment in R&D when the Government's ambition for future Australian prosperity relies on an 'Innovation Nation''.¹⁹

2.24 BDO Australia (BDO) also pointed out that 'despite the reduction in offset rates, the turnover threshold of \$20 million for those companies able to access the refundable offset has not changed since the Incentive was introduced'. BDO further noted that in 2018–19, the threshold for companies being able to achieve the base rate for the 27.5 per cent corporate tax rate is \$50 million.²⁰

\$4 million cap

2.25 Schedule 1 of the bill sets a cap of \$4 million per year on the refundable tax offset. Submitters noted that this cap was more generous than the \$2 million cap proposed in Recommendation 3 of the Review; however, many did not welcome the introduction of a \$4 million cap for the refundable tax offset.²¹

2.26 Officials from DIIS noted that the proposal in the bill was not only more generous than the recommendation made in the Review, but also did not include an

17 Research Australia, *Submission 10*, p. 8.

18 Research Australia, *Submission 10*, p. 8.

19 Research Australia, *Submission 10*, p. 8.

20 BDO Australia, *Submission 58*, p. 10.

21 See, for example, Professor Damien Giurco, *Submission 23*, p. [1]; RJED Consulting Pty Ltd, *Submission 33*, p. 1; Fastbrick Robotics Limited, *Submission 41*, p. 1; Parkway Minerals NL, *Submission 42*, p. [1].

overall maximum lifetime benefit, as suggested in the *Innovation and Science Australia (ISA) 2030 Strategic Plan*.²² Mr Calder from DIIS further noted that the \$4 million cap is 'very generous by international standards'.²³

2.27 Northern Minerals noted that its Browns Range Heavy Rare Earths Project (the Project) has been planned, financed and constructed relying on access to uncapped R&D cash refunds under the R&D tax incentive scheme over an eight-year period (2012–13 to 2018–19)—that is, prior to the introduction of the \$4 million cap.²⁴

2.28 Further, Northern Minerals highlighted the specific and immediate impact that the proposed legislation would have on the Project if enacted:

If the Bill is passed in its current form, it will apply retrospectively to this current financial year. This retrospective effect will create a \$12,361,470 million shortfall in the financing of the Project in 2018/19, the final year of the planned R&D program. This immediate and retrospective change by the Australian Government brings new and unexpected financial risk to the Project.²⁵

2.29 Northern Minerals considered that limiting the refundable tax offset to \$4 million per year could slow down important work, particularly that leading to commercialisation, the ultimate outcome of R&D.²⁶

2.30 AMEC considered that the uncapped refundable tax offset, that has been in place since 2011, had allowed a number of projects to progress to their current advanced stage and noted that the imposition of a cap could have created significant delays due to 'the difficulties in raising rare risk capital investment from alternative sources':

AMEC considers that any potential barrier or disincentive to successful mining in Australia should be removed. This is particularly crucial for small start-up and emerging companies with limited access to traditional finance. The proposed creation of a \$4 million cap will result in such an impediment, and not be internationally competitive.²⁷

2.31 AMEC also pointed out that access to cash flow from the refundable tax offset is particularly vital for start-up emerging miners who have limited access to capital:

22 Mr Wayne Calder, General Manager, Business Environment Branch, Strategic Policy Division, Department of Industry, Innovation and Science, *Committee Hansard*, 16 November 2018, p. 61.

23 Mr Wayne Calder, General Manager, Business Environment Branch, Strategic Policy Division, Department of Industry, Innovation and Science, *Committee Hansard*, 16 November 2018, p. 52.

24 Northern Minerals, *Submission 36*, p. 1.

25 Northern Minerals, *Submission 36*, p. 1.

26 Northern Minerals, *Submission 36*, p. 6.

27 Association of Mining and Exploration Companies, *Submission 14*, p. 2.

The proposed implementation of a \$4 million annual cap for these companies will be disastrous and will have a direct impact on Australia's capacity to maximize its resource potential. It will reduce future Government taxation revenue streams.²⁸

2.32 The Chamber of Minerals and Energy of Western Australia contended that the \$4 million cap will impact energy material projects and force them to develop very slowly or not at all.²⁹

2.33 Research Australia commented that it is difficult to gauge the direct impact of this measure on companies as there is no publicly available information about how many claims for the refundable tax offset exceed this claim, or the size, industry sector or financial position of such claimants.³⁰

2.34 At the public hearing in Canberra, Mr Calder from DIIS clarified that out of the approximately 10 000 companies that claim the refundable tax offset, DIIS estimated that 20 companies would be impacted by the proposed \$4 million cap.³¹³²

2.35 BDO recommended that the introduction of a cap should include transitional arrangements so that affected companies which can demonstrate commitment to or an investment in a project reliant on refunds greater than the \$4 million cap be able to apply for exemption from the cap for the budgeted life of that project.³³

Exemption for clinical trials to the \$4 million cap

2.36 The proposed \$4 million cap on the refundable tax offset includes an exemption for offset amounts that relate to expenditure on clinical trials. Stakeholders generally welcomed this exemption.³⁴

2.37 BioMelbourne Network considered that the proposed exemption 'recognises the high spill over benefits and additionality that clinical trials R&D brings to the Australian economy and to the Australian people'.³⁵

28 Association of Mining and Exploration Companies, *Submission 14.1*, p. 8.

29 Chamber of Minerals and Energy of Western Australia, *Supplementary Submission 2*, p. 1.

30 Research Australia, *Submission 10*, p. 9.

31 Mr Wayne Calder, General Manager, Business Environment Branch, Strategic Policy Division, Department of Industry, Innovation and Science, *Committee Hansard*, 16 November 2018, p. 61.

32 Approximately 13 000 companies are registered in the R&D tax incentive scheme. Of these, approximately 10 000 claim the refundable tax offset, and the remaining 3000 companies claim the non-refundable tax offset.

33 BDO Australia, *Submission 58*, p. 9.

34 See for example: Research Australia, *Submission 10*, p. 10; BioMelbourne Network, *Submission 21*, p. 5; Medicines Australia, *Submission 39*, p. [2]; Swanson Reed, *Submission 26*, p. 3; AusBiotech, *Submission 27*, p. 4.

35 BioMelbourne Network, *Submission 21*, p. 5.

2.38 Research Australia also welcomed this measure, noting that clinical trials are often undertaken by early stage SMEs, whose only asset is the intellectual property they are seeking to develop. These SMEs typically do not have any revenue, and their only activity is R&D:

Without the exemption, the cap would lead to fewer and/or delayed clinical trials and longer timeframes to get to market. In the competitive global market for medical devices and medicines, the first to market advantage can be critical to commercial success.³⁶

2.39 However, while many stakeholders supported this initiative, not all agreed that the proposed definition of what constitutes clinical trials used in the bill was appropriate; noting that some activities related to clinical trials may be excluded.³⁷

2.40 In particular, BioMelbourne Network considered that the proposed definition is skewed toward pharmaceutical products as 'it does not give adequate coverage for the range of medical interventions named, or provide for future interventions in emerging fields of medicines, such as cellular therapies, digital health, regenerative medicine, genomics and novel health services'.³⁸ BioMelbourne Network recommended that the proposed definition of a clinical trial be reviewed and refined through consultation with industry to ensure that the definition appropriately covers clinical trial activities that may be conducted now and into the future.³⁹

2.41 In its submission, KPMG recommended that the definition of 'clinical trials' for the purpose of the exception to the \$4 million annual refundable cap should specifically include the 'in-human' trialling of medical devices.⁴⁰

2.42 AusBiotech commented that the clinical trials exemption would give Australia 'an opportunity to build on its hard-won momentum in [clinical trials] and continue its growth in commercialising medical research'. However, it also considered that the proposed definition and the confusion about which expenditure related to clinical trials would be eligible to be claimed is 'completely unresolved and confusing':

The application of the carve-out that it 'is available only on R&D expenditure incurred directly on the identified clinical trial activity' is causing significant confusion and concerns. The explanatory materials provided in the last consultation note that 'current definitions around core and supporting R&D activities, as well as the requirements around overseas expenditure, will continue to operate unchanged', however many other questions remain unanswered. One example is how will a claim be treated if it encompasses both pre-clinical and clinical trials that together exceed the \$4 million cap?⁴¹

36 Research Australia, *Submission 10*, p. 10.

37 BioMelbourne Network, *Submission 21*, p. 5.

38 BioMelbourne Network, *Submission 21*, p. 5.

39 BioMelbourne Network, *Submission 21*, p. 5.

40 KPMG, *Submission 8.1*, p. 2.

41 AusBiotech, *Submission 27*, p. 4.

2.43 Consequently, AusBiotech recommended that the introduction of the \$4 million cap and the exemption for clinical trials be delayed until this issue is resolved.⁴²

2.44 Medicines Australia considered that all clinical trial investment should be eligible regardless of the aggregated turnover of the business, noting that:

...the growth in early phase clinical trials is also due to large companies attracting such trials to Australia, and the proposal does not recognise the value that larger companies provide in supporting ongoing clinical trials. ...This would recognise and support all businesses to help ensure that clinical trial investment not just continues, but also grows.⁴³

2.45 Some submitters proposed that consideration should be given to extending this exemption to other activities, including mining related activities.⁴⁴ In particular, AMEC also considered that the mining and mineral exploration sector, as well as the rare earths, lithium, strategic and battery related minerals sector, should be excluded from the proposed \$4 million annual cap.⁴⁵

2.46 Lithium Australia recommended that the bill be amended to 'either remove the proposed \$4 million cap on R&D rebates or scope out projects that support the development of critical raw materials and those associated with energy production and efficiency from the cap'.⁴⁶

2.47 Alternatively, BDO Australia proposed:

Rather than introducing an exemption specifically for clinical trials, ISA should be empowered to lift the cap through findings for projects of national importance. This effectively creates a hybrid between direct and indirect funding mechanisms and improves the flexibility of the legislation to adapt to national challenges.⁴⁷

Increase of the expenditure threshold to \$150 million

2.48 As noted in chapter 1, there is currently a \$100 million R&D expenditure threshold in place—which is legislated to sunset on 1 July 2024. The bill proposes to permanently increase the R&D expenditure threshold to \$150 million. Participants in the inquiry generally supported this measure.⁴⁸

42 AusBiotech, *Submission 27*, p. 4.

43 Medicines Australia, *Submission 39*, p. [2].

44 Association of Mining and Exploration Companies, *Submission 14*, pp. 3–4; Lithium Australia NL, *Submission 44*, p. 1; Leigh Creek Energy Limited, *Submission 6*, p. 1.

45 Association of Mining and Exploration Companies, *Submission 14*, pp. 3–4.

46 Lithium Australia NL, *Submission 44*, p. 1.

47 BDO Australia, *Submission 58*, p. 9.

48 See, for example, Cochlear Limited, *Submission 28*, p. 2; Mr David Lamont, Chief Financial Officer, CSL Limited, *Committee Hansard*, 30 January 2019, p. 18; BDO Australia, *Submission 58*, p. 2.

2.49 In particular, Mr Brent Cubis, Chief Financial Officer of Cochlear Limited, highlighted the significant benefit the proposed increase would have for their business:

...I want to emphasise that it is absolutely critical that the cap on R&D tax incentive eligible expenditure is lifted to \$150 million as a bare minimum. Placing an arbitrary cap on expenditure simply encourages companies with globally mobile R&D capability to look at other options once that amount has been reached. Cochlear has just started to hit the \$100 million mark. In response to the cap increase announced in last May's budget, we brought R&D we were intending to conduct in one of our overseas offices back to Australia. Raising the cap will mean more jobs in Australia, more intellectual property created in Australia, more tax paid in Australia and huge spillover benefits for the innovation ecosystem. If the cap is not increased, we will need to review this decision and our future R&D program in that context.⁴⁹

2.50 Mr David Lamont, Chief Financial Officer of CSL Limited, also supported the proposed increase of the threshold to \$150 million.⁵⁰

2.51 In considering the increase to the expenditure threshold, AMEC noted that there is no change in the \$20 million annual aggregated turnover threshold:

It is noted that this threshold has not changed since the R&D Tax Incentive was introduced in 2011. Yet in the 2019 financial year the threshold for companies being able to access the base rate for the 27.5% corporate tax rate will be \$25 million. This is a clear inequity and should be rectified.⁵¹

R&D intensity calculation

2.52 Schedule 1 to the bill also seeks to introduce a new intensity premium for larger R&D entities—that is, for entities with an annual turnover greater than \$20 million. As noted in chapter 1, larger R&D entities are currently entitled to a 38.5 per cent non-refundable tax offset. The bill proposes to change this offset such that larger R&D entities would be entitled to an offset 'equal to their corporate tax rate plus marginal intensity premiums determined with reference to the R&D intensity of their R&D expenditure on an incremental basis'.⁵²

2.53 An entity's R&D intensity is calculated by dividing its expenditure on R&D activities (notional deductions) by its total expenses for that income year.⁵³ Treasury officials noted that this reflected the proposed method set out in the Review.⁵⁴

49 Mr Brent Cubis, Chief Financial Officer, Cochlear Limited, *Committee Hansard*, 30 January 2019, p. 2.

50 Mr David Lamont, Chief Financial Officer, CSL Limited, *Committee Hansard*, 30 January 2019, p. 18.

51 Association of Mining and Exploration Companies, *Submission 14.1*, p. 10.

52 Explanatory Memorandum, p. 17.

53 Explanatory Memorandum, p. 18.

2.54 Participants in the inquiry supported the intent of this measure, which aims to increase R&D additionality and spillovers, as well as ensuring the integrity of the system.

2.55 For example, Cochlear Limited outlined its support of this measure:

Cochlear supports the Government's policy objective of targeting the RDTI in a way that encourages 'additionality' and spill-over benefits rather than simply supporting business as usual activities. We also support the introduction of an 'intensity measure' as a reasonable means of achieving this outcome.⁵⁵

2.56 However, most participants raised significant concerns about the proposed intensity premium, considering it would likely add complexity, regulatory burden and uncertainty to the scheme.⁵⁶

2.57 The Business Council of Australia also acknowledged the bill's objective of increasing R&D additionality; however, it considered that 'under the proposed intensity measure, the tax benefit for many large companies will more than halve at a time when R&D expenditure is declining':

Furthermore, the proposed intensity measure is not neutral with respect to R&D spending across companies, generating arbitrary and probably unintended effects, contrary to the intent of the legislation. It will not give the same marginal incentive to conduct R&D in Australia as the existing scheme or across companies, purely because of a company's structure. For example, the proposed changes disadvantage very large companies that employ, operate, purchase materials and conduct R&D in Australia relative to companies that primarily conduct R&D. In other words, the new incentive structure rewards certain company structures, not necessarily R&D expenditure. Perversely, at the margin, this could discourage domestic production and employment because these costs would dilute R&D intensity and the rate of tax incentive. This could become yet another factor influencing business location and investment decisions.⁵⁷

2.58 Cochlear also recognised that the proposed intensity measure had the potential to disadvantage some other businesses.⁵⁸

2.59 HorizonOne Consulting pointed out that, under the proposed R&D intensity measure, a company group will need to have an intensity level greater than

54 Mr Gregory Derlacz, Senior Adviser, Individuals and Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, 16 November 2018, p. 53.

55 Cochlear Limited, *Submission 28*, p. 2.

56 See, for example, Association of Mining and Exploration Companies, *Submission 14.1*, p. 6; Chemistry Australia, *Submission 15*, p. 2; Deloitte, *Submission 18.1*, p. 3; Brickworks Limited, *Submission 20*, p. [2]; BioMelbourne Network, *Submission 21*, p. 4; BDO Australia, *Submission 58*, p. 2.

57 Business Council of Australia, *Submission 24*, p. 3.

58 Ms Brooke O'Rourke, Senior Government Affairs Manager, Cochlear Limited, *Committee Hansard*, 30 January 2019, pp. 1–3.

13.125 per cent to match the 8.5 per cent received from the first dollar of eligible R&D under the current provisions.⁵⁹ HorizonOne further explained:

The problem is compounded by the weak impact of moving to a higher R&D intensity bracket. As a simple example, if an R&D spend of \$1,000,000 gives you an R&D intensity equal to 2%, the \$1,000,000 attracts the 4% support. A spend of \$1,000,001 puts you in the next bracket involving the 6.5% support rate. However, you get a blended outcome where \$1,000,000 receives the 4% and only \$1 attracts the 6.5%. No-one we have spoken to has been able to articulate how this translates into a genuine incentive to lift your R&D intensity in the face of all the institutional factors described in this submission.⁶⁰

2.60 BSI Innovation and Michael Johnson Associates made similar observations, noting that the proposed intensity measures go beyond the 1–2 per cent threshold recommended by the Review; however, they also noted that a small number of companies would benefit from the change, given that only 55 per cent of companies currently accessing this element of the R&D tax incentive are likely to have an intensity of greater than 2 per cent.⁶¹

2.61 Swanson Reed also agreed that a minimum intensity premium of 4 per cent was a positive introduction; however, they also noted that this offset is less than half of the current 8.5 per cent offset.⁶²

2.62 Research Australia pointed out that the proposed intensity measure appeared to have the unintended consequence of discouraging non-R&D business investment in Australia:

By linking the R&DTI to the value of R&D as a percentage of total expenditure, the proposed measure not only provides an incentive to increase R&D, but an incentive to reduce other expenditure. One obvious way to do this is to retain R&D in Australia but move other expenditure, such as manufacturing, to other countries. It also acts as a disincentive to companies undertaking R&D in Australia to increase manufacturing in Australia, and to bring manufacturing on shore.⁶³

2.63 CSL raised similar concerns, noting that 'when used in conjunction with a sliding scale of benefits, [the intensity premium calculation] will have the unintended consequence of specifically and perversely disadvantaging businesses which conduct R&D and manufacture in Australia'.⁶⁴ CSL explained:

Companies which invest significantly in R&D but are also large Australian manufacturers and employers will have a lower 'intensity' compared to a

59 HorizonOne Consulting, *Submission 7*, p. 1.

60 HorizonOne Consulting, *Submission 7*, p. 2.

61 BSI Innovation Pty Ltd, *Submission 29*, p. 2; Michael Johnson Associates, *Submission 38*, p. 2.

62 Swanson Reed, *Submission 26*, p. 4.

63 Research Australia, *Submission 10*, pp. 11–12.

64 CSL Limited, *Submission 4*, p. 1.

company which only conducts R&D in Australia and manufactures offshore or, is engaged in an industry which does not have high raw material and production costs (for example digital and online).⁶⁵

2.64 Chemistry Australia suggested that the introduction of the intensity measure contained in the bill is likely to significantly disadvantage the chemistry sector which is typified by businesses that require large capital investment, have large input and running costs and which operate on very tight margins.⁶⁶

2.65 Mr Bob Mac Smith, Director and Co-founder of MSM Milling, a fully integrated oilseed crushing and refining operation located at Manildra NSW, considered that the 'expenditure intensity test makes this proposal highly discriminatory against agricultural processing, manufacturing and commodity type businesses such as MSM'.⁶⁷ Mr Mac Smith explained:

...our R&D investment percentage is massively diluted by our growing [raw grain input] cost. The intensity of our R&D is approximately two per cent if grain is included in our cost structure or around 14 per cent if it's measured against all expenses other than just our grain⁶⁸

2.66 Several other submitters also pointed out that because the new calculation relies on an entity's R&D expenditure as well as its total expenditure (which cannot be known until the end of the financial year), the incentive aspect of the measure is lost.⁶⁹ BioMelbourne Network explained:

This essentially removes all sense of an incentive to undertake additional R&D, as the offset will become more of a retrospective refund rather than a forward estimate of benefit. All sense of incentivising additional R&D activity will be lost and will not fulfil the policy objectives of encouraging additional R&D investment.⁷⁰

2.67 Brickworks Limited contended that the introduction of the intensity threshold in its current form would 'run counter to the objectives of creating a more efficient and consistent RDTI program':

While targeting R&D intensity is a sensible approach to achieving better 'bang for buck' in public R&D spend, the proposed legislation seeks to apply this methodology in a way that creates industry biases, risks unduly

65 CSL Limited, *Submission 4*, p. 1.

66 Chemistry Australia, *Submission 15*, p. 2.

67 Mr Bob Mac Smith, Director and Co-founder, MSM Milling Pty Ltd, *Committee Hansard*, 30 January 2019, p. 26.

68 Mr Bob Mac Smith, Director and Co-founder, MSM Milling Pty Ltd, *Committee Hansard*, 30 January 2019, p. 26.

69 See for example: Chartered Accountants Australia and New Zealand, *Submission 54*, p. 6; AusBiotech, *Submission 27*, p. 1; BioMelbourne Network, *Submission 21*, p. 4.

70 BioMelbourne Network, *Submission 21*, p. 4.

influencing business decision making and arbitrarily advantages certain sectors and corporate structures.⁷¹

2.68 Brickworks Limited and KPMG proposed that consideration should be given to excluding certain amounts from the 'total expenditure' figure included in the intensity calculation.⁷² KPMG also noted:

In terms of the overall RDTI policy direction, our fear is that the proposed intensity measure may accelerate the current negative trajectory in business expenditure on R&D, and that the 4% rate would not be sufficient to represent a genuine incentive to undertake additional R&D.⁷³

2.69 The Business Council of Australia and Glasshouse Advisory noted that 'although a small number of companies are likely to benefit (some only marginally) overall support for R&D will almost certainly fall'.⁷⁴ This is the case even with the proposed increase in the expenditure threshold to \$150 million. This is because large companies have a larger cost base which limits claimable R&D and R&D intensity. The Business Council of Australia suggested that 'for very large companies, the cap means they will be unable to exceed the 2 per cent threshold regardless of their R&D expenditure, resulting [in] a reduction in support'.⁷⁵

2.70 HorizonOne Consulting urged the committee to reconsider the intensity premium, contending that 'at 4% for most of the adherents, you won't be driving innovation behaviour. You will be driving companies out of the program'.⁷⁶

Collaboration premium

2.71 Several submitters noted that the collaboration premium proposed in Recommendation 2 of the Review was not included in the changes proposed in this bill, and suggested that it ought to be included through the redirection of the savings made from the other measures already included in the bill.⁷⁷ Specifically, some stakeholders suggested the funding of direct grants from the savings.⁷⁸

71 Brickworks Limited, *Submission 20*, p. 4.

72 Brickworks Limited, *Submission 20*, p. 4; KPMG, *Submission 8*, p. 1.

73 KPMG, *Submission 8*, p. 2.

74 Business Council of Australia, *Submission 25*, p. 3.

75 Business Council of Australia, *Submission 25*, p. 3; Glasshouse Advisory, *Submission 63*, p. 2.

76 HorizonOne Consulting, *Submission 7*, p. 2.

77 See for example: Research Australia, *Submission 10*, p. 13; Science & Technology Australia, *Submission 17*, p. 2; Business Council of Australia, *Submission 25*, p. 1; Cochlear Limited, *Submission 28*, p. 2; BSI Innovation, *Submission 29*, p. 1; Medicines Australia, *Submission 39*, p. [3]; University of Melbourne, *Submission 48*, p. 3; Universities Australia, *Submission 50*, p. 3; PricewaterhouseCoopers, *Submission 60*, p. 5. Australian Information Industry Association, *Submission 61*, pp. 6–7.

78 Mr Brent Cubis, Chief Financial Officer, Cochlear Limited, *Committee Hansard*, 30 January 2019, p. 2; Dr Andrea Douglas, Vice President, R&D Strategy and External Affairs, CSL Limited, *Committee Hansard*, 30 January 2019, p. 25.

2.72 Recommendation 2 of the Review proposed:

Introduce a collaboration premium of up to 20 per cent for the non-refundable tax offset to provide additional support for the collaborative element of R&D expenditures undertaken with publicly-funded research organisations.⁷⁹

2.73 The University of Melbourne noted that the value of research collaboration between industry and publicly funded research organisations is now widely recognised; and noted the Review's finding that collaborative R&D 'is considered to be more likely to produce spillovers, so adjusting the programme to encourage collaborative R&D could increase the programme's effectiveness.'⁸⁰

2.74 Further, Research Australia considered:

Much of the Government's focus in this area has been on increasing engagement with SMEs, whereas the above recommendation is focused on the larger companies that are eligible for the non-refundable R&D TI offset. The Government has not formally provided a response to this recommendation from the Review, but it seems likely that it was not adopted because it would increase rather than decrease R&D expenditure.⁸¹

2.75 The Business Council of Australia and Universities Australia both suggested that budget savings from the bill should be redirected into promoting innovation and stimulating business R&D.⁸² Universities Australia proposed:

The introduction of a premium rate to the RDTI for businesses that collaborate with universities and publicly funded research agencies would encourage business to access expertise and resources inside these institutions, which would have the effect of significantly increasing the spillovers associated with both public-sector and business R&D.⁸³

2.76 GSK also considered that the introduction of a collaboration premium could particularly incentivise more players from both industry academia to collaborate and continue to growth the pharmaceutical sciences sector in Australia.⁸⁴

Online hotel bookings

2.77 As noted in chapter 1, Schedule 5 to the Bill amends the *A new Tax System (Goods and Services Tax) Act 1999* (GST Act) to require offshore suppliers of rights or options to use commercial accommodation in the indirect tax zone (broadly

79 Mr Bill Ferris AC, Dr Alan Finkel AO, Mr John Fraser, *Review of the R&D Tax Incentive*, 4 April 2016, pp. 2–4.

80 University of Melbourne, *Submission 48*, p. 4.

81 Research Australia, *Submission 10*, p. 13.

82 Business Council of Australia, *Submission 25*, p. 1.

83 Universities Australia, *Submission 50*, p. 3.

84 GlaxoSmithKline Australia, *Submission 72*, p. 7.

Australia) to include these supplies in working out their GST turnover from 1 July 2019.⁸⁵

2.78 The Explanatory Memorandum (EM) notes that this measure includes the following exemption:

The amendments do not apply to supplies of rights to hotel accommodation that are merely facilitated by an offshore entity acting as an agent on behalf of a hotel. Under an agency arrangement the hotel is the supplier to the customer and, as such, has the obligation to account for the GST on the total amount paid by the customer.⁸⁶

Whether the offshore supplier is the agent of the hotel or a principal requires the consideration and balancing of various factors. A critical indicator of an agency arrangement is the requirement that the agent account to its principal for monies had and received on its behalf.⁸⁷

2.79 Mr Bede Fraser from the Department of the Treasury explained that the measure extends the GST to offshore sellers of hotel accommodation in Australia:

...thereby levelling the playing field between offshore and local sellers of hotel accommodation. The measure does this by removing an existing carve-out in the GST law that allows offshore sellers not to charge GST on their margins.⁸⁸

2.80 Mr Fraser also noted that during the Treasury consultation on this measure, the general feedback from stakeholders had been positive and that the states and territories had also unanimously supported the extension of the GST.⁸⁹

2.81 Mr Richard Munro from the Accommodation Association of Australia (AAoA), noted that the measure will not capture a number of large online travel agencies, as they operate their Australian businesses under the agency model—as opposed to the merchant/principal model.⁹⁰

2.82 In their submissions to the inquiry, Booking.com and Airbnb explained that this legislation will not have an impact on their businesses because they are online platforms and do not act as a principal in on-selling rights to commercial accommodation in Australia.⁹¹

85 Explanatory Memorandum, p. 84.

86 Explanatory Memorandum, p. 85.

87 Explanatory Memorandum, p. 85.

88 Mr Bede Fraser, Principal Adviser, Department of the Treasury, *Committee Hansard*, 31 January 2019, p. 34.

89 Mr Bede Fraser, Principal Adviser, Department of the Treasury, *Committee Hansard*, 31 January 2019, p. 34.

90 Mr Richard Munro, Chief Executive Officer, Accommodation Association of Australia, *Committee Hansard*, 31 January 2019, p. 5.

91 Airbnb, *Submission 73*, p. 1; Booking.com, *Submission 74*, p. 1.

2.83 Expedia Group, which operates both an agency model and a merchant model clarified in its submission that it is preparing for the proposed changes to GST set out in the bill. Expedia Group also noted that its agency model has been registered for GST in Australia from 1 July 2017, following the extension of GST to inbound intangible consumer supplies.⁹²

2.84 Mr Tim Dyce from the Australian Taxation Office confirmed that:

...for organisations that are already operating under an agency model, this measure will not apply to them because there is already a measure that applies to them. They are already charging, collecting and remitting GST on business-to-consumer transactions where they operate as an agency and have been since 1 July 2017.⁹³

2.85 Noting that online travel agencies operate either under an agency model or a merchant/principal model, Mr Dyce also confirmed to the committee that GST arrangements for the agency model were addressed in the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* and that this bill addresses the merchant/principal based approach.⁹⁴

2.86 The AAoA expressed its support for the intent of this measure; however, stated in its submission that it did not support the legislation in its current form and contended that 'the additional tax GST on accommodation bookings the legislation seeks to impose will fall on operators of accommodation businesses—not online travel agencies—making it a virtual bed tax'.⁹⁵ AAoA explained:

Accommodation operators do not have the same luxury of increasing their room-rates to cover the new bed tax impost for two reasons:

- Agreements between Australian accommodation operators and global, offshore-based online travel agencies state that Australian accommodation operators are not permitted to advertise on their own websites a cheaper room-rate than online travel agencies—this requirement is known as 'price parity'; and
- Increasing room-rates at traditional accommodation houses will push even more visitors to stay at Airbnb...⁹⁶

2.87 Mr Ramkumar from the Department of the Treasury noted that they had 'not seen similar stories in terms of passing on the GST to any others in [other recent GST] measures'.⁹⁷

92 Expedia Group, *Submission 75*, p. 4.

93 Mr Tim Dyce, Deputy Commissioner, Indirect Tax, Australian Taxation Office, *Committee Hansard*, 31 January 2019, p. 33.

94 Mr Tim Dyce, Deputy Commissioner, Indirect Tax, Australian Taxation Office, *Committee Hansard*, 31 January 2019, p. 30.

95 Accommodation Association of Australia, *Submission 62*, p. 2.

96 Accommodation Association of Australia, *Submission 62*, p. 7.

2.88 In addressing questions regarding the implications for competition in the accommodation sector, Mr Marcus Bezzi from the Australian Competition and Consumer Commission (ACCC) noted that if an online travel agency has considerable market power 'such that accommodation providers really don't have any choice about whether to use them, then, theoretically, they ought to be able to raise commissions in response to an increase in the GST'.⁹⁸ Mr Bezzi explained:

That is almost the definition of substantial market power. If they can do that, then Booking.com and Expedia have absolutely conclusively got substantial market power. So in a sense, if the tax goes ahead and that's what happens—that is, the commission goes up—that will be a demonstration of their substantial market power. If it doesn't happen then it doesn't mean they haven't got the substantial market power but we've got to look more closely.⁹⁹

2.89 Mr Bezzi also advised the committee that price parity provisions that are imposed by online travel agents are currently the subject of an ongoing ACCC investigation.¹⁰⁰

2.90 The Tourism and Transport Forum (TTF) also considered that the legislation would adversely affect overseas travel agents who sell tours into Australia. TTF noted that such agencies' brochures for 2019 had already been printed and that should the changes come into effect from 1 July 2019, they would need to re-print with updated pricing structures, or see their commissions reduced. TTF recommended that non-resident suppliers of inbound tours to Australia be exempt from the proposed amendments until 1 July 2020.¹⁰¹

Other matters raised

Schedule 4—thin capitalisation

2.91 Schedule 4 to the bill amends the ITAA 1997 to tighten Australia's thin capitalisation rules.

2.92 The Tax Justice Network Australia (TJN–Aus) supported this measure noting that 'artificially loading up debt is a key technique that multinational corporations use to shift profits out of the jurisdictions where they are doing business to low tax

97 Mr Prashant Ramkumar, Analyst, Department of the Treasury, *Committee Hansard*, 31 January 2019, p. 35.

98 Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division, Australian Competition and Consumer Commission, *Committee Hansard*, 31 January 2019, p. 21.

99 Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division, Australian Competition and Consumer Commission, *Committee Hansard*, 31 January 2019, p. 21.

100 Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division, Australian Competition and Consumer Commission, *Committee Hansard*, 31 January 2019, p. 20.

101 Tourism and Transport Forum, *Submission 70*, p. [1].

jurisdictions to avoid paying the tax they should be paying in the place they are actually doing business.' TJN–Aus also commented that:

The TJN-Aus is concerned that the thin capitalisation safe harbour has been misused by corporations as giving them an acceptable limit of tax avoidance they are allowed to engage in through artificial debt loading through intra-party loans. In other words, the corporation makes a loan it does not need, as the financing in question could be provided through equity, from a low tax jurisdiction for the primary or sole purpose of avoiding paying tax in Australia through being able to claim interest repayments to itself as a tax deduction. In such circumstances the law should enable the ATO to actively investigate such intra-party loans and deny the deduction where a purpose of the intra-party loan is tax avoidance, even when the loan is below the thin capitalisation safe harbour. If this is not already possible under the general anti-avoidance rule, Part IVA of the Income Tax Assessment Act, then amendments should be made for this to happen.¹⁰²

Schedule 6—luxury cars

2.93 Schedule 6 to the bill removes liability for luxury car tax from cars that are re-imported following service, repair or refurbishment overseas.

2.94 No comments were made in relation to this measure.

Schedule 7—significant global entity

2.95 Schedule 7 to the bill amends the definition of 'significant global entity' in the ITAA 1997 so that it:

- applies to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company; and
- is not affected by the exceptions to requirements applying to consolidated or materiality rules in the applicable accounting rules.¹⁰³

2.96 TJN–Aus supported this measure, particularly the extension of the definition of 'significant global entity', noting that it will ensure that the definition will apply consistently to all types of entities.¹⁰⁴

2.97 TJN–Aus also noted its support for the amendments to require that country-by-country reporting entities need to include information on the other members of any country-by-country reporting group of which the entity is a member for the purposes of the country-by-country reporting provisions. TJN–Aus also proposed that global country-by-country reporting be extended to all multinational entities with over \$250 million in revenue.

102 Tax Justice Network Australia, *Submission 13*, p. 1.

103 Explanatory Memorandum, p. 91.

104 Tax Justice Network Australia, *Submission 13*, pp. 1–2.

Committee view

R&D tax incentive (schedules 1–3)

2.98 The committee notes the findings of the 2016 Review of the R&D tax incentive, in particular that the R&D tax incentive program falls short of meeting its stated objectives of additionality and spillovers. On balance the committee supports this bill in its intent to address this issue.

2.99 The committee was pleased to hear that the R&D tax incentive program had had a positive impact on many Australian businesses and researchers. It notes that in the main, participants in the inquiry supported the intent of the measures in the bill relating to the R&D tax incentive; particularly, the importance of ensuring the integrity of the system, making sure it is well targeted and cost effective.

2.100 The committee acknowledges the concerns voiced during the inquiry that some R&D entities affected by the bill have expressed about the retrospective application of the bill, which may have the potential to disrupt investments in R&D activities that have already been scheduled. In particular, the committee considers that some R&D entities affected by the introduction of the \$4 million cap on the refundable tax offset have not had enough time to plan for the changes proposed in the bill, given that their investments have been in train for some time prior to the announcement of this measure. Nevertheless, the committee is also cognisant that governments, in ensuring accountability of taxpayer funds, need to constantly monitor, examine and strengthen such programs and industry as partners in such schemes also need to remain alert to the need for improvements.

2.101 On examination of the proposed \$4 million cap on the refundable tax offset, the committee believes that it would benefit from some finessing to ensure that R&D entities that have already made investment commitments are not impeded unintentionally.

2.102 The committee also notes the concerns raised by participants in relation to the calculation of the proposed intensity premium. The committee shares participants' concerns that this intensity measure may have unintended consequences for larger R&D entities undertaking eligible R&D activities. In particular, the committee notes the possibility that businesses that manufacture in Australia may be disadvantaged compared with businesses that manufacture overseas. Further, the committee notes that the proposed intensity measure may also disadvantage those R&D entities that require large capital investment and operate on small margins.

2.103 The committee considers that, as currently drafted, the proposed intensity measure has possible unintended consequences that may disadvantage a range of Australian R&D entities. Therefore, the committee agrees that the intensity measure should be re-examined in order to ensure that Australian businesses are not unfairly disadvantaged.

Schedules 4, 5, 6, and 7

2.104 The committee notes the broad support for schedules 4, 6, and 7 to the bill and considers that these measures will help ensure that multinationals pay their fair share of tax in Australia.

2.105 The committee agrees that Australia now has some of the strongest anti-tax-avoidance rules in the world; and that ensuring the integrity of Australia's taxation laws is critical to ensuring an equitable society. The committee supports programs delivered through the tax system which result in substantial returns for taxpayers, and which demonstrate the government's commitment to continually strengthening our tax system.

2.106 The committee agrees that schedule 5 to the bill which will extend the GST to offshore suppliers of accommodation in Australia will level the playing field by ensuring the same tax treatment of Australian hotel accommodation, whether booked through a domestic or offshore company.

2.107 The committee notes concerns that the measure does not capture those online travel agencies that operate under an agency model; however, is satisfied that these businesses are captured under the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*, which came into effect on 1 July 2017.

Conclusion

2.108 The committee supports schedules 4–7 of the bill.

2.109 The committee notes that the ACCC is currently conducting a review of rate parity clauses by online travel agencies. In light of the evidence presented to the inquiry, the committee encourages the ACCC to expedite its inquiry.

2.110 The committee recognises the need for the government to maintain public confidence in the integrity and financial sustainability of the R&D tax incentive. This confidence promotes business innovation across the economy and allows the scheme to meet its stated objectives of additionality and spillovers. Further, the committee recognises that, while the R&D tax incentive in its current form is falling short of these aims and objectives, there is a need to reform the R&D tax incentive. On the weight of evidence presented, the committee considers that the bill should not proceed until there is further consideration of the R&D tax incentive measures.

Recommendation 1

2.111 The committee recommends that the Senate defer consideration of the bill until further examination and analysis of the impact of schedules 1–3 is undertaken. In particular, the committee recommends that:

- **the approach to the cap on the refundable portion of the Research and Development (R&D) tax incentive is refined, noting investment decisions already taken; and**
- **the formula for R&D intensity is refined, noting inherent differences in R&D intensity across industries and impacts on businesses with large operating costs.**

**Senator Jane Hume
Chair**

Appendix 1

Submissions, answers to questions on notice, and additional documents

Submissions

1. 2cloudnine
2. MYOB
3. Chamber of Minerals and Energy of Western Australia
4. CSL
5. PeopleStart
6. Leigh Creek Energy Limited
7. HorizonOne Consulting
8. KPMG
9. Djaru Contracting Pty Ltd
10. Research Australia
11. Carnegie Clean Energy
12. 99 Strategies
13. Tax Justice Network Australia
14. Association of Mining and Exploration Companies Inc (AMEC)
15. Chemistry Australia
16. RSM Australia Pty Ltd
17. Science & Technology Australia
18. Deloitte
19. Wunan Foundation
20. Brickworks Limited
21. BioMelbourne Network
22. Victorian Chamber of Commerce and Industry
23. Professor Damien Giurco
24. Business Council of Australia
25. WA Government
26. Swanson Reed
27. AusBiotech

28. Cochlear Ltd
29. BSI Innovation Pty Ltd
30. Maptek
31. Rip Curl
32. Uniseed
33. RJED Consulting Pty Ltd
34. W.F. Montague Pty Ltd
35. ATC Williams
36. Northern Minerals
37. Xenith IP Group Limited
38. Michael Johnson Associates
39. Medicines Australia
40. AVCAL
41. Fastbrick Robotics Limited
42. Parkway Minerals NL
43. Focus Valves Pty Ltd
44. Lithium Australia NL
45. VSPC Ltd
46. Anglo American
47. Digivizer
48. University of Melbourne
49. Dr Shumi Akhtar, University of Sydney
50. Universities Australia
51. Meriton Group
52. Newmont Australia Pty Ltd
53. Corporate Tax Association
54. Chartered Accountants Australia and New Zealand
55. Clover Corporation Ltd
56. Wastech Engineering Pty Ltd
57. Future Smart Technologies
58. BDO Australia
59. MSM Milling Pty Ltd
60. 60 PricewaterhouseCoopers

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61. Australian Information Industry Association
 62. Accommodation Association of Australia
 63. Glasshouse Advisory
 64. 64 GSM Consulting Pty Ltd
 65. Confidential
 66. Confidential
 67. Confidential
 68. Confidential
 69. Confidential
 70. Tourism & Transport Forum
 71. The Curious Thing
 72. GlaxoSmithKline Australia
 73. airbnb
 74. Booking.com
 75. Expedia Group

Answers to questions on notice

1. BioMelbourne Network: Answers to questions taken on notice from a public hearing on 16 November 2018 (received 5 December 2018).
2. AusBiotech: Answers to questions taken on notice from a public hearing on 16 November 2018 (received 5 December 2018).
3. Australian Taxation Office: Answers to questions taken on notice from a public hearing on 16 November 2018 (received 11 December 2018).
4. Australian Taxation Office: Answers to written questions taken on notice (received 11 December 2018).
5. Treasury and Department of Industry, Innovation and Science: Answers to questions taken on notice from a public hearing on 16 November 2018 (received 12 December 2018).
6. Treasury: Answers to questions taken on notice from a public hearing on 31 January 2019 (received 4 February 2019).
7. Treasury: Answers to questions taken on notice from a public hearing on 31 January 2019 (received 4 February 2019).
8. Treasury: Answers to questions taken on notice from a public hearing on 31 January 2019 (received 4 February 2019).
9. Tourism Accommodation Australia: Answers to questions taken on notice from a public hearing on 31 January 2019 (received 4 February 2019).

10. Australian Taxation Office: Answers to questions taken on notice from a public hearing on 31 January 2019 (received 5 February 2019).
11. Australian Competition and Consumer Commission: Answers to questions taken on notice from a public hearing on 31 January 2019 (received 5 February 2019).

Additional Hearing Information

1. Additional information provided by Universities Australia at a public hearing in Canberra on 16 November 2018: *Clever Collaborations: The Strong Business Case for Partnering With Universities*.

Appendix 2

Public hearings

Canberra, 16 November 2018

Members in attendance: Senators Hume, Ketter, David Smith, Storer.

BAUK, Mr George, Managing Director/Chief Executive Officer, Northern Minerals

BOWSKILL, Mr Andrew, Manager, Research and Industry Policy, Medicines Australia

CALDER, Mr Wayne, General Manager, Business Environment Branch, Strategic Policy Division, Department of Industry, Innovation and Science

CARROLL, Mr Stephen, Director, RSM Australia

CHIROIU, Ms Lorraine, Chief Executive Officer, AusBiotech

COGGIN, Mr Stuart, Group Taxation Manager Australia and New Zealand, GlaxoSmithKline

DAY, Mr Will, Deputy Commissioner, Private Groups and High Wealth Individuals, Australian Taxation Office

DE SOMER, Ms Elizabeth, Chief Executive Officer, Medicines Australia

DERLACZ, Mr Gregory, Senior Adviser, Individuals and Indirect Tax Division, Revenue Group, Department of the Treasury

DUCHINI, Mr Sergio, Partner, Global Investment and Innovation Incentives (Gi3); Codirector, Deloitte

EVANS, Dr Krystal Jacqueline, Chief Executive Officer, BioMelbourne Network

EWING, Mr Robert, Acting Division Head, Tax Analysis Division, Revenue Group, Department of the Treasury

FRASER, Mr Bede, Principal Adviser, Tax Analysis Division, Revenue Group, Department of the Treasury

JACKSON, Ms Catriona, Chief Executive, Universities Australia

JACOBS, Mr Martin, Assistant Commissioner, Case Leadership and Technical Excellence, Private Groups and High Wealth Individuals, Australian Taxation Office

LANSDOWN, Ms Anne-Marie, Deputy Chief Executive, Universities Australia

LEE, Mr Bernard, Director, Policy and Regulation, Chemistry Australia

MacTIERNAN, the Hon. Alannah, Minister for Regional Development; Minister for Agriculture and Food; and Minister assisting the Minister for State Development, Jobs and Trade, Western Australian Parliament

MULDER, Ms Joanne, General Manager, RDTI Program, Industry Capability and Research Division, Department of Industry, Innovation and Science

PURSER, Ms Nicola, Partner, BDO Australia

RAHMAN, Ms Kishwar, General Manager, Policy and Advocacy, Australian Information Industry Association

READ, Mrs Samantha, Chief Executive Officer, Chemistry Australia

ROSS-GOWAN, Mr Ian, Adviser (Michael Johnson Associates), Australian Information Industry Association

TRUST, Mr Ian, Executive Chairperson, Wunan Foundation

WAKEMAN, Mr Graham, Partner, BDO Australia

WILSON, Mr David, General Manager, Commercialisation Policy Branch,
Department of Industry, Innovation and Science

Melbourne, 30 January 2019

Members in attendance: Senators Hume, Ketter, Kim Carr.

BAKEWELL, Mr Robert, Chief Financial Officer, Brickworks Limited

BAXTER, Mr Damien, Group Tax, Risk and Internal Audit Manager, Brickworks Limited

CUBIS, Mr Brent, Chief Financial Officer, Cochlear Limited

DOUGLAS, Dr Andrea, Vice President, R&D Strategy and External Affairs, CSL Limited

HORDERN, Mr Brad, Executive General Manager, Supply Chain, DuluxGroup Limited

KLUKTEWICZ, Mr Wladyslaw(Wally), Group Corporate Affairs and IR Manager, Brickworks Limited

LAMONT, Mr David, Chief Financial Officer, CSL Limited

MAC SMITH, Mr Bob, Director and Co-founder, MSM Milling Pty Ltd

O'ROURKE, Ms Brooke, Senior Government Affairs Manager, Cochlear Limited

PEARCE, Mr Warren, Chief Executive Officer, Association of Mining and Exploration Companies

ROULSTONE, Dr Brian, Technical Director, DuluxGroup Limited

SHORT, Mr Graham, Deputy Chief Executive Officer, Association of Mining and Exploration Companies

SIMPSON, Ms Kimberley, Head of Group Tax, Cochlear Limited

WALTERS, Miss Lisa, Corporate Affairs Manager, DuluxGroup Limited

Melbourne, 31 January 2019

Members in attendance: Senators Hume, Ketter.

BEZZI, Mr Marcus, Executive General Manager, Specialised Enforcement and Advocacy Division, Australian Competition and Consumer Commission

DYCE, Mr Tim, Deputy Commissioner, Indirect Tax, Australian Taxation Office

FRASER, Mr Bede, Principal Adviser, Department of the Treasury

HOLLIS, Mr Dougal, General Manager, Victoria, Tourism Accommodation Australia

JACOBS, Mr Martin, Assistant Commissioner, Technical Excellence Services, Private Groups and High Wealth Individuals, Australian Taxation Office

McKEAN, Mr Cameron, Deputy General Manager, Substantial Lessening of Competition Unit, Australian Competition and Consumer Commission

McKENNA, Mr Brendan, Principal Adviser, Corporate and International Tax Division, Department of the Treasury

MUNRO, Mr Richard, Chief Executive Officer, Accommodation Association of Australia

RAMKUMAR, Mr Prashant, Analyst, Department of the Treasury

ROFF, Ms Kate, Assistant Commissioner, Indirect Tax Legal Assurance, Australian Taxation Office

WOOD, Mr Greg, Manager, Corporate and International Tax Division, Department of the Treasury

ZIRNSAK, Dr Mark, Spokesperson, Tax Justice Network Australia

