



**AusBiotech response to a 'question on notice' -
*Treasury Laws Amendment (Making Sure
Multinationals Pay Their Fair Share of Tax in
Australia and Other Measures) Bill 2018***

To: Senate Standing Committees on Economics
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5 December 2018

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Introduction

AusBiotech was pleased to provide evidence at the Senate Inquiry with the appearance of its CEO, Lorraine Chiroiu on 16 November 2018. AusBiotech welcomed the Inquiry into the Bill as it is in its view seeking to seriously reduce the R&D Tax Incentive (RDTI) and AusBiotech has urged the delay of the reform legislation until the details, mechanics and negative impacts are better understood and can be mitigated.

While Ms Chiroiu did not make a comment about the integrity measures in her prepared remarks, nor did AusBiotech in its submission, this submission responds to a question on notice about integrity measures:

“CHAIR: So you think that the current RDTI is well targeted and should remain as it is?

Ms Chiroiu: I think that there are some integrity measures that can be addressed.

CHAIR: Could you tell us what they are?

Ms Chiroiu: Yes. Would you be okay with me taking that on notice?

CHAIR: Absolutely” (p.40)

Integrity measures and the RDTI

The integrity of the RDTI-related legislation is an important component of a robust, equitable and high performing taxation system that both ensures R&D claims are legitimate and support a thriving R&D sector.

However, it should also be noted that of the breadth of integrity measures announced in the May 2018 Federal Budget (noted below), those about which AusBiotech wishes to comment do not form part of the legislation before the Parliament.

The May 2018 Federal Budget included moves to improve the integrity of the RDTI. The related fact sheet noted:

“Although the majority of taxpayers do the right thing, some claimants, spread across all industry sectors, have engaged in behaviour such as incorrect self-assessment of eligible R&D activities, exaggerating their expenditure claims, ‘pushing the boundaries’ of the interpretation of the R&D definition and engaging in other forms of non-compliance.

The Government will implement a series of compliance, enforcement and administration changes to improve the integrity of the R&DTI. This will help maximise the returns to the Australian community from the investment of public money in the R&DTI.

- Integrity: strengthening anti-avoidance rules in the tax law so the ATO can ensure taxpayers do not avoid paying their fair share of tax by using tax schemes involving the program;
- Enforcement: additional resourcing so the Government can help ensure that ineligible R&D claims are denied;
- Transparency: publishing company names claiming the R&DTI and the amounts of R&D expenditure they have claimed, to improve public accountability for R&D claimants;
- Guidance: enabling Innovation and Science Australia to produce public findings similar to the ATO, and provide more effective, binding guidance on the scope of

what is eligible R&D. This will help ensure taxpayers do not unintentionally misinterpret the meaning of the law; and

- Administration: imposing a three month limit on extensions of time available from when applications, registrations and reviews are due.”

While we are not aware of any specific concerns relating to incorrect self-assessment in the biotechnology sector, we broadly welcome any measures to strengthen integrity by providing further clarity and certainty for claimants.

Specifically, we support better resourcing and enforcement and further guidance for all sectors so that support to eligible R&D can be preserved. This is needed to reduce uncertainty that currently exists regarding the RDTI. In this context we agree with the proposal to enable Innovation and Science Australia (ISA) to produce public findings similar to the ATO, and provide more effective, binding guidance on the scope of what is eligible R&D.

However, we would ask that ISA be appropriately resourced with the expertise to be able to make assessments and findings about technologies in life sciences. This area is by nature ever-evolving in terms of new technologies in development, which pushes the boundaries of what is known and how it may be categorised.

Already, we hear anecdotes from companies about issues such as:

- An advanced overseas finding is rejected despite the fact there is no known place within Australia to conduct the required toxicology study;
- A clinical trial was rejected from eligibility on the grounds that it does not constitute an experiment and the outcome is known, despite the fact that the technology cannot seek regulatory approval until it has evidence of safety and efficacy arising from such a clinical trial, which is needed because the outcome is not known.

If issues like these could be overcome, the “advanced finding” process that is already in place provides an excellent option to enable companies to have certainty in advance of investment commitment.

We would also welcome written industry-specific guidance that goes into greater detail than the guidance currently available, for the same reason as noted above.

A key issue for the sector regarding the proposed bill and ongoing discussion of the RDTI is the ongoing uncertainty it has created. Integrity measures that help create certainty and reduce false R&D claims are welcomed, but this needs to be done in a way that does not retard developments in the life sciences industry. AusBiotech is happy to provide further support to help ensure implementation of any integrity measures achieves the intended goals.