



TA 2015/3 - Accessing the R&D Tax Incentive for ineligible broadacre farming activities

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This Alert was jointly developed with AusIndustry.

The Research and Development (R&D) tax incentive is jointly administered by Innovation Australia (supported by AusIndustry) and the ATO. AusIndustry has responsibility for assuring the eligibility of R&D activities while the ATO has responsibility for R&D tax offset claims under the incentive.

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Australian Government

Australian Taxation Office

**Department of Industry,
Innovation and Science**



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Taxpayer Alert

TA 2015/3

Accessing the R&D Tax Incentive for ineligible broadacre farming activities

Alerts provide a summary of our concerns about new or emerging higher risk tax or superannuation arrangements or issues that we have under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that we accept or endorse the arrangement or variation, or the underlying tax consequences.

Refer to [PS LA 2008/15](#) for more about Alerts. See [Alerts](#) issued to date.

Description

The ATO and AusIndustry are reviewing arrangements where primary producers involved in broadacre farming are claiming the R&D Tax Incentive for the cost of fertilisers and other treatments (soil improvers) where a significant part (or all) of the expenditure that is incurred relates to 'business as usual' farming activities and not to R&D activities.

In a typical arrangement:

- A primary producer registers an activity for the R&D Tax Incentive and claims that the activity is for the treatment of all or a large part of a farming property with soil improvers.
- Typically:
 - The entity purchases soil improvers, including fertilisers, microbes, and organic and other treatments. The soil improvers are either established products or products under development by another, usually unrelated, entity.
 - The soil improvers are applied across the entire property or a large part of it, in some cases up to thousands of hectares, whereas the treatment is only evaluated in respect of smaller specific parts of the property.
- The entity claims a tax offset under the R&D Tax Incentive for expenses including the cost of the soil improvers.
- In some cases, one or more companies may be established for the sole purpose of

facilitating the claiming of the tax offset, and the company may lease the farming property for a nominal value.

What are the ATO and AusIndustry's concerns?

We are concerned that entities involved in this arrangement are attempting to access the R&D Tax Incentive for expenditure related to normal business rather than eligible R&D activities.

A number of registered activities have been reviewed by Innovation Australia, and found to be ineligible activities for the purposes of claiming the R&D Tax Incentive. Innovation Australia's reasons include:

- The activities lacked the 'systematic progression of work' (which requires a hypothesis, experiment, observation and evaluation leading to logical conclusions).
- The activities involved the use of established products and existing organic treatment methodologies. A competent professional could have known or worked out the outcome of using the soil improvers without conducting an experiment.
- The activities claimed did not have a significant purpose of generating new knowledge.
- The size of the farming area to which the soil improvers were applied was excessive relative to the number of samples taken. The scale of the activities is more consistent with commercial production than the generation of new knowledge.
- Entities may have relied on R&D undertaken by or for another party, rather than carrying on their own R&D activity. The onus is on taxpayers to show that they are carrying on their own R&D activity.

We are concerned that other entities in the farming industry may be inappropriately claiming the R&D Tax Incentive under similar circumstances.

Although the arrangement described above concerns the use of purchased soil improvers across all, or substantially all, of a farming property, we also have concerns that some entities in the farming industry may be encouraged to claim the R&D Tax Incentive for other types of expenditure that relates to their normal business activities and which does not qualify for the R&D Tax Incentive. While legitimate R&D activities in the farming industry are to be encouraged, taxpayers in the industry need to be alert to the fact that normal business expenditure is not eligible for the R&D Tax Incentive. Potential R&D activities should be evaluated against the relevant criteria to ensure claims are eligible.

For more information, refer to [AusIndustry](#) or this [ATO fact sheet about the R&D Tax Incentive](#).

What are we doing?

Innovation Australia has reviewed the registered activities of certain entities and issued findings that the activities are ineligible for the R&D Tax Incentive.

The ATO and AusIndustry are working closely on this arrangement and have contacted entities who we believe may have entered into this type of arrangement to share our concerns.

The ATO and AusIndustry will monitor registrations for activities that are similar to those described in this Alert and will conduct compliance activities where appropriate. AusIndustry is developing a Specific Issue Guidance product to assist taxpayers engaged in the farming industry, and their accountants and advisors, to correctly identify and document eligible R&D activities in that industry.

What should you do?

If you are contemplating entering into this type of arrangement, you may want to apply to AusIndustry for a [finding](#) about your eligibility for the R&D Tax Incentive or seek independent professional advice.

If you have entered into this type of arrangement, or have otherwise claimed the R&D Tax Incentive in relation to your normal business activities, you may want to seek independent professional advice, make a [voluntary disclosure](#) to the ATO or [amend](#) your tax return.

Penalties may apply to participants and promoters of this type of arrangement. Registered tax agents involved in the promotion of this type of arrangement may be referred to the Tax Practitioners Board to consider whether there has been a breach of the *Tax Agent Services Act 2009*.

Do you have information?

To provide information about this or another arrangement or a promoter of this or another arrangement:

- phone us on **1800 177 006** (after the initial messages, wait for the 'Taxpayer Alert' option then press 1), or
- complete the [ATO Tip-Off Form](#)

References

Subject References:

AusIndustry
broadacre farming
primary production
research and development activities
research and development expenditure
research and development tax incentive
research and development tax offset

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