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28 September 2026

Dear Sir/Madam,

Better targeting the Research and Development Tax Incentive – Exposure Draft

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 176,000 members in over 100 countries and regions. We make this submission in response to the Exposure Draft released on 11 September 2026 relating to **Better targeting the Research and Development Tax Incentive – Exposure Draft** (ED).

Executive summary

CPA Australia supports the policy objective of better targeting the Research and Development Tax Incentive (RDTI) to encourage additional, high-quality business research and development (R&D), while maintaining the integrity and sustainability of the program. We suggest that some aspects of the ED may benefit from further refinement to avoid unintended consequences for early-stage, capital-intensive and long-horizon innovators, as well as mature Australian businesses undertaking significant technology transitions, product redevelopment and process transformation. In particular, the proposed 10-year refundability limit, the use of 'carrying on an enterprise' as a start day, and the extension of the test to connected entities and affiliates will, in combination, deny the refundable offset to businesses that are pre-revenue, loss-making and undertaking genuine R&D.

We recommend that Treasury refine the draft legislation to ensure the refundable offset remains available to genuine innovators, while addressing integrity risks through more targeted rules. This could include alternatives to a strict age-based test, such as a cap on the refundable component or a limit on the number of years an entity may access refundability. We also encourage Treasury to retain the current treatment of core and supporting R&D activities, unless any replacement framework can be shown to be clearer, more administrable and less likely to increase disputes. The proposed increase in the maximum expenditure threshold to $200 million and the reduction in the R&D intensity threshold to 1.5 per cent are welcome, but the intensity calculation should be reviewed so that the capped numerator does not artificially dilute the intensity rate as total group expenses increase. We also recommend that Treasury review the interaction between the increased refundable offset turnover threshold and the grouping rules in Subdivision 328-C, as substantial venture capital, private equity or multinational ownership structures may continue to deny refundable support to genuine early-stage Australian R&D entities.

In our view, these refinements would better align the measure with its stated policy intent and help avoid discouraging investment in sectors with long commercialisation timelines, including clean energy, critical minerals, advanced manufacturing, defence, quantum technology and other deep-tech industries, while preserving the sector-neutral design of the RDTI. We also note that, because the measures are proposed to apply to income years commencing on or after 1 July 2028, an R&D entity could lose access to the refundable offset immediately

on commencement with no transitional period, due to it or an affiliate having conducted an enterprise up to ten years prior. We recommend that transitional relief be provided for entities already registered under the program.

Key comments and recommendations:

We support the policy objective of better targeting the RDTI and consider amendments to the draft legislation to minimise unintended impacts on genuine early-stage, mature and long-horizon innovators. However, the Treasury should:

- Consider alternatives to a strict age-based refundability threshold, including a cap on the refundable component or a limit on the total number of years an entity may access refundability.
- Consider removing proposed subsection 355-100(6), or replacing it with a targeted successor rule, so that ordinary investors, founders, affiliates and group members do not inadvertently determine an R&D entity's start day.
- Consider replacing the 'carrying on an enterprise' test with a clearer and more administrable test based on the R&D entity's incorporation date, subject to appropriate anti-avoidance or successor rules.
- Clarify the operation of table item 1A, including its interaction with item 2, the anniversary year and the treatment of first R&D registration.
- If a time limit for refundability is retained, consider extending the 15-year period beyond therapeutic goods to other sectors with similarly long development and commercialisation pathways.
- Preserve the sector-neutral design of the RDTI and avoid creating different outcomes for comparable R&D activities based solely on industry classification.
- Retain the current treatment of core and supporting R&D activities unless any replacement framework can be shown to be clearer, more administrable and less likely to increase compliance costs or disputes.
- Address integrity and fiscal sustainability concerns through clearer expenditure rules, a stronger nexus to eligible R&D, objective apportionment rules and optional safe harbours.
- Review the R&D intensity calculation so that the $200 million expenditure cap does not artificially dilute the intensity rate as group expenses increase, and ensure the interaction with Subdivision 328-C does not undermine the increased refundable offset turnover threshold.

Please refer to Appendix A for our detailed comments. If you have any queries, contact Jenny Wong, Tax Policy Lead on jenny.wong@cpaaustralia.com.au or Bill Leung, Tax Technical Advisor on bill.leung@cpaaustralia.com.au.

Yours sincerely,

Jenny Wong
Tax Policy Lead

Appendix A

This appendix sets out CPA Australia's detailed comments and recommendations on the ED legislation.

1. Proposed refundability start day

1.1 Premature triggering through 'carrying on an enterprise'

Under proposed table item 1A of the ED, the 10-year refundability clock commences on the earlier of the day the R&D entity (or a connected/affiliated entity) first started 'carrying on an enterprise' or first registered R&D activities. The effect of this is that an R&D entity with aggregated turnover below $50 million ceases to be entitled to the refundable offset once a day in the income year falls on or after the tenth anniversary of that start date, although it retains the higher offset rate on a non-refundable basis.

- *The problem*: Early-stage deep-tech, clean-energy, and hardware ventures often exist as operational or holding entities for years, undertaking feasibility, corporate setup, or commercial groundwork, i.e., long before formal R&D programs commence.
- *Impact*: The 10-year clock will often expire before the company has reached revenue generation and while it is still actively conducting capital-intensive R&D, thereby reducing access to important cash-flow support. A non-refundable offset has no cash value for an entity in a sustained tax loss position and carried-forward offsets may be lost, for example, where the company fails the continuity of ownership test on a subsequent capital raising.

1.2 Unintended impacts on group restructures, affiliates and investors

Under proposed subsection 355-100(6), the start day calculation incorporates entities 'connected with' or affiliated with' the R&D entity.

- *The problem*: If an established Australian business or foreign parent incorporates a new subsidiary to commercialise a novel technology, the new entity inherits the parent's historical operating start day.
- *Impact*: A newly incorporated spinoff could be unable to access the refundable offset from the outset, which may adversely affect ordinary corporate restructures and joint ventures.

2. Ten-year age cap and sectoral distortions

2.1 Long-horizon technologies may lose refundable support too early

Capital-intensive sectors, such as quantum computing, advanced manufacturing, synthetic biology, critical minerals and clean technology, often require 10 to 15 years to achieve commercial revenue. The proposed 10-year refundability limit may also affect mature Australian businesses that undertake significant technology transitions, product redevelopment programs and process transformation initiatives well beyond their first decade of operation. Moving these entities to a non-refundable offset position at year 10 removes access to cash refunds for loss-making firms at a critical stage of development. We recommend that Treasury consider alternative approaches, including a cap on the cash-back component of the refundable offset or limiting the total number of years an entity can access refundability, rather than imposing a strict age-based threshold.

2.2 The therapeutic goods exception should not create arbitrary sectoral outcomes

While proposed section 28EA and subsections 355-100(4) – (5), supported by findings under proposed section 28EA of the IRD Act, extend the period to 15 years for therapeutic goods, this distinction may create different outcomes across sectors with comparable development and commercialisation timelines. Digital health platforms, non-therapeutic medical devices, agricultural biologicals and clean technologies may face similar commercialisation challenges but would not receive equivalent treatment. In our view, any sector-specific carve-out should be carefully tested against the RDTI's longstanding sector-neutral design, which has generally avoided making judgements about the relative merit of different forms of eligible R&D. Sector-specific concessions and exclusions may risk moving the program away from that principle by producing different outcomes for otherwise comparable R&D activities based solely on industry classification.

3. Detailed comments on table item 1A and proposed subsection 355-100(6)

- Subsection (6) appears to import the history of investors, founders and group members, even where they do not conduct, fund or have a relevant interest in R&D. Because item 1A is only invoked where aggregated

turnover is less than $50 million, the companies it affects are, by definition, members of small groups. The aggregated turnover test in the same table already performs the relevant grouping function. In our view, subsection (6) may not add significant integrity protection beyond that turnover test. It may also operate inconsistently with other measures released by Treasury for consultation on the same day, including **tax incentives for venture capital schemes** and the **Innovative Business CGT Concession**, by removing the refundable offset from early-stage companies at the point institutional capital is introduced.

- Prior business experience may, in some cases, support rather than undermine the prospects of successful commercialisation.
- Regardless of the intended policy outcome, 'carrying on an enterprise' is a broad threshold and may be difficult to apply in practice. There are three key consequences: first, the start day may precede the incorporation of the R&D entity, potentially by many years; second, because commencement activities may count, the start day may depend on a factual assessment of when preparatory steps began; and third, the concept has no Australian nexus, meaning offshore activity by an offshore holder may determine the start day. If the policy intent is to confine the refundable offset to young companies, the date of incorporation may provide a clearer and more administrable test. There is precedent for this approach in subsection 83A-33(3) of the ITAA 1997.
- Because subsection (6) contains no temporal anchor, the rule may be open to restructuring outcomes. For example, an entity that ceases to be connected before the relevant income year may fall outside the test. The provision may therefore be broader than necessary for ordinary claimants while not fully addressing the mischief it is presumably designed to target.
- It would be helpful to clarify whether a historical company associated with a founder, including one that was incorporated many years ago and has long since ceased trading, should affect the refundable offset eligibility of a newly incorporated R&D entity.
- The Explanatory Materials also appear to describe a different rule from the draft legislation. Paragraph 1.15 and Table 1.1 state that an entity qualifies where a day in the income year falls before, or "on or before", the tenth anniversary, whereas item 1A disqualifies the company where any day falls on or after that anniversary. Those tests may produce different outcomes in the anniversary year, and the worked example at paragraph 1.33 appears to follow the draft legislation rather than the Explanatory Materials. There are also unresolved interactions within the table. For example, item 1A is not expressed as being subject to item 2, which may create uncertainty for an R&D entity with aggregated turnover of less than $50 million that is past its tenth anniversary and also falls within item 2.

- Having regard to the above, we offer the following recommendations for Treasury's consideration:

#	Recommendation
1	Repeal new subsection 355-100(6) and confine the start day in table item 1A to the R&D entity itself.
2	Replace "first started carrying on an enterprise" with the date of the R&D entity's incorporation, consistent with subsection 83A-33(3) of the ITAA 1997.
3	Address entity churning through a more targeted successor rule, such as the suggested drafting below.
4	Clarify the operation of paragraph (b) of Item 1A and, if retained, replace the reference to the day of first registration with a reference to the first income year for which the entity is or was registered under section 27A of the IRDA.
5	Reconcile the Explanatory Materials with the legislation on the anniversary year and test the anniversary at a single point in time rather than by reference to 'any day during the income year'.
6	Express item 1A as applying only where item 2 does not apply.
7	Review the R&D intensity calculation so that the expenditure cap does not artificially dilute the intensity percentage as total group expenses increase.
8	Consider targeted exclusions, tracing rules or safe harbours so that genuine passive investment and ordinary venture capital, private equity or multinational group structures do not unintentionally deny refundable offset access to early-stage Australian R&D entities.

4. Suggested drafting

Table Item 1A, column 1:

'the R&D entity's aggregated turnover for the income year is less than $50 million, Items 2 and 3 of this table do not apply, and the first day of the income year occurs on or after the tenth anniversary of the day on which the R&D entity was incorporated.'

Replace subsection (6) with the following successor rule:

'(6) For the purposes of table item 1A in subsection (1), if: (a) another entity (the predecessor) carried on activities; and (b) all or a substantial part of the assets, employees or research and development activities of the predecessor were transferred (directly or indirectly) to the R&D entity; and (c) at the time of the transfer, the predecessor was connected with the R&D entity or was an affiliate of the R&D entity, or the R&D entity was an affiliate of the predecessor; the start day of the R&D entity is taken to be the earlier of the R&D entity's start day and the day on which the predecessor was incorporated or otherwise came into existence.'

5. Supporting R&D activities and expenditure integrity

We are very concerned that removing supporting R&D activities could increase, rather than reduce, complexity in practice. Under the current framework, the distinction between core and supporting activities is generally well understood, except in relation to certain excluded activities and specific production-related provisions. The removal of supporting activities seems to follow a restrictive ATO view over the past several years for costs incurred "on" R&D activities. If supporting activities are removed, businesses, advisers and regulators will need to dissect integrated R&D programs into individual tasks and determine whether each task forms part of the requirements of a core R&D activity. This will increase compliance costs, interpretative uncertainty and the likelihood of disputes.

We also note that an experiment-only approach could influence how businesses plan and document R&D. It may encourage businesses to separate integrated programs into discrete experiments, move too quickly into testing, and spend less time on the research, modelling and design work needed to make those experiments effective. This could risk rewarding the appearance of experimentation rather than well-designed R&D that generates valuable new knowledge.

If fiscal sustainability is the primary policy objective, retaining the current framework may provide a more practical and balanced approach. The existing core and supporting activity construct have been refined over time and generally strikes an appropriate balance between encouraging innovation and maintaining program integrity. If supporting R&D activities are nevertheless removed, the definition should explicitly cover the complete systematic body of work directed towards resolving an identified scientific or technical unknown. This should include relevant basic research, applied research and experimental development, including investigation, hypothesis development, experimental design, testing, analysis and iteration.

Proposed subsection 355-25(2A) provides, to avoid doubt, that an activity is not an R&D activity merely because it is directly related to, or undertaken for the purpose of supporting another activity covered by subsection 355-25(1). Read literally the provision is not objectionable, because the word 'merely' preserves eligibility for an activity that independently satisfies subsection (1). In practice, however, we expect it to be applied as a general exclusion for any activity capable of being characterised as supporting eligible work, including activities that satisfy subsection (1) in their own right. We recommend that subsection (2A) be supplemented with words to the effect that it does not prevent an activity from being an R&D activity if the activity itself meets the requirements of subsection (1).

Program integrity and fiscal sustainability may be better supported through clearer expenditure rules. We recommend considering prescribed expenditure categories, a clearer nexus to eligible R&D, objective apportionment rules and optional safe harbours for indirect costs, employment on-costs, contractors and mixed-use assets.

6. Expenditure thresholds, intensity and grouping rules

We welcome the proposed increase in the maximum expenditure threshold from $150 million to $200 million and the reduction in the R&D intensity threshold for the higher non-refundable offset rate from 2 per cent to 1.5 per cent. However, the design of the intensity calculation should be reviewed, as an unintended design remains that penalises Australian business expansion. There has been no change to the R&DTI statutory rules which means the current rules still restrict and cap the intensity numerator to the $200 million expenditure cap by reference to the eligible R&D expenditure threshold, while the denominator, being total group expenses, continues to grow without

an equivalent cap. steadily suppressing calculated R&D intensity below the R&D intensity threshold even as actual R&D investment scales. This interaction imposes a severe "double penalty" on large claimants: expenditure eligible for a premium offset is strictly capped at $200 million, and the artificially depressed intensity rate simultaneously downgrades the claim from the Tier 2 premium (21 per cent) to Tier 1 (16.5 per cent). This will create an artificial dilution effect for large Australian claimants whose total group expenses increase as they scale, even where their actual R&D investment remains significant.

Therefore, this interaction imposes a double penalty. Expenditure eligible for a premium offset is capped, and the resulting lower intensity percentage also moves a claimant from the higher premium rate to the lower rate. We recommend that Treasury consider uncapping the numerator for intensity calculation purposes, applying a corresponding cap to the denominator, or otherwise modifying the formula so that the threshold measures genuine R&D intensity rather than the scale of non-R&D group expenses.

We also welcome the proposed increase in the aggregated turnover threshold for the refundable offset from $20 million to $50 million. However, this change may not fully achieve its intended effect unless the grouping rules in Subdivision 328-C are considered. In particular, real world traps exist for R&D claimants via the 40 per cent control test where pre-revenue startups lose access to the R&D refundable tax offsets when substantial venture capital or private equity investments inadvertently include an investor’s global portfolio revenues or early stage Australian development subsidiaries are grouped with large multinational parents.

Therefore, early-stage Australian R&D entities may lose access to refundable support where substantial venture capital or private equity investment triggers grouping outcomes, or where Australian development subsidiaries are grouped with large multinational parents. We recommend that Treasury consider targeted exclusions, tracing rules or safe harbours for genuine passive investors and ordinary investment structures, while retaining appropriate integrity protections.

7. Commencement, transitional and consequential matters

The amendments are proposed to apply to income years commencing on or after 1 July 2028. On our reading, an R&D entity that first carried on an enterprise before 1 July 2018 would lose access to the refundable offset in its first income year commencing on or after that date, without any transitional period. The exposure draft contains no transitional rule: item 31 simply applies the amendments to income years commencing on or after 1 July 2028. R&D entities that have structured their R&D funding around the refundable offset would have limited capacity to respond. We recommend that an R&D entity registered under section 27A of the IRDA before the date of announcement retain access to the refundable offset for at least three income years after commencement.

We acknowledge that items 74 to 76 of the Schedule contain transitional rules for the removal of supporting R&D activities, and we support their intent. However, subitem 76(2) releases the Commissioner from findings already in force to the extent they relate to income years commencing on or after 1 July 2028. Entities that obtained advance findings under section 28A or 28C of the IRDA in reliance on the law as it stood would lose that certainty. We recommend that findings in force at the date of announcement continue to bind the Commissioner.