

The National Innovation Agenda & the R&D Tax Incentive – a Petroleum Perspective

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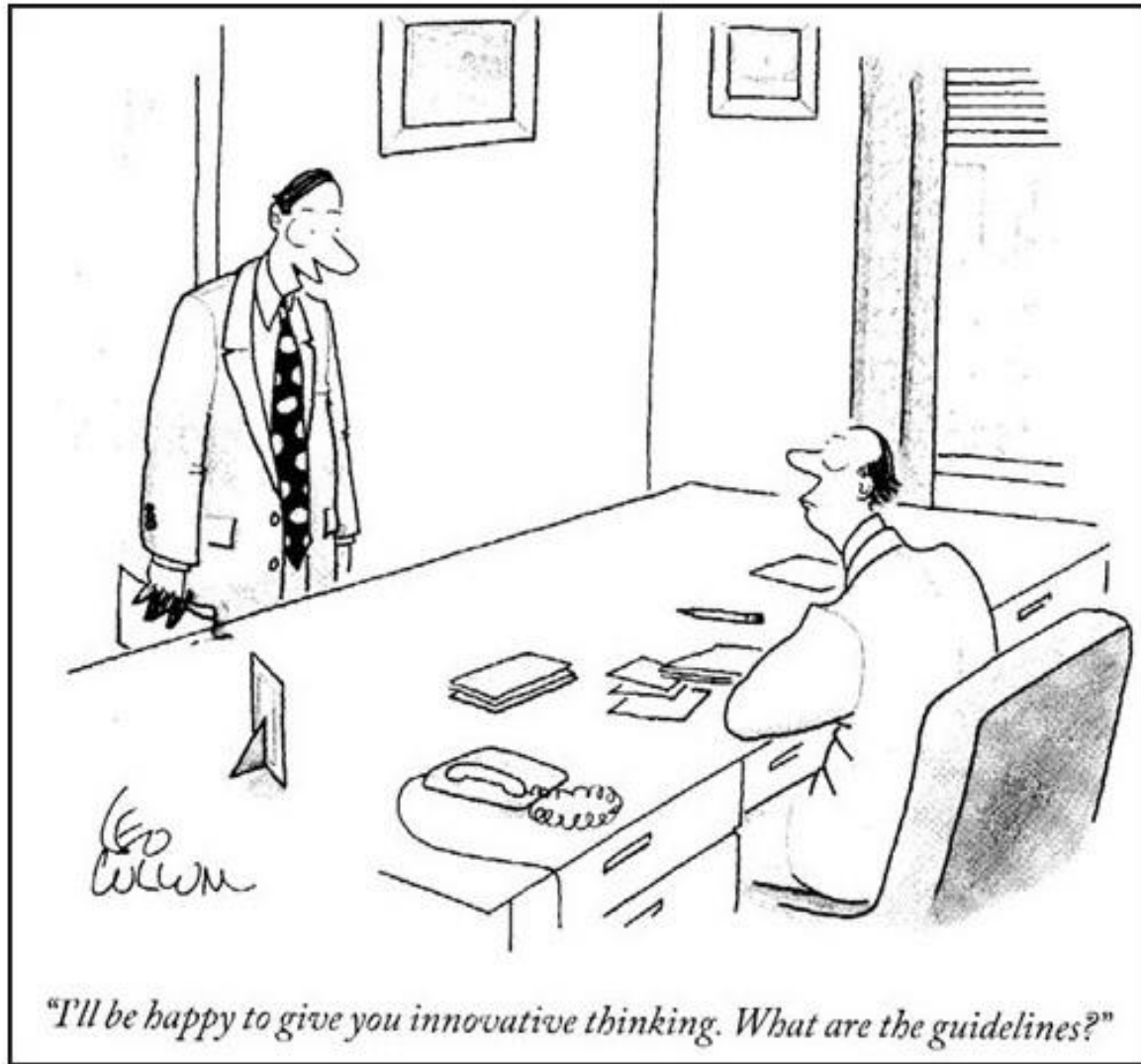
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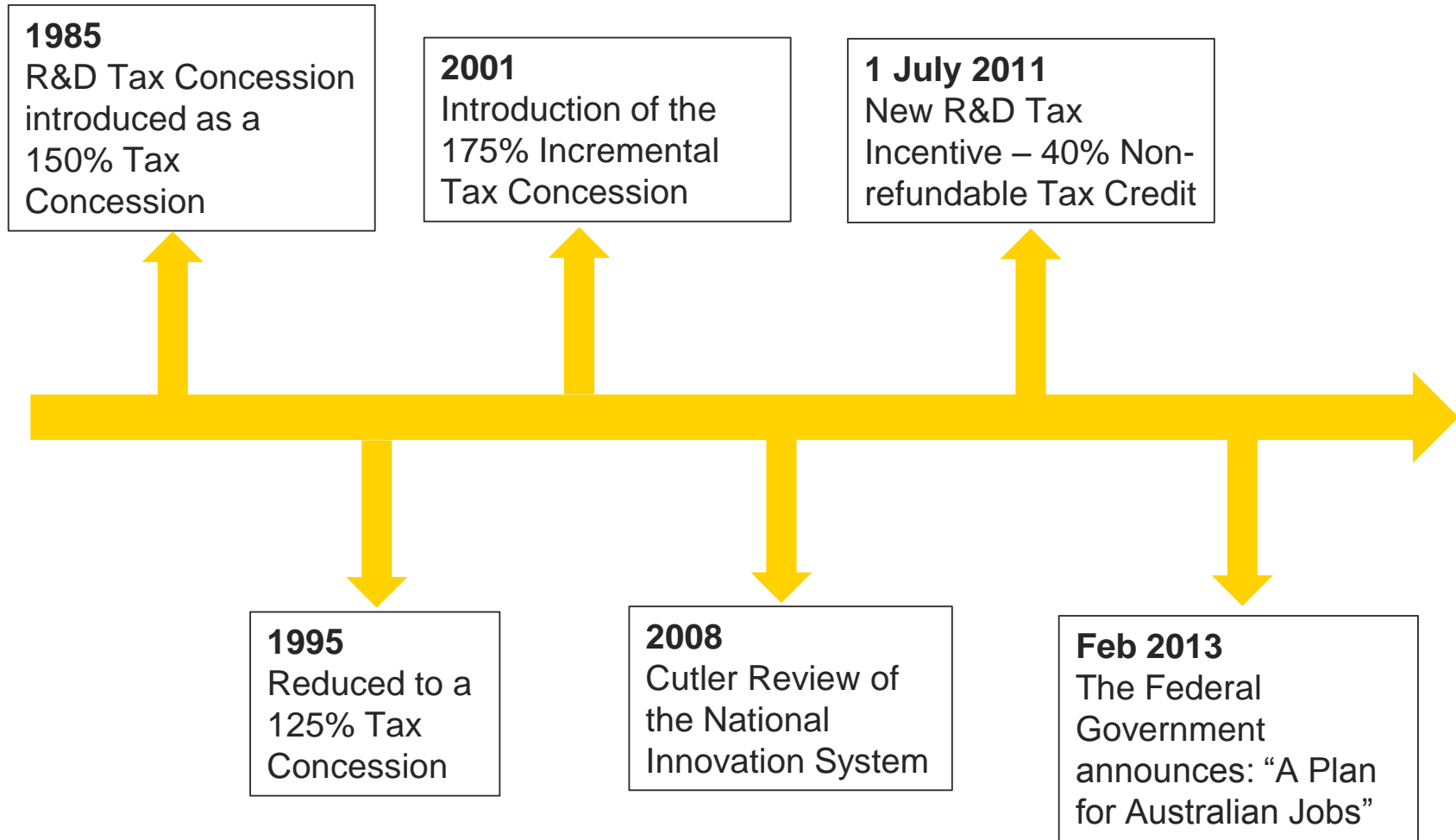
Overview

- ▶ The National Innovation and Science Agenda
- ▶ Review of the R&D Tax Incentive System – “3F Review”
- ▶ Changing Landscape of the R&D Tax Incentive
 - ▶ AusIndustry Guidance – “Getting R&D Claims Right”
 - ▶ ATO Guidance – TA 2017/2, 2017/3, 2017/4, 2017/5

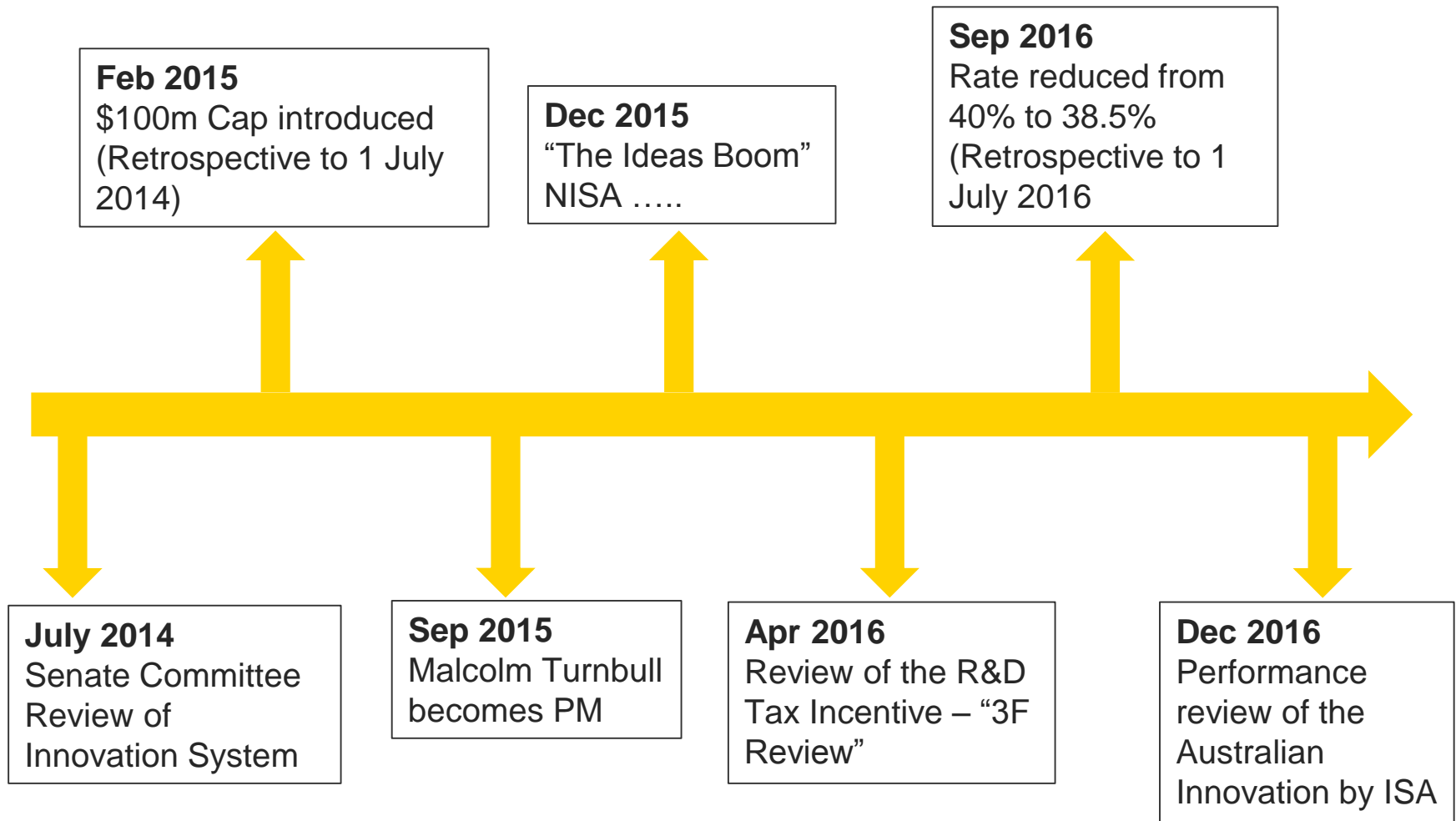


The National Innovation and Science Agenda and The “Ideas Boom”

Evolution of the Australian R&D Tax Legislation & Innovation Landscape



Evolution of the Australian R&D Tax Legislation & Innovation Landscape continued



NISA – A New Approach?

▶ **Key announcements to date:**

- ▶ Early Stage Innovation Company Investor Incentives/ESVCLP
- ▶ \$300M “Deep Tech” Investment Fund with CSIRO
- ▶ Industry Growth Centres – NERA

Future potential announcements....

Review of the R&D Tax Incentive System- “3F Review”

- ▶ Review by Bill Ferris (Innovation Australia), Alan Finkel (Chief Scientist), and John Fraser (Treasury)
- ▶ 6 Key recommendations:
 1. Keep the current definition- provide more guidance material
 2. A new premium incentive of 20% for hiring of PhD graduates and to collaborate with research institutions
 3. Cap the refundable tax offset at \$2M cash (balance as a non-refundable tax offset)
 4. Introduce an R&D intensity test (only allow claims on expenditure in excess of 1-2% of company turnover)
 5. Increase the current \$100M expenditure cap to \$200M
 6. Additional administrative changes- single application process, streamline of the dual agency model, and transparency changes.
- ▶ Decision from government pending

The Changing Landscape of the R&D Tax Incentive- AusIndustry and ATO Guidance

R&D Tax Incentive – Regulator Guidance

- ▶ AusIndustry “getting R&D claims right”
- ▶ AusIndustry “applying the law”
- ▶ AusIndustry other guidance
- ▶ ATO Tax Alerts

AusIndustry Guidance Material

- ▶ “Getting R&D claims right”- focused on technical aspects of defining the eligible experimental activities.
- ▶ Getting “mining” R&D claims right:
 - ▶ Standard testing/data collection is not experimental- need to have a new/ improved technique/product and a hypothesis.
 - ▶ Statutory compliance activities are excluded
 - ▶ Needs to be more than just specific to a location
 - ▶ Need to distinguish technical from commercial risk.
 - ▶ Exploration activities generally excluded unless relating to a new technique and trialled over an area where the geology is already known.

AusIndustry Guidance Material

- ▶ Additional guidance material:
 - ▶ Scale up
 - ▶ Applying the law guidance – “whole of...” claims
 - ▶ The \$100M cap
 - ▶ Guidance on feedstock
 - ▶ Grouping of R&D activities

R&D Tax Alerts

- ▶ The ATO and AusIndustry issued joint Tax Alerts on a number of R&D Tax topics:
 - ▶ **TA2017/2** – Building and Construction industry R&D claims
 - ▶ **TA2017/3** – Ordinary Business Activities claimed as R&D
 - ▶ **TA2017/4** – Agricultural activities and R&D
 - ▶ **TA2017/5** – Software development activities claimed as R&D

TA 2017/3 Claiming the R&D Tax Incentive for Ordinary Business Activities

- ▶ Ordinary business activities/“Business as Usual” (BAU) – What are these?
- ▶ Areas of concern
 - ▶ Activities
 1. Ineligible activities
 2. Mixture of eligible and ineligible activities
 3. Activities that were once eligible are no longer eligible
 - ▶ Expenditure
 1. No evidence
 2. Unreasonable apportionment/allocation to R&D
 - ▶ Tax Governance
- ▶ What is being done:
 - ▶ High risk advisers – being reviewed
 - ▶ R&D registration reviews – don’t want broad descriptions
 - ▶ Expenditure profiling – looking at industry/stage of business anomalies

R&D Tax Alerts

- ▶ Common themes in these Tax Alerts:
 - ▶ Broad or non-specific R&D project descriptions included in R&D Registrations
 - ▶ Re-characterising ‘ordinary’ activities as R&D activities after-the-fact
 - ▶ Extent of R&D claims – “Whole of ...”
 - ▶ Corporate Governance – oversight of R&D claims
 - ▶ Ensure there are sufficient records

R&D Guidance- Importance of Governance

- ▶ Must involve the tax function!
- ▶ Ideally want to include as part of any broader tax governance
- ▶ Ensure that any R&D Tax governance:
 - ▶ Provides appropriate review and oversight
 - ▶ Suitably qualified company representatives are involved – including both technical and tax / accounting
 - ▶ Appropriate management oversight
 - ▶ Systems are up to date and can appropriately recognise activity expenditure

R&D Guidance- Importance of Documentation

- ▶ Technical documentation
 - ▶ Must demonstrate that experiments were undertaken – *Docklands Science Park v Innovation Australia* [2015] AATA 973
 - ▶ Show that the outcomes could not be known in advance – e.g. background research
 - ▶ Evidence that the (not insubstantial) purpose is to generate new knowledge – *JLSP v Innovation Australia* [2016] AATA 23
- ▶ Expenditure documentation
 - ▶ Verify that the expenditure has occurred AND its connection to the R&D activity
 - ▶ Specific examples should show how the expenditure related to specific activities (and not just projects)
 - ▶ Apportionment of overheads- need evidence (future guidance to come)

Conclusion

- ▶ The National Science and Innovation Agenda – support for innovation
- ▶ 3F Review of the R&D Tax Incentive – potential future changes in the R&D Tax system and more generally for business innovation support
- ▶ Regulators focus:
 - ▶ Experimentation – reference the AusIndustry guidance
 - ▶ “Business as usual” R&D – need to define what is R&D and is not... avoid “whole of” project claims
 - ▶ Importance of governance and substantiation – technical and expenditure

Questions

