

ATO RELEASES TAX DETERMINATION TD 2023/5

EXPLORING CONTROL & AGGREGATED TURNOVER IN R&D TAXATION

ELDERTON GROUP

In September 2023, the Australian Taxation Office (ATO) has formally issued Tax Determination TD 2023/5, following the release of a draft ruling in June 2023. This determination delves into the intricate realm of aggregated turnover and connected entities, particularly focusing on the Commissioner's discretion when it comes to determining whether one entity has control over another.

For companies seeking benefits under the Research and Development (R&D) Tax Incentive, the rate of their R&D tax offset, as well as its refundability, hinges largely on the aggregated turnover of their R&D entity:

1. If an entity's aggregated turnover amounts to less than \$20 million and it is not under the control of any exempt entities, the company becomes eligible to claim a refundable tax offset. The refundable tax offset rate is calculated as the company's corporate tax rate, augmented by an additional premium rate of 18.5%.

2. Conversely, if an entity's aggregated turnover is equal to or exceeds \$20 million, or if it is controlled by exempt entities, the company can claim a non-refundable tax offset. The non-refundable tax offset rate depends on the company's corporate tax rate, with an additional premium rate of either 8.5% or 16.5%, contingent upon the level of R&D intensity.



In cases where groups of entities are involved, specific rules come into play, considering the turnover of entities that are considered connected or affiliated.

The concept of aggregation becomes crucial when there is a connection between these entities based on 'control.' Subsections 328-125(2) and (4) define the primary tests for control, which are pertinent to section 328-125. These subsections lay down the foundation for calculating a 'control percentage.' This occurs when one entity (the first entity) holds at least 40% of the relevant interests in another entity.

In scenarios where the first entity possesses a control percentage of over 40% but less than 50%, subsection 328-125(6) grants the Commissioner the discretion to determine that it does not have control over the test entity. This is referred to as the 'Commissioner's discretion.' To exercise this discretion, the Commissioner must establish that the test entity is, in fact, controlled by an entity or entities (the third entity or entities) that do not include the first entity or any of its affiliates.



It's essential to emphasise that, for the Commissioner's discretion to be applicable, there must be a positive determination of actual control by a third entity or entities. Merely demonstrating that the first entity is not in control is insufficient.

The principles outlined in TD 2023/5 regarding aggregated turnover and connected entities play a crucial role in helping entities determine their eligibility for the Refundable R&D Tax Offset. This determination provides guidance on the intricate interplay of factors that ultimately influence the tax offset benefits a company can claim under the R&D Tax Incentive.

Contact Elderton Group today and unlock the power of the R&D Tax Incentive.