

What to do when an R&D tax incentive claim goes bad.

Choose wisely when selecting an adviser to help prepare your R&D Tax Incentive claim

The R&D tax incentive program is the Government's largest program designed to support business innovation. It has been reviewed multiple times, with each review concluding it provides significant benefits to the Australian economy, far beyond the cost.

AusIndustry has a robust review process to safeguard the program. If you have claimed or intend to, the more you know of the process the less likely you are to be stung.

AusIndustry and the ATO are increasing review activity, particularly for large value claims and those within the agriculture, software and construction industries. If your R&D is in these areas, then review activity is more likely.

Below is a guide to the stages of review, and what you can expect in each of these stages.

First level of review

The review process is fairly transparent. The first level of review before annual registration is granted involves the identification of high risks of non-compliance based on the application form submitted by your business. The review may also involve a phone call with you. If passed a registration number is issued to your company.

Second level of review

The second level of review involves AusIndustry staff conducting a detailed behind the scenes review of your company's history in the program. Followed by an evaluation of the R&D activities based on the information provided in your application form. This is typically undertaken after registration has been issued.

Both these levels of review may be undertaken without your business being aware. Most reviews result in no further action. But in some cases, a desk review will follow if concerns are not addressed in the first and second level reviews.

Desk review

In a desk review, AusIndustry will provide a list of questions and other specific information to claimants, seeking written responses, typically within a month. The questions are focused on the issues identified in the prior reviews. AusIndustry may also ask for samples of records, such as contracts or trial reports. The review process may end here, or lead to the instigation of an activity review.

Activity review

An activity review takes several hours and involves an in person onsite meeting with the claimant to discuss the R&D activities, and to review records of the activities. AusIndustry will want to meet with research and finance staff and may request further information on the day. If the outcome is unsatisfactory Ausindustry will provide a post registration finding. These outcomes may conclude, for example, that certain claimed activities are ineligible. A finding such as this is likely to require an amendment to the claim and penalties may apply.

What you should do if you are being reviewed

- ATO review processes are similar to AusIndustry but they focus more on R&D expenditure. If you identify an issue in either, consider if a tax return amendment is appropriate before review activity commences.
- Be diligent in providing specific information about experimental activities, the hypothesis, and the new knowledge being generated. Failure to address these key criteria makes it difficult for AusIndustry to pass the initial review process. Don't make it hard for them – be transparent and detailed in the registration form to make a review less likely.
- To avoid poor review outcomes, ensure you have documentation that supports the conduct of the R&D activities described, and the incurring of the expenditure associated with the project. This might include contracts, project timeline charts, progress reports, internal project management system extracts, prototype diagrams, photos, test plans, and trial results. Documentation of the outcome of experimental activities is critical.
- If you do not have this documentation, you need to be aware you are vulnerable in the event of a review. Work with your consultant to consider the type of information you do have that would be audit suitable and make sure you retain them. Review activity can take place several years after the registration was lodged.
- Applicants have some powers under the Industry, Research and Development Act 1986 to seek an internal review or AAT review of findings by AusIndustry. Time limits apply to such applications. Seek advice if you intend to tread this path.

A good consultant can assist with each stage of the review process to ensure your case is well presented.

Need a hand with responding to an R&D tax incentive review?

Prime provides value through advice, services, networks, education and access to capital and has deep experience in supporting business owners and entrepreneurs who are trying something new. Contact us on 1800 317 005 to chat about ensuring your R&D claim is eligible and compliant.

[Simone Quin](#), [Brendan Brown](#), [John Driscoll](#) and [Matt Smith](#) are from Prime Accounting & Business Advisory Pty Ltd. They specialise in guiding innovative and rapidly growing businesses and their owners through their tax, accounting and structuring issues to reach their aspirations.

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