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Submission via Inquiry webpage

Dear Sir / Madam,

Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Bill 2026
RSM Australia submission – Schedule 4 - RDTI gambling and tobacco exclusions

We welcome the additional opportunity to provide feedback and comments to the Senate Economics Legislation Committee in respect of the R&D Tax Incentive (RDTI) gambling and tobacco activity exclusions that have now been introduced into Parliament.

We note that that we previously made a detailed submission in respect of the Exposure Draft (ED) legislation on 30 January 2026, but the legislation introduced into Parliament was identical to the ED with no recognition of any of the issues raised by us, or other varied stakeholders.

We provide our comments in the attached Appendix. These in large part remain similar to the comments made in our previous submission. One important additional observation below is that on reviewing the RDTI transparency reports, it is apparent that no large Australian tobacco companies are currently making any claims, which raises the question as to whether that part of the legislation is necessary.

Please contact me at [redacted] should you have any queries in respect of, or wish to discuss, the details of this submission.

Best regards,

[redacted]

Jessica Olivier
Partner, R&D Tax and Government Incentives
RSM Australia

APPENDIX I

1) Australia's R&D performance in context of recent Ambitious Australia Report

We believe that it is important for the Committee members to consider the proposed amendments, which will affect Australia's software and advanced manufacturing industries, within the context of Australia's current performance in R&D and innovation.

The latest analysis of the return on investment (ROI) of undertaking R&D in Australia was CSIRO-linked research[1] published in 2022, which cites a conservative estimate that every $1 invested in R&D generates about $3.50 in economy-wide benefits, with an average annual return of ~10%. This ROI continues to be used as the most defensible current estimate in more recent updates from DISR, the ATO, and other research into funding levels, intensity trends, and sectoral investment.

In 2025, the Group of Eight recommended that Australia should aim to lift R&D intensity to 3% of GDP by 2035 to align with OECD leaders and increase public investment in R&D to 1% of GDP[2].

Most recently, since the consultation on the ED legislation for the proposed provisions, the Government has released the final Report of the Strategic Review into R&D (SERD) entitled Ambitious Australia, published on 17 March 2026. Despite the recognised benefits of R&D and long-standing recommendations, Ambitious Australia concerningly confirmed the following:

- Intergenerational reports show that in 2002, the GDP per person was projected to grow 90% over 40 years. By 2023, the predicted growth in GDP per person over the next 40 years had dropped by more than one third to 57%. This has signalled a substantial reduction in the standard of living for Australians.
- Australia is ranked 105th of 145 national economies for economic complexity (Growth Lab n.d.).
- Australia has one of the lowest shares of manufacturing in the OECD (World Bank Group 2024a).
- Australia derives around 50% of our export revenue from selling our raw natural resources like iron ore, gas and coal, and our agricultural products (DFAT 2025a) allowing development of downstream innovation to occur overseas before importing the final products back to Australia.
- As such, mining contributes roughly 10% of GDP (Reserve Bank of Australia 2025) but directly employs only 2% of the workforce (Jobs and Skills Australia 2025).
- Finally, illustrating a lack of sovereign capability in a knowledge context, Australia researchers only create around 3% of the world's new knowledge each year (Clarivate Analytics 2025).

It is in this considered context, and the identified need to prioritise domestic R&D efforts, that these proposed amendments should be considered.

2) Oher observations on impact of provisions in Bill

We would also draw the Committee members early attention to the fact that R&D concessions have existed in Australian since 1985 to encourage innovation and technological advancement in all industries on an agnostic or sector-neutral basis, supporting any activity that meets the scientific and experimental statutory criteria. This approach matches most other advanced economies, with many adopting the principles laid out in the Frascati manual.

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[1] CSIRO
[2] Group of Eight report

To date, these sector-neutral innovation principles have globally avoided selective industry exclusions, and valid concerns have been raised that the singling out of tobacco and gambling by Australia, both being regulated and lawful industries, appears to be prejudicial given that other industries with significant public-health impacts such as social media, alcohol, cannabis, fossil fuels and ultra-processed foods will all remain eligible for RDTI support.

We naturally appreciate the underlying social concerns that have transpired from new transparency disclosures but consider that the required regulation in question could be better targeted to control the existing harmful behaviours (such as the recent gambling proposals), rather than seek to suppress the underlying innovation. The principle of targeting specific harmful activities can be easily acknowledged, but we feel that this could be achieved without the risk of stifling broader innovation that would also have positive implications for Australia.

From an economic perspective, given the acutely detrimental impacts on both software-based and advanced manufacturing activities, the Committee must consider whether the exclusions will rather serve to weaken Australia's competitiveness and reduce domestic R&D investment.

Notably, no other country with R&D incentives appears to be contemplating a similar approach. As such (and as was evident when diluting the tax benefits of the RDTI with reduced rates and an expenditure cap), many multinationals are behaviourally likely to continue to relocate valuable R&D activities to jurisdictions without such punitive exclusions. The Committee may be aware that anecdotally, many multinationals have already started to move valuable activities to New Zealand and other more generous jurisdictions, including those in the OECD.

Overall, we are concerned that pursuing these reactive targeted exclusions, initially a knee-jerk reaction to novel public transparency information. will set a precedential risk in Australia such that excluding one lawful industry will open the door to future exclusions based on the prevailing political sentiment at that time rather than objective innovation criteria.

These amendments, if enacted as they stand, will significantly dilute the reputation of Australia as a place of objective innovation. All that said, our more specific comments on the provisions as drafted are as follows.

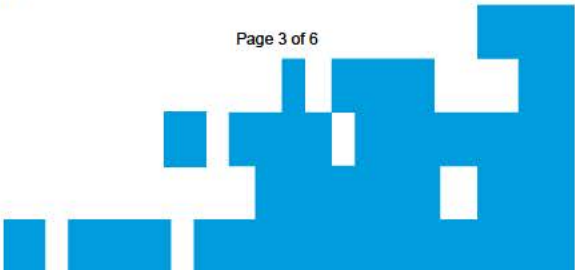
3) Gambling-related RDTI exclusion

As always, the exact text of the legislation as enacted will be critical for statutory interpretation. In this context we believe that the current drafting of the Bill covers such an exceptionally broad set of exclusions, the criteria set is likely to be insurmountable even for businesses operating adjacent to, but not wholly within the gambling industry.

Unless the statutory language is appropriately qualified, we believe that the exclusion could be administered to apply in a manner not contemplated by the legislature. As such, we consider that the proposed definitions should be amended to reflect more statutory clarity and pre-emptively prevent any misunderstandings and unintended consequences. We previously suggested that the broad exclusionary language used must be tapered by specifying whether the linkage must be direct, primary, or incidental.

For example, the definition within the Bill brings very little clarity in respect of how to distinguish between potentially targeted activities. Rather, it blanket-covers any type of activity carried out that "relates to" gambling and "gambling-like practices" (a term also used for the Digital Games Tax Offset (DGTO) legislation but not defined therein).

It must also be clear to potential RDTI claimants as to whether it is the purpose of the R&D activity, or the potential use of the output of the R&D results that is the key factor that will determine its eligibility. The breadth of the current language used seems to imply that it would apply to both scenarios and that if a technology could be used in gambling, or is used by a gambling entity, it may fall under the exclusion even if the underlying R&D itself has nothing or little to do with gambling.



We also believe that consideration should have been given to a more purpose-based or functional use test where R&D should only be excluded where the contemporaneous dominant purpose of the activity (which must be defined when registering the activities under the RDTI regime) is specifically directed at gambling functionalities. Clarification that R&D on generic technologies remain eligible even if potentially later used by gambling operators would also be helpful.

The intended huge breadth of terminology is already creating significant amounts of uncertainty for those businesses operating adjacent to, but not wholly within the gambling industry, as well as entities that develop mixed use technologies, where only part of the R&D activities may relate to elements of gambling-like functionality, and will thereby serve to stifle innovation. For example, many technologies serve multiple industries – examples include:

- Random number generators used in gaming can also be used in cybersecurity.
- A behavioural analytics model can be used for both harm minimisation or for marketing.
- A payments engine could support gambling but also e commerce.

In addition, modern digital products often include mechanics that could be seen to resemble gambling, such as:

- Randomised rewards
- Loot boxes
- Probability based outcomes
- Gamified engagement loops

For such affected adjacent entities, if the legislation as enacted adopts a blanket term of "gambling like practices", it will remain ambiguous and unclear as to whether video game developers, digital engagement platforms, consumer apps and loyalty programs are unintentionally caught, representing an outcome of poor tax policy. More specific examples that could be unintentionally affected include:

- Video games companies with loot boxes or any mechanism to uncover rare items. For example, any EA Sports games such as FIFA, Madden, NRL, NFL, NBA would be precluded from making RDTI claims should this work be done in Australia, an outcome which should be encouraged.
- Any arcade style games, including hardware, would be excluded – for example, any new age games comparable to the "claw machine".
- All trading / crypto technology or apps, given these facilitate investments in the market.
- Any insurance-based technologies and algorithms, which essentially calculate premiums against returns and payouts.
- Sports data models and technologies. For example, development of new insights for the NRL, the A-League or English Premier League intended to be used for the main purpose of improving player rehab and training. These insights could have a potential use for bookmakers and others who may use it for gambling and thereby be viewed as "directly related".
- Any fantasy sports technology developments, particularly where pay-to-enter premier tiers exist.
- Other Fintech peripheral industries, such as payments, UX designers, gamification mechanisms, could be viewed as "directly related" to gambling like practices.
- Any eCommerce gamification platforms or marketing platforms and technologies which offer a prize, such as spin the wheel etc.

We acknowledge the important safeguard in the form of the carve out for those activities caught where they are 'solely for harm minimisation". However, we consider that the use of the explicit term "solely" means that in practice this carve out could only be construed and interpreted extremely narrowly which may not be the intended outcome.

If "gambling related" remains defined too broadly, it will also be unclear whether:

- a harm minimisation tool built within a gambling platform,
- a cross industry behavioural analytics model, or
- a responsible gaming algorithm embedded in a wagering app

would represent activities that are "solely" for harm minimisation.

We previously recommended that the final wording of the Bill should permit RDTI eligibility where harm minimisation is the primary or dominant purpose, even if the technology may have incidental ancillary uses, and clarify whether harm minimisation R&D conducted by the gambling operators themselves is eligible, or only when conducted by third parties.

As well as clearer and more specific statutory definitions, we also believe that more useful examples should be added as a supplementary Explanatory Memorandum (EM) illustrating mixed-use and borderline exclusionary cases (e.g., payment systems, cybersecurity, fraud detection, generic platform infrastructure) as well as worked examples of eligible harm minimisation R&D (e.g., behavioural analytics, self-exclusion tools, real time risk detection).

4) Tobacco-related exclusion

As noted, on reviewing the RDTI transparency reports, it is apparent that no large Australian tobacco companies are currently making any claims. It is therefore unclear whether the provisions were either a knee-jerk yet incorrect assumption that tobacco companies are currently making claims or whether it is explicitly intended to target 'downstream' or 'upstream' entities.

If the former, it illustrates a distinct lack of understanding at the inception as to how the provisions will, or won't, operate and suggests that the measures have been reactive, and not based on thorough research and methodologies.

If the latter, it is important to understand that tobacco research has positive applications beyond traditional consumption and is an active area of ongoing R&D (that is not necessarily related to harm minimisation) for example, in pest control, pharmaceutical precursors, polymer composites, biofuels / plastic, construction materials and fabrics (to name a few).

That said, many of the comments we make above also apply to the proposed tobacco activities exclusion. The proposed legislative mechanism is extremely broad with "Activities related to tobacco" being an undefined term and able to capture both upstream and downstream R&D alluded to above that may be unrelated to the consumption of tobacco.

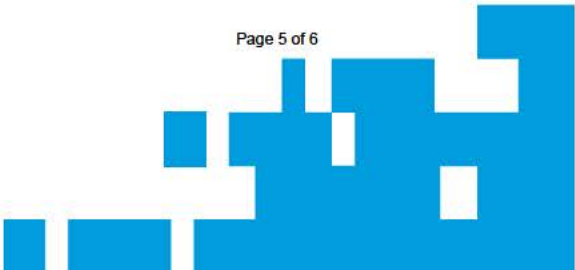
We believe that pursuing such a broad exclusion (which does not impact the large three tobacco companies in any case) would have extremely negative long-term implications for Australian advanced manufacturing capabilities with tobacco-related R&D often involving capabilities that benefit the broader Australian and global economy including:

- Employment of materials science, chemists, engineers, data scientists, toxicologists.
- Usage of specialised research facilities such as labs and testing centres that also service other industries.
- Innovation surrounding supply-chain capabilities including materials, packaging, biotech, and manufacturing.

As with the impact of the gambling exclusion on the software industry, the removal of RDTI support risks both job losses and capability erosion in the Australian advanced manufacturing industries.

Again, our previous suggestion was that the broad exclusionary language used must be tapered by specifying whether the linkage must be direct, primary, or incidental to tobacco usage. It would be helpful to clarify whether it is the purpose of the R&D activity, or the potential use of the output of the R&D results that is the key factor that will determine its eligibility.

A 'solely' test for the tobacco related harm-minimisation carve-out may also be insurmountable in practice since harm-minimisation in this industry is understood to rarely be isolated. Most harm-reduction research is integrated with broader product development, toxicology, materials science, and delivery-mechanism research.



We would also observe that there could be unintended outcomes such as reduced investment in safer alternatives with innovation in reduced-risk products, such as heat-not-burn or non-combustible nicotine delivery systems, dependent on broader tobacco R&D programs that would be disincentivised and hence negate the government's stated intention to support tobacco harm-minimisation.

5) Commencement date issues

We believe that the recommended changes to the language currently in the Bill are critical since affected companies will face significant uncertainty, increased audit risks, and costly legal interpretation, even in the absence of robust evidence that these exclusions will serve to improve public health outcomes.

We also note that the legislation is still proposed to be retroactive and will apply to income years starting on or after 1 July 2025 while many companies have multi-year R&D programs already underway.

We believe that any enacted amendments should either be delayed to commence from 1 July 2026 and/ or there should be a short grandfathering provision for projects that commenced before the announcement date. This could encompass a safe harbour rule for expenditure that was committed to under binding contracts entered into prior to release of the ED legislation. This would provide fairness and certainty for businesses that have already made significant investments in good faith.