



Protecting IP and the R&D tax incentive



National Vegetable Extension Network

VICTORIA - NORTHERN,
WESTERN & SOUTH EASTERN

What is intellectual property and why is it important?

Intellectual Property (IP) is a broad term for the legal regimes that protect an individual's or business's creativity or innovation. In the horticultural industry, this may relate to a range of patents, plant breeder's rights, trade marks and copyright. IP rights are commonly referred to as 'intangible' rights, meaning that they do not create rights in physical or tangible products, but the ideas and inventive concepts within them. Although it is not always the case, there are usually two main distinctions between types of IP, these being rights that are:

- Created – rights that come into existence once the subject matter is created (e.g. copyright)
- Registered – rights that come into existence once the owner has gone through the proper administrative process to register them (e.g. patents and plant breeder's rights)



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IP rights are designed to give the creators and innovators of products the opportunity to make a financial return on their creations, whilst also providing an incentive to create and innovate. They also have the ability to create a market position and deter competitors. This is important in the vegetable industry when creating products such as new farm machinery, plant varieties, trade marks for packaged goods and publications. This allows the creators of these products to be able to have an advantage when accessing new markets and distinguish themselves from their competitors.

There are programs in place to provide incentives for growers and industry bodies to innovate, diversify, improve productivity and take new products to markets. One of these programs is the Victorian Government's Food Innovation Voucher Stream, that encourages agri-food businesses to develop innovative products and processes, enter new markets, and secure supply chain opportunities. Further information can be found here: <http://www.business.vic.gov.au/support-for-your-business/grants-and-assistance/Boost-Your-Business/Food-Innovation-Voucher-Stream>

Key messages

- Intellectual Property (IP) is designed to protect the creativity or innovation of an individual or organisation
- The R&D tax incentive is a program designed to motivate organisations to invest in R&D
- Depending on the annual turnover, benefits include either a refundable or non-refundable tax offset to eligible businesses
- The program is accessed in three steps: conduct eligible R&D activities, register with AusIndustry and lodge a tax return with the ATO

What is the R&D tax incentive and what are the benefits?

The Research and Development (R&D) tax incentive is an incentive for businesses to invest in and grow their R&D capacity that is administered through the federal government via the ATO. It is a self-assessment program that seeks to motivate organisations to engage in R&D so as to benefit themselves and the industry. The incentive consists of:

- A 43.5% refundable tax offset for eligible businesses with an aggregated annual turnover that is less than \$20 M; or
- A 38.5% non-refundable tax offset for all other eligible businesses.

How is the program accessed?

The R&D tax incentive can be accessed by completing the following three steps:

1. Conduct eligible R&D activities

All activities must be eligible and adhere to the proper requirements. Businesses who are registering for the incentive are required to maintain appropriate records so they are able to validate the eligibility of their R&D activities. Businesses should also maintain sufficient financial records which demonstrate their expenditure on R&D activities. Further information on eligible activities can be found here: <https://www.business.gov.au/~media/Business/RDTI/Research-and-development-tax-incentive-fact-sheet-eligibility-of-activities-PDF.pdf?la=en>.

2. Register with the Department of Industry, Innovation, and Science's AusIndustry.

Applications must be lodged for R&D activity registration within 10 months after the end of financial year in which the activities were conducted. All applications must be lodged with the Australian Government's AusIndustry.

3. Lodge a tax return with the ATO

Claim amounts can be checked on the Australian Tax Office's (ATO's) website, with the use of the R&D Tax Incentive Calculator. Once the previous two steps are conducted, all claims are processed by the ATO.

Eligibility

R&D tax incentive program eligibility will depend on the structure of a company, where the activities are being conducted and what those activities are. To qualify, activities must follow a systematic progression of science based work and be of the following eligible company structures:

- An organisation who is incorporated under Australian law; or
- An organisation who is incorporated under a foreign law, but is an Australian resident for tax purposes; or
- An organisation who is incorporated under a foreign law, that is a foreign resident, but conducts business in Australia and is in a double tax agreement.
- They must be based on scientific principles and lead to logical conclusions.

The incentive is unavailable to the following:

- Individuals
- Corporate limited partnerships
- An organisation whose entire income is exempt from income tax.



Protecting IP and the R&D tax incentive

Usually, only activities that are conducted within Australia will be eligible, although, some international activities will qualify if they meet the requirements of the Industry Research and Development Act 1986.

For the horticultural industry, a wide range of R&D activities are deemed to be eligible for the incentive. As the program is self-assessed, the organisation conducting the R&D must assess their own eligibility against the requirements defined by legislation. Eligibility can be met by making sure R&D fits into one of the two categories:

- **Core R&D activities** – these are classified as experimental activities with an unknown outcome, undertaken to generate new knowledge of a topic.
- **Supporting R&D activities** – these are classified as activities that support the experimental activities, but are not directly a part of them.



References and further information

- **Intellectual Property for Horticulture: An Overview.** Horticulture Australia Limited, Australian Centre for Intellectual Property in Agriculture. <http://acipa.edu.au/pdfs/intellectual-property-for-horticulture-an-overview.pdf>
- **Food Innovation Voucher Stream.** Business Victoria. <http://www.business.vic.gov.au/support-for-your-business/grants-and-assistance/Boost-Your-Business/Food-Innovation-Voucher-Stream>
- **Research and Development Tax Incentive: Australian Taxation Office.** <https://www.ato.gov.au/Business/Research-and-development-tax-incentive/>
- **Business R&D Tax Incentive: Getting farming R&D tax incentive claims right.** Australian Government Department of Industry, Innovation and science <https://www.business.gov.au/~media/Business/RDTI/Research-and-development-tax-incentive-Getting-farming-RD-Tax-Incentive-claims-right-PDF.pdf?la=en>
- **The R&D Tax Incentive: A Guide to Interpretation.** <https://www.business.gov.au/~media/Business/RDTI/Research-and-development-tax-incentive-guide-to-interpretation-PDF.pdf?la=en>