

Discussion Points Raised at Workshop Breakout

Session 1 – Taxation Issues

1. Key Drivers

- (a) Accessibility of tax exempt status.
- (b) If taxable, clarification on tax consequences of fund flows and expenses.
- (c) Ability to commercialise in the future.
- (d) R&D tax concession is not a real driver for many of the CRCs.

2. Key Concerns

- (a) Tax consequences associated with transition from a company limited by shares to a company limited by guarantee are unclear.
- (b) Tax consequences of transition from unincorporated to incorporated are unclear.
- (c) Commercialisation unclear – complexity of moving IP and the tax consequences of doing so.
- (d) Not convinced the Templates can provide clarity. We need clarification from the ATO around tax exemption and consequences of IP being held beneficially by Participants.
- (e) Tax exempt status is preferred because of ease of administration.
- (f) Necessity to remit GST on “in-kind” contributions remains unclear.
- (g) Application of tax law should be simpler.
- (h) Exit strategy is important.
- (i) The hybrid model deserves further discussion. Possibly the best way to explore this is for a CRC to make a private binding ruling application to the ATO?
- (j) Want to be able to distribute income as well as be tax exempt.
- (k) Clarification of service based relationship and deemed tax partnership. Particularly relevant for access to the R&D tax concession where there is a service based relationship.

3. Summary

- (a) The templates will not address many of the above points.
- (b) Clarification from the ATO and a possible decision route for CRCs to use may assist CRCs to work through these issues.
- (c) The templates may also assist to clarify the relationships between the parties (ie. service based relationship or deemed tax partnership).

Discussion Points Raised at Workshop Breakout Session 2 – Intellectual Property (“IP”) Issues

1. Background IP

- (a) Mechanism to have Background IP properly identified and registered.
- (b) Valuation – less of an issue at the beginning but may be important when valuing the contribution of Background IP to Centre IP. Should this be based on a proportion of contribution?
- (c) Need for a mechanism to resolve disputes over commercial terms of access to Background IP.

2. Centre IP

- (a) Centre IP v Project IP – does there need to be a split? Issue that having separate Project IP creates unwanted “silos”. If so, clarification required in the templates.
- (b) Ultimately, the mix of Project IP and Centre IP may depend on the particular CRC and what its Participants want.
- (c) Separation of IP and the right to commercialise – there are two key issues:
 - (i) Who has the right to commercialise?
 - (ii) Who has the right to derive proceeds from commercialisation? It would be good to have a mechanism for resolving disputes on agreeing on commercial terms.
- (d) Other options – IP kept together, with separate commercialisation rights etc.
- (e) As with Background IP, the valuation of Centre IP can be problematic.
- (f) CRCs want to allow for Participants to use all Centre IP internally for research purposes, not just Project IP.

3. Termination and wind up issues

- (a) IP register is important.
- (b) Need to be careful to consider all issues that may arise in termination / wind up.
- (c) Withdrawal and expulsion could be easier – more streamlined.

4. Governance

- (a) Shadow Director issues.
- (b) Position of interim Board? What are the roles and liabilities of an interim Board?

5. Summary

- (a) Templates are generally changed to suit each CRC.
- (b) May be useful to have guiding principles/ notes to assist with interpretation of the Templates.