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A pair of hands is shown from the bottom, cupping a small, vibrant green sapling with thin needles. The sapling is planted in a mound of dark, rich soil. The background is a soft, out-of-focus blue, suggesting a sky or a studio backdrop. The overall image conveys a sense of growth, care, and investment.

# Making Sense of Impending Tax Changes

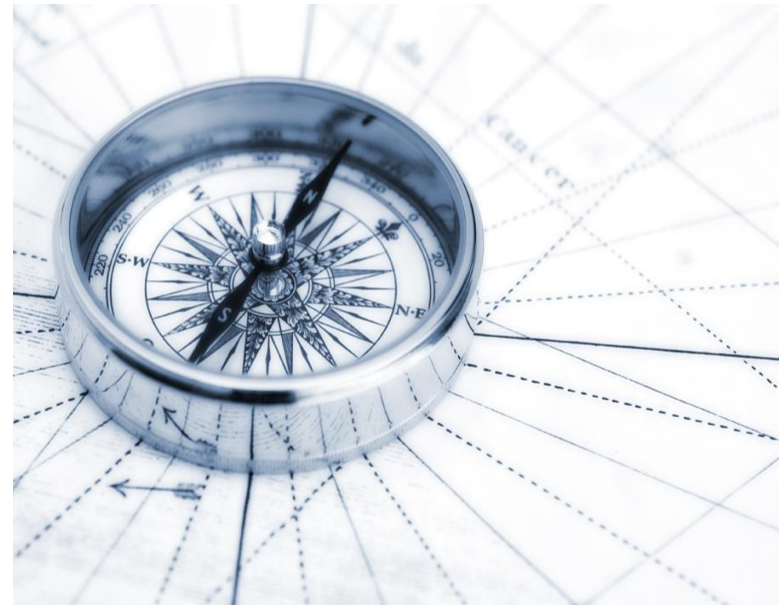
Sergio Duchini, Partner - Deloitte

Sandra Buth, Principal - Deloitte

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# This mornings presentation

- R&D tax Credit
- Consultation proposals
- What's next
  
- New taxation of employee share schemes



# “Powering Ideas: An Innovation agenda for 21<sup>st</sup> Century”

- Replace all R&D deductions with more predictable tax credit:
  - 45% refundable for companies with group turnover less than \$20 million
  - 40% non-refundable for companies with group turnover of more than \$20 million
  - 40% non-refundable for foreign-owned R&D
- Eligibility should be tightened so only “genuine R&D” receives support
- 1 July 2010 commencement date
- Acknowledgement of need to consult



# Consultation Proposals

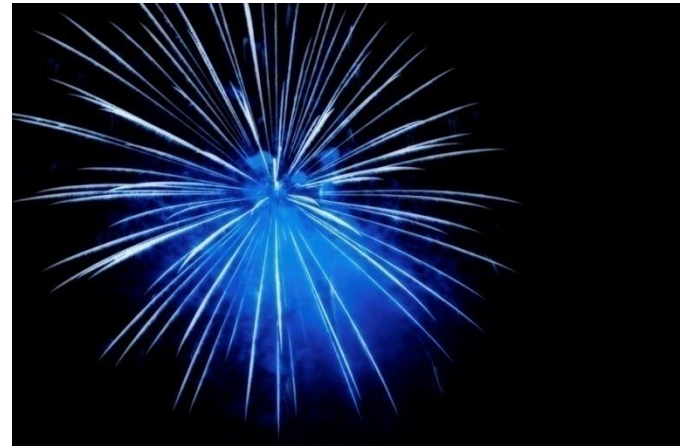
## 7 Design Principles

1. Incorporation in Australia. Location of IP no longer relevant.
2. Standard 40% R&D Tax credit
3. Refundable 45% R&D tax credit where group turnover less than \$20M p.a.
4. Scheme to be efficient and effective
5. R&D support should target R&D that:
  - a) Additionality
  - b) Large spillovers
6. Innovation “and” high levels of technical risk
7. Supporting R&D activities to be subject to new limitations

# Consultation Proposals

## 6 Questions

1. Should there be an exception to general rule that R&D be conducted in Australia?
2. How should the R&D credit treat expenditure currently deductible at 100%?
3. How to treat payments to associates?
4. Treatment of supporting activities
  - a) Capped?
  - b) Sole purpose test?
  - c) Exclude production or dual role activities?
  - d) Eligible on a net basis?
  - e) Lower rate of support?
5. Excluded activities
  - a) Amended?
  - b) Extended to supporting
6. How should we treat software R&D?



# High level comparison of proposed reforms

Expansion	Contraction	No change
Location of IP not relevant. Only requirement is that company be incorporated in Australia	Change in core R&D definition	Rate of tax credit - credit can be carried forward subject to integrity measure - same as tax losses
Companies with up to 50% ownership by exempt entities can access refundable credit	Limitation on expenditure related to supporting activities	Still administered by Innovation Australia and the ATO
Refundable Tax Credit for foreign owned R&D- subject to turnover test	Additionality and spill over	Removal of incremental concession
Removal of Multiple Sale criteria for software	Core and supporting documentation and costing	

# Proposed limitation on supporting R&D activities

Mechanism	Operation	Issues
Capping	As a percentage of expenditure on “core” R&D	What rate? Industry specific?
Change definition	Go from “carried on for a purpose directly related to” to, “carried on for the sole purpose of supporting” core activities Or purpose to be “predominately” as opposed to “sole”	Severely limiting where R&D is undertaken in commercial context or facilities?
Exclusion of activities	Specifically exclude dual purpose activities like production	As above. Would this then do away with the feedstock provisions?
Net expenditure only	Recoupment to supporting activities	Of all the options would be the most complicated to administer
Lower rate	For expenditure identified on supporting activities, lower rate of credit	Again – what rate? Issues identified already with expenditure currently only deductible at 100%. Complex in its administration.

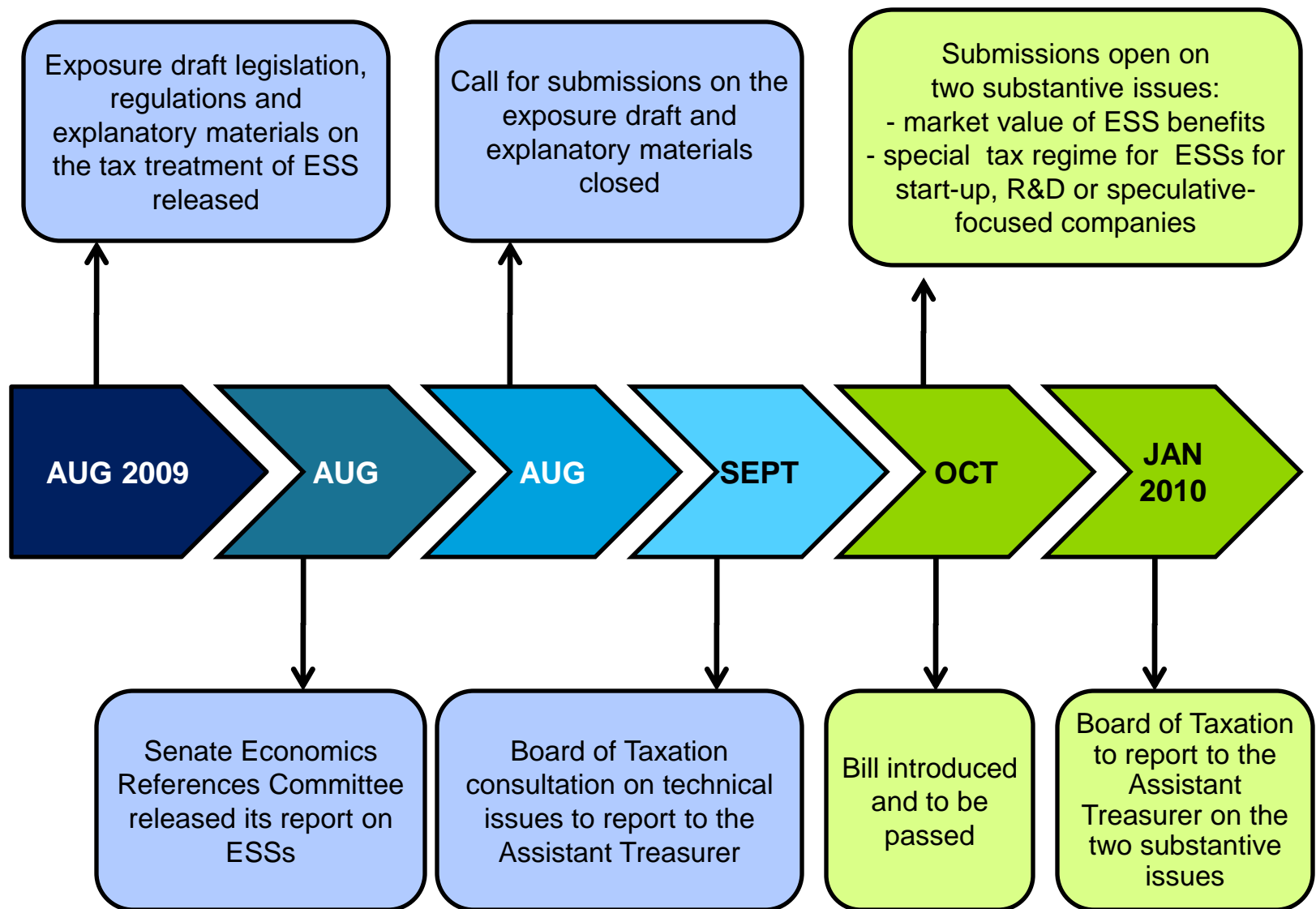
# AusBiotech/Deloitte Submission

1. Overseas expenditure should be eligible where IP retained
2. Tax exempt ownership interest should increase to 75%
3. Option for quarterly refunds
4. 45% refundable credit turnover threshold increase to \$50M
5. “additionality” and “spillover” must not be in legislation
6. No change to “innovation” and “high technical risk”
7. No differentiation of “core” and “supporting” activities
8. No extension of excluded activities
9. Industry specific guidelines
10. Consistent treatment of Software R&D

# What's next

- Grand vision has clearly been watered down at each step in the process
- Changing the definition and introducing limits on expenditure not desirable
- AusBiotech Submission lodged 26 October
- Draft legislation and EM for release later this year.
- More consultation
- Legislation introduced into Parliament in early 2010.
- Start date 1 July 2010

# Employee share scheme: progress check



# Key tax changes to ESS shares and rights acquired on or after 1 July 2009

## **\$1,000 tax exemption threshold increased**

Tax exemption for ESS benefit of up to \$1,000 per employee per year available to employees with adjusted taxable income of less than \$180,000 (threshold)

## **Limited deferral on salary sacrifice-based ESS**

Deferred tax concessions available for ESS of up to \$5,000 of salary sacrificed income, where there is no real risk of forfeiture

# Key tax changes to ESS shares and rights acquired on or after 1 July 2009

## Tax deferral available for discounted ESS until lapse of both forfeiture and disposal restrictions

ESSs with real risk of forfeiture (including meaningful performance hurdles OR term of service) PLUS restrictions on disposal will be taxed at the earlier of 7 (previously 10) years, cessation of employment or on lapse of forfeiture and disposal restrictions

## Reporting requirements

The federal government will require company reporting of

- number of shares and rights at grant and at the taxing point
- the estimated market value of shares or rights at taxing point

## Next steps

- Companies should review existing plans to assess the impact of the tax changes on ESS awards
- Companies should implement appropriate processes to track and record all ESS transactions that will need to be reported at tax year end

**Companies that would like to comment on a special tax regime for ESSs for start-up, R&D or speculative-focused companies should do so now. Send your comments to: [sbuth@deloitte.com.au](mailto:sbuth@deloitte.com.au)**



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