

## **Direction to Callaghan Innovation—Administration of the R&D Tax Incentive Transition Support Payment**

Under section 112 of the Crown Entities Act 2004, I direct Callaghan Innovation to put in place and administer a scheme to support former Growth Grant recipients as they make the transition to the Research and Development Tax Incentive (RDTI), to be known as the RDTI Transition Support Payment.

Under section 103 of the Crown Entities Act 2004, I direct Callaghan Innovation to give effect to government policy in the administration of that scheme as specified in this direction.

In this direction I clarify the policy objective and note the funding to be used to achieve that objective. I set out criteria for Callaghan Innovation to adhere to in assessing proposals for the RDTI Transition Support Payment and the terms for payment.

This notice uses the following format:

- Policy objective
- Funding to be allocated by Callaghan Innovation
- Basis for funding decisions
- Administrative processes
- Collection and provision of information

### **Policy Objective**

The objective of this scheme is to maintain business investment in Research and Development (R&D) by providing continuity of the level of government support provided to former Growth Grant recipients as they make the transition to the RDTI. It is designed to ensure that those businesses do not reduce their level of R&D activity as a result of uncertainty around the level of support they will receive under the RDTI scheme while they make the transition from the Growth Grant Scheme to the RDTI scheme.

I intend the RDTI Transition Support Payment scheme to be in place only for the time necessary to allow businesses to become familiar with the new R&D-eligibility criteria and the process under the RDTI. I do not intend it to continue providing support to businesses over the longer term.

While payments under the scheme may be made to former Growth Grant businesses in relation to any of the three first tax years of the RDTI, I anticipate that the large majority of businesses will only be eligible to apply for the Transition Support Payment (TSP) in the 2021/22 year.

### **Funding to be Allocated by Callaghan Innovation**

Callaghan Innovation will use funds from the “Research, Science and Innovation: Transitional Support to R&D Performing Businesses” appropriation for making payments under this scheme.

Callaghan Innovation will use funds from the “Research, Science and Innovation: Callaghan Innovation – Operations” appropriation to cover costs incurred in administering this scheme.

### **Basis for Funding Decisions**

#### **Business Eligibility**

To be eligible for a payment under this scheme in the relevant year a business must have:

- a. Either
  - i. Had an active Growth Grant contract on the last day of the business’s 2018/19 year and participated in the RDTI in the 2019/20 year; or
  - ii. Had an active Growth Grant contract during the period from 1 April 2019 to 31 March 2021 (inclusive); and
- b. Participated in the RDTI in the relevant year; and
- c. Not received a Project Grant in the relevant year.

All references to “year” in this notice should be interpreted as referring to the business’s income year (used for tax purposes), unless otherwise stated. References to the “relevant year” refer to the year in which the business is applying to receive the RDTI Transition Support Payment.

A business may be eligible to receive the RDTI Transition Support Payment under this scheme in any of the 2019/20, 2020/21, or 2021/22 years.

A business with a balance date after 31 March 2021 that both received a Growth Grant payment and participated in the RDTI in the 2020/21 year will be eligible to receive the RDTI Transition Support Payment in that year.

A business will be deemed to have participated in the RDTI in a given year if:

- a. For the 2019/20 income year, it filed a supplementary return; or
- b. For the 2020/21 and 2021/22 years:
  - i. It submitted an application for criteria and methodologies (CAM) approval; or
  - ii. It submitted an application for general approval (GA) of its activities;  
and it received a decision on its application (ie, its application was either accepted or declined).

Callaghan Innovation will develop and publish appropriate business grouping rules that it will use to determine whether, if two related entities have satisfied different elements of the criteria described above, those entities will be treated as the same business for the purposes of determining eligibility.

#### **Level of Entitlement**

The amount that a business is entitled to receive under the scheme in the relevant year is equal to 20 percent of the business's TSP Eligible R&D Expenditure, where its TSP Eligible R&D Expenditure is its Maximum TSP Eligible R&D Expenditure under this scheme less its RDTI Eligible R&D Expenditure in the relevant year.

A business's Maximum TSP Eligible R&D Expenditure under this scheme in the relevant year is the lower of:

- the average of the business's Growth Grant Eligible R&D Expenditure in the 3 years immediately preceding the relevant year; and
- the business's Growth Grant Eligible R&D Expenditure during the relevant year.

A business's RDTI Eligible R&D Expenditure is the amount of expenditure determined by Inland Revenue to be eligible for the RDTI in that year.

A business's Growth Grant Eligible R&D Expenditure is to be calculated by applying the definition of Eligible R&D Expenditure under the Growth Grant scheme ([New Zealand Gazette, 21 April 2020, Notice No. 2020-go1694](#)) to those activities for the relevant year. In line with the Growth Grant scheme, a business's Growth Grant Eligible R&D Expenditure is capped at a maximum of \$25 million.

If a business did not receive a Growth Grant payment during any of the previous three years then, for the purposes of calculating the average of the business's Growth Grant Eligible R&D Expenditure in the previous three years, its Growth Grant Eligible R&D Expenditure for the year in which it did not receive a Growth Grant payment should be substituted with:

- its Maximum TSP Eligible R&D Expenditure under this scheme for that year if it participated in the RDTI in that year; or
- zero if it did not participate in RDTI in that year.

If a business both received a Growth Grant payment and participated in the RDTI in the 2020/21 year:

- For the purpose of calculating its Maximum TSP Eligible R&D Expenditure, its Growth Grant Eligible R&D Expenditure for the 2020/21 year should be calculated as if the business had remained in the Growth Grant scheme for the whole year.
- For the purpose of calculating its TSP Eligible R&D Expenditure for the 2020/21 year, its Growth Grant Eligible R&D Expenditure for the period in which it received a Growth Grant payment should be offset against its Maximum TSP Eligible R&D Expenditure (ie, its TSP Eligible R&D Expenditure is its Maximum TSP Eligible R&D Expenditure under this scheme less its RDTI Eligible R&D Expenditure in the relevant year and its Growth Grant Eligible R&D Expenditure for the period for which it received a Growth Grant payment).

Before applying for a payment under this scheme, a business must accurately assess the level of its Growth Grant Eligible R&D Expenditure for the relevant year and provide this information to Callaghan Innovation in its application. It must also retain evidence to support its self-assessment of its Growth Grant Eligible R&D Expenditure for the relevant year and be in a position to provide this evidence to Callaghan Innovation immediately on request.

Callaghan Innovation should ensure that the business applies the same accounting treatment to expenditure claimed under this scheme as it applied to the same expenditure in its application under the RDTI.

#### **Requirement to Make Good-faith Attempt to Apply for Funding Under the RDTI**

A business receiving a payment under this scheme must have made a good-faith attempt to apply for funding for its R&D expenditure under the RDTI. In determining that a business made a good-faith attempt, the following matters will be considered:

- Whether the business included in its application(s) under the RDTI all activities that it could reasonably be expected to have considered as eligible under the RDTI;

- Whether the business included in its application(s) under the RDTI all information on those activities that it could reasonably have been expected to consider as relevant for considering its application; and
- Whether the business provided all information requested by the RDTI team as necessary to assess the eligibility of the business's activities under the RDTI.

For the avoidance of doubt, it is not expected that a business will include in its application(s) under the RDTI information relating to activities that it could not reasonably be expected to have considered as eligible under the RDTI.

A business applying for a payment under this scheme must retain evidence to show that it has made a good-faith attempt to apply for funding under the RDTI and be in a position to provide this evidence to Callaghan Innovation immediately on request.

#### **Administrative Processes**

##### **Acceptance of Applications**

Callaghan Innovation will open the scheme to applications as soon as possible after this Ministerial Direction comes into effect and keep it open until three months after the last eligible business is notified of a decision on its RDTI supplementary return by Inland Revenue, unless otherwise agreed with the Minister of Research, Science and Innovation.

##### **Assessment of Applications**

Callaghan Innovation must ensure that funding decisions are made in accordance with the Public Finance Act 1989.

Before making a payment under this scheme, Callaghan Innovation will establish that the business satisfies the business eligibility criteria.

Callaghan Innovation will require the business to attest, at the time of its application, that:

- a. it has accurately assessed the level of its Growth Grant Eligible R&D Expenditure in the relevant year;
- b. it has made a good-faith attempt to apply for funding under the RDTI; and
- c. it is in a position to provide evidence in support of statements (a) and (b) immediately on request.

Callaghan Innovation will develop and publish guidelines to ensure that the applicant understands the nature of the evidence that it is required to retain.

In assessing whether a business is eligible to receive a payment under this scheme and determining a level of entitlement, Callaghan Innovation will normally rely on the business's attestations as to the matters covered by these statements. It will, however, seek additional information from the business on these matters before making a payment under this scheme if there are indicators that the business may not have met these requirements.

##### **Timing of Payment**

Callaghan Innovation will make the payment to the business as soon as possible after it receives:

- an application for a payment; and
- notice of the business's RDTI Eligible R&D Expenditure for the relevant year.

##### **Audit of Applications**

Callaghan Innovation will commission an audit of a sufficient number of applications to be able to provide the Minister of Research, Science and Innovation with an assurance as to whether businesses receiving a payment under this scheme have complied with the requirements set out in this notice. In selecting which businesses to audit, Callaghan Innovation will take into account indicators that the business may not have met these requirements.

##### **Consequences of Not Complying with Requirements**

In making a payment to a business under the scheme, Callaghan Innovation will specify the consequences of not complying with the requirements set out in this notice. In particular:

- If it is determined after a payment has been made that the level of its Growth Grant Eligible R&D Expenditure in the relevant year assessed by the business exceeds the actual level of its Growth Grant Eligible R&D Expenditure as determined by Callaghan Innovation, it will be required to immediately repay those funds it has received that exceed the actual level of its Growth Grant Eligible R&D Expenditure.
- In addition to being required to repay the funds that exceed the actual level of its Growth Grant Eligible R&D Expenditure, the business will also be required to pay an amount set by Callaghan Innovation at a level to ensure businesses have a strong incentive to accurately self-assess their Growth Grant Eligible R&D Expenditure in the relevant year. In setting the amount, Callaghan Innovation should take into consideration that the scheme relies

on business's accurate self-assessment of its Growth Grant Eligible R&D Expenditure to minimise the costs to business of complying with the scheme. Callaghan Innovation may waive the requirement on the business to pay this additional amount if the excess amount the business received was small (relative to its actual Growth Grant Eligible R&D Expenditure) and it determines that the error in its self-assessment was made in good faith or if other exceptional circumstances apply.

- If it is determined after a payment has been made that a business has not made a good-faith attempt to apply for funding under the RDTI then, for the purposes of calculating the level of its entitlement under this scheme, the business's Growth Grant Eligible R&D Expenditure for the relevant year will be recalculated to exclude all expenditure relating to those projects and/or activities for which it has not made a good-faith attempt to apply for under the RDTI. The business will be required to immediately repay those funds that it has already received to which it was not entitled.

#### **Use of Funding for Administration Costs**

The funds allocated to cover administration costs must be spent in a prudent manner, and may only be used to cover Callaghan Innovation's incremental costs associated with operating the RDTI Transition Support Payment.

#### **Collection and Provision of Information**

Callaghan Innovation will provide the Minister of Research, Science and Innovation and MBIE with regular reports on the scheme, including business uptake, expenditure of funds under the appropriation, and the activities undertaken to provide an assurance as to whether businesses receiving a payment under this scheme have complied with the requirements. This will include the amount of auditing commissioned, the level of compliance (or non-compliance) revealed as a result, and the number of funds recovered from businesses that have not complied with the requirements.

Callaghan Innovation will collect business-level information relevant for the monitoring and evaluation of the scheme and policy development more generally, analysis of business performance, and other related research. It will make this information available:

- To the Ministry of Business, Innovation, and Employment (MBIE), upon request, for the purposes of monitoring and evaluation of the scheme and policy development more generally;
- To Inland Revenue, upon request, for the administration of the RDTI; and
- To Statistics New Zealand, on an annual basis, for the purpose of making it available to researchers on a de-identified basis through the Longitudinal Business Database.

Callaghan Innovation will ensure that all applicants have provided the consent necessary for sharing of this information as described above.

Dated this 7th day of July 2021.

HON MEGAN WOODS, Minister of Research, Science and Innovation.