R&D TAX INCENTIVE: QUARTERLY CREDITS

Exposure Draft Consultation Guide

Response from AIIA

MAY 2013

INTRODUCTION

The Australian Information Industry Association (AIIA) is the peak national body representing multinational and domestic suppliers and providers of a wide range of information technology and communications (ICT) products and services.

We represent over 400 member organisations nationally, including global brands such as Apple, EMC, Google, HP, IBM, Intel, Microsoft and Oracle; international companies including Telstra; national companies including Data#3, SMS Management and Technology, Technology One and Oakton Limited; and a large number of ICT SME's.

Our members and their employees contribute to the nearly 8 per cent that ICT contributes to the Australian economy. All of our members, large and small are committed to developing Australia's digital capability and presence nationally and on the global stage.

We are pleased to have this opportunity to respond to the R&D Tax Incentive: Quarterly Credits Exposure Draft consultation Guide.

COMMENTS

AIIA strongly supports the R&D Quarterly Credits initiative as an important mechanism to support start-ups and small and medium enterprises (SMEs) undertake R&D activities and drive innovation.

We note Treasury's consideration of comments provided during the initial consultation process and subsequent enhancements that have been made to the scheme.

Given the scheme is specifically aimed at start-up and SME businesses we are keen to ensure the legislation is clear in its application in respect of these businesses and does not entail unnecessary red tape to effectively defeat its purpose. In this context we make the following observations/comments.

In relation to 48-110:

We note that 'total compliance' requires an entity to have an established history of compliance with obligations under the tax law for the immediate last 5 years. We note the examples of 'non-compliance' provided.

AIIA seeks further clarification on the scope of non-compliance, specifically if it includes instances of late lodgement, 'persistent' late lodgement, late lodgement fines etc. These are arguably minor, but nonetheless technical instances of non-compliance. To ensure businesses do not waste unnecessary time initiating an application process, the boundaries of 'total compliance' need to be clearly specified – including in the context of the 5 year 'total compliance' test.

Notwithstanding, the ability to apply for the incidence of noncompliance to be excused, our view is that a 5 year 'total compliance test' is unreasonable, especially for start-up companies that have no tax history. We recommend this be reduced. In consideration of Government's desire for scheme integrity, it has been suggested that a period of 2 years 'total compliance' is more acceptable.

In relation to 48 - 115

Section 48-115(2) outlines what the Commissioner must have regard to in assessing whether to excuse noncompliance. We note that the Commissioner must be satisfied on all of (2)(a), (b), (c), (d) and (e).

In our view Parts (c) and (d) in particular are subjective and hence unclear and the overarching requirement arguably out of step, where simple noncompliance acts or omissions have occurred.

We query that all elements must be satisfied and are concerned that the onus of proof then falls to the start-up or SME, thus imposing disproportionate red tape process and cost – again defeating the purpose of the scheme.

In conclusion we would emphasise the need to ensure the drafting is in plain English and hence easily understood by interested businesses and that effort must go into ensuring the scheme is communicated via established channels, e.g. commercialisation Australia so as to minimise cost and complexity.