



Australian Government

**Department of Industry
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Mr Paul McCullough
General Manager
The Review of Self Assessment
The Treasury
Langton Crescent ACT 2600

Dear Mr McCullough

I refer to the Department of Treasury's Discussion Paper *Review of Aspects of Income Tax Self Assessment* (March 2004) and request for comments.

Given its role in developing the policy parameters for and administering the R&D Tax Concession program, this Department has a strong interest in the issue of unlimited review periods for tax deductions for business (section 3.4.6 of the discussion paper).

Attached is the submission from this Department addressing this issue. The Department did not consult with industry in developing this submission.

If you would like to discuss this submission further, please contact Ms Karen Kuschert, Manager, Business R&D Policy Section on 6213 6389.

Yours sincerely

Kerri Hartland
Head of Division
Innovation Division

7 June 2004

Department of Industry, Tourism and Resources

Submission regarding Review of Aspects of Income Tax Self Assessment

Background

According to the discussion paper (section 3.4.6), the *Income Tax Assessment Act 1936* provides for a number of special cases where the Tax Office can amend an assessment at any time (eg, car expenses provisions, farm management deposit provisions, private health insurance offset provisions). The paper also states that, in some cases, there is a logical rationale for an unlimited assessment period, for example, where a taxpayer incurs an expense and claims a deduction which is subsequently reimbursed.

This provision applies to companies that claim the R&D Tax Concession through their annual tax returns.

ITR's Role

The Department of Industry, Tourism and Resources (DITR), in conjunction with the Department of Treasury, have policy responsibility for the R&D Tax Concession program. Both agencies have a strong interest in monitoring its use and effectiveness. In addition, the R&D Tax Concession program is jointly administered by AusIndustry, the program delivery arm of DITR, and the Australian Taxation Office (ATO).

Over 4,700 companies were registered with AusIndustry for the 2001-02 income year to claim the tax concession (including 125% tax concession, the R&D Tax Offset and the 175% Premium Tax Concession). R&D expenditure reported by these companies to claim the concession in this period was \$6.09 billion.

Issues

In a self-assessment regime, it is generally recognised that there is some degree of uncertainty in relation to the amount of tax payable. Uncertainty may lead to costs for taxpayers, such as paying interest charges.

There are different categories of taxpayers, which has implications for both uncertainty and compliance costs. The appropriateness of measures to improve certainty or reduce compliance costs may differ between different groups of taxpayers. In general, business taxpayers face more complexity in tax matters than individual taxpayers.

The R&D Tax Concession has stringent requirements in terms of the definition of R&D and eligible expenditure. Furthermore, some aspects of R&D definition have not yet been tested in the courts, creating further uncertainty for business. The registration of companies for R&D Tax Concession, and assessment of R&D activities, by AusIndustry and the assessment of eligible R&D expenditures by the ATO is a complex matter, which may lead to disputes and consequent appeals and litigation. There are often long time lags between registration of companies for R&D Tax Concession and the final assessment of R&D claims and expenditures, due to the necessity of additional information collected from companies. Both companies and tax concession

administrators thus need sufficient time to deal with complicated claims for and amendments to the assessment of R&D activities and eligible expenditures.

Under the current arrangements, there is no time limit in respect of amendments to R&D claims by companies. This recognises the complexity of managing R&D activities and related claims by companies, the administration of the R&D Tax Concession program by AusIndustry and the ATO, and the very lengthy processes involved in resolving disputes (both through dispute resolution process and through the courts).

However, uncertainty in tax matters involves compliance costs for businesses, eg the need to keep records of their business transactions and justification of their claims in relation to their tax returns. As stated in the discussion paper (page 76), businesses have raised concern that the current record keeping requirements are onerous. Companies need certainty in terms of early finality of income tax assessment and any subsequent amendments.

A set time limit, say five years, may be justified to improve certainty. This would allow AusIndustry to undertake compliance assessment activities within this period from the time a company submits its registration application for the R&D Tax Concession, and once an assessment has commenced in the five year period, then it should be permitted to run its natural course (please note: this exclusion should also include ATO amendments). An unlimited period would allow AusIndustry and the ATO the opportunity to audit (in the extreme) companies after 10-15 years. However, it could be difficult for AusIndustry to keep up to date records and it is likely that the companies' record keeping and corporate memory would deteriorate over time. This would have significant impact on companies with respect to retaining papers and documentary evidence.

The Department of Industry, Tourism and Resources would recommend that any change to the current time limit for the review of income tax assessment, as far as it relates to the R&D Tax Concession, should be developed in close consultation with the Department and extensive consultation with stakeholders, and most particularly industry.