

25<sup>th</sup> October 2009

General Manager  
Business Tax Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

**Dear General Manager**

Re: The New Research and Development Tax Incentive

Thank you for the opportunity to comment on the discussion paper on the New research an Development Tax Incentive.

**General comment**

AMEC recognizes and supports the overall intent of the changes and also acknowledges the need for change to be revenue neutral.

AMEC believes caution needs to be exhibited in drafting the proposed changes as there is the potential for compounding definitional or eligibility changes may either take some existing claimants totally out of the Tax Credit system and could ultimately drive R&D offshore.

**Principle 1**

AMEC is concerned that there is the possibility of draconian rules resulting from this principle.

Location of ownership of IP should be irrelevant providing R&D is conducted within Australia. Reimbursement issues become critical and must be considered in respect of “on own behalf” tests.

**Principle 2**

Ok

**Principle 3**

Ok

**Principle 4**

*Paragraph 47*

AMEC believes that the distinction between core and supportive will depend subjective assessment by AusIndustry personnel and seriously disadvantage claimants. There needs to be clarity over what defines *supportive* and *core* activities.

**Principle 5**

OK

## Principle 6 - Innovation and High Levels of Technical Risk

The Consultation Paper for the new R&D tax credit provides that a core R&D activity will be required to contain both innovation and high levels of technical risk. We believe that this principle will exclude high value adding R&D activities from attracting concessional benefits. Our industry experience shows that there are many examples where R&D activities contain only one element; however considerable spill over benefits result from undertaking the activity. For example:

### ***High level of technical risk without innovation***

A mining company has a highly weathered ore body. If the ore can be successfully processed the resource is of a size that will provide positive economic returns to the company and create significant employment and flow on benefits for a regional community. The product resulting from the process is not novel and established processing technology will be used for the mineral extraction. Due to the weathered nature of the ore, high levels of technical risk exist that the ore can only be processed using excessively high levels of reagents which is cost prohibitive and will make the project uneconomic. The company will undertake a program of systematic, investigative and experimental (“SIE”) activities to mitigate the high levels of technical risk that exist in developing a process flow sheet that will achieve the economic extraction of minerals from a highly weathered ore.

### **Question 4 - Supporting Activities**

We do not agree with any of the options presented for limiting supporting R&D activities under the new tax credit as they will impose greater administration cost upon companies without targeting low value adding R&D claims. We also think that it will overly limit the amount of the tax credit accessed and result in a position beyond achieving revenue neutrality.

We propose that an alternative approach could be taken by redrafting the existing feedstock provisions to ensure that reward is given for those activities beyond "normal" commercial production and ensuring that R&D benefits are accessed by companies in the stages of a project cycle where subsidies are of greater benefit. The new feedstock provisions could be tightened to require the presence of SIE activities to merit any additional concessional treatment for claims during a processing cycle of a companies operation. This approach will prevent excessive R&D claims being made well into the production cycle due to a small amount of core R&D activity occurring during the conceptual design phase of a project.

AMEC asks that the word “and” in the sentence “(a) involves both innovation and high levels of technical risk”, be deleted so that it reads (a) involves innovation or high levels of technical risk.

The use of the word “and” was not proposed in the Cutler recommendations.

Paragraphs 52, 53, 54 and 55 are considered illogical in explaining the basis for taking the approach in Principle 6. It is not possible to bring innovation and risk down to an activity level.

Smaller companies will either be one or the other due to the smaller spend on R and D. In many instances these companies will take on the innovative aspects without the attached high risk and yet should still qualify.

It is also possible to carry the risk without the innovation and still meet the remaining aspects of R and D criteria. Innovation can infer risk but risk may not necessarily infer innovation. It is therefore important to enable both characteristics qualify for the tax credit.

Innovation in the mining and exploration context is a conceptual thing and very difficult to interpret.

### **Principle 7**

AMEC is of the view that where production activities are essential in the proof of concept then they should qualify as part of the claim.

### **Question 4**

AMEC does not support the options provided in Question 4. It prefers to see the situation remain as it is.

- (a) *Capping*: AMEC does not believe capping should be applied.
- (b) At no stage should supporting activities be limited to the “sole purpose of supporting R and D”.
- (c) Is totally unacceptable
- (d) Is considered too complicated and will result in increased administrative costs. It would require extensive qualification to provide the necessary levels of certainty.
- (e) This option is seen as having some chance of attracting industry support provided the rate was not seriously discounted to core activities.

Under any approach regarding supporting activities, claimants should be no worse off than being entitled to a 100% deduction under the R&D provisions. It is not realistic to assume that expenditure incurred in supporting activities would be deductible under normal tax provisions.

### **SIE**

Under the SIE arrangements AMEC believes trials should qualify for claims as trials will invariably be of an experimental nature.

AMEC would appreciate the opportunity to discuss any of the above aspects further if you require additional input

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Simon Bennison', with a stylized, flowing script.

Simon Bennison  
Chief Executive Officer

