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

Subject: eCorner Submission on Consultation Paper for New Research and Development Tax Incentives 2009

Dear Sir/Madam

Please find included in the content of this letter our company's submission to the proposed Research and Development Tax Incentives consultation process.

This submission has comments that are based around four key areas:

1. Core R&D – “Innovative **and/or** technically risky”
2. The definitions of Supporting Research and Development (R&D) – Principle 7.
3. The issue of software R&D – Principle 7 Question 6.
4. Conflicting policy between the new R&D Incentives and the National Broadband Network and other initiatives.

Who is eCorner Pty Ltd

eCorner is an Australian privately owned and operated information technology company that commenced operations in 2004 as a startup business. It is majority personally funded through savings and bank finance, supported by personal assets. Our specialisation is in the areas of Web and Cloud based systems that deploy eCommerce solutions that are mass hosted and could be explained as Software as a Service (SaaS). We have a number of local and international technology partners. Our customer base spans small and medium sized enterprises to larger retailers. Our model is very much partner driven and we have delivered solutions to partners such as the Commonwealth Bank (Evolve iShop) and Netregistry (StoreXpress). These partners sell these solutions to their customers with our support. Our business has been exporting since 2005 and we have customers in New Zealand, USA, South America, Asia and Europe. We now support over 1,000 customers directly and through our partners.

I am the company Managing Director and, with my wife, we are the majority shareholders. I have 40 years of experience in the Information Technology industry and am a Fellow of the Australian Computer Society.

New Tax Model

In principle we have no issue or concern with the change proposed from a tax deduction based system to a tax credit based system. Our concerns arise from the lack of clarity that surrounds certain aspects of the way the credits might be applicable to our industry and therefore our business.

General Issues and Comments

Software Research and Development by way of its nature carries high degrees of risk. The concepts, processes and practices that make up software R&D are continuing to change at a rapid rate. In the current and future marketplace software R&D is a real time process that has to adapt to rapidly changing technologies and environments. Our business delivers Web and Cloud based solutions meaning that we develop reusable systems and applications that may be deployed and used anywhere in the world.

Our research and development challenge is to stay ahead of, or to predict, how businesses and consumers will want to use the World Wide Web. We have to develop solutions that are innovative, usable and supportable. These solutions often have to be adapted to changing requirements. In Australia our challenge is complicated by localisation issues that are unique to this region such as payment methods, logistics and languages.

Very often our work has to be experimental by its nature and due to the rapidly changing platforms like Cloud based computing, Software as a Service (SaaS), Web Services (Soap), IPv6, Web2.0 and Web3.0. Even the hugely successful phenomenon of social networks, such as Facebook and Twitter, has an impact on our R&D.

Information Technology is a key enabler for business. In Australia Web based applications and especially ecommerce have been slow to take on. This has left Australia and Australian businesses at a competitive disadvantage. According to the ABS less than 25% of Australian businesses receive orders online (*Summary of IT Use and Innovation in Australian Business* (cat. no. 8166.0)). Information Technology is a key enabler for Australia's economic growth and competitiveness.

The government has realised the need to provide capability for small business to go online to be competitive. This is reflected in the [Small Business Online](#) program which Minister Emerson announced on 12th May 2009. Information technology companies, like ours, need to invest in Web and Cloud based systems R&D to satisfy those needs.

The government announced the National Broadband Network (NBN) to improve the capacity and capability of all Australians to access the World Wide Web and all that it can deliver. However there is a need to have businesses conceive, design and develop the applications and solutions that will run through the NBN. It is desirable to have those solutions developed here in Australia. This will require support from national R&D and commitment from IT companies like ours.

It should also be recognised that much of the innovative work that is done in information technology R&D in Australia is done by small to medium sized businesses (SMEs). It would be impossible for these businesses to sustain the level of financial commitment necessary to produce results without the benefits that R&D Tax Incentives provide. By stopping or significantly reducing this assistance many SME information technology companies would no longer be viable. IT SMEs are the largest employer group in the ITC sector.

Core R&D – “Innovative and/or technically risky”

Software research and development has not been clearly defined within the scope of this consultation. When we undertake R&D we do it in such a way as to minimise technical risk. There is always a commercial risk. The core technologies around which we are required to develop solutions are put in place and managed so that incremental and new development is not technically risky.

We therefore do not see that both “innovation” and “risk” can be applied when determining the applicability of software R&D.

The definitions of Supporting Research and Development (R&D) – Principle 7

Core and Supporting R&D in the IT industry for software development is very difficult to separate. Software R&D has changed dramatically over time and is still changing. The consultation paper refers to the UK definitions that see “new operating systems” as R&D. However it is highly unlikely that any commercial organisation will undertake the development of a new operating system in today’s marketplace. The definition of what is included in software R&D is an important aspect of this consultation and yet there seems to have been no attempt to define it or recognise the changes that have taken place in the Web enabled world.

Software development methods and processes have changed dramatically to respond to the urgency of the Web. It is not feasible or practical to undertake long projects that span multiple years and expect a profitable outcome. R&D in today’s, and tomorrow’s, world will be based on rapid development and deployments. Products will need to get to market faster and be followed with frequent updates and upgrades of features and functionality. By its nature development methods are more experimental than in the past.

In today’s Web and Cloud based environments software development takes place rapidly and in a distributed fashion. We rely on many existing technologies that are core in the whole Web and Cloud environment and we need to build and improve the use of those core technologies in ways that are more innovative and productive.

Returning to the issue of Core versus Supporting R&D by experience there is no difference between Core and Supporting R&D when applied to information technology and software. It is all R&D and all necessary for the successful commercialisation of any product that is developed. The emphasis on the separation in the consultation paper is artificial and does not reflect what the organisation undertaking the R&D actually has to do.

The issue of software R&D – Principle 7 Question 6.

We believe that no change is needed in the principles that currently govern the “multi-sales” test. In essence it is a good and effective test that can be applied and works. In the example that was provided in the consultation paper Attachment A – Example 3 the key issue is the definition of a “sale”.

The reality is that in the example it is very simple to determine if the “finance company” is in the business of building and selling IT systems to organisations or providing a productivity tool for their own use. The multi-sale definition can work with some clarifications around the core business of the company claiming the R&D concessions.

In point 73 of the consultation paper the proposition is put forward that “ecommerce” changes the validity of the multi-sales test. However this is just not the case. It is very clear and easy to determine if a software solution has been developed with the intent of resale as opposed to multiple uses. All Web based systems or browser based systems (those that operate via common browser like Internet Explorer or Firefox) are multi-user systems. In order to protect copyright and intellectual property they use is generally licensed to the user. This however is not the same as licensing (for resale) or selling that solution to an organisation.

Software as a Service has also changed the way that we have to look at the commercialisation of our R&D. It is no longer the case that we license, or sell, a software application or module. Increasingly the trend is to license (or sell) access or usage to technology that is mass hosted in the Web or Cloud. A successful international example of this is Salesforce.com.

Conflicting policy between the new R&D Incentives and the National Broadband Network initiatives.

When Senator Conroy announced the National Broadband Network (NBN) it was largely applauded as opening up the opportunity for Australian businesses to be more competitive in a digital economy. To quote Senator Conroy, “High speed broadband is increasingly essential to the way Australians communicate, and do business. It will help drive Australia's productivity, improve education and health service delivery and connect our big cities and regional centers.”

Of course delivering the highway does not create the vehicles that will carry the passengers or adapt vehicles to different road conditions. The task of developing applications and systems to provide the vehicles that deliver the promise of the NBN falls back to Information Technology companies like ours. We have to have the vision, commitment and invest in the R&D that supports the consumption of capacity on the NBN. By limiting the definitions that allow full and committed R&D then the new R&D tax treatment is counterproductive to the whole NBN strategy.

In summary we applaud the government for providing the R&D incentives that it has been providing to this point. We also see that there is a need to change and improve those R&D incentives to remove uncertainty. The change from tax deduction to tax credit based systems seems to be equitable based on the example in the Consultation paper. Broadening the

definition related to SME from \$2 million to \$20 million similarly seems to be the right thing to do.

However we are in a digital age where there are significant pressures placed on businesses like ours to deliver innovative Web based solutions to business problems. The government sees this clearly and has undertaken initiatives like Small Business Online and the “Nation Building” National Broadband Network.

Everyday our business undertakes innovative R&D and we try to mitigate or remove as much risk as possible. To link these items in the assessment of incentive applicability is not correct. Mitigation of technical risk is in itself an R&D process.

Our business revolves around Web and cloud based R&D that are evolving and that change rapidly. A core part of being competitive in this market and delivering solutions is to enable adaptable and rapid R&D with fast risk assessment. This is the way in which innovation in our marketplace is achieved. Continued support for Australian SMEs to offer innovative solutions is to be applauded.

Thank you for accepting our submission to the consultation process and also for consideration of the issues we have raised. If we can provide any clarification or further information please do not hesitate to contact us.

Yours Sincerely,

John Debrincat, FACS
Managing Director