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21st October 2009

Business Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

Attention: General Manager

Our company has been claiming the current R&D Tax Concessions and we are concerned that some of the proposed criteria outlined in the new Tax Credit scheme may disadvantage companies such as ours, in terms of the real benefits that we can expect from conducting legitimate research and development activities.

Although large enterprise is critical to the Australian economy, Australia is also highly dependent on small to medium size businesses who add to its GDP through development of new products, processes or services – many of which ultimately enhance the operations of large companies. Most private industries, especially SMEs, do not and often cannot undertake pure research in their own right because of high cost and high commercial risk, but are dependent on other established pure research bodies to provide innovative platforms which can be used as foundations for development of commercially viable products or processes. However, development of new products and processes is a critical component of R&D in Australia.

We request that the following aspects of this new scheme be reviewed and changes considered to reflect the true current and future reality of research and development initiatives undertaken by Australian enterprise as well as ensure that continued benefits from such undertakings flow out into the Australian economy :

PROJECT ELIGIBILITY: *The new proposed scheme will require both High Level of Technical Risk AND Innovation to exist in order to claim R&D expenses.*

We believe this condition should be scrapped and the current ‘...AND/OR...’ condition retained. The reasons for this include the following:

- The difficulty of defining the degrees of what does and does not constitute the element of ‘innovation’, which in itself can be an extremely complex and highly contentious issue and may ultimately be subject to personal interpretation.*
- The difficulty of proving what is or is not ‘innovation’ when no patent exists. How does one prove or disprove, that the outcome is innovative and that there is no other competitive product out there bearing same level of sophistication or innovation?*
- The cost and burden of proof a company such as ours would have to undertake would greatly diminish our desire to partake in R&D.*
- How is an assessor (with limited technical knowledge) going to be able to pass judgement on what is or is not innovative in a highly specialised field? Will the government support this new enterprise by entering a new phase of training and employing highly skilled and knowledgeable assessors undertaking the task of determining eligibility, or will this scheme, like so many others fail to meet expectations because compliance cannot be guaranteed due to highly restrictive definitions and inadequate resources? Why not face reality from the outset and ensure compliance can be a guaranteed outcome by virtue of setting realistic benchmarks?*
- The element of High Level of Technical risk is a far better measure in such circumstances and provides a better gauge of the high level of development that a company has had to undertake.*

CORE R&D versus SUPPORT R&D: “Supporting R&D will continue to be recognised under the new R&D tax incentives but claims will be subject to new limitations” (Principle 7),

Commercial reality dictates that development of core processes, as distinct to pure research, very often blends in with support requirements.

Questions that arise here are:

- How will a company be expected to differentiate between “core” and “supporting” R&D activities?
- At what stage will the cost of maintaining the records relating to the costs associated with both types of R&D for each project become a significant add on project cost to a company by virtue of it being extremely time consuming and meticulously demanding.
- Would a company, as many now already do, consider that the uncertainty of getting an expected \$\$\$ outcome from the government far outweighs the potential benefits, hence will either not proceed with the projects or not claim and hence “short change” the project’s potential to the considerable detriment of the Australian economy?
- In reality this concept could prove to be a compliance nightmare, resulting in much time and money spent by private enterprise as well as assessors on “finding needles in haystack’s” and could strongly influence many companies to rethink their position with respect to R&D commitment – ourselves included.

SOFTWARE DEVELOPMENT: We endorse the abolition of the ‘multiple sale rule’, however, why are we looking at adopting a restrictive UK model when Australia has so much to gain from formulating a leadership position in this fast growing field of technology?

- The field of software development is surging ahead in leaps and bounds. It is difficult to predict what will or will not be researched or developed within the next 12 months let alone next decade. It is therefore not practical to impose limitations and exclusions on software companies which may in the near future become meaningless and outdated and possibly even now don’t reflect reality. Hence, unlike other industries, in the case of software development, the point may be argued that a Software Project show that BOTH innovation AND High Level of Technical Risk in order to claim R&D and not pursue the path of definitive exclusion.
- The mere fact that a system already exists, be it manual or automated, should not automatically mean that further software development by a company excludes R&D. Often there is R&D involved.
- Systems of integration of pre-existing modules may have degrees of complexity and carry considerable innovation and require considerable development.

We trust that you will consider the above aspects in the formulation of this new scheme.

Yours Faithfully

Paul McCardell
Director