
From: Perry Eckert [perrye@nutech.com.au]
Sent: Wednesday, 23 September 2009 8:08 PM
To: R&D Tax Credit
Subject: Submission to Consultation Paper - The new R&D Tax Incentive
Importance: High

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

Dear Sir,

Nutech Paint is Australia's largest and oldest roof tile and decorative concrete coating manufacturer.

We have been in business since 1972 and have produced coatings worth more than AUD \$150 million.

Our Company turns over less than \$20 million per year. All manufacturing and R&D is undertaken in Australia

We currently export to the UK regularly through a Distributor and irregularly throughout Asia and NZ. We manufacture in Seaford Melbourne and we have a warehouse in Sydney and Brisbane, with a licensed distributor in Perth.

Our business is a multi award winning (Frankston & Peninsula Business Awards - Best Business 2005 & Victorian Telstra Small Business Finalist 2006).

We are currently setting up another business in the USA supplying roof coatings in California.

We have spent in excess of \$250,000 per year on research and development for the past 5 years and more than \$150,000 per year for the previous 5 years.

We are the leading roof coating manufacturer in Australia and probably the Southern hemisphere.

We are the only Company in the World licensed to use Dupont Teflon® in a roof coating.

We have also developed a new liquid glass coating called Liquid Surface Creations and have obtained Patents for this around the world over the past year (Australia, Singapore, South Africa, USA & 10 other Countries plus the EU awaiting approval).

These are examples of new products that would not exist without an active R&D program. These Patents have been approved on the basis that the product is novel and involved considerable expenditure with a high level of commercial risk because the concept patented relates to the appearance of the coating. Based on paragraph 52. This products should have been as perfect candidate for the R&D program.

"52. The definition of core R&D will not alter the SIE or purpose requirements. However, the Government's current intention is that the definition of core R&D will require SIE activities to be both innovative and technically risky."

We would like to spend more on R&D and see emerging nano technology applications for roof and concrete coatings as very important, however we are unable to increase our R&D budget.

It is relevant that considerable Company funds are now tied up in GST and Fuel Excise operational costs which have been introduced over the past 9 years without Government assistance.

We also opened a new warehouse in NSW this year and will be required to pay additional tax

However Like most family businesses we operate a Family Trust and therefore without running a complicated double set of companies we are ineligible for any R&D Grants. Because of the age of the business we are exempt from any Capital Gains tax if and when we sell. This is too valuable and asset to ignore, and therefore we cannot restructure the trust/business simply to accommodate R&D legislation. It seems equally onerous to require us to create a new R&D company just to satisfy R&D legislation when it is not required.

“19. Only companies will be eligible for the new R&D tax incentive. Generally, an entity that is treated as a company in the tax law will be treated as a company for the new R&D tax incentive. Extending eligibility to other entities would create significant integrity and administrative issues, especially in the area of trusts.”

Based on paragraph 34 it appears that the intention is to prevent us establishing a new company to claim R&D grants on behalf of Nutech anyway. A trust is simply another form of taxable entity and is widely used by Australian family businesses. To deliberately exclude these from R&D benefits is simply red tape nonsense. To suggest otherwise considering its widespread use in Australia is also incorrect.

“34. The new R&D tax incentive will also retain the rule that where R&D is exploited, it must be done so on commercial terms. This prevents firms doing R&D ostensibly on their own behalf, but then transferring the results to an entity that would be unable to claim the incentive.”

My analysis of the Paper Summary follows;

“78. The new R&D tax incentive will provide more effective and predictable support for Australian companies conducting R&D in Australia. **INCORRECT – it will not help bona fide family businesses like Nutech who are currently excluded by red tape. The proposed changes would also exclude the widespread current use of R&D companies to transfer benefits to trusts. It will not be predictable because companies will have no certainty that their project will meet the “innovation” and “technical risk” litmus tests.**

It will also be better targeted at the underlying rationale for public support so that taxpayers receive better value for money. **INCORRECT - By excluding non technically risky R&D the taxpayers will save money – however most small businesses obviously conduct R&D as a means to grow their business – what is a commercial risk to one company is simply business to another – either the Government wants to support R&D or it does not. Benefits flow from all R&D, not just that considered commercially risky. This is an onerous provision that will be impossible to measure and control and will remove all certainty for claiming business. I can just see the complicated set of R&D tax rulings that will soon be needed and exploited at the expense of small business resulting from this lack of certainty. This will just add to red tape, contrary to the Governments stated Budget intentions.**

In the 2009-2010 Federal Budget the Government announced that it supported measures to remove barriers to business growth. This proposal will not satisfy this criteria. All R&D is about business growth. To remove Government support for projects deemed non-commercially risky or not innovative (determined by who) would be directly contrary to potential business growth opportunities.

My reading of the paper suggest that the Government is simply trying to reduce Government R&D expenditure by tightening existing rules and regulations and introducing new “compliance tests” that will inevitably result in unnecessary uncertainty and confusion.

In summary its relatively simple. After the proposed, if an Australian business like Nutech Paint still fails the eligibly test for R&D tax incentives, then the review has been a complete

and intentional failure.

With respect,

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