



Internet Industry Association

ACN 071 075 575

The Tax Laws Amendment (Research and Development) Bill 2010

Response to Exposure Draft and Explanatory Materials Expansion of Excluded Activities / Changes to Eligibility of Software R&D

We broadly agree with the observations in the submission of Michael John Associates forwarded to you on 5 Feb 2010.

The Internet Industry Association notes the excluded activities concept has been expanded to deny eligibility for the prescribed activities as either core or supporting activities.

Furthermore, several software-related activities have been added to the list with little attendant explanation. The software limitations have been expanded rather than relaxed as recommended in Venturous Australia.

http://www.innovation.gov.au/innovationreview/Documents/NIS_review-chapter8.pdf

Instead a strengthened "multisale" test has been introduced.

The interaction between the retained multiple sale requirement and the expansion of the excluded activities list means that software-related R&D may now be exempt from any R&D support.

Previously, the Concession exempted software R&D from the multiple sale test. This is no longer the case with the Credit which apparently wipes out all software R&D that does not have a direct commercial purpose.

The proposal will cut a large proportion of software-related R&D by the two way expansion of the list of Excluded Activities.

Firstly, it excludes any R&D activities involved in integrating any software or any computer software services. As in-house software R&D as a core activity was **already excluded** by the multiple sale test, this is a major blow to R & D incentives for software providers.

The software industry is moving more towards the use of reusable, "best of breed" software components.

Innovation builds on the extension of existing technologies. The exclusion of the integration of software pushes researchers either to 'reinvent the wheel' or have necessary portions of software projects excluded from Credit.

Secondly, the exclusion now identifies supporting activities as well. This affects exclude software development or any computer software service necessarily required to enable non-software R&D activities to occur.

The IIA believes this is unwarranted as there is an increasing use of software as an ancillary aspect of many products.

For example, software to perform quality assurance tasks would not have any multi-sale aspect but may add significant value, and reduce costs in a R&D project. The expanded software limitations potentially exclude using software even though it offers cost effective alternatives to traditional R&D techniques. The term "in silico" is becoming more prevalent referring to performing activities in software rather than in real-world. These new exclusions have the potential to limit further "in silico" work.

Many new process developments depend on the integration of off-the-shelf software and other computer software services in the same way that they are dependent on activities and experimental methods that are not innovative or risky in their makeup. It is hard to understand why these changes have been proposed in an overhaul of a program in order to encourage more R&D by business in Australia.

Now it unclear how the proposed augmented feedstock, core technology and expenditure not at risk provisions will impact on what little software-related R&D activities remain.

For example, to meet the multisale test, the taxpayer must demonstrate that the purpose of the supply is to make a commercial return from the supply. If the related R&D generates an output of direct market value, this value needs to be offset against the R&D costs involved. It might be argued that to be eligible for the Credit with respect to software R&D, you must intend to not access it as you are seeking a direct commercial return.

RECOMMENDATION

That the proposed restrictions on eligibility should be put aside in favour of the already established and well-understood definitions of eligible R&D

About the Internet Industry Association

The Internet Industry Association (www.iiia.net.au) provides policy input to government and advocacy on a range of business and regulatory issues, to promote laws and initiatives that enhance access, equity, reliability and growth of the Net within Australia.