



TEYS BROS. (HOLDINGS) PTY. LTD.

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General Manager
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To Whom It May Concern

On behalf of Teys Bros (Holdings) Pty Ltd, I welcome this opportunity to provide feedback on the exposure draft of the Tax Laws Amendment (Research and Development) Bill 2010 released 18 December 2009 ("the exposure draft").

Tey's Bros is in the meat processing sector with operations in Naracoorte (SA), Beenleigh (QLD), Biloela (QLD) and Murgon (QLD). The business employs over 2500 people and plays a key role in these rural economies. We have been accessing the R&D concession scheme for a number of years and its benefits are known at the highest level of our management. Access to R&D concessions is seen as a valuable factor in the decision process towards investing in projects and we have spent considerable time towards educating our management as to the processes and advantages the program offers.

Our concern with the proposed changes to the tax laws associated with R&D is that the program may no longer make the investment of time and money in R&D review worthwhile. This in turn will remove R&D as a focus point for our process review and project analysis. The process of group discussion within Teys around the R&D program in itself facilitates feedback on what we are doing and can do to improve our business products, operations and performance. To remove R&D as a factor in our business planning will be inconsistent with the policy intent, but a reality of what the draft law delivers.

Our company commends the Government's stated intent in delivering a "more generous, more predictable, and less complex tax incentive", however we do not believe the legislation achieves this intent in its present form.

Whilst we understand the Government's intention to tighten eligibility in order to focus incentives on worthy activities which will benefit the broader Australian economy, we believe the combination of the high number of tightening measures contained in the exposure draft serves to drastically reduce the generosity, accessibility and attractiveness of the R&D Tax Incentive program.

Major concerns

Within the exposure draft, there are a number of key ways in which eligibility has been significantly tightened and claims will be curtailed, making the system less generous, more complex and less predictable for businesses.

1. The requirement for ‘considerable novelty’ in place of ‘innovation’ – this both raises the bar for eligibility of potential claimants, while increasing uncertainty by replacing a well understood and defined term. Innovation is an understood term, and the relationship between innovation, productivity and growth is similarly well understood. The shift in term seems to favour the “blue sky” R&D common in academic settings over business innovation – the incremental improvements which are vital to business competitiveness;
2. The introduction of the **“and”** test for the eligibility test of considerable novelty and high levels of technical risk. We believe that this change to the definition will lead to the exclusion of many genuine R&D activities that should be supported and are currently eligible for support under the existing R&D tax concession. As a mature industry, the advancements we look to make favour technical risk over novelty and to close the door on a projects based on the criteria to achieve both eligibility factors could significantly reduce our access to the scheme. If this change is to be adopted combined with other proposed restrictions, it would work against the aim of the new tax credit to provide a more generous concession.
3. The introduction of the “dominant purpose” test for supporting activities. This represents a significant tightening over the existing test in the current program, which only requires that a support activity be carried out for "a" purpose directly related to the core R&D activities. This new test will greatly reduce the amount of eligible support activities that may be claimed, and will also impose a severe evidentiary burden on claimants of the new R&D tax credit. Many support activities will have a commercial purpose as well as an R&D purpose and providing evidence that one purpose is clearly dominant over the other will be almost impossible in many cases. This introduces considerable uncertainty over the eligibility of claimed supporting activities and is highly undesirable as a consequence.
4. The “augmented feedstock provisions”, effectively limit R&D Incentives to the net expenditure on the R&D activities. This obviously decreases the generosity of the incentive, however it has other major consequences:
 - a. it makes the incentive less predictable, as the value of the output may be clawed back at a future date, making budgeting projects and accounting for incentives difficult (i.e. how would one carry the potential liability?);
 - b. it favours failure over success. We believe that having taken on the technical and financial risk of an R&D activity, a claimant should not be negatively treated at a indeterminate point in the future due to the disposal of the outputs of R&D;
 - c. the scope of what is included in the “output’s cost” should not include labour and plant depreciation. A company takes on a real *opportunity cost* by diverting staff and assets from normal duties to an R&D activity – this cost is in fact never fully recovered, even if the outputs of R&D are sold. The current feedstock provisions of the R&D Tax Concession, which deal only with material inputs and energy, amply claw back incentives on profitable trial activities.

Submission Request

There is, presently, a unique opportunity to draft the legislation precisely and specifically to meet the policy intent – this opportunity should not be missed. Given the above issues and complexities in the current exposure draft, we submit that the Government should:

1. Leave in place the well understood term – Innovation in the definition and remove the term considerable novelty;
2. Rethink the supporting activities restrictions to take into account that business will expend on costs that serve a commercial and R&D purpose in as efficient means as possible;
3. Revert to the existing feedstock provisions of s73B of the ITAA 1936 which, we believe, effectively limit incentives to net cost of trials or alternatively quarantine some specific activities from being treated as input costs in the augmented feedstock provisions. We request that two categories of costs be quarantined (and not included in the feedstock calculation) being labour and plant depreciation.

We hope that our submission will be given consideration and that the new tax credit will be finalised in a manner that will encourage business participation in innovation and productivity improvement.

Yours sincerely

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