Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Innovation, Industry, Science and Research Portfolio
Supplementary Budget Estimates Hearing 2010-11
20 October 2010

AGENCY/DEPARTMENT: INNOVATION, INDUSTRY, SCIENCE AND RESEARCH

TOPIC: R&D Tax Legislation

REFERENCE: Written Question–Senator Colbeck

QUESTION No: SI-79

1. Since June 2010 (when the Government first indicated it would attempt to make the R&D legislation take retrospective effective), what advice has been given by the Minister's office and by the Department to current and imminent investors in R&D? Have you been telling them they should follow the existing laws or that they should anticipate the proposed changes to the laws?

2. What is the reasoning behind making the changes retrospective to 1 July 2010?

3. In Senator Carr's media release of 31 May 2010 titled 'R&D Tax Credit Best In World', some words in a report from KPMG were used to claim that this legislation was the best in the world. Is the Department aware of a public statement from KPMG (dated 1 June 2010) that rejects what was written in that media release? And has anyone working in Corporate Strategy Branch, Innovation Division or AusIndustry brought this to the attention of the Minister's office?

4. What was the reasoning behind the decision to cut support for R&D in the building industry, through Section 355-225 (1) (a) of this legislation?

5. In a media release dated 30 September 2010, there is a comment from Minister Carr saying that "the Government will … establish a panel of R&D Tax Credit users to advise me and the Department on any unforseen [sic] consequences of the new R&D Tax Credit". What is meant by the term "users" in that sentence, how and when will this panel will report, to whom, and how will their advice be acted upon?

6. We understand that a lot of educational material has been prepared (and continues to be prepared) in the Department on the new legislation. What form does this collateral take, and how much has been spent on preparing it?

7. From reading AusIndustry's R&D Tax Concession Bulletin of September 2010, is it correct that the Department has recently changed some of the advice, processes and/or requirements relating to firms seeking to benefit from the R&D Tax Concession? Is it advising and/or requiring firms to document more details about their R&D activities? If so, what are the specifics of this advice, when did it change – and why?

8. Is it still envisaged by the Department that, if the legislation is passed, a review of the dominant purpose test would be conducted in three years' time?

9. Is there still any plan on the part of the Government to relax the rules on the application of the dominant purpose test so that it will not apply to firms with a turnover of less than $20 million?

ANSWER

1. The R&D Tax Concession (section 73B to 73Z of the *Income Tax Assessment Act 1936*) is the prevailing law. Taxpayers must comply with these rules when accessing support for R&D activities though the tax system.

2. To enable businesses to access the increased benefits as quickly as possible.

3. The Department and the Minister are aware of the public statement made by KPMG on 1 June 2010. The statement supporting tax credits as best practice were made by KPMG international. The KPMG comments of 1 June 2010 were made by KPMG Australia, which has clients that benefit from the existing tax concession.

4. The treatment of expenditure on buildings under the R&D Tax Credit accords with the treatment of expenditure on buildings under the existing R&D provisions.

5. The Minister accepted a recommendation of the Senate Economics Legislation Committee report on the Tax Laws Amendment (Research and Development) Bill 2010. The details of the panel have not been developed at this stage.

6. AusIndustry is currently drafting a number of educational resources for the R&D Tax Incentive. These documents are being developed by AusIndustry in consultation with the ATO, and include:

- a general overview of the R&D Tax Incentive
- information sheets on various aspects of the legislation
- a guide to the R&D Tax Incentive
- a guide to Advance Findings

To date approximately $55,150 has been spent on drafting these materials.

7. AusIndustry is implementing a new compliance framework under the R&D Tax Concession which presents a risk-based approach to compliance, tailoring the treatment of risk to the perceived risk of non-compliance.

AusIndustry is not requiring firms to document more details about their R&D activities. In its September R&D Tax Concession Bulletin, AusIndustry provided some guidance on R&D planning and record keeping which is consistent with the established requirements of the R&D Tax Concession program, and outlined its approach to compliance management.

8. Yes.

9. No.