

28 November 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

**RECOMMENDATION FOR AMENDMENTS TO TAX AGENT SERVICES BILL 2008
SPECIFICALLY IN RELATION TO THE REGISTRATION STATUS OF
“RESEARCH AND DEVELOPMENT CONSULTANTS”**

Please find attached my submission to the Senate Economics Committee, in relation to the Tax Agent Services Bill 2008. This submission deals specifically with the registration status of “Research and Development Consultants”.

I believe my proposed amendments will benefit the integrity of the tax system and the assistance provided by Government to promote innovation in Australia. These proposals are supported by a number of my industry colleagues.

You are welcome to contact me using the details below, if you have any queries or require any further clarification.

Yours faithfully

Jeremy Levitt

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SPECIFICALLY IN RELATION TO THE REGISTRATION STATUS OF
“RESEARCH AND DEVELOPMENT CONSULTANTS”**

Request

I submit this document to recommend amendments to the *Tax Agent Services Bill 2008* (Bill). The purpose of this Bill is to set professional and ethical standards for persons providing “Tax Agent Services” to the public. I understand that this Bill was initiated over concerns about the professional competency and accountability of BAS services providers. However, other specialist service providers are also affected by the proposed legislation.

I believe my proposed amendments will benefit the integrity of the tax system and the assistance provided by Government to promote innovation in Australia. These proposals are supported by a number of my industry colleagues.

Background

“Research and Development Consultants” advise their clients on claiming the research and development tax incentives (R&D Tax Concession) provided under s73B of the Income Tax Assessment Act 1936 (and subsequent amendments).

The Concession is jointly administered by AusIndustry on behalf of Innovation Australia with responsibility for the technical eligibility of the R&D activities and the ATO with responsibility for addressing eligibility and substantiation of eligible expenditure.

Determining eligibility for the R&D Tax Concession and the eligible claim amount requires an appreciation of the technical aspects of the research being undertaken, understanding the

scope of the research activities and process, the human and capital resources required to accomplish the technical objectives and determining the expenditures relating to those activities. The R&D Consultant prepares the eligible expenditure calculations in accordance with the published Guidelines and Case Law.

Successful R&D Consultants generally come from a technical background or are accountants who have a specific affinity for technology. This emphasis on technology is critical as the ability to assist clients in assessing the eligibility of activities and the extent of an R&D project relies on the technical understanding of the R&D Consultant. These consultants typically also advise clients on applying for the range of research grants, such as the now discontinued “Commercial Ready” and the current “Climate Ready” grants.

Issue

The Bill seeks to limit persons able to offer “Tax Agent Services” to those meeting specific criteria. The scope of “Tax Agent Services” as set out in the Bill includes advising on claiming the Research & Development Tax Concession.

The Regulations accompanying the Bill require that service providers must belong to a professional association with more than 1000 members, whose members must be qualified in the disciplines of accounting or law. It is doubted that the number of practitioners in this industry is anywhere near 1000. Based on my knowledge of the industry, whilst a number of practitioners’ qualifications would include courses in accounting or law, I doubt that many would meet the specific requirement “whose members must be qualified in the disciplines of accounting or law”.

This Bill, if passed without amending this restrictive requirement, will:

- screen out the vast majority of experienced consultants that have been working in this field (by their not being able to join the requisite associations that require their members to be qualified in the disciplines of accounting or law, or by their associations not having the required numbers or infrastructure to deal with the “R&D Consultant” discipline);
- restrict provision of these services to practitioners who in most cases will have no scientific or technical qualifications and limited appreciation of the technical aspects of R&D ; and
- as a consequence, have a detrimental effect on the integrity of the tax system with regard to the R&D Tax Concession.

Finally, by way of further background to the issue:

- This issue was discussed at R&D Tax Concession Administration Consultative Group meeting over a year ago, with the general advice from the government representatives being that R&D Consultants would be treated differently to BAS service providers, perhaps gaining some accreditation based on experience, technical expertise etc.

- It was therefore unexpected to see that the first example used in the Second Reading Speech and Explanatory Memorandum described an R&D Consultant as providing tax agent services, and specified that accreditations would require membership of professional organisations that are larger than the entire industry and that require their members to hold accounting or legal qualifications.

I would gladly accept a system that requires setting standards, ongoing continuing education and skills development, but do fear that the unrealistic restrictions will harm the R&D Tax Consulting Industry's ability to effectively service broader industry and the public.

Recommendation and Request

I ask that you seek amendments that will:

- remove the requirement for R&D (Tax) Consultants to hold legal or accountancy qualifications;
- broaden the scope of accrediting organisations to remove the requirement for R&D Consultants to have to be members of professional associations that restrict membership to individuals that hold legal or accountancy qualifications; and
- recognise relevant work experience ("Grandfathering" clauses), training in a relevant technical or scientific discipline and qualifications that include accounting or legal courses

as sufficient criteria to gain accreditation as an R&D (Tax) Consultant.

Yours faithfully

Jeremy Levitt
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R&D Consultant