

SUBMISSION TO THE SENATE ECONOMICS COMMITTEE
INQUIRY INTO THE TAX AGENT SERVICES BILL 2008.

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Executive Summary

The fundamental flaw in the *Tax Agent Services Bill 2008* and its associated regulations is that the Bill envisages the registration of those with accounting and/or law qualifications as tax agents but the definition proposed for tax agent services (Section 90-5) is much broader than the services that can be ethically and professionally provided by those with such qualifications. There is thus a fundamental non-alignment of the definition of tax agent services and the qualifications of those capable of delivering those services.

An obvious example of this mismatch is those professionals known as R&D Consultants who provide services in relation to Section 73 of the *Income Tax Assessment Act 1936* (ITAA).

Further, the Bill is couched to provide continuity and to set standards for a select group. The standards in turn are set to effectively preclude providers of services covered by the extended definition of tax agent services. The unintended effects of this Bill will increase with time as the tax system evolves and new areas are covered by the tax legislation.

The 125% R&D Tax Concession exists as an anomaly on the Australian tax landscape in that it is a scheme that is jointly administered by both the ATO and AusIndustry. This duality has led to industry specialisation whereby R&D consultants provide advice only in relation to the R&D provisions (Section 73) contained in the Act. It is believed that future government programs such as Carbon Credits will have similar requirements for joint administration due to the technical rather than financial factors affecting ultimate eligibility.

This submission seeks to highlight to the Committee the challenges facing specialist advisors, who, despite having a 23 year open relationship with the ATO, simply do not have a particular set of qualifications to whom the Tax Agents Services Bill offers registration.

This submission seeks to provide the Committee with insights as to the role and skill sets required for specialist advisors (using R&D Consultants as the example) and to make the Committee aware that the proposed legislation, despite claims to the contrary, is inflexible and inappropriate in that transitional provisions are denied to such specialist advisors and registration qualifications seek to impose time consuming additional skills of virtually no relevance to the provision of specialist services nor to the section of the Taxation Act to which restricted registration may be sought.

We wish the Committee to be aware that R&D Consultants operating in boutique consultancies in the majority do not have the required qualifications as prescribed and can no longer run their businesses in their existing form should this Bill be enacted in the form currently proposed.

The process of eliminating service providers in this area reduces the body of professional advice available to the public and will force smaller companies to use only large accounting firms. This in turn will significantly increase the cost of claim preparation to such a point that in some instances, smaller companies will not proceed with claiming the tax concession at all. This is in stark contrast to the recommendations of the recently commissioned Innovation Review that actively encourage enterprise of all sizes to innovate. But at what cost to the enterprise when clearly the specialised skills required become cost prohibitive?

Regulation of service providers is to be encouraged. We seek to be included in this new regulated environment by proposing two simple amendments to the Bill that will see our professional experience recognised as being relevant to the provision of our services as R&D consultants.

We have outlined in more detail below background information on the operation of the 125% R&D Tax concession and the role of an R&D consultant to assist you in your understanding of this unique area of practice.

1. Introduction

We are a group of independent R&D Consultants who have had an ongoing and open relationship with the Innovation Section of the Australian Taxation Office (ATO) and AusIndustry¹ for up to 23 years. We are all long standing and active participants in Innovation Australia's R&D Tax Concession Administration Consultative Group, jointly hosted by AusIndustry and the ATO. Although we assist companies in accessing entitlements under the *Tax Concession for R&D*, a program governed by Section 73B of the Income Tax Assessment Act 1936 (ITAA), we have never been seen nor promoted ourselves as tax agents or representatives of the ATO.

Indeed, our understanding has been that one did not need to be a registered tax agent to offer services in respect of the *Tax Concession for R&D*. This understanding was based on a number of factors:

1. We have no responsibilities in respect of the completion and lodgement of any company tax return
2. The focus of our work is primarily on the identification and description of eligible *R&D activities*
3. While we do help companies identify and calculate eligible R&D expenditures, these calculations are conducted in accordance with the principles established in the relevant tax rulings and now embodied in the *Guide to the R&D Tax Concession*, a joint AusIndustry-ATO publication available for public consumption
4. In many cases, the information we supply on eligible R&D activities and costs is reviewed and signed off on by the company's internal accounting staff and auditors before being lodged in the company tax return
5. We have worked continuously with both AusIndustry and the ATO to promote, develop and streamline the operations of the R&D Taxation Concession program, through forums like the R&D Tax Concession Administration Consultative Group. We are not aware of any complaints by either government body as to the quality of our work or our professionalism. More significantly, we have also been invited on numerous occasions to comment on proposed changes to the legislation and more generally on the administration of the program. In

¹ The government's industry portfolio has been located in a department that has had many name changes over the life of the tax concession program. Similarly there have been name changes to the IRD Board and its sub committees. AusIndustry is the public delivery arm of the Industry Department and is used as a generic term to describe both the Department and the Board charged with responsibilities under the Industry Research and Development Act 1986. Hence the word AusIndustry will be used when referring to aspects of the tax concession not directly linked to the ATO.

none of these consultations was the fact that we are not registered tax agents raised as an impediment to our involvement.

6. The *Application for Registration of R&D Activities* makes no reference to any requirement any consultants in this area need to be registered tax agents.

We were thus surprised to discover in the Explanatory Memorandum to the *Tax Agent Services Bill 2008* that, in part, our services were to be described as tax agent services and that no specific transitional provisions have been made to accommodate our position as specialist advisers in this area.

Representations to the Business Tax Division, The Treasury since the introduction of the Bill, have made us aware of their position that as the term “Research and Development” is defined in ITAA 1936, any advice proffered in relation to that term is advice on tax law and as such a tax agent service.

The Honourable Chris Bowen in introducing the Bill to the Parliament claimed that “key elements of the bill have been supported unanimously by the key players in the tax industry, including tax agents, bookkeepers, representatives of the tax and accounting professional associations as well as the legal professional associations, taxpayers and the tax office”. None of us, either as a group or as individual businesses have ever been consulted or included in the drafting process.

Notwithstanding this oversight, if we are now to be regarded as tax agents we would seek to hold The Honourable Chris Bowen to his word when he stated in the media release pertaining to this Bill on 13/11/2008 that:

Entities that specialise in a particular area of taxation laws or that only provide a type of tax agent service...will be eligible to register, with scope to operate in their specialty.

R&D Consultants for the most part are not accountants or lawyers. Hence had we been aware of the required tax agent registration and sought registration under the terms of the existing legislation, we would not have been able to obtain such registration.

The position is little changed in the proposed legislation.

In considering what specific transitional provisions might be relevant to our circumstances we would ask that the legislators to be mindful of the following:

- While the majority of us are tertiary qualified, few of us have accounting qualifications that will enable us to be readily registered as tax agents

- We also cannot be registered based on our experience as our experience was not acquired under the supervision of a registered tax agent.
- We cannot obtain voting membership of any of the 7 recognised professional associations (RPA) as we are not accountants or lawyers.
- Membership of an RPA may be achieved by the successful completion of a course of study in accounting and tax but such courses obviously take time to complete and are of little relevance to the services we provide (refer Attachment One)

Given the issues outlined above, we would therefore ask that any transitional provisions be flexible and broad enough to take account of the following:

- The majority of us are tertiary qualified
- Our years of experience in the program
- Our involvement in the administration of the program, through forums like the Consultative Group and through the many submissions on topics of interest that we have made over the years
- Our willingness to undertake further studies within a reasonable time frame (minimum 2 years) to become better qualified in the tax/ accounting field
- Our willingness to participate in ongoing professional development and to commit to a code of conduct.

2. Historical Perspective - Research & Development and the Australian Taxation System

Effective 1 July 1985, the government of the day sought to support and stimulate research and development (R&D) activities undertaken by Australian companies by way of a taxation concession. The terms of the concession were expressed via Section 73B of the *Income Tax Assessment Act 1936* (ITAA 1936).

In the 23 years that the taxation concession for R&D activities has been available the number of applicants has steadily risen from some 2,000 in 1986/87 to nearly 7,000 in 2006/07. Reported expenditure has also risen from \$1,000M to \$12,000M in the corresponding period. Based only on a concessional rate of 125%, the reported expenditure in 2006/07 would have resulted in tax revenue forgone of \$900M. This is a significant amount.

Prior to the introduction of a taxation concession, the undertaking of R&D activities was supported by Commencement and Project Grants administered by the Australian Industrial Research and Development Incentives Board (AIRDIB) within the Department of Industry, Technology and Commerce.

With the introduction of Section 73B ITAA, it was a requirement that to be eligible for the concession, a company must be registered with the Industry Research and Development Board (IRDB) that replaced the AIRDIB. A separate piece of legislation, the Industry Research and Development Act 1986, set out the roles and responsibilities of the IRDB.

The introduction of a taxation concession was a major change in the approach to providing an incentive for R&D activities. However, it is important to note that the primary eligibility is defined via R&D activities, not costs; and that the definition of such activities and the administrative mechanisms for determining the eligibility of such activities was and remains to the current day little changed from the grant programs that existed before the introduction of the taxation concession.

Simply put, the concept of providing a taxation concession was and still is, just a mechanism for making funds available. The definition of R&D activities, the grouping of related costs, the process of determining eligibility were all established and administered by bodies/departments not associated with the ATO or the tax regime. The subsequent linkage to a tax concession as a method of funding has seen no change in this process.

Grant programs continue in parallel to the taxation concession to the present day. The construct of a project, the definition of R&D activities and associated expenditure is essentially the same in both the grant and tax concession programs.

The introduction of Section 73B recognised the dual and equal administrative responsibilities for both the ATO and AusIndustry with clearly defined roles and

responsibilities outlined in separate legislation. The ATO, as evidenced by the nature of its Taxation Rulings (IT2442, 2451, 2552)², focused on ownership and expenditure issues and AusIndustry focused on R&D activities, commercialisation and benefits of the program to the Australian community. Both entities published separate rulings and guidelines.

It was not until the mid 1990s that the two administering bodies drafted a collaborative set of guidelines and not until current day that the ATO has begun to portray itself as the dominant administrator with AusIndustry acting simply as a precursor for R&D taxation concession eligibility.

² These rulings were not withdrawn until 6 August 2008. In part material in those rulings had become out of date and in part the relevant contents of those rulings had been included in Part C Guide to the Research and Development Tax Concession jointly authored by the ATO and AusIndustry.

3. R&D Consultants, AusIndustry and the ATO

The number of R&D Consultants throughout Australia is very small numbering less than 200. A few are employed as staff by large accounting houses but the majority are accounted for in small boutique consulting businesses that specialise in R&D related activities.

Though numerically small in number, specialist R&D Consultants have carved out a significant role for themselves within Australia's Innovation Community. The signatories to this submission, for example, collectively provide services to more than 5% of the 2006/7 claimants with total reported expenditure exceeding \$500M. Moreover, they have long standing relationships with a vast array of companies, ranging from small start-ups to Top 100s across all kinds of industries.

R&D Consultants involved with the tax concession program since its inception, for the most part, came from the existing grant regime. Primarily their relationship was with AusIndustry and taxation concessions were seen and treated as alternatives to grants; given that advice on project structure and eligibility in either program was, and is, the same. Grants needed prior approval with time consuming and costly documentation; tax concessions being based on self assessment were easier and less costly to prepare.

For the most part, prior to the mid 1990s, the relation with the ATO was a reactive one with contact limited to the ATO Innovation Section. Whilst reactive, the relationship was a very open one. The nature of the early taxation rulings was very prescriptive and the more challenging concepts relating to Syndication, 175% Premium rates, Offsets and MNE claimants were not part of the legislation at that time.

In contrast, the relationship with AusIndustry was very proactive. There was an active and constant relationship with R&D Consultants on virtually a monthly basis to sound out ideas of project definition, description, assessment, reporting and record keeping leading to draft rulings, guidelines and reporting formats that were forwarded to the R&D Consultants for comment and suggestions.

In effect the R&D Consultants were used as sounding boards to gauge the impact of intended operations and interpretations on compliance complexities and costings. The R&D Consultants pioneered the concept of project schedules leading to an R&D plan. One of the signatories to this submission published a Self Help Manual that found considerable acceptance by ATO field staff as a logical basis for identifying R&D activities and linking eligible costings.

R&D Consultants were also used (most discretely) as trainers for AusIndustry Regional staff and as filters for potential claimants wanting advice on project eligibility. It needs to be noted that the AusIndustry Help Line is a modern day tool that did not exist for the first 15 years of the taxation concession program.

In the early 1990s the R&D Consultants requested registration with AusIndustry. At the time there were no more than a handful of R&D Consultancies and given their diverse backgrounds, AusIndustry could not define a set of registration criteria nor did they feel it administratively worthwhile.

Since 2000, given the growth in the number of potential claimants, the experience gained in a long running program, increases in the complexity of compliance documentation, an increase in the number of R&D Consultants, pressure by the R&D Consultants for more regular consultation and a decrease in departmental resources; AusIndustry and the ATO agreed to formalise the consultation process by way of an Administrative Consultative Group. This Consultative Group meets at least twice a year in all major capital cities. All signatories to this submission are active participants in this consultative process.

R&D Consultants continue to make a valuable contribution to the administration of the program through the Consultative Group to this very day. Our input into proposed legislative and administrative change is also actively courted by both the ATO and AusIndustry, most recently in respect of the draft ruling on Section 73CA of the ITAA and the proposed changes to the R&D planning guideline.

4. The Role of the R&D Consultant

In 1986 Section 73 ITAA 1936 was made up of sub sections 73A and 73B. In 2008, Section 73 ITAA is made up of all the letters of the alphabet to 73Z. In addition, AusIndustry has more than 20 industry focussed grant programs.

The initial role of the R&D Consultant is to have an appreciation of the client's field of endeavour and to identify those Government Industry programs which are of relevance to the client. Next a client's ideas must be put into context having regard to what is already in the public domain, industry standards and timing. In effect, the R&D Consultant acts as a facilitator to have the client paint, first, the big picture and to then chunk it down so that one can have a story that is describable and feasible.

From an R&D Taxation Concession perspective, there are three annual outputs.

- An Application for Registration with AusIndustry.
- An ATO *Research and Development Taxation Concession Schedule*.
- An R&D Plan. (Not submitted unless requested by AusIndustry.)

The Application for Registration may be lodged by the claimant directly or by the R&D Consultant with the consent of the claimant. The ATO *R&D Schedule* forms part of a company's annual income tax return and as such must be submitted either by the company or its Registered Tax Agent.

To complete these three output documents it is necessary to:

- Identify and codify the technical eligibility of R&D activities within a project context.
- Isolate and quantify associated expenditure

These two activities are supported by:

1. The education of professional, technical and accounting staff as to the eligibility or otherwise of R&D activities.
2. An annual R&D planning and review process.
3. An upfront in-house system to identify and flag possible eligible projects.
4. An in-house system to identify and link times and costs to projects.
5. An in-house system to draft and maintain contemporaneous technical records.
6. A process of collation to produce the three required annual outputs.

The following sit behind the formal documentation process:

- Broad brush technology filtering
- Setting the scope and context of projects

- Identifying technical risk or innovation within the project
- Clarifying project goals
- Drafting descriptive documentation
- Designing and implementing contemporaneous technical and time keeping recording systems.
- Advising on and participating in the R&D planning process.
- Advising on the role of R&D in corporate strategic planning
- Drafting of R&D Plans.
- Assisting in the identification and quantification of eligible R&D costs
- Completing and lodging the Application for Registration, using R&D planning information
- Providing project costings to the claimant company for internal review and sign off by company auditors

The R&D Consultant plays an active role in all of the activities listed above, to a greater or lesser extent depending upon the internal capabilities and resources of the claimant company. Importantly, it must be stressed that the R&D Consultant **does not**:

- Take control or responsibility for the completion of lodgement of the company tax return
- Set up, manipulate or structure company accounts
- Advise on or have input into balance sheets
- Give advice on any tax related issues other than section 73B ITAA
- Portray themselves as tax agents, registered or otherwise.

From a government perspective, the R&D Consultant acts to advertise the government's innovation platforms; at the same time being a feedback loop as to operations, compliance and a simple understanding of intent. The R&D Consultants are trainers of tax agents and program assessors.

The R&D Consultant is a collaborator in the development of program operations. A most valuable input is that the R&D Consultant can bring a different perspective to the discussion; a perspective that is essentially non-rule based.

R&D Consultant Skill Set

It is most important to appreciate that eligibility for an R&D taxation concession or a grant is predicated on the eligibility of the selected R&D activities. All R&D activities are contextual and based on the sum of:

- the skill of the persons undertaking the R&D activities
- the industry group in which the R&D activities are undertaken
- knowledge existing in the public domain
- timing of the activities
- parallel developments in other industry groups

- cost constraints
- industrial convergence

Hence what may be considered R&D in one industry may be standard practice in another. The development of a new computer program in 1995 may, by 2008, be considered passé. Unlike rule based disciplines such as accounting where a nominal \$ amount remains the same, be it 1995 or 2008, a quantum of R&D undertaken in 1995 can be taken in 2008 to have never been R&D unless the context in which it was undertaken is considered.

Simply put, the nominal \$ amount retains its identity irrespective of context. The quantum of R&D can lose its identity unless it is put into context.

Understanding the above concept facilitates an understanding that the mindset required for a worthy R&D Consultant is very different to that required for an equally worthy accountant.

5. Unintended Consequences of the Proposed Tax Agent Services Bill 2008

The fundamental flaw in the *Tax Agent Services Bill 2008* and its associated regulations is that the Bill envisages the registration of those with accounting and/or law qualifications as tax agents but the definition proposed for tax agent services (S90-5) is much broader than the services that can be ethically and professionally provided by those with such qualifications. There is thus a fundamental non-alignment of the definition of tax agent services and the qualifications of those capable of delivering those services.

The most obvious example relates to those providing services with respect to Section 73 ITAA 1936 where fundamental eligibility for a taxation concession for R&D is predicated on the eligibility of a group of activities. So different is the skill set required to determine eligibility that the Commissioner for Taxation is legislatively bound to seek the intervention of a third party Government Department to make binding rulings on the eligibility of such R&D activities.

The introduction of a taxation concession for R&D in 1985 was designed to stimulate investment in innovation in industry in general rather than rely on a resource intensive and compliance expensive pre approval grant process. Essentially the introduction of a taxation concession was a philosophical change in the funding mindset; not in the concept of innovation per se; so adequately defined in the Frascati manual and the basis of government innovation programs in the western world.

At present there are sizeable grant programs associated with climate change, medical research, aging, health and childcare. It is quite conceivable that future governments may decide that a tax credit or concession may be a more equitable/ desirable method of funding than the plethora of existing grants. Should such a shift in mindset come about, further sections will be added to the ITAA where eligibility to claim associated expenditure will be predicated on the eligibility of a technical function requiring interpretive input from persons skilled in the relevant technical speciality.

The Bill is couched to provide continuity and to set standards for a select group. The standards in turn are set to effectively preclude providers of services covered by the extended definition of tax agent services. The unintended effects of this Bill will increase with time as the tax system evolves and new areas are covered by the tax legislation

The Explanatory Memorandum to the Bill states that “broadly the new legislative regime to govern the provisions of tax agent services is intended to ensure that tax agent services and BAS services provided to the public are of an appropriate ethical and professional standard.”

By limiting registration to those with accounting and legal skill sets the desired professional standards in specialist applications will be lowered.

It would be quite incorrect to imply that those not regulated by professional bodies do not uphold appropriate ethical and professional standards. R&D Consultants have had a 23 year open relationship with AusIndustry and the ATO as joint administrators of Section 73 ITAA. There is no record of malpractice, inappropriate advice, lack of professionalism or complaint by either administering body with respect to the R&D Consultants.

At present the “entry examinations” to each of the RPAs recognised by the existing Tax Agent Registration Board, include course material to engender some competence with GST, FBT, CST, Corporate tax etc. **However, there is not a single mention of anything to do with Section 73.** Hence, one can gain admittance to an RPA with absolutely no knowledge of Section 73. However, an R&D consultant who deals only with Section 73, to gain admittance to an RPA, is required to pass an examination in a raft of topics of absolutely no relevance to the performance of the R&D Consultant’s activities.

Without questioning the expertise of the vast majority of tax agents in the mainstream areas of tax compliance, the R&D Tax Concession is an area where registration as a tax agent is no recommendation or guarantee of professional service. On 19 November 2008, at a meeting of Innovation Australia’s R&D Taxation Concession Administration Consultative Group, the ATO representatives spoke of their concerns about accuracy and reliability of R&D Taxation Concession claims prepared by tax agents that prepare less than five of these claims per year and their intent is to set up a new audit category to target this group of existing tax agents (who, by definition in this legislation, remain eligible).

When the databases of the ATO and AusIndustry were first matched in about 1996, it was found that several hundred companies had claimed the taxation concession with the assistance of their tax agents but had never prepared or lodged an application for registration with AusIndustry. These companies would have had the prior deductions disallowed and attracted the general interest charge and possibly penalties.

Schedule 2 to the Tax Agent Services Regulations, sets out the prescribed requirements for registration as a Tax Agent. It would appear that a concession is made to non accounting or legally qualified practitioners in Part 1, Division 1, 101 (a) (ii) (A) by reference to a degree in another discipline relevant to the tax agent services to which the application relates. All other registration requirements remain totally focussed on accounting or legal skill sets. This imposes reskilling conditions on providers of specialist services of little relevance to the provision of those specialist services.

The Bill makes no transitional (grandfather) provisions for any who are not already registered tax agents but whose long standing services are now covered by the extended definition of tax agent services. Again, there is no recognition of different skill sets and no recognition of different operating environments.

The lack of any transitional (grandfather) provisions for R&D Consultants and Quantity Surveyors despite both groups' long association with tax related matters is indicative of an inflexible approach and a lack of understanding by the drafters of the legislation of the public's needs for specialist advice not adequately addressed by the skill sets of existing registered tax agents.

The Bill as it stands will, intentionally or unintentionally, deprive a small group of specialised consultants of their livelihood. This may be of no consequence to the drafters of the Bill but of significant consequence to the two government bodies that have collaborated for 23 years to develop and promote an integral segment of the Government's Innovation Program.

In addition, the Bill as it stands is in stark contrast to its intent to provide to the public services that are of an appropriate ethical and professional standard. If enacted in its current form, this Bill will not only fail the public by denying them the services of existing specialist groups, but it will also fail to provide the government with flexibility in how it may structure its future taxation programs.

This Bill defines the notional taxation world in terms of accountants and lawyers. The real taxation world has accountants, lawyers and technical professionals. Defining the tax world in terms of accountants and lawyers means that the technicians required to do the interpretation will always fall in the cracks.

The following lists the potential losses engendered by the cessation of R&D Consultant activities in the event transitional arrangements and realistic registration conditions are not included in the Tax Agent Services legislation

Loss to government innovation program.

- Loss of technical skill base
- Loss of sounding board
- Loss of technology filters and unpaid technology educators
- Increase in error rate by inexperienced agents (already proven)
- Sends wrong message to innovation market place. The implication is that innovation is tax/cost driven rather than technology driven.
- Undermines the role of Innovation Australia
- Places additional pressure on resources within AusIndustry to compensate for loss of filters.

Consumer/constituent issues

- Loss to industry of a technical advisory skill base
- Increased exposure by industry to inadequate or inappropriate R&D related advice.
- Increase in tax agent error rates
- Increase in accounting fees, especially for SMEs

- Removal of options for the public to obtain relevant advice
- Imposition of a rule based mindset in a technology environment
- Unemployment of a group of specialised persons
- Senseless waste of resources.

6. Proposals for Transitional and Registration Provisions

As professional consultants we want to assure the Committee that we are not opposed to registration. We support the intent of the legislation to ensure that services provided to the public are of an appropriate ethical and professional standard.

Our challenge is that there is no recognition that the nature of our work is fundamentally different to that of accountancy/legal skilled tax agents and that as a result of the nature of the work being different, our operating environment is also different.

The qualifications of R&D consultants vary from degrees in engineering, architecture, computing, arts, law, biology, nuclear physics, agriculture, chemistry but to name a few. There is no industry body to which we can collectively belong. To become a voting member of one of the Recognised Professional Associations is a virtual impossibility. Theoretically we can become members over an extended period of time by sitting for “entrance exams” of no relevance to the services for which we seek registration. (See Attachment 1.)

We propose that the Bill be amended and that existing consultants who meet the qualifications set out in the proposed grandfather clause be registered as tax agents restricted to providing services in relation to Section 73 ITAA.

We propose that the Bill be amended to provide registration opportunities for new consultants wishing to provide services in relation to Section 73 ITAA as set out in the section titled New Entrant Practitioners (non accounting).

Proposed Grandfather Clause

Without grandfather clause, existing R&D Consultants will not be able to transition to registered tax agent status without catastrophic interruption to their businesses. If one were to observe the law as proposed, without a transitional provision, one would have to cease trading until the new registration Board became operative. At that point registration could be sought but the prerequisites for the successful completion of courses in basic accounting, taxation law and commercial law could not be met. We understand that such courses would be a minimum of a semester in length. Assuming one could do all three courses in one semester, one would have been out of business for more than 12 months before registration could be obtained.

The committee will understand that if one is dependant on providing advice to clients on an annual basis and one is unable to provide such advice for an annual cycle, one has no clients. Those clients (R&D Tax Concession claimants) lose access to the specialist advice from their consultants that have a thorough understanding of their technology and projects.

The alternative approach of obtaining registration via work experience is not available to R&D Consultants. We are not members of an RPA and could not get timely membership by sitting an “entrance exam”. In addition, our experience is not recognised, as it is not “relevant experience” in that the experience gained was not gained under the supervision of a registered tax agent.

We therefore propose that the following transitional provisions be adopted:

Qualifications for Existing Practitioners

Education:

- A degree or diploma or certificate from a tertiary institution.

Work Experience or Number of Applications Prepared:

- Has been engaged in the equivalent of 5 years full-time relevant experience in the R&D tax concession in the preceding 10 years

OR

- Has been involved in the preparation of at least 100 applications within the preceding 10 year period

Professional education (if not previously qualified):

- Will commit to undertaking an approved course in basic accounting principles relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought and within two years of registration being granted.
- Will commit to undertaking an approved course in tax law relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought and within two years of registration being granted.

Continued Professional Development:

- Will commit to undertaking 120 hrs over a three year period of approved professional development. Such development may include attendance at technology focussed expositions, fairs or conferences and/or the undertaking of courses that would increase the individual’s technical knowledge or appropriate training courses (CPD) provided by the Taxation Institute of Australia or similar organisations.

New Entrant Practitioners (Non Accounting)

Education:

- A degree or diploma or certificate from a tertiary institution.
- Has successfully completed an approved course in basic accounting principles relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought.
- Has successfully completed an approved course in Australian taxation law relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought.
- Has successfully completed an approved course in commercial law relevant to the operation of that section of the ITAA (in this case Section 73 ITAA) for which registration is sought.

Work Experience:

- Has been engaged in the equivalent of 2 years full-time relevant experience under the supervision of a registered Tax Agent Specialist in the section of the ITAA (Section 73) for which registration is sought. (or was supervised by someone who is eligible under the grandfather clause even before the supervisor obtained tax agent status)

Continuation Training:

- Will commit to undertaking 120 hrs over a three year period of approved professional development. Such development may include attendance at technology focussed expositions, fairs or conferences and/or the undertaking of courses that would increase the individual's technical knowledge; or appropriate training courses (CPD) provided by the Taxation Institute of Australia or similar organisations.

We appreciate that the drafting of generic registration qualifications such that specialist/ technical professionals may obtain tax agent registration in a specific field is a challenging one. Attachment 2 sets out a list of attributes that we as employers would seek in a person wishing to become an R&D Consultant. We offer this list as a guide towards defining such qualifications.

7. Conclusion

We would like to thank the Committee for the opportunity to present this submission and would welcome any further consultation on any of the matters raised.

This submission is made on behalf of the following agencies.

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APPENDIX ONE.
SAMPLE COURSE CONTENT FOR BASE LEVEL MEMBERSHIP OF
RPA FOR APPLICANTS NOT POSSESSING TERTIARY
QUALIFICATIONS IN ACCOUNTING OR LAW.

TAXATION INSTITUTE OF AUSTRALIA

Membership Eligibility Criteria

Membership of the Tax Institute is open to all tax professionals and individuals interested in tax who meet any of the following criteria.

Fellow

A person will be eligible to apply to be admitted as a Fellow of the Institute if he or she:

- has passed the Advanced Tax assessment and
- has at least five years' relevant experience.

Associate

A person will be eligible to apply to be admitted as an Associate of the Institute if he or she:

Has at least three years' relevant experience and is a:

- Graduate of a university or other tertiary education institution with a degree in Taxation, Law, Commerce or Accounting or such other degrees as the National Council may approve; or
- Registered Tax Agent; or
- CPA Member; or
- Member of ICAA; or
- Member of NIA; or
- Solicitor or Barrister; or
- Lecturer or teacher in a prescribed subject at a tertiary level; or

Has passed the Applied Tax assessment. (See Box 2 below)

Affiliate

A person will be eligible to apply to be admitted as an Affiliate of the Institute if he or she satisfies one or more of the following criteria:

Has passed the Foundation Tax assessment; (See Box 1 below) or

- does not have three years' relevant tax experience but would otherwise qualify for admission as an Associate; or
- is enrolled in the Applied Tax course; or
- an employee of a Commonwealth or State revenue authority; or
- is a person having an interest in the affairs of the Institute who National Council resolves to admit as an Affiliate.

(Does an Affiliate have any voting rights as required for membership criteria of an RPA in the proposed legislation.)

AUTHOR'S COMMENT. In reviewing the course content for entry to base level membership into any of the current 7 listed RPAs for those not possessing a tertiary qualification in Accounting or Law, there is no mention of any knowledge requirement of Section 73B ITAA.

FOUNDATION TAX LEVEL 1. BOX 1.

COURSE CONTENT	Relevance to work of an R&D Consultant
<p>Introduction to the Australian Tax System</p> <ul style="list-style-type: none"> * Apply the characterisation and treatment of income and expenses, including the distinction between ordinary and statutory income and general and specific deductions. * Apply the requirements for a taxpayer to claim an amount as a general deduction, including the connection requirement and the impact of the four negative limbs. * Recognise the impact of an amount being characterised as capital in nature (both from an income and deductibility perspective). * Pinpoint the limitations placed on an employee with respect to the deductibility of certain costs (e.g. Motor vehicle expenses). * Calculate the impact of tax offsets in a taxpayer's tax liability. 	NONE
<p>Individuals</p> <ul style="list-style-type: none"> * Identify and apply relevant legislation and guidelines as they apply to the completion of individual income tax returns * Effectively and comprehensively extract all data from a client interview * Prepare accurate and compliant basic individual income tax returns using source data * Complete compliant individual income tax returns in a timely and accurate manner * Differentiate between simple tasks and those that require referral to supervisors. 	NONE
<p>Businesses</p> <ul style="list-style-type: none"> * Determine whether the activity undertaken is a business or a hobby * Correctly calculate income derived by the taxpayer * Determine eligibility for entry into the simplified tax system and identify benefits * Correctly claim a loss on a non-commercial business activity * Correctly apply the special derivation rules * Identify deductions particular to a business as well as specific deductions 	NONE Except identify specific deductions associated with R&D activities as prescribed by published ATO rulings and guidelines.

<ul style="list-style-type: none"> * Recognise and apply capital allowance provisions, pre-payment rules, trading stock and bad debts * Apply the special rules that relate to primary producers. 	
<p>Structures</p> <ul style="list-style-type: none"> * Identify and apply relevant taxation legislation and guidelines in relation to the choice of business structures * Apply these legislative rulings and guidelines in differing circumstances * Interpret the consequences of each structure for the client. 	NONE
<p>Loans</p> <ul style="list-style-type: none"> * Investigate facts to determine that a loan exists * Apply the correct tax treatment to loans * Determine whether interest is deductible * Determine the tax treatment of borrowing costs, leases and hire purchase agreements * Determine the tax treatment of loans provided by a private company to its shareholders * Apply the debt/equity rules and the effect on the characterization of a loan. 	NONE
<p>Goods and Services Tax</p> <ul style="list-style-type: none"> * Explain how GST works for both the consumer and the GST registered entity * Identify when to apply relevant GST legislation and guidelines * Calculate GST using the legislation and guidelines to complete transactions that involve GST * Recognise the impact of GST on a business. 	NONE
<p>Capital Gains Tax</p> <ul style="list-style-type: none"> * Determine whether an asset is subject to CGT * Determine whether a CGT exemption applies * Identify the circumstances in which capital gains or losses can be deferred * Calculate the amount of a capital gain or loss. 	NONE
<p>Fringe Benefit Tax</p> <ul style="list-style-type: none"> * Determine whether the FBT liability applies * Calculate FBT liability in relation to car fringe benefits * List common exemptions from FBT * Recognise the interaction between FBT and GST * List the types of state taxes, identify current rates and identify when the liability for each tax applies. 	NONE

APPLIED TAX LEVEL TWO. BOX 2.

COURSE CONTENT	Relevance to work of an R&D Consultant
<p>Ethics & Integrity in Tax Compliance</p> <ul style="list-style-type: none"> * Understand and apply ethical principles. * Tools to integrate ethical principles into professional practice and build an appreciation of the breadth of ethics. 	YES
<p>Capital Gains Tax (CGT) Fundamentals</p> <ul style="list-style-type: none"> * Examine the relatively complex but common CGT provisions: small business CGT concession; rollover relief (same asset, replacement asset and de-merger). 	NONE
<p>Corporate Tax Fundamentals</p> <p>Part A</p> <ul style="list-style-type: none"> * Calculate the taxable income of a company using financial statement and supplementary information. * Calculate the tax payable of a company and explain how and when this tax is paid. * Determine whether an interest in a company is classified as debt or equity for income tax purposes. * Explain the tax treatment of amounts connected with debt interests and equity interests in a company from the perspective of the holder of the interest and the company. * Apply the provisions for allowing a deduction for carried-forward tax losses and bad debt deductions in a given situation. <p>Part B</p> <ul style="list-style-type: none"> * Prepare a franking account. * Explain the taxation treatment of distributions from a company from the perspective of the company and the shareholder. * Identify circumstances in which amounts will be treated as a deemed dividend for income tax purposes (and explain the resulting income tax treatment of the deemed dividend for both the company and the recipient of the deemed dividend). * Identify who is eligible to form a tax consolidated group, and the implications of operating a simple tax consolidated group. * Calculate the allocable cost amount (ACA) for the purpose of entering and exiting a tax consolidated group in a simple situation. 	NONE

<ul style="list-style-type: none"> * Calculate the available fraction for a tax loss and explain the relevance of the available fraction when calculating the amount of losses available as a deduction. 	
<p>Goods and Services Tax (GST)</p> <ul style="list-style-type: none"> * Determine the conditions to be registered under the GST. * Identify when supplies are being made, examining whether a particular supply is a taxable supply, a GST-free supply or an input-taxed supply, and calculate the liability to GST. * Identify when acquisitions are being made in a particular transaction, and determine whether and to what extent there is an entitlement to claim an input tax credit. * Identify when supplies constitute GST-free exports and whether there is a liability to GST with respect to imports and the application of the deferral scheme. * Identify when financial supplies are made and calculate the amount of input tax credits available on acquisitions made by a taxpayer making financial supplies. * Determine when entities may form a GST group, and understand the impact of grouping on intra-group transactions. As well as calculate the impact of registration on typical transactions for non-profit bodies. * Identify the main GST issues relating to employees, supply of real property, margin schemes and sale of businesses (including qualifying/non qualifying for GST-free treatment). 	NONE
<p>Superannuation</p> <ul style="list-style-type: none"> * Identify for which employees an employer is required to make superannuation contributions and the amount and conversely the consequences of not fulfilling employer obligations. * Identify eligibility for an income tax deduction for superannuation contributions, calculate the amount of the entitlement and determine the income tax treatment of the payment of lump sum and pension benefits from a superannuation fund. * Calculate and explain the taxable income and tax payable of a superannuation fund. * Identify the main characteristics of a complying superannuation fund and the requirements to maintain compliance. 	NONE
<p>Fringe Benefits Tax (FBT)</p> <ul style="list-style-type: none"> * Determine when a fringe benefit arises, its category and exemption status, and the taxable value of the benefit. * Determine the records that need to be kept. 	NONE
<p>International Tax Fundamentals</p> <ul style="list-style-type: none"> * Determine resident or non-resident taxpayers for Australian taxation purposes * Identify what income is subject to tax in Australia, by virtue of its 	NONE

<p>source.</p> <ul style="list-style-type: none"> * Understand and apply the various exemptions available from income tax in Australia in a range of circumstances and determine a taxpayer's withholding tax liability. * Understand double tax agreements with Australia's domestic tax laws and calculate a taxpayer's foreign tax credit entitlement. * Understand the various attribution systems (CFCs, FIFs and transferor trust measures). 	
<p>Tax Strategy: Entities & Structures</p> <ul style="list-style-type: none"> * Examine various structures from a commercial and tax perspective. * Draw on the taxation and commercial knowledge of various structures. 	NONE
<p>Tax Strategy: Losses & Other Liabilities</p> <ul style="list-style-type: none"> * Interpret client information and predict future outcomes ensuring that missing client information is captured to give complete and appropriate advice. * Select and apply appropriate tests and outline the steps required to determine the extent of income tax deductibility of losses for income tax purposes including a tax consolidated group environment. * Advise what actions should or should not be taken to preserve an entitlement to deductibility of carried forward tax losses determine whether outgoings are deductible for income tax purposes and when those deductions arise. * Identify other tax related issues relating to liabilities incurred by a company in relation to employees. 	NONE
<p>Tax Strategy: Year End</p> <ul style="list-style-type: none"> * Examine a number of case studies considering the end of the income year tax issues. 	NONE

ATTACHMENT 2.

LIST OF ATTRIBUTES THAT WE AS EMPLOYERS WOULD SEEK IN A PERSON WISHING TO BECOME AN R&D CONSULTANT

- Have an enquiring mind and being open to concepts and ideas.
- Ability to put aside rule based thinking when dealing with technical issues.
- A sense of scientific wonder.
- Ability to deal with dual finance/technology mindsets or with those with no financial perspective at all.
- Listening to ideas and concepts, asking focussed questions and distilling the spoken into concise descriptive prose to convey the essence and intent to a person **not** skilled in the art.
- Facilitator
- Technical writing skills
- Ability to exercise judgement on context and content of technical concepts.
- Knowing where to get expert help to resolve challenging technical questions yet maintain confidentiality.
- Matching requirements to government published criteria, rulings and guidelines
- Able to read a profit and loss statement and balance sheet.
- Understanding basic commercial law principles with respect to contracts with third party suppliers.
- Tertiary qualifications in any discipline
- Knowledge of S73 ITAA and published guidelines.