

9 January 2008

The Committee Secretary

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

Dear Sir/ Madam

Re: Inquiry into the Tax Agent Services Bill 2008

I refer to the above matter and wish to raise some matters for consideration by the Committee when finalizing the transitional provisions and the regulations that will govern the qualifications and experience required for registration as a tax agent under the *Tax Agent Services Bill 2008*.

Background

I am one of the founding Directors of NOAH Consulting Pty Ltd (hereafter NOAH). We assist companies in accessing Federal Government Support for Innovation. A large component of our business relates to assisting companies maximize their entitlements under the *Tax Concession for R&D*.

I first began working in this area in 1993, with Michael Johnson & Associates (MJ&A). After 11 years with MJ&A, I and some other colleagues established NOAH in 2003 as an independent consulting house with a specialist focus on the R&D Tax Concession. I thus have in excess of 16 years of continuous practice in this area. I hold tertiary degrees in Science, Arts and Law. I was admitted to practice as a Solicitor by the Supreme Court of NSW in 1992. My fellow directors are also tertiary qualified holding degrees in Commerce and Economics, with 6 and 8 years experience respectively in the R&D tax consulting field.

NOAH has been a participant in the *Tax Concession Consultative Group* since its inception and has been invited to make submissions in respect of proposed legislative and administrative changes to the *Tax Concession* by both AusIndustry and the ATO – most recently in respect of the proposed draft ruling on s73CA and the new, proposed draft R&D planning guidelines. NOAH has been involved with numerous ATO and AusIndustry reviews and audits, and enjoys a solid working relationship with both of these government departments, who have joint responsibility for administration of the program.

NOAH currently services a client base ranging from Top 500 companies through to many small and medium sized enterprises across numerous industry sectors. Notwithstanding our long standing presence and acknowledged expertise in this area, we are not registered tax agents.

Concerns relating to the New Tax Agents Services Bill 2008

The *Explanatory Memorandum* to the new *Tax Agents Services Bill 2008* contains an example about an “R&D consultant” to clarify that henceforth such services, at least in part, are to be regarded as tax agent services for which registration will be required.

The proposed requirement was entirely unexpected, and somewhat perplexing given our long history of practice in this area had given us a reasonably held belief that our work was not so defined as tax agent services. This conclusion was based on a number of factors, including:

- NOAH has no responsibilities in respect of the completion and lodgment of any company tax return.
- The primary aspect of our operations is focused on the identification of eligible R&D activities, the characterization and description of these activities, and the provision of assistance with R&D planning, collation of technical supporting documentation and audit support.
- Although we assist companies with the identification and calculation of eligible R&D expenses, 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 that is readily available for public consumption.
- In most cases, the information NOAH provides regarding eligible R&D activities and costs is reviewed and certified by the client’s internal accounting staff and/or auditors before being included in the client’s tax return.
- We have worked continuously over many years with both AusIndustry and the ATO to promote, develop and streamline the operations of the R&D Taxation Concession program, through forums such as 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 relevant legislation and more generally on the administration of the program. In none of these consultations was the fact that we are not registered tax agents raised as an impediment to our involvement.

- The fact that the *Application for Registration of R&D Activities* provides for “consultants” to be nominated as contact points but does not state that such consultants need to be registered tax agents.

Nevertheless, we recognize the value and importance of bringing R&D Consultants within the Tax Agent framework, and fully support a more structured and regulated environment with relevant qualification requirements for providers of specialized consulting services. We implore legislators to consider specialist entities, such as NOAH, who operate in a specific area of taxation law not directly related to the preparation of a company’s tax return, and the implications the existing legislation has for such companies, its employees, and its clients.

The proposed legislation will prohibit existing R&D Consultants from continuing to provide professional services, given that;

- The Transitional Provisions and Regulations provide special rules in respect of BAS agents only.
- There is a focus on those with backgrounds in tax and accounting, with no recognition that other technical disciplines may be equally relevant in the context of the operation of the Tax Concession.
- “Relevant experience” is defined narrowly and only in terms of years spent working under the supervision of a tax agent or lawyer, irrespective of any involvement or familiarity with section 73B of the ITAA.

The omission of R&D Consultants from the Transitional Provisions would also appear to be at odds with the stated intent of Government when introducing the new legislation, for the Honourable Chris Bowen noted in his media release of 13/11/08 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.

Proposals for Transitional Provisions for R&D Consultants

We respectfully request the Bill be amended to enable existing R&D consultants who meet the qualifications set out in the proposed grandfathering clause (outlined below), be registered as tax agents restricted to providing services in relation to Section 73B of the Income Tax Assessment Act 1936 (ITAA).

We further propose that the Bill be amended to provide registration opportunities for new R&D consultants wishing to providing services in relation to Section 73B ITAA as set out in the section entitled “New Entrant Practitioners (Non Accounting)”.

Proposed Grandfathering Clause - Existing Practitioners

Education:

- A degree, 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 experience in providing tax concession services in the preceding 10 years *OR*
- Has prepared a minimum of 100 R&D Tax Concession 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 73B 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 73B 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.

Proposed Grandfathering Clause - New Entrant Practitioners (Non Accounting)

Education:

- A degree, 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.

Consequences of Not Providing for R&D Consultants

The Committee would appreciate that without grandfathering, 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 although the prerequisites for the successful completion of courses in basic accounting, taxation law and commercial law could not readily be met by the vast majority of R&D Consultants. We understand that such courses would be a minimum of a semester in length. Assuming one could complete all three courses in a single semester, a minimum period of 12 months would be required before the earliest possible date for registration, during which time said person could not provide services in this field.

The direct impact on our employees and clients will be significant, and the viability of our business will be placed in jeopardy. Our clients will also experience significant issues relating to the successful completion of their R&D Tax Concession claims, the majority of which are ongoing projects active throughout the year and are based on open and regular communication between our organisations.

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

The consequences of not taking account of R&D Consultants will reach beyond the immediate impact on our businesses and livelihoods. The process of eliminating the specialist service providers in this area will inevitably force smaller companies to use only large accounting firms. This will significantly increase the cost of compliance to such a point that many smaller companies will choose to abandon the program. Such a situation is in stark contrast to the recommendations of the recently commissioned National Innovation Review, which actively encouraged enterprises of all sizes to innovate. Innovation will become increasingly difficult and uneconomic if the specialised skills required to promote innovation become cost prohibitive.

The loss of the specialist expertise of R&D Consultants will inevitably lead to an increase in the number of claims being prepared by registered tax agents with little or no experience in the area of the R&D Tax Concession. Concerns regarding this possibility were raised by Claire Gill and Ian Cooper of the ATO’s National Innovation Segment at the Tax Concession Administration Consultative Group Meeting in Sydney on 8 November 2008.

It should be noted that the “entry examinations” to each of the RPAs include course material on GST, FBT, CST, Corporate Tax, but do not contain any content relating to Section 73B and the associated provisions. Hence, one can gain admittance to an RPA and become a registered tax agent eligible to provide R&D Tax Concession advice with no experience or knowledge of the relevant legislation in Sections 73B to 73Z.

Conclusion

The 125% R&D Tax Concession exists as something of an anomaly on the Australian tax landscape. Notwithstanding that the provisions relating to the operation of the tax concession lay in the Tax Act, the adjudication as to whether a certain set of activities are technically eligible or not is provided by Innovation Australia.

This duality has led to industry specialisation whereby R&D consultants provide advice only in relation to the R&D provisions contained in the ITAA. The sections have been expanded in

recent years to cover sections 73B to 73Z. Our clients select our services as they either do not have the knowledge or resources internally and prefer to use experts in the field, their accounting firm does not offer the service, or they are dissatisfied with the service provided by chartered accounting firms with respect to this specific area. Our clients elect to utilise our services due to our expertise, professional conduct, and the quality of advice we provide.

The introduction of the *Tax Agents Services Bill* will place our organisation in a position where we are unable to provide services relating to R&D, given the majority of company employees do not have the required qualifications as prescribed - notwithstanding that we have been actively engaged in R&D consulting for close to 23 years. Under the terms of the proposed Bill, we can no longer run our business in its existing form or until such time that we obtain the relevant qualifications deemed necessary by the Bill. This does not have regard to the nature of the work we undertake and how this particular scheme operates.

I thank you for the opportunity to present these matters for your consideration.

Yours sincerely,
Andrew Hills

A handwritten signature in purple ink, appearing to read "AHills".

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The author wishes to acknowledge that parts of this submission have been taken from the submission co-authored by the group of R&D Consultants comprising Andrew Hills (Director, NOAH Consulting), Rudi Werner (Director, The Fourth Wave), Fiona Mohr – Hanks (Director, Aditus Consulting), Michael Lynch (Director, BSI Services), Adam Rogers (Consulting Principal, OBM International Trade Services), Ian Ross-Gowan (Manager, Michael Johnson & Associates) and Nik Roudenko (General Manager, Structured Program Services).