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9 January 2009

Committee Secretary
Senate Economics Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

Dear Sirs,

RE: Tax Agent Services Bill 2008 and Tax Agent Services Regulations 2008

I ask for your assistance in seeking amendments to this Bill and regulations to overcome anomalies that may adversely affect the provision of services designed to promote innovation in Australia.

My request is that R&D Consultants be excluded from this Bill, as they have been added, perhaps as an afterthought, into a system that already has many checks and balances! It is an unnecessary measure that Australia does not need, especially at this time of recession!

I understand that this Bill has been initiated by concerns about the state based registration system, and by the professional competency and accountability of BAS services providers. The idea of a national board for authorised tax Agents seems reasonable, and to some extent that of BAS providers does as well.

However, R&D Consultants perform many roles and deliver many *valuable* services in relation to Innovation – a stated government policy initiative! These include Project Management, Intellectual Property Reviews, Assistance with Grant Applications and Assistance with R&D projects in relation to the R&D Tax Concession, amongst many others..

Many of these points include deliberations as to tax issues, (doesn't that now include everyone!?) including for example the point that grants are a taxable supply, and that claw back applies. R&D consultants help Companies to deliver value added goods and services, so Companies can then approach their Tax Agents to be sure to get their tax returns completed rapidly, efficiently and correctly.

The key point at this time seems to be specifically to providing advice with respect to the 125% R&D Tax Concession (the Concession) under section 73B of Income Tax Assessment Act 1936 (ITAA). With the exception of some of the employees of the largest accounting firms, almost all of the highly experienced or acknowledged leaders in this field are not tax agents or accountants, and could not meet the prerequisites as proposed for registration.

If it is essential that if this measure be included in the legislation, then there surely must be some type of grandfathering or transition provisions included.

The Concession is jointly administered by AusIndustry on behalf of Innovation Australia that has responsibility for the technical eligibility of the R&D activities;

- and the ATO with responsibility for addressing eligibility and substantiation of eligible expenditure.

The definition of research and development activities is contained in section 73B of the Income Tax Assessment Act 1936 (ITAA) and it is thus argued any advice related to this definition is a tax agent service. However, the definition as used in section 73B of the Income Tax Assessment Act 1936 (ITAA) is a generic definition based on the internationally recognised research and development Frascati manual and the same definition as used by Innovation Australia for its grant programs. The definition is neither numeric nor rule based and is interpreted relative to industry standards and the skill base of the employees within the individual company.

The people that work as successful R&D Consultants generally come from a technical background or are accountants that have a specific affinity for technology. This is critical as the ability to assist clients in defining an R&D project and then identifying and assessing the eligibility of activities relies in part on the facilitation skills; and in part on the technical understanding, of the R&D Consultant. The focus is on the writing and word skills of the consultant not the numeric or accounting skills.

Prior to expenditure being eligible as a deduction, under section 73B, the specific eligible research and development activities must be identified, the technology and grounds for eligibility described in detail and registered through an application process administered by AusIndustry. The function of an R&D Consultant is to assist in this process. It should be noted that the ATO is legislatively reliant on AusIndustry to determine the eligibility of R&D activities.

From the financial viewpoint, the R&D Consultant prepares the eligible expenditure calculations in accordance with the published Tax Rulings and Guidelines that provide comprehensive guidance. At the most the R&D consultant is required to read a profit and loss statement to identify the quantum of recorded expenditure against salaries, wages, direct R&D related expenditure and to identify items of expenditure as set out in the ATO Tax Rulings and Guidelines for inclusion in an overhead calculation whose structure is again set out by the ATO.

The R&D Consultant is not involved in the structure of the accounts, account adjustments or in the preparation of the company's income tax return other than the transposition of working sheet numbers onto the ATO R&D Tax Concession Schedule.

This Bill, if passed without amendment, will impose unrealistic and unnecessary accounting requirements on consultants that have been working in this field for many years.

FORMAL REQUESTS.

Option 1.

My Preference is that you delete the reference to R&D Consultants in this bill.

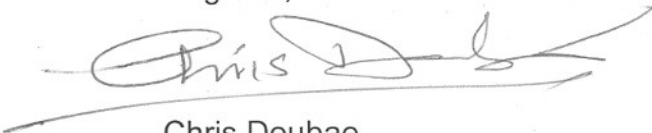
Option 2.

I ask that (if 1 is impossible) then could you make amendments to this bill and regulations that will recognise the value, expertise and capabilities of experienced R&D consultants, without the accountancy based prerequisites and that their relevant experience is not dependant upon the involvement of a registered tax agent or barrister nor membership of a non existent professional association.

A transition clause would recognise that R&D consultants with 5 years experience would be recognised as registered tax agents, (or simply R&D Consultants) operating only on section 73B of the Income Tax Assessment Act 1936 (ITAA). This should use the same grandfathering provisions being offered to registered tax agents as set out in Schedule 2 – Transitional provisions; Tax Agent Services (Consequential and transitional Provisions) Bill 2008.

Please email or call me if any queries.

Regards,

A handwritten signature in black ink, appearing to read "Chris Doubae", with a horizontal line underneath it.

Chris Doubae
Principal Consultant