

Committee Secretary
Senate Economics Committee
Department of the Senate

Inquiry into the Tax Agent Services Bill 2008

PURPOSE

The purpose is to recommend the following:

That R&D Tax Concession consultants be not be required to be registered as tax agents under this proposed act. The reasons are that their work is reviewed and oversighted by a registered tax agent before the company tax return is lodged and costs for small business who wish to access the R&D Tax Concession benefit are likely to increase if the registration requirement proceeds.

or

Consultations be held with R&D Tax Concession consultants on the matter of what requirements need to be met to be registered as tax agents.

REASONS FOR RECOMMENDATIONS

1. **No consultations on this bill** has been held with R&D Tax Consultants. Their representative group is effectively the R&D Tax Concession Administrative Consultative Group (ACG) who formerly meet two times per year in most capital cities. This group was established and is run by Innovation Australia and is made up of representatives from the Industry Department, Innovation Australia, ATO, R&D Tax Concession consultants and other interested industry persons. The matter of the requirement to be registered has not been placed on the agenda of any meetings of ACG held to date. This is despite the matter of registration of R&D Tax Concession consultants being within the scope of the Terms of Reference of the ACG.
2. A possible reason for this lack of consultation is that the requirement for R&D Tax Consultants to be registered was identified in only the most recent documentation on this bill, specifically, the Explanatory Memorandum to the Tax Agent Services Bill 2008 introduced into the House of Representatives on 13 November 2008. There is no reference to R&D Tax Consultants and the requirement that they be registered in earlier public documentation on the bill such as the Exposure Draft Explanatory Material which was released for consultation purposes.
3. The first public reference to the requirement for R&D Tax Consultants to be registered is most likely paragraph 2.31 and the following example 2.1 in the Explanatory Memorandum introduced on 13 November 2008.

Lorenzo describes himself as an 'R&D consultant'. Lorenzo assists his clients to identify which of the activities undertaken by them will meet the definition of 'R&D activities', for the purpose of assisting them in making claims under the R&D tax concession provisions in the ITAA 1936.

Lorenzo advises his clients on which activities are eligible, and helps them to prepare their registration forms to be lodged with Innovation Australia, in respect of these activities. This registration form includes a description of the eligible R&D activities and the technical objectives of those activities, as well as a break up of the expenditure claimable in respect of those activities. Registration with Innovation Australia is a pre-requisite to making a claim for the expenditure on those activities under the R&D tax concession.

The work performed by Lorenzo falls within the definition of 'tax agent service' as the service provided and advice given relate to the ascertaining of clients' entitlements under the R&D tax concession provisions in the ITAA 1936 and the services are provided in circumstances in which Lorenzo's clients could reasonably be expected to rely on them to claim the entitlement.

4. Example 2.1 describing Lorenzo's role is not in the earlier Exposure Draft Explanatory Material.
5. Due to the complexity of the R&D Tax Concession legislation and guidelines, R&D Tax Concession Consultant work is frequently performed by two separate persons working as a team. Lorenzo or the first member of the team will assist companies to identify eligible activities, prepare the part of the registration form that relates to project objectives and activities, prepare compliant R&D plans and in any compliance actions initiated by Innovation Australia. The first person may also assist with "a break up of expenditure claimable". The Lorenzo example above summarizes the first person role.
6. A second member of the team will assist companies and their accountants to determine and calculate eligible expenditure, complete the part of the registration that relates to expenditure, the R&D Tax Concession Schedule which is attached to the company's tax return and any compliance actions initiated by the ATO. The second member of the team may be the company's accountant who will be a registered tax agent. Alternatively, both first and second members may be separate to the company's accountant, but their work will be oversighted and checked by the company's accountant.
7. The ATO and Innovation Australia have joint responsibility for the administration of the R&D Tax Concession and their roles and responsibilities are divided in a manner similar to the separate roles of first person (Lorenzo) and the second person. The ATO is responsible for determining whether expenditure claimed by companies is eligible and the Part C of the Guide to R&D Tax Concession details how to determine and calculate eligible expenditure. Innovation Australia has legislative responsibility for administration of the concession and for maintaining the effectiveness of the program. Part B of the Guide to R&D Tax Concession details how to determine to the eligibility of activities and meet other legislative requirements and corresponds with Innovation Australia's role on R&D Tax Concession compliance.

8. Innovation Australia's compliance role includes assessing the eligibility of activities and this includes determining whether the activities are innovative or involve technical risk and are systematic, investigative and experimental. Due to the complex and state-of-the-art technology frequently involved in R&D activities, Innovation Australia staff who perform this role usually have a technical qualification and a background in the administration of legislative-based programs. There are many examples of where Innovation Australia staff have been recruited by R&D Tax Concession consultant and accountant companies to perform the Lorenzo or first person role.
9. I have been unable to find any documentation on what requirements R&D Tax Concession consultants who perform the Lorenzo or first person role will need to meet to be registered as tax agents or what qualifications they will need to hold. Requiring consultants who perform the Lorenzo first person role to be qualified accountants and thus excluding technically qualified persons of the type employed by Innovation Australia may have a negative impact on compliance rather than improved compliance which is the objective of the bill, Therefore, before the bill is passed, it is strongly recommended that there be consultation on what qualifications are needed for consultants who perform the Lorenzo first person role.
10. It is also recommended that the Senate Committee reconsider the need for R&D Tax Concession consultations to be registered tax agents since their work will be overlooked and reviewed by registered tax agents who prepare company's tax returns and are required to take reasonable care to ensure the correct interpretation and application of the law in respect to matters in the tax return.
11. Another reason why the Senate Committee should examine the need for R&D Tax Concession consultants to be registered is that it will result in increased costs for small business who wish to access the R&D Tax Concession benefits. Due to the high level of complexity of the R&D Tax Concession, most small companies find it difficult to access the benefit without external assistance and therefore R&D Tax Concession consultants provide a valuable service. The requirement to be registered may increase the cost of this service by up to 30% since it is likely to increase the cost of insurance (ignored in the explanatory memorandum) for persons who provide these specialist services. In addition, R&D Tax Concession consultants and other specialist service providers may find it necessary to become part of existing accounting practices adding perhaps 20% to the cost of providing such services. Others who work part time may consider leaving the industry forcing small companies to use the services of large accounting companies whose charge rates frequently exceed what small companies are able to afford.

Dr Terry Freund
R&D Tax Concession Consultant
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