



Business Strategies International

12 January 2009

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

Dear Sir/Madam

### **Tax Agent Services Bill 2008**

I ask for your assistance in seeking amendments to this Bill that will benefit the integrity of the tax system and the assistance provided by government to promote innovation in Australia.

I believe that this Bill has been initiated by concerns about the professional competency and accountability of BAS services providers. However, perhaps as an unforeseen or unintended consequence, other specialist providers have been caught up in the proposed legislation.

I refer 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.

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.

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 assessing the eligibility of activities and the extent of an R&D project relies on the technical understanding of the R&D Consultant.

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. From the

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financial viewpoint, the R&D Consultant prepares the eligible expenditure calculations in accordance with the published Tax Rulings and Guidelines that provide comprehensive guidance and then pass this information to the client, to be forwarded to their tax agent. I do not have any further involvement with the preparation of tax returns other than to reply to questions from the tax agent if they require clarification of the expenditure calculations.

This Bill, if passed without amendment, will have a detrimental effect on the integrity of the tax system with regard to the Concession, will significantly impact on the confidence of claimants of the Concession and will impose unrealistic and unnecessary requirements on consultants that have been working in this field for many years.

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. As recently as last week, at a meeting of Innovation Australia's R&D Tax Concession Administration Consultative Group, the Australian Tax Office (ATO) representatives spoke of their concerns about accuracy and reliability of R&D Tax Concession claims prepared by tax agents that prepare less than five of these claims per year and their intent to set up a new audit category to target this group of existing tax agents (who, by definition in this legislation, remain eligible).

As another example of many tax agent's lack of expertise in this field, when the databases of the ATO and AusIndustry were first matched in about 1996, it was found that many (I believe several hundred) companies had claimed the 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.

As justification for this late request for your intervention, this issue was discussed at R&D Tax Concession Administration Consultative Group meeting over a year ago and the general advice from the government representatives was that R&D Consultants would be treated differently to BAS service providers, perhaps gaining some accreditation based on experience, technical expertise etc. It came as a shock that the first example used in the EM to the Bill described an R&D Consultant as providing tax agent services.

The pre-requisites proposed by this Bill for registration as a tax agent may not necessarily be beneficial to the integrity of the R&D Tax Concession program and while they appear quite reasonable, they will preclude the R&D Consultants that have many years experience in this program.

The pre-requisites proposed by this Bill for registration as a tax agent may appear quite reasonable but for the R&D Consultants that have many years experience in this program, may be unreasonably harsh and not beneficial to the integrity of the R&D Tax Concession program.

May I use myself as an example:

- As the leader of one of the largest R&D practices in Australia, I personally prepare or oversee the preparation of more than 200 applications each year. Amongst these claims are major company groups including Lend Lease, United Group, Bayer Australia, Bradken Mining, SMEC and many larger SMEs.
- I have specialised exclusively in this program for 17 years.
- I have presented on the R&D Tax Concession to a national conference on innovation and similar presentations on behalf of government departments.
- I have provided continuous professional development training (CPD) to chartered accountants and been invited to provide CPD training by the Taxation Institute of Australia.
- I have presented this program to partner meetings of large accounting firms.
- I appeared before the Senate Economics Committee in 2001 when there was a proposed change to the legislation regarding eligibility requirements for R&D activities.
- I am a qualified Marine Engineer.
- I have a Graduate Diploma in Business Administration for the Graduate School of Business at the University of Sydney, with at least credit passes in subjects including Financial Accounting, Corporate Finance and Cost Based Accounting.
- I am a regular and active attendee of Innovation Australia's R&D Tax Concession Administration Consultative Group and I have been called upon by the senior management of AusIndustry to provide input to the future guidelines for operation of parts of the Concession.
- I am a Graduate of the Australian Institute of Company Directors.

With this experience and expertise I will not be eligible to be registered as a tax agent to provide R&D Tax Concession services because:

- I do not have an accounting degree or diploma;
- My prior experience will not be recognised as I have not been working under the supervision of a tax agent; and
- The requirements that I can meet for registration are not applicable because I am not a lawyer.
- I am not a member of a professional body of over 1,000 members who would apply to the new Taxation Board to become a "Recognised Professional Association" under the legislation.

Historically the skills base of R&D tax consultants has been of a technical or scientific background as the emphasis traditionally has been the technical eligibility. This legislation changes the emphasis to a purely accounting and taxation compliance function. I ask that you seek amendments to this bill that will recognise the value, expertise and capabilities of experienced R&D consultants, without the accountancy based prerequisites. The use of such "grandfather" arrangements are common with new regulations, in fact when the registration of tax agents was first formalised in 1988 the practitioners that had been previously providing these services were registered under such an arrangement.

I further ask that you seek amendments that will remove the requirement for R&D consultants to hold formal accountancy qualifications as training in some technical or scientific discipline is often more relevant in providing quality services in R&D claims.

## **Registration**

As a professional consultancy, 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, our operating environment is also different. This situation will continue to occur as governments use the tax system to provide incentive funding to specialist programs and deductions such as the proposed treatment of carbon emissions.

The qualifications of the BSI R&D consultants vary from degrees in engineering, commerce, science, geology. 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.

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 below entitled New Entrant Practitioners (non accounting).

### *Proposed Grandfather Clause*

Without a 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 a consultant is dependant on providing advice to clients on an annual basis and is unable to provide such advice for an annual cycle, the consultant 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 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)

*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.

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.

**Conclusion**

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

If you would like clarification on any of this information, please give me a call on 0414 225 995 at any time.

Yours sincerely

Michael Lynch  
Director