

Submission to Senate Economics Committee



Tax Agent Services Bill 2008

16 January 2009

Contents

Executive summary	1
Transitional Arrangements	2
Bill and regulation package	4
Consequences of no amendments	5
About Michael Johnson Associates	6

Executive summary

Submission

Passage of the *Tax Agent Services Bill 2008* (Bill) in its present form would needlessly damage the businesses of otherwise fit and proper persons who will be required to register with the new Tax Practitioners Board where these businesses are not considered to be providing tax agent services under the current law.

It will remove sound and affordable professional services from the small business segment of the market that the government intends to support through its 10 year innovation plan, to be announced later this year.

It will increase uncertainty and risk to taxpayers and will reduce the integrity of the tax system and will undermine the aims of the bill.

Our submission revolves around the following points:

- The failure of transitional arrangements to protect a set of persons that includes, but is not limited to, R&D tax concession consultants, that do not currently require registration as tax agents (or conditional tax agents) to operate their businesses.
- The current exposure draft of regulations (based on the previous proposed legislation) does not permit the new Tax Practitioners Board to recognise prior specialist experience, relevant to that set of persons.

The consequence of these issues is that the integrity of the R&D tax concession and, by implication, the Australian tax system and government support for business R&D, will

be reduced. There is a mistaken assumption that specialist R&D consultancy on the concession can only be provided by tax agents. Statements by the ATO on the questionable performance of some current tax agents serves reinforce the reality of this point (see the discussion on “Consequences of no amendments” below).

These items are explored further in the text.

Support for submission of independent R&D tax concession consultants

Michael Johnson Associates Pty Ltd (MJA) supports the submission to the Committee by eight firms (including MJA) affected by the passage of the Bill. That submission differs in its approach to transitional arrangements and the proposal to create a new class of registered tax agent.

If that approach is preferable to the Committee, MJA will willingly comply.

Previous appearances at Committee meetings

MJA has appeared before Senate Committees to assist in the passage of two bills associated with the R&D tax concession (*Industry Research & Development Bill 1996* and the *Taxation Laws Amendment (Research & Development Bill 2001)*).

Naturally, a representative of the firm would be prepared to assist the Committee explore both the MJA submission and that of the eight independent firms.

Transitional Arrangements

The Bill extends the range of persons required to apply for tax agent status and brings the regulation of tax agents into line with the realities of tax law and intermediaries in 2009. MJA commends the objectives of the Bill subject to our concerns about its implementation. This legislation will apply to tax intermediaries such as R&D tax concession consultants in ways that it never has before.

R&D tax concession consultants principally assist companies to access government innovation support to industry, and do not provide general tax, legal or accounting services. This is consistent with the more than 20 other industry assistance programs administered by AusIndustry. The only difference is that industry assistance provided by the R&D tax concession is paid to businesses through the tax system instead of by direct payment, tariff relief or another mechanism.

R&D consultants are not currently required to be registered as tax agents. Even if they meet all other requirements, most cannot register as tax agents under the current law because they do not have sufficient experience preparing income tax returns for a broad range of taxpayers. Only companies are eligible for the program and specialist R&D consultants are not in the business of providing income tax return advice or otherwise acting as agents for the taxpayer.

Deficiencies

The Bill expands the registration requirements so as to "extend the concept of 'tax agent services' beyond income tax matters"¹ by "broadening the scope and application of the regulatory framework to reflect the broader scope of services provided."² The current registration processes require broad experience with preparing income tax returns. The registration process to be administered by the Taxation Practitioners Board should also remove this requirement for conditional or specialised tax agents.

At present the Bill and regulations provide transitional arrangements for persons registered as tax agents by each of the State boards. These arrangements do not provide for the expanded number of persons requiring registration, unless they are members of a recognised professional association with over 1,000 members. This restriction will prevent most, if not all R&D tax concession providers from securing registration.

The absence of specific transitional provisions will disrupt the business of a set of practitioners that is broader than, but includes, R&D tax concession consultants.³ On the basis that these practitioners can establish that they are fit and proper persons with requisite qualifications and experience in a specialised field, we submit that they should be explicitly recognised as part of the transitional provisions for the Bill.

Unregistered R&D tax consultants not currently required or able to be registered may be prevented from providing their specialist services until they are registered.

1 Para 2.32 Explanatory Memorandum to *Tax Agents Services Bill 2008*

2 Chris Bowen MP Second Reading introducing the *Tax Agents Services Bill 2008* on 13 November 2008

3 Other examples include firms that review GST returns, prepare tax packaging services and Quantity Surveyors

To prevent passage of Bill disrupting the businesses of existing R&D consultants and their clients, we request a period of grace after the new Act receives Royal Assent in order to apply for registration. This period will need to be of sufficient time to allow the Board to be formed and to register conditional R&D specialist tax agents under s 20-25 of the new Act.

Before the new Tax Practitioners Board can register conditional specialist tax agents, appropriate regulations and guidelines will need to be developed, the process of registration put in place and the Board have sufficient time to process these registrations.

The latest exposure draft of proposed regulations was prepared prior to the changes announced by the Minister on 29 May 2008. These changes included recognising and allowing registration of specialist tax agents following submissions received on the 2007 exposure drafts. New regulations will need to be prepared and put in place before this can be achieved. In the meantime, persons working in areas that do not require registration under existing law but will need to be registered on passing of the Bill will be needlessly damaged, and along with it the AusIndustry program and the tax system, if there are not appropriate transitional arrangements made to allow otherwise fit and proper specialists to stay within the system.

Bill and regulation package

The Bill and regulations are deficient in their recognition of prior experience. For the category of specialised or conditional tax agents to have meaning, the regulations need to be revised to include different types of experience. For the purposes of R&D tax concession consultants, the nature of that experience needs to address the prior experience of principals of existing consultancies as appropriate supervision.

Assuming a person meets all the other requirements to be a fit and proper person to be registered as a tax agent, we submit that experience as an R&D consultant or as a tax manager responsible for managing the R&D tax concession for a corporate group engaged R&D should be recognised as appropriate experience to be a conditional tax agent. Experience would include the application of s 73B to s 73Z Income Tax Assessment Act 1936 and the registration of R&D activities as either a consultant or as a corporate tax manager. Such experience is more relevant for a R&D specialist tax agent than the current requirement for broad experience with preparing income returns with no required experience with AusIndustry programs to encourage business R&D in Australia.

For example MJA has 3 people who may be registered as meeting all the other criteria for being a fit and proper person to be a tax agent except that their experience is not in filing income tax returns under the supervision of a tax agent.

The 2 directors of the firm have 22 and 11 years' experience as R&D consultancy specialists and a manager has 15 years' experience in all corporate taxes as well as managing extensive R&D tax concession claims as a tax manager for an ASX 100 company group. All three have appropriate legal, tax or accounting qualifications to be registered as conditional tax agents under this proposed environment.

This would meet the objective of the Bill and not degrade the quality of R&D consultancy advice that will result if taxpayers are forced to rely on general tax agents with little or no R&D experience to assist with their R&D claims.

Consequences of no amendments

At the 19 November 2008 R&D Tax Concession Administration Consultative Group (ACG) meeting in Sydney, the ATO in its report on risks and compliance activities in R&D consultation, highlighted that a significant high risk group were taxpayers who relied on tax agents who had insufficient experience in R&D consulting, and submitted less than 5 R&D returns each year.

Tax agents with low R&D registrations were prone to making very significant errors in advice and work on R&D necessitating higher levels of compliance monitoring and administration by the Innovation Segment of the ATO than other taxpayers including those taxpayers who used specialist R&D consultants.

The integrity of R&D claims not prepared by R&D specialists is not a new problem. It follows the identification by the ATO in 1996 that a sizable number of R&D claims prepared by tax agents were never registered with AusIndustry where registration is a prerequisite for such a claim.

This leads us to submit that, unless this very specific problem is addressed constructively as part of the legislative process, the integrity of the R&D tax concession and, by implication, the Australian tax system, will be reduced.

Note that we do not seek to restrict the right of existing tax agents to prepare R&D claims where they have or purport to have sufficient experience. What we seek is for the legislative and regulatory regime to allow the current competent, professional and experienced service providers to continue their business and conform to the new tax agent regulatory environment.

About Michael Johnson Associates

MJA is a specialist consultancy of approximately 20 staff, with our head office in Balmain, NSW. We have assisted companies Australia-wide with the management of their R&D activities and government funding programs since before the introduction of the R&D tax concession in 1986. Our clients are as diverse in size and complexity as the technologies they develop, ranging from startups to ASX 200 entities and from biotechnology, software and medical research through to engineering, manufacturing and mining.

MJA is a respected and active participant in the administration and development of the R&D tax concession program. We work with taxpayers, AusIndustry, the ATO and a very broad range of tax agents on R&D tax concession matters, but do not prepare tax returns or perform any general accounting or bookkeeping services.

AusIndustry, the ATO, the Minister for Innovation, Industry, Science and Research, and previous Senates have actively sought to engage us in exploration of the R&D tax concession issues and legislation in order to improve service delivery, clarify legislative intent and act as a sounding board for issues.

The Bill will require us to register, for the first time, as tax agents in order to continue to provide very specialised services to our existing clients. We welcome the opportunity to participate in this community of respected professionals and look forward to the Senate resolving the issues raised in this submission.

Kris Gale

Managing Director
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