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Our ref KPMG RD tax incentive - Quarterly
payments submission (2)

email: R&DQuarterlyCredits@treasury.gov.au

3 September 2012

Dear Sir

R&D Tax Incentive: quarterly credits - Consultation Paper

Please find enclosed KPMG's submission in respect of the Consultation Paper on the R&D Tax Incentive: quarterly credits, released on 3 August 2012.

We welcome the opportunity to comment on the proposed payment system and support its intention to enable small and medium sized companies to access funding for R&D activities on a timely basis.

Whilst we recognise the need to manage and minimise the risk to the Commonwealth, we are concerned that the process proposed involves additional and undue compliance on the very companies which it is endeavouring to help. Key concerns are:

- Timeliness of obtaining approval from Innovation Australia.
- The level of additional information which may be required by both Innovation Australia and the Australian Taxation Office to provide approval under a self-assessment process.
- Apparent lack of seamless interaction between the ATO and Innovation Australia and within the ATO in relation to the R&D tax incentive payments and other taxation payments and obligations.

The attached submission provides further information on our concerns and recommendations for improvements and guidance material.



*The Treasury
R&D Tax Incentive: quarterly credits - Consultation
Paper
3 September 2012*

We would be pleased to work with you to enable the Government's stated policy to be achieved.

Yours faithfully

A handwritten signature in black ink, appearing to read 'David H Gelb', written over a horizontal line.

David H Gelb
National Partner, R&D Incentives

Enclosures:

Submission to Consultation Paper - R&D tax incentive - quarterly payments

Consultation questions

1 Are the proposed arrangements for quarterly credits workable? What features are most useful? Are there any features that are problematic? How might the arrangements be improved while appropriately managing risks to companies and the Commonwealth?

The most useful feature is the provision of a safe harbour amount from the ATO and the fact that no variation penalties will arise if the actual R&D tax incentive offset amount is less than the total of the quarterly payments received when the safe harbour option is utilised by the company. This recognises the natural variations which arise when undertaking R&D activities.

There are several problematic features:

- Timing for notification from Innovation Australia. We have assumed that this will not be an automatic process, but will require review and decision making by Innovation Australia. The intention of the quarterly payment arrangement is to provide timely payments to companies when they need it most. Notification should be provided within a specified time after application, e.g. 28 days.
- The requirement for separate and additional compliance steps by the company to provide a Registration and separate request for quarterly payments. Could these requests be combined?
- Where a company requests a variation to increase its quarterly payments above the safe harbour amount, the ATO can delay payment until it is satisfied. The ATO should make payments on the safe harbour amount until it is satisfied. Delaying all payment would penalise the applicant when it has already obtained approval for at least the safe harbour amount.

In addition to improvements to the items mentioned above, the process could be also improved by enabling more seamless interaction between the ATO, Innovation Australia and the company applying for access to the quarterly payment system. For example:

- Once the ATO has been advised by Innovation Australia of the approval number, the ATO can advise the company of the safe harbour amount, rather than the company requesting a quarterly amount and then subsequently requesting a variation amount. If a company has requested approval from Innovation Australia for quarterly payments and the ATO has been advised that such approval has been granted, the company should not have to go through an additional compliance step. .

2 What type of guidance material or services would be most useful to assist companies to access quarterly credits and meet any associated obligations?

Further guidance should be provided on the following areas:

- The extent of information to be provided to Innovation Australia to obtain approval.

- The information or type of information needed by the ATO for it to accept an increased variation.
- What is a “sufficiently large margin” in relation to the actual R&D tax incentive offset amount and the variation requested by the company?
- What are the modifications applicable to consolidated groups wanting to access the quarterly credit arrangement?
- The expected length of time the application and approval process would take.

3 Do the proposed arrangements for quarterly credits create any problematic interactions with other taxation or regulatory arrangements? If so, what are these interactions and how should they be addressed?

The timing of quarterly payments would ordinarily suggest a link with the timing for quarterly Business Activity Statement (“BAS”) lodgements, however this has not been acknowledged in the Consultation Paper. As the Pay As You Go (“PAYG”) income tax instalments are handled by this mechanism, is it also the intention to consolidate the R&D tax incentive quarterly payments into this process?

The annual refundable R&D tax incentive offset will be used by the ATO to offset any other tax liabilities (e.g. GST) that the company may have at the time the income tax assessment is made. It is not clear if this will also be part of the quarterly payment arrangement.

Investigating ways to simplify the flow of payments would be useful. For example, if a company has had its R&D quarterly payment approved, this could be included on a BAS statement to ensure that any liabilities arising from the other BAS components (e.g. GST, PAYG tax withheld, etc) could be immediately offset against the quarterly R&D tax incentive payments. Whilst this may result in a company receiving no payment from the R&D tax incentive it may still assist the company by reducing cash flow out at that time.

4 Are there any other comments on the proposed arrangements for quarterly credits outlined in this consultation paper?

A typical timeline against the proposed flow chart would provide useful guidance to applicants and ensure realistic expectations in relation to the decision making process.

Recommendations

Submission to Innovation Australia

Although the system will take a self-assessment approach, it requires an eligible company to notify Innovation Australia each income year of its intention to claim quarterly credits and provide an outline of the R&D activities that it expects to undertake and to obtain approval for

access to the quarterly payment arrangement. Therefore, this requires a company to submit a notification document, in addition to the annual R&D Incentive application.

Specific details around the notification document are not provided however, the requirement to outline R&D activities and expenditure suggests the submission will take a similar structure to that of an advance finding. This presents an additional burden on companies and may ultimately fail to minimise additional compliance obligations as desired by the program, or result in eligible companies not making an application for the quarterly payment arrangement.

Although not explicitly stated, we assume that this application and notification process will not be an automatic one, but that a decision will need to be made by Innovation Australia following a review of the information provided. A specific timeframe for decisions must be included, particularly when a company could miss a quarterly payment cycle if notification is delayed.

Powers of Innovation Australia

Once the notification has been approved by Innovation Australia, a quarterly credit notification number will be provided to the company. During this process and anytime within the year, the registered activities may be subject to a finding by Innovation Australia. In order for the activities that are the subject of a finding to be eligible, the finding must first come back positive. As a result, the timing of the notification and therefore claim process may be affected by a finding. This may require a company to wait on Innovation Australia prior to receiving the benefit or alternatively receiving a benefit for a quarter then being subject to a review, halting any further payments. Furthermore, there is no element of 'catch up' for a quarter that may be missed. Therefore, a company under review may miss out on a number of payments due to a prolonged review process.

Variation of the quarterly credit amount

Once received, the notification number will then need to be communicated to the ATO. The ATO will then provide the company with a quarterly credit amount. A company may seek to vary the quarterly credit amount to better anticipate the company's expected refund of the R&D refundable tax offset. This will be done as part of the quarterly process by which companies confirm their eligibility for quarterly credits (subject to acceptance by the ATO). A company will be required to support a variation by providing additional information. Furthermore, the ATO may delay payment of a varied quarterly credit amount until it is satisfied that there are reasonable grounds for variation. Specific details surrounding this process are not clear but it appears to lead away from a self-assessment approach and provide even further compliance requirements.

If the ATO requires additional time or information in order to decide whether a variation is warranted, it should continue to make payments at the safe harbour level until its decision has been made.

Recommendations

Combine request to access the quarterly payment arrangement with the annual R&D process

In order to reduce the burden of completing an annual Application for Registration for the R&D tax incentive as well as providing a request to access the quarterly payment arrangement, the two processes could be combined. This would also more closely align the process with that of the PAYG income tax instalment arrangement which is linked to a company's annual income tax return.

This may take a similar format to that of the previous R&D tax concession where a box was ticked to indicate that a company was claiming the tax concession offset.

For example, if a company lodges its R&D application for registration of activities undertaken in the year ended 30 June 2013, the Application for Registration could include a similar tick box indicating the company's desire to access quarterly payment of the R&D tax incentive. At this time the company could indicate whether it wants to access the payments for the 2014 or later income year. An overview of proposed activities and expenditure for the relevant year could be provided at this time.

An alternate short form could also be available should a company wish to access the quarterly payment system at a different time.

Interaction between ATO and Innovation Australia

Rather than having a separate step to inform the ATO of the notification number, the process may be simplified by facilitating communication between Innovation Australia and the ATO so that once the request has been made, Innovation Australia informs the ATO, who then provides the taxpayer with both the number and the safe harbour amount.

This would eliminate the step requiring the company to request a safe harbour amount from the ATO and then potentially requesting a variation of that amount. This would reduce compliance and the time required to obtain a quarterly payment.

Timing

Timing in relation to the process has not been identified. This presents significant uncertainty as it is unclear how long the process will take from the point of submission to obtaining the benefit. This process may be fixed by establishing a charter that establishes boundaries around timing to process or decline the submission, making Innovation Australia and the ATO more accountable on the timing.

Furthermore, assurance could be provided to companies by providing a specific time limit on providing a response such that if Innovation Australia or the ATO have not replied, or requested further information, within 28 days then the taxpayer can assume that the submission has been approved, i.e. auto approval unless advised otherwise. This would provide assurance and assist in simplifying the process.

A sample timeline has been mapped to the process flow chart which was provided at Figure 1 in the Consultation Paper. Based on a 28 day turnaround time by the ATO or Innovation Australia, the application process, including a request for variation, would take a minimum of 3 months.

Given that this arrangement is time critical, streamlining these process steps needs to be a priority.

Figure 1: Flow chart of R&D quarterly credits process

