



FOSTER'S
GROUP

Inspiring Global Enjoyment

29 October 2009

General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: rdtaxcredit@treasury.gov.au

Dear Sir/Madam

Response to the Treasury Consultation Paper, "The new research and development tax incentive" (Consultation Paper)

Foster's Group Limited (**Foster's**) welcomes the opportunity to make this submission in response to the principles and questions outlined in the Consultation Paper.

Foster's is the parent company of an Australian based premium beverage group. Foster's offers a broad-based portfolio of beverages. Foster's portfolio comprises over 120 brands across beer, wine, spirits, cider, juices and other non-alcohol beverages.

Foster's supplies to over 38,000 customers, from wholesalers and importers, to hotels, bottle shops and restaurants. In Australia alone, Foster's operates 19 facilities including distilleries, cideries, breweries and wineries and employs approximately 5,000 people. Foster's is a major exporter of wine from Australia to Europe, North America and Asia.

Foster's and the Research & Development (R&D) Tax Concession

Innovation is critically important to Foster's continuing success. To date, the main Government support for innovation at Foster's has been the R&D Tax Concession. This support has been applied to a portfolio of product and process-related R&D activity spanning the breadth of Foster's operations.

Foster's ability to access the R&D Tax Concession sends a clear message to Foster's senior management and staff that the Commonwealth Government values the innovation taking place at Foster's. The R&D Tax Concession is most effective in stimulating R&D activity where Foster's can reliably forecast the benefit from the R&D Tax Concession associated with a particular R&D activity. Accordingly, it is important for the R&D Tax Concession to be readily accessible, with rules that are straight forward to apply.

The Consultation Paper

Foster's supports certain of the proposals set out in the Consultation Paper. In particular, Foster's supports maintaining the R&D Tax Concession, which is an important mechanism for supporting investment by business in R&D activity.

However, Foster's does not support aspects of the seven design principles outlined in the Consultation Paper (**Design Principles**) that would:

- increase uncertainty in respect of the application of the R&D Tax Concession;
- increase compliance and administrative costs; or
- unduly restrict the availability of the R&D Tax Concession.

Each of these consequences would have the effect of reducing Foster's ability to reliably forecast the benefit of the R&D Tax Concession and act as a disincentive to Foster's investing in R&D activity in Australia.

Foster's comments on various of the Design Principles and questions in the Consultation Paper are set out below.

1. Principle two: Standard R&D Tax Credit

Foster's supports the change to a standard 40% R&D Tax Credit. The change:

- ensures that the benefit of the R&D Tax Concession is independent of any change to the corporate tax rate; and
- eliminates the complexity and uncertainty associated with the 175% Premium Concession. It is currently difficult for Foster's to forecast whether and to what extent Foster's will be eligible for the 175% Premium Concession on an individual project basis from year to year.

2. Principle four - Administration

Foster's supports the general principle that the legislation for the new R&D Tax Concession should provide support for the scheme's efficient and effective administration.

However, Foster's does not support the proposal (at paragraph 47 of the Consultation Paper) that would require companies to distinguish between core and supporting R&D activities.

The distinction between core and supporting activities is inherently unclear. Having to distinguish between the two activities would create unnecessary uncertainty and complexity and would inevitably result in higher compliance burdens and administrative costs.

Foster's does not currently distinguish between core and supporting activities in the conduct of its business. Whilst certain activities will be clearly identifiable as core activities and others will be clearly identifiable as supporting activities, the boundary between the two is not always clear. In order to make this distinction for the purposes of the R&D Tax Concession, Foster's would need to incur costs in:

- making significant changes to its accounting systems and administrative processes; and
- training personnel throughout its businesses to ensure that the accounting systems and administrative processes are operated effectively.

3. Principle five - Eligible R&D activity

Foster's supports the general principle that the R&D Tax Concession should target R&D activities that are in addition to what otherwise would have occurred and that provide benefits to the broader Australian community. Foster's also agrees with the comment at paragraph 49 of the Consultation Paper that "administrators cannot practically assess whether individual activities provide spillovers and whether the R&D would have occurred in the absence of a subsidy." Accordingly, Foster's would not support any initiative that would involve requiring a taxpayer to prove these matters in order to be eligible for the R&D Tax Concession.

4. Principle six - Core R&D

Foster's does not support principle six.

The current test achieves the policy objectives of the R&D Tax Concession. The proposed changes would increase uncertainty in respect of the application of the R&D Tax Concession and would not promote R&D activity in Australia.

The concepts of innovation and technical risk have been some of the most subjective elements of the law governing the current R&D Tax Concession. It is often difficult to clearly and confidently identify the presence of both elements in any given R&D project. The courts, claimants and regulators are often satisfied that a R&D project is eligible for the R&D Tax Concession because at least one element is present (even though it is possible or likely that both elements are present). As such, the current test is more likely to provide certainty and clarity than the test proposed in principle 6. Should the proposed test be implemented, the uncertainty and effort required to ensure that both elements are satisfied may mean it is not worthwhile investing time and money in certain R&D activities.

5. Principle seven - Supporting R&D

Foster's does not support principle seven.

The proposed changes would unduly restrict the availability of the R&D Tax Concession and dilute the incentive to undertake R&D activities.

The current rules in relation to supporting activities are appropriate in advancing the objectives of the R&D Tax Concession. Currently, in order for a supporting activity to be eligible for the R&D Tax Concession, there must be a **direct relationship** between the supporting activity and an eligible core activity. Supporting activities (eg prototyping, production based trials and sensory testing) are clearly necessary to the successful execution of a R&D project and their relationship to the core activity. Limiting the ability to claim these activities will not promote new R&D activity.

7. Design questions

The Consultation Paper raises a number of questions that relate to the Design Principles discussed above. For completeness, Foster's responses to the relevant questions raised in the Consultation Paper are set out below.

Question one- Foster's supports extending the R&D Tax Concession to R&D activities conducted outside Australia. Foster's actively promotes the cross fertilisation of innovation across its business units locally and globally. Foster's would welcome changes to the R&D Tax Concession that would allow R&D activities conducted overseas to qualify for the R&D Tax Concession. This would recognise the contribution of these activities to the Australian economy.

Question three- The R&D Tax Concession should reflect the basis on which the taxpayer is taxed. It would be unreasonable to require a taxpayer who is taxed on an accruals basis to determine its claim for the R&D Tax Concession on a cash basis.

Question four- As discussed above at point five, Foster's does not support any of the changes suggested.

Question five- Foster's does not support extending the list of activities excluded from being characterised as core or supporting activities.

Please contact Don Spirason on (03) 9633 2753 or me on (03) 9633 2689 if you would like to discuss our response in more detail.

Yours faithfully
Foster's Group Limited



Stewart Grieve
Director - Taxation