

I went to the public consultation on the initial R & D position paper in Sydney last year. I made the following statement : Making R & D expenditure on software more restrictive as proposed will result in 90% of those currently eligible becoming ineligible. The answer was that that is not the intention.

The exposure draft has retained the restrictive approach to software. This means that Australian Government support for R & D in the Australian software industry will dwindle to almost nothing . Is this the intention of the Government ?

The exposure draft includes the following statement :

"2.46 In addition, the list now clarifies that software activities are not R&D activities where they consist of integrating off-the-shelf commercial or open source computer software. These activities are excluded from being R&D because they are directed at taking software or pieces of software that are already available and integrating or combining them using known techniques and technology. In addition, these activities are excluded from being core R&D activities because the nature of integrated software output is such that the level of technical risk and innovation of such output is impossible to determine."

COMMENTS

Software is not combined using known techniques and technology. It is combined by writing programs. This is known to be inherently risky. How many multi-million dollar software development (let alone software implementation) projects have failed ? A court case is currently underway in NSW regarding the development of a new passenger fare system that cost tens of millions of dollars before it failed.

Much of 2.46 applies to almost all R & D of any type. Most R & D comprises existing components that are already available and integrating them using known techniques and technology. R & D mostly comprises doing this in different ways, with limited new components and experimenting to see how well it works, just like software.

The latter part of paragraph 2.46 concludes that as it is impossible to measure the risk in developing software, so Government R & D incentives for this sector should be excluded. I find this statement incomprehensible. A corollary is that as it is actually impossible to measure risk of R & D in all other areas, therefore all R & D assistance should be terminated. Software is an esoteric product and I believe that this has resulted in neither AusIndustry nor ATO coming to grips with understanding the software industry.

A further problem with 2.46 is its initial statement about integrating other software. Is this completely exclusive ? Virtually all software integrates some other software, even if it is primarily developed from scratch. This exclusion could potentially eradicate assistance to any software development at all.

Instead of providing a negative definition for software R & D, would it not be more useful to provide a positive definition and examples ?

DRAFT LEGISLATION

355-405 Expenditure not at risk

- (1) An *R&D entity cannot deduct expenditure under section 355-200 or 355-480 if:
- (a) when it incurred the expenditure, the R&D entity or an associate had received, or could reasonably have expected to receive, consideration as a direct or indirect result of the expenditure being incurred; and
 - (b) that consideration is equal to or greater than the expenditure.

COMMENT : This appears to negate all paid for prototypes, whereas under existing rules if a fixed price was agreed, the R & D company was taking the risk and could claim all the R & D. This discourages commercial agreements for success oriented companies.

GENERAL COMMENT

A lot of detail is missing from both the Exposure Draft and the Draft Legislation. For example, it is not clear what the longer term tax effects of a Tax Credit may be. Currently, if a company becomes profitable after receiving a Tax Concession, the claw back exceeds the benefit received. What is the effect on a company's tax liability if it receives a tax credit ?