

5 February 2010

Mr Paul McCulloch
General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: rdtaxcredit@treasury.gov.au

Dear Mr McCulloch,

Research Australia thanks the Government for the timely review of the Research and Development Tax Credit System and welcomes the opportunity to comment on the Exposure Draft Legislation. Research Australia is particularly concerned about the impact of the legislation on research and innovation in relation to health R&D.

Research Australia has consulted with our alliance partners and notes the following issues:

- Concerns regarding the criteria for eligibility for early stage, high tech, R&D based start-ups in pre-seed and seed stages. The 50% threshold may not be high enough to facilitate investments made by early stage commercialisation/venture funds structured as unit trusts. We note that AusBiotech has suggested that while the tax exempt ownership interest has increased to 50%, this is still inadequate and should be increased to 75% for private companies with university equity before loss of the entitlement to the R&D tax credit. The cap should be removed for publicly funded research.
- Concerns about the impact of the legislation on clinical trial activity as result of eligibility provisions relating to core R&D activity. Research Australia strongly recommends that the final legislation recognises that activities that are undertaken during the course of conducting clinical trials, and that would otherwise satisfy the requirements of being either core or supporting R&D activities, are not *a priori* excluded from eligible R&D activities. We are concerned that the legislation that requires support for core R&D activities will exclude much clinical trial activity from accessing the tax credit.
- We support proposals to streamline applications, including pre-claim advice, regarding eligibility of activities, to claimants, and the alignment of payments with BAS statements to improve cash flow positions.
- Licensing and patenting costs are related to R&D activity as 'supporting' and certainly integral to the success of the R&D program.
- There continues to be some ongoing confusion relating to terminology and interpretations, and we would support further clarification. The exposure draft

creates a number of new concepts and companies will need support in interpreting the new provisions and applying them to their own business and R&D operations. This in turn will raise the cost of compliance.

Research Australia notes that the BioMelbourne Network has raised various issues for consideration:

- The wording related to Principle 5 in that: the new R&D tax incentive should target R&D that 'is in addition to what otherwise would have occurred' this is contrary to the fundamental principles of the biotechnology industry where research and development activity is carefully designed with limited budgets and firm timelines in mind. If this is a guiding principle for the scheme, then the biotechnology sector is very unlikely to engage in activity that ordinarily would be additional.
- Design Question 4: should supporting activities be capped as a proportion of expenditure on core R&D. The biotech sector in general applies almost all of its administrative focus to supporting the R&D process. In industries (and companies) where the core purpose is research and development, a proportion of administrative overheads being eligible as supporting R&D activity is certainly reasonable.

Research Australia is conscious of the need to ensure the legislation promotes and supports the life science sector (from small start-ups to multi-nationals), improves our capacity to compete globally, and facilitate social and economic benefits to Australians.

Yours sincerely,



Rebecca James
Chief Executive

¹ KPMG (2008) *Competitive alternatives KPMG's guide to international business location Advisory*