Australian Government

Australian Small Business and Family Enterprise Ombudsman

3 March 2020

Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

***via email*:** economics.sen@aph.gov.au

Dear Sir/Madam

Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019

This Office conducted a review of the administration of the R&D Tax Incentive (R&DTI) in 2019 and released a Report (the Report) with 24 recommendations related to modernised approaches to compliance, and improvements to the R&D consultant industry.[1]

The R&DTI program is extremely complex. The legislation governing the program is jointly delivered by the ATO and the Department of Industry, Science, Energy and Resources. The incentive is paid after the R&D is undertaken, and both agencies can undertake retrospective compliance activities going back many years following receipt of the incentive. Due to its complexity, it is vital that small businesses understand the operations of, and their obligations under the legislation. Government also has an obligation to simplify the system wherever possible and administer it in a way that supports small business.

Item 56 of Schedule 1 of the Bill provides that changes apply in relation to assessments for income years commencing on or after 1 July 2019 – that is, this financial year. This date relates to the following changes:

- Schedule 2 of the Bill contains provision in relation to clawback of R&D recoupments, feedstock adjustments and balancing adjustments which are highly technical in nature and remain complex.
- Explicit extension of the general anti-avoidance rule in Part IVA of the *Income Tax Assessment Act 1936* to the refundable and non-refundable R&D tax offset, so as to ensure the ATO can act to prevent what it perceives are tax schemes. SMEs may need to ensure relevant documentation is available to show the dominant purpose of investing in R&D was not just to obtain the tax offset.
- Schedule 1 of the Bill changes the current law to cap the refundable component of the tax offset at $4 million and it will apply as from this financial year to R&D projects currently underway.

We strongly recommend that the Bill be amended to apply to newly registered R&D projects commencing on or after 1 July 2020. This would avoid any retrospective effect that the Bill might otherwise have. Additional time is necessary to allow for clear guidance material to be developed and effectively disseminated by both agencies, and for SMEs to take technical accounting advice in order to plan appropriately and ensure compliance.

[1] https://www.asbfeo.gov.au/sites/default/files/documents/ASBFEO-RDTI-report.pdf

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We welcome the potential to improve the existing program guidance in Schedule 3 to the Bill to allow Innovation Science Australia (ISA) to make a 'determination' as to how it will exercise its powers or perform any of its functions and duties – and the context provided in the Explanatory Memorandum. We note though, that the benefit conferred by publishing a 'determination' is only as good as the clarity of the document and this would benefit from close engagement with small business to ensure that it is the case.

Our Report recommended greater clarity around the definition of R&D activities and eligible expenses including that ISA should better utilise advance findings. Further, that ISA could emulate the ATO Test Case Litigation Program to test contentious areas of eligibility where there is no judicial authority, such as disputed software registrations. We would further welcome action in this area.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Ms Annette Conroy on [redacted] or at [redacted].

Yours sincerely

[redacted]

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman