CORPORATE TAX ASSOCIATION
of Australia Incorporated

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The Secretary
Senate Standing Committees on Economics
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Parliament House
Canberra ACT 26000

By email: economics.sen@aph.gov.au

Tax Laws Amendment (Research and Development) Bill 2013

The Corporate Tax Association welcomes the opportunity to comment on the *Tax Laws Amendment (Research and Development) Bill 2013*, dealing with the denying access to the Research and Development (R&D) Tax Incentive to large corporates with annual assessable incomes of $20 billion or more.

Please note that we provided a submission on the Exposure Draft legislation *Tax Laws Amendment (2013 Measures No.2) Bill 2013*) and have included similar comments in this submission.

At the outset, we wish to make the point that the comments below should not be taken in the context that we support the proposed changes. The proposed changes discriminate against a very small group of taxpayers by denying them access to the R&D Tax Incentive. We strongly believe that the changes, as proposed, will not achieve an outcome that is in Australia's best interests.

Currently, when a large corporate engages an external party to undertake R&D activities on its behalf, the terms of engagement often include an express requirement that the R&D activities (or at least the majority of the activities) be conducted in Australia. Under the proposed changes, there is no incentive for the affected companies to conduct R&D activities in Australia. The result of this is not in Australia's best interests for two reasons. Firstly, it adversely affects the operations of Australian research facilities, associated businesses etc., many of which are small and medium enterprises. It is important that support is given to these businesses so as to provide economic growth and employment opportunities. This is of particular importance in the current economic climate with many businesses struggling and employment opportunities diminishing. Secondly, given the need to be innovative, reduced R&D activity is not in Australia's best interests.

We therefore strongly believe that the R&D incentive needs to remain unchanged for the large corporates currently affected by the proposed legislation.

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The following comments relate to the legislation as drafted. Although this approach was not incorporated into the revised legislation, we maintain that the exception for large businesses based on assessable income is not appropriate. The use of a turnover notion is more appropriate as it more accurately reflects the activities of a business and therefore the size of a business. The following two examples illustrate this.

1. Turnover does not include one off transactions that are not part of a normal business activity. The inclusion of one off transactions may result in a corporate that should be below the $20 billion threshold being wrongly denied access to the R&D tax incentive.

2. Cases where the tax treatment differs from accounting treatment. For example under the treatment prescribed by the taxation of financial arrangements (TOFA) provisions, TOFA gains (or losses) may result, giving rise to assessable income (or deductions). These may not align with the accounting treatment with the result that a business is excluded because its assessable income exceeds $20 billion but the turnover is below 20 billion.

Another concern is the compliance cost impact. Although the Explanatory Memorandum advised that "*this measure does not raise any compliance cost issues*" feedback from members suggests otherwise. Compliance costs will arise because of the use of new definitions for the purposes of determining aggregated assessable income that will require corporates to determine the assessable income of connected and associated entities.

In summary, our preferred position is the retention of the existing provisions for the reasons outlined above. However, if the policy is to exclude large corporates from the R&D incentive, the exclusion should be determined by the use of a turnover concept (rather than assessable income).

Please contact me if you wish to discuss.

Yours sincerely

(Frank Drenth)
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