

Senate Economics Legislation Committee
Inquiry into R&D Bill
AIIA Evidence – Questions on Notice

Question 1 – Senator Patrick (*p34 proof Hansard*)

Question on Notice: How does the AIIA define an Australian business and how was the \$6.6 billion figure arrived at?

Response:

The AIIA thanks Senator Patrick for his question. An Australian business, as referenced in the AIIA's submission, means an entity based in Australia that is subject to Australia's tax laws. In the context of an Australian multinational, it means the Australian head entity and all other Australian resident entities owned or controlled by the Australian head entity. In the context of a foreign multinational, it means the Australian resident subsidiaries or branches which are subject to taxation in Australia.

Question 2 – Senator Carr (*p36-37 proof Hansard*)

Question on Notice: Does the AIIA think registration of R&D consultants, similar to Austrade's program, would prevent unscrupulous behaviour?

Response:

The AIIA is concerned by the issues raised by the ASBFEO. The AIIA agrees more needs to be done to prevent unscrupulous behaviour. Anyone who provides tax advice, including advice in relation to the R&D Tax Incentive, must be registered with the Tax Practitioners Board (TPB) and comply with the *Tax Agent Services Act* (TASA) which includes:

- Compliance with the TASA code
- Professional indemnity insurance
- Fitness and propriety

Given R&D consultants are already covered by a legislative framework which requires them to act properly, it appears an issue is one of compliance and policing. Having said that, this is not the AIIA's area of expertise and the AIIA recommends that the Government form a working group comprising the ATO, TPB, AusIndustry and industry representatives (including R&D consultants and R&D claimants) to consider whether R&D consultants require

separate and/or additional regulation to ensure proper conduct and if so, what that might be. The AIIA has both R&D consultants and claimants in its membership so we would be happy to assist in such a process.

Question 3 – Senator Pratt (*p37 proof Hansard*)

Question on Notice: Have advisor's fees been contingent on a successful R&D claim?

Response:

We understand there are a range of R&D consultant fee structures in the market; fixed fees, time & materials, fees capped at a percentage of the benefit and contingent fees. Our understanding is that for the most part, contingent fees are just that; the fee is contingent on registration of the R&D activities with AusIndustry and receipt the R&D tax offset from the ATO. However we understand there are two concerning scenarios involving unscrupulous advisors:

1. The contingent fee is less than the R&D tax offset received, but higher than the net benefit (this can occur where the fee is a percentage of the offset, rather than the net benefit); and
2. Where the claim is paid at the time, but later partly or wholly disallowed by either AusIndustry or the ATO and the R&D consultant has either disappeared or refuses to refund the contingent fee.

While the AIIA does not oppose contingent fees in principle, we do oppose fees which exceed the benefit (or which comprise a high percentage of the benefit) and we also oppose contingent fee which is not truly contingent. As noted in the response to Senator Carr's question, the AIIA recommends that the Government form a working group comprising the ATO, TPB, AusIndustry and industry representatives (including R&D consultants and R&D claimants) to consider whether R&D consultants require separate and/or additional regulation to ensure proper conduct and if so, what that might be.