

# ADITUS CONSULTING

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12 January 2009

Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO BOX 6100  
Parliament House  
CANBERRA ACT 2600

By email

Dear Sir/Madam

## **Unintended Consequences of the Tax Agent Services Bill 2008 and Regulations**

### **Background**

I am an R&D Consultant and have been working in the area of the 125% R&D Tax Concession. I have been working in the area for nineteen years in both large accounting firms and in smaller firms specialising in the area. I have a combined Arts and Law degree, and I am admitted as a Solicitor of the Supreme Court of NSW.

Since leaving PriceWaterhouseCoopers, where I was a Director in the National R&D Tax practice in 2003, I started a small firm with my business partner called Aditus Consulting. We advise over 50 clients ranging from small technology companies to large multinational companies. Our business also sub-contracts three other people.

I have run my own practice relying on the specific exemption afforded to solicitors and barristers for providing tax advice and charging a fee pursuant to section 251L(8) of the *Income Tax Assessment Act 1936 (ITAA)*. *There has been no need to register as a tax agent previously.*

### **125% R&D Tax Concession**

The 125% R&D Tax Concession exists as an anomaly on the Australian tax landscape in that it is a scheme that is jointly administered by both the ATO and AusIndustry. Notwithstanding that the provisions relating to the operation of the tax concession lay in the Tax Act, the adjudication as to whether a certain set of activities are technically eligible or not sits with the IR&D Board. The ATO does not have the ability to make this decision.

This duality has led to industry specialisation whereby R&D consultants provide advice only in relation to the R&D provisions contained in the Act. Over the years of its operation, the sections have been expanded from section 73B to 73D to now cover sections 73B to 73Z of the *ITAA*. The provision of R&D services is a highly specialised field with less than 200 individuals comprising the industry. Our clients select our services as they either do not have the knowledge internally and prefer to use experts in the field or their accounting firm does not offer the service. Each firm has elected to use our services for our expertise and quality of advice given.

### **Tax Agent Services Bill 2008 and Regulations**

I was extremely surprised to discover that the provisions of the *Tax Agent Services Bill 2008* and accompanying Regulations will not provide me with the exemption that currently exists for

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solicitors and barristers and that no specific transitional provisions have been made to accommodate me, and others like me, as a specialist adviser in this area.

Under the terms of the proposed Bill, I can no longer run my business in its existing form or until such time that I obtain the relevant qualifications deemed necessary by the Bill. This includes obtaining an accounting qualification which has limited relevance to the work I undertake. The provisions as currently drafted do not have regard to the nature of the work I undertake and how this particular scheme operates.

By regulating all “tax agent services” as proposed under the Bill, R&D consultants are specifically caught by this definition and will not be able to provide these services unless they become registered tax agents. I have been operating within the current legislative framework and have established my business upon these provisions.

Unless specific exemptions are granted or limited tax agent registration is considered, I will not be able to conduct my business and 5 people will be unemployed. Further, this unintended consequence of eliminating R&D service providers will contract the market such that only the big 4 and second tier accounting practices will be able to conduct services in this area.. This has the flow on effect that smaller companies will have no option but to use the top end of the market. The hourly rates of partners and directors in large accounting firms exceed \$1000 per hour. Our hourly rates are generally 25% of this amount albeit we have the same experience. This in turn will significantly increase the cost of claim preparation to such a point that in some instances, smaller companies will not proceed with claiming the tax concession at all. This is a function of the cost of compliance outstripping the after tax benefits. This is at odds with a Government encouraging SMES to embrace innovative solutions to survive in the global financial crisis.

As the owner of a small business, I will no longer be able to provide employment for 4 others.

***I expect that the above are all unintended consequences of the proposed Bill which was drafted in an economic climate quite different to that which we are currently experiencing.***

As an R&D Consultant, I should be able to operate either with limited registration as a Tax Agent providing advice specifically on the R&D Provisions (sections 73B to 73Z of the *ITAA*) or with a similar exemption that exists for barristers and solicitors under section 251L(8) of the *ITAA*.

I propose three amendments that will rectify this position:

#### **Amendment 1 - Limited Registration as an R&D Tax Agent**

By expanding the definitions to include a registered R&D Tax Agent, along similar lines as a BAS Tax Agent, R&D Tax Agents can still operate with limits on the scope of services. A registered R&D Tax agent can charge fees to advise in relation to sections 73B to 73Z of the *ITAA*, only.

This recognises that we can still provide advice in relation to these provisions however will continue to lodge the relevant tax schedules via a registered tax agent, as is the case presently.

In the event that the above limited registration is not granted, I propose two amendments that will recognise my professional experience as being relevant to the provision of services as an R&D consultant. Further, the introduction of transitional arrangements to allow me with sufficient time to re-skill without loss of income and loss of employment for those who work in our business.

#### **Amendment 2 - Qualifications for Existing R&D Consultants**

**a. Education**

A degree or diploma from a tertiary institution.

**b. Work Experience or Number of Applications Prepared**

1. Has been engaged in the equivalent of 5 years full-time relevant experience in the preceding 10 years; or
2. Has been involved in the preparation of at least 100 applications within the preceding 10 year period that can be verified by AusIndustry.

**c. Professional education (if not previously qualified)**

1. Will commit to undertaking an approved course in basic accounting principles relevant to the operation of that section of the ITAA (in this case Section 73B to 73Z of the ITAA) for which registration is sought and within two years of registration being granted.
2. Will commit to undertaking an approved course in tax law relevant to the operation of that section of the ITAA (in this case Section 73B to 73Z of the ITAA) for which registration is sought and within two years of registration being granted.

**d. Continued Professional Development**

Will commit to undertaking 120 hrs over a three year period of approved professional development. Such development may involve the undertaking of courses that would increase the individual's technical knowledge or appropriate training courses (CPD) provided by the Taxation Institute of Australia or similar organisations.

**Conclusion**

Regulation of a previously unregulated environment is to be encouraged. I welcome the ability to have a Board that I am accountable to. This helps with my business aims of maintaining a high quality service to all my clients.

What I strongly object to is the impact it will have on my business and others operating in the area. The amendments above recognise the unique nature of the R&D provisions in the *ITAA*. R&D consultants granted with either limited registration or having transitional provisions included in the Bill to enable us to obtain the required skills, will allow us to continue trading without any cessation to our businesses and without loss of clients, income and employment.

In the current economic environment, both employment and the generation of income should be actively encouraged.

Should you have any queries in relation to the above information, please do not hesitate to contact me on 0407 898 493 or [megan@aditus.com.au](mailto:megan@aditus.com.au).

Yours sincerely

Megan Bartlett  
Director