



26 February 2009

Small Business and General Business Tax Break - Consultation
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

E-mail: investmentallowance@treasury.gov.au

Dear Sir

Comment on the consultation materials

We thank the Treasury for allowing this Practice the opportunity to comment on proposed legislation relevant to the majority of our client base.

Whilst we applaud the aim of the measures, this Practice believes that the draft legislation falls short of what is required to fulfil the Treasury's policy intent.

Our particular concerns specifically relate to the relief only being:

1. for new investment; and
2. in the form of a Deduction.

To provide a contextual framework, we recount the Treasurer's words in Media Release of 25/02/2009 No.018:

The Government is delivering this Tax Break because it will give businesses a *vital incentive to invest* for the future with confidence.

This, in turn, will *stimulate economic activity and support Australian jobs.* [Emphasis added]

New Investment

It is clear from proposed section 41-120, that otherwise than for reasonable testing or trialling, the depreciating asset must not have been previously used by the taxpayer or any other entity.

Our understanding of this provision is to stimulate manufacturing of depreciating assets in Australia. What it does not take into consideration are the following:

1. A considerable amount of manufacturing is conducted offshore;
2. Not all equipment is readily available new;
3. Entities that are suffering financial distress may have already disposed of depreciating assets and it may be cost prohibitive to acquire new depreciating assets as replacements;

4. New depreciating assets may require modifications for the task required whereas previously used depreciating assets may be immediately ready; and
5. The main aim is to invest to stimulate activity to support Australian jobs. There will be instances where Australian jobs will suffer where entities will resist acquiring new depreciating assets as, even with relief, the net cost will not be economically viable, in comparison with previously used depreciating assets.

Deduction

We are concerned at a time where cash flow rather than taxable income is paramount, no regard is had for entities that are in a tax loss position. In these circumstances, the tax break would only provide an increased tax loss which may never be recouped.

The following is part of the Second Reading speech of the former Minister for Regional Services, Territories and Local Government in reference to the *Taxation Laws Amendment (Research and Development) Bill 2001* and specifically the tax offset for small companies who expend money on research and development:

These measures are designed to give effect to the Government's strategy to *encourage investment* in business research and development.

...

To assist small companies, especially those in tax-loss, a refundable tax offset will be available. To be eligible for the tax offset a company must have an aggregate research and development amount greater than \$20,000 and the group with which it is associated must have research and development expenditure of \$1million or less. The company and the group with which it is associated must also have an annual turnover of less than \$5 million. This will give small companies, in tax-loss, access to the cash equivalent to the research and development tax concession. *This initiative will foster the growth of these companies by providing them with timely support. A tax offset can also increase the cashflow of such companies when they most need it - during their initial growth phase. [Emphasis added]*

[It is to be noted that the above relates to companies as they are the only entity that this Bill related to].

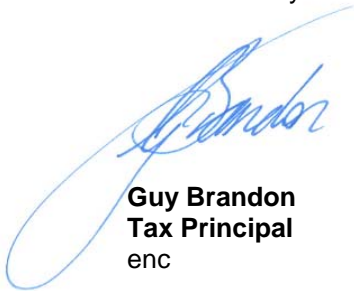
The above provides a precedent for the introduction of a tax offset to encourage investment and increase cash flow at the time most needed.

It is clear from the 2001 Bill, that the offset targeted *small business*. Therefore it would be understandable and reasonable that any tax offset in these circumstances be only allowable to small business.

It is submitted the tax offset may be chosen by a *small business entity as given meaning by section 328-110 of the *Income Tax Assessment Act 1997*.

We would appreciate due consideration given to the points raised and should you require any clarification, please contact the undersigned.

Yours faithfully



Guy Brandon
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