BETOptions

Integrated Wagering Systems

General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: rdtaxcredit@treasury.gov.au

23rd October 2009

Dear Sir/ Madam

Submission in relation to the Treasury Consultation Paper – "The new research and development tax incentive" – September 2009

BEToptions welcomes the opportunity to make this submission in relation to the above Consultation Paper released by Treasury on 18 September 2009.

BEToptions is a software developer that specialises in the delivery of race sports betting systems.

With offices in Australia and the United Kingdom, BEToptions provides its services on a global scale, with race and sports fixed odds betting solutions delivered with configurations that include multiple currencies, languages and odds facilitating operators to reach any market.

BEToptions' flagship system is WAGERplayer®.

WAGERplayer® is a comprehensive Sportsbook / Bookmaker management system established as a leader in gaming operations trading Fixed Odds, Spread (Index), Horse Racing and Events. The system has a multitude of channels through which wagering can be performed including internet, call-centre, retail and via wireless devices. Built entirely on high performance Internet technologies, the system is popular amongst large-scale operations.

The WAGERplayer® platform currently powers busy gaming operations in Australia, Europe and Asia.

BETоptions' growth is dependent on the continued market take-up of WAGERplayer®. To remain ahead of the competition, enhancements in functionality, performance and delivery to WAGERplayer® must be continuous. Each year the BETоptions team assesses its customer needs and the broader market opportunities, it revisits the company's strategic plan and maps out the next WAGERplayer® development cycle.

Research and development is critical to our success and the current concession program is critical in underpinning BETоptions development and enables the employment of additional development resource to continue to develop our core system while exploring and deploying new technologies.

BETоptions is a current claimant of the concession and our intention is to continue to claim. The current concession program is an important part of the company's decision making process, both in the projects that it will support and the way projects are funded

Principle 1
The new R&D tax incentive will be available to companies incorporated in Australia for R&D conducted in Australia. Location of ownership of the resulting IP will not be relevant.

Submission
BETоptions agree with the proposed Principle of removing the relevance of the location of ownership of the resulting IP.

Question 1
Should there be any exceptions to the general rule that eligible R&D activity must be conducted in Australia?

Submission
All our R&D is presently conducted in Australia and will continue to be for the next few years. However, our view would be that as long as the company is incorporated in Australia then there may well be occasions when funded specialist R&D conducted overseas should be eligible for the concession.

Principle 2
The Standard R&D Tax Credit will be available at a rate of 40 per cent for eligible R&D expenditure and can be carried forward where a company's income tax liability is zero.

BETоptions annual company turnover at present is less than $20 million, we do not have comments in relation to Principle 2.

Principle 3
The Refundable R&D Tax Credit will be available to companies with a turnover of less than $20 million at a rate of 45 per cent for eligible R&D expenditure.

Submission
BEToptions support the Government's proposal to increase the base rate of claim benefit and for increasing the threshold for current R&D tax offset claimants.

- BEToptions consider, though, the $20 million threshold between the non-refundable and refundable schemes are set too low. If the purpose of the scheme is to incentivise small companies such as ours, the proposed $20 million turnover threshold will not act as an incentive for growth. A company on the cusp of a $20 million turnover is still likely to be at a critical stage of growth; cash flow is key and the company might still be in tax losses. A refundable credit would be of far greater benefit in these circumstances. We submit that if a threshold is to be imposed on the company turnover, it be raised to the NIS Review's recommendation of $50 million.
- The proposed base rate of 45c per dollar of R&D spend is too low when taking into consideration the reduction in benefit from the repealing of the 50% Premium amount deduction provisions. We submit that the base rate be increased appropriately to compensate for the loss in incremental benefit. If the rate were higher, BEToptions would invest more in R&D because it makes more of a difference proportionately speaking.
- Issues previously encountered by stipulating a demarcation between schemes, i.e. the R&D tax concession and the R&D tax offset, will still exist under the proposed Principle. It is simply that the threshold now occurs at the $20 million turnover level, possibly creating a disincentive for companies to grow beyond $20 million due to the non-refundable nature of the scheme past the threshold. We submit that the imposition of a strict demarcation between the non-refundable and refundable aspect of the schemes be reassessed. We submit that a soft target be introduced instead, whereby the refundable component remains accessible to all companies up to a certain threshold, and that above that threshold, the non-refundable component starts to apply.

Question 2
How should the new R&D tax incentive treat R&D expenditure that is currently deductible at 100 per cent?

Submission
R&D expenditure that is currently deductible at 100 per cent should continue to attract the credit. BEToptions made use of cashing out the benefit from claiming R&D expenditure deducted at the 100 per cent rate from our 2008 tax year and the subsequent refund was a very important boast to our cash flow. We would recommend strongly that the proposed scheme should continue to allow for this important cash flow incentive.

Question 3
Should expenditure incurred to associate entities only be eligible for the new R&D tax incentive where paid in cash?

BEToptions have no comments in relation to Question 3.

Principle 4
Legislation for the new R&D tax incentive will provide support for the scheme's efficient and effective administration.

Submission
BEToptions support the Government in its proposal for the scheme's more efficient and effective administration. In this respect, we submit that the Government employ more technically qualified, knowledgeable and capable assessors who seek to understand the work that we do in commercial realities, and who have an existing appreciation of industry and the technological gaps currently faced. While current guidelines and templates are helpful fully understanding the complexities and the level of compliance can be quite onerous for a small company and in our experience more capable assessors to assist would benefit us.

Principle 5
The new R&D tax incentive should target R&D that:

(a) is in addition to what otherwise would have occurred; and
(b) provides spillovers – benefits that are shared by other firms and the community – that are large relative to the associated subsidy.

Submission
BEToptions support the proposed Principle on the basis that it is similar to what is supported under the current scheme.

Principle 6

Eligible R&D activity will be defined as systematic, investigative and experimental activity that:

(a) involves both innovation and high levels of technical risk; and
(b) is for the purpose of producing new knowledge or improvements.

Submission

BEToptions would submit that if the definition of eligible R&D activities is to be restricted from involving "either innovation or high levels of technical risk" to involving "both innovation and high levels of technical risk", a number of issues need to be addressed.

- A clear, practical and workable solution must still result from a fundamental change to the definition of eligible R&D activities. Innovation must be defined clearly and in the context of the commercial reality, which is that the vast majority of technological advancements in Australia are achieved incrementally, and not through fundamental overhauls of existing knowledge.

- In assessing what is sufficient for innovation, we draw reference to the patent legislation and the concept of "a person skilled in the art" and whether it would be obvious to combine knowledge from different sources of known technology. The greater the number of different sources of known technology to be combined, the more likely it is that the concept is inventive. New Zealand, in developing its definition, made reference to the concept of "a competent professional". We submit that it would be impractical and commercially unrealistic that the test for R&D activity be more rigorous and restrictive than that for the granting of a patent.

- Clarification is required in relation to the restriction in purpose requirement from "creating new or improved materials, products, devices, processes, or services" to "producing new knowledge or improvements". The original intent of support for R&D, being to provide an incentive for greater levels of R&D in Australia across a range of industries, should not be forgotten. We note that this proposed change is already more restrictive than that required for patents. Commercial reality should never be removed from the framework of the proposed Principles.

Principle 7
Supporting R&D will continue to be recognised under the new R&D tax incentive but claims will be subject to new limitations.

Submission
The distinction between core and supporting R&D is at best arbitrary and, from a commercial sense, irrelevant. All activities are necessary in order to complete the research and development component of the project. Best practice research and development in the commercial context does not look to distinguish between supporting and core R&D activities. BEToptions draw attention to the necessity for proposal Principles to be developed with reference to commercial reality. Our projects as is the industry standard are managed according to objectives and milestones, objectives being the framework for the project, milestones being the stop-go decision points, and relevant indicia of when R&D activity stops.

BEToptions submit that:

- the fiction created by the classification of supporting and core R&D be reassessed
- the new R&D incentive uses the opportunity to update the assessment such that it is based on the commercial realities of how a project is conducted
- new limitations do not unnecessarily restrict technological developments occurring through legitimate R&D projects and activities for the sake of reducing a small proportion of companies making 'whole of mine' claims. We draw attention to the NIS Review articulating the need to address such claims in its own right, and not by default through a general tax concession
- all five forms of limitation proposed for supporting activities, as provided by Question 4, create inequality and are likely to result in skewed claims without the purpose of reflecting the true involvement of R&D in the project

Question 4
Should supporting activities:

(a) be capped as proportion of expenditure on core R&D?
   (i) If so, what would be the appropriate proportion (for example, 1:1)?
(b) only be eligible where they are for the sole purpose of supporting core R&D activity?
(c) exclude production activities or dual role activities?
(d) only be eligible on a net expenditure basis?
(e) attract a lower rate of assistance than core R&D?
   (i) If so, what would be the appropriate rate be?

Submission
If limitations are to be imposed on all supporting activities, BETOptions submit that proposal (b) be adopted due to a compromise between the relative ease of administration of this option and the benefit likely to be gained from the scheme for our cross-section of R&D activities.

Question 5
Should the current list of activities excluded from being considered core R&D be:
(a) amended in any way?
(b) extended to exclude certain activities from being considered supporting activities?

Submission
BEToptions submit that:
- the current list of activities excluded from being considered core R&D to be fair and logical and should be retained and unmodified from its current form
- We do not consider that the list should not be extended to exclude certain activities from being considered supporting activities.

Question 6
How should the new R&D tax incentive treat software R&D?

Submission
BEToptions submit that:
- no separate definition be created to assess eligible software R&D, the reason being that an inequality would arise between developments in different industries if a distinction is introduced. We also make reference to the fact that the lower level software development considered by the consultation paper to be ineligible will already be made ineligible through the proposed changes to the definition of core R&D, thus making a separate definition to restrict software R&D an unnecessary further addition and complexity
- the requirements for "innovation" be carefully considered and clarified in the context of commercial reality for software development under the proposed definition for eligible R&D activity stipulating "both innovation and high levels of technical risk". We draw attention to the NIS Review's reference to software R&D and note that eligible software R&D was referred to in the context of technical risk only, and not in the context of innovation, recognising that software R&D is predominantly considered eligible on the limb of technical risk, and not under the limb of innovation. In spite of this, the NIS Review notes the importance of software development as eligible research and development and its potential for substantial spillovers for the rest of the community.

- a greater quantity of relevant and commercially realistic guidance material is needed in relation to what the Government considers to be eligible software R&D. The example provided in the consultation paper does not provide guidance as it does not reflect an appreciation of the technical difficulties and the nature of R&D in the context of software development.

In BEToptions view software R&D in the commercial context is the development effort that keeps our core product WAGERplayer competitive in a rapidly changing environment, to do this we consider there are two streams of R&D.

In the purest sense of R&D we research new and innovative technologies and adapt them to improve our product and functionality, in this we believe there is both innovation and technical risk.

For our customers to remain competitive they need to react to the market place and introduce new products or services, on receipt of their specification BEToptions then design the software development required. This development is run as an IT project and the development is both innovative and technically challenging, in the majority of cases it has not been developed before and there is never any commercial software that can be utilised.

Conclusion

In summary, we wish to highlight the need to consider the commercial realities of the research and development effort in industry in Australia in developing the Principles and specifics of the new R&D tax incentive. We would be happy to discuss any of our comments further.

Please do not hesitate to contact Stuart Cashen on 0394869770 to discuss.

Yours sincerely

S J Cashen
Managing Director