West Hills Farm Pty. Ltd.
ACN 009 293 681
ABN 80 009 293 681

5 February 2010

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

To Whom It May Concern

On behalf of **West Hills Farm Pty Ltd** I welcome this opportunity to provide feedback on the exposure draft of the Tax Laws Amendment (Research and Development) Bill 2010 released 18 December 2009 ("the exposure draft").

West Hills Farm Pty Ltd grows and packs carrots on 4,000ha of irrigated land in Lancelin, Western Australia, for Australia's largest carrot exporter, Sumich. With 70 employees, West Hills Farm is a key employer in the region's second largest employment group, vegetable growing. Among the horticultural industry, West Hills Farm is seen as a successful innovator whose initiatives influence industry practices.

Innovative technologies introduced by West Hills Farm include measures to increase efficiencies and reduce the carbon footprint of our product, for example:

- Refrigeration technologies that enable the shelf-life of the vegetables to be extended.
- Use of robotics in on-farm packaging which decreases the transport and off-site handling required.
- The use of renewable energy technologies to provide on-site, green generating capacity and demand-side electricity management measures.

For the reasons outlined in this submission, we are concerned that changes to the R&D Tax Concession program will be detrimental. Specifically, we are concerned about the following impacts:

1. The viability of the company will be threatened if we are not able to aggressively innovate. The domestic market could never absorb the amount of carrots we produce, so we are entirely reliant on supplying the quality and speed to market that enable our distributor to remain competitive in export markets. Competitors are from countries whose taxation and agricultural policy regimes support innovation. The capacity to invest in R&D is not optional; it is essential to our success.
2. Moreover, the markets into which our produce is eventually sold include those with stringent carbon footprint regulations. Thus, the ability to continually reduce the greenhouse emissions associated with the growth and distribution of our product is another imperative which makes innovation essential.
3. The key benefit to us of a facilitative R&D Concession program is the speed at which we can respond to new ideas in production and packaging methods. While we might have 'considerable novelty' in some of the innovations we have undertaken, most of our

PO Box 63 Tuart Hill WA 6060 Australia
Phone: +61 8 9207 3111 • Fax: +61 8 9207 3222 • Email: office@nee.com.au

improvements have resulted from insightful, incremental innovations. We are concerned that a requirement for considerable novelty and high levels of technical risk will mean that we gradually cease to invest in incremental improvements because there is no incentive for us to do so.

4. For a small-medium enterprise (SME) like West Hills Farm Pty Ltd, the capacity to engage in high-technical-risk, blue sky R&D such as that which we fear is intended by the new R&D Concession program will compromise our ability to invest in those incremental innovations which have served us so well in the past. We are concerned that our appetite for R&D will wane, as the concessionary environment operates against the 'give it a try' R&D culture that we have built up.
5. If the R&D Concession innovation bar is set too high, we will have no alternative except to involve other partners in R&D ventures. This will increase the bureaucracy involved which will have a detrimental impact on the speed at which we can implement innovations. It will also be problematic from a commercial perspective, given that innovation is generally driven by a need for a competitive advantage.

Our company commends the Government's stated intent in delivering a "more generous, more predictable, and less complex tax incentive", however we do not believe the legislation achieves this intent in its present form.

Whilst we understand the Government's intention to tighten eligibility in order to focus incentives on worthy activities which will benefit the broader Australian economy, we believe the combination of *the high number* of tightening measures contained in the exposure draft serves to drastically reduce the generosity, accessibility and attractiveness of the R&D Tax Incentive program.

**Major concerns**

Within the exposure draft, there are now five key ways in which eligibility has been significantly tightened and claims will be curtailed, making the system *less generous, more complex and less predictable* to Australian businesses.

1. The requirement for 'considerable novelty' in place of 'innovation' – this both raises the bar for eligibility of potential claimants, while increasing uncertainty by replacing a well understood and defined term. Innovation is a well understood term, and the relationship between innovation, productivity and growth is similarly well understood, across OECD countries and in a local context. The shift in term seems to favour the "blue sky" R&D common in academic settings over business innovation – the incremental improvements which are vital to business competitiveness;
2. The introduction of the "and" test for the eligibility test of considerable novelty and high levels of technical risk. We believe that this change to the definition will lead to the exclusion of many genuine R&D activities that should be supported and are currently eligible for support under the existing R&D tax concession. As a stand alone measure, this change may be acceptable, but in combination with the other new eligibility restrictions, it will exclude too many meritorious R&D endeavours and overall support for innovation will be considerably reduced. If this change is to be adopted, then other

proposed restrictions should not be introduced otherwise the aim of the new tax credit to provide a more generous concession will not be fulfilled.

3. The introduction of the "dominant purpose" test for supporting activities. This represents a significant tightening over the existing test in the current program, which only requires that a support activity be carried out for "a" purpose directly related to the core R&D activities. This new test will greatly reduce the amount of eligible support activities that may be claimed, and will also impose a severe evidentiary burden on claimants of the new R&D tax credit. Many support activities will have a commercial purpose as well as an R&D purpose and providing evidence that one purpose is clearly dominant over the other will be almost impossible in many cases. This introduces considerable uncertainty over the eligibility of claimed supporting activities and is highly undesirable as a consequence. Please note, this uncertainty is acknowledged in the discussion of the new test in the Explanatory Memorandum.

4. The apparently arbitrary exclusion of a large number of activities from being either core or supporting activities, via the repurposing of the former s73B(2C) of the Income Tax Assessment Act 1936 (ITAA 1936). We believe that this change, while having obvious negative consequences for the computer science and information technology industries in Australia, also has (possibly unintended) consequences, including that:

   a. s355-35 (2)(l) renders clinical trials ineligible as they are performed for (amongst other purposes) the preparation of a regulatory requirement of the Therapeutic Goods Administration;

   b. the expansive drafting of s355-35(2)(h) suggests that manufacturing industries will have eligible R&D processes, including trials, drastically reduced;

   c. s355-35(2)(i) is broadly drafted and confusing.

   d. s355-35(2)(o,p,q and r) which will result in the exclusion of the majority of IT related R&D from obtaining support under the program.

5. The "augmented feedstock provisions", effectively limit R&D Incentives to the net expenditure on the R&D activities. This obviously decreases the generosity of the incentive, however it has other major consequences:

   a. it makes the incentive less predictable, as the value of the output may be clawed back at a future date, making budgeting projects and accounting for incentives difficult (i.e. how would one carry the potential liability?);

   b. it favours failure over success. We believe that having taken on the technical and financial risk of an R&D activity, a claimant should not be negatively treated at a indeterminate point in the future due to the disposal of the outputs of R&D;

   c. the scope of what is included in the "output's cost" should not include labour and plant depreciation. A company takes on a real *opportunity cost* by diverting staff and assets from normal duties to an R&D activity – this cost is in fact never fully recovered, even if the outputs of R&D are sold. The current feedstock provisions of the R&D Tax Concession, which deal only with material inputs and energy, amply claw back incentives on profitable trial activities.

**Submission Request**

There is, presently, a unique opportunity to draft the legislation precisely and specifically to meet the policy intent – this opportunity should not be missed. Given the above issues and complexities in the current exposure draft, we submit that the Government should:

1. **Leave in place the well understood term – Innovation in the definition and remove the term considerable novelty;**
2. **Delete the exclusions list and thereby not use it as a means to limit supporting activities, or, if absolutely necessary to achieve policy objectives, redraft s355-35(2) to clarify those activities which are intended to be excluded;**
3. **Remove the specific exclusions on computer software to ensure that genuine R&D undertaken that is information technology related is supported by the R&D tax credit program going forward; and**
4. **Revert to the existing feedstock provisions of s73B of the ITAA 1936 which, we believe, effectively limit incentives to net cost of trials or alternatively quarantine some specific activities from being treated as input costs in the augmented feedstock provisions. We request that two categories of costs be quarantined (and not included in the feedstock calculation) being labour and plant depreciation.**

If the above changes are made to the exposure draft, the Government will be able to achieve its objectives for the new tax credit – that is, implement a more generous, more predictable and less complex incentive that targets additionality and spillovers whilst maintaining revenue neutrality.

However, if the Exposure Draft is implemented in its current form, the direct outcome would be a significant lowering of the support for innovation in Australian businesses. As a result, the Government risks losing scientific, information and engineering and other technical industries (and jobs) offshore, as well as reducing the development of products, technologies and processes which will boost productivity – the very lever which the Government has stated will support an aging population. Reduced effectiveness and uptake of the R&D Tax Incentive will also negatively affect Australia's Business Expenditure on R&D ("BERD").

Yours sincerely

**LISA TANA**
**Director**