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20 April 2010

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

By email: rdtaxcredit@treasury.gov.au

Dear Sir or Madam

**SUBMISSION ON TAX LAWS AMENDMENT (RESEARCH AND DEVELOPMENT) BILL
2010 EXPOSURE DRAFT LEGISLATION AND EXPLANATORY MATERIALS**

CPA Australia represents the diverse interests of more than 129,000 members in over 110 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, we now provide this submission concerning the second exposure draft legislation and accompanying materials on the Tax Laws Amendment (Research and Development) Bill (2010) ('the second exposure draft') which was re-issued for comment on 31 March 2010. In making this submission reference is also made to our earlier submission dated 3 February 2010 on the initial exposure draft legislation on this subject which issued on 18 December 2010.

This submission is made not only on behalf of our members but also for the accounting profession and in the broader public interest.

CPA Australia has long held the view that the development of a streamlined, efficient and equitable R&D tax credit regime is essential if Australia is to ensure that it has a robust, productive and internationally competitive economy for the next generation.

The availability of such a scheme is necessary if the private sector is to successfully deal with a raft of unprecedented challenges including, amongst others, reducing carbon emissions, constructing a national broadband network, competing for international investment in R&D, and coping with the increasing cross border exchange of intellectual property via the internet.

Whilst we acknowledge the need to ensure that the new R&D incentive is targeted towards appropriate activities it is our view that the measures canvassed in the first exposure draft legislation were structurally flawed and would have drastically cut the number of eligible claimants.

We therefore are pleased that some of our concerns in respect of the first exposure draft legislation have been wholly or partly addressed in the second exposure draft legislation.

We particularly welcome the removal of the multiple sale test in respect of core R&D claims for software projects which otherwise satisfy the proposed revised definition of eligible R&D

as the encouragement of such activities is fundamental if Australia is to continue to be an internationally competitive economy. It appears to be wholly appropriate that such claims should be subject to the same rules as other kinds of R&D activities.


We also note that the proposed dominant purpose test for supporting R&D activities has been restricted under proposed section 355-35 to only apply to production activities and activities on the exclusions list set out under proposed section 355-30. This is a constructive step as the blanket extension of the dominant purpose test to all supporting activities as originally proposed under section 355-35(1) was in our view unnecessarily excessive and would in practice deter claims.

However, we believe the following two issues must be addressed before the second exposure draft legislation is finalised as amending legislation:

- We reiterate our views in our earlier submission on the initial exposure draft legislation that any augmentation of the existing feedstock rules would have a profoundly adverse impact on the viability of the new R&D incentive as it would penalise companies whose R&D activities are commercially successful. Accordingly, we strongly recommend that any redrafted feedstock provision be based on the terms of the existing feedstock provisions in section 73B of the Income Tax Assessment Act (1936 ('the ITAA (1936)'), and that appropriate examples are provided in any finalised explanatory memorandum to illustrate the application of such a provision. We would be pleased to review such a rewritten provision before it is introduced into the Parliament to ensure that its potential application is consistent with the existing feedstock provisions; and
- The proposed revised definition of core R&D activities in proposed section 355-25 is a significant departure from the existing definition of eligible R&D as it has excised any reference to innovation and high levels of technical risk. As you will note from our earlier submission CPA Australia has long contended that the new incentive should be available in respect of R&D projects which involve either 'innovation' or 'high levels of technical risk' for eligible research and development activities as defined under section 73B(1) of the ITAA (1936) as we believe that the latter test allows certain 'development' projects to be eligible as well as innovative research. Accordingly, we were opposed to the proposal under the first exposure draft legislation that eligible claimants would have to satisfy both the innovation and high levels of technical risk requirements. Despite the change in terminology we are concerned that the practical impact of the revised definition under proposed section 355-25 is that companies will be effectively required to satisfy an increased eligibility threshold which may exclude certain development activities that would be currently eligible. Accordingly, we remain committed to the retention of the existing definition of eligible R&D activities under section 73B of the ITAA (1936) (including the alternate criteria of 'innovation' and 'high levels of technical risk') to ensure that the scope of the new incentive is appropriately targeted to include appropriate development activities as well as research. Moreover, this measure would reduce confusion in the market which will otherwise arise if a new definition of core R&D activities is introduced.

If you have any questions regarding the above, please contact me on (03) 9606 9860 or via email at mark.morris@cpaaustralia.com.au.

Yours faithfully

A handwritten signature in black ink that reads "Mark Morris". The script is cursive and fluid, with the first name "Mark" and last name "Morris" clearly distinguishable.

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