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Business Tax Division  
The Treasury  
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PARKES ACT 2600

**By email:** [rdtaxcredit@treasury.gov.au](mailto:rdtaxcredit@treasury.gov.au)

26 October 2009

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

Dear Sir/ Madam

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

Our company is a current claimant of the R&D tax concession and our intention is to continue to claim.

R&D is integral to the commercial success of the company and we encourage the Government to continue its support of the program. We will focus our response on those principles and questions that are relevant to our circumstances and begin by providing some background to the company.

**Maxxia - Company Background**

Maxxia, a subsidiary of McMillan Shakespeare Limited, has been growing steadily for more than two decades to become a publicly listed company and a leading provider of workplace benefits services in Australia, with offices in every state and a staff numbering more than 450 skilled people. Our customers are sourced from state and federal governments, hospitals, charities and private sector organisations throughout Australia.

**Maxxia R&D effort**

Maxxia provides enhanced industry standard financial management systems for the administration of our customer's salary packaging needs, which includes novated leasing, fleet management and most recently, car and home contents insurance. We

leasing, fleet management and most recently, car and home contents insurance. We invest R&D in our IT infrastructure and the performance of our systems in order to provide our fast growing customer base with the quality and reliable financial management services required and expected of us, including high volume processing capability, automated reporting, scalability and enhanced fiscal and audit control of financial transactions.

The key to our success is our investment in our IT infrastructure, platforms and systems to stay abreast of technological and transaction reporting requirements and exceed customer expectations. Our customers depend on the reliability of our services in the management of their financial transactions and we have demonstrated the benefits of our investment in R&D by becoming the leading service provider of salary management systems.

### **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 – Principle 1**

We 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 – Question 1**

As our R&D is presently conducted in Australia, we do not have comments in relation to Question 1.

### **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.

### **Submission – Principle 2**

We are generally supportive of the Government's proposal to increase the base rate of claim benefit, however, we submit that one rate be applied to all eligible companies, regardless of size, to introduce simplicity into the administration of the program. We think that this rate should be higher given the repealing of the 50% Premium deductions. We also submit that the Standard R&D Tax Credit be defined such that

the accounting treatment of the Credit gives rise to an 'above the line' benefit for companies.

### **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 – Principle 3**

As noted in our response to Principle 2, we submit that one rate be applied to all companies, regardless of size or turnover, for simplicity of administration.

### **Question 2**

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

### **Submission – Question 2**

We have no comments in relation to Question 2.

### **Question 3**

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

### **Submission – Question 3**

We 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 – Principle 4**

We support this Principle and the Government's proposal for more efficient and effective administration. High on the priority list of Government considerations in structuring the new R&D tax incentive should be the burden of excessive and/or unnecessary administration faced by claimant companies in the course of making a claim. It is important that the overhead administrative cost of making a claim is kept to a minimum. The scheme should be efficient and effective to administer from the point of view of the claimant company.

### 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 – Principle 5

We do not consider that it will be possible for the Government to assess whether additionality or spillover are met. As such we submit that they not be included to the Principles of the program.

### 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 – Principle 6

We oppose a proposal for a definition of eligible R&D activity requiring both innovation and high levels of technical risk as the definition gives rise to uncertainty in application given what is currently understood to be qualifying R&D to be. We ask that for software development the requirements for “innovation” be carefully considered and clarified in the context of commercial reality. In support of this, we draw attention to the reference to software R&D in the National Innovation System (NIS) Review 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 spillover benefit for the rest of the community.

Also in support of our submission, 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.

In relation to the second limb of the definition, we submit that clarification is required if the definition is to be changed from “creating new or improved materials, products, devices, processes, or services” to “producing new knowledge or improvements”. The

original intent for the support for R&D through a tax concession/ credit is to provide an incentive for greater levels of R&D in Australia across a range of industries. We note that this proposed change is already more restrictive than that required for patents and draw the Government's attention to commercial reality and how the proposed Principles should never be far removed from this.

We therefore submit that no change be made to the definition of eligible R&D from that applied in the current R&D tax concession.

If it is necessary to change the definition to "both innovation and high levels of technical risk", we submit that:

1. the concept be tested at the project level and not at the activity level and
2. the current definitions of innovation and technical risk be maintained from the current law

in order to maintain clarity in application and still provide some workable, practicable outcome for claimant companies.

### **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 – Principle 7**

We do not agree with the Principle of wide ranging limitations to supporting R&D when it is conducted legitimately and is necessary for the development to occur.

We submit that:

- new limitations should 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 and
- 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 – Question 4

As noted in our response to Principle 7, we submit that all five forms of limitation proposed for supporting activities 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 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 – Question 5

We submit that:

- the current list of activities excluded from being considered core R&D be retained and unmodified from its current form and
- 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 – Question 6

We agree that the multiple sale test is a weakness of the current scheme. In agreement with the viewpoint of the NIS Review, we submit that in-house software development drives efficiencies into the economy by lowering the price of goods and services. We submit that as long as the development meets the definition of an eligible R&D activity, there should be no reason to exclude the activity from being eligible purely on the basis that it does not meet multiple sale requirements. We therefore submit that the multiple sale test be removed entirely.

Further, we 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 and
- 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.

We also draw attention to our response in Principle 6, the application of “innovation” to the commercial reality of software development, and the reference in the NIS

Review to software development in the context of technical risk and not innovation, and submit that the Government considers the merits and spillover benefit of R&D in the software industry when structuring the requirements for eligible R&D activity as a whole.

**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 John Bugeja Financial Controller on (03) 9635 0105 to discuss.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Bugeja', with a stylized flourish at the end.

John Bugeja  
Financial Controller  
Maxxia Pty Ltd