

Pelena Pty Limited (ACN 19 082 368 330)
33 Dome Road, Dorrigo, NSW, 2453
Phone +61 (0)2 66571720

5th October 2009
General Manager
Business Tax Division
The Treasury
Langton Crescent, PARKES ACT 2600

By Email to: rdtaxcredit@treasury.gov.au

Dear Sir / Madam,

Re: Submission for the “The new research and development tax incentive – Consultation Paper - September 2009”

We are an export-focused engineering company with over 11 years experience in R&D activities. Since our company's incorporation, we have been unable to claim any incentives from the existing R&D Tax Concession due to the onerous reporting demands and a lack of clarity for our export-orientated business.

We wish to make the following recommendations regarding the above issued Consultation Paper:

R&D to be conducted in Australia

Paragraph 23 states in part “.... a claim in relation to Australian-owned R&D can include R&D conducted overseas where the activities cannot be conducted domestically and provided it does not exceed 10 per cent of the claimed expenditure.”

We are concerned about the lack of clarity regarding the determination of whether or not R&D activities “cannot be conducted domestically” and disagree with the 10% cap. Who will determine whether or not an activity can occur domestically, and at what stage in the process of the activity will this claim be made? Development of our manufactured goods over the past 11 years has required substantial R&D outside of Australia – well exceeding 10% of R&D expenditure. The result of the R&D activities has been the development of manufactured goods in Australia for export. Environmental factors relating to our customers' location commercially precludes – in our opinion - such R&D from occurring in Australia.

We are concerned, based on previous experience, that our limited budget for R&D activities, and personal opinion of ‘experts’ will exclude us from the newly proposed tax incentives. Greater clarity is required to allow companies to ensure their proposed overseas activities will indeed be included in the proposed Tax Incentive.

Payments to associates

Paragraph 42 states in part “*The Government is yet to decide how expenditures incurred to associate entities will be treated.*”

In relation to the above matter regarding overseas activities, we have been forced to establish a foreign entity (company) so as to facilitate activities in that country, to, at a later time, establish an export market to that country. Payments to the foreign company are needed to allow that company the benefits of accessing duty exemptions (sometimes exceeding 150%) for importation of R&D equipment and support R&D activities in that country.

Eligibility

Paragraph 44 states in part “*Legislation for the new R&D tax incentive will provide an administrative framework that balances the ability of claimants to self-assess their eligibility and entitlements and the scope for administrators to ensure compliance.*” More detail is required here, particularly the timing of the reporting to allow for tax claims. Our experience with the existing R&D Tax Concession is that the administrative demands are too excessive for our business, and as such we are excluded from the program due to commercial constraints. R&D is a risky business. Tax incentives need to encourage R&D not compound the risk through onerous reporting. Retrospective claims for R&D activities – up to 3 years – should also be part of the new incentive.

Yours faithfully,

Peter Lynch BE
Managing Director