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SUBMISSION TO THE NEW RESEARCH AND DEVELOPMENT TAX INCENTIVE

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

INTRODUCTION AND EXECUTIVE SUMMARY

ResMed is a leading developer, manufacturer and marketer of products for the screening, treatment and management of sleep-disordered breathing (SDB) and other respiratory conditions. The company was founded in 1989 and since then has become one of the world's leading respiratory medical device manufacturers, exporting more than 95% of its production from Australia. ResMed is listed on both the Australian and New York Stock Exchanges.

Our focus is on continuous innovation to develop breakthrough products and technologies. As global leaders in sleep and respiratory medicine, we educate and raise awareness by sharing knowledge with patients, clinicians, industry professional and the broader medical community.

ResMed welcomes the consultation opportunity in the design of the new R&D tax incentive program.

The key recommendations made in respect to the new Research and Development Tax Incentive:

1. Retain the existing definition of R&D core activities as any changes will increase uncertainty and potentially result in numerous projects being ineligible.

2. Introduce a set expenditure level for supporting activities, whereby supporting expenditure is set at a 1:1 ratio of core expenditure. This ensures a maximum cap is applied in an administratively efficient manner and rewards companies that invest in core R&D expenditure.

3. Provide an exception to the general rule that eligible R&D activity must be conducted in Australia for clinical studies undertaken overseas that support other eligible R&D activities and core R&D where qualified personnel are not available in Australia. This exception should be on a self-assessment basis and capped at a ratio of 25% Australian expenditure

4. The R&D software multiple sale rule be largely retained but extended to software which is developed but provided without a license fee to third parties.

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ResMed Submission

Principle 1 & Question 1:

ResMed accepts principle 1 on the basis the R&D tax incentive should not be impacted by IP ownership.

Whilst broadly agreeing that only R&D conducted in Australia should be eligible, we would submit two critical exceptions to this principle:

an exception should be available for clinical studies which typically must be conducted overseas due to availability of specialist hospitals, university and doctors, as well as patient volume. ResMed submits that clinical studies performed overseas, in connection with R&D performed in Australia should be treated as eligible expenditure.

an exception should be available for core R&D conducted overseas but under the direction of the Australian domiciled entity. This is a common situation in complex R&D projects as invariably offshore expertise not readily available in Australia must be utilised to contribute to Australian based R&D projects. This exception should be applied on a self-assessment basis and may, for example, be capped at 25% of Australian based R&D expenditure.

Principle 4:

ResMed agrees with principle 4. Further, ResMed submits that a private ruling type system, similar to that operated by the Australian Taxation Office, should be established to provide companies greater certainty on the application of R&D legislation to specific circumstances.

Principle 5:

ResMed agrees with principle 5, which is largely a “goal” of the R&D tax incentive program.

It should be noted that many large companies undertaking R&D in Australia are multinational organisations that have a presence in numerous locations around the world. If the revised tax incentive and its application is too restrictive, many large companies have the option to move R&D offshore where incentives might be more beneficial, effective and certain.

Principle 6:

ResMed submits that the current definition of core R&D should be retained, where core R&D activities contain either innovation or high levels of technical risk.

The proposed definition will significantly increase uncertainty in the application of the R&D tax incentive. Innovation or high levels of technical risk can independently result in activities that are highly beneficial to the Australian economy.

An example might be a manufacturing process has high levels of technical risk due to semi-automation, but is not considered to be innovative. The project itself might generate additional engineering positions as well as the subsequent manufacturing activity if the project is successful.

To require projects that involve both innovation and high levels of technical risk would mean many projects would not qualify, despite having significant spillover benefits. To deny these projects eligibility is likely to result in either the projects potentially not being undertaken, or untaken in a jurisdiction where R&D incentives are available.

ResMed also submits that for greater certainty, R&D activities that require regulatory approval (e.g. from the Food and Drug Administration) should be automatically considered eligible R&D. Any new product requiring regulatory approval will have “high-levels of technical risk” until regulatory approval is obtained.

Principle 7 and Question 4:

ResMed submits that a set level of core R&D expenditure to supporting R&D expenditure should be 1:1, regardless of actual supporting expenditure.

This approach would provide a greater incentive for companies to invest in core R&D expenditure rather than reward excessive supporting expenditure. This also eliminates the significant administrative complexities involved in separately calculating supporting expenditure which is generally very time consuming for companies and the Australian Taxation Office in R&D audits and risk reviews.

Question 5:

ResMed submits subsection (k) in exclusions list should be removed specifically in relation to patent costs as patent and design registration costs are directly related to R&D activities being performed. These costs are also treated as eligible R&D tax incentive expenditure in other jurisdictions such as France.

Question 6:

ResMed submits that the current software R&D provisions be largely retained but with the notable change that software must be developed for either multiple sale or multiple-license by third parties.

An example may be where a software is developed which meets the primary R&D requirements but is provided without a license fee to third parties. Under the existing definition, this type of R&D project may be ineligible, despite significant R&D expenditure being incurred and economic benefits arising.

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ResMed would like to thank The Treasury and Department of Innovation, Industry, Science and Research for their consideration of ResMed's submission.

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ResMed Ltd