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1996

THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

SENATE

INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT BILL 1996

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

(Circulated by the authority of the
Minister for Industry, Science and Tourism.
The Hon. John Moore MP)

OUTLINE

These amendments and new clauses seek to address a number of concerns raised by the Senate Economics Legislation Committee in its report of 30 October 1996 about the transitional arrangements for companies which incurred expenditure in relation to research and development (R&D) activities in any or all of the years of income 1985-86 to 1992-93 inclusive. They amend the Industry Research and Development Amendment Bill 1996, a Bill to amend the *Industry Research and Development Act 1986*.

Amendments to the Industry Research and Development Amendment Bill

The amendments modify the transitional arrangements to provide those companies with a history of registration for the R&D tax concession, a history of claiming the R&D tax concession, or a history of tax loss with an opportunity to seek registration for the R&D tax concession in respect of a year or years of income in the period 1985-86 to 1992-93 inclusive.

The amendments also provide the Industry Research and Development Board with the power to grant a three month extension of time in which a company can lodge its application for registration for the R&D tax concession.

FINANCIAL IMPACT STATEMENT

These amendments reduce the revenue protection measure of the Bill by \$10 million over four years.

Clauses 1 through 4

1. Clauses 1 through 4 make consequential amendments to the Industry Research and Development Bill 1996 to facilitate the insertion of new Item 13A.

Item 13A - After Section 39J

2. As the Industry Research and Development Bill 1996 (the Bill) currently stands, it is proposed that the Industry Research and Development Board (the Board) would be prohibited from registering a company for the research and development (R&D) tax concession after 2.30 pm Australian Eastern Standard Time on 6 December 1995, in respect of the 1992-93 year of income or earlier (proposed paragraph 39JA(1)(a)).

3. The new provisions 39JA, 39JB and 39JC modify the transitional arrangements to allow the Board to register an eligible company in respect of the 1992-93 year of income or later after this time, where the company meets certain criteria. These criteria are predicated on the situations in which an eligible company may have inadvertently failed to follow the correct processes necessary to obtain the benefit of the R&D tax concession, or had been unable to realise the benefit of the R&D tax concession at the time that R&D activities were conducted because the company had incurred no taxable income in that year of income.

4. At the same time, these provisions are designed to minimise the access to tax benefits by those companies which did not plan to access the R&D tax concession at the time of conducting the R&D activities.

5. This Item is taken to have commenced as at 2.30 pm Australian Eastern Standard Time on 6 December 1995.

New Transitional Arrangement - Registration History

6. The Board may register an eligible company in respect of certain years of income prior to the 1993-94 year of income after 2.30 pm on 6 December 1995, where it meets the registration criteria in section 39J of the *Industry Research and Development Act 1986* (the Act), and the registration history criteria.

7. A company has a history of registration for the R&D tax concession if:

the company has registered for the R&D tax concession for at least two of the years of income between 1985-86 and 1992-93 inclusive (the two years of income need not be consecutive); and

- the company was registered for these years of income prior to twelve months after the end of the 1992-93 year of income.

8. Where an eligible company has a registration history, the Board may register the company in respect of a year of income:

which is subsequent to the second year of income, prior to the 1993-94 year of income, for which the company is registered; and
all subsequent years of income up to and including the 1992-93 year of income.

9. In determining which year of income is the second year of income, a company should look at the second year, in chronological order, for which it is registered for the tax concession. For example, where a company is registered for the 1987-88, 1988-89, 1989-90 and 1990-91 years of income, the second year is 1988-89. The order in which a company sought registration for the years of income has no bearing.

10. The company must lodge an application for registration in respect of the relevant year of income prior to the 1993-94 year of income prior to 1 July 1997. An application is lodged when it is received by the Board.

Example 1

11. A company works on a standard financial year accounting period. By 30 June 1994 the company had registered in respect of the 1986-87, 1987-88 and 1990-91 years of income. Under the new arrangements, the Board would be able to register the company in respect of the 1988-89, 1989-90, 1990-91, 1991-92 and 1992-93 years of income, if the company lodges an application for registration in respect of these years of income prior to 1 July 1997, and meets the criteria for registration prescribed by section 39J of the Act.

Example 2

12. A company works on a standard financial year accounting period. By 30 June 1994 the company had registered in respect of the 1985-86 and 1988-89 years of income. Under the new arrangements, the Board would be able to register the company in respect of the 1989-90, 1990-91, 1991-92 and 1992-93 years of income, if the company lodges an application for registration in respect of these years of income prior to 1 July 1997, and meets the criteria for registration prescribed by section 39J of the Act.

New Transitional Arrangement - Claim History

13. Subsection 73B(10) of the *Income Tax Assessment Act 1936* (ITAA) requires that a company be registered with the Board in respect of a year of income in order to claim a deduction for expenditure incurred in respect of R&D activities in that year of income. This has not been observed by all companies in all instances.

14. To accommodate those companies which claimed the concession in error without registering with the Board first, an exception is made to new paragraph 39J(1A)(a) for companies with a history of claiming the R&D tax concession.

15. A company has a history of claiming the R&D tax concession in respect of a year of income where:

- the company has claimed expenditure incurred in respect of R&D activities in the 1992-93 or an earlier year of income; and
- the company was not registered in respect of that year of income at the time of making the claim; and
- the company claimed a deduction under section 73B of the ITAA in the assessment of the company's taxable income for that year of income; and
- the assessment was made prior to 7 December 1995.

16. Section 6 of the *Income Tax Assessment Act 1936* provides the definition of “assessment” used by the Commissioner of Taxation, and this definition applies in respect of new section 39JB. A company is advised of the date on which an assessment is made by the Commissioner of Taxation in the Notice of Assessment issued on assessment.

17. A company does not have a history of claiming the concession in respect of a year of income, however, where the company claimed a deduction under section 73B of the ITAA as an amendment to its assessment. An amendment occurs as a result of an application for an amendment as provided for by section 170 of the *Income Tax Assessment Act 1936*.

18. Where a company has a history of claiming the R&D tax concession in respect of a year of income, the Board is not bound by proposed paragraph 39JA(1)(a), and may register the company in respect of that year of income, if the company lodges an application for registration in respect of that year of income prior to 1 July 1997, and meets the criteria for registration prescribed by section 39J of the Act.

Example 1

19. A company claimed in respect of R&D expenditure under section 73B of the *Income Tax Assessment Act 1936* in respect of the 1990-91 year of income, in its original return for the 1990-91 year of income. The assessment occurred prior to 7 December 1995.

20. Under the new arrangements, the Board would be able to register the company in respect of the 1990-91 year of income, if the company lodged an application for registration in respect of this year of income prior to 1 July 1997, and met the criteria for registration prescribed by section 39J of the Act.

Example 2

21. A company lodged its return for the 1988-89 year of income on 30 March 1990, and did not include a claim for R&D expenditure under section 73B of the ITAA. On 30 March 1992, the company submitted an amended return, and included a claim under section 73B for R&D expenditure. In both instances the assessment occurred prior to 7 December 1995.

22. In this instance, the Board **may not** register the company in respect of the 1988-89 year of income. The company does not meet the history of claim criterion because the R&D expenditure was claimed in an amended assessment.

New Transitional Arrangement - History of Tax Loss

23. Some companies have not accessed the tax concession for R&D activities conducted in the years of income 1985-86 to 1992-93 because they were in tax loss, and accordingly could not realise the benefit provided by the R&D tax concession at that time.

24. To accommodate those companies who did not register for the concession prior to 7 December 1995 because they had not been able to realise the benefits of the concession, an exception is proposed to new paragraph 39J(1A)(a) for companies with a history of tax loss.

25. A company has a history of tax loss where:

the company performed R&D activities in a year of income prior to 1993-94;

the company had no taxable income for the year of income in which the R&D activities were conducted; and

- the company had no taxable income for every year of income, subsequent to the year of income in which the R&D activities were conducted, which ended prior to 7 December 1995.

Example

26. A company conducted R&D activities in 1987-88, and 1990-91, but did not register for either year of income. The company registered a tax loss for the year of income 1987-88, and all subsequent years of income which ended prior to 7 December 1995.

27. Under the modified transitional arrangements, the Board is not prohibited from registering the company in respect of the 1987-88 and 1990-91 years of income, if the company lodges an application for registration in respect of those years of income prior to 1 July 1997, and meets the criteria for registration prescribed by section 39J of the Act.

Example 2

28. A company conducted R&D activities in 1987-88, and 1990-91, but did not register for either year of income. The company registered a tax loss for the years of income 1987-88, and all subsequent years of income which ended prior to 7 December 1995, with the exception of the 1989-90 year of income.

29. Under the new arrangements, the Board is bound by new paragraph 39J(1A)(a) in respect of the 1987-88 year of income. The Board may, however, register the company in respect of the 1990-91 year of income if the company lodges an application for registration in respect of those years of income prior to 1 July 1997, and met the criteria for registration prescribed by section 39J of the Act.

30. The company does not meet the history of tax loss criterion in respect of the 1987-88 year of income because the company was not in tax loss for **all** years of income subsequent to 1987-88 which ended prior to 7 December 1995.

Parameters and Interaction of Transitional Arrangements

31. The new transitional provisions only compel the Board to make a registration decision in respect of a company which meets the transitional provisions. It does not require the Board to make a decision in favour of the applicant, and any additional registration criteria in the Act or regulations will apply.

32. A company may find that more than one of the new transitional arrangements apply to the company over the years of income 1985-86 to 1992-93 inclusive; for example, it may meet the history of registration and history of claim criteria for different years of income over this period. The fact that the company meets one of the proposed new transitional arrangements in respect of one or more years of income in the prescribed period does not affect the company's ability to meet a different new transitional arrangement in respect of a different year of income in the prescribed period.

Example

33. A company has a history of registration which allows it to be considered for registration in respect of the years of income 1991-92 and 1992-93. The company has no history of tax loss.

34. The company claimed in respect of R&D expenditure under section 73B of the ITAA in respect of the 1986-87 year of income, in its original return for the 1986-87 year of income, on 30 June 1988, but did not register with the Board under section 39J of the Act. The assessment occurred prior to 7 December 1995.

35. Under the new arrangements, the Board is not prohibited from registering the company in respect of the years of income 1986-87, 1991-92 and 1992-93, if the company lodges an application for registration in respect of those years of income prior to 1 July 1997, and met the criteria for registration prescribed by section 39J of the Act.

Clauses 5 and 6

36. Clauses 5 through 7 make consequential amendments to the Industry Research and Development Bill 1996 to facilitate the insertion of new Item 13A.

Clause 7 - Application for extension of time & Item 19 - Subsection 39S(1)

37. The Board may grant a company an extension of time in which to make an application for registration under section 39J of the Act if it meets certain self explanatory criteria. In all instances, the granting of an extension of time will result in a company having a further three month period, in addition to the six month period prescribed in the Act, in which to lodge an application for registration. For example, where a company works on a financial year accounting period, the granting of an extension of time will mean that the company must lodge an application for registration in respect of the particular financial year by the 31 March, rather than the 31 December, immediately following the end of that financial year.

38. The refusal to grant an extension of time is subject to internal review by the Board, and subsequent external review by the Administrative Appeals Tribunal (AAT). In the interest of fairness, a company has a further three months from the date of a positive decision on review in which to lodge the application for registration, or, if that review decision is taken prior to the end of the six month application period, three months from the end of that period.

39. Clause 7 and Item 19 commence on Royal Assent.



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