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By email to RDincentive@MBIE.govt.nz

‘R&D tax incentive team’
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INTRODUCTION

These submissions have been prepared by The New Zealand Institute of Patent Attorneys, Inc (NZIPA).

NZIPA is an incorporated body representing most Trans-Tasman patent attorneys registered and practising in New Zealand.

The current membership of NZIPA comprises 162 Fellows, 1 Honorary, 36 Students, 18 Non-resident, 15 Associates and 6 Retired.

Patent attorneys operate in the global arena across all sectors of industry to assist businesses in their key markets and to use intellectual property (IP) systems for strategic advantage. Patent Attorneys are qualified to, and regularly advise on, all intellectual property rights including patents, trade marks, designs, and copyright.

COMMENTS

The proposed research and development (R&D) tax incentive is intended to fuel innovation, and support the government’s broader goals for an inclusive, sustainable, and productive economy. The aim is to incentivise business R&D, so the economy can benefit from the broader social returns to business R&D.

The Research and Development Tax Incentive Discussion document identifies one factor limiting private sector investment in R&D as uncertainty that business will secure the benefits of that R&D, even if it proves to be successful. Assisting businesses to identify, capture, secure and commercially exploit the results of their R&D is at the heart of the work patent attorneys do.

Callaghan Innovation is the Crown entity charged with assisting New Zealand business to become more innovative. But, for example, Callaghan Innovation’s [2017 Annual Report](#) makes a single reference (page 16) to the term ‘patent’, in Professor Shaun Hendy’s piece concerning ‘New Zealand’s low rates of patenting ideas with commercial potential (14 per million people versus OECD average of 40)’. Callaghan Innovation’s [2017 Annual Report](#) also highlights that New Zealand’s rate of journal publication is significantly greater than in similar sized economies, and that the quality of those publications is world-class (see page 17).

Despite its comparatively poor private sector investment in R&D, New Zealand continues to create world class innovation, but then favours freely publishing the outputs of that R&D rather than actively managing and controlling the intellectual property.

Increasing private sector R&D is only part of the solution to achieving the government's goals. For New Zealand to fully benefit from the increased investment in R&D, the results of that R&D must be identified, captured, secured and, preferably, commercially exploited.

Accordingly, while many of the questions that are posed in the Discussion document fall outside of the NZIPA's purview, four are particularly relevant:

Question 3: Does this definition exclude R&D that you think should be eligible, please illustrate with examples.

Question 7: Are there any reasons why the exclusions should not apply to support as well as core activities? Please describe.

Question 10: What are the advantages and/or disadvantages of limiting eligible expenditure to R&D labour cost?

Question 11: What are the advantages and/or disadvantages of setting overhead costs as a percentage of R&D labour costs? What would the appropriate percentage be?

Page 17 of the Discussion document identifies certain activities as being routinely excluded from R&D tax incentives, but notes such activities could qualify as support activities within paragraph (b) of the scheme's definition of R&D. These activities include 'commercial, legal and administrative aspects of patenting, licensing or other activities'.

Page 6 of the Discussion document states that introducing an R&D tax incentive will, among other things, lead to greater innovative business activity, thus increasing employment, industry diversity, international engagement, profitability and overall sustainability.

The NZIPA considers that achieving these goals requires businesses to be incentivised to not only increase their investment in R&D but also to identify, capture, secure and commercially exploit the results of their R&D activities. To fully realise the benefits of the scheme, eligible expenditure should also include business expenditure on, for example, identifying, capturing, securing and commercially exploiting the results of their R&D activities.

The NZIPA considers that the definition of eligible expenditure should, therefore, include business expenditure on, for example, identifying, capturing, securing and commercially exploiting the results of their R&D activities. Such expenditure should not fall within the excluded activities but should, instead, at least qualify as eligible

expenditure under the support activities within paragraph (b) of the scheme's definition of R&D.

Furthermore, businesses may invest in R&D that for many reasons is not ultimately successfully secured or commercialised. Eligible expenditure should therefore include R&D activities that might not be successfully secured or commercialised. It is important to encourage businesses to invest not only in 'traditional' R&D but also in 'blue sky' R&D, in which the desired outcomes may not be as certain.

Limiting eligible expenditure to R&D labour cost or setting overhead costs as a percentage of R&D labour costs provides no additional incentive for businesses to identify, capture, secure and commercially exploit the results of their R&D activities. This would be wholly inconsistent with the broader aims of the R&D tax incentive. Worse still, failing to at least identify, capture and secure the relevant intellectual property rights potentially allows overseas businesses to benefit from taxpayer-subsidised New Zealand R&D without any benefit to New Zealand.

Yours faithfully

A handwritten signature in blue ink that reads "Duncan de Geest".

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