

Tax Working Group Public Submissions Information Release

Release Document

September 2018

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Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;
- [2] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [1] appearing where information has been withheld in a release document refers to section 9(2)(a).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

Tax Working Group Secretariat
PO Box 3724
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Dear Members of the Tax Working Group,

Small businesses and innovation

The Tax Working Group has asked for submissions on what the tax system can do to support small businesses.

For inventors and small businesses working on developing new and innovative products and ideas, a significant cost hurdle is seeking intellectual property protection. In particular the costs of securing patent protection, especially if such protection is also being sought in overseas markets. Such protection is essential for inventors to protect their ideas, but is expensive to obtain.

It is my understanding that the current tax regime applying to patents is that:

1. All income or proceeds from the sale of a patent is subject to tax (i.e. is assessable income) even if it might be considered "capital" in nature; and
2. Expenses incurred in obtaining a patent are only tax deductible to the extent that they would meet normal deductibility tests.

The practical effect of this is that inventor who wishes to obtain patent protection for an innovative idea has to fund the full cost of this up front, but will be unlikely to be able to obtain any tax deduction for that expenditure until they are able to show the IRD that they have a viable business off the ground.

I note that the current patent tax rules are asymmetric, in that all patent income is automatically assessable but all patent expenditure is not automatically deductible.

In light of the above I submit that it would be helpful for inventors (and thus encourage innovation, particularly by small enterprises) if the tax law is changed to provide for full deductibility of all patent related costs¹ when they are incurred, irrespective of whether normal deductibility tests are met. Furthermore, these deductions should be able to be offset against other sources of income.

¹ Patent related costs should include all New Zealand, PCT and foreign national filing, prosecution and renewal fees and all related patent attorney costs.

If potential tax avoidance is a concern the right to the deductions suggested above could be restricted to the original inventor and the first assignee (if any) where the original inventor is either an employee of or shareholder in the first assignee.

It is acceptable for the Tax Working Group and the Secretariat to contact me to discuss the points raised, if required.

Yours sincerely,

[1]

John Redmayne