



19 September 2022

The Director
Small Business Tax Unit
Treasury
Langton Crescent
Parkes ACT 2600

Email: SkillsBoost@treasury.gov.au

Dear Director,

Skills and training boost

Chartered Accountants Australia and New Zealand (CA ANZ) appreciates the opportunity to comment upon the exposure draft legislation and explanatory memorandum for Treasury Laws Amendment (Measures for consultation) Bill 2022: Skills and Training Boost.

Executive summary

With record low unemployment and a need to increase productivity and skill flexibility, the introduction of a skills and training boost is timely and welcomed.

CA ANZ advocates that supporting small businesses to train and upskill their employees should not be limited to funding employees studying towards a vocational education and training (VET) or higher education qualification. Rather it should extend to providing small businesses the flexibility to direct their training expenditure to upskill their employees in targeted skill areas of immediate relevance to their business. This could be achieved by ensuring the skills and training boost is inclusive of training and education that is in the form of:

- non-award single unit study in an Australian Skill Quality Authority (ASQA) or the Tertiary Education and Quality and Standards Agency (TEQSA) recognised course; or
- continuing professional development (CPD)¹ undertaken with an Australian based professional body where that training contributes to the employee maintaining their professional registration or credential for example CPD that is delivered by associations with a Professional Standards Scheme in force and/or with professional credentialing arrangements in place, including accounting (e.g., CA ANZ), healthcare, engineering, legal, veterinarian and computing professional bodies².

¹ Typically, in the form of a structured program of learning which does not lead to an ASQA or TEQSA recognised qualification, but which is recognised by the professional body as providing CPD training hours that are eligible to be counted by towards the required CPD hours that must be completed by an individual to maintain their professional registration or credential.

² The list of Australian based Professional associations with a Professional Standards Scheme in force can be accessed at <https://www.psc.gov.au/professional-standards-schemes/scheme-documents>.

To assist Australia boost the training and upskilling of its workforce, it is recommended that:

- the legislation and explanatory memorandum be amended to make clearer that the Skills and Training Boost extends to training that is undertaken as either award or non-award study in an ASQA or TEQSA recognised course within the provider’s scope of registration; and
- consideration be given to extending the Skills and Training Boost to include expenditure by small businesses on CPD training that is undertaken by an employee with an Australian based Professional body that contributes to the employee maintaining their professional registration or credential.

CA ANZ also notes that for small businesses training employees is a substantial investment of time as well as resources. Some courses of education occur over several years. The legislation requires that the arrangement or enrolment for the provision of training be made after 29 March 2022. Arrangement and enrolment can occur at vastly different times. Greater clarity is needed about these concepts, particularly whether they apply to a course of study or a particular component during study.

Small businesses already face a high compliance burden. The compliance burden (and risk) associated with this measure could be reduced by requiring the training organisation to quote on their invoice their Registered Training Organisation (RTO) number or TEQSA Provider Identifier.

Registered higher education provider

Higher education providers that are registered under the TESQA Act have gone through an extensive provider registration and course accreditation process which ensures that there are appropriate governance standards, financial resources, and quality and integrity assurance processes.

This is obliquely recognised in the draft legislation in section 328-450(b)(i) and (ii) which has the requirement that:

“328-450 Expenditure eligible for the bonus deduction for upskilling employees of small business entities etc. . . .

(b) at each time you incur any of the expenditure for any of the training provided by a particular provider:

(i) the provider is a registered body of a kind listed in subsection (2); and

(ii) the training is within the provider’s scope of registration (if any) for that kind of registration.”

Paragraph 1.37 of the explanatory memorandum more clearly articulates the assurance that the government has in registered higher education providers by noting that:

“A different regulatory framework applies to registered higher education providers within the meaning of the Tertiary Education Quality and Standards Agency Act 2011. Higher education training providers under this Act are not subject to a registration requirement that they deliver training within the scope of their registration. Thus, the scope of registration requirement is not relevant for higher education training for the purpose of the bonus deduction.”

The high level of regulatory quality assurance that applies to all units of study delivered as part of an ASQA or TEQSA recognised course are applicable irrespective of whether the unit of study is undertaken by an individual as part of an award course or as non-award study. It is thus desirable that it be clearer in the

legislation and explanatory memorandum that the bonus deduction for upskilling employees of small business entities extends also to non-award study taken in an ASQA or TEQSA recognised course within the provider's scope of registration.

This clarity will benefit small businesses seeking to use their training dollar to upskill a greater number and diversity of employees through funding employee enrolments in targeted non-award single units of study that form part of an ASQA or TEQSA recognised course without having to enrol their employees in the full award course. Such non-award training also benefits the employees and the Australian education sector as it can provide employees with a study credential that may be used to obtain advanced credit towards a future VET or higher education award course enrolment.

Continuing Professional Development (CPD) maintaining quality and expertise of professions

An essential component of helping small businesses upskill their employees so that they can innovate and grow is assisting them to acquire and maintain knowledge of professional standards (such standards typically address and protect public interest concerns).

It is thus crucial that consideration be given to extending the Skills and Training Boost to include expenditure by small businesses on CPD that is undertaken by their employees to maintain their professional designation or qualification, (for example, CPD that is delivered by associations with a Professional Standards Scheme in force and/or with professional credentialing arrangements in place, including accounting, healthcare, engineering, legal, veterinarian and computing professional bodies²).

CPD assists professionals employed by small businesses maintain a high level of professional standards and practices as well as act ethically in their work.

Importantly, CPD delivered by professional bodies is designed and developed with the necessary rigour to ensure training outcomes assist the professionals upskill year on year and maintain the quality and expertise expected and needed by the profession.

For example, in CA ANZ's instance, our CPD programs form a mandatory component of maintaining the Chartered Accounting (CA) designation and:

- are scrutinised by senior educational, industry and professional experts to ensure they are at the forefront of learning design principles, content quality, development, and delivery; and
- enhance the professional competencies that contribute to the quality and growth of the small businesses the Chartered Accountants are working in so they can keep pace with the fast changing small business landscape.

The upskilling of professionals across varied skill areas will also help address the current talent and skills shortage in the accounting and other professional occupational areas (for example, by refreshing the skills of employees who have taken career breaks or have children).

Enrolment or arrangement

The training boost applies to each enrolment or arrangement for the provision of training made or entered into at or after 29 March 2022 (section 328-450(1)(d)). The draft explanatory memorandum does not expand on this requirement.

It is not clear whether expenditure will qualify for the 20% bonus deduction if:

- The *arrangement* of training occurs prior to 29 March 2022 but the *enrolment* of a particular staff member into the training occurs after 29 March 2022. This may occur if an employer arranges training to be provided on say complaint management for wait-listed staff, but due to employee turnover the actual nomination of staff who are enrolled in the training occurs later.
- A person commences a *course* of study prior to 29 March 2022 but enrolls in a particular *unit* of study after 29 March 2022. Can the cost of the unit of study result in an entitlement to the 20% bonus deduction?
- Many businesses will only reimburse an employee for the cost of study upon successful completion of the course (either by subject or a whole course). This could be a general human resources policy rather than a specific arrangement with an employee. Would reimbursement for a course commenced before 29 March 2022 but completed after 29 March 2022 qualify for the 20% bonus deduction?

Clarification about these scenarios in the draft explanatory memorandum would assist employers.

Checking training provider registration

The proposed legislation requires that the training provider be registered at the time the expenditure is incurred with:

- Australian Skills Quality Authority
- Tertiary Education Quality and Standards Agency
- Victorian Registrations and Qualifications Authority
- Training Accreditation Council of Western Australia

In addition, the training must be within the provider's registration scope for all entities other than those entities registered with the Tertiary Education Quality and Standards Agency Act 2011.

The draft explanatory memorandum states at paragraph 1.36 that small businesses can check that the training is within scope of a provider's registration by visiting training.gov.au.

However, it is not clear how small businesses will know where to locate the higher education provider's registration scope information on the TEQSA website or how to interpret this information.

It is also unlikely that small businesses, or their advisors, would be aware of the subtleties within and across these websites. Even if they were aware, the websites of the various regulatory authorities are difficult for small businesses to navigate³.

³ For example, the Australian Skills Quality Authority (ASQA) [website](#) appears to be structured to assist training providers comply with regulations. It is not obvious, where a small business could check that a training provider is regulated by the ASQA, let alone whether the course is within the scope of their registration. To do this, a person must visit the student section, then explore [more support](#) before finding a section entitled finding a training course or provider.

The Tertiary Education Quality and Standards Agency [website](#) does at least have an area on their that explains how students can check a provider's registration. The Victorian Registration and Qualifications Authority [website](#) requires several clicks to locate an [area](#) where a provider's name could be inserted into a search engine to determine if they are registered.

Practical guidance on how to determine whether a provider is a registered provider and is providing a course within scope needs to be created. To minimise compliance costs for small business, consideration should be given to a requirement for training providers to provide their registration details and course number, and where applicable references to training.gov.au on quotes/invoices to small businesses.

Penalties should apply to those who falsely represent to small businesses that they are registered providers.

Australian connection

In person training must be conducted within Australia, but digital training can occur anywhere. The draft explanatory memorandum states that: “The intent is to allow for circumstances in which employees may be temporarily located overseas for operational reasons or working remotely.” (Paragraph 1.22 of the explanatory memorandum).

This intent is not reflected in the draft legislation which does not have a limit on any digital training. Thus, employees who work permanently overseas, for example an IT programmer, can have their training claimed at 120% provided it is delivered digitally to them.

Clarification of whether this is the intended outcome would be appreciated.

Deductions and fringe benefits tax

Paragraph 1.17 of the explanatory memorandum states that: “as the bonus deduction is only available where expenditure is already deductible under the taxation law, the training must be necessarily incurred in carrying on a business for the purposes of gaining or producing income.” Expenditure made by a business in relation to an employee is generally deductible under section 8-1 of the Income Tax Assessment Act 1997. This will be the case whether it is for personal yoga (i.e. well-being) classes or a bar tending course for a waiter who is seeking promotion to bartender. The explanatory memorandum recognises this.

The difference in tax treatment arises not in relation to the deductibility of the training expenditure for the employer but in the fringe benefits tax (FBT) liability. The employer in this case could be subject to FBT in relation to the yoga class as it would not usually be otherwise deductible to the waiter but there would be no FBT in relation to the bar tending course as that cost would be otherwise deductible for the waiter as it directly relates to advancement in their employment.

Another example is where the training is accompanied by employee entertainment opportunities which go beyond what is reasonable in the circumstances and could give rise to an entertainment fringe benefit. CA ANZ notes that the provision of entertainment at offsite “management courses” was one of the criticisms levelled at the former Training Guarantee Levy regime⁴.

Insertion in the draft explanatory memorandum of a discussion about the FBT consequences of providing training to an employee would provide a more complete picture.

⁴ Refer December 1993 report of the Taskforce on Regional Development, Developing Australia.

Self-employed small business operators

Many small businesses do not have any employees. They are owned and operated by sole traders, and sometime partners. Self-employed sole traders and partners will not have access to the bonus 20% deduction under the proposed draft legislation – which is in accordance with the budget announcement.

Given the number of small businesses with no employees consideration should be given to expanding this measure, along with appropriate integrity measures to include the self-employed. The eligibility criteria for JobKeeper (self-employed applicants) could be instructive in this regard.

Should you have any queries please contact Susan Franks on 0401 977 342 or susan.franks@charteredaccountantsanz.com

Yours sincerely



Michael Croker
Tax Leader Australia