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Mr Bede Fraser
Principal Adviser
Personal and Small Business Tax Branch
Treasury
Langton Cres
PARKES ACT 2600

Attention: The Director, Small Business Tax Unit
Email: SBEI@treasury.gov.au

Dear Bede

Small Business Energy Incentive – Draft legislation and Explanatory Memorandum

Thank you for the opportunity to comment on the draft Bill and draft Explanatory Memorandum for the Small Business Energy Incentive (SBEI).

About Chartered Accountants Australia and New Zealand

CA ANZ represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live. Around the world, Chartered Accountants (CAs) are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ's comments

Detailed comments on the draft Bill and EM are set out below.

Legislative delay for recent incentive measures

The SBEI is the latest in a series of incentives targeting small businesses, the others being the technology investment boost and the skills and training boost. The latter measures were announced on 29 March 2022 by the previous Coalition government but only became law on *23 June 2023*.

Chartered Accountants in public practice have expressed to CA ANZ their dismay at the time taken to legislate these recent incentive measures, particularly the technology investment boost which applies to expenditure incurred in the period commencing from 7:30 pm AEDT 29 March 2022 until *30 June 2023*. Claims for expenditure on a depreciating asset only attracted the technology investment boost if the asset was first used, or installed ready for use, by *30 June 2023*.

A mere seven days between date of Royal Assent and the termination of the incentive reflects poorly on all involved in designing and implementing this measure. It creates uneven outcomes between those who based their decision on government announcements, and those who prudently awaited enactment of the legislation.

Whilst CA ANZ appreciates that the 2022 Federal Election, other government priorities, drafting resources and more pressing matters on the parliamentary schedule contributed to the delay, our members also note that the *policy objective* of this measure – modernisation of business technology – was adversely impacted.

CA ANZ asks that Treasury officials pass on our members' concerns to the office of the Treasurer and Minister for Small Business in the hope that the SBEI progresses to enactment with much greater speed.

Compliance aspects of the SBEI – fossil fuel references

It is clear from a reading of the draft Bill that environmental factors have been front of mind for those charged with drafting this legislation.

There are no less than five references to "fossil fuels" in the draft Bill, designed to make it clear that "[C]ertain kinds of assets and improvements are not eligible for the bonus deduction, including where the asset or improvement uses a fossil fuel" (EM para 1.8).

Whilst this is laudable from an environmental perspective, CA ANZ notes that:

- The 30 April 2023 announcement by the Treasurer made no mention of the relevance of fossil fuels. Rather, the Treasurer stated that the SBEI would "…help small businesses make investments like electrifying their heating and cooling systems, upgrading to more *efficient* fridges and induction cooktops, and installing batteries and heat pumps". [Emphasis added]

- Fossil fuel is undefined in the draft Bill. It is possible that the ordinary meaning of the term is misunderstood (e.g. some may feel that gas-generated power is 'cleaner' than power generated by oil, diesel etc, and is not a fossil fuel).

- Conversely, there are rapidly emerging, more environmentally friendly fuel sources such as hydrogen, but even here the CSIRO notes the "rainbow" nature of different types of "good" and "bad" hydrogen – ranging from "green", "blue", "grey", "brown" to "black".

- In short, a definition of "fossil fuel" should be inserted into the final version of the Bill.

- In practice, SMEs may find it difficult to establish whether there is a comparable, available asset that uses a fossil fuel: refer proposed section 328-470(2)(a) and comments below.

Energy efficiency

- CA ANZ suspects that most SMEs will be more comfortable with determining whether the new depreciating asset is more energy efficient than the asset it is replacing: refer proposed section 328-470(2)(b). Small business operators will likely ascertain this using the familiar energy star ratings label commonly found on appliances, although some may rely on advice provided by an energy efficiency consultant, their energy provider, representation by the manufacturer or supplier of the depreciating asset, or installer. The EM should clarify the acceptable sources which SMEs should or could access to determine energy efficiency.

- The EM at 1.17 provides a good example of the kind of asset that would fall within section 328-470(2)(a), being the installation of an electric reverse cycle air-conditioner in place of a gas heater. It explains that the business could claim a bonus deduction for the cost of that air-conditioner as it uses electricity, and a fossil fuel alternative is available in the market". It seems to us that, from a climate and environmental policy perspective, this limb is of central importance to the policy objectives of the SBEI, namely that businesses electrify their operations by either opting for electric assets in the first instance or replacing existing fossil fuel-run assets with new electric assets, where there is a fossil fuel option. As such, we would recommend that the EM provide further examples of the types of transitions of assets that would fall under this limb of the draft Bill.

Solar panels as part of an integrated capex project

CA ANZ notes that the SBEI will not apply to assets which have the sole or predominant purpose of generating electricity (such as solar panels).

Given that energy saving expenditure nowadays often involves “bundled” offerings involving solar panels and batteries, CA ANZ anticipates that problems will arise in identifying eligible expenditure.

For example:

- What components of a “lump sum” capex outlay will be allocated to the solar panels, and to the battery?
- How will expenditure on related items be categorised? For example, the cost of inverters, cabling, switchboards and meters.
- How will labour installation costs be apportioned?

Whilst it is all very well for policy makers to leave such questions to ATO administration (e.g. via public advice and guidance products), it would be desirable from both a policy and compliance reduction perspective to extend the SBEI to *integrated* capex projects involving the installation of solar panels, batteries and all outlays necessary to make the system work as a whole.

ATO effective life determination looks at power generating systems, not components

Reinforcing the point made in the preceding paragraph, CA ANZ notes that TR 2022/1 – the ATO ruling dealing with “Income tax: effective life of depreciating assets (applicable from 1 July 2022)” – provides the Commissioner’s determination of effective life applies to a “solar power generating *system* (*incorporating* batteries, inverters, solar panels, regulators)”.

Conversions

The EM should clarify that the SBEI is attracted where a *component* of an existing machine is replaced to cater for electrical capability.

The most common example is where a diesel fuel engine and related components are replaced with an electrical engine and related components. CA ANZ suggests an example along these lines be inserted as new Example 1.2 after Example 1.1 at para 1.67.

Stand-by generators powered by electricity

The EM should clarify that the SBEI is attracted when an electrically powered generator (connected to mains supply) is purchased to cater for the scenario where a clean energy source cannot provide the power necessary to conduct business operations (e.g. where overcast weather impacts the performance of solar panels).

The example at paras 1.50 to 1.52 could be extended to address this specific scenario.

CA ANZ also suggests an example be provided of a situation where use of fossil fuels is merely ‘incidental’: proposed section 328-470(6)(a). For example, and continuing the scenario outlined above, what if the electrically powered stand-by generator can also be powered by diesel fuel if there is a total black-out and mains supply electricity is unavailable?

Available in the market

CA ANZ observes that neither the draft Bill nor the EM gives any explanation of what this new concept of "available in the market" means.

For example, does it have both a temporal and a geographical qualification to it? That is, if a business needs the asset immediately *now* and an alternative is not available *now* (e.g. due to factor outside the control of the taxpayer, then would the small business be able to take the position that the asset is not available in the market?

Similarly, if the small business was located in a remote or regional area and its available options for assets in the *local* market are limited, then would they be able to determine that an asset is not available in their market at the relevant time?

In summary, who determines what is "available in the market", and what market is contemplated by the policy? CA ANZ submits that a broad interpretation is appropriate, as distinct from a nuanced approach.

Balancing adjustment events

The treatment of balancing adjustment events seems overly restrictive. CA ANZ suggests that SBEI entitlements not be jeopardised where the asset is transferred to an associated income producing entity (e.g. within a wholly owned unconsolidated group) be permitted.

Apportionment where the asset is not wholly used for a taxable purpose

Given that many small businesses also claim deductions for home office expenses, CA ANZ suggests that the EM (e.g. after para 1.63) provides an example addressing the purchase of energy efficient items in a home office where deductions are typically apportioned between income producing and private use.

Motor vehicles

CA ANZ notes that motor vehicles are excluded from the scope of the policy. Given the focus of this policy in incentivising businesses to transition from fossil fuel combustion motors and technologies, it is likely that grey issues at the borderline will arise in this context as to whether an item of machinery constitutes an excluded "motor vehicle", or alternatively is not a motor vehicle and therefore is intended to be included in the policy.

The EM at 1.49 states that "[o]ther incentives are available for electric and hybrid vehicles … and these are not eligible for the bonus deduction." This is understandable, however outside of these types of road cars (EVs and hybrids), it could be seen as reasonable that other types of vehicles would be intended to be covered.

As more and more "green" solutions for motor transport become available, this could become a significant issue and it is important that the EM provides greater clarity.

Low value expenditure

Some capital expenditure on energy efficient items will be low value. For example, some electricity use monitors can be purchased for less than $200.

Whilst the EM refers to low value depreciation pools, reference should also be made to the interaction between SBEI and the ATO's administrative approach in PS LA 2003/8 (the '$100 threshold rule' and the 'sampling rule') which in broad terms allows low value expenditure to acquire an asset for business use to be treated as revenue expenditure.

Should you wish to discuss this submission, please contact Michael Croker on +61 434 333 452 or michael.croker@charteredaccountantsanz.com

Yours faithfully

Michael Croker CA
Tax Leader – Australia