

19 September 2022

Tina Smith
Director
Small Business Tax Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: SkillsBoost@treasury.gov.au

Dear Ms Smith

Skills and Training Boost

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the Treasury Laws Amendment (Measures for Consultation) Bill 2022: skills and training boost exposure draft legislation (**draft legislation**) and accompanying exposure draft explanatory material (**explanatory material**) in relation to the introduction of the skills and training boost (**skills boost**).

In the development of this submission, we have closely consulted with our National Small and Medium Enterprises Technical Committee to prepare a considered response which represents the views of the broader membership of The Tax Institute.

The Tax Institute broadly supports the enactment of legislation to introduce the skills boost into the *Income Tax (Transitional Provisions) Act 1997 (IT(TP)A)* and encourage small businesses to improve productivity in their workforce. We consider that the policy's effectiveness and equity could be enhanced if the scope of employee training is extended to apply to other types of worker relationships, with a continued focus on small business owners. These small businesses are the engine room of the economy and it is paramount that their owners are supported to enable growth and improved productivity in their business. This would ensure that the measure appropriately and effectively supports small businesses to create opportunities to develop the skills of their workers and grow the business, irrespective of whether they employ staff within the ordinary meaning.

We would be pleased to work with the Treasury to address the issues outlined in our submission and ensure the measure applies as intended, and fairly and effectively, to ensure workforce productivity is improved.

Our detailed response is contained in **Appendix A**.



The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact our Tax Counsel, Julie Abdalla, on (02) 8223 0058 or our Senior Advocate, Robyn Jacobson, on (03) 9603 2008.

Yours faithfully,



Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration to ensure that the draft legislation and explanatory material are effective in meeting the policy intent and provide the most effective and practical advice for taxpayers and their advisers.

Expanding eligibility to sole traders and partners

Proposed section 328-450(1) operates to allow businesses to claim the bonus deduction for employees of the business.

Paragraph 1.15 of the explanatory material explains that training provided to sole traders, partners in a partnership and independent contractors who are not 'employees' (in accordance with its ordinary meaning) is excluded. Paragraph 1.16 explains that the policy intent is to develop the skills of employees to improve productivity and support the growth of small businesses.

Businesses structure their workforce in various ways, including through the use of employees and/or contractors. We consider that the policy intent to exclude independent contractors is appropriate.

However, we consider that the bonus deduction, that is proposed to apply only to the costs of training employees, should be expanded to include training costs for non-employee business owners.

The explanatory material does not explain why the provision of training to non-employee business owners will not satisfy the policy objective. Developing the skills of sole traders and partners in a partnership that do not presently employ staff translates to improved productivity overall, and supports the growth of such small businesses.

Accordingly, we consider that expenditure incurred for training non-employee business owners should be eligible for the bonus deduction as there is no clear justification for excluding these workers.

By way of example, an employer incurs expenditure for an employee who is an accountant to undertake a Graduate Diploma of Chartered Accounting (**the course**) that will improve their skills. The course is registered with the Tertiary Education Quality and Standards Agency and is eligible expenditure provided that all the following conditions are satisfied:

- the cost of the course is deductible under the taxation law;
- the cost is incurred between 7:30pm AEDT on 29 March 2022 and 30 June 2024;
- the course is provided by a registered training provider that is not an associate of the small business;
- the expenditure is in respect of training employees of the small business; and
- the entity is a small business entity under section 328-110 of the *Income Tax Assessment Act 1997 (ITAA 1997)* or an entity covered by proposed subsection 328-445(4) of the IT(TP)A (about entities with an aggregated turnover of at least \$10 million and less than \$50 million).

Under the ordinary rules for deductibility, the course generally would be deductible for a business, whether the expenditure is incurred for the purposes of training an employee or a business owner (where the non-employee business owner works in the business).

However, different outcomes arise in respect of the eligibility for the bonus deduction where the expenditure is incurred for the purposes of training an employee or a business owner (who is not an employee but still works in the relevant business). This is explained below.

- If the accountant is a partner in a partnership, the cost of the course would be deductible in accordance with section 8-1 of the ITAA 1997 but the partnership's deduction would be limited to the amount of the expenditure. The partnership would not be entitled to claim the bonus deduction because the training is not provided to an employee.
- If the accountant is not a partner in the partnership and is employed by the partnership, the partnership would be entitled to a deduction for the amount of the expenditure plus the bonus 20% deduction.

In the above example, both scenarios will result in an improvement to the overall skills of the workers in the business and encouraging the growth of the business. However, both the partnership and partner (who cannot be employed by the partnership) are disadvantaged under this measure. The partnership will be unable to claim the additional 20% deduction which will result in the partner not receiving the benefit of the bonus deduction and therefore ultimately paying more tax on the partnership distribution. Additionally, there will be an adverse commercial impact for the partnership running the business as they will not have the same incentive to incur expenditure in training their partners.

As stated earlier, businesses structure their workforce in various ways. Take another example of a plumber who operates as a sole trader versus one who operates through a company and employs themselves in that company. The sole trader will be ineligible to claim the skills boost while the plumber who is employed in his own company will be eligible.

We consider that the policy intent to exclude non-employee business owners is appropriate. We therefore recommend that the draft legislation and explanatory material should be amended to extend eligibility for the skills boost to non-employee business owners.

Clarification of paragraph 1.15

Paragraph 1.15 excludes directors of a company that carries on a business unless the directors are also employees of that company. While directors can be employed by a company, and are treated as employees for Superannuation Guarantee purposes, they are not common law employees unless they are engaged to undertake duties under an employment contract with the business. Directors are generally the chief decision-makers of small businesses, and play an instrumental role in their strategic direction and expansion. Including training of directors, who are not otherwise engaged as employees within the scope of eligibility, will ensure that these small businesses are encouraged to enhance the skills of their directors which will contribute to the development and growth of the business.

It was estimated that Australia had 2.7 million company directors in November 2021 and, although not all of this population would be eligible for the skills boost, by including non-employee directors within the scope of the measure, the impact of the policy could be enhanced by applying to more workers.¹ Accordingly, we recommend that the draft legislation and explanatory material should be amended to allow the skills boost to apply to training expenditure incurred by companies for directors who are not common law employees.

Hybrid format of training

Paragraph 328-450(1)(a) of the draft legislation provides that eligible training can be in the form of in-person training or by way of online training. Training methods have evolved in recent years to include a variety of delivery methods, one of these being a hybrid format of training (provided in-person and online). The proposed wording of subparagraphs (i) and (ii) of paragraph 328-450(1)(a) of the draft legislation suggests that the delivery method is mutually exclusive by the use of the word 'or' at end of subparagraph (i); however, this would seem not to be the policy intent. We recommend that the explanatory material should clarify that training delivered in a hybrid format is included within the intended scope of the skills boost. This could be simply remedied by inserting a new subparagraph 328-450(1)(a)(iii) which provides words to the effect of: 'or a combination of both of the above methods'.

¹ Australian Government, The Treasury, 'Director IDs now available online for 2.7 million Australians' (Media Release, 1 November 2021).

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.