



THE TAX INSTITUTE



10 May 2013

The Hon. Wayne Swan MP
Deputy Prime Minister and Treasurer
Parliament House
CANBERRA ACT 2600

By email: Wayne.Swan.MP@aph.gov.au

Dear Treasurer,

Reforms to Self-Education Expense Deductions

The Tax Institute and Business Law Section of the Law Council of Australia (**Joint Bodies**) write to you to express our deep concern regarding the recently announced measure¹ to reform the self-education expense deduction by capping the deductible amount at \$2,000 per annum from 1 July 2014.

The imposition of a cap on the deduction is a very blunt instrument to achieve the object of preventing extravagant claims of the type referred to in the Media Release. The proposed measure would capture and limit all claims for self-education expenses, regardless of their nature².

An educated workforce should be one of the key objectives of Government. Providing a financial penalty to those seeking to self-fund their education is a significant disincentive. The objective of building a smarter Australia will be compromised through the introduction of the proposed cap.

Concerns with the announced measure

According to the Government's Media Release, the aim of the self-education expenditure reform is to target work related self-education expenses that individual employee taxpayers claim more fairly by imposing a cap on the amount of the claim that can be made. We note the Government's particular focus on large claims made for expenses such as first class air fares, five star accommodation and expensive courses.

¹ The Hon. Wayne Swan MP, Media Release No. 48, 13 April 2013 (**Media Release**)

² For example, the fee for tuition only (i.e. not even being examined for a degree) for one unit of study in the University of Melbourne's Law Masters program is \$3,360. This alone exceeds the cap.

The imposition of a cap might well prevent large deductions from being claimed, but in doing so, it would also penalise Australians who are endeavouring to improve their qualifications for work or business who are not incurring unnecessarily excessive costs. Accordingly, many legitimate claimants would suffer higher out-of pocket expenses as a result of this measure.

Members of professions (eg medicine, law, accounting to name just a few) are required to educate themselves annually to maintain their knowledge and qualifications through continuing professional education. In some cases attendance at venues out of Australia will be essential in order to share in the knowledge that is developed offshore and to "import" those critical skills to Australia. This will be particularly the case in the medical and scientific fields where, of course, it is essential to keep up to date with international developments.

Often, this expenditure is incurred by employees where their employer is unable to support the provision of the necessary education to maintain their professional qualifications. As an example, for registered tax agents to maintain their registration with the Tax Practitioners Board, they are required to undertake 90 hours of continuing professional education (**CPE**) every three years. For lawyers/tax agents who are unable to access employer-provided education, ensuring the requisite CPE hours are obtained, and at a high standard, may be jeopardised if this group of professionals is required to seek out lower cost (and perhaps lower quality) alternative CPE. Similar concerns arise for other professions with extensive CPE requirements.

The proposed measure also raises the question of potential inconsistent treatment between employers deducting the full cost of educating employees and a limit on the same deduction to employees self-funding their education and the self-employed. This approach therefore discriminates against certain common business structures (for example, sole traders).

We assume the Government's greater concern is with certain costs associated with attending the conferences rather than the conference fees themselves. There may be some circumstances where associated costs, such as travel and accommodation expenses, may be incurred at a level that the Government believes is higher than might arguably be required (for example, a first class airfare rather than a business or economy airfare). However, this concern, in our view, warrants a more targeted approach rather than the imposition of a cap on self-education expenses.

Various not for profit professional bodies, including the Joint Bodies, conduct continuing education programs for their members and the general public and engage in consultation processes with government and its agencies. Causing an impact on the cost structures for participants in those continuing education programs would compromise their appeal and potentially the part they play in the operations of those professional bodies to their detriment.

Suggested alternative

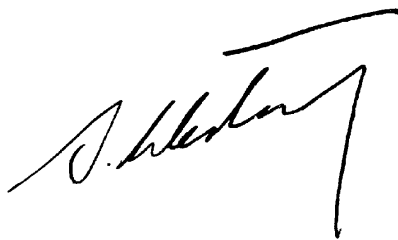
If, in the Government's view, it is necessary to more fairly target self-education expense deductions, an alternative to the proposed measure would be for the Australian Taxation Office (**ATO**) to utilise its existing powers in reviewing taxpayers' returns who claim self-education expenses. The ATO sets out the parameters for the administration of the deduction for self-education expenses in Taxation Ruling TR 98/9. Many examples are given showing which types of expenses can be claimed, those that must be apportioned and those that cannot be claimed³.

In conjunction with this, the Government may wish to consider a very specific legislative amendment that targets those expenses that are considered, in the Government's view, to be large claims, but does not adversely impact on legitimate claims for self-education expenses. One approach may be to link acceptable claims to public service guidelines. This test of reasonableness is used as the basis for the guidelines already used by the ATO for determining reasonable travel and meal allowances as described in Taxation Determination TD 2012/17.

In order to achieve an effective legislative solution to the concerns expressed in the Media Release, any amendment would need to be carefully designed. We look forward to being part of the Government's consultation on this new measure to ensure that it is appropriately targeted.

If you would like to discuss any of the above, please contact either me or Senior Tax Counsel, Robert Jeremenko, on 02 8223 0011 for The Tax Institute and Mark Friezer, on 02 9353 4227 for the Law Council of Australia.

Yours sincerely



Steve Westaway
President
The Tax Institute



Frank O'Loughlin
Chairman
Business Law Section
Law Council of Australia

³ For example, see paragraphs 67 to 70 of TR 98/9.