

29 January 2021

Manager
Individuals Tax Unit
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: Selfedconsultation@treasury.gov.au

Dear Sir/Madam,

Education and training expense deductions for individuals

1. The Taxation Law Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes Treasury's consultation on education and training expense deductions for individuals, and supports this timely review of the issue for the reasons set out in the Background section of the December 2020 Discussion Paper.
2. Due to time constraints, the Committee provides limited feedback on discussion question 2 only, *'Should any new deduction be targeted to courses delivered by education and training providers registered with the appropriate regulatory bodies?'*
3. The Committee agrees that training courses to be eligible for any new expense deduction should be quality courses that typically lead to the individuals earning an assessable income. However, it may be too restrictive to limit the deduction to *'nationally recognised training and industry training packages delivered by education and training providers registered with TEQSA, ASQA, VRQA and TAC'* as contemplated in the Discussion Paper.¹
4. Lawyers who wish to practice as barristers may be required to complete specific training. By way of example, lawyers in Victoria are required to complete the Victorian Bar's Readers' Course to practice as barristers in Victoria. The Course offers quality training *'comprised of a mix of lectures, workshops, interactive sessions and exercises, led by judges, magistrates and experienced counsel who generously volunteer their time and expertise to provide the best possible introduction to life at the Bar'*.² The Course is designed to develop, among other things, oral and written advocacy skills.³ Completion of the Readers' Course and passing the Entrance Exam are compulsory for practicing as a barrister in Victoria.

¹ At p 7.

² <https://www.vicbar.com.au/public/about/becoming-barrister/bar-readers-course>, last accessed in January 2021.

³ <https://www.vicbar.com.au/public/about/becoming-barrister/bar-readers-course>, last accessed in January 2021.

5. Whilst some education and training expenses for lawyers, such as specialist accreditation courses (for example for accreditation as a family law specialist offered by the Law Institute of Victoria) or advocacy courses (for example the Australian Bar Association's advocacy course), may be deductible under the current law, the Commissioner of Taxation has formed the view that the Readers' Course fee is not deductible⁴ on the basis that, to use the words from the Discussion Paper, '*the expense is not related to [a solicitor's] current employment*'.⁵ The Commissioner's position puts training such as the Readers' Course in a unique position of disadvantage; and it seems to the Committee that such training falls squarely within the ambit of the Discussion Paper regarding '*the skills requirements of current and future jobs*'⁶ of, in the present case, lawyers.
6. The Readers' Course is not a training package delivered by education and training providers registered with the listed regulatory bodies, but the Committee can see no policy reason for excluding it from any new expense deduction. Rather, the Committee considers training such as the Readers' Course to be consistent with both the changing labour market identified in the Background section of the Discussion Paper and the objective of '*encouraging Australians to retrain and reskill to support their future employment and career*'.⁷ Further, courses such as the Readers' Course have '*a readily identifiable link to an individual's future income earning capacity*'⁸ as a barrister.
7. Accordingly, the Committee considers that any new deduction should not be limited to courses delivered by education and training providers registered with the listed regulatory bodies. Rather, the Committee considers that the test should focus on the nexus between the education and training expense and the individual earning an assessable income in current or future employment. Alternatively, the list of approved courses could include '*Readers' courses conducted by constituent bodies of the Australian Bar Association*'.
8. The Committee would be pleased to provide further comments as this consultation progresses.
9. Please contact the chair of the Committee, Angela Lee at angela.lee@vicbar.com.au, or Committee Member, Jennifer Batrouney AM QC at Jennifer.Batrouney@vicbar.com.au, if you would like to do so.

Yours faithfully



Greg Rodgers
Chair, Business Law Section

⁴ As advised by phone on 20 July 2017 by the Commissioner's representatives to representatives of the Victorian Bar's Tax Bar Association.

⁵ At p 2 (emphasis in original).

⁶ Discussion Paper at p 7.

⁷ Discussion Paper at p 2.

⁸ Discussion Paper at p 7.