



SELF-FUNDED WORK-RELATED TRAINING FOR EMPLOYEES AND THE SELF EMPLOYED

Issued 8 June 2018

ICAEW welcomes the opportunity to respond to the consultation *Taxation of self-funded work-related training: the extension of tax relief for training by employees and the self employed* published by HMT and HMRC on 13 March 2018.

This response of 8 June 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty benchmarks the tax system by reference to its Ten Tenets for a Better Tax System, summarised in Appendix 1.

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GENERAL COMMENTS

1. We welcome HMT's/HMRC's collaborative approach to consulting on this topic and the opportunity for pre-consultation exploratory discussions in which we participated, and also that this consultation sought comments at an early stage in the policy-making cycle.
2. We appreciate that policing by government of claims for work-related self-funded training is potentially resource-intensive for all parties involved and our comments reflect this. However, if the underlying objective is to raise productivity across the economy, then, where the individual is funding the training, the primary concern should be to ensure that the courses in question are directed towards acquiring skills and self-development which have the potential to improve the productivity of the individual in whatever earning activity they pursue in the future.
3. We reiterate the principles in our briefing submitted in January 2018 to HMT ([ICAEW REP 30/18](#)), the text of which we have reproduced in Appendix 2 for convenience.
4. We suggest that active consideration be given to the following:
 - for employees inter alia relaxing the 'necessarily' and 'in the performance of' rules in s336, ITEPA 2003 and the conditions in s250 et seq ITEPA 2003 to enable tax relief for self-funded work-related training, including upskilling, for a current or a prospective job
 - for the self employed, relaxing the capital bar so the cost of upskilling can be an allowable revenue expense
 - for both employees and the self employed, giving relief for training for a prospective job or trade either against total income when the training expense is incurred or training takes place, or failing that, against the earnings of the prospective job or trade once it starts
 - reinstating the salary sacrifice exemptions for work-related training removed by the optional remuneration (OpRA) legislation in Sch 2 to Finance Act 2017
 - enabling employers to be able to use apprenticeship levy funds for training non-apprentices in certain circumstance, for example on redundancy or if the employer is insolvent
 - allowing relief for training that complies or whose providers comply with certain criteria
 - as a means of helping into training those on low incomes or who are out of work, extending and publicising the availability of loans which are repayable out of income in the same way as student loans, such as advance learner loans
 - if a cap is to be imposed on tax relief then £500 is too low; £1,000 would be more appropriate, and a loan approach could be much more generous.
5. We welcome the government's desire expressed, in para 5.24 et seq, to ensure that any changes should be simple to understand and administer. This aligns with our Ten Tenets for a Better Tax System (outlined in Appendix 1).

ANSWERS TO CONSULTATION QUESTIONS

Chapter 4: Lessons learned

Question 1 Do you agree with the lessons that need to be learned from the UK and overseas?

6. We agree that there are useful lessons to be learned from experiences in the UK and overseas.

Chapter 5: Objectives and design criteria

Question 2 Do you agree with the high-level objectives? Are there any others you think are as or more important?

7. We agree the high-level objectives.

Question 3 Do you agree with the high-level design principles? Are there any others you think are as or more important?

8. We agree the high-level design principles.
9. We would note that skills support is a devolved matter; this will need to be taken into account when framing new rules.

Question 4 How could the rules be reformed to allow a tax deduction for self-funded retraining subsequently used in a new employment or self-employment? Do you think a time-limited carry forward would be the best approach and how could this work in practice?

10. For employees the ‘necessarily’ and ‘in the performance of’ rules in s336, ITEPA 2003 and the conditions in s250 et seq ITEPA 2003 need to be relaxed, inter alia so that relief is available for self-funded training by individuals for a prospective job and the ‘related employment’ conditions in s251, ITEPA 2003 are not restricted to employments with the same or a connected employer.
11. For the self employed, the capital/revenue distinction means that upskilling and other training in new skills is currently treated as capital. We suggest that the capital bar should be relaxed for such training and such costs be treated as an allowable trading expense.
12. We suggest that an incentive to individuals to upskill and retrain for a prospective job or trade would be for relief to be deductible from current total income in the year in which the training expense is incurred or the training is undertaken. Early relief will help the individual’s cash flow.
13. Failing this, where the training relates to a prospective job or trade, then the cost should be allowed against the income of the prospective job or trade once it begins.
14. In both cases a time-limited carry-forward would be a feasible approach. Pre-trading expenses for the self employed allow revenue expenses incurred up to seven years before trading starts.
15. There would need to be a means to record any allowable training costs contemporaneously, ideally in the personal tax account, so they are not forgotten.

Question 5 How could the rules be reformed to allow a tax deduction when the self-employed fund training on upskilling for their existing business?

16. For the self employed, the capital/revenue distinction means that currently upskilling and training in new skills is treated as capital. We suggest that the capital bar be relaxed for such training and such costs be treated as an allowable revenue expense against the current trade.

Question 6 How could the rules be reformed to allow a tax deduction when an employee funds training on upskilling for their current employment?

17. The ‘necessarily’ and ‘in the performance of’ rules in s336, ITEPA 2003 and the rules in s250 et seq ITEPA 2003 which provide an exemption for the cost of work-related training incurred by an employer, could be widened to enable relief to be claimed by an employee who self-funds the training.

Question 7 To what extent would reforms to tax relief change behaviour so individuals are incentivised to undertake more work-related training? Please explain.

18. We are not in a position to answer this question quantitatively but we believe that government assistance with the costs of training, combined with the knowledge that as long as the nature of the training and/or the provider meet clear conditions, the claim will be allowed, and also a simple way to claim relief in-year, would encourage individuals to undertake more work-related training at their own expense.

Question 8 Do you think the tax system would be the most effective lever to support employees and the self-employed who want or need to upskill, retrain, and take part in career learning? Please explain.

19. Tax relief for self-funded training would give a clear indication of the government’s intention to encourage a more highly skilled workforce, so increasing productivity, by encouraging individuals to undertake further training.
20. If the objective is to provide financial assistance to those undertaking self-funded training who are on low incomes or are out of work, we question whether tax relief is the best approach, as such people need cash up front to be able to pay for the training.
21. We suggest that government loans would be more appropriate for those on low incomes or out of work. Existing government loan arrangements, for example, [advanced learner loans](#), repayments of which are already collected via the student loan repayment mechanism, need to be better promoted and publicised. Loans would be a viable alternative for taxpayers too, and, if a cap were applied to a tax relief route, loans could enable more expensive training to be undertaken.

Question 9 How could the government target work-related training leading to valued qualifications through approved providers and professional organisations?

22. There is merit to, involving approved providers providing formal qualifications, but:
- this would mean that HMRC would have to satisfy itself that the providers albeit ‘approved’ and the courses albeit ‘formal’ and or leading to qualifications conformed with the government’s objectives. We acknowledge that this could be resource-intensive for HMRC, and, potentially, for course providers; and
 - if the courses that qualified for support had to lead to qualifications, there is a danger that this would be a very narrow exemption as many courses, such as, for example, by those returning to work after a break for childcare, are more of a refresher than a new qualification.

23. Until the last few years it was common for professional organisations to approve courses for the purposes of continuing professional development (CPD) requirements. Those systems of approval have largely been dropped with a shift towards self-directed CPD with self-certification and occasional audit by the professional body.
24. It might be possible to ask professional and trade bodies to reinstitute a system of approval for courses along the lines of the systems previously run by e.g. ICAEW, the Law Society, etc. However, this could be regarded as a retrograde step. It would also place a burden on such bodies which might be met partly by direct payment to the bodies in question by HMT, and partly by the course providers paying a modest fee for recognition for each course they run. The result would be that the course approvals would give assurance to HMT that the funding was being directed to appropriate learning and development while maintaining a light touch for government. Those dealing with course approvals would be best placed to assess whether the course met criteria which could be set out in HMT-approved guidelines.
25. The bodies which could give such approvals could include all those professional bodies which are recognised for the purposes of s343 ITEPA 2003, but could also include bodies approved by HMT, which might include trade unions and trade associations (perhaps with a membership over a particular threshold) and such other bodies, for example local councils, as may be approved for this purpose from time to time.
26. A lighter touch system would involve HMT approving course providers to specify courses which qualify for the relief because the courses meet criteria set out in guidelines.
27. Whatever system was adopted, the bodies approving courses could have their power to approve courses withdrawn at the absolute discretion of HMT.

Question 10 How can the scope for misuse be minimised, particularly claims related to recreational activities, and the rules be made enforceable in practice without being resource-intensive for individuals or HMRC?

28. Restricting relief to earnings from a current or future related trade or employment provides scope for an element of self-policing, although this would need HMRC to make the usual compliance checks and make it known that it is doing so. This would discourage people from claiming relief for recreational and similar training, just as making inflated or incorrect expense allowance claims is checked currently.

Question 11 If it is necessary, at what level would any cap on expenditure eligible for tax relief need to be set to make a meaningful difference to the choices made by individuals? Please explain.

29. A cap of £500 is mentioned at para 5.21. For a basic rate taxpayer this is £100 tax saved, which is welcome, but £500 does not buy a lot of training. We note that the government recognises this by citing the possibility of a cap being reviewed and modified once the scheme has bedded in, and, if work-related self-funded training is taken forward into legislation, we recommend that such an undertaking is included in the legislation with a time limit for reviewing the cap.
30. We suggest that the initial cap be £1,000 with a much more generous loan option available.

Question 12 Are there complementary or alternative approaches that could ensure any extension is affordable but would still meets its objectives?

31. As recommended in our answer to Q8, loans should be be available, and existing loan arrangements, e.g. advanced learner loans, need to be better publicised.

32. Other possibilities for containing the cost of tax relief to the exchequer could include allowing tax relief only at basic rate. However, this is operationally complex, and for PAYE taxpayers HMRC would have to work out the allowance due and issue revised code numbers to employers/ees. Complexity in working out code numbers would be compounded if, like the savings allowance, tax relief depended on whether the claimant is a basic, higher or additional rate taxpayer, and further complications arise owing to differing Scottish, and potentially Welsh, income tax rates. We therefore recommend against restricting tax relief in any of these ways.

Question 13 How could any changes be administered so that take-up is maximised, errors are minimised, and the system is not resource-intensive for either individuals or HMRC? Is the existing system involving submitting a paper or online form via the Personal Tax Account and self-assessment appropriate?

33. We welcome the fact that government is mindful of the need for any extension to the rules should 'be as simple as possible to understand and administer so that take-up is maximised, and errors are minimised', as this aligns with our belief that any new rules should conform with our *Ten Tenets for a Better Tax System*, summarized in Appendix 1, especially Tenets 2: Certain, 3: Simple and 4: Easy to collect and calculate.
34. A practical way of enabling employees to claim for self-funded training would be to enable them to use their PTA, perhaps at the same time uploading self-certification that the training is work-related or relates to a prospective job/trade, or, where the training relates to a current employment, confirmation from their employer that the training is employment-related.

Question 14 Are there any issues with the current rules or administration of the existing tax relief for work-related training by employees and the self-employed that need to be resolved?

35. The rules that define tax reliefs relating to training need to be clearer and more consistent and for employees the 'necessary' and 'in the performance of' rules in s336, ITEPA 2003 need to be relaxed for training (see above). For example, in *Decadt v CRC* (TL3792) a specialist NHS registrar was refused relief for the expenses of taking professional examinations, even though it was a condition of his employment that he should do so. Additional examples can be found in HMRC's employment income manual [EIM61018](#).
36. For the self employed, the capital bar on upskilling needs to be relaxed (see above).
37. We suggest that the salary sacrifice exemptions for work-related training provision in ss250-260, ITEPA 2003, which were removed by the legislation that introduced the optional remuneration arrangements (OpRA) rules (Sch 2 to FA 2017), be reinstated, using the powers in s228A(9), ITEPA 2003, as we believe that this would make employers more likely to encourage employees to undertake training. Only s311 *Retraining courses* was retained as an exemption under OpRA and this is very restricted.
38. We suggest that apprenticeship levy funds should be able to be used by employers to fund work-related training for non-apprentices. This could perhaps be limited to, say, employees who are being made redundant or where the employer is insolvent; in these circumstances relief could be allowed for training in a field not necessarily the same as the employment that is being terminated/lost.
39. There is a wider issue, which is raising productivity across the economy. To achieve this, provided the training/learning involved satisfies the basic requirement of improving the

participant's potential productivity, there should be no narrow requirement that the training should be either 'wholly and exclusively' in the case of the self employed or in the case of employees, required by the employer and/or 'wholly, exclusively and necessarily' for or even connected with a current or immediate past employment. Nor should there be a bar to expenditure which might currently be considered capital.

40. The criteria ought to be framed around increasing the potential productivity of individuals taking the courses. In particular in an economy where a job for life is no longer the norm, encouraging flexibility in the work force should be a high priority and anyone considering training should be encouraged. Accordingly, particularly where the individual is funding the training, the major concern should simply be to ensure that the courses in question are directed towards skill acquisitions and development which have the potential to improve the productivity of the individual in whatever earning activity they pursue – or might pursue – in the future.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).

APPENDIX 2

BRIEFING SUBMITTED ON 9 JANUARY 2018 BY ICAEW TAX FACULTY TO HMT

EXECUTIVE SUMMARY

We welcome both the current initiative to introduce a tax deduction for self-funded training and the fact that HMT and HMRC are seeking views at such an early stage in the policymaking cycle.

We suggest that consideration be given to:

- extending the current tax deduction available for employers who train their employees (s250 ITEPA 2003) to unreimbursed costs of training incurred by employees themselves
- including training costs as an optional remuneration arrangements exemption (s228A ITEPA) so that employees who sacrifice salary to fund training costs paid by employers are not taxed on the higher of the cost of the training and the amount sacrificed
- simplifying the current position on self-employment and training
- introducing tax relief on training expenditure to develop new skills for the employed and self-employed.

We recommend as an overriding point that any new rules need to be clear and consistent.

WHAT THIS NOTE COVERS

This briefing provides ICAEW's assessment of the UK tax reliefs available for training costs incurred by employers, the employed and the self-employed, with suggestions for improvement.

1. Principles for better tax system
2. Tax reliefs available for training
3. Summary of our key concerns and where change could be considered
4. Appendix: ICAEW's ten tenets for a better tax system [see Appendix 1]

PRINCIPLES FOR A BETTER TAX SYSTEM

By way of introduction we would like to draw your attention to our ten tenets for a better tax system (see appendix). We consider these principles to be central to a good tax system.

Of the ICAEW's ten tenets, the following three are most relevant to tax reliefs available for training:

- A tax system should be fair and reasonable;
- Tax rules should be simple, understandable, and clear in their objectives;
- Tax should be easy to collect and calculate.

TAX RELIEFS AVAILABLE FOR TRAINING

We strongly support this early stage review of tax relief for training in 2018.

In 2004 the Labour Government commissioned **Sandy Leitch** to undertake an independent review of the UK's long-term skills needs. The review culminated in the publication of *Prosperity for all in the global economy - world class skills* in December 2006. ICAEW provided a response to this review in the context of tax reliefs available for training. Although much has changed in the economy and world of work, very little has changed as regards tax relief for training.

- **The current position where an employer pays for training courses for employees** is that the cost is tax deductible from the employer's trading income. Employees are not taxed on the value of the training as long as the course relates to their work. For example, if a practice nurse is sent on a first aid refresher course, the nurse will not be taxed on the cost of this course because the course relates to their work. See s 250, ITEPA 2003, for work related training.

However, where an employer funds the cost of training by way of employee salary sacrifice arrangements, then under the new optional remuneration arrangements (OpRA) rules introduced in Sch 2 Finance Act 2017, employees are liable to income tax and NIC on the higher of the amount sacrificed and the cost of the training. This is reducing the amount of training undertaken by employees in this situation.

- **The current position for an employee who pays for a training course directly** is that usually they cannot claim tax relief for the costs of the training course. Unless they are reimbursed, by their employer, no relief is available except in rare circumstances.

If an employee pays for a course directly, they cannot claim tax relief for the costs unless the training was actually carried out as a part of their job, not just to prepare them to do that job. This makes it highly unlikely that relief will be available.

The tax law which allows a deduction for general expenses incurred by an employee is very strict:

Section 336, ITEPA 2003, Deductions for expenses: the general rule

1. The general rule is that a deduction from earnings is allowed for an amount if—
 - a) the employee is obliged to incur and pay it as holder of the employment, and
 - b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

Recommendations

The exemption in s250, ITEPA 2003 should be extended to allow relief where the employee incurs similar training costs,
and

Training should be treated as exempt for OpRA purposes under s228A, ITEPA 2003.

- **Training costs incurred by the self-employed are currently classified either as a capital expense or a revenue expense.** A capital expense relates to training for new skills outside of that individual's current vocation; tax relief is not available. A revenue expense relates to training that tops up the individual's existing knowledge or skills. It relates to their current vocation and is tax deductible from their current income.

Many people seeking a new or enhanced career, or those returning to work following a career break or redundancy, will pay for their own training in a new field. That they are not allowed tax relief against their future self-employed earnings is often surprising to them and seems to be contrary to Government policy to encourage people to learn new skills and develop. (Note. The same applies to similar individuals who follow their career break with new employment rather than self-employment).

Recommendation

There are two possibilities.

The first is to remove the capital / revenue distinction from training costs. This would give full relief immediately from the income generated by using the new skills to trade.

The alternative would be to retain the capital / revenue distinction, but to allow tax relief for the capital cost spread over the period when earnings result, perhaps for four years.

SUMMARY OF OUR KEY CONCERNS AND WHERE CHANGE COULD BE CONSIDERED

- **Consideration could be given to the introduction of tax reliefs for the employed and self-employed on training expenditure to develop new skills.** The cost to the Exchequer should be outweighed by the positive contribution new skills bring to the UK economy.
- **Consideration could be given to extending the current tax deduction available for employers who train their employees, to unreimbursed costs of training incurred by employees themselves (ss250, ITEPA 2003) and including it as an OpRA exemption (in s228A, ITEPA)**
- **The rules that define which tax reliefs relate to training need to be clear and consistent.** For example, in **Decadt v CRC (TL3792)** a specialist registrar was refused relief for the expenses of taking professional examinations, even though it was a condition of his employment that he should do so. Additional examples can be found [in HMRC's employment income manual ([EIM61018](#))].
- According to the Office for National Statistics (ONS) around 4.7 million people were registered as self-employed last year. These are highest figure since records began in 1992 and perhaps are related to the lack of jobs available in the current economic environment. **Consideration could be given to simplifying the current position on self-employment and training.** There are two obvious options which policymakers could consider. One, remove the distinction between a capital expense and a revenue expense. Or retain the current distinction but allow a tax relief for the capital cost spread over the period from when earnings are received. (For example, four years).