TR 97/D20 - Income tax: deductibility of self-education expenses

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Draft Taxation Ruling
Income tax: deductibility of self-education expenses

other Rulings on this topic

IT 313; IT 314; IT 2290; IT 2458; IT 2685; TD 92/142; TD 93/159; TR 92/8; TR 95/8 - TR 95/22

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What this Ruling is about

Class of person/arrangement

1. This Ruling sets out our views on the circumstances in which self-education expenses are allowable as deductions to individuals under subsections 51(1) and 54(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) and sections 8-1 and 42-15 of the *Income Tax Assessment Act 1997* (ITAA 1997). In doing so, the Ruling discusses the types of expenditure that are considered to be allowable.

2. While many of the cases cited in this Ruling consider deductibility under subsection 51(1) of the ITAA 1936, the decisions in these cases and the discussion in this Ruling have equal application to section 8-1 of the ITAA 1997. All references to subsection 51(1) should therefore be taken as including a reference to section 8-1.

3. The Ruling does not discuss the substantiation requirements in Schedules 2A and 2B of the ITAA 1936 and Divisions 28 and 900 of the ITAA 1997.

4. For the purposes of this Ruling, self-education includes courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related conferences or seminars, self-paced learning and study tours (whether within Australia or overseas).

5. This Ruling also discusses the operation of section 82A of the ITAA 1936 which limits the amount of expenses of self-education otherwise allowable under subsection 51(1).

Date of effect

6. Subject to paragraphs 7 and 8 below, this Ruling applies to years commencing both before and after its date of issue. The views expressed concerning the operation of section 82A are more favourable to taxpayers and apply to years both before and after the issue of the Ruling, subject to the statutory limitation in section 170 of the ITAA 1936. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

7. Paragraph 18 of this Ruling communicates the view that self-education expenses are not deductible to recipients of Commonwealth educational assistance payments made under the AUSTUDY, ABSTUDY, AIC and VCES schemes. This view is less favourable than our earlier view that appears in publications such as Taxation Rulings IT 2458 and TR 92/8, and Tax Pack. Accordingly, our view that self-education expenses are not deductible to the recipients of these payments only applies to expenditure incurred on or after 1 January 1998.

8. Our interpretation of the term 'a prescribed course of education' has changed from the views previously expressed in Taxation Rulings IT 283 (withdrawn on 8 October 1997) and IT 314. Accordingly, paragraphs 141 and 145 of this Ruling apply to all expenses of self-education incurred on or after 1 January 1998.

Previous Rulings

9. This Ruling is essentially an updated version of Taxation Ruling TR 92/8 which will be withdrawn on finalisation of this Ruling. This Ruling clarifies some issues that have arisen in relation to the matters covered in TR 92/8 and also incorporates our views on the operation of section 82A.

10. The principles contained in Taxation Rulings IT 313 and IT 2290 have been incorporated in this Ruling and will be withdrawn on finalisation of this Ruling. The views expressed in Taxation Ruling IT 314 and paragraphs 19 and 20 of Taxation Ruling IT 2458 have changed. Accordingly, IT 314, together with paragraphs 19 and 20 of IT 2458, will also be withdrawn on finalisation of this Ruling.

Ruling

Circumstances in which self-education expenses are allowable

Subsection 51(1)

11. Self-education expenses are deductible under subsection 51(1) where they have a relevant connection to the taxpayer 's current income-earning activities.

12. If a taxpayer's income-earning activities are based on the exercise of a skill or some specific knowledge and the subject of self-education enables the taxpayer to maintain or improve that skill or knowledge, the self-education expenses are allowable as a deduction.

13. If the study of a subject of self-education objectively leads to, or is likely to lead to, an increase in a taxpayer's income from his or her current income-earning activities in the future, the self-education expenses are allowable as a deduction.

14. No deduction is allowable for self-education expenses if the study, viewed objectively, is designed to enable a taxpayer to get employment, to obtain new employment or to open up a new income-earning activity (whether in business or in the taxpayer's current employment). This includes studies relating to a particular profession, occupation or field of employment in which the taxpayer is not yet engaged. The expenses are incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.

15. The intention or purpose of a taxpayer in incurring the self-education expenses can be an element in determining whether the expenses are characterised as allowable under subsection 51(1). There are circumstances where apportionment under subsection 51(1) is required. For example, if a study tour or attendance at a work-related conference or seminar is undertaken for income-earning purposes and for private purposes, it is appropriate to apportion the expenses between the purposes. If the income-earning purpose is merely incidental to the main private purpose, only the expenses which relate directly to the former purpose are allowable. However, if the private purpose is merely incidental to the main income-earning purpose, apportionment is not appropriate.

16. When determining whether self-education expenses can be characterised as having been incurred in gaining or producing assessable income, it is, at the least, a relevant matter to consider whether a non income-producing purpose was the dominant purpose for the incurring of the expenses. To the extent that comments of the Federal Court of Australia (Hill J) in *FC of T v. Studdert* 91 ATC 5006 at 5011-5012; (1991) 22 ATR 762 at 767-768 might be interpreted as suggesting otherwise, we believe that this view is

inconsistent with the decision of the High Court of Australia in *Fletcher & Ors v. FC of T* (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613.

17. The suggested tests based on a 'perceived connection between expenditure and the gaining of assessable income', on a 'direct effect on income', on 'part and parcel of the employment' or on an 'express or implied condition of employment' are not substitutes for the tests for deductibility under subsection 51(1).

Commonwealth educational assistance schemes

18. We consider that self-education expenses are not deductible to students receiving payments under the following Commonwealth educational assistance schemes:

(a) AUSTUDY;

(b) ABSTUDY;

(c) Assistance for Isolated Children Scheme (AIC); and

(d) Veterans' Children Education Scheme (VCES).

19. The principles of deductibility discussed in paragraphs 12 and 13 above are not satisfied. The expenses are not incidental and relevant to the educational assistance payments. Expenses incurred in fulfilling the course requirements are correctly characterised as expenses incurred in gaining a qualification that, viewed objectively, is designed to enable the student to obtain employment in a particular field.

20. This Ruling does not specifically address the deductibility of self-education expenses in relation to other educational assistance schemes. However, while the relevant principles need to be considered in each case, generally, self-education expenses are not deductible where the scheme provides payments in the nature of assistance.

Depreciation

21. A deduction is allowable under subsection 54(1) (section 42-15 of the ITAA 1997) for depreciation of items of plant or articles used for the purpose of producing assessable income. In general, if the subject of self-education enables a taxpayer to maintain their skill or knowledge or is likely to lead to an increase in income from their current income-earning activity, depreciation of items used for self-education purposes is allowable. For example, technical instruments

and equipment, computers, calculators, professional libraries, filing cabinets and desks are generally allowable.

Types of self-education expenses allowable

22. Subject to the general tests under subsection 51(1) being met, the following types of expenses related to self-education are allowable:

(a) course or tuition fees of attending an educational institution, work-related conference or seminar, including student union fees;

(b) the cost of professional and trade journals, text books and stationery;

(c) subject to paragraph 23(c) of this Ruling, transport expenses, including public transport fares and the running costs associated with motor vehicles, between a taxpayer's home and an educational institution (including a library for research) and return and between his or her place of work and the educational institution and return. If a taxpayer travels from his or her home to an educational institution and then to his or her place of work and returns home by the same route, only the costs of the first leg of each journey are allowable;

(d) subject to paragraph 23(d) of this Ruling, where a taxpayer is away from home overnight, accommodation and meals expenses incurred on overseas study tours, on work-related conferences or seminars, or on attending an educational institution; and

(e) interest incurred on borrowed monies where the funds are used to pay for self-education expenses associated with a course of education, that enables a taxpayer to maintain or improve his or her skill or knowledge or is likely to lead to an increase in income from the taxpayer's current income-earning activities. Regard must be had to the connection between the interest expense and the income-earning activity in each income year interest is claimed because a change in circumstances, for example, a change of employment, may mean that the necessary connection no longer exists.

Types of self-education expenses not allowable

23. The following expenses related to self-education are not allowable under subsection 51(1):

(a) a higher education contribution payment made under Chapter 4 of the *Higher Education Funding Act 1988* (subsection 51(6) of the ITAA 1936, section 26-20 of the ITAA 1997);

(b) expenditure on meals while attending an educational institution, work-related conference or seminar where the taxpayer is not required to sleep away from home;

(c) motor vehicle expenses and fares between a taxpayer's home and an educational institution where the institution is also the taxpayer's place of work; and

(d) expenditure on accommodation and meals where a taxpayer has travelled to another location for self-education purposes and is not considered to be away from home, but rather is considered to have established a new home.

Section 82A

24. Section 82A operates to limit the amount of expenses of self-education otherwise allowable under subsection 51(1).

25. Where section 82A applies, the total allowable deduction under subsection 51(1) cannot be greater than the amount the net amount of expenses of self-education exceeds $250. In other words, only the excess of the self-education expenses over $250 may be considered for deduction under subsection 51(1). In performing this calculation, it is not necessary that the self-education expenses be deductible (provided they are 'necessarily incurred' in connection with a prescribed course of education). Expenses that are deductible under provisions other than subsection 51(1) are also taken into account in the section 82A calculation.

26. However, having established the maximum amount (i.e., the net amount of self-education expenses over $250), any expenses that meet the requirements of subsection 51(1) may be claimed in full up to the maximum amount. The operation of section 82A is illustrated in the **Example** at paragraph 150 of this Ruling.

Expenses 'necessarily incurred' by the taxpayer

27. Expenses of self-education include those expenses that are 'necessarily incurred' in connection with a prescribed course of education, but do not include payments made under the Higher Education Contribution Scheme (HECS) or the Tertiary Student Financial Supplement Scheme. Compulsory and unavoidable expenses, as well as those for which a need can be shown in terms of fulfilling the requirements of the course, are regarded as being 'necessarily incurred'.

Prescribed course of education

28. The expression 'prescribed course of education' used in subsection 82A(2) refers to an organised course of study, full-time or part-time, provided by schools, colleges or universities. It also includes a course provided by an institution or organisation, or a dedicated part thereof, whose primary function is the provision of systematic instruction, training or schooling in a subject, skill or trade.

29. In addition, the expression 'course of education' requires an element of continuity and of ongoing instruction or training. It therefore does not include short-term refresher courses, in-service activities or short-term development courses. These are considered to be more akin to on-the-job training.

Explanations

General principles of deductibility under subsection 51(1)

30. Expenditure on self-education falls for consideration under subsection 51(1). As most self-education expenses are voluntarily incurred to produce income, we believe it is not necessary in this Ruling to consider the second positive limb of subsection 51(1). The first positive limb applies to all taxpayers, including those taxpayers carrying on business.

31. To be allowable under the first positive limb of subsection 51(1), expenditure must be able to be characterised as having been incurred in gaining or producing assessable income (*Fletcher & Ors v. FC of T* (1991) 173 CLR 1 at 17; 91 ATC 4950 at 4957; (1991) 22 ATR 613 at 621-622). In so far as it is relevant for present purposes, subsection 51(1) provides as follows:

> '... outgoings to the extent to which they are incurred in gaining or producing the assessable income, ... shall be allowable deductions ...'

32. The High Court of Australia has indicated that the expenditure must have the **essential character** of an outgoing incurred in gaining assessable income or, in other words, of an income-producing expense (*Lunney v. FC of T*; *Hayley v. FC of T* (1958) 100 CLR 478 at 497-498; (1958) 11 ATD 404 at 412). There must be a **nexus** between the outgoing and the assessable income so that the outgoing is **incidental and relevant** to the gaining of the assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47 at 56; (1949) 8 ATD 431 at 435).

33. Consequently, it is necessary to determine the **connection** between the particular outgoing and the operations by which the taxpayer more directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344 at 349-350; (1956) 11 ATD 147 at 148; (1956) 6 AITR 379 at 384; *FC of T v. Cooper* 91 ATC 4396 at 4403; (1991) 21 ATR 1616 at 1624; *Roads and Traffic Authority of NSW v. FC of T* 93 ATC 4508 at 4521; (1993) 26 ATR 76 at 91). Whether such a connection exists is a question of fact to be determined by reference to all the facts of the particular case.

34. The many cases dealing with expenses of self-education and subsection 51(1) are no more than examples of the application of these general principles to the facts of those cases. Application of the principles provides an indication of the facts relevant in the self-education area in determining the characterisation issue.

35. However, some of the decisions of the courts and the Taxation Boards of Review (see *FC of T v. White* 75 ATC 4018; (1975) 5 ATR 192; *FC of T v. Kropp* 76 ATC 4406; (1976) 6 ATR 655; *Case G65* 75 ATC 474; 20 CTBR (NS) *Case 36*) caused confusion by using expressions, such as 'a perceived connection between expenditure and the gaining of assessable income', 'direct effect on income', 'part and parcel of the employment' or 'express or implied condition of employment', as determinants of deductibility for self-education expenses under subsection 51(1). In doing so, they probably applied tests for deductibility that were stricter than intended. However, we believe that the courts, in decisions such as *FC of T v. Studdert* 91 ATC 5006; (1991) 22 ATR 762, have returned to applying general principles of deductibility.

Self-education - principles of deductibility

(a) A deduction is allowable for self-education expenses if the taxpayer's income-earning activities are based on the exercise of a skill or some specific knowledge and the subject of self-education enables the taxpayer to maintain or improve that skill or knowledge

36. In *FC of T v. Finn* (1961) 106 CLR 60; (1961) 12 ATD 348, the High Court held that expenditure incurred by a senior government architect on an overseas tour devoted to the study of architecture was allowable under subsection 51(1). All three Judges recognised that the tour expenses were relevant to the activities by which Mr Finn was currently producing income. Kitto J found (106 CLR at 69; 12 ATD at 352) that the tour was incidental to the proper execution of the duties of Mr Finn's office because:

> 'Its professional status implied an obligation of progressive acquaintance with a living and developing art. It was therefore, I think, plainly incidental to the office that the respondent should avail himself of such opportunities as might arise to add ... to his knowledge and understanding of architectural achievements and trends overseas ...'

37. Windeyer J (106 CLR at 70; 12 ATD at 352) was of a similar view to Kitto J, stating that:

> '... a taxpayer who gains income by the exercise of his skill in some profession or calling and who incurs expenses in maintaining or increasing his learning, knowledge, experience and ability in that profession or calling necessarily incurs those expenses in carrying on his profession or calling.'

38. In *Studdert*, the taxpayer, a flight engineer, sought a deduction for expenses incurred on light aircraft flying lessons leading to a private pilot's licence. The Administrative Appeals Tribunal (AAT) (91 ATC 2007; (1991) 22 ATR 3042) at first instance was prepared to accept that it was part of Mr Studdert's duties to understand the overall workings of aircraft flight. The AAT allowed the expenditure on the basis that the lessons improved his proficiency in those duties. It also found that Mr Studdert rightly believed that possession of the pilot's licence would assist him in promotion to higher grades as an engineer, although the AAT did not consider it necessary to base its decision on this finding.

39. On appeal to the Federal Court, Hill J substantially agreed with the decision of the AAT. His Honour found that the expenses were relevant and incidental to the activities as flight engineer that directly produced Mr Studdert's income. This finding was based on the facts that undertaking the lessons made him better equipped to perform his

skilled job and better proficiency was a motivation for undertaking the lessons. If necessary, his Honour would also have supported his decision with the finding that flying proficiency would assist Mr Studdert in promotion to higher grades in his current job (91 ATC at 5015-5016; (1991) 22 ATR at 772).

40. **Example:** Barry, a trainee accountant, is studying commerce part-time at university. He is allowed a deduction for the costs associated with the course because the course enables Barry to maintain or increase the specific knowledge required in his current position and to carry out his duties more effectively.

41. If a course of study is too general in terms of the taxpayer's current income-earning activities, the necessary connection between the self-education expense and the income-earning activity does not exist. The cost of self-improvement or personal development courses is generally not allowable, although a deduction may be allowed in certain circumstances. In *Case Z42* 92 ATC 381; *AAT Case 8419* (1992) 24 ATR 1183, a senior newspaper journalist, whose duties involved interviewing people for feature articles and making presentations to potential advertisers, was allowed a deduction for the cost of a speech course because it was incurred in maintaining or increasing his ability in his current employment and therefore was necessarily incurred in carrying on that employment.

42. **Example:** Brianna, a company director, was having difficulty coping with increased stress levels brought about by the company's expanded markets. She decided to attend a four-week course in stress management for executives to help her deal with the situation. Brianna attended the course after hours and paid for it herself.

The cost of the course is not allowable because the course was not designed to maintain or increase the skill or specific knowledge required in her current position. The expenses are more correctly characterised as being necessary to put her in a position to carry out her income-earning activities.

(b) A deduction is allowable for self-education expenses if the subject of self-education objectively leads to, or is likely to lead to, an increase in the taxpayer's income from his current income-earning activities

43. In *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557, Menzies J held that expenses incurred by a primary school teacher in relation to the submission of theses to gain a Teacher's Higher Certificate were allowable. His Honour considered that the certificate expenses were related to the actual gaining of income because possession of the certificate entitled Mr Hatchett to

move to another pay scale and, therefore, to earn more money in the future. It also entitled him to be paid more for doing the same work without any change in grade (125 CLR at 498; 71 ATC at 4186; 2 ATR at 559).

44. Similar reasoning was used to allow self-education expenses in *FC of T v. Smith* 78 ATC 4157; (1978) 8 ATR 518 and in *FC of T v. Lacelles-Smith* 78 ATC 4162; (1978) 8 ATR 524. Furthermore, in *Studdert*, Hill J said that an expense normally is allowable if it can be shown to contribute or be likely to contribute to increased income, but noted that such a finding is not a prerequisite for deductibility (91 ATC at 5013-5014; 22 ATR at 770).

45. **Example:** Kieran, a computer salesman, takes six months leave without pay to undertake a business administration course. He has been assured that, upon successful completion of the course, he will be promoted to an assistant manager position with his current employer. Kieran is allowed a deduction for the costs of the course because it leads to an increase in income from his current employment.

(c) Expenses related to improving knowledge or skills are not of a capital nature

46. Both *Finn* (106 CLR at 68-69; 12 ATD at 351) and *Hatchett* (125 CLR at 497-498; 71 ATC at 4186; 2 ATR at 559) make it clear that expenses related to improving knowledge or skills are not of a capital nature. They rejected the argument that such improvement amounts to the acquisition of something of an enduring nature, equivalent to the extension of plant in a factory.

(d) A deduction is not allowable for self-education expenses if the subject of self-education, viewed objectively, is designed to get employment, to obtain new employment or to open up a new income-earning activity

47. The decision of the High Court in *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541 establishes the principle that no deduction is allowable for self-education expenses if the study, viewed objectively, is designed to enable a taxpayer to get employment or to obtain new employment. Such expenses are incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.

48. The Federal Court in *FC of T v. M I Roberts* 92 ATC 4787; (1992) 24 ATR 479 applied the principle in *Maddalena* when it overturned an AAT decision allowing a mine manager a deduction for expenses associated with a Master of Business Administration degree.

Mr Roberts was retrenched by his employer in Australia and then undertook an MBA course in the US for two years. On his return to Australia, he was re-employed as a mine manager by another company at a significantly increased salary when compared with his previous position.

49. The AAT had relied on *Kropp* to allow a deduction for his MBA studies, based on a finding that there was a sufficient connection between the expenses and the income derived on the taxpayer's return to Australia. In overturning the AAT decision, Cooper J considered that moneys were spent to obtain a new employment, albeit one in a better position and on higher wages, rather than in the course of employment and that *Maddalena* clearly applied.

50. In the course of his judgment, Cooper J considered the decision in *Kropp* where an accountant resigned his employment with an Australian accounting firm to take up a development appointment with an associated firm in Canada for two years. Mr Kropp later returned to Australia and recommenced work with his old employer at an increased salary. Waddell J allowed a deduction for the cost of the taxpayer's air fare to Canada on the basis that there was a perceived connection between the expenditure and the gaining of increased income on Mr Kropp's return to Australia. Cooper J considered that 'the principles enunciated by the High Court in *Maddalena* were not applicable ...' on the facts of *Kropp*.

51. Despite the view expressed by Cooper J, we regard the decision in *Kropp* as in error. The decision fails to recognise that, because of the break in employment, the expenses in issue were incurred at a point too soon to be regarded as incurred in gaining or producing income.

52. **Example:** After finishing her final year of school, Sarah enrols in a full-time fashion photography course at a technical college. She is supported by her parents during her studies and does not receive any government assistance, but does some casual sales work on weekends.

53. Sarah cannot claim the costs associated with the course against her casual work income because her study costs were incurred at a point too soon to be regarded as incurred in gaining or producing income from her future employment in the fashion photography industry.

54. **Example:** Stuart wants to be the manager of a leading hotel. He enrols in a hotel management course, one semester of which involves an industry placement to gain work experience. Stuart is placed with a major hotel where he gains experience in all facets of hotel management, including catering, housekeeping and bar work.

He claims a deduction for the cost of the course against income earned during the placement.

55. A deduction is not allowable because the study, viewed objectively, is designed to get Stuart employment as a hotel manager, not derive income from work experience. It is incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.

56. **Example:** Shannon, who is undertaking a 4-year university degree in mining engineering, takes a job as a casual employee with a mining company during the end of year holiday period. It is the company's policy to take only students who are pursuing relevant studies. Shannon is not entitled to a deduction for the cost of the course because, viewed objectively, the study is designed to get future employment in the field. It is incurred at a point too soon.

57. We believe that *Maddalena* also supports our view that no deduction is allowable for self-education expenses if the study is designed to enable a taxpayer to open up a new income-earning activity, whether in business or in the taxpayer's current employment. In *Case Z1* 92 ATC 101; *AAT Case 7541* (1991) 22 ATR 3549, a public service clerk studying for a law degree later obtained a legal officer position in the public service. Such expenses of self-education were incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.

58. **Example:** Joseph is currently employed as a clerk in a public service department. He would like to transfer to a position in another section of the department and undertakes a course of study designed to equip him with the skills needed in that position. The study is unrelated to the skills required in his current position and is not likely to lead to an increase in income. As the study is designed to enable Joseph to enter a new income-earning activity, no deduction is allowable.

59. We also believe that *obiter* comments of Lee J in *FC of T v. Highfield* 82 ATC 4463; (1982) 13 ATR 426 are consistent with the views discussed in paragraph 55. Although not necessary to decide, his Honour discussed whether expenses incurred by a dentist in general practice on a post-graduate degree in periodontics would have been allowable if the study had been undertaken to become a specialist periodontist.

60. His Honour came to no final conclusion on the matter, but recognised that there were equally competing views. On the one hand, such expenses could be said to be allowable on the basis that the dentist was an independent contractor who was attempting to obtain contracts. On the other hand, the expenses would not be allowable

because the dentist was attempting to carry on a different income-earning activity or business and would be in no different position from a person who undertakes study to obtain a job (82 ATC at 4474; 13 ATR at 439). We believe that the latter view is the correct application of subsection 51(1).

61. **Example:** Desiree is a general medical practitioner in partnership with two other general practitioners in a large regional town. She undertook further study in dermatology in order to set herself up independently as a specialist dermatologist. The expenses related to the study are not allowable as the study is designed to open up a new income-earning activity as a specialist.

(e) The intention or purpose in incurring the expense may be an element in determining whether the expense is allowable

62. As most self-education expenses are voluntarily incurred, intention or purpose of a taxpayer in incurring the expenses can be an element in determining whether the whole or a part of the expenses are characterised as allowable under subsection 51(1) (see *Fletcher & Ors* 173 CLR at 17; 91 ATC at 4957; 22 ATR at 622). In *FC of T v. Klan* (85 ATC 4060 at 4064; (1985) 16 ATR 176 at 181-182), Ormiston J recognised that a taxpayer's purpose in undertaking study, when related to his or her plans for the future, may have a significant role in determining the essential character of self-education expenses.

63. If the main purpose of a study tour or attendance at a work-related conference or seminar is the gaining or producing of income, the existence of an incidental private purpose does not affect the characterisation of the related expenses as wholly incurred in gaining assessable income.

64. Both *Ronpibon Tin NL* (78 CLR at 59; 8 ATD at 437) and *Fletcher & Ors* (173 CLR at 16; 91 ATC at 4957; 22 ATR at 621) recognise there are at least two kinds of expenditure that require apportionment under subsection 51(1). The first is expenditure in respect of a matter where distinct and severable parts are devoted to gaining income and other parts are devoted to some other end. If a study tour or work-related conference or seminar was mainly devoted to a private purpose, such as having a holiday, and the gaining or producing of income was merely incidental to the private purpose, only those expenses directly attributable to the income-earning purpose would be allowable.

65. The second kind of apportionable expenditure is a single outlay that serves both an income-earning purpose and some other purpose indifferently. While the High Court recognised that there can be no precise arithmetical division in such cases, it said there must be some

fair and reasonable division based on the facts of each case. For example, if a study tour or work-related conference or seminar is undertaken equally for income earning purposes and private purposes, we would apportion the expenses equally between purposes.

66. As discussed in paragraph 39, Hill J held in *Studdert* that one of the purposes of the expenditure in that case related to increased proficiency in Mr Studdert's activities as a flight engineer. His Honour further held (91 ATC at 5011-5012; 22 ATR at 767-768) that it was irrelevant to the characterisation issue in that case to go any further and enquire whether there was a dominant purpose for incurring the expenditure that related to retraining as a flight officer. To the extent that his Honour might be interpreted as suggesting that, when determining the characterisation issue for self-education expenses, it is irrelevant to consider whether a non income-producing purpose was the dominant purpose for incurring the expenses, we believe that this view is not supported by *Fletcher & Ors*.

67. When determining the characterisation issue for self-education expenses, we believe that it is relevant to consider whether a non income-producing purpose was the dominant purpose for incurring the expenses. We consider this is supported by the passage from *Fletcher & Ors* referred to in paragraph 60. We also consider this passage was intended by the High Court to apply to subsection 51(1) in general and not just to instances of tax avoidance, as suggested by Hill J in *Studdert* (91 ATC at 5011; 22 ATR at 767-768).

68. **Example:** Glenn, a qualified architect, attends an eight-day work-related conference in Hawaii on trends in modern architecture. One day of the conference involves a sight-seeing tour of the island and a game of golf is held on the final afternoon of the conference. As the main purpose of attending the conference is the gaining or producing of income, the total cost of the conference (air fares, accommodation and meals) is allowable.

69. The existence of private pursuits, such as the island tour and the game of golf, is purely incidental to the main purpose and does not affect the characterisation of the conference expenses as wholly incurred in gaining assessable income.

70. **Example:** Jenny, a doctor, was holidaying in Cairns when she became aware of a work-related seminar on the current treatment of cancer patients. The cost of the half-day seminar was $200. Jenny is able to claim a deduction for the cost of the seminar because it is directly attributable to an income-earning purpose. However, no part of her air fare to Cairns or her holiday accommodation is an allowable deduction.

71. **Example:** Francesco is a paediatrician who attends a five-day international conference on paediatrics in Singapore. He also decides to have a seven-day holiday in Thailand following the conference. The conference package is $2,500 ($1,000 return air fare, $500 for the cost of the conference and $1,000 for accommodation and meals at the conference venue). The conference cost and the accommodation and meals expenses at the conference are allowed as the necessary costs of attending the conference. Half of the return air fare is allowed as it objectively appears that the expense was incurred equally for income-earning and for private purposes.

Commonwealth educational assistance schemes

AUSTUDY scheme

72. AUSTUDY payments made under the *Student and Youth Assistance Act 1973* and administered by the Department of Employment, Education, Training and Youth Affairs (DEETYA), provide financial assistance to students. To be eligible for AUSTUDY payments, a person must satisfy citizenship and residency requirements, be of appropriate age or status and be enrolled in an approved course of study. A student's continuing eligibility for payment generally depends on making satisfactory progress during the course of study.

73. Having regard to the nature of the payment, we believe that self-education expenses relating to a course of study are not relevant and incidental to the derivation of AUSTUDY income. Viewed objectively, self-education expenses are incurred to gain an educational qualification resulting from the course of study. Consequently, the essential character of these expenses is linked to the gaining of the qualification.

74. As discussed in paragraphs 36 to 45, the necessary connection exists where the taxpayer's income-earning activities are based on the exercise of a skill or some specific knowledge and the subject of self-education enables the taxpayer to maintain or improve that skill or knowledge, or objectively leads to, or is likely to lead to, an increase in the taxpayer's income from his or her current income-earning activities. A course of study undertaken by a recipient of AUSTUDY income would not fall within either of these established principles.

75. AUSTUDY payments are received because a student is enrolled in a course of study and satisfies eligibility requirements. Expenses incurred in satisfying course requirements are correctly characterised as expenses in gaining a qualification which, viewed objectively, is designed to enable the student to obtain employment in a particular field. As discussed in paragraph 47, no deduction is allowed if the

study, viewed objectively, is designed to enable a taxpayer to get employment, to obtain new employment or to open up a new income-earning activity.

ABSTUDY, AIC and VCES schemes

76. We consider that our views concerning the deductibility of self-education expenses in relation to AUSTUDY payments also apply to student assistance payments made under the ABSTUDY and AIC schemes, which are administered by DEETYA, and the VCES, which is administered by the Department of Veterans' Affairs. Costs associated with a course of study are not deductible to recipients of these payments.

77. The view we have expressed concerning the deductibility of self-education expenses to recipients of the above mentioned allowances represents a change in the view previously expressed in paragraphs 19 and 20 of Taxation Ruling IT 2458 (these two paragraphs only, are to be withdrawn on finalisation of this Ruling) and in Taxation Ruling TR 92/8 (to be withdrawn on finalisation of this Ruling).

Other educational assistance payments

78. A comprehensive consideration of the deductibility of self-education expenses to recipients of payments under the various educational assistance schemes is beyond the scope of this Ruling. While the principles of deductibility discussed in this Ruling need to be considered in each case, we consider that, generally, self-education expenses are not deductible where the scheme provides for payments in the nature of assistance.

Depreciation

79. A deduction is allowable under subsection 54(1) of the ITAA 1936 (section 42-15 of the ITAA 1997) for depreciation of items of plant or articles owned and used by a taxpayer for the purpose of producing assessable income. If the subject of self-education enables a taxpayer to maintain their skill or knowledge or is likely to lead to an increase in income from their current income-earning activities, depreciation of items used for self-education purposes is allowable.

80. We consider that depreciation is allowable for items such as technical instruments and equipment, computers, calculators, professional libraries, filing cabinets and desks. If the item is used partly for self-education purposes and partly for private purposes, the

deduction for depreciation should be apportioned based on an estimate of the percentage of use for self-education purposes.

81. Depreciation is calculated using either the prime cost method or the diminishing value method. Depreciation using the prime cost method is calculated as a percentage of the cost of the item. Depreciation using the diminishing value method is calculated initially as a percentage of the cost of the item and thereafter as a percentage of the written down value of the item.

82. If the item used is bought part way through the year, the deduction for depreciation should be apportioned on a pro rata basis.

83. Any item of plant or articles bought on or after 1 July 1991 can be depreciated at a rate of 100% under subsection 55(2) of the ITAA 1936 (sections 42-125 and 42-130 of the ITAA 1997) if it cost $300 or less, or if its effective life is less than 3 years (see Taxation Determination TD 93/159). This means an immediate deduction is available for each item in the year of purchase. That is, there is no need to prorate the deduction. However, the item may be depreciated at a rate less than 100% if the taxpayer elects (subsection 55(8) of the ITAA 1936, section 42-120 of the ITAA 1997). The current depreciation rates are set out in Taxation Ruling IT 2685.

84. An arbitrary figure is not acceptable when determining the value of items for depreciation purposes (*Case R62* 84 ATC 454; 27 CTBR (NS) *Case 113*). In determining the value of an item to be depreciated, its opening value is the original cost to the taxpayer less the amount of any depreciation that would have been allowed if the item had been used, since purchase, to produce assessable income (see Taxation Determination TD 92/142).

Types of self-education expenses allowable

85. The following paragraphs discuss the types of expenditure that are considered to be allowable if the self-education expenses associated with the study are allowable under subsection 51(1). The types of expenditure associated with self-education not considered to be allowable under subsection 51(1) are also discussed.

Course or tuition fees

86. Course or tuition fees incurred in attending an educational institution or of attending work-related conferences or seminars, including student union fees, are allowable under subsection 51(1). However, under subsection 51(6) of the ITAA 1936 (section 26-20 of the ITAA 1997), no deduction is allowable for a higher education contribution payment made under Chapter 4 of the *Higher Education*

Funding Act 1988. Such payments are made by a student to cover the cost of a course of study at a tertiary educational institution. Also, AUSTUDY Supplement loan repayments and Open Learning Agency of Australia charges are not allowable.

Books, journals and stationery

87. Expenditure on professional and trade journals is allowable under subsection 51(1). Expenditure on items of stationery, such as pens, pencils and photocopying, is also allowable.

88. Text books are generally used during the course of study and, in most cases, only in the year of purchase. In such circumstances, the cost of the books is allowable under subsection 51(1). However, if the text books are intended to be used for a number of years as reference material for income-producing purposes, depreciation on the books is allowable under subsection 54(1) of the ITAA 1936 (section 42-15 of the ITAA 1997). An immediate deduction may be available under the depreciation provisions (refer to paragraph 80).

Accommodation and meals (as part of a travel expense)

89. Expenditure on accommodation and meals ordinarily has the character of a private or domestic expense. However, the occasion of the outgoing may operate to give the expenditure the essential character of an income-producing expense. An example is where the expenditure is incurred while away from home overnight on a work-related activity (*Case E34* 5 TBRD (NS) 205 at 211; 4 CTBR (NS) *Case 99* at 587; *FC of T v. Cooper* 91 ATC 4396 at 4415; (1991) 21 ATR 1616 at 1638; *Roads and Traffic Authority of NSW v. FC of T* 93 ATC 4508 at 4521; (1993) 26 ATR 76 at 92).

90. Where a taxpayer is away from home overnight in connection with a self-education activity, accommodation and meals expenses incurred are deductible under subsection 51(1). (Examples include an overseas study tour, a work-related conference or seminar or attending an educational institution.) They are part of the necessary cost of participating in the tour or attending the conference, the seminar or the educational institution. We do not consider such expenditure to be of a private nature because its occasion is the taxpayer's travel away from his or her home on income-producing activities.

91. However, we consider that remarks made by Hill J in the *Roads and Traffic Authority of NSW* case support our view that an exception to the general rule mentioned in the previous paragraph exists when a new home is established. In these circumstances, accommodation and

meal expenses are private or domestic in nature and therefore not allowable under subsection 51(1).

92. Generally, it is obvious where a taxpayer's home is located. For example, if a taxpayer lives with her spouse and children in Sydney and travels to Melbourne for a 10-day seminar, her home remains in Sydney. Alternatively, if she sold the family home in Sydney and moved with the family to Harvard (USA) to do a two-year business course, her home would now be in Harvard.

When is a new home established?

93. The key factors to be taken into account in determining whether a new home has been established include:

- the total duration of the travel;
- whether the taxpayer stays in one place or moves frequently from place to place;
- the nature of the accommodation, e.g., hotel, motel, long term accommodation;
- whether the taxpayer is accompanied by his or her family;
- whether the taxpayer is maintaining a home while away. The fact that the taxpayer did not maintain a home while away for an extended period was the decisive factor in characterising expenditure on accommodation and meals as private 'living expenses' in a series of Board of Review decisions: *Case N13* 13 TBRD (NS) 45; 10 CTBR (NS) *Case 98*; *Case N16* 13 TBRD (NS) 65; 10 CTBR (NS) *Case 99*; *Case N19* 13 TBRD (NS) 76; *Case N20* 13 TBRD (NS) 79;
- the frequency and duration of return trips to the **previous** home;
- whether the taxpayer's children attend school at the new location; and
- whether the taxpayer or their partner seeks employment.

94. Each of the following examples is designed to illustrate factors and circumstances that are relevant in determining whether a taxpayer has established a new home in the new location. For these examples, it is assumed that there is a sufficient connection between the self-education expense and the income-earning activity.

95. **Example 1:** Elizabeth ordinarily lives with her parents in a country town outside Brisbane. She takes 4 months leave from her job to undertake a course of education at a training college in Brisbane.

She shares a rented unit in Brisbane with two other students and returns to her parental home every weekend and during holiday periods.

96. The relatively short period of her stay in Brisbane and the frequency of her return visits to her parental home indicate that Elizabeth has not established a new home in Brisbane.

97. **Example 2:** John, who is single, decides to undertake a 2-year course of study at a university in a city 250 kilometres from the town where he lives with his parents. He shares a rented house with some other students during this period and takes a casual job. He occasionally returns to the parental home on weekends.

98. The length of time that John resides in the city, the long term nature of his accommodation and the fact that he has employment in the city indicate he has established a new home.

99. **Example 3:** Madonna undertakes a 5-month study tour in Europe. Her husband and family remain at the family home in Melbourne. The study tour involves travel to four separate locations in Europe for periods of between four and six weeks each. At each location, Madonna stays in serviced apartments.

100. The relevant factors are the short-term nature of the tour and accommodation, travel to several locations and the fact that she is maintaining a home in Melbourne. Together, they indicate that Madonna is travelling away from her home. However, the conclusion is the same if Madonna was accompanied by her husband and family and their Melbourne home was rented out for the period of the study tour.

101. **Example 4:** Charles travels to London to undertake a 12-month course of study at a university. His family remain in Australia at the family home in Perth. While in London, he rents an apartment for the full period of his stay. Although his family remain in Australia, the length of his stay in one place and the nature of his accommodation indicate that Charles has established a new home in London for the period of his stay.

102. **Example 5:** Henrietta takes leave without pay from her job as a school teacher and enrols in a 2-year course at a university 400 kilometres from the town where she ordinarily resides with her husband and family. She stays in accommodation at the university and is not accompanied by her family. She returns home during vacation breaks, holiday periods, special events and at the weekend when study commitments permit.

103. The fact that her husband and family remain at the family home, and the frequency of her visits to that home, indicate that Henrietta has not established a new home in the city.

104. **Example 6:** James travels overseas for 12 months to undertake a studies program. He spends 10 months in the USA where he attends a university and 2 months based at an academic institution in the UK. He is accompanied by his wife and the family home in Australia is rented out while he is away. While in the USA, he resides with his wife in an apartment leased for the duration of their stay.

105. The facts indicate that James has established a new home in the USA for the period of his stay. He stayed in one place in leased accommodation with his wife for the 10-month period and the family home in Australia was rented out during the period he was away.

106. The facts in *Case V15* 88 ATC 177; *AAT Case 4075* (1988) 19 ATR 3147 are similar to this example. In that case, the AAT held that, on balance, the taxpayer had not established a new residence in the USA. The AAT considered that it was more appropriate to consider the apartment as a place temporarily occupied by the couple in order that the taxpayer might perform the duties of his employment. We take a different view and consider the factors mentioned above indicate that the taxpayer established a new home during his stay in the USA.

107. **Example 7:** Katherine travelled overseas for 6 months to study at a university in Germany. She was accompanied by her husband and three children. An apartment suitable to accommodate the family was rented for the period of her stay and the family home in Australia was rented out.

108. The relevant factors are the period of time away, the renting of the family home and staying in one place with her family. These factors indicate that a new home was established in Germany.

109. A similar factual situation occurred in *Case S80* 85 ATC 589; 28 CTBR (NS) *Case 88* and comments made by T J McCarthy (Member) support our view. He did not consider that any part of expenditure on accommodation was allowable as a deduction under subsection 51(1). He stated (85 ATC at 595; 28 CTBR (NS) at 690):

> 'Between ... the taxpayer was not travelling away from his home on his work. The apartment in Bonn was, and was intended to be, the family residence for five months. The older children went to school in Bonn and family life was centred in Bonn. Whilst in some cases questions of degree may be involved, I do not think there is any doubt in the present circumstances. The essential character of the rental expenditure is of a private or domestic nature.'

110. As the above examples illustrate, the question of whether a new home has been established depends on all the facts. There is no one test to satisfy all circumstances. Also, a change in circumstances may affect deductibility of expenditure on accommodation and meals.

111. **Example 8:** Don travels to London to undertake a 3-week course of study to maintain and improve knowledge relevant to his income-earning activities. He stays in hotel accommodation until the end of the 3-week period when he decides he should extend his stay and complete a more extensive 6-month course of study. He rents an apartment and arranges for his family to join him in London.

112. Expenditure on accommodation and meals during the initial 3-week period is deductible as Don is away from home. However, depending on all the relevant facts, Don may be considered to have established a new home for the period of his stay in the apartment with his family.

*Meals and accommodation when **not** sleeping away from home*

113. Expenditure on meals and accommodation while attending an educational institution, work-related conference or seminar where the taxpayer is not required to sleep away from home, for example, a taxpayer living in a suburb of Sydney and attending an institution in the metropolitan area, is not allowable as a deduction. The expenditure is private in nature.

Transport expenses

114. Transport expenses, including public transport fares and the running costs associated with motor vehicles, etc., are allowable for travel between:

- a taxpayer's home and an educational institution and return; and
- a taxpayer's place of work and an educational institution and return;

as being part of the incidental costs of the study.

115. If a taxpayer travels from his or her home to an educational institution and then to his or her place of work and returns home by the same route, only the costs of the first leg of each journey are allowable, as being incidental costs of the study. The costs of the second leg of the outward journey are costs incurred in order to get to work. The costs of the second leg of the return journey are costs incurred in order to return to the taxpayer's home. The High Court in

Lunney and Hayley (100 CLR at 501; 11 ATD at 414) held that the cost of travel between home and work is not deductible.

116. A summary of situations in which transport costs are allowable is contained in the following table:

	Deductible as self-education expense?		Deductible as self-education expense?	
Home	YES →	Place of Education	YES →	Home
Home	YES →	Place of Education	NO →	Work
Work	YES →	Place of Education	NO →	Home
Work	YES →	Place of Education	YES →	Work

117. We consider that the decision of the AAT in *Case U45* 87 ATC 320 does not require any departure from the views expressed in paragraph 115. In that case, the AAT was of the view that, in determining whether self-education expenses are allowable, an educational institution is considered to be a place of work. Accordingly, deductions were allowed for the costs of travelling between the institution and the taxpayer's place of work, but not for the costs of travelling between the taxpayer's home and the institution. We believe that, in the majority of cases, an institution is not a place of work at which income-earning activities are carried out.

118. However, we recognise that there are some situations where income-earning activities are carried out at an institution. For example, if a taxpayer is required under the terms of his or her employment to attend a place of education during a period of traineeship and they have no other place of work, the place of education is comparable to a place of work. In those situations, the cost of travelling between the taxpayer's home and the place of education is not an allowable deduction, being costs in order to get to work.

119. This is to be contrasted with the situation where a taxpayer undertakes a course of study away from his or her normal place of work. For example, where an apprentice attends technical college, away from the workplace, to undertake an apprenticeship course two days per fortnight, the college is a place of education, not a place of work.

Interest expenses

120. Interest incurred by a taxpayer on moneys borrowed to pay for self-education expenses is allowable under subsection 51(1) where the interest expense has a relevant connection with the activities by which a taxpayer currently derives his or her assessable income. Generally, we consider the relevant connection can be shown where the interest expense relates to funds borrowed and used to pay self-education expenses associated with a course of education, etc., that enables a taxpayer to maintain or improve their skill or knowledge or is likely to lead to an increase in income from their current income-earning activity.

121. However, it is necessary to have regard to the connection between the interest expense and the income-earning activity in each year in which the interest is claimed. There may be situations where funds borrowed were initially applied to an income-producing purpose, but a change in circumstances means there is no longer a connection between the interest expense and the earning of assessable income. An example is where a taxpayer subsequently changes his or her income-earning activity or ceases employment altogether.

122. **Example:** Christine, an employee solicitor, is undertaking a Master of Laws course to enable her to carry out her current duties more efficiently. She borrows $10,000, repayable over 3 years, to pay tuition fees. She incurs $1,000 interest in each year. Christine continues in her employment during the 3-year period and completes her studies after 2 years.

123. Christine is allowed a deduction of $1,000 for interest in each year because there is a sufficient connection between the interest expense and her current income-earning activity.

124. **Example:** Assume the above facts, except that Christine ceases employment after the first year or changes her job to a fashion designer. A deduction for interest is allowable only for the first year. No deduction is allowed in subsequent years because there is no connection between the interest expense and gaining of assessable income in those years.

125. **Example:** After completing his secondary education, Alex studied commerce as a full-time student at a private university. He

borrowed $30,000 in 1995, repayable over 5 years, and used the funds to pay course tuition fees. He completed his degree the following year and obtained employment with an accounting firm in early 1997.

126. In the 1997 income year (and subsequent years), no deduction is allowable for interest incurred on the loan. The funds borrowed were not used for an income-producing purpose, but related to a course of study undertaken by Alex before he obtained his current employment. Accordingly, there is not a sufficient connection between the interest expense and Alex's current income-earning activities.

Section 82A - limits to the deductibility of self-education expenses

Operation of the section

127. Section 82A operates to limit the amount of expenses of self-education otherwise allowable under subsection 51(1). Section 82A provides that a deduction for self-education expenses under subsection 51(1) is not to be greater than the amount by which the net amount of expenses of self-education exceeds $250.

128. If educational expenses do not fall within the definition of 'expenses of self-education' in section 82A the whole amount may be deducted, provided it meets the requirements of subsection 51(1) or another deduction provision.

129. If the expenditure falls within the definition of 'expenses of self-education' in section 82A, it is only the excess of the expenditure over $250 which may be deductible under subsection 51(1).

130. For some time, it has been our practice to require that the $250 reduction be applied only to expenses that are allowable as deductions under subsection 51(1). This practice was based on an interpretation of the law supported by an unreported AAT decision of Purvis J (NT 85/16096-98) delivered in December 1987. In that case, Purvis J rejected the taxpayer's argument that capital expenditure should be taken into account in calculating the total of expenses of self-education in excess of $250 and held that self-education expenses allowable under subsection 51(1) were to be reduced by $250.

131. However, we now consider that this practice is not appropriate and is based on an incorrect interpretation of the words of section 82A. We consider that, on a correct interpretation of the section, the calculation requires that the $250 reduction applies to all 'expenses of self-education' as defined in section 82A, whether or not those expenses are deductible under section 51(1). This interpretation represents a change to the view expressed in Taxation Rulings TR 95/8 to TR 95/22 (inclusive). The operation of section 82A is illustrated by the **Example** at paragraph 150.

132. Expenses related to self-education that are deductible under provisions other than subsection 51(1) are taken into account in the section 82A calculation. For example, car expenses claimed using the 'cents per kilometre' and '12% of original value' methods are deductible under Divisions 3 and 4 of Schedule 2A respectively of the ITAA 1936 (sections 28-25 to 28-60 of the ITAA 1997). Although there is a question as to whether deductions claimed using these methods are in the nature of 'expenses', we accept that they would qualify for the purposes of section 82A. Where expenses of self-education are deductible under a provision other than subsection 51(1), they are not subject to any reduction as a result of the application of section 82A. Therefore, provided the requirements of that provision are satisfied, the whole amount of those expenses is deductible.

133. Expenses of self-education that are not deductible under any provision are taken into account in the section 82A calculation. For example, where a taxpayer travels from work to an educational institution and then home, the costs of that leg of the journey between the institution and home are not deductible, but may still qualify for the purposes of section 82A. For the purposes of calculating the cost of this travel, if the travel is by car, we accept calculations based on a rate per kilometre multiplied by the number of kilometres travelled. The rate that may be used is the same rate used to calculate car expenses under Division 3 of Schedule 2A of the ITAA 1936 (sections 28-25 to 28-35 of the ITAA 1997).

134. Section 82A applies if:

(a) the expenses of self-education are necessarily incurred by the taxpayer for or in connection with a course of education provided by a school, college, university or other place of education; and

(b) the course is undertaken by the taxpayer for the purpose of gaining qualifications for use in the carrying on of a profession, business or trade, or in the course of any employment.

135. Subsection 82A(2) specifies that the net amount of expenses of self-education is calculated by reducing the total amount of expenses of self-education by:

(a) the amount of Commonwealth educational assistance for secondary education, technical or tertiary education or post-graduate study that were capable of being claimed by the taxpayer or by another person in respect of the taxpayer, but excluding amounts that have been or will be included in the taxpayer's assessable income; and

(b) any non-assessable payments received or receivable from the taxpayer's employer or other person in the year of income in respect of the self-education expenses.

136. Subsection 82A(2) expressly excludes HECS payments, Open Learning charges and debt repayments under the Tertiary Student Financial Supplement Scheme from being classified as an expense of self-education.

Expressions used in section 82A

Expenses 'necessarily incurred'

137. The expression 'necessarily incurred' was considered by the Supreme Court of South Australia in *Pearce v. FC of T* 79 ATC 4195 in relation to the former section 82J of the ITAA 1936 which allowed a deduction for education expenses. Subsection 82J(6) defined education expenses to mean 'expenses necessarily incurred by the taxpayer for or in connection with full-time education ...'. Sangster J did not accept that the words 'necessarily incurred' in the context of the former section 82J had the same meaning as those words have in subsection 51(1). He considered the ordinary meaning of the word 'necessarily' to 'import at least some element of need (for the expense in question)'.

138. We consider it is appropriate to adopt the approach taken by Sangster J in the context of section 82A. Therefore, compulsory and unavoidable expenses, as well as those for which a need can be shown, are regarded as 'necessarily incurred'. This includes expenditure on fares, travel and accommodation, as well as fees, books and equipment to the extent they are incurred in pursuing a prescribed course of education. The balance is between expenses needed to fulfil the requirements of the course and those related to the provision of items, etc., which may serve a useful purpose.

139. We discuss below our view of the extent to which particular common expenses are regarded as 'necessarily incurred' when encountered in pursuing a prescribed course of education in terms of section 82A.

Child care costs: where there is a need to incur expenditure for child minding to enable a taxpayer to attend lectures or other activities in connection with a prescribed course of education, child minding expenses to the extent they relate to those activities are 'necessarily incurred'.

Capital cost of computers: where there is a need to own and use a computer to fulfil the requirements of a prescribed course of education

and the computer is acquired and used for this purpose, the capital cost of the computer is regarded as an expense 'necessarily incurred'.

Capital cost of filing cabinets, desks and books comprising part of a professional library: where there is a need for such items to fulfil the requirements of a prescribed course of education and the item is acquired and used for this purpose, the cost is an expense 'necessarily incurred'.

Repairs: the cost of repairs to items of equipment used in fulfilling the requirements of a prescribed course of education is 'necessarily incurred'.

Meals: the cost of meals purchased while travelling to and from or attending an educational institution does not qualify as 'necessarily incurred' in terms of section 82A; rather the expenditure relates to a private matter not connected with the course of education.

Prescribed course of education

140. Subsection 82A(2) defines a 'prescribed course of education' as **a course of education** given by a school, college, university or **other place of education**, and undertaken by the taxpayer for the purpose of gaining qualifications for use in the carrying on of a profession, business or trade or in the course of any employment.

'Course of education'

141. In our view, a course of education is a course or program of study involving systematic instruction, training or schooling. 'Education' is to be given its ordinary meaning of 'acquisition of knowledge, skill, etc.' (*Macquarie Dictionary*) and refers to a wide range of areas of knowledge or skill, including sport. To this extent, our view has changed from that expressed in Taxation Ruling IT 314 (to be withdrawn on finalisation of this Ruling), which adopted a narrower interpretation by stating that a sporting activity is not 'education' in the generally accepted meaning of the term.

142. To qualify as a course of education, a program of study need not be conducted on a full-time basis. Part-time courses of study can also be courses of education. However, a course of education does not include short term refresher courses, in-service activities or short-term staff development courses. These are considered to be more akin to on-the-job training. Costs of short-term refresher courses by employees are therefore not regarded as 'expenses of self-education' in the sense required in subsection 82A(2). In some cases, the total cost of short-term refresher courses may be allowed as deductions under subsection 51(1) provided they meet the requirements of the provision.

'Other place of education'

143. A place of education is an institution or organisation, or a dedicated part of it, whose primary function is to provide systematic instruction, teaching or schooling in a subject, skill or competency. This view is supported by the decision of the No 2 Board of Review in *Case M11* 80 ATC 78; 23 CTBR (NS) *Case 97*. There, L C Voumard (Member) relied on *Barry v. Hughes* [1973] 1 All ER 537, where it was said that an educational establishment was one whose primary function was that of education.

144. In *Case S95* 85 ATC 688; 29 CTBR (NS) *Case 2*, the No 1 Board held that a correspondence course was a course provided by a place of education even though the provider did not conduct set classes or have a building where classes were conducted. The provider was an organisation established with the dominant function of training and educating people in various skills and areas of knowledge.

145. Our interpretation of the meaning of the expression 'other place of education' has changed from the view expressed in Taxation Ruling IT 283 (withdrawn on 8 October 1997). That Ruling expressed the view that we did not agree with the principle in *Barry v. Hughes*. The Ruling stated that, if a course or program of study is a course of education, then the place where it is given is a place of education. We consider that our former view is not appropriate, given the court and Board decisions mentioned above.

146. **Example:** Will, who is an editor in a publishing house, undertakes a speed-reading course of three days duration at an educational institution through an organisation whose primary objective is to improve people's reading skills and comprehension. The course teaches various techniques that improve reading skills. The proficiency of each participant is tested and assessed. A certificate is awarded to each student at the end of the course showing the reading and comprehension rate achieved.

147. The course is considered to be a prescribed course of education because the primary function of the course provider is the education of people in speed-reading skills. Because Will intends to use those skills in his work as an editor, section 82A applies.

148. **Example:** Mary is employed as a manager with a large advertising company. Her employer actively encourages her to attend a personal development course which is a full-time residential course of five days duration, where trained instructors supervise a structured program of physical and team-building activities designed to develop personal characteristics of the trainees. All trainees are individually

assessed and feedback is given to enable them to build on professional and personal skills such as confidence, leadership qualities, communication and problem solving techniques needed in their employment.

149. The course is accepted as being a course of education provided by a place of education. As the qualifications or skills acquired by Mary will be used in her employment, the course is a prescribed course of education for the purposes of section 82A. The active encouragement by Mary's employer for her to participate in the course is strong evidence to support this view. Had the course been undertaken for recreational, hobby or other private purposes, neither subsection 51(1) nor section 82A would have applied.

150. **Example:** Con, who is employed as a civil engineer, is completing part-time university studies to obtain a Master of Business Administration degree. As the qualifications or skills acquired by Con will be applied in his current employment to increase his income-earning capacity, the course is a prescribed course of education for the purposes of section 82A. In the year of income, he wishes to claim the following:

Travel between work and university:	
Bus fares	$50
Car expenses 213 km @ 47 cents	$100
Child minding fees (during course attendance)	$500
University fees	$200
Depreciation of computer	$200
Computer repairs	$100
Stationery	$100
Total expenses	$1,250

151. 'Depreciation of computer' is not in the nature of 'expenses' necessarily incurred in connection with a prescribed course of education and therefore does not form part of self-education expenses. Therefore, the net amount of expenses of self-education is:

Bus fares	$50
Car expenses (cents per kilometre method)	$100
Child minding fees	$500
University fees	$200
Computer repairs	$100
Stationery	$100

Net amount of self-education expenses	$1,050

152. Because of the operation of section 82A, the limit up to which a deduction may be allowable under subsection 51(1) is $800 (i.e., net amount of $1,050 less $250). However, as computer repairs, car expenses using the cents per kilometre method and child minding fees are not allowable under subsection 51(1), a deduction of $350 is allowable (i.e., university fees $200, bus fares $50 and stationery $100).

153. Car expenses using the cents per kilometre method may be allowable under Division 3 of Schedule 2A of the ITAA 1936 (sections 28-25 to 28-35 of the ITAA 1997), while repairs and depreciation may be deductible under sections 53 and subsection 54(1) of the ITAA 1936 respectively (section 25-10 and 42-15 of the ITAA 1997). The cost of child minding fees is not deductible under any provision.

Alternative views

AUSTUDY scheme

154. The view has been expressed that self-education expenses are deductible because, if the expenses were not incurred, the taxpayer may not be entitled to receive future AUSTUDY income. This is based on the premise that expenses need to be incurred to meet the satisfactory progress requirement. It has also been suggested that, by accepting AUSTUDY payments, the taxpayer has a duty to study and any expense incurred in fulfilling that duty is deductible.

155. It is our view that the purpose of the expenditure in these circumstances is to gain a qualification and their essential character is taken from this purpose.

156. Support can be gained for our view in *Case N94* 81 ATC 507; 25 CTBR (NS) *Case 48*. In that case, a taxpayer in receipt of unemployment benefits claimed the cost of travel, accommodation and sundry items in seeking employment. It was argued by the taxpayer these expenses were incurred in order to continue to receive unemployment benefits, it being a statutory requirement that the recipient of such benefits take reasonable steps to obtain work. In deciding that the expenses were not deductible, B R Pape (Member) said (81 ATC at 512; 25 CTBR (NS) at 363):

> 'He received the benefit because he was unemployed not because he spent money in searching for employment, albeit that the continuation of benefits may have been withdrawn if he did not satisfy the Director-General of Social Security of the matters

> prescribed in para.(c) sec.107(1) of the *Social Services Act 1947*. Thus I am of the opinion that the expenditure incurred by the taxpayer in seeking employment was not an outgoing incurred in gaining the unemployment benefit. Moreover I am of the opinion that the expenditure was incurred at a point too soon to be properly regarded as gaining or producing the taxpayer's future assessable income.'

157. We recognise that there may be cases where a taxpayer puts forward an argument that there is a sufficient connection between the self-education expenses and the receipt of AUSTUDY income because their purpose in undertaking the course of study is to receive the AUSTUDY payment. In these cases, the student has chosen to study rather than pursue another income-earning activity. We consider that the purpose of the self-education expenditure relates to gaining the qualification or enjoying academic pursuits, rather than gaining the AUSTUDY income.

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Your comments

159. If you wish to comment on this Draft Ruling, please send your comments by: Friday 13 February 1998

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