IT 2558 - Income tax : meal expenses in relation to self-education claim

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TAXATION RULING NO. IT 2558

INCOME TAX : MEAL EXPENSES IN RELATION TO SELF-EDUCATION CLAIM

F.O.I. EMBARGO: May be released

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	MEAL EXPENSES	82A(1)

PREAMBLE The purpose of this Ruling is to examine the extent to which income tax deductions are allowable for meal expenses incurred by part-time students while attending courses of study at universities or colleges. This issue has arisen in a number of recent AAT decisions and clarification of office policy is considered necessary.

2. The cost of meals is seldom an allowable deduction for taxation purposes. This is because it cannot normally be said to have been incurred in gaining or producing the assessable income, or necessarily incurred in carrying on a business for the purpose of gaining or producing such income. A further reason is that expenditure of a private or domestic nature is excluded from deduction by subsection 51(1); a clearer example of private or domestic expenditure than a person's meals would be hard to find. Decisions of various tribunals over the years confirm this general view of the law.

3. Where expenses of self-education qualify for deduction, the disallowance of deductions for meals associated with attendance at the course might seem harder to justify. But again, the general position is that the expenditure on meals is not deductible. A number of cases illustrating this are discussed below. On the other hand, there have been some instances where expenditure on meals associated with deductible self-education expenditure has been held to be allowable as a deduction. These are also examined.

FACTS 4. In Case F44 74 ATC 249; 19 CTBR (NS) Case 62, the taxpayer was employed as a clerk by a firm of chartered accountants. He claimed a deduction under subsection 51(1) of the Income Tax Assessment Act ("the Act") for the cost of evening meals purchased at the end of his day's work en route to technical college to attend evening lectures on accountancy. Board of Review No.1 held that the taxpayer's claim failed because the money was outlaid "for his advantage and benefit as a human being (cf. Norman v Golder (Inspector of Taxes) (1945) 1 All ER 352 at p.354, (1966) 27 TBRD Case S13). The expenditure on meals [was] an outgoing of a private nature."

5. More recently, in Case U71 87 ATC 443, a Taxation Officer claimed a deduction for meals purchased while in attendance at a university 42 kms from his home. The AAT (Mr P.M. Roach, Senior Member) stated : "As to the question of 'meal expenses', I am not persuaded that anything is allowable ... I am not persuaded that the cost of partaking of food and drink ... is to be characterised either directly or indirectly as an expense of education. Such expenses serve an even more basic need than education."

6. In Case U215 87 ATC 1210; 18 ATR 4036, the taxpayer claimed a deduction for the cost of meals which he had purchased on those nights he was engaged in a part-time study course. The Tribunal (Mr H.E. Hallowes, Senior Member) agreed with Mr Roach in Case U71 (supra) that the expenses were to serve a basic need and held that they were outgoings of a private or domestic nature.

7. A recent AAT decision in which a deduction was allowed under subsection 51(1) for a component of meal expenses incurred in relation to a deductible course of study was Case U212 87 ATC 1195; 18 ATR 4033. The applicant was a sales tax investigation officer with the Taxation Office. In the 1984 income year, he claimed under subsection 51(1) certain self-education expenses which included excess meal expenses of $120 (60 nights @ $2.00 per night). The claim for meals arose from the applicant pursuing a course of study at university to facilitate his promotion within the Taxation Office. It was not disputed that the self-education expenses (apart from the meal expenses) were incurred in gaining assessable income. Section 82A of the Act operated to exclude the first $250 from the section 51 deduction.

8. The applicant was required to be at the university at a time when people would normally eat dinner. The amount claimed was the difference between the cost of eating at home and the cost of eating at the university. Evidence showed that it would have been impractical to eat at home on the nights claimed.

9. The Tribunal considered that the excess meal expenses were deductible under subsection 51(1). In the Tribunal's view, as the claim was only for the excess above what eating at home would cost, and, as it was incurred in pursuing a course of study, other expenses of which were conceded to be incurred in producing the assessable income, the amount claimed was allowable under subsection 51(1).

10. It is recognised that in borderline cases there must be scope for exercise of individual judgment and discretion in deciding whether a claim is allowable. Individual opinions in such cases may differ. Nevertheless, some difficulty is felt in reconciling the Tribunal's decision in this particular case with principle and earlier decisions. No appeal was lodged because the amount at issue was small and it was not doubted that the Tribunal had in mind the correct legal principle.

11. In Case V78 88 ATC 548, the taxpayer, also a sales tax

officer, claimed a deduction of $5 per night (totalling $600) for the cost of meals eaten away from home while pursuing an approved tertiary course. The Commissioner's representative challenged the correctness of the decision in Case U212 (supra), but the Tribunal (Deputy President R.K. Todd) distinguished that case on the basis that, unlike the taxpayer in Case U212 (supra), the taxpayer here did not provide any evidence as to the cost of meals taken at home. The meals taken at home could conceivably cost $5 a night. It was held that, as it was not possible to apportion the cost, the expenditure on meals was private in nature and not deductible. With respect, it is considered that the expenditure was private in nature and not deductible, whether or not it was possible to apportion the cost.

12. A situation in which meal expenses may be allowed is illustrated by FC of T v Highfield 82 ATC 4463; 13 ATR 426. In that case, the taxpayer claimed a deduction pursuant to subsection 51(1), for travelling, accommodation and meal costs, and university course and examination costs, all associated with overseas study. It was held by the Supreme Court of NSW (Lee J.) that meal and accommodation costs were deductible under subsection 51(1) as part and parcel of a total claim for allowable overseas study expenses. No distinction was made between meals and accommodation costs and the other items involved in the total claim.

RULING

13. The Commissioner accepts that where expenditure on an overseas course of study is deductible under subsection 51(1), associated costs (including meals and accommodation) are not necessarily excluded as being outgoings of a private nature. The situation where a taxpayer travels overseas on a study tour is distinguishable from that where a student based at home studies part-time at a local university or college. However, it might be noted that this view is not universally accepted - see for example, the view of Mr J.R. Harrowell (Member, Board of Review No. 1) in Case N69 (on appeal, Highfield (supra)), 81 ATC 358 at 371; 25 CTBR (NS) Case 23 at 185, (paragraph 38). Applying the test adopted by the High Court in FC of T v Forsyth (1981) 148 CLR 203, and Handley v FC of T (1981) 148 CLR 182, the "essential character" of meal expenses is that they are of a private or domestic nature, so that technically they should not be subsumed as part of a total claim for self-education expenses.

14. The Tribunal's decision in Case U212 (supra) is not accepted as having general application. In the general run of cases, the better view is considered to be that meal expenses are of a private nature and therefore not deductible. It is considered that, almost invariably, the whole of the expenditure on meals by a part-time student at a local university or college will be of a private nature and non-deductible. It is not appropriate to apportion or segregate any part of such expenditure for inclusion in a claim for expenses of self-education. This view is consistent with Taxation Ruling No. IT 2412 which states that full-time students receiving AUSTUDY and Postgraduate Award Scheme allowances are not entitled to income tax deductions for the cost of food and accommodation. These deductions are also

denied to students whose assessable income includes payments under the Assistance for Isolated Children Scheme or under the Veterans' Children Education Scheme (Taxation Ruling No. IT 2458).

COMMISSIONER OF TAXATION
7 September 1989