IT 285 - Self-education expenses - application of recent court decisions

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TAXATION RULING NO. IT 285

SELF-EDUCATION EXPENSES - APPLICATION OF RECENT COURT DECISIONS

F.O.I. EMBARGO: May be released

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I 1070201	CONCESSIONAL REBATES	51(1)
	SELF-EDUCATION EXPENSES	82JAA
	COURSES OF STUDY	159U

OTHER RULINGS ON TOPIC: IT 271, IT 312

FACTS In two decisions in the Supreme Court of New South Wales, FC of T v Smith 78 ATC 4157; 8 ATR 518 and FC of T v Lacelles-Smith 78 ATC 4162; 8 ATR 524, Waddell J. accepted that expenditure incurred by two assessors in the Australian Taxation Office in pursuing courses of study undertaken by them as a prerequisite to entry into the assessing branch qualified for deduction under section 51. In one case, the claim for deduction was limited to the excess of the expenditure incurred over $400, which amount had been allowed as a deduction under section 82JAA as it then existed. The other case involved the cost of travelling necessary in the pursuit of the particular course of study.

2. As it has been decided not to seek leave to appeal to the Federal Court, the purpose of this ruling is to explain the implications of the decisions.

RULING 3. The circumstances in which expenditure on self-education incurred by employee taxpayers would qualify for deduction under section 51 were first outlined in CITCM 813 which issued in 1962. Generally, that circular memorandum, which had as its genesis the decision of the High Court in FC of T v Finn (1961) 106 CLR 60, limited the deduction for self-education expenses to persons already qualified or skilled in a particular profession. It was stated that, because it is an implied condition in the employment of a person engaged in a skilled occupation that he shall maintain his professional knowledge and skill, any expenditure so incurred by that person is prima facie deductible under section 51.

4. At the same time the CITCM went on to state that there was nothing in the decision in Finn's case which required modification of the administrative view that the cost of acquiring higher professional qualifications, for example, an academic degree, represented an outgoing of a capital or private nature expressly precluded from deduction by the very terms of

section 51. Indeed, paragraph 12 of the CITCM gave as an illustration of non-deductible education expenses:-

> "Educational courses undertaken to obtain a higher status in the profession or occupation, e.g. an academic degree, diploma or trade certificate, or to obtain knowledge or status as a qualification for advancement, e.g. a typist undertaking a course in shorthand to qualify for advancement to stenographer."

5. As a result of subsequent Taxation Board of Review decisions, the rulings in the CITCM required certain modifications. From the Board decisions there had emerged a principle that, if the facts establish that a course of study is undertaken for the purpose of maintaining or increasing a taxpayer's knowledge, or ability in his existing occupation or employment, expenditure incurred in connection therewith is deductible under section 51 on the authority of Finn's case irrespective of whether the course is a short refresher course or whether the attainment of higher academic qualifications such as a degree or diploma may be the result of the course of study.

6. Further Board of Review decisions amplified the above treatment of self-education expenses. As a result deductions under section 51 were not to be allowed for expenditure on self-education where the course of study would be likely to open up a new field of employment. Deductions were to be denied not only in cases where the studies would lead to a formal right to practise in a particular field, for example, law, accountancy, surveying, valuing, but also in any case where a first university degree or other tertiary qualification was likely to be obtained in due course. As a practical measure it was to be assumed that the obtaining of a first degree would inevitably open up new fields of employment.

7. On the other hand, it was recognised that the cost of study for a second degree or post-graduate studies leading to a higher degree would not necessarily be debarred from deduction. Provided that the course was undertaken for the purpose of maintaining or improving ability in an existing occupation, deductions might be allowed if, upon examination of the facts, it could be accepted that the course had not been undertaken to enable the taxpayer to enter into any new income earning occupation.

8. In practice this meant that it could be accepted that a post-graduate course had been undertaken for the purpose of promoting a taxpayer's efficiency in his employment if the course was directly relevant to his duties. Deductions would be allowable under section 51 so long as the course was not one that was likely, in the ordinary course of events, to open up a new field of earning activity either in the present employment or some new employment.

9. By way of illustration expenses incurred by public servants who attended part-time courses in automatic data processing would qualify for deduction under section 51. So

also would the expenses incurred by chartered accountants who undertook a management course which would lead ultimately to the degree of Master of Business Administration. Another example is the expenditure incurred by the graduate employee who does his masters degree. By way of contrast a doctor in general practice would not be entitled to a deduction under section 51 for expenditure incurred on a course of study which would enable him to practice in some particular field as a specialist.

10. The above principles have been and should continue to be applied in determining whether deductions under section 51 are allowable for second degrees or qualifications or post-graduate studies. Once the relevance of the further studies has been established, the only other question is whether the particular course was undertaken to enable the taxpayer to enter into a new income earning activity or occupation. It is not sufficient to say that the further studies might open up new income earning activities - that could be said of most, if not all, further studies. The question is whether the further studies were undertaken for that purpose and, in the final analysis, the answer to this question will depend upon an examination of all the circumstances including the taxpayer's motives in undertaking the further study.

11. Since July 1967 most of the disputes concerning self-education expenses have revolved around expenditure incurred in pursuing initial courses of study or in gaining initial qualifications. Since the decision of Menzies J. in FC of T v Hatchett; (1971) 125 CLR 494 it has not been open to argue that this sort of expenditure is of a capital nature.

12. Deduction for expenditure on initial courses of study has been denied on the ground that the particular expenditure was not incurred in gaining or producing the assessable income in the relevant sense. Generally speaking it has been argued for the Commissioner that self-education expenses have not been part and parcel of the particular duties of employment nor have they arisen as an inevitable incident of the employment. In the generality of cases, the expenditure was incurred as a pre-requisite to gaining the employment or in order to acquire a position from which greater income may be derived. On the authority of the decisions of the High Court in John Fairfax & Sons Pty Ltd v FC of T (1959) 101 CLR 30 and Lodge v F C of T (1972) 128 CLR 171, expenditure of this type does not qualify for deduction under section 51 because it does not have the necessary connection with the actual derivation of the assessable income. It is at a stage too remote from the earning of the income because the need for expenditure arose out of undertakings or decisions made in order to obtain the opportunity to derive the income.

13. In essence these were the arguments addressed to the Court in the assessors' cases. It is not necessary to recite in detail the facts of the two cases. The judgments delivered in those cases set out both the requirements for officers to be pursuing appropriate courses of study in order to be eligible for entry into the assessing area and the provisions in the

Public Service Act prohibiting advancement beyond certain levels in the absence of suitable qualifications.

14. Having satisfied himself of the relevance of the studies to the duties of the employment, Waddell J. found a real connection between the expenditure and the earning of the assessable income. To take the case of Smith, for example, his Honour found that the commencement of the course was reasonably calculated to lead to an increase in the assessable income in future years, that it had in fact led to the confirmation of his salary range by his appointment as Assessor, Grade 2, that his continuation with the course had, during the year of income, led to an increase in his salary because of his appointment as Acting Assessor, Grade 3, and that it was reasonably calculated to lead to future increases in assessable income.

15. The acceptance of the decisions amounts to a recognition of the fact that the arguments put forward for the Commissioner do not have any validity where the circumstances are comparable to those which existed in the two cases. Accordingly, his Honour's reasoning should be applied to other taxpayers who have undertaken courses of study because the particular employment requires it. Some examples of other taxpayers to whom the decisions should be applied are other assessors in the Australian Taxation Office, articled clerks in law firms, employees of accountancy firms who are required to undertake studies in accountancy, apprentices who are required to attend educational institutions as part of their training and Australian Government cadets.

16. Where the duties or conditions of the particular employment do not require the pursuit of study and the taxpayer voluntarily undertakes a course of study to improve his efficiency, to increase his chances of promotion or, even, to seek other income earning opportunities, claims for deduction for education expenses should continue to be disallowed.

17. It will be appreciated that, by virtue of the operation of section 82A, claims for deduction under section 51 will be limited to amounts in excess of $250. Where the facts support the allowance of a deduction for the cost of a course of study the cost will include, in addition to any fees paid, other relevant expenditure incidental to the course, for example, the cost of travelling to and from the college or university, text books, stationery, instruments and equipment.

COMMISSIONER OF TAXATION