TR 98/9 - Income tax: deductibility of self-education expenses

This cover sheet is provided for information only. It does not form part of *TR 98/9 - Income tax: deductibility of self-education expenses*

This document has changed over time. This is a consolidated version of the ruling which was published on *17 June 1998*

Taxation Ruling
Income tax: deductibility of self-education expenses

other Rulings on this topic

IT 2458; IT 2685; TD 92/142; TD 93/159; TR 92/8; TR 95/8 to TR 95/20 inclusive; TR 95/22; TR 98/6

contents para

What this Ruling is about 1
Date of effect 7
Previous Rulings 10
Ruling 12
Explanations 31
Alternative views 156
Note 160
Detailed contents list 161

Preamble

*The number, subject heading, and the **Date of effect** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

Class of person/arrangement

1. **Part A** of this Ruling sets out the circumstances in which self-education expenses are allowable as deductions to individuals under the *Income Tax Assessment Act 1936* (ITAA 1936) and 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, and vice versa.

3. This Ruling does not deal with the question of the deductibility of expenses associated with travel between a taxpayer's home, an educational institution and a place of work. Taxation Ruling TR 92/8 (paragraphs 11(d), 13(c), 43 and 44) addresses the relevant principles in terms of the deductibility of motor vehicle expenses. These paragraphs have been reproduced in the **Note** at the end of this Ruling (see paragraph 160).

4. The Ruling does not discuss the substantiation requirements in Divisions 28 and 900 of the ITAA 1997.

5. For the purposes of **Part A** 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, including sabbatical (whether within Australia or overseas).

6. **Part B** of this Ruling discusses the operation of section 82A of the ITAA 1936 which, in some circumstances, limits the amount of expenses of self-education otherwise allowable under section 8-1.

Date of effect

7. Subject to paragraphs 8 and 9 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 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).

8. Paragraph 18 of this Ruling states 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 July 1998.

9. 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 128 and 136 of this Ruling apply to all expenses of self-education incurred on or after 1 July 1998.

Previous Rulings

10. This Ruling is essentially an updated version of Taxation Ruling TR 92/8. It 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. The principles contained in paragraphs 11(d), 13(c), 43 and 44 of Taxation Ruling TR 92/8 relating to motor vehicle and travel expenses have not been dealt with in this Ruling. Consequently, TR 92/8, with the exception of paragraphs 11(d), 13(c), 43 and 44, is now withdrawn.

11. The principles contained in Taxation Rulings IT 313 and IT 2290 have been incorporated in this Ruling. These Rulings are now withdrawn. 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 are now withdrawn.

Ruling

PART A

Circumstances in which self-education expenses are allowable

Section 8-1 of the ITAA 1997

12. Self-education expenses are deductible under section 8-1 where they have a relevant connection to the taxpayer's current income-earning activities.

13. 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.

14. 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.

15. No deduction is allowable for self-education expenses if the study is 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.

16. In practice, the above principles do not always operate on a mutually exclusive basis. It is always necessary to have regard to the words of section 8-1 and apply them to the facts.

17. An expense is deductible under section 8-1 when it has the essential character of an income-producing expense. The essential character is to be determined by an objective analysis of all the surrounding circumstances. There are circumstances where apportionment under section 8-1 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.

Commonwealth educational assistance schemes

18. We consider that self-education expenses are not deductible against 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 13 and 14 above are not satisfied. Expenses incurred in fulfilling the course requirements are correctly characterised as expenses incurred in undertaking study that might enable the student to obtain employment in a particular field. The expenses are not incidental and relevant to the educational assistance payments.

20. There may be cases where a payment under a Commonwealth education assistance scheme is exempt income. For example, AIC payments received after 1 July 1996 are exempt income. In these cases there is an additional reason for the deduction not being allowable: the income tax law does not allow a deduction for expenses incurred in earning exempt income.

21. 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 light of the facts in each case, generally, self-education expenses are not deductible where the scheme provides payments in the nature of assistance.

Depreciation

22. A deduction is allowable under section 42-15 of the ITAA 1997 for depreciation of items of plant or articles used 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 activity, depreciation of items used for self-education purposes is allowable.

For example, depreciation of technical instruments and equipment, computers, calculators, professional libraries, filing cabinets and desks is allowable, where the self-education satisfies the principles outlined in paragraphs 13 and 14.

Types of self-education expenses allowable

23. Subject to the general tests under section 8-1 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) airfares incurred on overseas study tours or sabbatical, on work-related conferences or seminars, or attending an educational institution. They are part of the necessary cost of participating in the tour, etc.;

(d) subject to paragraph 24(c) 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 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

24. The following expenses related to self-education are not allowable under section 8-1:

(a) a higher education contribution payment made under Chapter 4 of the *Higher Education Funding Act 1988* (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) expenditure on accommodation and meals where a taxpayer who has travelled to another location for self-education purposes has established a new home.

PART B

Section 82A

25. If self-education expenses are allowable under section 8-1 but also fall within the definition of 'expenses of self-education' in section 82A, the section operates to limit the amount of expenses otherwise allowable under section 8-1.

Expenses of self-education

26. 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

27. 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.

28. 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.

Operation of section 82A

29. Where section 82A applies, the total allowable deduction under section 8-1 cannot be greater than the amount by which 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 section 8-1. In performing this calculation, it is not necessary that the expenses of self-education be deductible (provided they are 'necessarily incurred' in connection with a prescribed course of education). Expenses that are deductible under provisions other than section 8-1 are also taken into account in the section 82A calculation.

30. However, having established the maximum amount (i.e., the net amount of self-education expenses over $250), any expenses that meet the requirements of section 8-1 may be claimed in full up to the maximum amount. The operation of section 82A is illustrated in the **Examples** at paragraphs 145-150 and 151-155 of this Ruling.

Explanations

PART A

General principles of deductibility under section 8-1

31. Expenditure on self-education falls for consideration under section 8-1. 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 section 8-1. The first positive limb applies to all taxpayers, including those taxpayers carrying on business.

32. To be allowable under the first positive limb of section 8-1, 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, section 8-1 provides as follows:

> '**8-1(1)** You can **deduct** from your assessable income any loss or outgoing to the extent that:
>
> (a) it is incurred in gaining or producing your assessable income ... '.

33. 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).

34. 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.

35. The many cases dealing with expenses of self-education and section 8-1 are no more than examples of the application of these general principles to the facts of those cases. These cases provide an indication of the facts relevant in the self-education area in determining the characterisation issue.

36. 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*) have 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 section 8-1. In doing so, they probably applied tests for deductibility that were stricter than necessary. However, the courts are having more regard to the words of the relevant provisions, in later decisions such as *FC of T v. Studdert* 91 ATC 5006; (1991) 22 ATR 762.

Self-education - principles of deductibility under section 8-1

(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

37. 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 section 8-1. 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 ...'.

38. 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.'

39. 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.

40. 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 5006 at 5015-5016; (1991) 22 ATR 762 at 772).

41. **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.

42. 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.

43. **Example:** Brianna, a company director, was having difficulty coping with work due to stress brought about by difficulties with her family situation. She decided to attend a four-week course in stress management 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 related to a private matter.

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

44. 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).

45. 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).

46. **Example:** Kieran, a computer salesman, takes six months leave without pay to undertake a business administration course. He has an

agreement with his employer 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

47. 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 is designed to get employment, to obtain new employment or to open up a new income-earning activity

48. 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 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.

49. 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.

50. 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.

51. In the course of his judgement, Cooper J considered the decision in *Kropp* where an accountant resigned from his employment with an Australian accounting firm to take up a two-year development appointment with an associated firm in Canada. 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*.

52. 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.

53. **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.

54. 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.

55. **Example:** Stuart wants to be the manager of an 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.

56. A deduction is not allowable because the study 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.

57. **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 the study is designed to get future employment in the field. It is incurred at a point too soon.

58. 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.

59. **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.

60. 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 58. 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.

61. 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 section 8-1.

62. **Example:** Desiree is a general medical practitioner in partnership with two other general practitioners in a large regional town. She undertakes 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

63. An expense is deductible under section 8-1 when the essential character is that of an income producing expense. The essential character is to be determined by an objective analysis of all the surrounding circumstances (see *Fletcher & Ors* (199) 173 CLR 1 at 17; 91 ATC 4950 at 4957 and 4958; (1991) 22 ATR 613 at 622).

64. If the 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.

65. 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 section 8-1. 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.

66. 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 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, it would be appropriate to apportion the expenses equally between the purposes.

67. **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.

68. 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.

69. **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.

70. **Example:** Francesco, a paediatrician, has 2 equal purposes when he decides to attend a five-day international conference on paediatrics in Singapore to be followed by a seven-day holiday in Thailand. 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). Francesco paid another $2,000 for accommodation, meals and car hire for the 7 day holiday in Thailand. Francesco is allowed a deduction of $1,500 for the conference cost and the accommodation and meals expenses at the conference. Only half of the return air fare ($500) is allowed as the expense was incurred for two equal purposes, one income-earning and the other private. The other expenditure of $2,000 relating to the holiday in Thailand is private in nature and not allowable as a deduction.

Commonwealth educational assistance schemes

AUSTUDY scheme

71. 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. (It is proposed that, as from 1 July 1998, AUSTUDY will be replaced by the Youth Allowance for under 25 year olds and an austudy payment for over 25 year olds. The principles discussed below in relation to AUSTUDY have equal application to these new payments). 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.

72. 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 undertake the course of study. Consequently, the essential character of these expenses is linked to that study. AUSTUDY is in the nature of

assistance and the essential nature of the expense relates to the study, not the assistance which may be available as an incident of the study.

73. A course of study undertaken by a recipient of AUSTUDY income would not fall within the principles discussed in paragraphs 37 to 46. Consequently, the necessary connection does not exist.

74. 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 is designed to enable the student to obtain employment in a particular field. As discussed in paragraph 48, 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

75. 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.

76. The view we have expressed concerning the deductibility of self-education expenses to recipients of AUSTUDY, ABSTUDY, AIC and VCES payments represents a change in the view previously expressed in paragraphs 19 and 20 of Taxation Ruling IT 2458 (these two paragraphs only, are now withdrawn) and in Taxation Ruling TR 92/8 (now withdrawn except for paragraphs 11(d), 13(c), 43 and 44). We believe our previous view was based on an incorrect interpretation of the law.

Other educational assistance payments

77. 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 self-education expenses are not deductible where the scheme provides for payments in the nature of assistance.

Depreciation

78. A deduction is allowable under 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.

79. 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.

80. 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.

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

82. Any item of plant or articles bought on or after 1 July 1991 can be depreciated at a rate of 100% under 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. However, the item may be depreciated at a rate less than 100% if the taxpayer elects (section 42-120 of the ITAA 1997). A guide as to acceptable depreciation rates is set out in Taxation Ruling IT 2685.

83. 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

84. The following paragraphs discuss the types of self-education expenditure that are considered to be allowable under section 8-1.

Course or tuition fees

85. Course or tuition fees incurred in attending an educational institution or attending work-related conferences or seminars, including student union fees, are allowable under section 8-1. However, under 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

86. Expenditure on professional and trade journals is allowable under section 8-1. Expenditure on items of stationery, such as pens, pencils and photocopying, is also allowable.

87. 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 section 8-1. 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 section 42-15 of the ITAA 1997. An immediate deduction may be available under the depreciation provisions (refer to paragraph 82).

Accommodation and meals (as part of a travel expense)

88. 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).

89. Where a taxpayer is away from home overnight in connection with a self-education activity, accommodation and meals expenses incurred are deductible under section 8-1. (Examples include an overseas study tour or sabbatical, 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 home on income-producing activities.

90. However, we believe that comments by Hill J in the *Roads and Traffic Authority of NSW* support our view that there may be exceptions to the general rule outlined in the previous paragraph. The case raised issues concerning the application of fringe benefits tax where workers required to camp at the work site, were paid a camping allowance. It was necessary for his Honour to consider whether expenditure on meals in the circumstances would have been deductible under section 8-1. In considering the question he stated (93 ATC at 4523; 26 ATD at 94 and 95) that:

> 'An employee who had no private home and was employed indefinitely to work at a particular site and did in fact work for the whole of his employment at that site, might be said to have chosen to live at the site so that the cost of his accommodation there would be private.'

91. In our opinion, the same principle applies when a taxpayer establishes a new home. In these circumstances, expenditure on meals and accommodation is private or domestic in nature and therefore not allowable under section 8-1.

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 at the previous location 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; and

- the frequency and duration of return trips to the previous location.

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. 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:** James, a university lecturer**,** 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.

102. 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.

103. The facts in *Case V15* 88 ATC 177; *AAT Case 4075* (1988) 19 ATR 3147 are similar to this example. In that case, the Commissioner argued that the taxpayer had established a new residence in the USA. While the AAT held that, on balance, the taxpayer had not established a new residence, the tribunal found the Commissioner's argument could not easily be dismissed. The AAT considered that in the particular circumstances it was more appropriate to regard the apartment as a place temporarily occupied by the couple in order that the taxpayer might perform the duties of his employment.

104. **Example 5:** 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.

105. 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.

106. A similar factual situation occurred in *Case S80* 85 ATC 589; 28 CTBR (NS) *Case 88*. While the case concerned the question of the appropriate apportionment of a rental expense, preliminary 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 section 8-1. 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.'

107. 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.

108. **Example 6:** 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.

109. 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*

110. 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.

Airfares

111. Airfares incurred on overseas study tours or sabbatical, on work related conferences or seminars or attending an educational institution are deductible under section 8-1. They are part of the necessary cost of participating in the tour or attending the conference or seminar or the educational institution.

Interest expenses

112. Interest incurred by a taxpayer on moneys borrowed to pay for self-education expenses is allowable under section 8-1 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.

113. 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.

114. **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.

115. 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.

116. **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.

117. **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.

118. 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.

PART B

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

119. The amount of self-education expenses allowable under section 8-1 must not be greater than the excess of the net amount of 'expenses of self-education' over $250.

120. 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.

121. 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 was 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.

122. 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'

123. 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 section 8-1. He considered the ordinary meaning of the word 'necessarily' 'imports at least some element of need (for the expense in question)'.

124. 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 merely serve a useful purpose.

125. We discuss below our view of the extent to which particular common expenses, other than those mentioned in the previous paragraph, are regarded as 'necessarily incurred by the taxpayer for or in connection with 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'. This would include the cost of travel associated with using child minding facilities.

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'.

Expenses not 'necessarily incurred'

126. *Meals:* the cost of meals purchased while travelling to and from or attending an educational institution when not sleeping away from home 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

127. 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'

128. 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 (now withdrawn), which adopted a narrower interpretation by stating that a sporting activity is not 'education' in the generally accepted meaning of the term.

129. 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, short-term staff development courses, seminars or workshops. 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 section 8-1 provided they meet the requirements of the provision.

130. **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.

131. 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.

132. **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. The course places particular emphasis on professional skills such as confidence, leadership

qualities, communication and problem solving techniques needed in the employment environment.

133. 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 section 8-1 nor section 82A would have applied.

'Other place of education'

134. 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.

135. In *Case S95* 85 ATC 688; 29 CTBR (NS) *Case 2*, the No 1 Board held that a correspondence course provided by a correspondence school 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. In deciding the matter, the Board took the view that the words 'other place of education' should not be limited as having a similar meaning as the words 'school, college or university'. The provider was an organisation established with the dominant function of training and educating people in various skills and areas of knowledge.

136. 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.

Operation of section 82A

137. Section 82A operates to limit the amount of expenses of self-education otherwise allowable under section 8-1. Section 82A

provides that a deduction for self-education expenses under section 8-1 is not to be greater than the amount by which the net amount of expenses of self-education exceeds $250. In more simple terms, section 82A requires a mathematical calculation to determine if claims for allowable deductions under section 8-1 need to be reduced (the maximum reduction would be $250).

138. 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 section 8-1 or another deduction provision.

139. If all 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 section 8-1.

140. 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 section 8-1. 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 section 8-1 were to be reduced by $250.

141. However, we now consider that this practice is not appropriate and is based on an incorrect interpretation of the words 'expenses of self-education' in section 82A. The correct interpretation of the words 'expenses of self-education' is considered to include expenses that are not allowable deductions under section 8-1. 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 **Examples** at paragraphs 145-150 and 151-155.

142. Expenses related to self-education that are deductible under provisions other than section 8-1 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 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 section 8-1, 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.

143. Expenses of self-education that are not deductible under any provision are taken into account in the section 82A calculation. For example, a taxpayer may undertake travel that is not deductible, but still qualifies 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 sections 28-25 to 28-35 of the ITAA 1997.

144. The capital cost of items such as computers is another example of a non-deductible expense which may qualify for the purposes of section 82A. Where this expense, the capital cost, is taken into account for the purpose of section 82A it has no effect on a claim for depreciation.

145. **Example:** Con, who is employed as a civil engineer, is completing part-time university studies to obtain post-graduate qualifications in engineering. 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

146. As depreciation is not in the nature of an actual 'expense' (it is not an outgoing), it does not fall within the definition of 'expenses of self-education' in section 82A. Therefore, depreciation is not taken into account in the section 82A calculation. Consequently, 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

147. Because of the operation of section 82A, the limit up to which a deduction may be allowable under section 8-1 is $800 (i.e., net amount of $1,050 less $250). Computer repairs, car expenses using the cents per kilometre method and child minding fees are not allowable under section 8-1. A deduction of $350 is allowable under section 8-1 (i.e., university fees $200, bus fares $50 and stationery $100).

148. Car expenses using the cents per kilometre method may be allowable under sections 28-25 to 28-35 of the ITAA 1997, while repairs and depreciation may be deductible under section 25-10 and 42-15 of the ITAA 1997. The cost of child minding fees is not deductible under any provision.

149. The following amounts will be allowable:

University fees	$200
Bus fares	$50
Stationery	$100
Depreciation	$200
Repairs	$100
Car expenses	$100
	$750

150. In other words, because Con had expenses that were either not deductible (child minding fees of $500) or deductible under a provision other than section 8-1 (repairs of $100, car expenses of $100) which exceeded $250, his claims under section 8-1 did not have to be reduced.

151. **Example:** Assume that Con in the above example incurred the following expenses during the year of income:

Books, stationery and tuition fees	$500
Computer	$2,200
Total expenses	$2,700

152. Con is also entitled to claim a deduction of $400 for depreciation on the computer. Depreciation is not an expense and does not form part of the section 82A calculation.

153. Because of the operation of section 82A, the limit up to which a deduction may be allowable under section 8-1 is $2,450 (i.e., net amount of $2,700 less $250). As the cost of books, stationery and tuition fees allowable under section 8-1 is $500, a deduction of $500 is allowable.

154. In other words, because Con had expenses that were not deductible under section 8-1 (the capital cost of the computer of $2,200) which exceeded $250, his section 8-1 claim did not have to be reduced.

155. In total, Con can claim $500 for the cost of books, stationery and tuition fees and $400 for depreciation. He cannot claim a deduction for the capital cost of his computer.

Alternative views

AUSTUDY scheme

156. 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.

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

158. *Case N94* 81 ATC 507; 25 CTBR (NS) *Case 48* supports our view. 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.'

159. It has been argued that there is a sufficient connection between the self-education expenses and the receipt of AUSTUDY income where a taxpayer's purpose in undertaking the course of study is to receive the AUSTUDY payment. However, we regard the essential character of the expenditure as derived from the objective pursuit of formal study rather than gaining AUSTUDY income.

Note

160. Paragraphs 11(d), 13(c), 43 and 44 of Taxation Ruling TR 92/8 are reproduced below for your convenience.

Ruling

Types of self-education expenses allowable

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

...

(d) Subject to paragraph 13(c), motor vehicle expenses 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.

Types of self education expenses not allowable

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

...

(c) Motor vehicle expenses and fares between a taxpayer's home and an educational institution where the taxpayer carries out income-earning activities at the institution. 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 journeys between the institution and the place of work are allowable.

Explanations

Motor vehicle expenses

43. Motor vehicle expenses between a taxpayer's home and an educational institution and return and between his or her place of work and the educational institution and return are allowable, as being part of the incidental costs of the course of study. 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 v. FC of T; Hayley v. FC of T* (1958) 100 CLR 478 at 501; 11 ATD 404 at 414, held that the essential character of these types of expenditure is of a private nature.

44. We consider that the decision of the AAT in *Case U45* 87 ATC 320 does not require any departure from the views expressed in the previous paragraph. 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.

Detailed contents list

161. Below is a detailed contents list for this Ruling:

	paragraph
What this Ruling is about	**1**
Class of person/arrangement	1
Date of effect	**7**
Previous Rulings	**10**
Ruling	**12**

PART A **12**
Circumstances in which self-education expenses are allowable 12
Section 8-1 of the ITAA 1997 *12*
Commonwealth educational assistance schemes 18
Depreciation 22
Types of self-education expenses allowable 23
Types of self-education expenses not allowable 24
PART B **25**
Section 82A 25
Expenses of self-education *26*
Prescribed course of education *27*
Operation of section 82A *29*
Explanations **31**
PART A **31**
General principles of deductibility under section 8-1 31
Self-education - principles of deductibility under section 8-1 37
(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 *37*
(b) A deduction is allowable for self-education expenses if the subject of self-education leads to, or is likely to lead to, an increase in the taxpayer's income from his current income-earning activities *44*
(c) Expenses related to improving knowledge or skills are not of a capital nature *47*
(d) A deduction is not allowable for self-education expenses if the subject of self-education is designed to get employment, to obtain new employment or to open up a new income-earning activity *48*
(e) The intention or purpose in incurring the expense may be an element in determining whether the expense is allowable *63*
Commonwealth educational assistance schemes 71
AUSTUDY scheme *71*

ABSTUDY, AIC and VCES schemes *75*
Other educational assistance payments *77*
Depreciation 78
Types of self-education expenses allowable 84
Course or tuition fees *85*
Books, journals and stationery *86*
Accommodation and meals (as part of a travel expense) *88*
When is a new home established? *93*
*Meals and accommodation when **not** sleeping away from home* *110*
Airfares *111*
Interest expenses *112*
PART B **119**
Section 82A - limits to the deductibility of self-education expenses 119
Expressions used in section 82A *123*
Expenses 'necessarily incurred' *123*
Expenses not 'necessarily incurred' *126*
Prescribed course of education *127*
'Course of education' *128*
'Other place of education' *134*
Operation of section 82A *137*
Alternative views **156**
AUSTUDY scheme 156
Note **160**
Detailed contents list **161**

Commissioner of Taxation

17 June 1998

ISSN 1039 - 0731

ATO references
NO 98/6008-8
97/9500-6
97/2396-0
97/33-1
96/11680-2
96/11679-9
BO

Previously released in draft form as TR 97/D20

Price $3.70

FOI index detail
reference number
I 1017580

subject references
- accommodation expenses
- AUSTUDY
- child care expenses
- deductible expenses
- depreciation
- fares
- interest expenses
- meals
- motor vehicle expenses
- prescribed course of education
- repairs
- self-education expenses
- transport expenses
- travel expenses

legislative references
- ITAA97 8-1
- ITAA97 25-10
- ITAA97 26-20
- ITAA97 28-25
- ITAA97 28-35
- ITAA97 28-60
- ITAA97 42-15
- ITAA97 42-120
- ITAA97 42-125
- ITAA97 42-130
- ITAA97 Div 28
- ITAA97 Div 900
- ITAA36 51(1)
- ITAA36 82A
- ITAA36 82A(2)
- ITAA36 82J
- ITAA36 82J(6)
- ITAA36 170
- Student and Youth Assistance Act 1973
- Higher Education Funding Act 1988

case references
- Barry v. Hughes [1973] 1 All ER 537
- Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344; (1956) 11 ATD 147; (1956) 6 AITR 379
- FC of T v. Cooper 91 ATC 4396; (1991) 21 ATR 1616
- FC of T v. Finn (1961) 106 CLR 60; (1961) 12 ATD 348
- FC of T v. Hatchett (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557
- FC of T v. Highfield 82 ATC 4463; (1982) 13 ATR 426
- FC of T v. Klan 85 ATC 4060; (1985) 16 ATR 176
- FC of T v. Kropp 76 ATC 4406; (1976) 6 ATR 655
- FC of T v. Lacelles-Smith 78 ATC 4162; (1978) 8 ATR 524
- FC of T v. Maddalena 71 ATC 4161; (1971) 2 ATR 541
- FC of T v. M I Roberts 92 ATC 4787; (1992) 24 ATR 479
- FC of T v. Smith 78 ATC 4157; (1978) 8 ATR 518
- FC of T v. Studdert 91 ATC 5006; (1991) 22 ATR 762
- FC of T v. White 75 ATC 4018; (1975) 5 ATR 192
- Fletcher & Ors v. FC of T (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613
- Lunney v. FC of T; Hayley v. FC of T (1958) 100 CLR 478; (1958) 11 ATD 404
- Pearce v. FC of T 79 ATC 4195
- Re Studdert and FC of T 91 ATC 2007; AAT Case 6600 (1991) 22 ATR 3042
- Roads and Traffic Authority of NSW v. FC of T 93 ATC 4508; (1993) 26 ATR 76
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47; (1949) 8 ATD 431
- Case E34 5 TBRD (NS) 205; 4 CTBR (NS) Case 99
- Case G65 75 ATC 474; 20 CTBR (NS) Case 36
- Case M11 80 ATC 78; 23 CTBR (NS) Case 97

- 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
- Case N94 81 ATC 507; 25 CTBR (NS) Case 48
- Case R62 84 ATC 454; 27 CTBR (NS) Case 113
- Case S80 85 ATC 589; 28 CTBR (NS) Case 88
- Case S95 85 ATC 688; 29 CTBR (NS) Case 2
- Case V15 88 ATC 177; AAT Case 4075 (1988) 19 ATR 3147
- Case Z1 92 ATC 101; AAT Case 7541 (1991) 22 ATR 3549
- Case Z42 92 ATC 381; AAT Case 8419 (1992) 24 ATR 1183
- NT 85/16096-98 (unreported)