IT 2290 - Income tax: deductibility of expenditure on self-education - employee's expenses on refresher courses

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TAXATION RULING NO. IT 2290

INCOME TAX : DEDUCTIBILITY OF EXPENDITURE ON SELF-EDUCATION - EMPLOYEE'S EXPENSES ON REFRESHER COURSES

OTHER RULINGS ON TOPIC : IT 271, IT 285, IT 312, IT 313

F.O.I. EMBARGO: May be released

REF H.O. REF: J 35/1051 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1078050	SELF-EDUCATION EXPENSES REFRESHER COURSE	51(1) 82A 159U

PREAMBLE In 86 ATC 169, Case T10, 29 CTBR(NS) 112, Case 14, Taxation Board of Review No.2 held that the taxpayer was not entitled to a deduction under sub-section 51(1) of the Income Tax Assessment Act ("the Act") for expenses incurred in travelling overseas to attend two refresher courses.

FACTS 2. The taxpayer, who had owned and operated her own pharmacy business for many years but had sold it about 10 years previously, worked part-time as a locum pharmacist in the years ended 30 June 1982 and 1983. In the first income year she attended the Sixth Annual Pharmacy Refresher Course organised by the Pharmaceutical Society of Australia and held in Japan. She departed Australia on 22 May 1982 and returned almost 3 weeks later on 9 June 1982. The costs of attending the refresher course, principally comprising air fares and accommodation, were $2,942. In the following income year she attended the Pharmaceutical Society's Seventh Annual Pharmacy Refresher Course in Malaysia. She departed on 1 June 1983 and returned on 11 June 1983, incurring costs relating to the course of $2,109. The taxpayer participated in the refresher courses in her own time and at her own expense.

3. In reaching its decision the Board had regard to the High Court decisions in FCT v. Finn (1961) 106 CLR 60 and F.C. of T. v. Hatchett (1971) 125 CLR 494 and an analysis of those decisions by the Supreme Court of New South Wales (Helsham J.) in FCT v. White 75 ATC 4018 at p.4022 (5 ATR 192 at pp.197-198). In the Board's view it could not be said that the courses of study, though associated with her employment as a locum, were part and parcel of the employment i.e. the expenditure was not incurred in the process of carrying out the employee's duties. The Board was influenced by the fact that the taxpayer attended the courses in her own time and at her own expense and by the fact that during the times she was out of

Australia she was, on the particular basis she worked, unemployed. The Board felt that it could not be said that the courses of study had a direct effect on her income. The taxpayer was paid according to an award and that remained undisturbed by any considerations whether the recipient had incurred expenses in order to update her knowledge. The Board concluded that the expenses were not deductible under sub-section 51(1) of the Act.

EFFECT OF LEGISLATIVE AMENDMENTS

4. Prior to the income year commencing 1 July 1985 "expenses of self-education" were taken into account under section 159U of the Act in calculating a taxpayer's concessional expenditure rebate in terms of section 159N. The maximum amount qualifying for the rebate was limited by section 82A to $250. Where the self-education expenses exceeded $250, the excess was deductible under sub-section 51(1) where it could be said to have been incurred in gaining or producing the taxpayer's assessable income. Expenditure on a taxpayer's own education which did not come under section 159U as "expenses of self-education" was able to be deducted wholly, in appropriate circumstances, under sub-section 51(1).

5. Since the repeal of section 159U by Act No. 123 of 1985, applicable to assessments for the year ended 30 June 1986 and subsequent income years, the amount of expenditure on a taxpayer's own education that may be allowed under sub-section 51(1) still depends on the operation of section 82A. Where the expenditure deductible under sub-section 51(1) comes within the scope of the definition of "expenses of self-education" in sub-section 82A(2) and it exceeds $250 the amount allowable as a deduction under sub-section 51(1) is, broadly speaking, the excess of the self-education expenses over $250. Where, however, the expenditure does not come within the definition of "expenses of self-education" in sub-section 82A(2) it may, in appropriate cases, be wholly deducted under sub-section 51(1).

6. To come within the definition of "expenses of self-education", the expenditure must be incurred by the taxpayer for or in connection with a "prescribed course of education". This latter term is defined in sub-section 82A(2) to mean "a course of education provided 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".

RULING

7. Short-term refresher courses, such as that involved in Case T10; Case 14 are not considered to satisfy the definition of "prescribed course of education". Such courses are more akin to on-the-job training, inservice activities of a teacher or short-term staff development training courses than to a course of education undertaken 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. Costs of short-term refresher courses by taxpayer employees are therefore not regarded as "expenses of self-education" in the sense required in sub-section

82A(2).

8. In appropriate cases the costs of short-term refresher courses may be allowed as deductions under sub-section 51(1) in full. Whether sub-section 51(1) applies will, of course, need to be determined in the light of the facts of each case. Reference should be made in this regard to the principles outlined in Canberra Income Tax Circular Memorandum No. 713 and Taxation Rulings Nos. IT 271 and IT 285.

COMMISSIONER OF TAXATION
7 May 1986

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