




TA 2011/3 - Arrangements involving holiday travel claimed as a work related, investment or self-education expense

 This cover sheet is provided for information only. It does not form part of *TA 2011/3 - Arrangements involving holiday travel claimed as a work related, investment or self-education expense*

 The ATO view on this arrangement is set out in Taxation Ruling TR 98/9

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Taxpayer Alert

TA 2011/3

FOI status: May be released

TITLE: Arrangements involving holiday travel claimed as a work related, investment or self-education expense

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk tax planning issues or arrangements that the Australian Taxation Office (ATO) has under risk assessment, or where there are recurrences of arrangements that have been previously risk assessed.

Taxpayer Alerts provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform tax officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO. In these latter cases, the Taxpayer Alert will be withdrawn and a notification published which will be referenced to that Taxpayer Alert.

Taxpayer Alerts give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and highlight the features which are of concern to the ATO. These issues will generally require more detailed analysis to provide the ATO view to taxpayers.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a private ruling (noting that the Taxation Administration Act 1953 sets out circumstances where the Commissioner may decline to issue such a ruling). Such taxpayers might also contact the tax officer named in the Taxpayer Alert and/or obtain their own advice.

This Taxpayer Alert is issued under the authority of the Commissioner.

Overview

This Taxpayer Alert describes arrangements where a taxpayer claims a deduction for expenses incurred in relation to various educational courses and seminars where the expenses have insufficient connection with the taxpayer's current income-earning activities and are private or domestic in nature. These expenses include the costs for domestic or overseas travel on a holiday activity or to a holiday destination.

Context for the arrangement

Self-education expenses and work related travel expenses are deductible under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) where they have a relevant or sufficient connection to the taxpayer's income-earning activities.

Where an activity is undertaken both for income-earning purposes and for private purposes, it is necessary to apportion the expenses between the purposes.

Expenses allowable under section 8-1 of the ITAA 1997 may also fall within the definition of 'expenses of self-education' in section 82A of the *Income Tax Assessment Act 1936* (ITAA 1936). Section 82A of the ITAA 1936 limits the amount of expenses otherwise allowable under section 8-1 of the ITAA 1997 to amounts over the \$250 threshold.

Description

The alert applies to arrangements with features substantially equivalent to the following:

1. An Australian resident taxpayer (the 'taxpayer') undertakes domestic or overseas travel and as part of the travel participates in an educational course, seminar or conference ('educational activities') arranged by an organiser (the 'organiser').
2. The educational activities may include, but are not limited to, the taxpayer:
 - a.) Purchasing a self-study training program (for example CD, DVD and/or written publications) which may be undertaken at a holiday destination of the taxpayer's choice;
 - b.) Undertaking a self-study training program and/or attending a seminar on board a cruise ship; or
 - c.) Undertaking an educational activity such as a wealth creation seminar whilst travelling.
3. The promotional materials of the organiser may include one or more of the following features to encourage the claiming of deductions:
 - a.) the self-study training program can be undertaken at a location and time of the taxpayer's choice;
 - b.) the program can be undertaken individually or in a group;
 - c.) there is a minimum requirement of self-study per day over the course of the program;
 - d.) a period of time is available to spend at the taxpayer's own leisure;
 - e.) in some instances, no agenda is published for a seminar and the content of presentations is tailored to the audience's familiarity of the topics;
 - f.) taxpayers may also be required to conduct an exam at the end of the course and/or complete a feedback form to acknowledge completion; or
 - g.) taxpayers are required to record time spent in a diary, so that 100% of the educational fees and associated travel/accommodation can be claimed as a deduction.

4. In some instances, the educational activity may be targeted towards members of a particular profession, occupation or field of employment.
5. The organiser may allege that they have received endorsement from the ATO supporting the ability to claim deductions for the costs incurred in participating in an educational activity under these types of arrangements.
6. The taxpayer does not objectively apportion their expenses to the extent they are not connected to their income-earning activities and are private or domestic in nature. This may result in the taxpayer claiming as a deduction the full amount of their education/conference expenses and associated travel costs.

Features which concern us

The ATO considers that arrangements of this type give rise to the following issues relevant to taxation laws, being whether:

- (a) the expenses incurred by the taxpayer are deductible under section 8-1 of ITAA 1997, and the extent to which they are deductible;
- (b) any part of the self-education expenses are limited by section 82A of ITAA 1936; and
- (c) any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to the *Tax Administration Act 1953*.

The ATO is currently reviewing these arrangements.

The ATO view regarding deductibility of self-education expenses is contained in [Taxation Ruling TR 98/9](#).

Note 1: *You may have already sought advice from the ATO in respect of your arrangement by way of a private ruling or class ruling. If you have received a private ruling or class ruling in respect of your arrangement, you can rely on that ruling. A private or class ruling is legally binding on the Commissioner who will be bound to act in the way set out in the ruling, even if the ruling is later found to be incorrect. However, a private ruling only applies to a particular entity identified and the particular scheme described in the ruling. Similarly, a class ruling only applies to a specified class of entities and the particular scheme described in the ruling. If there is a material difference between the scheme described in the ruling, and the scheme that was actually implemented, the ruling will not be legally binding on the Commissioner. Also, other entities cannot rely on a private ruling issued in respect of a different entity.*

Note 2: *Base penalties of up to 75% of the tax avoided can apply where you make a false and misleading statement to the Commissioner. Reductions in base penalty will be available if the taxpayer makes a voluntary disclosure to the ATO. If you have any information about the current arrangement, phone us on **1800 177 006**.*

*Tax agents wanting to provide information about people or companies who may be promoting arrangements covered by this alert should also call **1800 177 006**.*

- Note 3:** *Penalties of up to 5,000 penalty units for individuals, 25,000 penalty units for bodies corporate or up to twice the amount of consideration received or receivable may apply to promoters of tax exploitation schemes under Division 290 of Schedule 1 to the Taxation Administration Act 1953. The Commissioner can also apply to the Federal Court of Australia for restraining and performance injunctions against promoters where prohibited conduct has occurred, is occurring or is proposed.*
- Note 4:** *A registered tax agent may have their registration cancelled or suspended by the Tax Practitioners Board under the Tax Agent Services Act 2009 for breach of a condition of registration including being penalised for being a promoter of a tax exploitation scheme.*
- Note 5:** *The Commissioner may amend an assessment at any time where he is of the opinion there has been fraud or evasion. See Law Administration Practice Statement PSLA 2008/6.*

References

Subject references:

- self-education expenses
- work related expenses
- income-earning

Legislative references:

Income Tax Assessment Act 1936

- [Section 82A](#)

Income Tax Assessment Act 1997

- [Section 8-1](#)

Taxation Administration Act 1953

- [Division 290](#)

Related Practice Statements:

- [PS LA 2008/15 - Taxpayer Alerts](#)

Rulings

- [TR 98/9](#)

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