TR 92/8 - Income tax: deductibility of self education expenses

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Taxation Ruling
Income tax: deductibility of self education expenses

This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the ***Taxation Administration Act 1953****, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

contents para
Refer to page 16 **60**

What this Ruling is about

1. This Ruling consolidates our policy on the circumstances in which self education expenses are allowable as deductions under subsections 51(1) and 54(1) of the *Income Tax Assessment Act 1936* to those who derive employment, business and AUSTUDY income. In doing so, the Ruling discusses the types of expenditure which are considered to be allowable.

2. While employment-related expenses and car and travel expenses of all taxpayers need to be substantiated by documentary evidence to be allowable under subsections 51(1) and 54(1), this Ruling does not discuss the substantiation requirements in Subdivision F of Division 3 of Part III in relation to self education expenses.

3. This Ruling also does not discuss when a taxpayer is not entitled to a deduction under section 51 for the first $250 expended because the expenses are 'expenses of self education' within the meaning of section 82A.

4. In this Ruling, for the purposes of subsections 51(1) and 54(1), 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 (whether within Australia or overseas).

Ruling

(a) Circumstances in which self education expenses are allowable

5. If the subject of self education is directly relevant to the activities by which a taxpayer currently derives his or her assessable income, the expenses associated with the study are allowable as a deduction under subsections 51(1) and 54(1). This particularly applies

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.

6. 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, then the self education expenses are allowable as a deduction.

7. With the exception of depreciation allowable under subsection 54(1), self education expenses are not of a capital nature. However, no deduction is allowable for self education expenses, 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 (whether in business or in the taxpayer's present 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.

8. The intention or purpose of a taxpayer in incurring the self education expenses can be an element in determining whether the expenses can be characterised as allowable under subsection 51(1). In particular, if a study tour or attendance at a work-related conference or seminar is undertaken equally for income earning purposes and equally for private purposes, it is appropriate to equally apportion the related expenses between the purposes. If the income-earning purpose is merely incidental to the main private purpose, only the expenses which directly relate to the former purpose are allowable. However, if the private purpose is merely incidental to the main income-earning purpose, apportionment is not appropriate.

9. When determining whether any self education expenses can be characterised as having been incurred in gaining or producing assessable income, it is, at the least, a relevant matter to consider whether a non income-producing purpose was the dominant purpose for the incurring of the expenses. To the extent that comments of the Federal Court of Australia (Hill J) in *FC of T v. Studdert* 91 ATC 5006 at 5011-2; (1991) 22 ATR 762 at 767-8 might be interpreted as suggesting otherwise, we believe that this view is inconsistent with the decision of the High Court of Australia in *Fletcher & Ors v. FC of T* 91 ATC 4950; (1991) 22 ATR 613.

10. We consider that suggested tests based on a 'perceived connection between expenditure and the gaining of assessable income', on a 'direct effect on income', on 'part and parcel of the employment' or on an 'express or implied condition of employment' are not substitutes for the tests for deductibility under subsection 51(1).

(b) 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 :

a) Course or tuition fees of attending an educational institution or of attending work-related conferences or seminars, including student union fees.

b) The cost of text books, of professional and trade journals, of technical instruments and equipment and of clerical activities (e.g. word-processing and photocopying).

c) Fares and accommodation and meals expenses incurred on overseas study tours, on work-related conferences or seminars attended away from a taxpayer's home base or on attending an educational institution away from the taxpayer's home base.

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.

e) Interest incurred on moneys borrowed to pay for the expenses covered by subparagraphs a)-d) and interest incurred on borrowed moneys used to purchase items of plant or articles on which depreciation is allowable.

12. Depreciation on professional libraries and other items of plant or articles used in connection with self education (such as computers, filing cabinets and desks) is allowable under subsection 54(1).

(c) Types of self education expenses not allowable

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

a) A higher education contribution payment made under Chapter 4 of the *Higher Education Funding Act 1988* (see subsection 51(6)).

b) Meals purchased by a taxpayer, while attending a course at an educational institution in the course of normal travel to and from home.

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.

Date of effect

14. To the extent that this Ruling is concerned with changes in interpretation, those changes operate in favour of taxpayers. Consequently, it applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued. However, if a taxpayer has a private ruling which is inconsistent with this Ruling, then this Ruling will only apply to that taxpayer from and including the 1992-93 year of income unless the taxpayer asks that it apply (subject to any limitations imposed by statute) to earlier income years.

Explanations

(a) Self education and characterisation under subsection 51(1)

15. As most self education expenses are voluntarily incurred to produce income, we believe that it is not necessary in this Ruling to consider the second positive limb of subsection 51(1) in addition to the first positive limb. To be allowable under the first positive limb, expenditure must be able to be characterised as having been incurred in gaining or producing assessable income (*Fletcher & Ors* 91 ATC at 4957; 22 ATR at 621-22).

16. In considering this characterisation issue, the High Court in *Amalgamated Zinc (De Bavay's) Ltd v. FC of T* (1935) 54 CLR 295 at 309; 3 ATD 288 at 298 emphasised the need to look at the relevance of the claimed expenditure to the scope of the operations or activities by which income is produced. Dixon J noted that an expense incurred in gaining or producing assessable income is one incurred in the course of gaining or producing that income. In *Ronpibon Tin N.L. v. FC of T* (1949) 78 CLR 47 at 56; 8 ATD 431 at 435, Dixon J also expressed the characterisation issue as a determination of whether the expenditure is relevant and incidental to the gaining or producing of assessable income. In this Ruling, assessable income includes AUSTUDY allowances paid under the *Student Assistance Act 1973* (SAA).

17. The many later cases dealing with self education expenses and subsection 51(1) are no more than examples of the application of these general principles to the facts of those cases. Application of the principles provide an indication of the facts relevant in the self education area in determining the characterisation issue. However, we consider that expressions used in some of the cases, 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' are not substitutes for the conditions for deductibility for self education expenses under subsection 51(1).

(b) The decisions in *Finn* and *Hatchett*

18. In *FC of T v. Finn* (1961) 106 CLR 60; 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. Dixon CJ, 106 CLR at 67; 12 ATD at 350-1, considered that there were four conclusions of fact which governed his decision :

a) The increased knowledge of architecture gained by Mr Finn made his advancement in his employment more certain.

b) So far as purpose was relevant, advancement in salary was a real and substantial element in Mr Finn's decision to travel.

c) Mr Finn's employer treated the tour as a distinct advantage to his work for the employer.

d) The tour was undertaken while he was in his employment.

19. As Hill J in *Studdert* (91 ATC at 5015; 22 ATR at 771), points out, Dixon CJ was not saying that those four elements must be present in every case for the relevant expenditure to be allowable. Dixon CJ was merely recognising that, in that case, the presence of those elements showed that the expenses related to the tour were incidental to the activities by which Mr Finn was employed as a government architect and were most relevant to it.

20. In fact, 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 the professional status of the office implied an obligation of progressive acquaintance with the developing art of architecture. Windeyer J (106 CLR at 70; 12 ATD at 352) was of a similar view to Kitto J, holding that someone, like Mr Finn, who gains income by the exercise of a skill and who incurs expenses in maintaining or improving that skill, incurs those expenses in the course of carrying on his or her income-earning activities. All three judges were recognising that the tour expenses were relevant to the

activities by which Mr Finn was currently producing income and to the likelihood of his actually gaining more income in the future.

21. Menzies J in *FC of T v. Hatchett* (1971) 125 CLR 494; 71ATC 4184; (1971) 2 ATR 557 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 but that university fees incurred on an Arts degree course were not. 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 and 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 - similar reasoning was used to allow the expenses in *FC of T v. Smith* 78 ATC 4157; (1978) 8 ATR 518 and in *FC of T v. Lascelles-Smith* 78 ATC 4162; (1978) 8 ATR 524).

22. In relation to the university fees, his Honour said that they had no connection with the activities by which Mr Hatchett gained his income as a primary school teacher. It was not enough that Mr Hatchett's employer encouraged their payment by contributing towards them, nor that the course was likely to make Mr Hatchett a better teacher in a general sense (125 CLR at 499; 71 ATC at 4187; 2 ATR at 560).

23. Some of the decisions of the courts and the Taxation Boards of Review after *Hatchett* (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*) caused confusion by trying to make the expressions referred to in paragraph 17 the sole determinants of deductibility for self education expenses under subsection 51(1). In doing so, they probably applied tests for deductibility which were stricter than that intended by the High Court. More recently, we believe that the courts, in decisions such as *Studdert,* have returned to correctly applying general principles.

(c) The decision in *Studdert*

24. In *Studdert*, the taxpayer, a Qantas 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; AAT Case 6600 (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 Mr Studdert's 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.

25. 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 which directly produced Mr Studdert's income. This finding was based on the facts that undertaking the lessons made Mr Studdert better equipped to perform his skilled job and that 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 at 5015-6; 22 ATR at 772). His Honour said that an expense will normally be allowable if it can be shown to contribute or to be likely to contribute to increased income, but noted that such a finding is not a prerequisite for deductibility (91 ATC 5013-4; 22 ATR at 770).

26. We believe that the earlier decisions in *FC of T v. Wilkinson* 83 ATC 4295; (1983) 14 ATR 218; *FC of T v. Klan* 85 ATC 4060; (1985) 16 ATR 176; and *Griffin v. FC of T* 86 ATC 4838; (1987) 18 ATR 23 are consistent with the general approach taken by Hill J in *Studdert*.

(d) Self education and capital

27. Both *Finn* (106 CLR at 68-9; 12 ATD 351) and *Hatchett* (125 CLR at 497-8; 71 ATC at 4186; 2 ATR 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.

(e) Self education undertaken prior to income-earning activities

28. However, the decision of the High Court in *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541 clearly supports our view that no deduction is allowable for self education expenses, if the study, viewed objectively, 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. 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 present employment). An example would be a public servant studying for a law degree who later obtains a legal officer position in the public service, as in *Case Z1* 92 ATC 101; *AAT Case 7541* (1991) 22 ATR

3549. Such expenses are also incurred at a point too soon to be regarded as incurred in gaining or producing assessable income.

29. We 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 the previous paragraph. 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. 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 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 subsection 51(1).

30. However, we consider that the decisions of Waddell J in *Kropp* and of the AAT in *Case Y54* 91 ATC 471; *AAT Case 7449* (1991) 22 ATR 3492 are inconsistent with the reasoning in *Maddalena* and should not be followed. In *Kropp*, an accountant resigned his employment with an Australian accounting firm to take up a development appointment with an associated firm in Canada for two years. Mr Kropp later returned to Australia and recommenced work with his old employer at an increased salary. His Honour 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.

31. In *Case Y54*, a mine manager was retrenched by his employer in Australia and undertook a Master of Business Administration course in the US for nearly two years. On his return to Australia, the taxpayer was re-employed as a mine manager at a significantly increased salary when compared with his previous position. The AAT relied on *Kropp* to allow a deduction for the expenses associated with the MBA course, 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 neither case was *Maddalena* properly analysed or applied. We view both decisions as in error in failing to recognise that, because of the lengthy break in employment, the expenses in issue were incurred at a point too soon to be regarded as incurred in gaining or producing income.

(f) Self education - purpose and apportionment

32. As most self education expenses are voluntarily incurred, the intention or purpose of a taxpayer in incurring the expenses can be an element in determining whether the whole or a part of the expenses can be characterised as allowable under subsection 51(1) (see *Fletcher & Ors* 91 ATC at 4957; 22 ATR at 622). In *Klan* (85 ATC at 4064; 16 ATR at 181-2), Ormiston J recognised that a taxpayer's purpose in undertaking study, as related to his or her plans for the future, may have a significant role in determining the characterisation of self education expenses. If the main 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.

33. Both *Ronpibon Tin N.L.* (78 CLR at 59; 8 ATD at 437) and *Fletcher & Ors* (91 ATC at 4957; 22 ATR at 621) recognise that there are at least two kinds of expenditure which require apportionment under subsection 51(1). The first is expenditure in respect of a matter of which distinct and severable parts are devoted to gaining income and other parts are devoted to some other end. An example would be 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.

34. The second kind of apportionable expenditure is a single outlay which serves both an income-earning end and some other end indifferently. While the High Court recognised that there can be no precise arithmetical division in such cases, it said that there must be some fair and reasonable division based on the facts of each case. Such an example would be a study tour or conference undertaken equally for income earning purposes and equally for private purposes. We would apportion the related expenses equally between the purposes.

35. As discussed in paragraph 24, Hill J held in *Studdert* that one of the purposes of the expenditure in that case related to increased proficiency in Mr Studdert's activities as a flight engineer. His Honour further held (91 ATC at 5011-2; 22 ATR at 767-8) that it was irrelevant to the characterisation issue in that case to go any further and enquire whether there was a dominant purpose for the incurring of the expenditure which related to retraining as a flight officer. To the extent that his Honour might be interpreted as suggesting that, when determining the characterisation issue for self education expenses, it is irrelevant to consider whether a non income-producing purpose was the dominant purpose for the incurring of the expenses, we believe that that view is not supported by *Fletcher & Ors*.

36. When determining the characterisation issue for self education expenses, we believe that it is, at the least, a relevant matter to consider whether a non income-producing purpose was the dominant purpose for the incurring of the expenses. We consider that this is supported by the passage from *Fletcher & Ors* referred to in paragraph 32. We also consider that this passage was intended by the High Court to apply to subsection 51(1) in general and not just to instances of tax avoidance, as suggested by Hill J in *Studdert* (91 ATC at 5011; 22 ATR at 767-8).

(g) Types of self education expenses allowable

37. The following paragraphs discuss the types of expenditure that are usually considered to be allowable if the study of a subject of self education supports a conclusion that the expenses associated with the study are allowable under subsections 51(1) and 54(1). They also discuss the types of expenditure associated with self education which are not allowable under subsection 51(1).

(h) Course or tuition fees

38. Course or tuition fees of attending an educational institution or of attending work-related conferences or seminars, including student union fees, are allowable under subsection 51(1), as being the direct cost of the study. However, under subsection 51(6), 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. They can be paid directly to the institution at the beginning of a student semester or they can be accumulated and paid to the Commissioner of Taxation at a later time in the year.

(i) Books, journals and technical equipment

39. The cost of professional and trade journals, of technical instruments and equipment and of clerical activities related to the study (e.g. word-processing and photocopying) is allowable under subsection 51(1). Text books used in a course of study would ordinarily be used on a regular basis only in the year of purchase and in many cases are disposed of on completion of the unit of study. In such circumstances, the cost of the books is allowable under subsection 51(1). If the textbooks used in a course of study are intended to be used regularly in later years as reference material for income-earning purposes, depreciation on the books is allowable under subsection 54(1) at the rate determined for professional

libraries. Depreciation on other items of plant or articles used in connection with self education (such as computers, filing cabinets and desks) is also allowable under subsection 54(1).

40. We consider that the decision of the Taxation Board of Review in *Case S21* 85 ATC 236; 28 CTBR (NS) *Case 31* 254 does not require any departure from the views expressed in the previous paragraph. In that case, the taxpayer, a director of a major co-operative building society, purchased text books for a graduate diploma in professional accounting. Although the Board suggested that the use of the books by the taxpayer was likely to be limited to the course of his study, they relied on an English authority to find that the cost of the books had a capital character. That authority seems to have been treated as a general statement of principle by the Board without any reference to the facts in that case or to the facts in the case before them.

(j) Fares and accommodation and meals expenses

41. Fares and accommodation and meals expenses incurred on overseas study tours, on work-related conferences or seminars attended away from a taxpayer's home base or on attending an educational institution away from the taxpayer's home base are allowable under subsection 51(1). 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 his or her home base on income-producing activities.

42. The position is different for meals purchased by a taxpayer while attending a course at an educational institution in the course of travelling to and from his or her home base within the immediate area, e.g. a taxpayer living in Sydney who attends an institution within the metropolitan area. The cost of such meals is not allowable because it is expenditure of a private nature. Its occasion is the private choice of the taxpayer to eat at the institution rather than at his or her home. The meals are, in fact, a substitution for meals taken at home.

(k) 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.

45. However, we recognise that there are some situations where income-earning activities are carried out at an institution, e.g. trainee teachers attending teachers' college during their traineeships and students receiving AUSTUDY allowances under the SAA. In those situations, the cost of travelling between a taxpayer's home and an educational institution is not then an allowable deduction, being the cost incurred in order to get to work. The costs of travelling between the institution and the taxpayer's place of work are allowable, as the costs of travelling between two places of work. 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.

(l) Interest expenses

46. Interest incurred by a taxpayer on moneys borrowed to pay for self education expenses is allowable under subsection 51(1), where the self education expenses are themselves allowable under the subsection. Interest incurred by a taxpayer on borrowed moneys used to purchase an item of plant or articles, e.g. a computer, is also allowable under subsection 51(1), where depreciation is allowable on the plant or articles under subsection 54(1).

Examples

(a) Self education whilst employed

Example 1

47. A and B are both employed by a small and innovative computer software company. A works on product design and B is responsible for product marketing. A needs to keep up to date with the latest developments in computer software design. Accordingly, he subscribes to two of the most influential journals in Australia and the United States of America dealing with the computer industry. The annual cost of these journals is allowable to A on the basis that their study enables A to improve his knowledge of computer software.

48. The company has had a rapid expansion in sales in the last two years. B has recently noticed her difficulty in coping with increased stress levels brought about by the pressures to deliver marketing strategies for the company's expanded market. She decided to attend a four-week course in stress management for executives to help her to deal with the situation. B attended the course after hours and paid for it herself. The cost of the course is not allowable to B because the course is not relevant to the activities by which B currently derives her income. The expenses are more correctly characterised as those which are necessary to put B in a position to carry out her income-earning activities.

Example 2

49. M teaches Mathematics and Science in a large private secondary school. She has a Bachelor of Science degree and has been teaching those subjects in secondary schools for 10 years. M wanted to advance her career prospects by becoming the Department Head for either Mathematics or Science at her school (Department Heads organise the teaching of a particular subject at the school and are paid at a higher pay scale than normal teachers). However, M was advised by her headmaster that to have any chance of becoming a Department Head she had to obtain tertiary qualifications in Education.

50. After completing a Bachelor of Education degree at her local university, she unsuccessfully applied for a position as Department Head for Science. At post-selection counselling, M was told by her headmaster that, as a result of having completed her degree, she would be seriously considered for selection when the Department Head for Mathematics became vacant in 18 months. The expenses associated with her study are allowable because the obtaining of the Education degree is objectively likely to lead to an increase in M's income from her teaching in the future.

Example 3

51. H is an employee accountant who incurred expenses in completing the professional year of study as required for membership

of the Institute of Chartered Accountants in Australia. The expenses are allowable because the study will improve his knowledge of accounting and is likely to lead to promotion in the near future. Although the study leads to membership of a professional association, H is already employed by an accounting firm and the study is not designed to open up a new income earning activity.

(b) Obtaining employment

Example 4

52. P had worked as a solicitor in the NSW Crown Law Office for 3 years. He was awarded a scholarship by a private think-tank to travel to England to study for a post-graduate course in public law. As his employer was reluctant to give him leave without pay for an extended period, P resigned from his job and travelled to England. At that time, he intended to attempt to obtain legal work there with a public authority when his course was completed. The course took 18 months to complete and P was later unable to obtain the legal position he wanted. Through contacts in his English university, P became aware of a lecturing job at a university in Sydney, specialising in administrative law. He applied for the position and was successful, largely on the basis of outstanding results achieved on the course.

53. P claimed a deduction for the costs of travelling to England and of attending the course, in excess of those covered by his scholarship. He asserted that the extra expenses were incurred in gaining income as a university lecturer. The claim was disallowed on the basis that the expenses were incurred at a point too soon to be regarded as having been incurred in gaining or producing income from his lecturing position in Sydney.

(c) Specialist study

Example 5

54. K is a general medical practitioner in partnership with two other general practitioners in a large regional town. She has recently been doing some basic dermatology work as there is no specialist dermatologist in her town. She decided to undertake some 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 specialist.

(d) Overseas conference

Example 6

55. X is a paediatrician who hears about a three-day international conference on paediatrics in Vancouver. X and her husband, Y, had previously intended to travel to Thailand with their two children on holidays. However, they decide that it would be a good idea for X and for the family if they were to combine X's attendance at the conference with a family holiday in Vancouver for an extra four days . The conference package per person for paediatricians attending the conference was $3,000 ($2,000 return economy class air fare between Sydney and Vancouver; $500 for the cost of the conference; and $500 for accommodation and meals at the conference venue for three days). X and Y paid another $3,000 for accommodation, meals and car hire for the family for the other four days.

56. X claimed a deduction of $4,000 in relation to her overseas trip, being the $3,000 expended on the conference package and $1,000 for her share of the other expenses. X is allowed a deduction of $2,000. The $1,000 of other expenses is disallowed as being of a private nature. The conference cost and the accommodation and meals expenses at the conference are allowed as the necessary costs of attending the conference. Half of the air fare is allowed, as it objectively appears that the $2,000 was incurred equally for income-earning and for private purposes.

(e) Fees, textbooks, meals and motor vehicle expenses

Example 7

57. H works with a Commonwealth public service department and is currently studying part-time for a Master of Commerce degree. Two days a week, H travels by car from his home to the university for an early morning lecture and then travels to work. At the end of both days, he travels from work back to the university to study at the library and then travels home. On both days, H buys dinner at the university canteen before studying at the library. H has paid his compulsory student union fees for the year and has bought four textbooks for the course which he also knows will be of considerable use in his work in later years.

58. H has claimed deductions under subsection 51(1) for the student union fees, the cost of the textbooks, the dinner expenses and the motor vehicle expenses associated with the travel to and from the campus. The union fees are allowable as being the direct cost of the study. As the textbooks are intended to be used regularly in later years in his work, H is allowed to depreciate the books under subsection 54(1) as part of his professional library, rather than allowed a deduction for the whole cost of the books up-front. The dinner expenses are disallowed as being of a private nature. For the motor

vehicle expenses, only the costs of the first leg of each journey is allowable, as being incidental costs of the study.

Previous Rulings

59. Taxation Rulings IT 38, 271, 285, 312, 341, 2083, 2151, 2203, 2223, 2315, 2379, 2401, 2404, 2405, 2412, 2430, 2457, 2459, 2463 and 2558 are now withdrawn. To the extent that the principles in those Rulings are still applicable and are still consistent with the current state of taxation judicial authority, they have been incorporated into this Ruling.

60. **CONTENTS**

What this Ruling is about **1**
Ruling **5**
(a) Circumstances in which self education expenses are allowable 5
(b) Types of self education allowable 11
(c) Types of self education not allowable 13
Date of effect **14**
Explanations **15**
(a) Self education and characterisation under subsection 51(1) 15
(b) The decisions in *Finn* and *Hatchett* 18
(c) The decision in *Studdert* 24
(d) Self education and capital 27
(e) Self education undertaken prior to income-earning activities 28
(f) Self education - purpose and apportionment 32
(g) Types of self education expenses allowable 37
(h) Course or tuition fees 38
(i) Books, journals and technical equipment 39
(j) Fares and accommodation and meals expenses 41
(k) Motor vehicle expenses 43
(l) Interest expenses 46

Examples **47**

(a) Self education whilst employed 47
(b) Obtaining employment 52
(c) Specialist study 54
(d) Overseas conference 55
(e) Fees, textbooks, meals and motor vehicle expenses 57
Previous Rulings 59

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