

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

The following information is only of a general nature and should not be taken as professional advice.

294 | Work-related Self-Education Expenses

Work-related self-education expenses live in D4 of individual tax returns.

Work-Related Self-Education Expenses

In December 2020 Treasury issued a discussion paper labelled "Education and Training expense deductions for individuals". So in light of this discussion paper, let's have a closer look at work-related self-education expenses, D4 in the individual tax return.

In this episode Andrew Henshaw of [Velocity Legal](#) in Melbourne will walk you through the rules as they currently stand, look at court cases around self-education expenses, the changes to the \$250 threshold and also look at Treasury's discussion paper.

Here is what we learned but please listen in as Andrew explains all this much better than we ever could.

To listen while you drive, walk or work, just access the episode through a free podcast app on your mobile phone.

Work-Related Self-Education Expenses

Work-related self-education expenses stand on three pillars being s8 ITAA97, s82A ITAA 36 and TR 98/9.

s8 ITAA97

As so often when we talk about tax deductions, it starts with s8 ITAA97, which says that you can deduct any loss or outgoing to the extent that it is:

- Incurred in gaining or producing assessable income or
- Necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income

As long as that loss or outgoing is neither capital nor private or domestic in nature and has not be incurred produce exempt income or NANE and is not barred by the non-commercial loss rules in Div 35.

That is all ITAA97 has to say about work-related self-education expenses.

s82A ITAA36

The first \$250 of self-education expenses are not deductible. Why? Nobody knows.

This section is really just a forgotten remnant of a previous rule that was repealed in 1985.

Why it has taken over 35 years to clean this out? Nobody knows either. But the good news is that this is going, hopefully from 1 July 2022.

Taxation Ruling TR 98/9

TR 98/9 summarises the ATO's position on self-education expenses. The main gist is that you can't claim self-education for a future career or a career change, but only for two purposes:

- 1 – to maintain or improve current skills or knowledge you already use for your work, or
- 2 – to increase your income from your current income-earning activities.

And the emphasis with both is on the word 'current'.

So training expenses to obtain new employment or to open up a new income-earning activity (whether in business or in your current employment) is not enough. Anything you are not yet engaged in is too soon to be regarded as being incurred in gaining or producing assessable income.

If a course is too general, you lose the necessary connection between the self-education expense and the income-earning activity. For that reason self-improvement or personal development courses are not deductible.

The ruling lists a number of examples:

Example #1 – Brianna

Company director Brianna suffers under family stress and attends a stress management course. Not deductible since private in nature and not designed to maintain or improve her work skills.

Example # 2 – Barry

Trainee accountant Barry studies commerce part-time at university. Deductible since the course enables Barry to maintain or increase the specific knowledge required in his current position.

Example # 3 – Kieran

Computer salesman Kieran takes six months leave without pay to undertake a business administration course. He has an agreement with his employer that after the course he will be promoted, hence is allowed a deduction since increasing income from his current employment.

Example # 4 – John

Joseph is a public services clerk. He would like to transfer to another section of the department and does a course to get the necessary skills.

Not deductible since doesn't improve his skills in his current position and unlikely to lead to an increase in income.

Example # 5 – Francesco

Paediatrician Francesco attends a five-day international conference on paediatrics in Singapore to be followed by a seven-day holiday in Thailand.

Francesco can tax deduct the airfare to Singapore, accommodation and meals in Singapore and half of the return air fare.

Court Cases

Here are six court cases that shaped the common law around self-education expenses:

1 – Finn

Mr Finn was a senior government architect, who went on an overseas tour devoted to the study of architecture.

All three Judges of the High Court in *FC of T v. Finn (1961) 106 CLR 60; (1961) 12ATD 348*, held that the tour expenses were relevant to the activities by which Mr Finn was currently producing income. So Mr Finn won and kept his work-related self-education expenses.

2 – Studdert

Mr Studdert was a flight engineer, who wanted to tax deduct his light aircraft flying lessons leading to a private pilots licence as self-education.

He won at the AAT and the High Court since the lessons improved his proficiency as a flight engineer and help him to get promoted.

3 – Journalist

A senior newspaper journalist interviewed people for feature articles and made presentations to potential advertisers, and attended a speech course.

The AAT allowed the tax deduction in *Case Z42 92 ATC 381; AAT Case 8419 (1992) 24 ATR 1183*, because the course increased his ability in his current employment.

4 – Hatchen

Ms Hatchen was a primary school teacher and studied for a Teachers Higher Certificate.

The AAT allowed the deduction in *FC of T v. Hatchen (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557*, since certificate expenses were related to the actual gaining of income and allowed her to move to another pay scale and, therefore, to earn more money in the future .

5 – Maddalena

A public service clerk studying for a law degree later obtained a legal officer position in the public service and wanted to claim his law degree as self-education.

The AAT found in *Case Z1 92 ATC 101; AAT Case 7541 (1991) 22 ATR 3549*, the expense was incurred too soon and that the study was designed to open up a new income earning activity, not maintain or improve a current one.

6 – Khan

And then this is the biggest and newest case that we focus on in this episode.

Mr Khan was an aircraft maintenance technician with Emirates from 2004 until 1 September 2016, when Emirates fired him. He did three courses in September and November 2016 and February 2017 and then joined Etihad as an aircraft maintenance engineer. So he got a better paying job and if all this had happened while with Emirates it would have been deductible.

However, since Mr Khan attended all three courses while unemployed the AAT declined the tax deductions, since there was no nexus to his current work.

Khan is a reminder of the narrowness and potential unfairness regarding self-education expense deductions. If he had stayed with Emirates, the costs would have been deductible. Alternatively, if had done the courses after joining Etihad, the costs would have been deductible. Unfortunately, Mr Khan fell in no man's land.

Treasury Discussion Paper

In December 2020 Treasury issued a discussion paper labelled "Education and Training expense deductions for individuals". However, since the discussion paper only asked question, there is no pathway yet to changing the current ambiguous rules.

Budget

The 2021/22 budget promises that the government will remove the \$250 exclusion from 1 July 2022, otherwise 1 July 2021.

So this is a short overview but please listen in as Andrew goes into a lot more detail around the Khan case.

MORE

[Opportunity Cost of Saving Tax](#)

[Vendor Finance Arrangements](#)

[Inventory Management Software](#)

Disclaimer: *Tax Talks does not provide financial or tax advice. All information on Tax Talks is of a general nature only and might no longer be up to date or correct. You should seek professional accredited tax and financial advice when considering whether the information is suitable to your or your client's circumstances.*

The information above is for general information only and should not be taken as constituting professional advice from Tax Talks. We are not a financial, legal or tax adviser. You should consider seeking independent legal, financial, taxation or other advice to check how the above information relates to your unique circumstances.