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Self-education expenses: some thoughts for taxpayers and their advisers

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With the advent of another tax year, the nature and form of self-education expenses come to mind. The income tax return for individuals makes a perceived distinction between forms of education for tax purposes but it may not be that clear for taxpayers and their advisers. Item D4 of the individual tax return allows for taxpayers to make a claim for work related self-education expenses that relate to formal qualifications from a school, college or university. The individual tax return implies that there is a distinction between formal self-education and informal self-education. However when one looks at the relevant Australian Tax Office (ATO) material, this distinction could easily be overlooked.

In Taxation Ruling TR 98/9¹ the ATO states² that “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”. However, TR 98/9 also discusses the operation of s 82A of the Income Tax Assessment Act 1936 (Cth) (ITAA 36), which limits the amount of self-education expenses otherwise allowable under s 8-1 of the Income Tax Assessment Act 1997 (Cth) (ITAA 97). This requires an understanding of the specific application of s 82A which, of itself, is not an easy task. As has been pointed out by Boccabella, s 82A is a deduction denial section, regardless of the heading that reads “Deductions for expenses of self-education”.³

In TR 98/9 the ATO also states⁴ that if self-education expenses are allowable under s 8-1 but also fall within the definition of “expenses of self-education” in s 82A, the section operates to limit the amount of expenses otherwise allowable under s 8-1.

In that context, expenses of self-education, which is itself defined within s 82A, rather than in the definition section of s 6 of the ITAA 36, states that these are expenses necessarily incurred for or in connection with a prescribed course of education (not including a student contribution amount). A prescribed course of education refers to an organised course of study full-time or

part-time provided by schools, colleges or universities. Accordingly, s 82A operates in such a way that the first \$250 of a prescribed course of education is not deductible.

So, in the context of preparing a tax return, an individual that is claiming expenses of self-education is required to include such expenses at item D4 of their individual tax return. This then highlights to the ATO that the individual taxpayer has made a claim, which is subject to s 82A of the ITAA 36. On this basis, the ATO will be able to apply the denial for expenses of self-education as prescribed by s 82A or will have expected that the taxpayer has made the relevant calculation of the prescribed denial of deduction. On the other hand, where a taxpayer has a claim for informal self-education, this will be made at D5 on the tax return, being other work related expenses.⁵ These costs include work-related conferences or seminars, the cost of professional and trade journals, textbooks or airfares incurred on overseas study tours, on work related conferences or seminars, or attending an educational institution.

From a practical perspective, a taxpayer still needs to be able to identify the differences between expenses of self-education, as contemplated by s 82A of the ITAA 36, prior to making a claim in their tax return. It is imperative that taxpayers and their advisers are careful as to the understanding of what is meant by work-related self-education given that the difference has not been made clear in TR 98/9. That ruling outlines the circumstances in which self-education expenses are allowable. This is spelt out in Part A and Part B. Under the heading “Part A”,⁶ the ATO sets out the circumstances in which self-education expenses are allowable. Under the heading “Part B”,⁷ the ATO sets out the manner in which s 82A of the ITAA 36 operates to limit the amount of expenses otherwise allowable under s 8-1 of the ITAA 97. The problem is that para 25 confuses the situation for taxpayers. Paragraph 25 states that if self-education expenses are allowable under s 8-1 (which seems to be a reference to Part A of the ruling) but also fall within the definition of “expenses of self-education” in s 82A of the ITAA 36, this section actually operates to limit the amount of expenses otherwise allowable under s 8-1 of the ITAA 97.

Reading para 25, it would seem that it is saying that self-education expenses under Part A of the ruling (which covers self-education generally) are also “expenses of self-education” for s 82A of the ITAA 36, and that therefore s 82A will operate to limit the available deduction. The use of the same term “self-education expenses” (for Part A purposes of the ruling) and then “expenses of self-education”, which has a distinct meaning, only for s 82A purposes, therefore requires that taxpayers and their advisers need to be very careful as to the application of the various provisions in both the ITAA 36 and the ITAA 97.

Indeed, this leaves both taxpayers and their advisers with the very difficult task of actually determining what is meant by the term “self-education expenses” for income tax purposes. The rejection of the previous federal government reforms to self-education deduction limits⁸ by the current federal government does very little to clarify the existing position. The rejection of the capping of self-education expenses actually just maintains the status quo which, as discussed above, is a difficult and complex position.

The actual application of s 82A of the ITAA 36 to those self-education expenses covered by that section is also a very difficult task. Section 82A only operates to deny a deduction for those expenses that are in respect of s 8-1 of the ITAA 97. Note that this doesn't actually mean that the self-education expenses have to be allowable under s 8-1, but only that they have to be allowable with respect to the operation of s 8-1. That is, the expenses have to be deductible with respect to self-education expenses for s 8-1 purposes (incurred for the purposes of producing assessable income), but could also be non-deductible expenditure for s 82A purposes. So, there could be self-education expenditure incurred by a taxpayer, such as child-minding expenditure on the university campus while the taxpayer undertakes their study, which is relevant to their income production. This is self-education expenditure, however it will not be deductible under s 8-1(2)(b) as it is a private expense. However that expenditure can nevertheless be used to absorb the \$250 denial aspect of s 82A and the taxpayer can then claim all of their deductible self-education expenses. In addition, if there are self-education expenses that are governed for deductibility purposes other than s 8-1, then s 82A will have no operation. Such expenses would include computer repairs, depreciation of equipment and car expenses using the cents per kilometre method.

The above discussion illustrates that there are many pitfalls for taxpayers and their advisers when making a claim for expenses of self-education. The most critical aspect is to recognise that the term “self-education” has different meanings for s 8-1 of the ITAA 97 and s 82A of the ITAA 36. Once it is established which type of self-education expenditure the actual expenditure falls under,⁹ then it will be necessary to determine what can actually be used to absorb the \$250 deduction denial that is prescribed by s 82A. The above also shows that it is time that the legislature took a look at repealing s 82A. Section 82A's role is actually more applicable to a time when a rebate was claimable for self-education expenses. Those days have truly been left behind. Indeed, s 82A serves no useful purpose and its continual presence actually confuses taxpayers and their advisers.

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Footnotes

1. ATO, TR 98/9: *Income tax: deductibility of self-education expenses incurred by an employee or a person in business* 17 June 1998, available at <http://law.ato.gov.au>.
2. Above, n 1, at [5].
3. D Boccabella “\$250 deduction denial for expenses of self-education: Retention of section 82A is a mystery” (2008) 37 *Australian Tax Review* 164.
4. Above, n 1, at [25].

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5. D5 of the Individual Tax Return covers all other work related tax expenses but that includes conferences, seminars and the like that are related to the production of assessable income.
6. Above, n 1, at [12]–[24].
7. Above, n 1, at [25]–[30].
8. *Treasury Reform to Deductions for Education Expenses: Discussion Paper* May 2013, available at www.treasury.gov.au.
9. Either D4 or D5 of the Individual Tax Return.