

Self-education expenses denied

Self-education expenses such as tuition fees, textbooks and travel incurred in attending universities and other educational institutions may be deductible where the expenses have the necessary connection with the taxpayer's assessable income.

Direct connection with expenditure

In addition to the above, the self-education must have a real and direct connection with a person's employment. The expenditure also needs to be "incidental and relevant" to the gaining of assessable income. These principles were reaffirmed in a recent AAT decision.

In this case, the taxpayer was a waiter who was disallowed a deduction for expenditure incurred in undertaking a Hotel Management course. Although the course would ultimately lead the taxpayer to a managerial position within a hotel, it was not "incidental and relevant" to his current role as a waiter. Furthermore, the course was not a condition of his employment as a waiter and his pay was not determined on formal qualifications achieved.

In the Tribunal's view, the expenses were incurred at a point too soon to be "incidental and relevant" to his role as a waiter. The expenses were also concerned with getting work in the future rather than assisting the taxpayer in discharging his current duties.

In another similar case, the taxpayer (a baker's assistant) also argued that the expenses incurred for undertaking a Hotel Management course were deductible to him. The Tribunal applied the same principles as in the previous case and denied the claim. The fact that the taxpayer secured the work as a baker's assistant in order to graduate from his course further weakened the nexus between the education expenditure and the taxpayer's employment.

To successfully claim self-education expenses, the purpose of the course being undertaken needs to be considered. In particular, whether the course will assist the taxpayer in his current role (deductible) or whether the course is being undertaken to prepare the taxpayer for a future role (non-deductible).

Reference: Southwell-Keely v Commissioner of Taxation [2008] AATA 606; Vivekanand Amuthalan v Commissioner of Taxation [2008] AATA 818

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Having a car log book is not enough

If you think you can rely on your log book alone for claiming the business usage of your car, think again!

The "log book method" seems to suggest that the business usage of a car is substantiated by simply maintaining a log book. However, if you are using the log book method for claiming an income tax deduction or reduction of FBT car benefits, having a log book is **only one of many factors** that you take into account in estimating the business usage percentage of your car.

Although keeping a log book is a precondition for using the log book method, other evidence such as pattern (or change in pattern) of car use and the number of cars used should also be considered when estimating the business usage percentage of a car. For example, if your business activities or employment duties have varied materially since you established your log book, your estimated business percentage should reflect your current pattern of usage of the car. The log book percentage should only be used as a guide.

This was confirmed in a recent tax case where the taxpayer failed in his claim for income tax deduction because the log book entries were inconsistent with other evidence.

How often should a log book be renewed?

Log books are to be renewed every five years unless you are specifically requested by the Commissioner to keep a log book for the year or if you start to use one or more additional cars under the log book method during the year.

Reference: Zaid Latif v FCT [2008] AATA 675

Are you carrying on a business or employed as a sports person?

The nature of the sporting profession allows a sports person to realise his/her talent through many avenues (such as advertising, competition, sponsorship and employment) which in turn generate different sources of income. It is often debatable whether a sports person derives his/her income from carrying on a business or from employment.

What difference does it make?

For a sports person, being categorised as an employee for taxation purposes can mean losing deductions for management fees incurred in negotiating new contracts.

In a recent case, the Full Federal Court overturned the decision in the single court and held that the management fees paid by two footballers were not deductible because the footballers' engagement with their respective clubs was of an employment nature.

The Full Federal Court held that the management fees paid by the footballers for negotiating new contracts were for the purpose of obtaining employment and were therefore not deductible. Expenses incurred in obtaining employment are generally not deductible as they are incurred "at a point too soon", meaning they are incurred prior to the derivation of assessable employment income.

On the contrary, if the footballers' activities had constituted carrying on a business (as decided previously by the single court judge) the outcome would have been in favour of the footballers. The management fees, being necessarily incurred in carrying on a business, would have been deductible.

Where do you draw the line?

As mentioned above, it is difficult to draw a line between carrying on a business as a sports person and being employed as a sports person. This issue, although it has been debated in courts, is still unsettled.

The taxpayers are currently seeking approval for an appeal in the High Court. It is anticipated that the decision of the High Court may finally settle the issue of whether a sports person is carrying on a business or is employed.

Reference: Commissioner of Taxation v Spriggs [2008] FCAFC 150

Should you require assistance additional information, **contact your PKF tax adviser** or:

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When can you get tax-free redundancy payments?

A worker whose employment is terminated due to genuine redundancy can receive a tax-free redundancy payout (up to certain limits). Nevertheless, what is a genuine redundancy? This is not always an easy question to answer but the Australian Taxation Office (ATO) has recently issued a draft ruling that gives guidance on this issue. If the ruling is finalised without amendment, it would restrict or even remove the availability of these tax concessions in situations involving dual capacity employees (e.g. company directors who are also employees) and fixed-term contract/project workers.

More hurdles for small to medium businesses

The release of the draft ruling was partially prompted by a case decision concerning genuine redundancy payouts to dual capacity employees. Much of the draft ruling examines additional conditions applicable to redundancy payments made to these types of employees. These additional rules mean that many businesses in the Small to Medium Enterprise (SME) sector, where the directing minds are often also employees of the business, will need to jump through more hurdles in order to gain access to the concessional treatment on genuine redundancy payments.

Fixed-term contract and project workers

The draft ruling specifically excludes casual contract and project workers from claiming concessional tax treatment on redundancy payments except in circumstances where an ongoing employment relationship can be established, for example some rolling fixed-term contracts or casual workers that have in fact occupied long term positions. However, the period of employment is only one determinative factor in establishing an ongoing employment relationship. Other factors such as the nature of the project and the terms of engagement also need to be taken into account.

The draft ruling is currently under consultation and PKF has assisted the joint professional bodies in preparing a submission to the ATO.

Reference: TR 2008/D6