

CR 2006/73 - Income tax: NSW probationary constables - self education expenses - Associate Degree of Policing Practice



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Class Ruling

Income tax: NSW probationary constables – self education expenses – Associate Degree of Policing Practice

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① This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- paragraph 26-20(1)(cb) of the ITAA 1997; and
- section 82A of the *Income Tax Assessment Act 1936* (ITAA 1936).

Class of entities

3. The class of entities to which this Ruling applies is students enrolled in the Associate Degree of Policing Practice and who are, or intend to become, probationary constables employed by the New South Wales (NSW) Police Force (NSW Police). In this Ruling these entities are referred to as 'students'.

4. The class of entities does not include those persons who are enrolled in the Associate Degree who do not intend to become probationary constables.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 20 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

9. This Ruling applies from 1 July 2005. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The scheme that is the subject of the Ruling is described below. This description is based on the following documents and telephone records which are attached to the file record maintained by the Tax Office for this Ruling. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or part of documents incorporated into this description of the arrangement are:

- letter dated 23 August 2005; and
- email sent 24 January 2006.

14. The Department of Commerce for the State of New South Wales has entered into an agreement with the Charles Sturt University (the University) under which the University will conduct a course specific to the needs of the NSW Police. The University is to run the course and be responsible for academic matters and ensuring appropriate accreditation of the course. A Board of Management, comprised of representatives of the NSW Police and the University, is responsible for ensuring the curriculum meets NSW Police educational requirements.

15. The course is the Associate Degree of Policing Practice (the course). It is designed to meet the educational needs of entry level police practitioners. There are two components of the course being the pre attestation and post attestation components. The successful completion of the pre attestation component of the course meets the academic requirements for a student to be considered for recruitment to the NSW Police as a probationary constable. Successful completion of the post attestation component of the course results in the award of the Associate Degree and satisfies the academic requirements for confirmation as a constable in the NSW Police.

16. The University is responsible for the assessment of the academic requirements of the course and the NSW Police is responsible for the assessment in relation to the professional suitability of students for remaining in the course.

17. Acceptance into the post attestation component of the course is subject to the student being offered a position as a probationary constable by the NSW Police. The University has agreed to offer students who fail to be offered a position as probationary constable a place in another course of the University with relevant credit for their studies.

18. At the conclusion of the post attestation component and subject to the requirements of the Police Regulation 2000 being met, the probationary constable's appointment is able to be confirmed as constable under the *Police Act 1990* (NSW).

19. Under the agreement referred to in paragraph 14 of this Ruling, the NSW Police and the University would jointly provide tuition to the students. The NSW Police would cover its own costs of staffing and so on. The University's costs would be covered by a fee to be paid by the student. It is expected that, under the Commonwealth Higher Education funding arrangements, the students would be entitled to FEE-HELP, which is a student loan system.

20. During the pre attestation component, students are to study by the delivery mode of their choice, whether on campus or by distance education. For the post attestation component, students are expected to study by means of distance education.

Ruling

21. The expenses incurred by students in the pre attestation component of the course are not an allowable deduction under section 8-1 of the ITAA 1997.

22. Subject to paragraph 23 of this Ruling, expenses of self education incurred by students in the post attestation component of the course are an allowable deduction under section 8-1 of the ITAA 1997 provided they are not a loss or outgoing of capital, private or domestic nature.

23. As these expenses also fall within the definition of 'expenses of self education' in section 82A of the ITAA 1936, that section operates to limit the amount of expenses otherwise allowable under section 8-1 of the ITAA 1997. The student's total allowable deduction under section 8-1 of the ITAA 1997 cannot be greater than the amount by which the net amount of expenses of self education exceeds \$250 for each income year.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

24. Section 8-1 of the ITAA 1997 allows a deduction for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income, except where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income.

25. Taxation Ruling TR 98/9 Income tax: deductibility of self education expenses, discusses the circumstances under which self-education expenses may be allowable as a deduction.

26. TR 98/9 provides at paragraph 12:

12. Self-education expenses are deductible under section 8-1 where they have a relevant connection to the taxpayer's current income earning activities.

27. Further paragraphs 13 to 15 of TR 98/9 discuss this relevant connection with a taxpayer's current income earning activities, and states that:

13. If a taxpayer's income earning activities are based on the exercise of a skill or some specific knowledge and the subject of the self-education enables the taxpayer to maintain or improve that skill or knowledge, the self-education expenses are allowable as a deduction.

14. 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, the self-education expenses are allowable as a deduction.

15. No deduction is allowable for self-education expenses if the study is 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 current 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.

28. The decision of the High Court in *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541 (*Maddalena's case*) is regarded as establishing the principle as stated in paragraph 15 of TR 98/9.

29. It is necessary to look at the application of these principles to the circumstances of the scheme that is the subject of this Ruling.

Pre attestation component of the course

30. The expenses incurred by the students in respect of the pre attestation component of the course have been incurred before they have gained employment as a probationary constable with the NSW Police.

31. The studies were undertaken by the student in order to obtain that employment as a probationary constable and are considered to have been incurred at a point too soon, in line with the principles in *Maddalena's case*. As such any expenses incurred in relation to this component of the course are not deductible under section 8-1 of the ITAA 1997.

Post attestation component of the course

32. Upon successful completion of the pre attestation component the student may be offered a position as a probationary constable by the NSW Police.

33. If the student is employed as a probationary constable they are then required to undertake the post attestation component of the course. This will provide them with improved skills and knowledge required in undertaking work as a police constable.

34. Upon the successful completion of the post attestation component the student has satisfied the academic requirements and will be eligible for confirmation as a police constable.

35. The expenses the students incur in relation to the post attestation component of the course are for the purposes of improving the necessary skills and knowledge required in their employment. Therefore these expenses have the relevant connection with their current income earning activities and will be deductible under section 8-1 of the ITAA 1997 provided they are not a loss or outgoing of capital, private or domestic nature. Part A of TR 98/9 provides examples of self education expenses and whether or not they are allowable as a deduction.

Operation of section 82A of the ITAA 1936

36. Where self education expenses are allowable under section 8-1 of the ITAA 1997 but also fall within the definition of 'expenses of self-education' in section 82A of the ITAA 1936, that section operates to limit the amount of expenses otherwise allowable under section 8-1 of the ITAA 1997.

37. The expression 'expenses of self education' is defined in subsection 82A(2) of the ITAA 1936 to mean expenses necessarily incurred by the taxpayer for or in connection with a 'prescribed course of education', but do not include payments made under the Higher Education Contribution Scheme (HECS) or the Tertiary Student Financial Supplement Scheme, or loan repayments under FEE HELP.

38. A 'prescribed course of education' refers to an organised course of study, full time or part time, provided by schools, colleges or universities. It also includes a course provided by an institution or organisation, or a dedicated part thereof, whose primary function is the provision of systematic instruction, training or schooling in a subject, skill or trade.

39. Although the University and the NSW Police both contribute towards the management of the course, the course satisfies the definition of a prescribed course of education as it is a course provided by a university. This is because the University is responsible for academic matters, including accreditation of the course.

40. As section 82A of the ITAA 1936 applies, the student's total allowable deduction under section 8-1 of the ITAA 1997 cannot be greater than the amount by which the net amount of expenses of self education exceeds \$250 for each income year.

41. Students should refer to paragraphs 119 to 155 in Part B of the Explanations in TR 98/9 for further information on the application of section 82A of the ITAA 1936.

FEE-HELP

42. Course fees relating to income producing activities are deductible even if the student has obtained a loan for the course fees for example under the FEE-HELP scheme.

43. However, paragraph 26-20(1)(cb) of the ITAA 1997 provides that loan repayments to FEE-HELP are not deductible.

Appendix 2 – Detailed contents list

44. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 98/9

Subject references:

- deductions & expenses
- self-education expenses

Legislative references:

- ITAA 1936 82A

- ITAA 1936 82A(2)

- ITAA 1997 8-1

- ITAA 1997 26-20(1)(cb)

- TAA 1953

- TAA 1953 Sch 1 357-75(1)

- Copyright Act 1968

- Police Act 1990 (NSW)

Case references:

- FC of T v. Maddalena 71 ATC 4161; (1971) 2 ATR 541

ATO references

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