TR 2024/3EC - Compendium

Australian Government
Australian Taxation Office

Public advice and guidance compendium – TR 2024/3

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Ruling TR 2023/D1 *Income tax: deductibility of self-education expenses incurred by an individual*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*.

Issue number	Issue raised	ATO response
1	Several comments were received noting concerns with general wording of the draft Ruling, including: (a) The wording of the third dot point of paragraph 3 of the draft Ruling was too broad. (b) The words' We consider' should be removed from the first dot point of paragraph 6 of the draft Ruling as it has already been stated that the Ruling is the Commissioner's view on the application of the law. (c) In paragraph 20 of the draft Ruling, it would be more straightforward to state 'does not prevent a deduction' rather than 'does not necessarily preclude a deduction'. (d) The words 'The Commissioner considers' should be removed from paragraph 22 of the draft Ruling.	(a) The final Ruling updates Taxation Ruling TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business* which has been withdrawn. While we have not changed our view, the articulation of our view in the final Ruling has been modernised to make the principles clearer. The third dot point of paragraph 3 of the final Ruling replicates, in part, paragraph 5 of TR 98/9. (b) We agree. In the final Ruling, these words have been removed from the first sentence of the first dot point of paragraph 6. (c) We disagree. The meaning of the 2 phrases are different. (d) We agree. In the final Ruling, these words have been removed from paragraph 22.

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2	There is often confusion around the first dot point of paragraph 23 of the draft Ruling (which refers to Exclusion 1) when applying this exclusion in the context of an individual's (for example, an employee's) existing income-earning activity within their current employment. That is, it is often easier to identify when an employee is undertaking a particular course of study in order to obtain new employment, as opposed to when an employee is undertaking a particular course of study in order to open up a new income-earning activity within their current employment. It is recommended that the final Ruling provide more examples to illustrate the latter situation. This could include the following: • Expand Example 7 of the draft Ruling to clarify whether the outcome to the example would be any different if Kieran's existing duties were limited to only performing the role of a computer salesman and no role as an assistant manager. In other words, would Kieran still be entitled to claim the cost of his course if he was not an assistant manager because this would be opening up a new income-earning activity with his existing employer? • An example that incorporates the decision in *Anders and Commissioner of Taxation* [2023] AATA 1471. This could consider whether a deduction for self-education would be available where a teacher undertakes a course of study in order to expand the subjects that they are able to teach. • An example of a bookkeeper working in an accounting practice who undertakes a Bachelor of Business in Accounting degree in order to expand the type of work undertaken in their existing employment. • An example where an employee accountant undertakes a course on superannuation so that they	The final Ruling has been updated to include the additional example in relation to the employee accountant – see new Example 12. The application of the principles and exclusions requires consideration of the specific facts and circumstances of each case and it is not possible to address every potential scenario in the Ruling. The final Ruling comprehensively sets out the relevant principles and provides explanations through text and examples of the application of the principles to particular fact patterns. Taxpayers or their advisors, applying the final Ruling, provided they take all relevant facts and circumstances into account, should be able to determine the deductibility of self-education expenses with confidence.

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	start servicing self-managed superannuation fund clients. • An example where an employee solicitor incurs expenditure to become a barrister by paying for the cost of a reader's course and the cost of sitting the bar exam.	
3	Paragraphs 24 and 25 of the draft Ruling are not particularly helpful and should be simplified.	Minor updates have been made to paragraphs 24 and 25 of the final Ruling. The final Ruling updates TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business* which has been withdrawn. While we have not changed our view from TR 98/9, the articulation of our view in the final Ruling has been modernised to make the principles clearer. The wording in paragraphs 24 and 25 has been largely adopted from paragraphs 16 and 35 of TR 98/9. The addition of the summarised statement by the High Court in *Commissioner of Taxation v Day* [2018] HCA 53 (*Day*) at [29] updates those paragraphs. However, to avoid any possibility of confusion, and to ensure that paragraph 25 is abundantly clear, changes have been made in the final Ruling to the last 2 sentences in paragraph 25 to more clearly reflect the view in *Day* at [29].
4	It is considered that there is no point to including Paragraph 29 of the draft Ruling as one could argue that education is also an enduring benefit. Further, with regard to footnote 32 of the draft Ruling, consider whether specific reference to depreciating assets should be made rather than pointing the reader to Division 40 in a footnote.	Paragraph 29 of the final Ruling has not been updated as it discusses the negative capital limb in paragraph 8-1(2)(a). The 'Note' contained in footnote 32 of the draft Ruling has been deleted in the final Ruling as it relates to the decline in value of a depreciating asset under Division 40, which is dealt with in a separate section of the Ruling.
5	It is considered that the second sentence of paragraph 33 of Example 2 of the draft Ruling is irrelevant. It has already been stated in the example that the employer has agreed with the employee that the course would be useful. It is irrelevant whether or not a later review by the employer decided it did or did not improve Lorraine's skills.	We agree. The second sentence of paragraph 33 has been deleted in the final Ruling.

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6	In paragraph 41 of Example 5 of the draft Ruling, it is suggested that the words 'field of activity carried out by Kerr' be changed to 'income-earning activity of Kerr'.	Changes have been made in the final Ruling to paragraphs 40 and 41.
7	Paragraph 44 of the draft Ruling sets out factors identified by courts and tribunals as relevant when considering whether the self-education leads to, or is likely to lead to, an increase in your income from your current income-earning activities. The fifth dot point of paragraph 44 of the draft Ruling lists as a factor 'the self-education is something that leads to or is likely to lead to a promotion to a position which is not materially different from your current position'. Would this factor be satisfied if the self-education led to a promotion to a team leader.	Whether a relevant factor is satisfied will depend on the facts and circumstances of the particular case. Where the promotion is to a position that is materially different from the current position, the expenses are incurred in getting, not doing, work, which precedes the relevant income-earning activity and comes at a point too soon to properly be regarded as incurred in gaining or producing assessable income – see paragraph 35 of *Ting and Commissioner of Taxation* [2015] AATA 166 (*Ting*). Guidance on the concept of 'materially different' is provided by Deputy President Alpins in paragraph 30 of *Ting* where he states: > I accept the respondent's submission that the applicant's income-earning activities as a classroom teacher stand in contradistinction to those of a leading teacher, which is a management role. The evidence, including both the applicant's oral evidence and the departmental document to which I have referred, establishes that employment as a classroom teacher is materially different from employment as a leading teacher. Promotion to the position of a leading teacher does not merely constitute increased income for the same income-earning activities, rather it involves engagement in relatively new income-earning activities for the purposes of s 8-1. Put simply, it means more pay for doing a different job. The other factors outlined in paragraph 44 of the final Ruling would also need to be considered as no one factor on its own will necessarily determine whether the self-education leads to, or is likely to lead to, an increase in your income from your current income-earning activities.
8	Example 7 of the draft Ruling provides an example of the operation of Principle 2. This is a common scenario that confuses people and also, it seems to contradict information contained in paragraph 44. It is considered that what is more money versus a new role needs to be clearer.	The final Ruling has not been updated in this regard. Example 7 of the Ruling is an example that has been retained from TR 98/9 with clarifications to make it clear that the expense has the requisite nexus to Kieran's income-earning activities. We do not consider that Example 7 of the Ruling contradicts the information contained in paragraph 44. The example provides that Kieran will be promoted to the position of manager (he is currently the Assistant Manager) in the same sales area. This is designed to demonstrate that the promotion is

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		not materially different because, as Assistant Manager, he is already in the same area – which is consistent with paragraph 44 of the final Ruling. However, to avoid any possibility of confusion, and to ensure that the example is abundantly clear, changes have been made in the final Ruling to paragraph 49.
9	Further clarification is required regarding the deductibility of self-education expenses for individuals who commence study in a particular field, and then obtain a part-time, casual or full-time job in the same field while undertaking their course. At the moment, the draft Ruling somewhat addresses this issue in Examples 10 and 11, which make it quite clear that obtaining an industry placement or a casual or part-time job while undertaking a particular course of study does not make the cost of the course deductible (or any other self-education expenses deductible). However, what needs further clarification is the situation where an individual starts a course full time, but part way during the course they obtain full-time employment and then continue their course part time. For example see the 'Tommy' example of the ATO's fact sheet – QC 20811 – *Nurse and midwives – income and related deductions*, under self-education expenses. The 'Tommy' example indicates that a deduction in these circumstances may be available from the time that an employee commences full-time employment in the same field as their course. It is recommended that this issue be addressed in the final Ruling.	The final Ruling has been updated to include Example 15 which is based on the self-education expenses scenario for 'Tommy' in 'Example: working in an unrelated field' published on our website in the occupation and industry specific guide for Nurses and midwives – income and work-related deductions.
10	In paragraphs 54 and 58 of the draft Ruling, insert the words 'in the course of' before 'gaining or producing assessable income'.	The final Ruling has not been updated in this regard. The words 'in gaining or producing assessable income' are the words of the legislation. In the final Ruling, the words 'in the course of' have been removed from paragraphs 76, 154 and footnote 17 to reflect the words in the legislation.
11	For clarification, in paragraph 57 of the draft Ruling, it is suggested that the sentence 'Sarah wants to be a fashion photographer' be added at the start of the example.	We agree. Paragraph 57 has been updated in the final Ruling to include the suggested words.

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12	In Exclusion 2, further clarification on what is meant by income-earning activities and ceasing income-earning activities part-way through completing deductible self-education, would be useful. It is noted that Example 32 of the draft Ruling appears to illustrate that an employee can be on unpaid leave, and the course fees can be deductible against other employment income, where the employer has agreed to a promotion upon course completion and return to work.	We consider that the discussion regarding Exclusion 2 in the Ruling is sufficient. In particular, going beyond this to further consider what circumstances may constitute ceasing income-earning activities will likely require employment law considerations and is outside of the scope of this Ruling. Example 32 of the draft Ruling was included primarily to demonstrate when meals and accommodation expenses incurred while undertaking self-education are not considered deductible. To avoid the possibility of confusion and to make this clearer, changes have been made in the final Ruling to now Example 34.
13	The wording in paragraph 72 of the draft Ruling is confusing and it is suggested that it be rephrased.	We agree. Paragraph 77 has been rephrased in the final Ruling. Further, the date in footnote 51 to that paragraph has been updated in the final Ruling to reflect the correct date for the application of section 26-19.
14	Further information to clarify when an individual is required to consider apportionment of self-education expenses is required. As we understand it, an individual is not required to analyse and assess at a 'per subject' level where someone undertakes a course that is related to their work at a high level – for example, a full fee-paying Bachelor of Business and Accounting course for an individual working as an accountant.	The apportionment discussion in paragraphs 81 to 95 of the final Ruling was adopted from paragraphs 64 to 70 of TR 98/9 and updated to include *Ting* – see paragraphs 83 and 84 of the final Ruling. Paragraph 84 provides that where a course fee, when considered in its entirety, is not deductible, but particular subjects, classes or modules are sufficiently connected to your income-earning activities, you apportion by claiming a deduction only for the expenses relating to those particular subjects, classes or modules that are deductible.
15	The opening words of paragraph 79 of the draft Ruling which refers to paragraphs 78(a) and 78(b) of the draft Ruling is confusing. Our reading of paragraph 79 is that it is an extension of paragraph 78(a) (and not 78(b)) by explaining it more fully.	The final Ruling has not been updated to address this. Paragraph 83 of the final Ruling sets out the general principles of apportioning all expenses per *Ronpibon Tin NL v Commissioner of Taxation (Cth)* [1949] HCA 15. Paragraph 84 of the final Ruling describes a particular set of circumstances which would fall within either dot points 1 or 2 of paragraph 83.
16	Paragraph 80(b) of the draft Ruling provides the mechanism for apportioning if there is an incidental purpose in circumstances where you are on a holiday or attending an event for private purposes and the gaining or producing of assessable income was merely incidental to the private purpose. It is suggested that paragraph 80(b) of the draft	We agree. In the final Ruling, changes have been made to the second dot point of now paragraph 85.

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	Ruling be rephrased to tie the self-education expense back to the income-earning activity (employment) of the taxpayer.	
17	Paragraphs 95 and 96 of the draft Ruling need to be clearer in saying that you can claim a deduction for the fee for the course when the FEE-HELP or otherwise debt is incurred (that is, when you study the course in that study period) but you cannot later claim a deduction for the repayment you have to make via your tax return.	We agree. In the final Ruling, changes have been made to now paragraphs 100 and 101 and a new footnote 61 added.
18	In paragraph 98 of the draft Ruling, it would be helpful to specify that Jaison can claim the deduction in the year the debt is incurred.	We agree. In the final Ruling, changes have been made to now paragraph 103.
19	In paragraphs 99 and 102 of the draft Ruling, change the ordering of the words so that it reads correctly.	We agree. In the final Ruling, changes have been made to now paragraphs 104 and 107.
20	In paragraph 107 of the draft Ruling, delete the words 'in any circumstances' as it is not necessary to sound this pointed – it is sufficient to say that repayments of the principal amount borrowed are not deductible.	We agree. In the final Ruling, changes have been made to now paragraph 112.
21	In paragraph 113 of the draft Ruling, it may be helpful to specify – even if the interest is incurred later – while Alex is working in that job.	We agree. In the final Ruling, changes have been made to now paragraph 118.
22	Examples 26 and 27 of the draft Ruling could be misconstrued as a self-education expense on their own (including part-private purposes) is tax deductible. The reason is both examples have the sentence 'The study *can be characterised* as being incurred in the gaining or producing of his/her assessable income' (emphasis added). The concern with this sentence is that it may convey the wrong impression that these studies 'can' be tax deductible, even if they do not have a nexus to gaining or producing assessable income, as long as they 'can' be characterised as such. In the avoidance of unintended interpretation, the sentence could be rephrased as follows: 'The study is	We agree. In the final Ruling, changes have been made to paragraphs 121 and 123.

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	connected to his/her field of employment and is relevant in gaining or producing his/her assessable income'.	
23	Most of the apportionment issues raised by practitioners involve the apportionment of airfares where an overnight work-related trip (for example, an interstate or overseas conference) involves a private component (for example, an extended stay over for private purposes such as a holiday). It is suggested that the final Ruling should expand on the discussion at paragraph 120 of the draft Ruling by applying the apportionment principles at paragraphs 79 and 80 of the draft Ruling to airfares. Further, the final Ruling could include an example, similar to Examples 17 and 18 of the draft Ruling which illustrates the apportionment principle in paragraph 80(a) of the draft Ruling. At the moment, although Example 17 illustrates this principle, it merely involves a game of golf and a sight-seeing tour. There should be an example involving a private stay over in relation to an interstate or overseas work-related conference, which is incidental to the main purpose of attending the conference (being the income-producing purpose). Further, consider whether the draft Ruling should make some comment about whether airfares can be apportioned based on the number of days spent on work activities and the number of days spent on private activities. This is one of the most common issues raised by practitioners in relation to airfares, and it would appear that the Tribunal in recent times has not favoured an apportionment approach based on the time spent on work-related and private activities. For example, see *Case R13* 86 ATC 168 and *Lenten and Commissioner of Taxation* [2008] AATA 281.	The final Ruling has not been updated in this regard. We consider that the apportionment discussion at paragraphs 81 to 95 of the final Ruling can be applied in the context of apportioning airfares, being a type of self-education expense referred to in paragraphs 125 to 127 of the final Ruling. Further, we do not consider it necessary to provide additional examples under the 'Airfares' section of the final Ruling to demonstrate these principles. These different factual scenarios are dealt with adequately under the apportionment examples where self-education expenses are stated to include airfares (for example, see Example 18 of the final Ruling). We do not consider it necessary for the final Ruling to make comment about whether airfares can be apportioned based on the number of days or time spent on work activities versus private activities. The apportionment principles in paragraphs 81 to 95 of the final Ruling are sufficient in stating that self-education that has distinct and several parts (however this is determined) can be apportioned – see paragraph 83 of the final Ruling. Further, in relation to *Case R13* ATC 168 and *Lenten and Commissioner of Taxation* [2008] AATA 281, the question of deductibility and also apportionment needs to be answered taking into account the facts of the case. An apportionment based on time may not have been favoured by the Board of Review and Administrative Appeals Tribunal in those cases because it was not considered appropriate on the facts. Instead, it appears the Board of Review and Administrative Appeals Tribunal sought to apportion using a 'purpose' basis which is endorsed by paragraph 83 of the final Ruling and is not inconsistent with the examples in the final Ruling.
24	It would be helpful to have some further clarity of when accommodation and meals incurred in connection with self-	We have not modified Example 30 of the final Ruling as it focuses on the deductibility of airfares. However, in the final Ruling we have made changes

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	education are deductible. For example, it could be addressed in Examples 28 and 31 of the draft Ruling.	to now Example 33 to evidence that both accommodation and meals are deductible in that example.
25	In paragraph 123 of the draft Ruling, change the words 'carrying on your self-education' to 'participating in your self-education'.	We agree in part. Changes have been made in the final Ruling to now paragraph 128. This adopts the wording from TR 98/9.
26	Paragraph 124 of the draft Ruling would benefit from some more explanation.	We agree. Changes have been made in the final Ruling to now paragraph 129, and a reference added in footnote 68 to Taxation Ruling TR 2021/4 *Income tax and fringe benefits tax: employees: accommodation and food and drink expenses travel allowances, and living-away-from-home allowances* (with subsequent references in footnotes 67 to 70).
27	What is the factor in paragraph 126(a) of the draft Ruling relative to?	The factors in paragraph 131 of the final Ruling are a reference to the factors in paragraph 42 of TR 2021/4. Reference is made to this paragraph in footnote 69 of the final Ruling.
28	In paragraph 154 of the draft Ruling, add 'for' the purpose of producing assessable income to the first sentence.	The final Ruling has not been updated to address this. A 'taxable purpose' is defined in subsection 40-25(7) as including 'the purpose of producing assessable income'. In the final Ruling, the reference to 'taxable purpose' has been moved from paragraph 159 to paragraph 158 and footnote 77 has been added.
29	It is suggested that paragraph 154 of the draft Ruling be reworded.	We agree. In the final Ruling, changes have been made to now paragraph 159 which adopt the wording of paragraph 79 of TR 98/9.
30	Various punctuation changes to the draft Ruling have been suggested.	Various punctuation changes have been made in the final Ruling.