The Windfall Granted To Students in High Court Decision

Under Attack by New Legislation

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Abstract

This article reviews new legislation proposed by the Government to disallow deductions against any government assistance payments received by taxpayers. The article will revisit the facts of the High Court’s decision of Anstis\(^1\) in which a taxpayer successfully challenged the Commissioner to the right to claim self education costs against her Youth Allowance payments. It will then examine the actions taken by the government after the High Court decision by allowing taxpayers to claim a predetermined amount for self-education expenses against government payments for the years 2007 to 2010 and to claim actual expenditure for the 2011 year. The proposed legislation aims to disallow any claims from 1 July 2011, meaning that students and other recipients of government assistance payments will no longer be able to offset any expenditure they incur against these payments.

Introduction

In the Australian Taxation Office’s (ATO) view taxpayers were only entitled to claim the costs of education as a deduction against their assessable income if there was a direct nexus between their employment and the area of study. The ATO did not accept that taxpayers in receipt of government assistance payments such as Youth Allowance could offset the costs of their study against the government payments. This view was questioned by Symone Anstis (taxpayer) a full-time student who received Youth Allowance payments and was studying a teaching degree at a recognised university. The taxpayer objected against the ATO decision

\(^1\) Commissioner of Taxation v Anstis (2010) 241 CLR 443; (2010) 76 ATR 735; 2010 ATC 20-221
to disallow her expenditure and thus began the court battle between her and the ATO which ended in the High Court in November 2010 which resulted in a unanimous decision that she should be allowed to claim the deductions. This was seen as a windfall for students but it would also have an impact on other government assistance payments, where in order to receive the payments taxpayers were required to incur costs, for example unemployment payments. The ATO, whilst acknowledging the decision and assisting those taxpayers eligible to claim the self-education costs for the years 2007 to 2011, worked with the Government to introduce new legislation to counteract the decision of the High Court. The Government released Exposure Draft – Disallow Deductions Against Rebatable Benefits, in January 2012 which seeks to amend the *Income Tax Assessment Act 1997* (ITAA 97) to disallow deductions against taxable government assistance payments that are eligible for a rebatable benefit. The date of effect, if the legislation is passed, will be 1 July 2011.

With this background, the article will now trace the history of self education and government assistance payments before examining the proposed legislation and drawing some conclusions.

**Self-Education**

Self-education expenses are costs incurred by taxpayers when they undertake a course of study at a recognised place of education such as a university. The taxpayer must show that there is a sufficient connection between his/her current employment and the course being studied before any expenditure can be claimed.

The ATO requires that taxpayers satisfy certain conditions including:

- they are upgrading their qualifications for their current employment

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they are improving specific skills or knowledge used in their current employment

they are employed as a trainee and are undertaking a course that forms part of that traineeship

they can show that at the time of working and studying, the course lead or was likely to lead, to an increase in employment income

Examples

Example 4 Louis is a computer science student who works at the university laboratory installing computers. The course and the job are generally related, and what Louis learns might help him in his job. The high level professional skills Louis acquires are well beyond the skills required for his current job and employment. Consequently, there is not a sufficient connection between his job and his course and he cannot claim a deduction for self education expenses.

Example 5 Barry, a trainee accountant, is studying commerce part-time at university. He is allowed a deduction for the costs associated with the course because the course enables Barry to maintain or increase the specific knowledge required in his current position and to carry out his duties more effectively.

It can be seen from the above example that the ATO applies stringent rules to self-education claims. Many more examples can be viewed in Taxation Ruling TR 98/9.

If a sufficient connection between current employment and a course is established then examples of self education expenses allowed as tax deductions include tuition fees (which includes fees payable under FEE-HELP – but not HECS-HELP), textbooks, stationery,

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4 ibid 3 - taken from ATO Self Education Facts
5 Income tax: deductibility of self education expenses, Australian Taxation Office, paragraph 41
computer expenses (depreciation and repairs), guild memberships, running expenses of a room in which to undertake study and capital items such as a desk, chairs on which depreciation will be allowable.

Self education expenses are broken up into five different categories

<table>
<thead>
<tr>
<th>Category</th>
<th>Allowable expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Tuition fees, textbooks, stationery, student guild fees, public transport fares, car expense worked out using the ‘logbook’ or ‘one-third of actual expenses’ method, running expenses for a room set aside specifically for study</td>
</tr>
<tr>
<td>B</td>
<td>Decline in value (depreciation) deductions of assets such as a computer, desk, or car for which you are claiming a deduction in Category A</td>
</tr>
<tr>
<td>C</td>
<td>Repair costs to assets used for self-education purposes</td>
</tr>
<tr>
<td>D</td>
<td>Car expenses using the ‘cents per kilometre’ or ‘12%’ of original value method. You cannot claim car expenses under this category if you have included deductions for decline in value or repairs to your car under category B or C</td>
</tr>
<tr>
<td>E</td>
<td>Expenses you have incurred but cannot use as a deduction – for example:</td>
</tr>
<tr>
<td></td>
<td>• for work related self education, travel expenses for the last stage of travel from your home to place of education and then to your workplace or workplace to your place of education and then to your home</td>
</tr>
<tr>
<td></td>
<td>• for Austudy, ABSTUDY or Youth Allowance recipients, travel expenses from your home to your normal place of education and back</td>
</tr>
<tr>
<td></td>
<td>• child care costs related to attendance at lectures or other self-education activities</td>
</tr>
<tr>
<td></td>
<td>• capital costs of items acquired in the financial year and used for self-education purposes, such as a computer or desk</td>
</tr>
</tbody>
</table>

These expenses can be used to offset the $250 reduction to your Category A expenses

Sec 82A(1) of the Income Tax Assessment Act 1936 (ITAA 1936) states that –

6 Ibid 3- table extracted from ATO
Where a deduction is, or but for this section would be, allowable to the taxpayer under section 8-1 of the Income Tax Assessment Act 1997 in respect of a year of income in respect of expenses of self-education, the deduction, or the aggregate of the deductions, so allowable to the taxpayer in respect of those expenses shall not be greater than the amount by which the net amount of expenses of self-education exceeds $250.

This means in effect that $250 must be taken off the expenses of self education with the balance allowable.

Example (taken from ATO Self-Education Facts) \(^7\) Maureen is an apprentice hairdresser studying hairdressing at a TAFE College. Her course fees, textbooks and public transport fares are all Category A expenses totalling $290. Maureen can only claim $40 after the $250 reduction.

To illustrate how category E works, let us assume that Maureen has a child and is required to place the child into childcare whilst she attends her TAFE classes. The cost of the childcare is $300. Maureen can now claim the full $290 as the reduction of $250 has been offset against the $300 incurred in childcare costs.

The ATO provides very useful advice to students via its website (www.ato.gov.au) including the self-education eligibility tool and expenses calculator. Students who may consider that they are eligible to claim self education costs should refer to the website.

The Challenge

As mentioned previously the ATO considered only those taxpayers with employment income could gain access to self-education deductions and was quite adamant that taxpayers receiving government assistance payments whilst studying were not entitled to make a claim

\(^7\) Ibid 3
for any expenses they incurred. This was reflected in *Taxation Ruling TR 98/9*\(^8\) which stated that “education expenses would not be deductible against various Commonwealth educational assistance schemes.”

Fortunately for many students, one student decided to challenge this in the courts. The outcome of *The Anstis Case* in the High Court was that if taxpayers are in receipt of government assistance payments for studying and the conditions to maintain receipt of payments include that a course of study is undertaken, then expenses can be offset against this income as there is a direct nexus between the receipt of the assessable income and the associated expenses of earning that income.

*The case in summary*

*FCT v Anstis* (2010) HCA 40 \(^9\)

The taxpayer was a full-time university student completing a teaching degree. She received Youth Allowance that was conditional upon her being

- enrolled in the degree
- undertaking at least \(\frac{3}{4}\) of the normal amount of full-time study, and
- meeting certain criteria for achieving satisfactory progress

as required under the *Social Security Act 1991* and *Youth Allowance (Satisfactory Study Progress Guidelines) Determination 1998* (SSA).

In the taxpayers income tax return for the year ended 2006 an amount of $3,622 being Youth Allowance was disclosed in assessable income and a corresponding claim for expenses in

\(^8\) Income tax: deductibility of self education expenses, Australian Taxation Office

\(^9\) Ibid 1
relation to her teaching degree of $920 was claimed under sec 82A of the ITAA 1936. Total expenses were $1170 and were reduced for the first $250 as required under sec 82A.

The Commissioner argued that these expenses were not deductible by the recipient of a Youth Allowance under s8-1 of the ITAA 1997 and did not allow the deduction to be claimed.

The taxpayer appealed against the decision firstly to the Administrative Appeals Tribunal (AAT) which found in favour of the Commissioner. An appeal against the AAT decision was lodged by the taxpayer with the Federal Court in which she was successful. The Commissioner then appealed to the Full Federal Court who also found in favour of the taxpayer. The Commissioner then requested special leave to the High Court with the outcome favouring the taxpayer again, thus opening the door for students or recipients of government assistance payments to claim expenses against their assessable government payments.

The High Court considered that there were 3 areas which needed to be addressed –

**Assessability of the Allowance** – The Court needed to consider whether Youth Allowance was assessable income under the ITAA 1997 and it was concluded that it was assessable. The High Court stated that Youth Allowance payments enable recipients to rely upon them for regular expenditure, and recipients can expect to receive those payments as long as they satisfy the various requirements of the social security legislation. The Court claimed that it followed that such amounts met the definition of income according to ordinary concepts.
Whether the expenses were incurred “in gaining or producing” assessable income - The Court also had to consider whether the taxpayer’s self education expenses were incurred ‘in gaining or producing’ her assessable income.

The Court maintained that the notion of ‘gaining or producing’ income within the meaning of s 8-1(1)(a) of the ITAA 1997 was wider than those activities which may be said to earn income. According to its ordinary meaning, to ‘gain’ means not only to ‘earn or obtain (a living)’ but to “obtain, secure or acquire” or to “receive”.

The High Court considered it was essential to identify how the assessable income was gained or produced. It noted that previously the Federal Court stated that the assessable Youth Allowance income received by the taxpayer was gained or produced by her entitlement to the payment. That right to payment of the Allowance is retained by the taxpayer as long as she maintains her qualification for the payment by satisfying the activity test by undertaking full-time study as noted above.

The taxpayer incurred expenses in satisfying the activity test and the Court held the expenses were deductible.

Were the expenses of a “private” nature? – If the expenses were incurred “in gaining or producing” the taxpayer’s assessable income, the Court needed to consider if the expenses were of a private nature, in which case they would have been disallowed. The High Court held that the expenses were not of a “private” nature.
The Commissioner contended that the expenditure was private in nature on the basis that it was an attempt by the taxpayer to better herself as an individual and claimed that it was an investment in human capital.

The High Court concluded that the taxpayer’s desire to obtain a degree, whether to enable her to become a teacher or for some other reason, could not ‘deny the circumstances that expenses occasioned by her enrolment, full time study and satisfactory progress in that degree were incurred by her as a recipient of Youth Allowance’. The Court said the outgoings did not lose their connection with the ‘position’ she held as a recipient of Youth Allowance ‘simply because she might have been studying for reasons other than enjoying an entitlement to Youth Allowance’.

The Court said there was ‘no sufficient foundation’ for a conclusion that the expenditure by the taxpayer were essentially private in nature within the sense of s 8-1(2)(b) of the ITAA 1997.

The taxpayer was successful on all of the abovementioned three areas on which the High Court needed to be satisfied.

Of concern to the Government and ATO after the handing down of the decision was that other government assistance payments such as Newstart Allowance or Youth Allowance (Job Seeker) would be treated in the same way and that any expenses incurred to obtain these payments would be deductible. Other taxpayers who could also claim expenses against government assistance payments would result in revenue-negative implications for the Government.
Response after the Decision

The ATO released a *Decision Impact Statement*\(^{10}\) (DIS) in December 2010 in relation to the decision of the High Court in the *Anstis* case and accepted the findings of the High Court. The ATO added an Addendum to *Taxation Ruling TR 98/9* to take into account the decision.

The Assistant Treasurer\(^{11}\) issued a media statement to coincide with the release of the ATO’s DIS and stated that the government would not amend the tax law retrospectively to deny deductions against Youth Allowance for prior years following the decision of the High Court and that the ATO would be working with those taxpayers affected by the decision to ensure they received any entitlements that were due to them. At the same time it was announced that the Government would consider its position on the deductibility of expenses against Youth Allowances for future financial years in early 2011 (which has now been done with the release of the exposure draft in January 2012).

The ATO wrote to those taxpayers it considered were affected by the changes, being students receiving Austudy, ABSTUDY and Youth Allowance and who had previously declared the payments as assessable income in their taxation returns and offered to amend their income tax returns for the years ended 30 June 2007, 2008, 2009 and 2010 to allow a standard claim of $550 without the need to substantiate the expenses. The actual expenditure on self-education was considered to total $800 and was reduced for the first $250 under sec 82A (ITAA 36), thus resulting in the deduction of $550. The $800 was based on information published by academic institutions. If taxpayers considered that their self-education expenses were greater

\(^{10}\) Decision Impact Statement, Commissioner of Taxation v Symone Anstis, Australian Taxation Office, 16 December 2010

\(^{11}\) The Hon Bill Shorten MP
than the standard claim they could amend their own returns but were required to substantiate the whole amount of their claim. Amended assessments were issued by the ATO to those taxpayers who accepted their offer before the 30 June 2011. For the year ended 30 June 2011, taxpayers who wished to claim self-education expenses against government assistance payments were required to substantiate the whole of their claims.

**Government’s Current Position**

The Assistant Treasurer\(^2\) announced in the media statement in December 2010 that the Government would review the decision of the High Court. In the 2011 federal budget the Government announced its intention to change the law to prevent deductions being claimed against all government assistance payments from 1 July 2011. The government has now acted on those announcements with the release of Exposure Draft “Disallow Deductions Against Rebatable Benefits” on 20 January 2012. The exposure draft and associated explanatory material seeks to amend the ITAA 1997 to disallow deductions against taxable government assistance payments that are eligible for a rebatable benefit.

The Exposure Draft intends to introduce sec 26-19 into the ITAA 1997 as follows and it will apply from the 2011/12 income year and later income years –

**26-19 Rebatable benefits**

(1) You cannot deduct under this Act a loss or outgoing to the extent that the loss or outgoing is incurred in gaining or producing a rebatable benefit (within the meaning of section 160AAA of the *Income Tax Assessment Act 1936*).

(2) To the extent that you use property in gaining or producing a rebatable benefit, your use of the property is taken not to be for the ‘purpose of producing assessable income if subsection

\(^2\) Ibid 9
(1) would stop you deducting a loss or outgoing if you incurred it in the income year in
gaining or producing the rebatable benefit.

Note: Under some provisions of this Act, in order to deduct an amount for your property,
you must have used the property for the purpose of producing assessable income.

Section 160AAA ITAA 1936 as mentioned above provides a rebate in respect of certain
pensions and benefits. Benefits such as Youth Allowance, Newstart Allowance, ABSTUDY
and Austudy are examples of government assistance payments that are eligible for a rebate.
The effect of a rebate is that taxable government assistance payments are concessionally
taxed, as the rebate extinguishes the tax liability raised on the payment received. If a
taxpayer has no other income then they will not have a tax liability, if there are other forms of
income such as employment or investment income as well as the government assistance
payment, the tax liability will only be based on the other income, as the rebate extinguishes
the tax on the government payment.

The reasons for the Government’s decision to disallow the expenses against government
assistance payments can be seen from reviewing the following paragraphs of the Exposure
Draft –

1.7 The High Court decision represented a departure from the principle that study
expenses unrelated to employment are not deductible. The decision means that individuals in
like circumstances (such as students with the same income) have different tax obligations
depending on the type of government assistance payment they receive, or whether they
receive any government assistance payments at all.
1.8 In that sense, the decision has long-term implications for the integrity of basic tax principles; involves a cost to revenue; and introduces additional horizontal inequities into the tax system.

1.9 Disallowing deductions going forward recognises that taxable government assistance payments are effectively tax-free and provide certainty as to the scope of eligible deductions.

A comparison of key features of the new law and the current law is contained in the explanatory material -

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<tr>
<th>New Law</th>
<th>Current Law</th>
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<tbody>
<tr>
<td>Individuals will not be able to deduct a loss or outgoing they incur in gaining or producing a rebatable benefit (as defined in section 160AAA of the Income Tax Assessment Act 1936) even if the loss or outgoing is not considered private or domestic in nature. If an individual uses property in gaining or producing a rebatable benefit, the use of property is taken to not have been for the purpose of producing assessable income, and is not deductible.</td>
<td>Individuals may deduct a loss or outgoing they incur in gaining or producing a rebatable benefit, provided the loss or outgoing is not considered private or domestic in nature.</td>
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</tbody>
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The Government called on submissions for the proposed legislation changes but unfortunately it cannot be seen by the authors that there will be many lobbying against this, apart from possible student bodies.

**Conclusion**

The Government has stated that the changes to the legislation relating to the deductibility of self-education payments against government payments are to reinstate their original policy intention that deductions should not be allowed against taxable but effectively tax-free government assistance payments. Other reasons cited were that the changes were necessary
to ensure there are no horizontal inequities\(^\text{13}\) in the tax system and to provide certainty as to
the scope of eligible deductions. There was also concern it seems with the cost to revenue,
but if we looked at the taxpayers this decision affected it could be seen that the loss to
revenue would not be significant. For example taxpayers receiving government assistance
payments are not allowed under the *Social Security Act* to earn large amounts of income as
they would not be entitled to any assistance, so it can be safely assumed that all taxpayers
would be on the marginal tax rate of 15%. Let’s assume that expenses against government
assistance payments is on average $550 (as per the average provided by the ATO) that
equates to $82.50 in tax. It should also be remembered that taxpayers can effectively earn up
to $16,000 tax free with the Low Earners Income Tax Offset, so it can be a struggle to
understand why this will affect government revenue, when most of the taxpayers receiving
government assistance payments and who are wanting to claim tax deductions against them
would not be paying tax or very little!

So the windfall granted by the High Court decision is possibly nearing an end for students if
the proposed legislation is enacted and passed by the Parliament. But it should be
remembered that if a student’s employment income is directly related to his/her course of
study self-educations expenses are still deductible to them. Those who believe that they
would be entitled to make a claim under these provision should refer to the ATO website
where information on self-education can be obtained or to seek professional advice from a
taxation professional.

\(^\text{13}\) Horizontal equity (people in similar positions should be treated similarly), Australian Taxation Law 2012, CCH 22\textsuperscript{nd} Edition, Woellner, Barkocy, Murphy, Evans, Pinto