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ANSTIS MAKES A NEW LAW

A claim for self-education expenses has entered new territory following the decision in *Commissioner of Taxation v Anstis*¹ says Richard A Bobb partner, David Woo.

In simple terms, the case involved a student who was in receipt of the Youth Allowance. A condition of receiving the Youth Allowance was that she be undertaking “full-time-study”. The taxpayer satisfied the definition of “full-time-study” set out in Section 541B(1) of the *Social Security Act* by being enrolled in a course of education at an educational institution.

The Full Court of Appeal was satisfied, on this basis alone, that the taxpayer met the conditions necessary to be entitled to receive the Youth Allowance (namely undertaking a course of education at an educational institution) could therefore claim deductions incurred as a consequence of her enrolment at, in this case, the Australian Catholic University.

Naturally, the Commissioner is aggrieved and has indicated in a public announcement that he will not accept the decision of the Full Court and has lodged an application to seek special leave to appeal to the High Court of Australia.

This is, now, the second time, the Commissioner has been unsuccessful. He was unsuccessful before a single judge of the Federal Court. Now, in a unanimous decision of the Full Court of Appeal all three (3) judges have held that the Commissioner could not succeed in his appeal.

¹ 2009 FCAC 154.

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One wonders why the Commissioner will not accept the decision of four (4) judges. However, one can only speculate that the Commissioner, unhappy as he is about the decisions, is not prepared to allow the “flood gates to be opened”.

In many ways, the decision in *Anstis* alters the general orthodoxy, in respect of self-education expenses, as in the past most of these claims have been in respect of taxpayers pursuing opportunities to derive additional income or higher paid income from either employed or self-employed positions. *Anstis* is now authority that taxpayers no longer need to make the requisite connection between expenditure, on the one hand, and employment or self-employment income on the other. The mere receipt of the Youth Allowance will qualify as assessable income from which expenditure incurred in respect of a course of education will give rise to allowable deductions.

As a post-script, it should always be remembered that the Section 82A exclusion still applies. This provision says that the first \$250.00 of self-education expenses cannot be claimed and it is only the excess above the sum that is taken into account in working out the allowable deduction under the general provisions of Section 8-1.

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