

# **Submission to Individuals Tax Unit into Proposed Section 26-19 of the ITAA 1997**

Submission by:

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Individuals Tax Unit,

This brief submission has been lodged three days late. Please accept the submission even though it is lodged after the due date (by 17 February 2012).

There are no restrictions on the distribution of this submission to the public.

## **Submission**

### **Section 26-19 Achieves Aims**

The broader background to s 26-19 appears to be that government receipts such as Youth Allowance (Study), Youth Allowance (Unemployment), benefits, etc, are to be tax-free. Also, the government does not want a situation where expenses in obtaining the government receipts become effectively deductible against non-government income receipts (i.e. government wants “quarantining”).

In light of this background, it appears that s 26-19 achieves its aim. It prevents deductions from arising that could have effectively been used against non-government receipts of assessable income.

### **Equity basis to Section 26-19**

It is clear that s 26-19 has an equity aspect to it, namely, the unfairness that would subsist against self-funded students (e.g. students working as waiters, sales assistants) that incur self-education expenses in circumstances similar to those incurred by the taxpayer in *Anstis*. These students would not obtain a deduction for their self-education expenses, whereas under *Anstis* (and pre-s 26-19), students obtaining government income receipts would. Section 26-19 ensures that these two groups of students are put in a similar position. (The unfairness could never be that significant because of the interaction of means testing of government benefits, and the fact the deduction under the income tax was taken at a marginal rate of 15%).

## **Are there any other Pockets of Inequity Remaining?**

While it is sometimes difficult to achieve perfect equity across taxpayers in regard to particular activities, one concern I have is whether s 26-19 retains some unfairness in regard to students generally (which now includes *Anstis-type* students), as opposed to students receiving income under a cadetship or trainee type-position. In brief, the key feature feature of cadetships, etc, is that the employer requires the employee to study and to make good progression in their study as a condition of retaining their employment. In one sense, the situation is analogous to the activity test for continued receipt of government payments (like that in *Anstis*).

It is clear that in an *Anstis* situation, the expenses of self-education can be seen as: (a) an expense to obtain a first qualification or to get started on a career path and/or (b) an expense to retain an income stream. Under s 8-1, the first is not deductible but the second is deductible. Section 26-19 now denies the deduction in the second situation where the income stream is a government receipt. Section 26-19 does not apply to non-government receipts.

The cadetship situation can also be viewed as analogous to an *Anstis* situation (i.e. new career and/or retention of income stream). While some may argue that it is not analogous to an *Anstis* situation, and that the expense is keeping-up-to-date “in an area in which one is employed”, it is unrealistic to view the cadetship situation, at least in the early years, as an expense of keeping-up-to-date with “an area of knowledge”. The cadet is still commencing on a carer path, and like other students is incurring self-education expenses that are similar to those incurred by all students.

Section 26-19 will not deny deductions for self-education expenses in a cadetship situation. On the fairly safe assumption that s 8-1 is satisfied in the cadetship situation, a position that is established or strengthened by *Anstis*, is there not an element of unfairness between students on cadetships and other students? If so, then should consideration be given to extending s 26-19 to other retention of income stream payments?

## **Need for Brighter Lines in Self-Education?**

A strong case can be made for introducing clearer lines into the area of self-education expenses. It is an area where numerous mistakes are made. The combination of the self-assessment system and the proven history of errors, on a large scale over a considerable period, suggests a need for bright lines in this area.

The discussion immediately above about cadetships, etc, can be seen as one example where a bright line rule could provide for better outcomes.

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20 February 2012