

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D11/01

Salaries tax – allowable deductions – membership fee – section 12(1) of the Inland Revenue Ordinance (‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Ho Chung Ping and David Li Ka Fai.

Date of hearing: 18 January 2001.

Date of decision: 17 April 2001.

The taxpayer was offered a post of lecturer in Organization A in 1996. The taxpayer was informed that any additional qualifications might be considered for salary adjustment purpose. By another appointment letter dated 11 May 1998, Organization A offered the taxpayer further employment as lecturer for two years from 1998. By a letter dated 15 July 1998, the salary of the taxpayer was raised in view of his election as a professional associate of the Royal Institution of Chartered Surveyors (‘RICS’).

In response to enquiries from the Revenue, Organization A informed the Revenue that the taxpayer’s professional qualification is not a pre-requisite of his employment. The issue is whether the taxpayer is entitled to deduct from his salary the membership fee that he paid to the RICS.

Held:

Based on the evidence before the Board, the taxpayer’s membership with the RICS placed him in a position where he was considered for salary adjustment and is not a pre-requisite of his employment. The membership fee that he paid was clearly not incurred in the production of his increment (BR19/73, IRBRD, vol 1, 121; Commissioner of Inland Revenue v Sin Shun Wah 2 HKTC 364 compared; D72/90, IRBRD, vol 1, 503 applied).

Appeal dismissed.

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Cases referred to:

BR19/73, IRBRD, vol 1, 121
Commissioner of Inland Revenue v Sin Shun Wah 2 HKTC 364
D72/90, IRBRD, vol 1, 503

Ngan Man Kuen for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

Background

1. On 27 January 1996, Organization A invited applications for the post of lecturer in ‘construction’ (‘the Post’) to teach post-secondary students ‘building studies, civil engineering and other related subjects’. Applicants were required to have an honour degree in a discipline relevant to the above subject areas and three years’ relevant post-degree experience.
2. The Taxpayer submitted an application for the Post on 3 February 1996. He was then holder of a BSc degree in Quantity Surveying and a MSc degree in Construction Project Management. He was also a probationer with the RICS. His application was successful. By a letter dated 6 September 1996, Organization A offered him the Post at a salary of \$24,850 per month. This was below the minimum salary of \$28,490 for the post and was determined in the light of the Taxpayer’s qualifications and relevant post-qualification experience. He was informed that ‘any additional qualifications such as membership of the Hong Kong Institution of Engineers ... may be considered for salary adjustment purpose.’
3. On 15 January 1998, the Taxpayer passed the final assessment of professional competence test of the RICS (Quantity Surveying Division). By a memo dated 12 February 1998, the Taxpayer invited Organization A to make appropriate adjustment to his salary in view of his additional professional qualification.
4. By another letter of appointment dated 11 May 1998, Organization A offered the Taxpayer further employment as lecturer for two years from 1 September 1998 at a salary of \$29,100 per month. This was below the minimum salary of \$30,430 for the post.
5. By a letter dated 15 July 1998, the Taxpayer was informed that his salary was adjusted to \$38,285 per month with effect from 15 January 1998 in view of his election as a professional associate of the RICS.

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6. In response to enquiries from the Revenue, Organization A informed the Revenue by a letter dated 14 September 2000 that the Taxpayer's 'professional qualification is not a prerequisite of his employment'.

7. The issue before us is whether the Taxpayer is entitled to deduct from his salary for the year of assessment 1998/99 the sum of \$1,230 being the membership fee that he paid to RICS.

The law

8. Section 12(1) of the IRO provides that:

'(1) In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person –

(a) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income.'

9. In BR 19/73, IRBRD, vol 1, 121, the taxpayer, an engineer, claimed deductions in respect of subscriptions which he paid as a member of two societies relating to his profession. The Board referred to the views expressed by Vaisey J in Lomax v Newton 34 TC 561 where the Learned Judge described the analogous English provision permitting deduction 'wholly, exclusively and necessarily in the performance of a taxpayer's duties of his office as provisions which *'are notoriously rigid, narrow and restricted in their operation ... it must be shown that the expenditure incurred was not only necessarily but wholly and exclusively incurred in the performance of the relevant official duties ... The words are indeed stringent and exacting; compliance with each and every one of them is obligatory if the benefit of the Rule is to be claimed successfully.'* On the basis of the narrow and restricted construction of the words 'wholly, exclusively and necessarily', the Board disallowed the taxpayer's claim.

10. In Commissioner of Inland Revenue v Sin Chun Wan 2 HKTC 364, the taxpayer was a Government employee. Under Civil Service Regulations he was required to give three months' notice of resignation or one month's salary in lieu of notice in order to terminate his employment. He resigned from the Government. Having failed to give three months' notice he paid a month's salary in lieu of notice and claimed this amount as a deduction from his total income from his new employment. The Board allowed the taxpayer's claim on the basis that he could not lawfully have earned his emolument from his new employer without paying the Government. Nazareth J (as he then was) reversed the Board's decision. The Learned Judge accepted the contention on behalf of the Revenue that the sum in question was not incurred *in the production of* the assessable income.

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Although the expenses were incurred in order to place the taxpayer in a position in which he was able to earn part of the assessable income, they were not incurred in the production of it.

11. Commissioner of Inland Revenue v Sin Chun Wah was applied by this Board in D72/90, IRBRD, vol 1, 503. The taxpayer was employed by the Hong Kong Government. The entry requirement of his post did not require the applicant to be a member of any professional body. However, in order to earn a bonus increment to his salary, an officer had to belong to a professional body being relevant to his field of work. The policy in granting the increment was to encourage employees in the taxpayer's position to keep abreast of latest developments in their respective fields through the institution's journals and seminars. The taxpayer argued that the statutory requirements were satisfied as the bonus increment which he had earned was unquestionably assessable income; to earn the bonus increment, he had to satisfy the Civil Service Branch that he belonged to the professional body relevant to his field; to maintain his membership, and to pay the annual subscription. The Board rejected the taxpayer's contentions. On the basis of the test laid down in Commissioner of Inland Revenue v Sin Chun Wah, the Board concluded that '*The expenditure has put the Taxpayer in a position where he qualified for the bonus increment, but was not incurred in the production of such increment.*'

Our decision

12. We are of the view that this case is on all fours with D72/90. Organization A's letter dated 14 September 2000 makes it very clear that the Taxpayer's 'professional qualification is not a pre-requisite of his employment'. The Taxpayer's membership with RICS placed him in a position where he was considered for salary adjustment. The membership fee that he paid was clearly not incurred in the production of his increment.

13. For these reasons, we dismiss the Taxpayer's appeal.