

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D138/00**

**Salaries tax** – net assessable income – deduction – fees incurred for Chinese opera course by a police constable – sections 12(1), (6) and 70 of the Inland Revenue Ordinance (‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), David Lee Tai Wai and Lily Yew.

Date of hearing: 22 December 2000.

Date of decision: 8 March 2001.

The taxpayer, a police constable, appealed against the determination of the Commissioner for the rejection of the taxpayer’s claim for deduction in respect of the fees that he incurred for his Chinese opera course between April 1998 and March 1999.

The taxpayer put his case on two alternative grounds:

1. Given the stance of the Revenue in allowing deduction of the fees which he incurred in attending such course in the years of assessment 1996/97 and 1997/98, the Commissioner was estopped from maintaining that Centre A was not an institution approved by the Commissioner for the purpose of section 12.
2. He was planning to retire in 2006. The expenses in question would assist him in securing future employment.

**Held:**

1. Under section 12(1)(a) of the IRO, the taxpayer is only entitled to deduct from his assessable income expenses which he ‘wholly, exclusively and necessarily incurred in the production of the assessable income’. The fees in question were undoubtedly not incurred by the taxpayer ‘wholly, exclusively and necessarily’ in the production of his income as a police constable.
2. Under section 12(1)(e), the taxpayer did not identify what prospective employment he had in mind and how Chinese opera could be relevant to such prospective employment. Vis-à-vis the general public, Centre A is undoubtedly not an institution approved by the Commissioner for the purposes of this section.

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3. The Commissioner was not estopped as the earlier approval may be construed as approval of a place of education under section 12(6)(b) and the Commissioner is entitled to withdraw that approval at any time. Alternatively, the answer is provided by the proviso to section 70. The status of Centre A was not determined on objection or appeal in those years of assessment. The Revenue is entitled on the basis of that proviso to re-open the assessments for those years.

### **Appeal dismissed.**

Leung Wing Chi for the Commissioner of Inland Revenue.  
Taxpayer in person.

### **Decision:**

### **Background**

1. The Taxpayer is a police constable. He joined the Force on 13 December 1982.
2. The Taxpayer is devoted to his profession and is also concerned to improve his career prospect after his retirement from the Force. On his own volition, he attended a physical training course in November 1997. He also successfully completed a computer course in July 1999.
3. The issue before us relates to a third course which the Taxpayer has attended since November 1996 - a course in Chinese opera organised by Centre A. In respect of the fees which he incurred in attending such course, the Taxpayer had, in the years of assessment 1996/97 and 1997/98, successfully claimed and obtained deductions of the same from his income assessable to salaries tax.
4. By a notice of assessment dated 22 September 1999, the Revenue rejected the Taxpayer's claim for deduction in the year of assessment 1998/99. The issue before us is whether the Revenue is correct in rejecting the Taxpayer's claim for deduction in respect of the fees that he incurred for his Chinese opera course between April 1998 and March 1999.

### **The relevant provisions in the IRO**

5. Section 12(1) provides:

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- ‘ (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 ...*
  - (e) *the amount of the expenses of self-education paid in the year of assessment not exceeding the amount prescribed in subsection (6).’*

6. Section 12(6) provides :

‘ *For the purposes of subsection 1(e) -*

- (a) *the total amount that may be deducted in any year of assessment shall not exceed the amount specified in relation to that year in Schedule 3A;*
- (b) *the Commissioner may approve a place of education for the purposes of the definition of a prescribed course of education and the approval operates on and from the date specified in the approval and may be withdrawn at any time.*
- (c) *“expenses of self-education” means expenses paid by the taxpayer on fees ... in connection with a prescribed course of education ...*
- (d) *“prescribed course of education” means a course undertaken to gain or maintain qualifications for use in any employment that is –*
  - (i) *a course of education provided by –*
    - (A) *...*
    - (F) *any institution approved by the Commissioner for the purposes of this section.’*

7. Section 70 provides that:

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*‘ Where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the assessable income ... assessed thereby ... the assessment as made ... shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income ...*

*Provided that nothing in this Part shall prevent an assessor from making an ... additional assessment for any year of assessment which does not involve re-opening any matter which has been determined on objection or appeal for the year.’*

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8. We are impressed by the sincerity of the Taxpayer. We accept that he genuinely believes that the Chinese opera course would improve his communication skills, advance his physical agility and improve his vocal tone and all these would ensure to his benefit as a police constable.

9. The Taxpayer does not dispute the Revenue’s correspondence with Centre A wherein Centre A admits that it is not an institution approved by the Commissioner for the purposes of deduction of self-education expenses.

10. He puts his case on two alternative grounds:

- (a) Given the stance of the Revenue in the years of assessment 1996/97 and 1997/98, as far as he is concerned, Centre A is an institution approved by the Commissioner for the purpose of section 12.
- (b) He is planning to retire in 2006. The expenses in question would assist him in securing future employment.

### **Our decision**

11. Under section 12(1)(a) of the IRO, the Taxpayer is only entitled to deduct from his assessable income expenses which he ‘wholly, exclusively and necessarily incurred in the production of the assessable income’. The fees in question were undoubtedly not incurred by the Taxpayer ‘wholly, exclusively and necessarily’ in the production of his income as a police constable. Unless his claim is within section 12(1)(e), he is not entitled to make the deduction in question.

12. The definition of ‘prescribed course of education’ envisages a course to ‘gain ... qualification for use in any employment’. This lends support to the Taxpayer’s argument that he is

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entitled to deduct expenses incurred to gain qualification in any future employment that he might be engaged after his retirement. This, however, is merely an initial hurdle which the Taxpayer has to surmount. He has to further satisfy us that Chinese opera is relevant to the 'qualification' of his prospective employment and that the course was provided by an institution approved by the Commissioner. The Taxpayer did not identify what prospective employment he had in mind and how Chinese opera could be relevant to such prospective employment. Vis-à-vis the general public, Centre A is undoubtedly not an institution approved by the Commissioner for the purposes of this section. We therefore have no difficulty in rejecting the second argument of the Taxpayer.

13. The first argument of the Taxpayer is essentially an estoppel argument. Miss Leung for the Revenue frankly admitted that her department was in error for the years of assessment 1996/97 and 1997/98. We are of the view that there are two answers to this argument. First, the earlier approval of the Commissioner may be construed as approval of a place of education under section 12(6)(b) and the Commissioner is entitled to withdraw that approval at any time. Alternatively, the answer is provided by the proviso to section 70. The status of Centre A was not determined on objection or appeal in those years of assessment. The Revenue is entitled on the basis of that proviso to re-open the assessments for those years. In these circumstances, it is difficult to see how the doctrine of estoppel would operate.

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