

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D16/92

Salaries tax – whether subscription to professional journal can be deducted from assessable income.

Panel: William Turnbull (chairman), Donald Cheung Quintin and Douglas C Oxley.

Date of hearing: 21 May 1992.

Date of decision: 24 June 1992.

The taxpayer was a member of an institute which had an official journal. The taxpayer claimed as a deduction from his income assessable to salaries tax the cost of the journal as well as the cost of his annual subscription to the institute. The assessor allowed the taxpayer to deduct the expense of being a member of the institute but disallowed the subscription to the journal. The taxpayer appealed to the Board of Review.

Held:

The Board has no power to either grant or extend an extra-statutory concession. As a matter of law the subscription to the journal is not an allowable expense.

Appeal dismissed.

Cases referred to:

D24/87, IRBRD, vol 2, 598

D23/90, IRBRD, vol 5, 178

Pauline Lee for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

This is an appeal by a taxpayer against the refusal of the Deputy Commissioner to allow the deduction of a subscription to a professional journal. The facts are as follows:

1. The Taxpayer was a member of an institute ('the Institute'). There was an official journal of the Institute ('the Journal').

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2. The Taxpayer submitted in his 1989/90 salaries tax return a claim to deduct as allowable outgoings and expenses the sum of \$663 being his annual subscription to the Institute and \$468 being his annual subscription to the Journal.

3. The assessor when assessing the Taxpayer to salaries tax for the year of assessment 1989/90 allowed as a deductible outgoing or expense the subscription paid by the Taxpayer to the Institute but refused to allow as an outgoing or expense the subscription to the Journal.

4. The Taxpayer objected to the assessment and submitted that the holding of a professional qualification was a pre-requisite of his employment and the retention of membership and the keeping abreast of current developments in the accounting profession were of regular use and benefit to him in the performance of his duties.

5. By his determination dated 30 February 1992 the Deputy Commissioner confirmed the salaries tax assessment against which the Taxpayer was objecting and declined to allow the deduction of the subscription to the Journal on the ground that it was not an expense wholly, exclusively and necessarily incurred in the production of the assessable income.

6. The Taxpayer appealed to the Board of Review.

The Taxpayer appeared on his own behalf before the Board of Review. He submitted that he was an associate member of the Institute and did not belong to any other professional accountancy bodies. He submitted that the holding of an accountancy professional qualification was a pre-requisite to his employment which he said was as a Financial Controller and Company Secretary of a company incorporated and carrying on business in Hong Kong. He said that the retention of membership of the Institute and the keeping abreast of current developments in his accountancy profession were of regular use and benefit to him in the performance of his duties as Financial Controller and Company Secretary. He said that his employer was a manufacturing company with a staff of over 260 persons.

He said that his employer did not provide him with any professional journal or materials which could keep him abreast of current developments in his accountancy profession. He said that to keep abreast of current developments in his accountancy profession he was obliged to subscribe to the Journal published monthly by the Institute. He produced a photo copy of one page of the Journal and highlighted references which he submitted made reading of the Journal mandatory.

He went on to say that previously his subscription to the Journal had always been allowed as an outgoing and expense when his salaries tax had been assessed. He said that this had been allowed as part of an extra-statutory concession laid down in the Inland Revenue Departmental Interpretation and Practice Notes No 9. He submitted:

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‘To disallow my claim for a deduction in respect of my subscription to the Journal is simply inequitable and is in total contradiction to the spirit and letter of the “extra-statutory concession” under the heading of Subscriptions to Professional Societies etc.

The Commissioner’s determination is based on section 12(1) of the Inland Revenue Ordinance, whereas my argument is based on the “extra-statutory concession” as explained above.’

The Taxpayer was asked to confirm that this was the basis of his appeal and that his appeal was based on an extra-statutory concession which he said should apply to his case as opposed to the provisions of the Inland Revenue Ordinance which the Commissioner said should apply. The Taxpayer confirmed that this was the basis of his appeal.

The representative for the Commissioner said that the issue to be decided by the Board was whether or not the Commissioner was wrong in not applying the extra-statutory concession to the claim of the Taxpayer. He said that the Commissioner had issued a Departmental Practice Note which provided only for the deduction of one subscription to one professional association. He pointed out that the departmental policy related only to membership subscriptions and was not extended to payments of any other nature. He pointed out that the subscription to the Journal was not mandatory as claimed by the Taxpayer but was optional and his membership of the Institute was not dependent upon his subscribing to the Journal. He pointed out that whether or not to subscribe to the Journal was the personal choice of the Taxpayer and there was no evidence before the Board that it was necessary for him to subscribe to the Journal in order to keep abreast of current developments in the accountancy profession.

The representative for the Commissioner then cited to us D24/87, IRBRD, vol 2, 598 and D23/90, IRBRD, vol 5, 178.

This Board has no hesitation in dismissing this appeal which has no merit whatsoever. As stated in D24/87 the Board of Review has no power to extend the scope of any extra-statutory concession. Indeed the Board of Review cannot even apply let alone extend any extra-statutory concession. The Board of Review is strictly bound by the provisions of the Inland Revenue Ordinance and has no discretionary powers other than those laid down in the Inland Revenue Ordinance. The entire case of the Taxpayer is based upon his alleged claim to an extra-statutory concession and he accepted when appearing before the Board that the subscription to the Journal was not a permitted deduction within the meaning of section 12(1) of the Inland Revenue Ordinance.

D23/90 has much similarity to the present case. That was an appeal by a person who was employed as an audit manager, who was a member of the Institute, and who subscribed to the Journal. The taxpayer in that case submitted that he had to be acquainted with the latest developments in the accountancy profession in order that he would be able to advise his clients efficiently and effectively. If anything the facts of that case are stronger

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than those of the Taxpayer in the case before us? The Board in D23/90 said that, as in the case now before us, it was not obliged to make a decision on whether the subscription to the Journal was an allowable expense under section 12(1) of the Inland Revenue Ordinance. As the determination of the Deputy Commissioner was not based on any extra-statutory concession but was based on the application of section 12(1) to the subscription to the Journal we place on record that we find the determination of the Deputy Commissioner to be correct. The wording of section 12(1) is notoriously limited and the subscription to the Journal is not an expense wholly, exclusively and necessarily in the production of the assessable income. Accordingly the decision of the Deputy Commissioner is correct.

For the reasons given this appeal is dismissed.