

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D23/90

Salaries tax – claim to deduct subscription for professional journal – whether extra-statutory concession can be extended.

Panel: T J Gregory (chairman), John C Broadley and Charles Hui Chun Ping.

Date of hearing: 8 December 1989.

Date of decision: 13 July 1990.

The taxpayer was employed as a professional accountant and subscribed for a professional journal which he said was necessary for his work. He claimed that the cost of buying the professional journal should be allowed as a deduction against his salaries tax and that an extra-statutory concession should be extended.

Held:

The Board of Review could not extend an extra-statutory concession.

Appeal dismissed.

Cases referred to:

D19/73, IRBRD, vol 1, 121
CIR v Humphrey 1 HKTC 451
Lomax v Newton 34 TC 558
Owen v Burden [1976] 1 All ER 356
Ricketts v Colquhoun 10 TC 118
Brown v Bullock 40 TC 1
CIR v Robert P Burns 1 HKTC 1181
Humbles v Brooks 40 TC 500
D24/87, IRBRD, vol 2, 398

S McGrath for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. THE NATURE OF THE APPEAL

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The Taxpayer appealed against the determination of the Commission ('the determination') issued on 18 September 1989 disallowing his claim for the deduction of the amount paid by him in respect of a subscription to a professional journal in the year of assessment 1986/87, the deduction in question amounting to \$364.6.

2. THE FACTS

2.1 At the material times the Taxpayer was a member of an institute of accountants in England ('the Institute'). The Institute publishes an official journal ('the Journal').

2.2 At all times during the relevant year of assessment, 1986/87, he was employed in Hong Kong as an audit manager.

2.3 On 3 June 1987 the Taxpayer submitted his 1986/87 salaries tax return in which he claimed, inter alia, as outgoings and expenses:

2.3.1	Subscription to the Institute (£26.5)	\$314.2
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2.3.2	Subscription to the Journal (£30)	\$364.6
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The amount of the subscription to the Journal included \$10 bank handling charges.

2.4 On 14 January 1988 the assessor raised an assessment to salaries tax in which he allowed as a deduction the subscription to the Journal, net of the \$10 bank handling charge, namely \$354.6, but not the subscription paid to the Institute.

2.5 The Taxpayer objected to the assessment on 9 February 1988, namely noting the disallowance of his membership subscription of the Institute.

2.6 In reply to the assessor's letter in which the assessor proposed to allow the membership subscription but to withdraw the deduction for the subscription to the Journal, the Taxpayer by letter dated 14 June 1988 submitted that:

2.6.1 As an audit manager in a professional firm 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. That basic requirement was inherent in his contract of employment. The Taxpayer referred to the words used by the then Commissioner of Inland Revenue in his determination quoted in D19/73, IRBRD, vol 1, 121 at page 122, an appeal concerned with whether a subscription to a professional association was deductible in ascertaining net chargeable income under the then wording of section 12(1)(b) of the Ordinance. The passage quoted reads:

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‘Strictly speaking, a subscription to a society is not allowable; however, it is departmental practice to grant one such deduction where the qualification is a pre-requisite of employment and where the retention of membership and keeping abreast of current developments in the particular profession are of regular use and benefit in the performance of the taxpayer’s duties.’

- 2.6.2 As the Journal is the official journal of the Institute and it was by subscribing to the Journal that he kept himself informed about the latest developments in the accountancy profession. He considered that the subscription was a deductible expense as a matter of departmental practice.
- 2.7 By letter dated 14 July 1988 the taxpayer’s employer advised the Revenue that:
- 2.7.1 the Taxpayer was encouraged to read as many books on auditing and accountancy as possible and that his reading of the Journal was desirable for the proper performance of his duties with the firm;
- 2.7.2 the firm did not have the Journal in its library;
- 2.7.3 the Taxpayer did not have to purchase, as opposed to read, the Journal in order to properly carry out his duties although reading the Journal was clearly desirable; and
- 2.7.4 they did not reimburse him the cost of that subscription as that was outside the terms of his employment.
- 2.8 The Taxpayer wrote two further letters to the Revenue on 3 October 1988 and 1 November 1988, in the former pointing out that his reading of the Journal was desirable and essential in performing his duties as he had been engaged on assignments for companies connected with the United Kingdom and that he had visited the United Kingdom to conduct auditing functions for a Hong Kong registered company with operations in the United Kingdom, and in the latter pointing out that many professional institutions include the supply of their official journal free to those who had paid their membership subscription and that to disallow his subscription to the Journal would discriminate against members of the Institute as opposed to members of other accountancy institutions whose members obtained a free copy of their institution’s official publications.
- 2.9 As a member of the Institute the Taxpayer is not obliged to subscribe for the Journal.

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- 2.10 The assessor conceded that the Taxpayer's subscription to the Institute should be allowed by concession but considered that the allowance in respect of the subscription to the Journal should be withdrawn.
- 2.11 The determination was that the Taxpayer should be allowed his membership subscription of the Institute as an extra-statutory concession but that the cost of the subscription to the Journal should be disallowed. The assessor's original assessment was varied accordingly.
- 2.12 The Taxpayer gave notice of appeal on 17 October 1989 annexed to which were his grounds of appeal. The grounds of appeal which are in the nature of a written submission raise the following issues:
- 2.12.1 Quoting paragraph 3(3) of the determination: that under a restricted interpretation neither a subscription to a professional institution nor a subscription for a professional journal qualify for exemption under section 12(1)(B)(sic).
- 2.12.2 Quoting further from paragraph 3(3) of the determination that the decision to permit the deduction of a subscription to a professional body but not a subscription for a professional journal is inconsistent with the spirit of granting a deduction for the membership subscription as an extra-statutory concession.
- 2.12.3 It was not in dispute that membership of the Institute and reading its Journal were beneficial in the performance of his duties, refer his employer's letter quoted at paragraph 2.7 above.
- 2.12.4 In the relevant year of assessment the Hong Kong Society of Accountants did not publish any journal whereby subscribing to the Journal was the only way he could keep abreast of professional developments.
- 2.12.5 As an overseas member of the Institute he pays a lower subscription than members who are residents of the United Kingdom because the periodic updating circulars were not supplied to overseas members who had to await receipt of them from the Institute annually with the handbook. Accordingly, the subscription did not fully contribute to keeping him abreast of professional developments.
- 2.12.6 That membership of the Institute and the subscription to the Journal go hand in hand and meet the criteria set out in the paragraph 3(3) of the determination.
- 2.12.7 Most professional bodies include as a benefit of membership a free copy of their official journal. To allow the deduction to those whose bodies provide their journals free to subscribing members but to deny the same deduction to a member of a institute which does not provide its official journal free to its

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members creates a disparity and the strict application of the Ordinance as it had been applied to him constituted discriminatory treatment.

2.12.8 He disagreed with paragraph 3(5) of the determination, namely reading the Journal at a library. He stated that subscribing to the Journal was not a matter of personal choice but a professional necessity.

2.12.9 In the United Kingdom the Revenue allowed the subscription to the Institute and the subscription to the Journal as extra-statutory concessions which was acknowledged as not binding on the Commissioner or the Board but was put forward as a useful guideline.

3. SUBMISSION BY THE TAXPAYER

3.1 The Taxpayer stated that his submission was set out in the grounds of appeal, refer paragraph 2.12 above. However, he highlighted certain parts thereof:

3.1.1 Several of the points he had raised in correspondence with the Revenue had not been answered and he felt it appropriate that the Board should deal with those questions.

3.1.2 His subscription of the Journal was not allowable on a strict interpretation of section 12(1)(a) and that this particular section was particularly harsh.

3.1.3 D19/73, IRBRD, vol 1, 121 at page 122 contains an extract from the determination of the Commissioner:

‘... it is departmental practice to grant one such deduction where the qualification is a pre-requisite of employment and where the retention of membership and keeping abreast of current developments in the particular profession are of regular use and benefit any performance of the Taxpayer’s duties’.

He emphasized the words ‘keeping abreast of current developments’.

3.1.4 Today, most membership subscriptions to professional institutions entitle the member to have a free copy of its official journal, for example, the Hong Kong Society of Accountants. Other bodies regulating accountants which are approved by the Professional Accountants Ordinance supply their journals as a privilege of membership.

3.1.5 The Institute does not supply the Journal to any of its members: each has to purchase it privately. He had to refer to the Journal regularly as he was involved in the audit of United Kingdom incorporated companies or Hong Kong incorporated companies with business in the United Kingdom.

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- 3.1.6 Membership of the Institute did not contribute to keeping him abreast of current developments as he did not receive the circulars which United Kingdom resident members receive. Without subscribing to the Journal the regular updates with respect to accounting standards would only be received by him after he had paid his annual subscription and received the annual handbook.
- 3.1.7 His membership subscription and his subscription to the Journal were part and parcel of a package and ought to be treated as such by the Revenue.
- 3.2 The representative of the Revenue had no questions to the Taxpayer.
- 3.3 In answer to questions from the Board the Taxpayer stated that in the relevant year of assessment his employer did not receive or subscribe to the Journal and although one partner, a member of a different institution, received his own institution's journal, it was not put in the firm's library. He had no access to any professional journal without subscribing to the Journal.

4. SUBMISSION BY THE REVENUE

The submission of the Revenue was in writing and may be summarized as follows:

- 4.1 Whilst the membership subscription and the subscription to the Journal were paid to the same entity, the Institute, the nature of the subscriptions was entirely different. The membership subscription ought to be allowed as an extra-statutory concession. In this context the Board was referred to the Revenues Departmental Interpretation of Practice Notes No 9 'Expenses Deductible for Salaries Tax' issued in April 1981 and, particularly, the paragraph appearing in page 5 reading as follows:

'Although it is considered that such subscriptions are in general not allowable under a strict interpretation of the wording of the Ordinance, in practice an allowance is admitted where the holding of a professional qualification is a pre-requisite of employment and where the retention of membership and the keeping abreast of current developments in the particular profession are of regular use and benefit in the performance of the duties. Any such allowance is to be restricted to the subscription to one professional association.'

The only point in dispute is whether the subscription to a professional journal is allowable.

- 4.2 Having referred the Board to present wording of section 12(1)(a) the representative submitted that for the Taxpayer to succeed the onus was upon

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him to prove to the satisfaction of the Board that the expenditure in question qualified for deduction under section 12(1)(a), refer section 68(4) of the Ordinance. The representative referred to the difference in wording between the relevant provisions of the United Kingdom legislation and the Ordinance and to the decision in CIR v Humphrey 1 HKTC 451 at page 466 et seq in which Blair-Kerr, J stated that on the facts with respect to that appeal:

‘ ... the difference in phraseology is immaterial ... ’

- 4.3 The representative then referred the Board to Lomax v Newton 34 TC 558 and, having quoted from page 561, namely the learned judge’s observation that ‘the provisions of that rule are notoriously rigid, narrow and restricted in their operation’ quoted a passage:

‘ The words [wholly, exclusively and necessarily] 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.’

- 4.4 The representative also referred the Board to Owen v Burden [1976] 1 All ER 356, Ricketts v Colquhoun 10 TC 118, and Brown v Bullock 40 TC 1, and refer paragraph 6.4.2 below, and CIR v Robert P Burns 1 HKTC 1181.

- 4.5 The representative submitted that the subscriptions by the Taxpayer to the Journal was to enable the Taxpayer to get himself up to date with developments his field so as to maintain his present professional standards for his personal present and future benefit as a professional accountant. Accordingly, the subscription was not ‘wholly, necessarily and exclusively for the production of income’. The Board was referred to Humbles v Brooks 40 TC 500, in which fees incurred by the headmaster in attending a series of weekend lecture in history at an adult education college to obtain the ability to teach history was held not to satisfy the text of ‘wholly, necessarily and exclusively’ incurred.

- 4.6 The representative drew the attention to the fact that there was no evidence that the Taxpayer was obliged by his employer to read the Journal whereby the incurring of the expense was a voluntary act on his part. Whilst he had stated that a copy of the Journal was not available within his office the decision not to go the public library where a copy would be available was a matter of personal convenience.

- 4.7 The Revenue concluded that by pointing out the fact that a subscription to one professional body was allowed as an extra-statutory concession but a subscription to a journal was required to satisfy the rigid and narrow text laid by 12(1)(a). It was submitted that the Taxpayer has failed to demonstrate that the subscription met the conditions stipulated in 12(1)(a).

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5. REPLY BY THE TAXPAYER

- 5.1 The Taxpayer conceded that his purpose in appealing was to persuade the Board that the subscription should be allowed as an extra-statutory concession. He reiterated that his subscription to the Journal conformed to the extract from the Commissioner's determination quoted in D19/73, refer paragraph 3.1.3 above, and reiterated that he needed to be aware of current United Kingdom practice for the reasons he had already advocated, refer paragraph 3.1.5 above.
- 5.2 He pointed out that the subscription was to his own institution's journal, not the world's most expensive accountancy journal. The Revenue in the United Kingdom allowed the Institute's members to claim both subscriptions, that on the case law, see CIR v Humphrey, refer paragraph 4.2 above, the requirements of the United Kingdom and Hong Kong statutes were the same and whilst English case law was not binding it presented a useful guide for the Board.
- 5.3 He repeated that his request was for the Board to grant the subscription as an extra-statutory concession.
- 5.4 The Board referred the Taxpayer to D24/87, IRBRD, vol 2, 398 and, particularly, the paragraph on page 399 reading:

‘We accept the Revenue's submission that the Board of Review cannot extend the scope of such an extra-statutory concession since it is administrative in nature.’

In reply the Taxpayer stated that it was discriminatory to apply the Commissioner's criteria to those who got their institutions' journals as a privilege of membership but not those whose institutions required the journal to be purchased.

- 5.5 The Taxpayer confirmed that the auditor's certificate to the accounts incorporating the work he had done in the United Kingdom had been signed by a partner of his employer and that the auditor's certificate to the accounts incorporating the work he had done in Hong Kong with respect to companies incorporated in England had been signed by the auditors in England.

6. REASONS FOR THE DECISION

- 6.1 In this appeal the onus is on the Taxpayer to establish to the satisfaction of the Board that an allowance to which he is entitled has not been afforded to him.
- 6.2 At the appeal the Taxpayer did not contend that the subscription to the Journal was an allowance to which he was entitled under section 12(1)(a). As such, this Board is not obliged to make a decision on that point.

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- 6.3 The Taxpayer's argument was that the subscription to the Journal should have been allowed as part of the extra-statutory concession. The Board accepts that the correct position is as stated by the Board in D24/87, refer paragraph 5.4 above and, accordingly, is obliged to find that the Commissioner was correct in disallowing the Taxpayer's claim for a deduction in respect of his subscription to the Journal.

7. DECISION

For the reasons given the Board is obliged to dismiss this appeal.