

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D72/90

Salaries tax – deduction of expenses – membership fee of professional body – section 12(1)(a) of the Inland Revenue Ordinance.

Panel: Henry Litton QC (chairman), Alexander Au Siu Kee and Frank Wong Kuen Chun.

Date of hearing: 29 January 1991.

Date of decision: 1 March 1991.

The taxpayer was a civil servant who in order to earn a bonus increment to his salary belonged to a professional body relevant to his field of work. The taxpayer sought to deduct from his taxable income the cost of being a member of the professional body.

Held:

Section 12(1)(a) of the Inland Revenue Ordinance is very limited in its scope. In the present case the expense was not incurred in the production of the increment. CIR v SIN Chun-wah applied.

Appeal dismissed.

Cases referred to:

Lomax v Newton 34 TC 558  
CIR v SIN Chun-wah [1988] 2 HKLR 496

Iris Ng Yuk Chun for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

#### Introduction

1. This appeal is concerned with the proper construction of the provisions of section 12(1)(a) of the Inland Revenue Ordinance which reads:

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- ‘ 12(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.’

### Facts

2. The background facts of the case are straightforward. At all relevant times, 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 such as the Taxpayer had to belong to a professional body being relevant to his field of work.

3. The Secretary for the Civil Service had a policy of checking on officers of the Taxpayer’s grade to ensure that if they enjoyed the bonus increment, they did not allow their membership of the professional body to lapse. This means, in effect, that to continue receiving the bonus increment (which is, of course, chargeable to salaries tax) the officer concerned had to keep up his subscription to the professional body.

4. The reason for this policy was explained in a memorandum from the Secretary for the Civil Service in these terms:

‘ ... the spirit of granting incremental credit is to encourage [Taxpayer’s post title named] to improve [their support] to professionals by becoming members, and most essential of all, maintaining membership of [recognised institutions/societies], so that they would be able to keep abreast with latest developments in their respective fields through the institutions’ journals, newspapers and other publications, participation in seminars and other activities organised by the institutions, and exchange of ideas with other fellow members etc.’

5. In the year in question, the Taxpayer paid a sum to a professional body by way of annual subscription. The question is whether, on the facts outlined above, for the computation of salaries tax, this expense is deductible against the Taxpayer’s chargeable income.

### Section 12(1) of the Inland Revenue Ordinance

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6. The Taxpayer's argument is a simple one: the bonus increment which he had earned was unquestionably assessable income; to earn the bonus increment, the Taxpayer 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. What more, the Taxpayer asks, is needed to show that the subscription to the professional body was 'wholly, exclusively and necessarily incurred' in the production of his assessable income?

7. In order to evaluate the Taxpayer's argument, it is necessary to have a broad look at the statutory scheme under part III of the Ordinance.

8. There must be many situations in which, loosely speaking, a person's expenditure in the course of a year is made by him in some way in connection with his employment. The degree of proximity between the expenditure and the chargeable income would vary over a huge spectrum of facts. If the law were to allow a taxpayer to make deductions against chargeable income in a broad and liberal way, the resources of the Inland Revenue Department would be greatly stretched in examining such claims. In commenting upon analogous provisions in the United Kingdom statutes, in the case of Lomax v Newton 34 TC 558 at 561 – 562, Vaisey J said that the provisions were 'notoriously rigid, narrow and restricted in their operation'. As was clearly pointed out by Mr Justice Nazareth in the case of CIR v SIN Chun-wah [1988] 2 HKLR 496 at 498 for a claimed deduction under section 12(1)(a) to succeed, the taxpayer must show that the expenditure was wholly, exclusively and necessarily incurred in the production of assessable income: the emphasis here is on the words underlined: and whilst the expenditure incurred might have placed the taxpayer in a position in which he was thus enabled to earn a part of the assessable income, this did not mean that the expenditure was incurred in the production of it.

9. In what way was the subscription to the professional body an expenditure incurred in the production of the bonus increment? It seems to us that the Taxpayer in this case fails the test as formulated by Mr Justice Nazareth in the case of CIR v SIN Chun-wah cited above. 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.

10. There has, for a long time, been a policy of allowing deductions for subscriptions to professional associations where the holding of a professional qualification is a pre-requisite of employment and the retention of membership is necessary for reasons which can broadly be regarded as 'professional'. This is an 'extra-statutory concession' granted by the Commissioner as a matter of policy. We make no comment as to whether such an extra-statutory concession is correct in law or not; it is for the Commissioner to decide what policies to lay down for the efficient discharge of this functions and duties under the Ordinance. On the facts of this case, this extra-statutory concession clearly does not extend to the Taxpayer who was not a professional officer, and whose employment as an officer never required him to belong to any professional body.

11. To a layman, the scope for deductions under section 12(1)(a) may appear excessively harsh. But the law is clear; and there are strong policy reasons why the claim for

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deductions under section 12(1)(a) should be restricted. For the reasons stated above, this appeal is dismissed.