

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D88/99

**Salaries Tax** – deduction – expenses for self education – ‘paid in the year of assessment’ – sections 2(1), 12(1)(a), 12(1)(e) and 12(6)(d)(i) (A) to (F) of the Inland Revenue Ordinance (the ‘IRO’), Chapter 112.

Panel: Andrew Halkyard (chairman), Felix Chow Fu Kee and Victor Hui Chun Fui.

Date of hearing: 9 September 1999.

Date of decision: 10 November 1999.

The taxpayer claimed that under section 12(1)(e) of the IRO he should be granted a deduction for expenses of self education for two sums. One sum is dropped at the hearing when it was pointed out by the Board that the institute was an unregistered school under section 12(6)(d)(i) (A) to (F).

In respect of the second sum the taxpayer was granted a deduction for self-education expenses (up to the then statutory maximum of \$12,000) in his salaries tax assessment for the year of payment. The taxpayer continued his studies throughout the following year. The taxpayer claimed that the balance of tuition expenses (less the \$12,000 previously allowed) should be carried forward and allowed (up to the statutory limit) in the year of assessment. The assessor disallowed the claim for deduction in the year of assessment on the basis that, in terms of section 12(1)(e), no amount of self-education expenses was ‘paid in the year of assessment’.

The taxpayer appealed on three grounds (1) the date on which actual payment for those expenses was made should be disregarded (2) if deduction of self-education expenses was only allowed for the year of assessment in which they were paid, this would be unfair because payment methods were determined by the course providers and (3) the Legislature could not have intended such an unfair result and thus section 12(1)(e) should be interpreted in a broad and purposive way to allow the claimed deduction.

#### **Held:**

- 1 Section 12(1)(e) by its express terms only allows a deduction for self-education expenses ‘paid in the year of assessment’. The term ‘year of assessment’ is defined in section 2(1) to mean ‘the period of 12 months commencing on 1 April in any year.’

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- 2 There is no dispute that the amount claimed for deduction by the taxpayer was 'paid'. There is also no dispute that this amount was paid for 'expenses of self-education'. But it was not paid 'in the year of assessment'. In that regard, the Board note that 'paid' is a very different concept from 'incurred' which, by way of contrast, appears in section 12(1)(a) and not in section 12(1)(e).
- 3 The amount deducted must be paid 'in the year of assessment', not 'for' or 'in relation to' or 'in respect of the year of assessment'. The meaning of 'paid in the year of assessment' is unambiguous and there is no provision whatsoever in the IRO to allow any further deduction for any expense of self-education paid in a year of assessment to be carried forward to a subsequent year of assessment.

### **Appeal dismissed.**

Chow Cheong Po for the Commissioner of Inland Revenue.  
Taxpayer in person.

### **Decision:**

1. The Taxpayer has appealed against the Commissioner's determination of salaries tax for the year of assessment 1997/98. He claims that under section 12(1)(e) of the Inland Revenue Ordinance (the IRO) he should be granted a deduction for expenses of self-education in respect of the following two items:

1. The sum of \$20,000 ('the First Sum') out of a total amount of GBP4,400 being part of the course fee paid for a post-graduate course offered by a UK university; and
2. A sum of \$2,780 ('the Second Sum') paid to a language institute.

### **The Second Sum**

2. At the Board hearing the Commissioner's representative, Mr Chow Cheong-po, contrary to an earlier determination by the Commissioner, accepted the Taxpayer's argument that the language course organised by the language institute was undertaken to 'gain or maintain qualifications for use in any employment' in terms of section 12(6) of the IRO. We thank Mr Chow for this broad and purposive admission.

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3. However, documentary evidence introduced by Mr Chow also showed that the language institute did not fall within any of the universities, schools or institutions listed in section 12(6)(d)(i) (A) to (F). In short, at all relevant times the language institute was an unregistered school. In these circumstances, the Taxpayer properly withdrew his claim for deduction of the Second Sum. We thank the Taxpayer for this action. For the record we note that, prior to receiving the relevant documents from the Commissioner's representative, the Taxpayer was not aware that the institute was an unregistered school.

### **The First Sum**

4. It follows that the sole issue before us is to decide whether the Taxpayer is entitled to a deduction in respect of the First Sum in the year of assessment 1997/98. The facts relating to the First Sum are not in dispute. We find that they are set out in the Commissioner's determination. In summary,

1. The Taxpayer commenced the post-graduate course with a UK university in 1995;
2. The minimum period for completing this course was 2.5 years;
3. The Taxpayer, having made initial payments in 1995, paid the balance of the course fee of GBP4,400 in two instalments, namely in April 1996 (GBP2,300) and in October 1996 (GBP2,100) [total approximately \$55,000];
4. The Taxpayer was granted a deduction for self-education expenses (up to the then statutory maximum of \$12,000) in his salaries tax assessment for the year of payment, namely, the year of assessment 1996/97;
5. The Taxpayer continued his studies throughout the year of assessment 1997/98;
6. The Taxpayer claimed that the balance of tuition expenses (less the \$12,000 previously allowed) should be carried forward and allowed (up to the statutory limit) in the year of assessment 1997/98;
7. The assessor disallowed the claim for deduction in the year of assessment 1997/98 on the basis that, in terms of section 12(1)(e), no amount of self-education expenses was 'paid in the year of assessment'; and
8. The Taxpayer appealed to this Board against the Commissioner's rejection of his objection to the assessment.

### **The Taxpayer's contentions**

5. The main thrust of the Taxpayer's arguments before us was three-fold:

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1. First, by enacting section 12(1)(e) the Legislature intended to encourage people to advance themselves through participating in educational courses. It followed that a taxpayer should be eligible for deduction of self-education expenses for the period of the course programme. Thus, the date on which actual payment for those expenses was made should be disregarded.
2. Second, if deduction of self-education expenses was only allowed for the year of assessment in which they were paid, this would be unfair because payment methods were determined by the course providers. To support this argument the Taxpayer gave an example whereby different tax treatment would, if the Commissioner were correct, result when one taxpayer paid all the expenses in one year (this was the Taxpayer's case) and where another taxpayer paid those expenses by instalments over several years (and could thus qualify for deduction in each of those years).
3. Third, it follows from 2. above that the Legislature could not have intended such an unfair result and thus section 12(1)(e) should be interpreted in a broad and purposive way to allow the claimed deduction. In this regard, the Taxpayer contended that the Inland Revenue Ordinance does not prohibit carrying forward any excess deduction paid in a previous year of assessment. He urged us generally to apply the spirit and not simply the letter of the law.

### **Reasons for our decision**

6. We sympathise with the Taxpayer's claim. We also see the force of the Taxpayer's example set out at 2. above. However, it is trite, but true, to say that taxation is not always fair. We must apply the law as enacted.

7. In this case, the law is clear and there is no room for a different interpretation: section 12(1)(e) by its express terms only allows a deduction for self-education expenses 'paid in the year of assessment'. The term 'year of assessment' is defined in section 2(1) to mean 'the period of 12 months commencing on 1 April in any year'. Therefore the year of assessment for 1997/98 is 1 April 1997 to 31 March 1998.

8. There is no dispute that the amount claimed for deduction by the Taxpayer was 'paid'. There is also no dispute that this amount was paid for 'expenses of self-education'. But it was not paid 'in the [1997/98] year of assessment'. In this regard, we note that 'paid' is a very different concept from 'incurred' which, by way of contrast, appears in section 12(1)(a) and not in section 12(1)(e).

9. The Taxpayer argues that it should not matter when the amount was paid and that denial of the claimed deduction is unfair. We can see both sides of this dispute. Emotionally, the

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Taxpayer's argument has a strong appeal. However, the words of the IRO are clear. The amount deducted must be paid 'in the year of assessment', not 'for' or 'in relation to' or 'in respect of' the year of assessment. Given this clear wording, we do not agree with the Taxpayer that the Legislature must have intended to allow him a deduction in this case. Indeed, it would appear that the Legislature did not so intend because it has limited the deduction to a maximum amount (\$12,000 in the year of assessment 1996/97), the meaning of 'paid in the year of assessment' is unambiguous and there is no provision whatsoever in the IRO to allow any further deduction for any expense of self-education paid in a year of assessment to be carried forward to a subsequent year of assessment.

10. It follows that we have no option other than to dismiss this appeal. As indicated above, we have some sympathy for the Taxpayer's claim, but the fact remains that he did not pay any sum for self-education expenses in the year of assessment under appeal.