WORK-RELATED TRAINING – whether signing-on bonus was a reimbursement of training costs – yes – whether exempt under section 200B Taxes Act 1988 – yes – whether exemption removed by section 200C --no

THE SPECIAL COMMISSIONERS

CLEMENTINA SILVA Appellant

- and -

MIKE CHARNOCK Respondents

(HM INSPECTOR OF TAXES)

Special Commissioner: DR JOHN F AVERY JONES CBE

Sitting in London on 4 July 2002

The Appellant in person

The Inspector in person

DECISION

1. This is an appeal against an amendment made on 19 July 2002 to the Appellant's self-assessment return for the year 2001/02 that a payment of £18,000 to the Appellant by her employer as reimbursement of training fees is taxable income. The Appellant and Mr Charnock, the Inspector, both appeared in person.
2. At the start of the hearing, having given notice to the Tribunal by letter, Mr Charnock very properly (although quite understandably to the annoyance of the Appellant) drew my attention to a possible procedural irregularity in that the Inland Revenue had given a refusal of a claim for relief under section 200B of the Taxes Act 1988 against which the Appellant had appealed. Section 42 of the Taxes Management Act 1970 applies "Where any provision of the Taxes Acts provides for relief to be given…on the making of a claim…." This does not apply to section 200B because that section does not require a claim. With the consent of the parties I said I would continue to hear the appeal but that I would not issue a decision until the Appellant had made a self-assessment return for 2001/02, the Inspector had amended it to claim that the payment in question was taxable, and that the Appellant had appealed against that decision. I would treat the hearing as having been against that decision. So that the Appellant was not disadvantaged by this additional procedure by being kept waiting for a decision, following the hearing I issued this decision in draft. The Appellant has now made the return, the Inspector has amended it, and the Appellant has appealed against the amendment.
3. There is one further preliminary matter to which I should refer. The notice of appeal states that colleagues of the Appellant have had similar

payments exempted and the Appellant has not received equal treatment. I explained that it was my task to decide this appeal on its facts. Mr Charnock admitted that the Revenue had not acted consistently over such payments but made the point that small differences in facts could affect the outcome, and he hoped that my decision would help to prevent inconsistencies in the future. I am sure that the Appellant would not expect me to decide this case contrary to the law because the Inland Revenue had treated other taxpayers differently; and if she has incorrectly been treated differently from others that was the point of the appeal. If the Appellant's real complaint is that she has been singled out for different treatment I suspect that the answer lies in the way the payment was expressed by her employer. The treatment of other taxpayers whose facts I do not know is not a matter for me.

4. The issue in this appeal is whether the payment of £18,000 to the Appellant expressed as a "signing bonus" from her employer is taxable, as Mr Charnock contends, or exempt under section 200B, as the Appellant contends.
5. There was a statement of facts produced by Mr Charnock which the Appellant agreed at the hearing and expanded upon as a result of which I find the following facts.

1. The Appellant was employed by PricewaterhouseCoopers. In September 2000 she took a career break to undertake an MBA. The Appellant was on unpaid leave of absence; her employment status remained secure.
2. The Appellant studied for her MBA at INSEAD, a European Business school based in France and her tuition fees cost 27,900 Euros (£18,000). This was paid by the Appellant in instalments between June 2000 and January 2001.
3. She entered into an Agreement with Roland Berger Strategy Consultants in the United Kingdom that is dated 2 May 2001 (in type on the first page) but against the Appellant's signature she has written "June 2001" and so I infer that the Agreement was in fact entered into on some date in June 2001, under which it was determined she would commence employment with them on 1 October 2001.
4. The agreement provided for remuneration at a rate of £63,000 per annum and in addition a signing bonus of £18,000.
5. The "Signing Bonus Declaration" stated that in return for the payment of £18,000 the Appellant agreed to remain in the company's employment for at least one year, and also that if she left employment within 12 months of commencement she agreed to repay the £18,000 in full. This was signed in June 2001 after which the Appellant resigned from PricewaterhouseCoopers.
6. The MBA programme was completed in July 2001.
7. Roland Berger made the payment of £18,000 under deduction of tax on 24 August 2001.
8. The Appellant commenced employment on 1 October 2001.
9. In an undated letter received in September 2001 the Appellant claimed repayment of the tax deducted by Roland Berger of £3,960.

6. Sections 200B and C are as follows:

Section 200B Work-related training provided by employers

(1) This section applies for the purposes of Schedule E where any person ("the employer") incurs expenditure on providing work-related training for a person ("the employee") who holds an office or employment under him.

(2) Subject to section 200C, the emoluments of the employee from the office or employment shall not be taken to include—

(a) any amount in respect of that expenditure; or

(b) any amount in respect of the benefit of the work-related training provided by means of that expenditure.

(3) For the purposes of this section the employer shall be taken to incur expenditure on the provision of work-related training in so far only as he incurs expenditure in paying or reimbursing—

(a) the cost of providing any such training to the employee; or

(b) any related costs.

(4) In subsection (3) above "related costs", in relation to any work-related training provided to the employee, means—

(a) any costs which are incidental to the employee's undertaking the training and are incurred wholly and exclusively as a result of his doing so;

(b) any expenses incurred in connection with an assessment (whether by examination or otherwise) of what the employee has gained from the training; and

(c) the cost of obtaining for the employee any qualification, registration or award to which he has or may become entitled as a result of undertaking the training or of undergoing such an assessment.

(5) In this section "work-related training" means any training course or other activity which is designed to impart, instil, improve or reinforce any knowledge, skills or personal qualities which—

(a) is or, as the case may be, are likely to prove useful to the employee when performing the duties of any relevant employment; or

(b) will qualify him, or better qualify him—

(i) to undertake any relevant employment; or

(ii) to participate in any charitable or voluntary activities that are available to be undertaken in association with any relevant employment.

(6) In this section "relevant employment", in relation to the employee, means—

(a) any office or employment which he holds under the employer or which he is to hold under the employer or a person connected with the employer;

(b) any office or employment under the employer or such a person to which he has a serious opportunity of being appointed; or

(c) any office or employment under the employer or such a person as respects which he can realistically expect to have such an opportunity in due course.

(7) Section 839 (meaning of "connected person") applies for the purposes of this section.

200C Expenditure excluded from section 200B

(1) Section 200B shall not apply in the case of any expenditure to the extent that it is incurred in paying or reimbursing the cost of any facilities or other benefits provided or made available to the employee for one or more of the following purposes, that is to say—

(a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes unconnected with the imparting, instilling, improvement or reinforcement of knowledge, skills or personal qualities falling within section 200B(5)(a) or (b);

(b) rewarding the employee for the performance of the duties of his office or employment under the employer, or for the manner in which he has performed them;

(c) providing the employee with an employment inducement which is unconnected with the imparting, instilling, improvement or reinforcement of knowledge, skills or personal qualities falling within section 200B(5)(a) or (b).

...

(6) In subsection (1) above the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of any leisure activity.

(7) In this section—

"employment inducement", in relation to the employee, means an inducement to remain in, or to accept, any office or employment with the employer or a person connected with the employer;....

7. Mr Charnock contended that if section 200B did not exempt the reimbursement of the fees they were taxable under section 19 as emoluments. He cited *Shilton v Wilmshurst* 64 TC 78 as authority that indirect payments are within section 19, and *Riley v Coglan* 44 TC 481 as authority that the fact that an amount was repayable did not prevent it form being an emolument. I do not think that the Appellant disputed this and I agree that this is the case. The payment is simply part of the remuneration under the contract.
8. In relation to section 200B Mr Charnock's case is first that on the facts there had been no reimbursement by Roland Berger of any training expenditure incurred by the Appellant but merely the payment of an inducement for her to enter into the employment contract. Secondly, that section 200B(1) required that the person should be employed at the time the training was provided. Thirdly, if he was wrong about the previous points, that section 200C(1) disallowed the expenditure on the basis that it

had the purpose of providing the employee with an employment inducement unconnected with the imparting of knowledge. The Appellant's case is that the payment is exempt under section 200B.

Was there a reimbursement?

9. The payment is described as a signing bonus and there is no reference to training in the employment contract which is an extremely detailed one comprising 17 pages plus the page containing the signing bonus declaration. I also take into account two letters written by Roland Berger to the Inspector. In the letter of 15 October 2001 they say that "the payment was a sign-on bonus intended to help cover the cost of Miss Silva's tuition fees at Insead." In their letter of 21 November 2001 they say:

   3. [In reply to the Inspector's question: Is the purpose to reward the employee for joining the company or to pay for training which was undertaken prior to the commencement of her employment with you] We refer to the payment as a sign-on bonus. It is usually only paid to employees joining the company who have just finished some form of training eg MBA, BA, MSc. The purpose is for the employee to pay for their training, whether this be in the form of a student loan or loan from their ex-employer who sponsored them during their studies.

   4. There is no pass of fail for MBAs, everyone passes [the Appellant told me, and I have no difficulty in accepting, that this is nonsense]. The amount is paid when the prospective employee signs and returns their employment contract. To arrive at the amount we looked to the market to see what was being offered by our competitors and offered a similar amount.

10. The Appellant told me that it was the custom for the leading consultants to make similar payments to meet training costs. Roland Berger effectively say the same in the last sentence in No.4 quoted above. While it would have been more satisfactory to have heard from Roland Berger in person so that they could be cross-examined by the Inspector I have no reason to doubt any of this evidence. The Appellant had previously been employed by PricewaterhouseCoopers and knew their policy and she had been offered a job by another consulting firm but decided to join Roland Berger. The £18,000 also equates to the cost of the course. All this evidence satisfies me that the payment was indeed a reimbursement of the training expenditure. It is clear from No.3 quoted above that if there had been no training costs there would have been no sign-on bonus. I would add that by calling it a signing bonus Roland Berger is not assisting its employees and it would be much more satisfactory if they had dewcribed it in the contract as a reimbursement of the cost of the course. I also bear in mind that the Appellant said that she was the first person to have been taken on by them straight from a MBA course. Accordingly I find that the payment was a reimbursement of the cost of the course. It is not disputed that the course qualifies as work-related training for the employment with Roland Berger for which the Appellent was then under contract but had not yet started work.

Section 200B

11. Mr Charnock's second point is that section 200B(1) requires that the training is provided to a current employee. He contends that it is therefore essential that there is a current employment when the training takes place, even though the training may be designed to qualify the employee to undertake a different actual or prospective job with the same employer (the relevant employment defined in subsection (6)). If that were not the case, he asks why employers could not reimburse tax-free university costs for new graduates.
12. The section applies where an employer "incurs expenditure on providing work-related training" for someone who holds an office or employment under the employer. The words in quotation marks seem to me to look at the time of incurring the expenditure, not the time the training takes place. This interpretation is supported by subsection (3) explaining that the quoted words mean that the employer incurs expenditure in paying or reimbursing the cost of providing any such training to the employee. Again the emphasis is on the expenditure not when the training takes place. Further support is obtained from subsection (6) where the definition of relevant employment includes an employment that the employer is to hold under the employer, or to which he has a serious opportunity of being appointed, or which he can realistically expect to have such an opportunity in due course. It is therefore clear that an employer can incur expenditure on training for a future employment (even a future employment that may never happen) that has nothing to do with the current employment. If this is the case, it would be odd if the law required that the training should take place during the currency of the current employment. Since the event that would be taxable but for the exemption in section 200B is the reimbursement, it is in accordance with the structure of the legislation to look at the time of the incurring of the expenditure. It seems to me that so long as the person is an employee when the expenditure is incurred (in this case reimbursed) it does not matter that the training was not undertaken while the person was an employee. I do not think that Mr Charnock contended that at the time of payment the Appellant did not hold an employment with Roland Berger, and I think she did; she had entered into a contract with them and they were committed to make the reimbursement on entering into the agreement. In this case, there is an overlap between the course and the employment: the employer committed itself to reimburse the fees in June 2001 before the course ended in July 2001 and it paid the money on 24 August 2001. This is not a case where the employer has reimbursed fees paid much earlier. Here the employer wants to hire an employee with an MBA; engages the employee before the MBA course has ended; and at the same time promises to pay the cost of the course. Accordingly the exemption in section 200B applies.
13. The existence of section 200C reinforces the conclusion I have reached on section 200B. An employment inducement is defined to include "an inducement to…accept any…employment with the employer." Therefore there must be some inducement payments that are exempted by section 200B. It is possible that the circumstances envisaged are that the employee is in one employment with the employer and is induced to accept a different employment (which would be a relevant employment). If an employer can incur expenditure on training as an inducement to take a different employment with the same (or a related) employer, so long as the training is not unconnected with imparting of knowledge which is likely to be useful when performing the duties of the new employment, why should the exemption not apply to incurring the expenditure as an inducement to take the original employment in which case the training is bound to take place before the employment starts?

Section 200C

14. Mr Charnock's third point is that the exemption is removed by section 200C(1)(c) as the payment is for the purpose of providing the employee with an employment inducement which is unconnected with imparting, instilling, improving or reinforcing any knowledge, skills or personal qualities within section 200B(5).
15. Section 200C(1) excludes from the exemption expenditure to the extent that it has the purpose of enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes, which under subsection (6) includes enjoying them in the course of any leisure activity (paragraph (a)), or for the purpose of providing an employment inducement (paragraph (c)) which (in either case) is unconnected with (reading shortly) imparting knowledge that will qualify the employee to undertake the employment; or that it has the purpose of rewarding the employee for the performance of his duties (paragraph (b)). For the exemption to apply the training must be designed to impart knowledge which will qualify the employee to undertake the employment. The circumstances envisaged here must therefore be that although that is the case, the purpose of making the reimbursement is (at least to some extent) unconnected with that, but in relation to paragraph (c) is to provide the employee with an inducement to accept the employment.
16. The question is therefore whether in reimbursing the cost of the course Roland Berger had the purpose of paying for a course that imparted knowledge which will qualify the Appellant to undertake the employment, or (while accepting that the course did so) they had the purpose of inducing the employee to accept the employment. The context of the provision is that it goes with two other provisions that enable the employee to enjoy the facilities or benefits for entertainment or recreational purposes, including enjoying them in the course of any leisure activity, also unconnected with imparting knowledge that will qualify the employee to undertake the employment, or which rewards the employee for the performance of the duties of the employment. The impression given is that of some not very serious training that means that the training itself is secondary in importance to giving the employee some entertainment, recreational, or leisure enjoyment, or a reward for good work. Applied to employment inducement the equivalent is that the employer will pay for a course that is a benefit inducing him to take the employment. Mr Charnock showed me the Treasury explanation of these sections of the 1997 Finance Bill which I am not sure I am entitled to read as an aid to interpretation but I can use as part of his argument, commenting on section 200C(1): "This means that, for instance 'skid-pan training' offered to all drivers as part of a driver training programme will be exempt, while go-karting offered to those sales representatives meeting sales targets will not". It is not clear to me how go-karting would be work-related training anyway. I find it difficult to apply this provision to a serious MBA course. Roland Berger say in No.3 of their letter of 21 November 2001 quoted above, in answer to the question whether the purpose was to reward the employee for joining the company or to pay for training, that "the purpose is for the employee to pay for their training." I have no difficulty in accepting this. They need an employee with an MBA and they are willing to pay for the course in order to get such an employee in a market where other prospective employers will do the same. While there is a purpose of inducing the employee to accept the employment because if they do not pay she will no doubt go to work for a competitor who will pay for it, one cannot say that this is a purpose that is to any extent unconnected with imparting knowledge that will qualify the Apellant

to undertake the employment. It is an employment inducement that is intimately connected with the imparting of such knowledge. With a course leading to a serious qualification like an MBA it is difficult to see how any other conclusion is possible. Accordingly I do not think that section 200C prevents the exemption from applying.

17. Accordingly I find (a) that Roland Berger did reimburse the Appellant's course fees, (b) that the exemption in section 200B applies, and (c) that section 200C does not remove the exemption, and I allow the appeal.

DR JOHN F. AVERY JONES

SPECIAL COMMISSIONER

SC 3061/02