Making work-related training work

Employment Tax | Tax voice

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Susan Ball looks at the alternatives: tax exemptions or reliefs

On 1 December 2017, HMRC published the response to its ‘Taxation of employee expenses call for evidence’, which closed last summer. As part of the government response, four measures were announced in the Autumn Budget 2017, one of which being that HMRC will consult on extending the scope of tax relief available to employees (and the self-employed) for work-related training costs.

Complexities in the UK tax system mean that the availability of tax relief depends on who is paying for the training and what the training is designed to achieve.

Through ‘Considering the Industrial Strategy: building a Britain fit for the future (November 2017)’, and the OECD Study of Taxation and Skills (April 2017) it is clear that there is a role for tax but there are many challenges as well. For those of us with long memories, a previous attempt was made in the 1990s with tax relief for vocational training.

So I would encourage all interested parties to respond during the HM Treasury and HMRC consultation period. It might be helpful in the meantime to remind ourselves of the current rules and the difference between those who are employed or self-employed.

What are the current rules for employees?

Employees are not taxed as a benefit in kind on any benefit that they may receive, if their employer sends them on ’work related training’, providing that the employer incurs the cost of the course, or reimburses it.

However difficulties arise because not all training is deemed ’work related’; just because an employer pays for it, HMRC does challenge cases it thinks do not meet the exemption.

What is work-related training?

For tax purposes it is defined in s250 ITEPA 2003 as any training course or other activity which is designed to impart, instill, improve or reinforce any knowledge, skills, or personal qualities which:

- are, or are likely to prove, useful to the employee when performing his/her duties
- will qualify or better qualify the employee to undertake the employment, or to participate in charitable or voluntary activities arising through the employment.

Therefore a wide range of practical and/or theoretical skills will qualify for exemption so long as the skills are relevant to the employee.

If the training qualifies then the associated expenses may also qualify for tax relief such as the costs of travel to and from the course and any training materials needed.

This can result in claw back clauses in employment contracts if employees leave their employment before the employer believes they have received the full benefit of paying for the training.

When might an employee’s training not be allowable for tax purposes?

This can occur where the employee incurs the cost of work-related training and is not reimbursed by an employer. While they can try and obtain a tax deduction under s336 ITEPA 2003, making a successful claim is very difficult under this particularly rigid section.

An employee may only claim a deduction under this section if the expense is incurred ’wholly exclusively and necessarily’ in the performance of the duties of employment.

It has been decided in the courts over the years that many training courses do not meet the test so no deduction would be due. Certain roles however can claim a tax deduction via completing a P87 or a tax return. These cases often occur when an employee undertakes a research period or training phase of their career, during which the attendance at external courses represents an intrinsic part of the duties of the employment.

In the case of *Revenue & Customs Commissioners v. Dr Piu Banerjee ([2010]* EWCA Civ. 843), the Court of Appeal accepted that a deduction for training costs incurred by an employee should be allowed if the employee was employed on a training contract where training was an intrinsic contractual duty of the employment (see HMRC manuals EIM32530 & EIM32546,) and where any personal benefit would be incidental and not therefore give rise to a dual purpose of the expenditure.

HMRC’s manual at EIM32530 provides guidance on the requirements for claiming training costs and in practice this means that it is hard for many employees although those in certain professions, such as healthcare often can meet the strict criteria.

To assist employees some employers historically offered salary sacrifice schemes for work-related training. But the new rules on Optional Remuneration from 6 April 2017 have impacted such arrangements.

What about scholarship income?

Although the existence of Section 776 IT(TOI)A 2005 as an exempting section suggests that scholarship income of the holder of the award would otherwise be chargeable to tax, this is not necessarily the case.

If the sums concerned are taxable as earnings from an office or employment the ’scholarship income’ is likely to be chargeable to income tax on the holder. The concepts of ’earnings’ and ’scholarship income’ are mutually exclusive. However, if there is no office or employment then the income cannot be taxable as employment income. For example, student maintenance grants made available by grant awarding bodies do not constitute taxable income. This is because no income tax liability arises on first principles.

Statement of Practice 4/86: academic years commencing on and after 1 September 2007, which can be found at EIM06237, sets out the circumstances when payments made by an employer to an employee for periods of attendance on a full-time course (including sandwich courses) can be exempted from income tax as scholarship income.

What are the current rules for self-employed?

Individuals who are trading as a self-employed, need to consider if the training is revenue or capital in nature looking at the facts, and taking exactly the same approach as it would for any other cost.

HMRC views: “Where attendance at a course is intended to give business proprietors new expertise, knowledge or skills which they lack, it brings into existence an intangible asset which is of enduring benefit to the business. We take the view that the expenditure is therefore of a capital nature, and deduction is prohibited by ICTA88/S74 (f) (now s.33 ITTOIA 2005).

“On the other hand, where attendance is merely to update expertise etc. which proprietors already possess, the expenditure is normally regarded as revenue expenditure and will be deductible if it satisfies the `wholly and exclusively for the purposes of the trade’ test in ICTA88/S74 (a) (now s.34 ITTOIA 2005).”

Therefore CPD would be updating expertise, should be considered revenue and if it satisfies the `wholly and exclusively’ an allowable expense.

HMRC’s commentary can be found at BIM37035 and BIM35660.

Conclusion

The taxes legislation therefore sets out to discriminate between eligibility of tax relief simply because an employer is prepared to incur the expense of behalf of an employee, or where a sole trader has incurred the expense; and yet denies the claim for relief by an employee who has personally incurred the same or similar expense.

This consultation is therefore welcome and we have to hope that government’s mantra of fairness and simplification results in improvements for all.