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1997

THE ASSOCIATION OF CAMPHILL COMMUNITIES

OPINION

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Ref: JLD

THE ASSOCIATION OF CAMPHILL COMMUNITIES

OPINION

1. I understand that following the Consultation in this matter the Honorary Secretary to the Camphill Village Trust contacted all Communities that are members of The Association of Camphill Communities informing them of the advice that was being sought and asking them to confirm that the position of their co-workers conformed to that discussed in Consultation and set out in this Opinion. Certain special situations were identified within a few Communities which I have considered in paragraph 20 below. Subject to those special situations, confirmation was received from all Communities that the position of their co-workers is the same as that considered in this Opinion so that this Opinion covers the position of all co-workers in the Camphill Communities that are members of the Association.
2. In this Opinion, I have summarised the factual position as I understand it in relation to co-workers within Camphill Communities and I have then considered the legal position in order to determine whether there is any substantive basis on which it could be contended that a co-worker holds an office or employment within the scope of Schedule E so as to be subject to income tax on any benefits provided for the coworker and his or her family. For the detailed reasons which follow, I am clearly of the opinion that co-workers do not hold any office or employment within the scope of Schedule E; instead, their status within the Camphill Communities is a matter of informal agreement which is not intended to, and does not, create any legal relations which are enforceable either by a co-worker or by the Community within which the co-worker lives. I turn first to consider the factual position as set out in my Instructions and enclosures and as amplified in Consultation.

The Camphill Movement

3. The Camphill Movement was founded in 1940 by Dr. Karl Konig who formulated the principles underlying the Movement upon the insights of the philosopher, Rudolf Steiner. The fundamental concept is that of Anthroposophy - a knowledge of one's humanity. Anthroposophy recognises that every human individual embodies a higher spiritual being which existed before and will exist after that individual's life on earth. Any mental disability which might obscure this undamaged spiritual being is seen as having a definite meaning in the continuing destiny of the individual and as being of particular significance to those who come and work with the individual, as well as for society as a whole.
4. There are three guiding principles in the Camphill Movement:
 - 1) A cultural life enabling members of a Community to realize their own potential;
 - 2) A shared Community life based on Christianity and a recognition of the special qualities of every individual; and
 - 3) An economic life based on the needs of the Community and the ability of each person, where there is a separation of work from money.

5. Camphill Communities occupy premises owned by various corporate charities connected with the Camphill Movement and the principal activities of these charities are the provision of accommodation and land for caring communities. The main land holding companies are Camphill Village Trust Limited which owns seven properties in England and two properties in Scotland, Camphill Estates Limited and Camphill Central Scotland Limited which own eight properties in Scotland and Camphill Communities Trust (NI) which owns three properties in Northern Ireland.
6. Each Camphill Community is founded upon residential life sharing where co-workers and their families share their lives with individuals with varying special needs. Those individuals live with co-workers and their families in a shared daily life within a house. House Communities vary in size from 4 to 20 people made up of children, young persons or adults of all ages depending upon the nature of the Community, together with experienced co-workers, members of the co-worker's own family and younger co-workers. Shared family life assists in mutual understanding and lessens the distinction between a "helper" and the "helped". True Community life is fostered and reflected in "non-hierarchical" decision making processes which involve many different people who aim to reach a consensus as to what is to be done in relation to any particular situation.
7. All Camphill Communities recognise the importance of work both in its value to the individual and to the Community. All members of Communities contribute what they can for the benefit of those with whom they are living and in accordance with their own abilities. It is a fundamental principle of the Camphill Movement that nobody within a Camphill Community receives remuneration for work done. Each person's needs are met by the Community according to individual circumstances.
8. Camphill Communities operate solely on a basis of mutual trust and shared belief, so any individual co-worker is free to leave a Community at any time if he or she wishes to do so. A co-worker who chooses to leave has no rights against the Community that he or she has been a part of and conversely, the Community has no rights against the co-worker who chooses to leave. This lack of enforceable obligation between the co-worker and Community is an essential element in each Community - the shared sense of purpose and belief which is fundamental to the successful working of a Camphill Community cannot be imposed by any form of contractual or other legal obligation. Without mutual trust and shared belief, a Camphill Community cannot function.
9. The lack of any enforceable rights between a Community and a co-worker can work to the significant disadvantage of a Community. Substantial time and trouble will usually have been invested by a Community in formally training a co-worker in specialist skills such as curative education or nursing leading to the award of a recognized Camphill certificate (a one year foundation course for short-stay coworkers, a three to five year formal training course for other co-workers) and yet the co-worker is free to leave a Community at any time giving no notice and with no obligation to compensate the Community for the specialist skills that have been taught. Disadvantages such as these are accepted because all the Communities agree that the fundamental tenets of the Camphill Movement are inconsistent with the imposition of any legal obligation on co-workers. Camphill Communities do, of course, have paid employees to perform specific functions for the Community and these employees are subject to income tax and national insurance contributions in the normal way, but they are not members of the Community and their position is fundamentally different to that of a co-worker. Employees are engaged under a contract of employment providing for agreed remuneration, holiday entitlement and a minimum period of notice of termination of employment, all of which are enforceable rights.

10. In contradistinction to the contractual provision made for its employees, each Community only provides for its members, including co-workers, according to its perception of their needs, so that shelter, food and clothing is given, education may be provided for the children of co-workers, an annual holiday may be provided for a co-worker and his or her family and pocket money is provided according to perceived needs. All such provision is made by the Community on the basis of mutual trust and without the creation of any obligation, or enforceable right so that a co-worker who chooses to leave a Community cannot make any claim for his or her "unpaid" pocket money or for a holiday not provided. Whilst a co-worker is in a Community, the Community will provide for the co-worker according to the Community's perception of the needs of that individual, but any such provision is made without the creation of any obligation.
11. As Camphill Communities function on the basis of mutual trust and shared belief, a Community can ask (and particular Communities have asked) a co-worker (or coworkers) to leave the Community immediately as his or her (or their) presence is no longer conducive to the satisfactory operation of the Community as a whole. A coworker who is asked to leave has no rights against the Community that he or she was formerly a part of, nor can the Community make any claim against the coworker.
12. In summary, therefore, a co-worker's "membership" of a Camphill Community is a relationship based on mutual trust and shared beliefs and not on the existence of any rights enforceable by a co-worker or by the "Community" of which the co-worker is a part. Benefits are not provided to a co-worker and members of his or her family under any agreement that the co-worker makes with a Community on becoming a member of it, but are provided informally by the Community based on its perception of the needs of that individual whilst living within the Community.

Basis of charge to tax under Schedule E.

13. The Taxes Act 1988, Section 19 charges income tax under Schedule E on the emoluments of the offices and employments which fall under one of the three Cases into which the Schedule is divided. Tax will be chargeable under Schedule E only if three conditions are satisfied:
 - 1) there must be an office or employment;
 - 2) there must be emoluments; and
 - 3) the emoluments must derive from the office or employment.
14. In the present case, the question is whether condition (1) is satisfied - does a coworker hold an "office" or "employment" with the Community of which he or she is a member? The term "office" is not defined in the Taxes Act 1988 but has been judicially described as a subsisting, substantive, permanent position which has an existence independent of the person who fills it and which goes on and is filled by successive holders, see Rowlatt J. in *Great Western Railway Co. v. Bater* [1920] 3 KB 266 at p.274 approved in *McMillan v. Guest* [1942] AC 561 at 564; 24 TC 190 at p.201. In my opinion, on the basis of the facts set out in paragraphs 3 - 12 above, there is no substantive basis upon which it can be contended that a co-worker holds an "office" with a Community; the sole question is whether a co-worker can be said to be in employment whilst being a member of a Camphill Community. In *Fall v. Hitchen* (1972) 49 TC 433 the term "employment" in Schedule E was held to be coterminous with the words "contract of service" so that the question resolves itself into determining whether the relationship between a co-worker and the Community of which he or she is a member has the characteristics of a "contract of service".

15. In my opinion, in order for there to be a contract of service, an “employment” with emoluments taxable under Schedule E, there must be:
- a) an intention to create legal relations between the parties, that is an intention to create an agreement enforceable in the Courts, a contract of service, and
 - b) the contract must provide a reward for the services rendered under it – the emoluments.
16. The legal position of a co-worker in a Camphill Community is very similar to the position of a Methodist minister as considered in *President of the Methodist Conference v. Parfitt* [1983] 3 AER 747. The respondent was a Methodist minister who was dismissed after disciplinary proceedings were taken against him in the Church Court. The respondent claimed that he was employed under a contract of service and had been unfairly dismissed. The Court of Appeal held that in all the circumstances, especially having regard to the doctrinal standards of the Church and the spiritual nature of his admission as a minister and his functions in that capacity, there had been no intention to create legal relations either when the respondent had been ordained or when he accepted an appointment as a Methodist minister. The Court found that the respondent did not have a contract of service with the Church.
17. In the Parfitt case it was shown that on appointment a Methodist minister was entitled to have a manse provided and furnished for him to a prescribed standard. An allowance or stipend at a specified rate was also paid. Although the provision of furnished accommodation and an allowance or stipend was the entitlement of a minister, the Court, in deciding that there was no intention to create legal relations and no contract of service, paid particular regard to the principle of the Ministry as set out in a pamphlet entitled “The Methodist Ministry” which stated the following:

“The principle which lies behind our system is this. No minister is paid for his services. He cannot be paid for that which he gives without measure in wholehearted devotion to Christ and His Church but, as he gives himself, leaving no time or energy to provide for the material needs of himself and his family, the Church undertakes the burden of their support and provides for each man according to his requirements. There is a basic stipend which is committed to his own stewardship.

The Church also makes some provision for the maintenance and education of a Minister’s children and for the years of retirement at the end of his ministry, in addition to that which is provided by the State. The spirit that shapes this system is that of the Christian communism of the New Testament - from each according to his ability, to each according to his needs. We should feel that to sell our services or bargain for remuneration would make us guilty of the sin of attempting to buy or sell the gifts of the spirit and of serving God for personal gain.”

In my opinion, the statement of the fundamental principle of the Methodist Ministry is virtually identical to the Camphill philosophy in relation to co-workers. Each Camphill Community undertakes the burden of the support of its co-workers and provides for each according to his needs. Co-workers devote the whole of their time and effort to the Movement and provide in services what they are able; services are not provided because of a contractual obligation to do so but through each co-worker’s personal commitment to the Movement.

18. The relationship between a co-worker and the Community of which he or she is a member is much less formalised than that of the Methodist Ministry as considered in the Parfitt case. Unlike

the Methodist minister who has an entitlement to a furnished manse of a particular standard and an allowance or stipend, a coworker has no entitlement to any benefit of any prescribed standard from a Community; the Community decides what benefit should be, provided and to whatever standard it considers appropriate for a particular co-worker. In *Parfitt* the provision of stipulated benefits to an agreed standard for a ordained Methodist minister was held to be insufficient to create an enforceable contract of service having regard to the nature of the Methodist Ministry, so that, a fortiori, a Camphill co-worker with no legal entitlement to any benefit from a Community cannot be regarded, in my opinion, as holding a contract of service or employment with that Community. A co-worker's position within a particular Community creates no legal entitlement or obligation, nor is it intended to do so, because the Camphill Movement is based solely on the personal commitment and shared belief of its co-workers and not on legal compulsion.

19. It is important not to confuse the case law on tips, gifts and gratuities which have been held to be taxable emoluments under a Schedule E with the position in the present case. In all the reported cases of taxability of tips, gifts and gratuities there has been an existing employment, viz the individual has been an employee under a contract of service. The sole question for the Court to decide in those cases has been whether a particular receipt of the employee, e.g. a tip from a third party, has been a receipt from the employment, that is to say, is the employment the source of the receipt so as to render it assessable under Schedule E as an emolument. In the present case, the question is whether or not there is any "employment" within the scope of the Schedule E charge, not whether an existing employment can be said to be the source of any gratuities received by an employee.

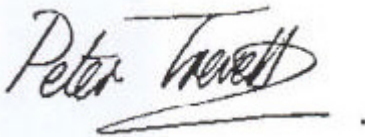
Special situations

20. A small number of special situations have been identified within certain Communities which do not affect the basic principles set out in this Opinion but with which I should deal:

- 1) co-workers who have a personal income from investments, an inheritance or a pension, but have their needs met by a Community on the same basis as other co-workers;
- 2) co-workers who have an earned income (with PAYE deducted by their employer) which they make over to a Community, which supports them in the same way as other co-workers;
- 3) co-workers who live on a "needs met" basis in rented accommodation and who are involved in Camphill projects which are not residential life sharing communities;
- 4) co-workers who live within Communities and receive board and lodging but not other personal needs. They receive a regular amount which they are expected to use for personal needs including clothing and holidays; and
- 5) co-workers who are part of a Community but who through lack of space live outside the Community or on the periphery of it (in accommodation rented by the Community). These co-workers account for money which they administer on behalf of the Community including that used for their personal needs.

I understand that in each of these cases, the co-worker has no entitlement to any provision made for him or her by a Community. Sums made available to such coworkers remain entirely within the discretion of the particular Community and the coworker has no claim or entitlement in respect of any amount.

21. In my opinion, the position of the co-workers in the five special cases set out above is the same as that considered in the main part of my Opinion. No co-worker has a contract of service or employment with a particular Community; sums are made available to the co-worker on the basis of mutual trust and shared belief and without any intention to create legal relations. Accordingly, even in the special situations outlined in paragraph 20, there is no contract of service and, therefore, no "employment" within the scope of Schedule E.



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Peter Trevett Q.C.

7th January 1998