

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D20/01**

**Salaries tax** – mortgage loan – allowable home loan interest deduction – basis of calculation of deduction – section 26E of the Inland Revenue Ordinance ( ‘ IRO ’ ).

Panel: Ronny Wong Fook Hum SC (chairman), Paul Shieh Wing Tai and Adrian Wong Koon Man.

Date of hearing: 9 March 2001.

Date of decision: 27 April 2001.

The taxpayer and her husband purchased a housing estate flat as joint tenants for the sum of \$1,855,000. Having secured a mortgage loan, she reported that, for the year of assessment 1998/99, the total interest paid on the loan was \$123,984. She in turn claimed home loan interest deduction in the sum of \$90,000, the maximum allowable deduction being \$100,000 under the IRO. She stated that she held the flat with her husband in the ratio of 9:1.

**Held:**

Under section 26E(2)(c)(i) of the IRO, the taxpayer’ s entitlement to the amount of \$100,000 (specified in Schedule 3 of the IRO) was reduced in proportion to the number of joint tenants and not according to the beneficial interests of joint tenants or otherwise. Section 26E was very clear in this regard.

**Obiter:**

Even though the taxpayer’ s notice of appeal was technically out of time by one day, in light of an intervening public holiday, the Revenue was correct not to oppose an application for extension of time.

**Appeal dismissed.**

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Chow Chee Leung for the Commissioner of Inland Revenue.

Taxpayer represented by her husband.

### Decision:

1. By an assignment dated 1 September 1993, a flat at Housing Estate A (' the Flat' ) was assigned in favour of the Taxpayer and Mr B as joint tenants for \$1,855,000.

2. By a mortgage dated 1 September 1993, the Flat was mortgaged by the Taxpayer and Mr B in favour of Bank C to secure a loan (' the Mortgage Loan' ) repayable by monthly instalments in amounts that varied in accordance with the prevailing rate of interest.

3. By her tax return dated 30 May 1999, the Taxpayer reported to the Revenue that the total interest paid on the Mortgage Loan for the year of assessment 1998/99 was \$123,984 and she claimed home loan interest deduction in the sum of \$90,000. In correspondence with the Revenue, the Taxpayer asserts that the Flat is held by her and her husband in the ratio of 9:1. On this basis, the Taxpayer contends that she is entitled to 90% of the maximum allowable deduction of \$100,000.

4. The position is regulated by section 26E of the IRO which provides:

*'(1) Subject to the other provisions of this section and to section 26F, where a person pays during any year of assessment any home loan interest for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by the person exclusively or partly as his place of residence, a deduction in respect of the home loan interest shall be allowable to that person for that year of assessment.*

*(2) (a) Subject to paragraphs (b) and (c) and subsection (3), a deduction allowable to a person under subsection (1) in respect of any home loan interest paid by the person during any year of assessment shall be –*

*(i) (A) where the dwelling is used by the person exclusively as his place of residence during the whole of that year of assessment, the amount of the home loan interest paid; or*

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(B) *in any other case, such amount (whether representing the full amount of the home loan interest paid or any part thereof) as is reasonable in the circumstances of the case; or*

(ii) *the amount specified in Schedule 3D in relation to that year of assessment.*

*whichever is of the lesser amount.*

(b) *For the purpose of this section, where a dwelling is held by a person otherwise than as a sole owner, the amount of the home loan interest paid referred to in paragraph (a)(i) shall be regarded as having been paid –*

(i) *where the dwelling is held by the person as a joint tenant, by the joint tenants each in proportion to the number of the joint tenants; or*

(ii) *where the dwelling is held by the person as a tenant in common, by the tenants in common each in proportion to his or her share in the ownership in the dwelling.*

(c) *For the purpose of paragraph (a), where a dwelling is held by a person otherwise than as a sole owner, the relevant amount specified in Schedule 3D referred to in paragraph (a)(ii) shall be regarded as having been reduced –*

(i) *Where the dwelling is held by the person as joint tenant, in proportion to the number of the joint tenants.*

(ii) *where the dwelling is held by the person as a tenant in common, between the tenants in common each in proportion to his or her share in the ownership in the dwelling.’ (emphasis applied).*

The amount specified in schedule 3D is \$100,000.

5. The Taxpayer’s position is governed by section 26E(2)(c)(i). The Flat is held by her and Mr B as joint tenants. Her entitlement is to claim the amount specified in Schedule 3D (that is, \$100,000) reduced ‘in proportion to the number of the joint tenants’. The section does not provide for reduction in any other manner. In particular, the section does not contemplate

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reduction in proportion to the beneficial interests of the joint tenants. The contrast in wordings between section 26E(2)(b)(i) and 26E(2)(c)(i) on the one hand and section 26E(2)(b)(ii) and 26E(2)(c)(ii) makes the position very clear.

6. There is no merit in the Taxpayer's appeal and we dismiss the same.

7. The determination in this case was issued by the Commissioner of Inland Revenue on 1 December 2000. There is evidence before us that the same was delivered to the Taxpayer on 2 December 2000. The Taxpayer's notice of appeal (dated 30 December 2000) was not received by this Board until 3 January 2001. Given the intervening public holiday, we are of the view that the Revenue is right in not opposing the Taxpayer's application for extension of time. In the light of our clear views on the substantive point outlined above, this extension of time is of limited value to the Taxpayer.