

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D136/99

**Profits Tax** – long term mortgage taken out but quick sales – whether the sale of a property was a sale of capital asset or trading stock – section 14(1) of the Inland Revenue Ordinance (‘IRO’).

Panel: Robert Wei Wen Nam SC (chairman), Herman Fung Man Hei and William Tsui Hing Chuen.

Date of hearing: 16 July 1999.

Date of decision: 9 March 2000.

The taxpayers (Mr A and Ms B), a married couple, appealed against a profits tax assessment for the year of assessment 1997/98 arising out of the purchase and sales of two properties (Property 2 and Property 3) and contended that the gain derived from the disposal of the two properties was capital and should not be chargeable to profits tax. The main issue was whether it was acquired by the taxpayers as a capital asset or a trading stock.

#### **Held :**

1. ‘Trade’ includes every trade and manufacture and every adventure and concern in the nature of trade : section 2 of the IRO.
2. The onus of proving that the assessment appealed against was excessive or incorrect shall be on the appellant : section 68(4) of the IRO.
3. In considering whether an asset is a trading asset or a capital asset, one has to consider the intention which existed at the time of acquisition of the asset : Simmons v IRC [1980] 1 WLR 196 at page 1199.
4. A self-serving statement by a person is of limited value until it has been tested against the objective facts : All Best Wishes Limited v CIR 3 HKTC 750 at page 771 per Mortimer J.
5. Quick sales were normally regarded as being inconsistent with a long-term-investment intention, and it was for the taxpayers to explain away the inconsistency satisfactorily. It thus became necessary to examine the reasons for the resales.

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6. The Board was neither satisfied that size was a reason for selling Property 2 nor was it satisfied that any real inconvenience existed.
7. Water leakage was the reason Mr A relied on heavily to explain the sale. But there is no corroborative evidence to support his assertions. There were no photographs of the leakage, no invoice of the materials he bought for the temporary work, no claim for the expense, and no evidence from his wife, Ms B whom he might have called to support him not only on the water leakage issue but also on the whole case.
8. A long term mortgage may give rise to an inference of a long-term-investment intention, but it may also raise the inference of an intention of resale at a profit, market permitting, while minimising monthly instalments in the meantime by selecting a long term mortgage.
9. An asserted intention to move to a property as one's residence was not the same thing as stating that he had intended to acquire the property as a long term investment. That statement would have to be weighed against the surrounding circumstances, particularly the property market conditions.
10. The argument that the Revenue should take into account of the taxpayers' loss over the market crash upon the purchase of Property 4 and set it off against the profits from Properties 2 and 3, was fallacious because he has in fact not sold Property 4. On the other hand, it is arguable that the doldrums in the market may well explain why he has held on Property 4.
11. The Board found that the taxpayers' intention in acquiring Properties 2 and 3 was to resell each of them at a profit and that the quick sales were made pursuant to that intention.

**Appeal dismissed.**

Cases referred to:

Simmons v IRC [1980] 1 WLR 1196  
All Best Wishes Ltd v CIR 3 HKTC 750

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Fung Ka Leung for the Commissioner of Inland Revenue.

Taxpayers in person.

### **Decision:**

#### **Nature of this appeal**

1. This is an appeal by Mr A and Ms B (Mr A and Ms B individually and the Taxpayers collectively) against the determination of the Commissioner of Inland Revenue dated 25 March 1999 whereby the profits tax assessment for the year of assessment 1997/98 raised on the Taxpayers was revised as shown in paragraph 12 below. The Taxpayers contend that the profits derived from the sales of two properties, referred to below as Property 2 and Property 3 respectively, should not be assessable to profits tax.

#### **Facts not in dispute**

2. The Taxpayers are husband and wife. At all relevant times, they lived in a flat in District C (Property 1) which is owned by Mr A's mother.

3. (a) By an agreement dated 4 January 1997, the Taxpayers purchased a flat in District D (Property 2) at a consideration of \$2,590,000. The purchase was completed on 17 February 1997 when the flat was assigned to the Taxpayers.

(b) To finance the purchase, the Taxpayers took out bank loans in the amount of \$1,591,075. The principal and interests of the loans were repayable by 240 monthly instalments of \$14,315.31 each.

(c) By a provisional agreement dated 2 March 1997, the Taxpayers sold Property 2 at a consideration of \$3,000,000. The sale was completed on 17 April 1997 when the flat was assigned to the purchasers.

4. (a) By a provisional agreement dated 5 March 1997, the Taxpayers purchased a flat in District D (Property 3) at a consideration of \$2,850,000.

(b) To finance the purchase, the Taxpayers took out a mortgage loan of \$1,500,000. The principal and interests of the mortgage loan were repayable by 240 monthly instalments of \$13,495.89 each.

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(c) By a provisional agreement dated 9 June 1997, the Taxpayers sold Property 3 at a consideration of \$3,400,000. The sale was completed on 14 July 1997 when the flat was assigned to the purchaser.

5. The Taxpayers left Property 2 and Property 3 vacant during their period of ownership.

6. In a questionnaire completed by them, the Taxpayers claimed that they had derived profits of \$189,880.50 and \$377,060 from the purchase and resale of Property 2 and Property 3 respectively by deducting cost of purchase and expenses incurred in the purchase and resale, totalling \$2,810,119.50 and \$3,022,940 respectively, including bank interest of \$74,072, and decoration (change of door lock) of \$340 in relation to Property 2 and bank interest of \$45,000 and decoration (installation of lamp) of \$2,100 in relation to Property 3, from the selling prices of \$3,000,000 and 3,400,000 respectively.

7. The assessor was of the opinion that the purchase and resale of Property 2 and Property 3 were trading transactions. He raised on the Taxpayers the following profits tax assessment for the year of assessment 1997/98:

Assessable profits (\$189,880 + \$377,060)	<u>\$566,940</u>
Tax payable thereon	<u>\$85,041</u>

8. The Taxpayers objected to the above assessment on the following grounds:

- (a) Property 2 and Property 3 were purchased for self-use.
- (b) As the Taxpayers were inexperienced in selecting properties, Property 2 and Property 3 did not meet their needs.
- (c) After the sale of Property 3, they bought a flat in District D (Property 4). The purchase was completed on 29 November 1997.
- (d) Taking into account the drop in value (estimated to be \$890,758) which resulted from the downturn of the property market, the Taxpayers would have a net loss of \$323,818 (\$890,758-566,940).

9. Property 4 was purchased by Mr A on 26 June 1997 at a consideration of \$2,780,000. Mr A leased out Property 4 for a period of two years with effect from 1 February 1998.

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10. To support their contention that Property 2 and Property 3 were purchased as their intended residence, the Taxpayers gave the following explanations regarding the circumstances leading to the sales of the two properties:

10.1 Location of Property 2 is not convenient and the size is too small.

10.2 Location of Property 3 is too noisy and serious water leakage at the window edge in the master bedroom.

10.3 Non-suitability of either property was not found before the purchase due to their inexperience in property selection and at the same time the rapid rising of the property price at that time forced them to make quick decision in order to avoid further price increase.

11. In response to the assessor's enquiries, the Taxpayers stated that:

11.1 During the period from 1 April 1996 to 31 March 1998, the Taxpayers and their daughter lived in Property 1. The mother was staying with Mr A's sister because Property 1 was not big enough. However, the mother would stay in Property 1 during holidays and some weekends.

11.2 The intended occupants of Property 2 and Property 3 were the Taxpayers and their daughter.

11.3 The estimated usable floor area and number of bedrooms of Properties 1, 2, 3 and 4 are as follows:

	<b>Property 1</b>	<b>Property 2</b>	<b>Property 3</b>	<b>Property 4</b>
<b>Gross floor area</b>	510	628	684	665
<b>Usable floor area</b>	408	502	547	532
<b>No of bedrooms</b>	2	2	3	2

11.4 ' After the (water leakage problem of Property 3) was found, I did not take any photo of the affected area on the damage. In addition, I just did some temporary fix by myself. So I do not have any documentary (sic) showing the leakage problem. However, I had asked the previous owner of the flat about the water leakage problem after the problem was found and she say (sic) that is a problem of the whole building. In addition, I did taken (sic) a look at the windows of the neighbourhood flats and found that they have also done some repair work at their window edge trying to fix the water leakage problem from

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the window edge. It proofs (sic) to me that the water leakage problem is really a problem of the building instead of just an isolated problem of my flat and major repair will be required in order to fix the problem. So, this makes me lose confidence in the quality of the building and hence lose the interest on using the subjected (sic) flat as my home.'

11.5 'Property 4 is rented out since February 1998. This is because [Mr A' s] mother has agreed to stay in [Mr A' s] sister' s place to take care of her son for another short period. So [Mr A] has decide to rent (Property 4) out in order to help in expediting the mortgage repayment completion earlier.'

12. The assessor maintains the view that the purchase and resale of Property 2 and Property 3 are trading transactions. As the Taxpayers now claim that the interest incurred for Property 2 and Property 3 was \$74,328 and \$43,080 respectively, the assessor considers that the profits tax assessment for the year of assessment 1997/98 should be revised as follows:

	\$
Assessable profits as per paragraph 7 above	566,940
<u>Add</u> : Interest overclaimed [\$74,072+\$45,000-\$74,328-\$43,080, see paragraph 6 above]	<u>1,664</u>
Revised assessable profits	<u><u>568,604</u></u>
Tax at standard rate of 15%	85,290
<u>Less</u> : Tax exempted by virtue of the Tax Exemption (1997 Tax Year) Order	<u>8,529</u>
Tax payable thereon	<u><u>76,761</u></u>

13. On 25 March 1999, the Commissioner of Inland Revenue determined the Taxpayers' objection against the Taxpayer and revised the assessment in question as per paragraph 12 above. The Taxpayers are now appealing against the determination of the Commissioner.

### **Grounds of appeal**

14. The Taxpayers' grounds of appeal set out in their notice of appeal are principally to the following effect:

14.1 Their intention of acquiring the properties for self-use is proven by the fact that they obtained mortgage loan from the bank.

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- 14.2 (i) Their inexperience in property selection coupled with the sky-rocketing property prices force them to make purchase decision without spending enough time to reconsider some of the important factors such as inconvenience.
- (ii) In addition, the size issue relating to Property 2 is proven by the fact that Property 3 and Property 4 are 56 square feet and 37 square feet bigger respectively than Property 2.
- (iii) As for the water leakage problem at Property 3, that was only found out after the heavy rainfall when the purchase was completed, and the observable repair work in the nearby flats coupled with the confirmation from the previous owner of the leakage problem shows that is a major problem and difficult to fix.
- (iv) As to renting out Property 4, the purchase was to help expedite the mortgage repayment as Mr A's mother had agreed to stay in Mr A's sister's place for another period of time.
- 14.3 Taking into consideration the transactions relating to Properties 2, 3 and 4, they have actually suffered a net loss of \$323,818 instead of making a profit from the transactions.
- 14.4 The tenant at Property 4 has requested termination of the lease from May 1999 and then they will be moving their residence to Property 4.

### **The hearing of this appeal**

15. At the hearing, the Taxpayers were in attendance and were represented by Mr A, the husband, while Mr Fung Ka-leung, assessor, represented the Commissioner of Inland Revenue. Mr A gave evidence for the Taxpayers. Mr A was informed at the beginning, and reminded at the end of his testimony of his right to call other witnesses. No other witness was called.

### **Mr A's testimony**

16. Mr A's testimony may be summarised as follows.

In chief

- 16.1 He agrees with the facts of the case as set out in paragraph 1 of the determination of the Commissioner.

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- 16.2 He did not treat those properties as being in the nature of trade. His purchase and sale of them was not in the nature of trade because he went to the bank to get a mortgage loan. As to why within a few months or just within a year he came to purchase and sell two properties, that was only because they decided to buy their own property.
- 16.3 Since they did not have experience of buying property, they failed to pay attention to a few significant factors. Further, at that time property prices were sky-rocketing and they were anxious to buy one. After the purchase of the first property, they found the location and the size of the property unsuitable. Not big enough. So later they sold the first property. They continued looking for another property and then they found it and purchased it. At the time of the purchase, they found it suitable to them, because in buying the second one they paid attention to the factors they had neglected when they purchased the first one. Further, the second one was already fully renovated and they were satisfied with it.
- 16.4 It was a second-hand flat. After the purchase of the second one, it rained for quite some time. During the rainy period they found that in the master bedroom water was seeping through the window and puddles formed on the floor. He tried to do something about the wall. He is not in the building trade. He went to a metalware shop to buy some plastering thing to put on the wall. In fact, the plaster gel he put on is what people use to seal their fish tank. The former owner told him that the whole building has similar water leakage problem. He looked at windows in the same building and he realised that nearly all those windows had similar repair job. What the former owner said to him strengthened his belief that this flat was no good. For that reason he decided that it was not the right place for a residence.
- 16.5 Upon the sale of the second property, he purchased a third one, referred to as Property 4 in the documents. After the purchase the property price tumbled suddenly and he suffered a loss. If the Revenue thinks he should pay tax on the profit he made from Properties 2 and 3, why don't they take into account the loss he suffered from Property 4.
- 16.6 They have just renovated Property 4 and will move in tomorrow. According to the lease the tenant should give him three months' notice. The tenant moved out at the end of April so he took possession in May. From May onwards they had someone to renovate the flat.

In cross-examination



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- 16.7 He works in an airline company in District E. He first lived in Property 1 in 1972. He got married in 1992 and his wife first lived in Property 1 in 1992.
- 16.8 He had been looking at properties since before his marriage though he was then not able to afford one.
- 16.9 Property 2 was the property he first bought.
- 16.10 His mother owns Property 1. She had bought it with her own money.
- 16.11 He had visited at least 10 properties before he purchased Property 2 on 4 January 1997. It is in District D. He visited Property 2 once before he signed the provisional agreement.
- 16.12 As for his criteria in selecting a residence, it should be less than ten years old and it should be quiet. The purchase of Property 2 was an important decision to him. He was buying it for use by his wife and himself and their daughter then three years old.
- 16.13 Before the purchase, he knew the size of Property 2 and he knew that it was bigger than Property 1 by 100 square feet. But he found the bedroom not big enough. But, as for the living room and the toilet, they are bigger, and also the kitchen. There were two bedrooms, about the same in size. Both were not big enough.
- 16.14 He was attracted by the big size of the toilet, the kitchen and the living room; that is why he neglected the bedroom. Also, the surrounding was too attractive; that is why he neglected the bedroom. It does not have a sea view, but it is much quieter than Property 1.
- 16.15 As to why he considered that the location of Property 2 was not convenient, it is up on a hill. There is a slope and one has to go down the slope to go to work and then has to climb up the slope to go home.
- 16.16 When asked whether he could go back to Property 2 by minibus or by bus, instead of climbing up the slope, he stated that ' Yes, there is minibus.'
- 16.17 He was not aware of the traffic problem of Property 2 before he purchased it.
- 16.18 When he was referred to his notice of appeal where he stated that he did not spend enough time to reconsider some of the important factors such as

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inconvenience (see paragraph 14.2(i) above), he replied that what he meant was, after he visited the flat, he did not think of it again.

- 16.19 He cannot recall the exact date he sold Property 2 but it should be after he got the keys and visited it a few times. After that he sold it. They had gone up to measure the size so that they could go and buy furniture.
- 16.20 After they decide to sell Property 2, they considered they should be more careful in selecting a new residence, especially the factors they had neglected when they were purchasing the first one. All the factors, plus the factors they had neglected.
- 16.21 He had visited at least 10 properties before he purchased Property 3, not counting the ones he visited before he purchased Property 2. He had visited Property 3 himself, but on the day of purchase he did not visit it. His wife signed the purchase agreement. Before that day he had visited some other flats in the same building, but not that particular one. He saw Property 3 for the first time after the day of purchase. But that is not so in the case of his wife. She had visited Property 3 once before the purchase. The purchase of Property 3 was an important decision for him.
- 16.22 Property 3 was noisy. It was the noise from people. Even at night time the passing traffic was quite noisy.
- 16.23 It was only when they were about to move in that they found there was water leakage.
- 16.24 They never moved in.
- 16.25 After they collected the keys, they visited the flat at night twice and they became aware of noise.
- 16.26 When asked why he did not inspect the environment of Property 3 at night time since quiet environment was one of his important criteria, he stated that usually they visited flats in the daytime. They found the place quiet enough in the daytime but they did not realise that at night time it was quite different.
- 16.27 Property 3 was already fully renovated. They only bought some lamps and installed them. They became aware of the water leakage problem after they had collected the keys. It was after the rain after they had purchased it. He did not take any photographs.

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- 16.28 When they purchased Property 3, the previous owner gave them a name card.
- 16.29 He spent about \$200 to \$300 just for the materials for some temporary work which he did to solve the water leakage problem. He bought plaster, plaster gel and one can of paint. He had the invoice at the time he bought them, but now he does not know whether he still has the invoices.
- 16.30 He was referred to a questionnaire completed by him and his wife where he declared that the expense of \$2,100 was only for the lamps. When asked why he did not claim the expense for the temporary fixing, he stated that at the time of filling in this form, he only aimed to fill in the significant figures. In respect of Property 2, he only filled in \$340 for renovation; he could remember it because this was the only thing he had changed.
- 16.31 Water leakage problem had taken place three times in Property 3 before he decided to sell it. His temporary fix did not solve the problem. He did not employ a professional decoration company to solve the problem.
- 16.32 He was referred to his written statement made to the Revenue (see paragraph 11.4 above) where he stated that he looked at the neighbours' windows and found that they had also done some repair work at their window edge. He stated that he had noticed this repair work after he talked to the previous owner and after he had tried to fix it. His wife did not notice this repair work before the purchase. She did not see. If she had seen something, she would have let him know. He never asked the neighbours if their repair work could solve the problem.
- 16.33 The property price was on an increasing trend after he had decided to sell Property 3.
- 16.34 Since the birth of the son of his elder sister, his mother had been taking care of the child. All along his mother, himself, his wife, his daughter and his elder sister had lived at Property 1; it was only in September or October 1995 that they realised that the place was too small and his mother would go to live with his elder sister to take care of the child. His mother had agreed to take care of the child for two years. She is still taking care of his elder sister's child. His mother never refused to look after the grandchild.
- 16.35 His daughter was born in October 1993 and his elder sister's son was born in early 1995. So when his elder sister's son was born, his mother was taking care of two children. When his daughter was close to two years old,

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they realised the place was too small and his mother decided to move to live with his sister and take care of the child. His mother left Property 1 to stay with his sister in October 1995.

- 16.36 When he purchased Property 4 his mother was already living with his sister. After the purchase, his mother agreed to stay in his sister's place to take care of her son for another short period.
- 16.37 He required Property 4 urgently as his residence when he purchased it.
- 16.38 It was suggested to him that he did not require Property 4 so urgently since the date of the provisional agreement was 26 June 1997, while the completion date was five months later. He replied that he did have an urgent need. The property price was rising at the time; if he did not get in the market, someday his money would not be enough to buy a flat.
- 16.39 Four or five months later, there was a sudden drop of the market.
- 16.40 He let out Property 4 in early 1998. If the tenant had not terminated the tenancy prematurely he would still be letting out the property until it expired at the end of January 2000. He would not renew the tenancy because his daughter is growing up and needs to have a room for herself.
- 16.41 She does not have a room to herself at Property 1. There are two bedrooms in Property 1. One is occupied by the three of them. There were still some of his mother's belongings in the other room. He cannot buy things for her and put them in that room because every now and then his mother would still come back.
- 16.42 His daughter is five and a half and will be in primary school in the coming term. The school is in District F.

Mr A was reminded of his right to call more witnesses if he so wished. Mr A said no.

### **The law**

17. 'Trade' includes every trade and manufacture, and every adventure and concern in the nature of trade (see section 2 of the Inland Revenue Ordinance (the IRO)).
18. The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant (see section 68(4) of the IRO).

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19. *‘Trading requires an intention to trade: normally the question to be asked is whether this intention existed at the time of the acquisition of the asset. Was it acquired with the intention of disposing of it at a profit, or was it acquired as a permanent investment?’* (per Lord Wilberforce in Simmons v IRC [1980] 1 WLR 1196 at 1199.)

20. A self-serving statement by a person is of limited value until it has been tested against the objective facts. The intention must be *‘genuinely held, realistic and realisable’*. *‘But as it is a question of fact, no single test can produce the answer. In particular, the stated intention of the taxpayer cannot be decisive and the actual intention can only be determined upon the whole of the evidence ... intention can only be judged by considering the whole of the surrounding circumstances, including things said and things done. Things said at the time, before and after, and things done at the time, before and after’* (per Mortimer J in All Best Wishes Ltd v CIR 3 HKTC 750 at 771).

### **Findings and reasons**

21. Since 1972, Mr A has lived in his mother’s flat, that is, Property 1. When he married Ms B in 1992, she came to live in Property 1 as well. Besides, his mother and his elder sister lived there also. In October 1993, his daughter was born and his mother looked after the baby. When his elder sister gave birth to a son in early 1995, his mother had to look after two children. They realised that Property 1 was getting too small, so, in October 1995 his mother went to live with his elder sister to take care of the grandson, leaving Mr A, his wife and daughter to continue to reside in Property 1. This state of affairs continued right up to the day of the hearing of this appeal.

22. In the meantime the Taxpayers went through the following transactions concerning Properties 2, 3 and 4:

22.1 On 4 January 1997, they purchased Property 2 for \$2,590,000. The purchase was financed by bank loans repayable by 240 monthly instalments of \$14,315.31 each.

22.2 On 2 March 1997, they sold Property 2 for \$3,000,000, making a profit of \$189,880 (see paragraph 7 above).

22.3 On 5 March 1997, they purchased Property 3 for \$2,850,000. The purchase was financed by a mortgage loan of \$1,500,000 repayable by 240 monthly instalments of \$13,495.89 each.

22.4 On 9 June 1997, they sold Property 3 for \$3,400,000, making a profit of \$377,060 (see paragraph 7 above).

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22.5 On 26 June 1997, Mr A purchased Property 4 for \$2,780,000. He leased out the property for a period of two years with effect from 1 February 1998.

23. Within a period of just over five months as from 4 January 1997, the Taxpayers purchased and sold Properties 2 and 3 profitably in quick succession. The purchases and resales took place when the property market was rising.

24. This appeal concerns Properties 2 and 3. The Taxpayers' case is that Property 2 was acquired as a long-term investment for use as their residence and so was Property 3, and that they were sold because they were found to be unsatisfactory after acquisition. Quick sales are normally regarded as being inconsistent with a long-term-investment intention, and it is for the Taxpayers to explain away the inconsistency satisfactorily. It thus becomes necessary to examine the reasons for the resales.

### **Reasons for selling Property 2**

#### Reason 1: size

25. He had visited the flat once before signing the provisional agreement. Before the purchase, he knew Property 2 was bigger than Property 1 by 100 square feet, but did not realize that the two bedrooms were both too small, because he was so attracted by the big size of the toilet, the kitchen and the living room and by the surroundings that he neglected the bedrooms (see paragraph 16.14 above).

26. We are unconvinced that the big size of the other parts of the flat could have blinded him to the alleged smallness of the bedrooms. We are not satisfied that size was a reason for selling Property 2.

#### Reason 2: inconvenience

27. Property 2 is up on a hill. One has to climb up a slope to get to it, he said. But he agreed that one could go to Property 2 by minibus instead of climbing up the slope (see paragraph 16.16 above). He was not aware of the problem before he purchased it (see paragraph 16.17 above).

28. We are not satisfied that any real inconvenience existed.

### **Reasons for selling Property 3**

#### Reason 1: noise

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29. Property 3 was noisy. It was the noise from people. Even at night time the passing traffic was quite noisy. After they collected the keys, they visited the flat at night twice and they became aware of noise. They found the place quiet enough in the daytime but had not realized that at night it was quite different (see paragraph 16.26 above).

30. The evidence of noise was vague as to its nature and cause and as to the effect it might have on the Taxpayers and their daughter. There is no evidence that noise was the reason or even part of the reason for the sale; rather, the evidence is that water leakage was the reason for selling the flat (see paragraph 16.4 above).

### Reason 2: water leakage

31. Property 3 was already fully renovated when it was purchased. They only bought some lamps and installed them. They became aware of the water leakage problem after the rain after they had purchased it. He did not take any photographs. He spent \$200 to \$300 just for some plaster, some gel and a can of paint for the temporary work he did to solve the leakage problem. He had the invoice then, but is not sure whether he still has it (see paragraph 16.29 above). When asked why he did not claim the expense for the temporary fixing, he stated that when he was filling in the form, he only chose the significant figures (see paragraph 16.30 above).

32. Water leakage was the reason Mr A relied on heavily to explain the sale. But there is no corroborative evidence to support Mr A's assertions. There are no photographs of the leakage, no invoice of the materials he bought for the temporary work, no claim for the expense, and no evidence from his wife Ms B whom he might have called to support him not only on the water leakage issue but also on the whole case.

### **Other points raised by the Taxpayers**

#### Long-term mortgage loan

33. The argument here is that since the Taxpayers chose a long term on a mortgage, that must mean that they intended to acquire Properties 2 and 3 as long-term investments. That is not so. A long-term mortgage may give rise to an inference of a long-term- investment intention, but it may also raise the inference of an intention of resale at a profit, market permitting, while minimising monthly instalments in the meantime by selecting a long-term mortgage.

#### Intention to move to Property 4 on long-term basis

34. Mr A asserted an intention to move to Property 4 as his residence (see paragraphs 16.5 and 16.6 above), but that is not the same thing as stating that he had intended to acquire the property as a long-term investment. That statement would have to be weighed against the surrounding circumstances, particularly the property market conditions. It will be remembered that

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property prices were rising again after Mr A had decided to sell Property 3 (see paragraphs 16.33 above). So he sold Property 3 and purchased Property 4. Then property prices tumbled suddenly (see paragraph 16.5 above), and there is no evidence of a recovery. Mr A argues that the Revenue should take account of his loss over the market crash and set it off against the profit from Properties 2 and 3. This is of course fallacious because he has in fact not sold Property 4. On the other hand, it is arguable that the doldrums in the market may well explain why he has held on to Property 4.

### **Conclusion**

35. We are not satisfied that the reasons for the quick sales have been proved, or that the Taxpayers had acquired Properties 2 and 3 long-term investments, or that their long-term-investment intention was frustrated by any subsequently discovered faults. On the contrary, we find that their intention in acquiring Properties 2 and 3 was to resell each of them at a profit and that the quick sales were made pursuant to that intention.

36. Our conclusion is that this appeal falls to be dismissed and that the profits tax assessment for the year of assessment 1997/98 as revised as per paragraph 12 above is hereby confirmed.