

**Case No. D15/11**

**Personal assessment** – rental income – deduction of loan interest – sections 42(1), 68(4) and (8) of the Inland Revenue Ordinance (‘the Ordinance’).

Panel: Albert T da Rosa, Jr (chairman), Chau Cham Kuen and Ho Chi Wai.

Date of hearing: 3 June 2011.

Date of decision: 25 July 2011.

The issue in the appeal was whether that the Taxpayers should be allowed to further deduction of mortgage interest under personal assessment in respect of loans taken out to acquire the relevant letting properties. The Taxpayers claimed that the interest payable on the money that they had borrowed for producing the rental income indeed exceeded the rental income itself. The evidence adduced by the Taxpayers in support of the claim that they had borrowed loans from their family members and incurred interest expenses thereon was, however, sketchy.

The parties wished to use the Cantonese dialect of the Chinese language for all oral proceedings before the Board but to continue to use English for all written elements without translation into Chinese.

**Held:**

1. The Board has power to dispense with translations between the two official languages and to make final decision on use of either or both of the official languages in proceedings before it (sections 2 to 5 of the Official Languages Ordinance; rule 1 of the Official Languages (Translation) Rules; and sections 31 and 40 of the Interpretation and General Clause Ordinance considered).
2. The Board finds that probably the Taxpayers would have obtained some sort of loans from their relatives. However, the evidence did not identify who when how much and on what terms were such loans made. Given the family relationship and the informal manner in which the loans were created and the obligations of the Taxpayers are dealt with, there is insufficient evidence to buttress the obligation to pay interest. The Board is not satisfied that the Taxpayers have discharged their onus as regards such the details of the loan from relatives and interest amount.

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3. The Taxpayers have not proved that they had paid or were liable to pay any interest to their family members and that the interest was payable on money borrowed. The first two conditions as laid down under the proviso to section 42(1) of the Ordinance are not satisfied. Deduction of the alleged interest paid to family members under personal assessment could not be allowed.
4. Separately, even if one assumes that loans from relative exist, the Taxpayers have not demonstrated which loan is related to which specific rental income of a specific property.
5. The proviso to section 42(1) of the Ordinance allows the deduction of interest payable on money borrowed for the purpose of producing chargeable property income. On interpretation of the proviso to section 42(1), differently constituted Boards, including D86/99, D4/01, D96/01, D27/04 and D51/04, held that the proviso to section 42(1) did not allow a global deduction for interest payable against total taxable property income. The amount of interest deductible had to be restricted to the net assessable value of that property. There should be some correlation between the interest claimed and the interest relieved.
6. The Taxpayers therefore have not proved that the assessment appealed against is incorrect in principle.

**Appeal dismissed.**

Cases referred to:

D50/96, IRBRD, vol 11, 547  
D86/99, IRBRD, vol 14, 581  
D4/01, IRBRD, vol 16, 126  
D96/01, IRBRD, vol 16, 796  
D27/04, IRBRD, vol 19, 219  
D51/04, IRBRD, vol 19, 391

Taxpayer in person.

Ong Wai Man and Chan Wai Lin for the Commissioner of Inland Revenue.

**Decision:**

### **Introduction**

1. This is an appeal by Ms A in respect of the determination (the ‘Determination’) dated 29 June 2010 by the Acting Deputy Commissioner of Revenue (the ‘Deputy Commissioner’).
2. Ms A, the appellant in this appeal D15/11, and Mr B, the appellant in D14/11, are wife and husband. The facts, issues submissions and the Relevant Determinations are closely interwoven and connected.
3. By agreement of the parties this appeal was heard at the same time as D14/11.
4. Ms A and Mr B are collectively called the ‘Taxpayers’.
5. The Deputy Commissioner’s determinations dated 29 June 2010 as regards Ms A and Mr B are collectively called the ‘Determinations’

### **Language**

6. Ms A heads a unit in the Hong Kong Government, and all documents submitted to the Board including all previous correspondence between Ms A and the Respondent have been in English.
7. The parties wished to use the Cantonese dialect of the Chinese language for all oral proceedings before the Board but to continue to use English for all written elements without translation into Chinese.
8. Under Section 3 of the Official Languages Ordinance (‘OLO’)
  - ‘(1) *The English and Chinese languages are ... official languages ... for ... court proceedings.*
  - ‘(2) *The official languages possess equal status and ... enjoy equality of use for the purposes set out in subsection (1)*’
9. Under Section 2 of OLO, the word ‘court’ as used in OLO
  - ‘... also means any board ... having by law the power to hear, receive and examine evidence on oath.’
10. Subsections (3), (4) (5) of section 5 of OLO applies to proceedings before the ‘court’ (with its extended meaning under Section 2 of OLO) so the parties and witnesses have the right to use either language to give evidence or to address the ‘court’ including the Board.

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11. Rule 1(3) of Official Languages (Translation) Rules ('OLTR') made pursuant to section 5(5) of OLO also provides that

*'The court may at any time dispense with the need for a translation of a document from one official language to the other official language'*

and unless so dispensed, Rule 1 (1) and (2) of the OLTR require translation to be provided.

12. Rule 1(5) of OLTL however, provides:

*'In these rules "court" included a magistrate or other person conducting judicial proceedings'*

13. Since the Board is not a magistrate and hearings before the Board are not judicial proceedings, the Board cannot rely on the meaning of 'court' ascribed by rule 1(5) of OLTR as the basis for exercising the powers under rule 1(3) to dispense with translations. Fortunately, rule 1(5) is inclusive and not exclusive and section 31 of Interpretation and General Clauses Ordinance ('Chapter 1') provides

*'Where any Ordinance confers power to make subsidiary legislation, expressions used in the subsidiary legislation shall have the same meaning as in the Ordinance conferring the power ...'*

Thus, the term 'court' as used in rule 1(3) of OLTR also includes the Board by virtue of section 2 of OLO and the Board has the power to dispense with translations between the two official languages.

14. The power given under subsections (1) and (2) of section 5 of OLO to make final decision on use of either or both of the official languages in any proceedings is only vested in 'judge, magistrate or other judicial officer' which do not include the Board.

15. Reliance is therefore made under section 40 of Chapter 1 which provides that

*'Where any Ordinance confers upon any person power to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing'*

16. The hearing was therefore conducted on the following basis without any objection from the parties:

16.1. oral evidence and submissions were in the Cantonese dialect of the Chinese language;

16.2. written submissions were in English; and

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16.3. there was no translation of documents in one of the official languages to the other.

17. The Board delivers this decision in English.

**Background**

18. On the basis of the oral evidence given by the Ms A and the documents provided we have no difficulty in finding the following:

18.1. At the relevant times, the Taxpayers were owners of the following properties:

	Location of property	Mr B's share of ownership	Ms A's share of ownership
(a)	Location D (the 'Residence')	50%	50%
(b)	Location E ('Flat E')	50%	50%
(c)	Location F and car parking space No. XX ('Flat F & CPS')	-	100%
(d)	Location G ('Office G')	-	100%
(e)	Location H ('Office H')	100%	-

18.2. The Taxpayers purchased the Residence at a price of \$6,053,000 on 4 January 1993. To finance the purchase, Ms A obtained a down payment loan of \$353,600 (the 'Employer Loan') from Ms A's employer, the Government of the Hong Kong Special Administrative Region (the 'Employer') on 30 April 1993 and the following mortgage loans:

Date of mortgage	04-01-1993	03-04-2000
Name of bank / financial institution	Bank I	Bank J
Loan amount	\$4,237,100 ('Loan 1')	\$3,082,700 ('Loan 2')
Date of redemption (Balance redeemed)	03-04-2000 (\$3,082,700)	16-05-2003

18.3. The Taxpayers purchased Flat E at price of \$4,182,000 on 1 July 1994. On divers dates, the Taxpayers, with Flat E as a security, obtained the following mortgage loans:

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Date of mortgage	01-07-1994	18-04-1996	15-09-1997	14-04-2000
Name of bank / financial institution	Bank K	Company L	Company M	Bank J
Loan amount	\$2,927,400	\$2,380,000	\$2,300,000	\$2,030,000 (‘Loan 3’)
Date of redemption (Outstanding balance of principal immediately prior to the redemption date)	18-04-1996 (\$2,820,051)	15-09-1997 (\$2,277,900)	16-03-2000 (\$2,001,816)	19-05-2003

- 18.4. Ms A purchased Flat F & CPS at a price of \$7,320,000 on 4 March 1997. On divers dates, the Taxpayers, with Flat F & CPS as a security, obtained the following mortgage loans:

Date of mortgage	04-03-1997	10-06-1999
Name of bank / financial institution	Bank K	Bank N
Loan amount	\$4,500,000	\$3,500,000 (‘Loan 4’)
Date of redemption (Balance redeemed)	12-06-1999 (\$4,157,336)	13-09-2004

- 18.5. Ms A purchased Office G at a price of \$1,061,000 on 13 January 1995. To finance the purchase transaction, Ms A obtained a mortgage loan of \$740,000 from Bank O (‘Loan 5’). Loan 5 was fully repaid on 11 June 1999.
- 18.6. Mr B purchased Office H at a price of \$1,669,000 on 13 January 1995. To finance the purchase transaction, Mr B obtained a mortgage loan of \$1,080,000 from Company P. On 13 July 1996, the loan was leased and Office H was used as a security to obtain another mortgage loan of \$1,100,000 from the Company Q. The latter mortgage loan was fully repaid in 1999.

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18.7. During the year of assessment 2001/02, the Taxpayers received rental income from the letting of properties. The net assessable values of the properties were as follows:

Net assessable Value ('NAV')	Flat E \$	Flat F & CPS \$	Office G \$	Office H \$	Total \$
Mr B's share	29,467	95,663	-	49,876	175,006
Ms A's share	<u>29,468</u>	<u>95,664</u>	<u>33,204</u>	<u>--</u>	<u>158,336</u>
Total	<u>58,935</u>	<u>191,327</u>	<u>33,204</u>	<u>49,876</u>	<u>333,342</u>

19. The Respondent did not allow the mortgage interest claimed by Ms A in respect of Office G by reason that Loan 5 was fully repaid on 11 June 1999 and that no evidence was provided to prove that interest was paid in respect of Office G for the year of assessment 2001/02. On the other hand, since the Taxpayers have provided further information and documents to show that they paid interest for Loan 2 during the year of assessment 2001/02, the assessor agreed to allow further deduction of home loan interest in respect of Residence. Therefore in the Determinations the additional personal assessment for the year of assessment 2001/02 were revised to that as follows:

	Total amount \$	Mr B's share \$	Ms A's Share \$
Income from			
Properties – Wholly owned	83,080	49,876	33,204
Properties – Partly owned	250,262	125,130	125,132
Employment	<u>2,911,830</u>	<u>1,960,000</u>	<u>951,830</u>
Total	3,245,172	2,135,006	1,110,166
<u>Less: Deductions</u>			
Mortgage interest payable -			
Flat E	58,935	29,467	29,468
Flat F & CPS	<u>129,156</u>	<u>64,578</u>	<u>64,578</u>
	188,091	94,045	94,046
Charitable donations	8,110	3,500	4,610
Home loan interest	132,708 <sup>(1)</sup>	66,354	66,354
Contributions to recognized retirement schemes	<u>12,000</u>	<u>12,000</u>	<u>--</u>
Reduced total income	<u>2,904,263</u>	<u>1,959,107</u>	<u>945,156</u>
Tax payable thereon (at standard rate)	<u>432,639</u>	<u>291,842</u> <sup>(2)</sup>	<u>140,797</u> <sup>(3)</sup>

Notes

(1)  $\$3,694.45 [Fact (10)(a)] + \$129,014.25 [Fact (13)] = \$132,708.70$

(2) Mr B's share of tax payable:

$$\$432,639 \times \frac{\$1,959,107 \text{ (Mr B's share of reduced total income)}}{\$2,904,263 \text{ (Reduced total income)}} = \underline{\underline{\$291,842}}$$

(3) Ms A's share of tax payable:

$$\$432,639 \times \frac{\$945,156 \text{ (Ms A's share of reduced total income)}}{\$2,904,263 \text{ (Reduced total income)}} = \underline{\underline{\$140,797}}$$

**Ground of appeal**

20. The ground of appeal as set out in the notice of appeal dated 29 July 2010 is very precise

‘ We hereby lodge our appeal against the computation of our mortgage interest, in particular, in respect of [Flat F] (w/CPS) and [Office G]. The interest payable on the money we have borrowed for producing the rental income indeed exceeded the rental income itself.’

21. The issue for the Board to decide is whether that the Taxpayers should be allowed to further deduction of mortgage interest under personal assessment in respect of loans taken out to acquire the following letting properties:

21.1. Flat E;

21.2. Flat F & CPS;

21.3. Office G; and

21.4. Office H.

**Evidence**

22. The Taxpayers have not stated their disagreement to any facts as set out in Part 1 of each of the Determinations. There is no dispute on the amount of net assessable value attributable to each of the properties.

Loans from Financial Institutions

23. In the present case, the documentary evidence adduced by the Taxpayers show that the following amount of interest was paid in the year ended 31 March 2002 in respect of Flat E and Flat F & CPS respectively:



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<u>Property</u>	<u>Amount</u>
	\$
Flat E	81,417
Flat F & CPS	129,156

24. Regarding Office G and Office H, there was no evidence that Ms A and Mr B had obtained further mortgage loans to replace Loan 5 which was fully paid on 11 June 1999. Nor was there evidence showing that there was any interest payable for the year from 1 April 2001 to 31 March 2002 on mortgage loan borrowed for the purpose of producing chargeable income in respect of Office G and Office H.

25. On 31 May 2011, Ms A provided the following schedules ('Schedule E', 'Schedule F', 'Schedule G' and 'Schedule H' respectively) to support the amount of interest claimed to produce rental income:

<u>Schedule</u>	<u>Properties</u>	<u>Document</u>
E	Flat E	Repayment schedule dated 01-07-1994 issued by Bank K in respect of a loan of \$2,927,400
F	Flat F & CPS	Repayment schedule dated 03-03-1997 issued by Bank K in respect of a loan of \$4,500,000
G	Office G	Loan amortization table dated 27-05-1999 issued by Bank O in respect of a loan of \$577,139.36 advanced on 20-05-1999
H	Office H	Repayment schedule dated 13-01-1995 issued by Company P in respect of a loan of \$1,080,000

26. The schedules show the following amount of interest to be paid for the period from 1 April 2001 to 31 March 2002:

<u>Year</u>	<u>Month</u>	(Schedule E) <u>Flat E</u>	(Schedule F) <u>Flat F &amp; CPS</u>	(Schedule G) <u>Office G</u>	(Schedule H) <u>Office H</u>
2001	Apr	15,521.20	12,712.19	3,934.40	6,212.68
			12,685.35		
	May	15,414.92	12,658.42	3,767.28	6,148.48
			12,631.40		
	Jun	15,307.84	12,604.30	3,849.93	6,083.70
			12,577.09		
	Jul	15,199.96	12,549.80	3,684.86	6,018.35
			12,522.42		

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<u>Year</u>	<u>Month</u>	(Schedule E) <u>Flat E</u>	(Schedule F) <u>Flat F &amp; CPS</u>	(Schedule G) <u>Office G</u>	(Schedule H) <u>Office H</u>
			12,494.94		
	Aug	15,091.27	12,467.38	3,764.08	5,952.41
			12,439.72		
	Sep	14,981.77	12,411.96	3,721.13	5,885.88
			12,384.12		
	Oct	14,871.44	12,356.18	3,559.18	5,818.75
			12,328.14		
	Nov	14,760.29	12,300.02	3,633.17	5,751.02
			12,271.79		
	Dec	14,648.30	12,243.48	3,473.36	5,682.69
			12,215.07		
			12,186.56		
2002	Jan	14,535.47	12,157.96	3,543.78	5,613.74
			12,129.26		
	Feb	14,421.80	12,100.46	3,499.00	5,544.18
			12,071.57		
	Mar	14,307.27	12,042.58	3,119.61	5,473.99
			<u>2,013.50</u>		
Total		<u>179,061.53</u>	<u>321,555.66</u>	<u>43,549.78</u>	<u>70,185.87</u>
Interest		<u>179,060.00</u>	<u>321,556.00</u>	<u>43,549.00</u>	<u>70,186.00</u>

Alleged loans from family members

27. Ms A gave evidence that she borrowed money from her relatives.

28. Ms A claimed that she borrowed monies from her mother (the 'Mother'), with the assistance from her siblings, to repay the loans borrowed from the Taxpayers' parents for financing the down-payments for acquisition of properties, to effect re-mortgages or to pay off mortgages of properties. She claimed that the following loans were borrowed from the Mother with assistance from her siblings (collectively referred to as 'Family Loans'):

<u>Properties</u>	Repayment of loans for <u>down-payment</u>		<u>Top-up</u>	<u>Payoff</u>	<u>Total</u>
	\$		\$	\$	\$
Flat E	1,254,600	(4)	440,501	(5)	1,695,101
Flat F & CPS	2,820,000	(6)	657,336	(7)	3,477,336

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<u>Properties</u>	<u>Repayment of loans for down-payment</u>		<u>Top-up</u>	<u>Payoff</u>	<u>Total</u>
Office G	321,000	(8)	-	580,531 (9)	901,531
Office H	<u>589,000</u>	(10)	-	<u>622,310</u>	<u>1,211,310</u>
	<u>4,984,600</u>		<u>1,097,837</u>	<u>1,202,841</u>	<u>7,285,278</u>

Notes

- (4) Purchase cost \$4,182,000 - Loan \$2,927,400
- (5) \$2,820,501 - \$2,380,000
- (6) Purchase cost \$7,320,000 - Loan \$4,500,000
- (7) \$4,157,336 - \$3,500,000
- (8) Purchase cost \$1,061,000 - Loan \$740,000
- (9) \$577,139.36 + \$3,391.68
- (10) Purchase cost \$1,669,000 - Loan \$1,080,000

29. Ms A claimed that the interest charged on the Family Loans was agreed to be the amounts stated in Schedules E to H and that the payment of the interest and repayment of principal of the Family Loans were made to her sister's account XXX-XXXXXX-XXX ('Sister's Account') on a regular basis. She further claimed that the amount of interest paid in respect of the four properties remained as that stated in Schedules E to H notwithstanding the payment of mortgage interest of \$81,417 and \$129,156 in respect of Flat E and Flat F & CPS in the period from 1 April 2001 to 31 March 2002 (paragraph 6.1) nor the partial repayment of \$1,500,000 on 13 March 2002 of the mortgage loan of \$2,030,000 obtained from Bank J on 14 April 2000. She contended the bank mortgage interest would be 'offset'.

30. In support of her claim, Ms A provided 11 pay-in slips of Bank K showing that the following amounts were deposited in the Sister's Account:

Date	Deposit	Amount	Transfer from
		\$	
05-03-2001	Cheque	100,000	
06-06-2001	Cheque	130,000	
04-07-2001	Transfer	100,000	
06-08-2001	Transfer	100,000	XXX-X-XXXXXX
05-09-2001	Transfer	100,000	XXX-X-XXXXXX
29-09-2001	Cheque	100,000	
09-11-2001	Cheque	100,000	
13-12-2001	Cheque	70,000	
22-12-2001	Transfer	80,000	
15-02-2002	Transfer	170,000	XXX-X-XXXXXX
06-03-2002	Cheque	<u>100,000</u>	
Total		<u>1,150,000</u>	

31. The pay-in slips, at best, show that certain sums were deposited in the Sister's Account. They show neither the nature of the payments nor the identities of the payers. These pay-in slips per se are not sufficient to show that the existence of the Family Loans, the payment of interest and repayment of principal as alleged.

**The Law**

32. Section 42(1) of the Ordinance provides that:

*'(1) For the purposes of [personal assessment] the total income of an individual for any year of assessment shall, subject to subsection (8), be the aggregate of the following amounts –*

*(a) (i) ...*

*(ii) in respect of the years of assessment commencing on or after 1 April 1983, the sum equivalent to the net assessable value as ascertained in accordance with sections 5(1A) and 5B ...*

*(b) the net assessable income of the individual for that year of assessment; and*

*(c) ... the assessable profits of the individual for that year of assessment computed in accordance with [Profits Tax];*

*(d) ...*

*Provided that there shall be deducted from that part of the total income arising from paragraph (a) the amount of any interest payable on any money borrowed for the purpose of producing that part of the total income where the amount of such interest has not been allowed and deducted under (Profits Tax). (emphasis added)*

33. Section 68(4) of the Inland Revenue Ordinance ('the Ordinance') provides that:

*'The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.'*

34. In order to prove that the 'assessment appealed against is excessive' the Taxpayers would have to show what the end figure of tax assessment should be so that the Board is in a position to 'reduce' the assessment in exercise of the powers and duties in section 68(8) (a) of the Ordinance.

35. If the Taxpayers can prove that the ‘assessment appealed against is ... incorrect’ in principle, the Board is in a position to remit the assessment to the Commissioner in exercise of the powers and duties under section 68(8)(a) and (b) of the Ordinance.

### **Analysis**

#### Assessment of Evidence on Family Borrowing

36. The evidence adduced in support of the claim that the Taxpayers had borrowed the Family Loans and incurred interest expenses thereon is sketchy:

36.1. There is no evidence, like loan agreements, showing that there was legally enforceable agreement between the Taxpayers and the Mother.

36.2. They have not provided details of the loans obtained from the Mother including the date and the agreed terms of repayment.

36.3. They have not provided the details of the actual repayment of the Family Loans and the payment of interest thereon to the Mother, including the date and amount.

36.4. They have not provided bank statements showing the receipts of the loans from the Mother and the repayment of monies borrowed together with interest to the Mother as alleged.

36.5. The alleged basis of computation of interest charged on the Family Loans is not reasonable.

(a) The interest stated in Schedules E, F, G and H were related to mortgage loans borrowed by the Taxpayers at the time when the properties were acquired. All these mortgage loans had been fully repaid prior to 1 April 2001 as follows:

<u>Properties</u>	<u>Lender</u>	<u>Loan</u> \$	<u>Date of</u> <u>Mortgage</u>	<u>Date of</u> <u>Redemption</u>
Flat E	Bank K	2,927,400	01-07-1994	18-04-1996
Flat F & CPS	Bank K	4,500,000	04-03-1997	10-06-1999
Office G	Company P	1,080,000	13-01-1995	13-07-1996

There is no relevance between the above loans and the Family Loans, which were alleged to be borrowed for repayment of loans from the Taxpayers’ parents for down-payments or payoff of the above mortgages.

- (b) Even assuming (as claimed by Ms A in her evidence) that the interest rate for the loan from the Mother was fixed by reference to a hypothetical repayment schedule based on the interest rate applicable had the above mortgage loans been continued less the interest the Taxpayers actually paid to the various financial institutions on the remaining outstanding loans the one notes for the period from 1 April 2001 to 31 March 2002, the interest rates charged on the loans will not have been at a fixed rate but will vary over times when the prime rate changes. The amount of interest stated in Schedules E, F and H does not represent the actual amount of interest payable on these loans.

37. We find that probably the Taxpayers would have obtained some sort of loans from their relatives. However, the evidence did not identify who when how much and on what terms were such loans made. Given the family relationship and the informal manner in which the loans were created and the obligations of the Taxpayers are dealt with, there is insufficient evidence to buttress the obligation to pay interest. We are not satisfied that the Taxpayers have discharged their onus as regards such the details of the loan from relatives and interest amount.

38. Without such detailed information the Board cannot come to a decision on the figures and we are in no position to reduce the assessment.

39. In D50/96, IRBRD, vol 11, 547, the Board stated at page 552 that:

*‘The proviso to section 42(1) allows the deduction under personal assessment on money borrowed for the purpose of producing income chargeable to property tax. To succeed in their claim, the Taxpayers need to establish:*

- (1) that interest was payable;*
- (2) that the interest was payable on money borrowed; and*
- (3) that the money was borrowed for the purpose of producing chargeable property income.’*

In relation to the third condition, the Board stated at page 553, that:

*‘... “purpose” generally relates to a person’s design or intention...’*

40. The Taxpayers have not proved that they had paid or were liable to pay any interest to their family members and that the interest was payable on money borrowed. The first two conditions as laid down under the proviso to section 42(1) of the Ordinance are not satisfied. Deduction of the alleged interest paid to family members under personal assessment could not be allowed.

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41. Separately, even if one assumes that loans from relative exist, the Taxpayers have not demonstrated which loan is related to which specific rental income of a specific property.

42. The proviso to section 42(1) of the Ordinance allows the deduction of interest payable on money borrowed for the purpose of producing chargeable property income. On interpretation of proviso to section 42(1), differently constituted Board, including D86/99, IRBRD, vol 14, 581, D4/01, IRBRD, vol 16, 126, D96/01, IRBRD, vol 16, 796, D27/04, IRBRD, vol 19, 219 and D51/04, IRBRD, vol 19, 391 held that the proviso to section 42(1) did not allow a global deduction for interest payable against total taxable property income. The amount of interest deductible had to be restricted to the net assessable value of that property. There should be some correlation between the interest claimed and the interest relieved.

43. The Taxpayers therefore have not proved that the assessment appealed against is incorrect in principle.

44. Following the above authorities, the amount of interest deductible for the year of assessment 2001/02 pursuant to the proviso to section 42(1) of the Ordinance should be computed as follows:

Property	Net assessable value			Interest payable	Interest Deductible		
	Mr B	Ms A	Total		Mr B	Ms A	Total
	\$	\$	\$	\$	\$	\$	\$
Flat E	29,467	29,468	58,935 <sup>(11)</sup>	81,417 <sup>(11)</sup>	29,467	29,468	58,935 <sup>(13)</sup>
Flat F & CPS	95,663	95,664	191,327 <sup>(12)</sup>	129,156	64,578	64,578	129,156
Office G	-	33,204	33,204	-	-	-	-
Office H	49,876	-	49,876	-	-	-	-
	<u>175,006</u>	<u>158,336</u>	<u>333,342</u>	<u>210,513</u>	<u>94,045</u>	<u>94,046</u>	<u>18,091</u>

Notes

(11) \$81,417 - \$58,935 = \$22,482

(12) \$187,960 + \$3,367

(13) Restriction to net assessable value of that property (see paragraph 44 herein)

45. Since the amount of interest paid by the Taxpayers in respect of Flat E was greater than the amount of net assessable value of that property and by reason of the words ‘that part’ in the proviso to section 42(1), a deduction of interest payment in respect of Flat E can only be allowed to the extent of the net assessable value of Flat E and the excess of \$22,482 cannot be deducted from the net assessable values of Flat F & CPS and Office H.

**Decision**

46. We therefore dismiss the appeal and confirm the Determination and the levy of additional Personal Assessment for the year of assessment 2001/02 resulting in a tax on Ms A, the appellant in the sum of \$140,797.