Case No. D39/01

Personal assessment – deduction – home loan interest – refinance of mortgage – sections 42, 68(4), 68(8)(a) and 68(9) of the Inland Revenue Ordinance (‘ IRO’).

Panel: Kenneth Kwok Hing Wai SC (chairman), Henry Lau King Chiu and Sydney Leong Siu Wing.

Date of hearing: 10 April 2001.
Date of decision: 31 May 2001.

The taxpayers contended that the purpose of three loans, namely $2,406,000, $691,000 and $600,000, was to lease out Property 1 to obtain rental income. The Commissioner contended that the purpose of the three loans was to acquire Property 4 and as Property 4, being used as the taxpayers’ residence, produced no rental income, no deduction was permissible under section 42 of the IRO.

The Commissioner also contended that as Property 1 had been used as the taxpayers’ residence from 1 April 1994 to 15 December 1994, no interests paid during this period was deductible and that the assessable value of Property 2 during the year of assessment 1996/97 should be $19,528 instead of nil. The Commissioner invited the Board to increase the assessments for the years of assessment 1994/95 and 1996/97 accordingly.

Held:

1. Section 68(4) of the IRO provides that the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.

2. The Board rejected the taxpayers’ contention that the purpose of the three loans was to lease out Property 1 to obtain rental income.

    (a) The reason or objective for which the three loans were obtained was clearly to acquire Property 4. If the taxpayers’ real objective were to lease Property 1, they could have rented another flat for use as their residence.

    (b) The interests expenses for the three years of assessment exceeded or were almost the same as the rental income.

(c) It made no commercial or common sense if the purpose of the three loans were to lease Property 1. There was a loss of $153,628.66 in the year of assessment 1994/95. The gross gain in the year of assessment 1995/96 was $18,698.07. The gross gain in the year of assessment 1996/97 was $51,837.57.

(d) It made good sense if the purpose of the three loans was to acquire Property 4.

(e) The taxpayers' real objective was to acquire Property 4. Upon the acquisition of Property 4, the taxpayers had three flats. The choice of the flat to be used as a residence was a matter of them. The effect or consequence of their decision was that there would be no rental income from the flat chosen to be their residence and the other two flats would become or continue to be available for rental income (D50/96, IRBRD, vol 11, 547 and D86/99, IRBRD, vol 14, 581 considered and applied).

3. Pursuant to section 68(8)(a) of the IRO, the Board increased the additional personal assessment for the years of assessment 1994/95 and 1996/97.

4. The Board ordered the taxpayers to pay the costs in the sum of $5,000 to be shared equally between them (D37/00, IRBRD, vol 15, 360 and section 68(9) of the IRO considered and applied).

Appeal dismissed and a cost of $2,500 charged.

Cases referred to:

D50/96, IRBRD, vol 11, 547
D86/99, IRBRD, vol 14, 581

D37/00, IRBRD, vol 15, 360

Ngan Man Kuen for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. This is an appeal against the determination of the Commissioner of Inland Revenue dated 22 December 2000 whereby:

(1) Additional personal assessment for the year of assessment 1994/95 under charge number 6-2620701-95-2, dated 17 December 1997, showing net chargeable income of $681,556 with tax payable thereon of $128,511 (the Taxpayer’ s share being $43,448) was reduced to net chargeable income of $654,383 with tax payable thereon of $123,076 (the Taxpayer’ s share being $52,312).

(2) Additional personal assessment for the year of assessment 1995/96 under charge number 6-3807609-96-1, dated 16 February 1998, showing reduced total income of $1,178,287 with tax payable thereon of $176,743 (the Taxpayer’ s share being $74,792) was increased to reduced total income of $1,183,323 with tax payable thereon of $177,498 (the Taxpayer’ s share being $75,169).

(3) Additional personal assessment for the year of assessment 1996/97 under charge number 6-1634567-97-7, dated 13 November 1997, showing net chargeable income of $848,464 with tax payable thereon of $161,892 (the Taxpayer’ s share being $55,482) was increased to net chargeable income of $1,007,535 with tax payable thereon of $190,205 (the Taxpayer’ s share being $79,402).

The facts

2. The Taxpayer has not disputed the facts stated in ‘ Facts upon which the determination was arrived at’ in the determination and we make the following findings of fact.

3. The Taxpayer has objected to the additional personal assessments for the years of assessment 1994/95, 1995/96 and 1996/97 raised on him. The Taxpayer claims that he should be entitled to certain interest deductions.

4. On divers dates, the Taxpayer and his wife purchased the following properties as joint tenants:

Property	**Location**	**Purchase date [Purchase cost]**
1	Address A	17-2-1986 [$473,450]
2	Address B	1-9-1987 [$44,100]
3	Address C	16-3-1992 [$2,450,000]
4	Address D	2-6-1994 [$3,438,000]

On 6 September 1999, the Taxpayer and his wife sold Property 3.

5. (a) By a facilities letter dated 24 January 1986, the Taxpayer and his wife obtained a mortgage loan of $250,000 from Bank E secured on Property 1. The loan was repayable by 104 monthly instalments of $3,603.55 each. On 17 March 1992, the outstanding principal of the loan in the amount of $98,083.71 was repaid.

(b) By a letter dated 28 March 1992, Finance Company F certified that it had granted a mortgage loan of $2,200,000 to the Taxpayer and his wife secured on Property 1. The loan had been advanced on 16 March 1992. It was repayable by 144 monthly instalments of $25,347.50 each. After the payment of the 24th instalment on 1 April 1994, the outstanding principal of the loan was $1,914,697.94.

(c) On 28 April 1994, a further advance of $600,000 was made by Finance Company F to the Taxpayer and his wife. The loan of $600,000 together with the outstanding principal sum of $1,914,697.94 was consolidated into a loan of $2,514,697.94 secured on Property 1. The consolidated loan was repayable by 240 monthly instalments of $20,258.30 each. The due date for the first instalment was 1 June 1994.

(d) During the years of assessment 1994/95, 1995/96 and 1996/97, interests paid on the mortgage loans were as stated below:

Year of assessment

1994/95		1995/96		1996/97	
Date	Interest $	Date	Interest $	Date	Interest $
1-4-1994	11,634.26	1-4-1995	20,095.84	1-4-1996	18,705.51
9-5-1994	1,571.68	1-5-1995	20,065.78	1-5-1996	18,672.23
1-6-1994	15,716.86	1-6-1995	20,035.47	1-6-1996	18,638.70
1-7-1994	16,734.37	1-7-1995	20,004.92	1-7-1996	18,604.91
1-8-1994	16,705.72	1-8-1995	19,974.12	1-8-1996	18,570.86
1-9-1994	16,676.88	1-9-1995	19,943.07	1-9-1996	18,536.55
1-10-1994	17,688.34	1-10-1995	19,911.77	1-10-1996	18,501.97
1-11-1994	17,659.13	1-11-1995	19,880.21	1-11-1996	18,467.13
1-12-1994	17,629.72	1-12-1995	19,848.39	1-12-1996	18,432.02
1-1-1995	19,153.05	1-1-1996	19,816.32	1-1-1997	18,396.63
1-2-1995	19,123.43	1-2-1996	19,276.71	1-2-1997	18,360.98
1-3-1995	20,125.66	1-3-1996	19,244.01	1-3-1997	18,325.05
	190,419.10		238,096.61		222,212.54

6. Property 3 was mortgaged to Bank G on 30 April 1992 as security for an overdraft facility granted to a third party. The Taxpayer and his wife were the mortgagors in relation to the security but not the borrowers of the overdraft facility.

7. (a) By a facilities letter dated 3 June 1994, Bank G confirmed that it had granted a mortgage loan of $2,406,600 on 1 June 1994 to the Taxpayer and his wife secured on Property 4. The loan was repayable by 204 monthly instalments of $21,618 each. The first repayment date was 30 June 1994.

(b) During the years of assessment 1994/95, 1995/96 and 1996/97, interests paid on the mortgage loan in sub-paragraph (a) above were as stated below:

Year of assessment		**Interest** $
1994/95	1st to 10th instalment	172,766.35
1995/96	11th to 22nd instalment	226,320.32
1996/97	23rd to 34th instalment	212,105.80

(c) On 2 June 1994, the Taxpayer's wife obtained a second mortgage loan from the Government of Hong Kong in the amount of $691,000 secured on Property 4. The loan was repayable by 120 monthly instalments of $7,628.21 each.

(d) During the years of assessment 1994/95 and 1995/96, interests paid on the mortgage loan in sub-paragraph (c) above were $35,178.84 and $40,172.41

respectively. For the period from April 1996 to December 1996, the interest was $25,337.33.

8. In his tax return - individuals for the years of assessment 1994/95, 1995/96 and 1996/97, the Taxpayer declared the following income and particulars:

	(a)	(b)	(c)
Year of assessment	1994/95	1995/96	1996/97
	$	$	$
Salaried income from Department H of the Government of Hong Kong	329,191	358,637	389,307
Property that were let and partly owned by the Taxpayer	Property 1 Property 2 Property 3	Property 1 Property 2 Property 3	Property 1 Property 2 Property 3
Interest payment to produce income from the above properties in respect of:			
Loan in paragraph 5(c) above	209,275	236,700	221,796
Loan in paragraph 7(a) above	172,766	207,300	212,106
Loan in paragraph 7(c) above	32,137	40,000	34,172

9. The assessor raised on the Taxpayer the following personal assessments for the years of assessment 1994/95, 1995/96 and 1996/97:

(a) Year of assessment 1994/95

	Total	His share	Total	The Taxpayer's share
			$	$
Salaries			790,967	329,191
Net assessable value from properties partly owned by the Taxpayer or his wife				
	$	$		
Property 3	156,480	78,240	156,480	78,240
Total income			947,447	407,431
Less: Interest (Property 3)			156,480	78,240
Reduced total income			790,967	329,191

Less: Married person' s allowance	144,000	
Child allowance	40,000	
Net chargeable income	606,967	
Tax payable thereon	113,593	**47,277

** $47,277 = $329,191 ÷ $790,967 x $113,593

Assessor' s note

Mortgage interest was allowed subject to review.

(b) Year of assessment 1995/96

			Total	The Taxpayer' s share
			$	$
Salaries			898,330	358,637
Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 3	166,080	83,040	166,080	83,040
Total income			1,064,410	441,677
Less: Interest (Property 3)			166,080	83,040
Reduced total income			898,330	358,637
Less: Allowances			230,000	
Net chargeable income			668,330	
Tax payable thereon			125,866	**50,250

** $50,250 = $358,637 ÷ $898,330 x $125,866

(c) Year of assessment 1996/97

	Total	The Taxpayer' s share
	$	$
Salaries	987,948	389,308
Net assessable value from properties partly owned by the Taxpayer or his wife		

	Total	His share		
	$	$		
Property 1	273,600	136,800		
Property 2	-	-		
Property 3	175,680	87,840		
	449,280	224,640	449,280	224,640
Total income			1,437,228	613,948
Less: Interest			441,798	217,158
Reduced total income			995,430	396,790
Less: Allowances			260,500	
Net chargeable income			734,930	
Tax payable thereon			139,186	**55,482

** $55,482 = $396,790 ÷ $995,430 x $139,186

10. The Taxpayer objected to the personal assessment for the year of assessment 1994/95 in paragraph 9(a) above on the ground that dependent parent allowances in respect of his father and mother were not granted. The assessor accepted the objection and revised the 1994/95 personal assessment as follows:

1994/95 revised personal assessment

			Total	The Taxpayer's share
			$	$
Salaries			790,967	329,191
Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 3	156,480	78,240	156,480	78,240
Total income			947,447	407,431
Less: Interest (Property 3)			156,480	78,240
Reduced total income			790,967	329,191
Less: Married person's allowance			144,000	
Child allowance			40,000	
Dependent parent allowance			46,000	
Net chargeable income			560,967	
Tax payable thereon			104,393	**43,448

** $43,448 = $329,191 ÷ $790,967 x $104,393

The Taxpayer did not object to the personal assessments for the years of assessment 1995/96 and 1996/97 in paragraphs 9(b) and (c) above. The assessments were then final and conclusive in terms of section 70 of the IRO.

11. On divers dates, the assessor raised on the Taxpayer the following additional personal assessments for the years of assessment 1994/95, 1995/96 and 1996/97:

(a) 1994/95 additional personal assessment

			Total	The Taxpayer's share
			$	$
Salaries			790,967	329,191
Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 1	79,800	39,900		
Property 2	4,897	2,448		
Property 3	156,480	78,240		
	241,177	120,588	241,177	120,588
Total income			1,032,144	449,779
Less: Interest			120,588	120,588
Reduced total income			911,556	329,191
Less: Allowances			230,000	
Net chargeable income			681,556	
Tax payable thereon			128,511	**43,448

** The tax was the same as paragraph 10 above.

(b) 1995/96 additional personal assessment

	Total	The Taxpayer's share
	$	$
Salaries	898,330	358,637

Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 1	273,600	136,800		
Property 2	19,475	9,737		
Property 3	166,080	83,040		
	459,155	229,577	459,155	229,577
Total income			1,357,485	588,214
Less: Interest			179,198	89,599
Reduced total income			1,178,287	498,615
Tax payable thereon at standard rate of 15%			176,743	74,792

(c) 1996/97 additional personal assessment

			Total	The Taxpayer's share
			$	$
Salaries			987,948	389,308
Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 1	273,600	136,800		
Property 2	-	-		
Property 3	~~175,680~~	~~87,840~~		
	449,280	224,640	~~449,280~~	~~224,640~~
Total income			1,437,228	613,948
Less: Interest			328,264	217,158
Reduced total income			1,108,964	396,790
Less: Allowances			260,500	
Net chargeable income			848,464	
Tax payable thereon			161,892	**55,482

** The tax was the same as in paragraph 9(c) above.

12. The Taxpayer objected to the additional personal assessments in paragraphs 11(a), (b) and (c) above on the grounds that his interests should be deducted in computing personal assessment. The Taxpayer added as follows:

(a) Property 3 was purchased on 16 March 1992 at $2,450,000. Since this property was under a rental agreement, the Taxpayer and his wife were unable to borrow money from bank. They obtained a mortgage loan of $2,200,000 from Finance Company F on 16 March 1992 secured on Property 1. This financial arrangement allowed them to produce rental income from Property 3. The financial arrangement was not a re-mortgage loan. Rental income was derived from Property 3 after 16 March 1992.

(b) In order to rent out Property 1, the Taxpayer and his wife borrowed money from Finance Company F , Bank G and the Government of Hong Kong to purchase Property 4 on 2 June 1994. Property 1 was vacated and rental income was derived from Property 1 after June 1994. The financial arrangements in respect of Property 4 allowed the Taxpayer and his wife to have rental income from Property 1. Interest under such financial arrangements should be deducted under personal assessment.

(c) The purchase price of Property 4 in the amount of $3,438,000 was financed by $2,406,600 from Bank G, $691,000 from the Government of Hong Kong and the balance ($340,400) was financed by Finance Company F .

13. In correspondence with the assessor, the Taxpayer made the following claims:

(a) Property 1 was used by the Taxpayer and his wife for residential purpose in the year around 1994 and before.

(b) For the purpose of interest deduction under personal assessment, it was not necessary to have the mortgage loan secured on the property being let.

(c) If the Taxpayer and his wife did not move to Property 4, they were unable to produce rental income from Property 1. No borrowing meant no rental. The relationship was straight forward. They did not use the money borrowed with Property 4 as security to improve their living conditions or for other purposes.

14. The assessor was then of the following view:

(a) $98,083.71 out of the loan of $2,200,000 in paragraph 5(b) above was applied for the acquisition of Property 1.

(b) $2,101,916.29 ($2,200,000 - $98,083.71) out of the loan of $2,200,000 in paragraph 5(b) above was applied for the acquisition of Property 3.

(c) $1,914,697.94 out of the loan of $2,514,697.94 in paragraph 5(c) above was attributable to the outstanding principal of the loan in paragraph 5(b) above.

Hence, the amounts of interests deductible under personal assessment in relation to Property 1 and Property 3 are as stated below:

	Mortgage interest deducted under personal assessment		
Property 1	**The Taxpayer's share** $	**Wife's share** $	**Total** $
1994/95	3,293	3,294	(1)6,587
1995/96	4,041	4,041	(2)8,082
1996/97	3,772	3,771	(3)7,543
Property 3	**The Taxpayer's share** $	**Wife's share** $	**Total** $
1994/95	70,587	70,587	(4)141,174
1995/96	83,040	83,040	(5)166,080
1996/97	80,825	80,825	(6)161,650

Note

1. $\$11,634.26 \times \frac{\$98,083.71}{\$2,200,000} + (\$190,419.10 - \$11,634.26) \times \frac{\$98,083.71}{\$2,200,000} \times \frac{\$1,914,697.94}{\$2,514,697.94}$

   Paragraph 5(d) Paragraph 5(d)
   = $518 + $6,069
   = $6,587

2. $\$238,096.61 \text{ [Paragraph 5(d)]} \times \frac{\$98,083.71}{\$2,200,000} \times \frac{\$1,914,697.94}{\$2,514,697.94}$

   = $8,082

3. $\$222,212.54 \text{ [Paragraph 5(d)]} \times \frac{\$98,083.71}{\$2,200,000} \times \frac{\$1,914,697.94}{\$2,514,697.94}$

   = $7,543

4. $(\$11,634.26 - \$518) + (\$190,419.10 - \$11,634.26) \times \frac{\$2,101,916.29}{\$2,200,000.00} \times \frac{\$1,914,697.94}{\$2,514,697.94}$

   Paragraph 5(d) Note 1 Paragraph 5(d)
   = $11,116.26 + $130,058
   = $141,174

5. $\$238,096.61 \text{ [Paragraph 5(d)]} \times \frac{\$2,101,916.29}{\$2,200,000.00} \times \frac{\$1,914,697.94}{\$2,514,697.94}$

   = $173,024

Since the net assessable value of Property 3 in the year of assessment 1995/96 was $166,080, so the interest deductible under personal assessment was restricted to $166,080 instead of the figure of $173,024.

6. $222,212.54 [Paragraph 5(d)] x $\frac{\$2,101,916.29}{\$2,200,000.00} \times \frac{\$1,914,697.94}{\$2,514,697.94}$

= $161,650

In this connection, the assessor was prepared to revise the additional personal assessments as follows:

(a) 1994/95 additional personal assessment

			Total	The Taxpayer's share
			$	$
Salaries			790,967	329,191
Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 1	79,800	39,900		
Property 2	4,897	2,448		
Property 3	156,480	78,240		
	241,177	120,588	241,177	120,588
Total income			1,032,144	449,779
Less: Interest				
	Total	His share		
	$	$		
Property 1	6,587	3,293		
Property 3	141,174	70,587		
	147,761	73,880	147,761	73,880
Revised reduced total income			884,383	375,899
Less: Allowances			230,000	
Revised net chargeable income			654,383	
Revised tax payable thereon			123,076	**52,312

** $52,312 = $123,076 x $375,899 ÷ $884,383

(b) 1995/96 additional personal assessment

	Total	The Taxpayer's share
	$	$
Salaries	898,330	358,637

Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 1	273,600	136,800		
Property 2	19,475	9,737		
Property 3	166,080	83,040	459,155	229,577
	459,155	229,577		
Total income			1,357,485	588,214
Less: Interest				
	Total	His share		
	$	$		
Property 1	8,082	4,041		
Property 3	166,080	83,040		
	174,162	87,081	174,162	87,081
Revised reduced total income			1,183,323	501,133
Revised tax payable thereon (at 15%)			177,498	75,169

(c) 1996/97 additional personal assessment

			Total	The Taxpayer's share
			$	$
Salaries			987,948	389,308
Net assessable value from properties partly owned by the Taxpayer or his wife				
	Total	His share		
	$	$		
Property 1	273,600	136,800		
Property 2	-	-		
Property 3	175,680	87,840		
	449,280	224,640	449,280	224,640
Total income			1,437,228	613,948
Less: Interest				
	Total	His share		
Property 1	7,543	3,772		
Property 3	161,650	80,825		
	169,193	84,597	169,193	84,597
Revised reduced total income			1,268,035	529,351
Less: Allowances			260,500	
Revised net chargeable income			1,007,535	

Tax payable thereon	190,205	**79,402

** $79,402 = $190,205 x $529,351 ÷ $1,268,035

The appeal hearing

15. This appeal was heard together with the appeal of the Taxpayer's wife (B/R 220/00). The husband had the conduct of the appeal on behalf of the Taxpayers. The Respondent was represented by Miss Ngan Man-kuen. The parties in these two appeals agreed that the appeals stand or fall together.

16. The couple's main contention was that the purpose of the loan of $2,406,600 referred to in paragraph 7(a) above, the loan of $691,000 referred to in paragraph 7(c) above, and the loan of $600,000 referred to in paragraph 5(c) above was to lease out Property 1 to obtain rental income.

17. Miss Ngan Man-kuen contended that the purpose of these three loans was to acquire Property 4 and as Property 4, being used as the couple's residence, produced no rental income, no deduction was permissible under section 42 of the IRO.

18. Miss Ngan Man-kuen also contended that as Property 1 had been used as the couple's residence from 1 April 1994 to 15 December 1994, no interests paid during this period was deductible and that the assessable value of Property 2 during the year of assessment 1996/97 should be $19,528 instead of nil. Miss Ngan Man-kuen invited us to increase the assessments for the years of assessment 1994/95 and 1996/97 accordingly.

Our decision

19. Section 68(4) of the IRO provides that the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.

20. Section 42(1)(a)(ii) provides that:

' *(1) For the purposes of this Part 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:

Provided that where an individual is a joint owner or co-owner of property, that individual's share of the net assessable value shall be computed by apportioning the value ascertained in accordance with section 5(1A) or 5B–

(a) in the case of joint ownership, between the joint owners equally ...

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 Part IV'

21. We reject the couple's contention that the purpose of the three loans was to lease out Property 1 to obtain rental income.

(a) The reason or objective for which the three loans were obtained was clearly to acquire Property 4. If the couple's real objective were to lease Property 1, they could have rented another flat for use as their residence.

(b) The interests expenses for the three years of assessment exceeded or were almost the same as the rental income. For the year of assessment 1994/95, interests amounted to $172,766.35 + $35,178.84 + $190,419.10 x 600,000/2,514,697.94 = $253,378.66, compared with a rental income of $99,750. For the year of assessment 1995/96, interests amounted to $226,320.32 + $40,172.41 + $238,096.61 x 600,000/2,514,697.94 = $323,301.93, compared with a rental income of $342,000. For the year of assessment 1996/97, interests amounted to $212,105.80 + $25,337.33 + $222,212.54 x 600,000/2,514,697.94 = $290,462.43, compared with a rental income of $342,000.

(c) It made no commercial or common sense if the purpose of the three loans were to lease Property 1. There was a loss of $153,628.66 in the year of assessment 1994/95. The gross gain in the year of assessment 1995/96 was $18,698.07. The gross gain in the year of assessment 1996/97 was $51,837.57.

(d) It made good sense if the purpose of the three loans was to acquire Property 4.

(e) In our decision, the couple's real objective was to acquire Property 4. Upon acquisition of Property 4, the couple had three flats. The choice of the flat to be used as a residence was a matter for them. The effect or consequence of their decision was that there would be no rental income from the flat chosen to be their residence and the other two flats would become or continue to be available for rental income.

22. Our decision is supported by the previous Board of Review decisions sent by Miss Ngan Man-keun to the couple before the hearing of the appeals.

23. In D50/96, IRBRD, vol 11, 547, the Board held that:

> '*Given, therefore, that "purpose" generally relates to a person's design or intention, it is clear in this case that the Taxpayers' acknowledged purpose in borrowing the funds from the Mortgagee was to finance the purchase of Property C as a family residence in order to improve the family's living conditions (fact 10). In light of authorities such as Mallalieu v Drummond we then considered whether there were sufficient inferences from the facts before us which would justify us departing from this conclusion. We could not find them. At best we could only conclude that one effect or consequence of the Taxpayers purchasing Property C was to create a rental stream when the use of Property B was changed from self-residence to letting. It is not open to us to go further to conclude that the purpose of the Taxpayers in borrowing from the Mortgagee was to produce chargeable rental income.*'

24. The couple tried to distinguish D50/96 by contending that in their case, Property 4 was worse than Property 1. While the newly acquired property in D50/96 was better, the basis of the Board's decision lied in its analysis of the taxpayer's design, intention, effect and consequence. Thus analysed, we concluded that the real objective, design or intention was to acquire Property 4.

25. In D86/99, IRBRD, vol 14, 581, the Board pointed out that:

> '*By its express terms the proviso only allows a deduction for interest payable on money borrowed for the purpose of producing that part of the total taxable property income which has been included for personal assessment under paragraph (a) for the relevant year of assessment. It does not allow a global deduction for interest payable against total taxable property income; even less does it allow a global deduction of interest payable against total taxable income.*'

26. For the reasons we have given, the couple's appeals fail.

Increasing assessments under section 68(8)(a)

27. In the couple's property tax return for the year of assessment 1994/95, the couple reported that Property 1 was wholly used by the owners for residential purposes from 1 April 1994 to 15 December 1994 and wholly let from 16 December 1994 to 31 March 1995. Thus, only interests paid from 16 December 1994 to 31 March 1995 might be deductible. We accept the computations of Miss Ngan Man-kuen at R1 page 64 that interests deduction should be $1,668 instead of $6,587 (see paragraph 14 above) and that revised net chargeable income should be $659,302, with revised tax payable thereon of $124,060, the Taxpayer's share being $52,782 and the wife's share being $71,278.

28. In the couple's property tax return for the year of assessment 1996/97, the couple reported that Property 2 was wholly let from 1 April 1996 to 31 March 1997 at a rental of $25,500. We accept the computations of Miss Ngan Man-kuen at R1 page 65 that the assessable value for Property 2 should be $19,528 instead of nil and that revised net chargeable income should be $1,027,063, with revised tax payable thereon of $193,134, the Taxpayer's share being $80,868 and the wife's share being $112,266.

Disposition

29. Pursuant to section 68(8)(a) of the IRO:

(a) We increase the additional personal assessment for the year of assessment 1994/95 appealed against to net chargeable income of $659,302 with tax payable thereon of $124,060 (the Taxpayer's share being $52,782).

(b) We confirm the additional personal assessment for the year of assessment 1995/96 appealed against.

(c) We increase the additional personal assessment for the year of assessment 1996/97 appealed against to net chargeable income of $1,027,063 with tax payable thereon of $193,134 (the Taxpayer's share being $80,868).

Costs order

30. In D37/00, IRBRD, vol 15, 360, the Board ordered the Taxpayer to pay costs in the sum of $1,500 for the following reasons:

> ' *We are of the further view that this appeal is frivolous. Had the Taxpayer considered the authorities sent to him prior to the hearing of this appeal, it would have been apparent to him that this appeal should not have been maintained. We further order the Taxpayer to pay $1,500 as costs of the Board.'*

31. The case for making an order for costs in the two appeals before us is stronger than D37/00. We are of the further view that both appeals are frivolous. Had the couple considered the authorities sent to them prior to the hearing of the appeals, it would have been apparent to them that these appeals should not have been maintained. The case for making an order for costs is stronger because by letter dated 15 June 1998 to the couple, the assessor quoted D50/96 at some length. What the couple chose to do was to make the artificial and unreal assertion that the purpose of the three loans was to produce rental income for Property 1.

32. In our decision the couple should be ordered to pay costs in the total sum of $5,000 to be shared equally between them. Pursuant to section 68(9) of the IRO, we order the Taxpayer to pay the sum of $2,500 as costs of the Board, which $2,500 shall be added to the tax charged and recovered therewith.