

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D5/02

Salaries tax – home loan interest deduction – home purchase loan scheme – section 26E of the Inland Revenue Ordinance (‘IRO’).

Panel: Patrick Fung Pak Tung SC (chairman), Paul Ng Kam Yuen and Daisy Tong Yeung Wai Lan.

Date of hearing: 21 March 2002.

Date of decision: 30 April 2002.

The taxpayer took the benefit of the home purchase loan scheme operated by the Government to purchase a property. It was a condition of the scheme that an applicant cannot make the purchase of property in the name of himself or herself. It must be co-owned between at least two members of the family. Hence, the purchase of the property was made by the taxpayer and her mother as joint tenants. The taxpayer is the sole bread-winner in the family and has been responsible for paying all the mortgage instalments.

The taxpayer’s case is that since she is the person who is responsible for making all the repayment of the mortgage loan, she should be allowed the full benefit of the home loan interest deduction especially when the co-ownership of the property with her mother is not of her own choice but as a result of a condition of the scheme. The taxpayer says that the law is unfair and that the Commissioner should have exercised his discretion in allowing her the deduction in full.

Held:

The effect of section 26E of the IRO is very clear. For someone in the position of the taxpayer, she can only claim deduction to the extent of 50% because of the fact that there is another joint tenant. Neither the Commissioner nor the Board has any discretion in allowing her any deduction to a larger extent (D20/01, IRBRD, vol 16, 187 followed).

Appeal dismissed.

Case referred to:

D20/01, IRBRD, vol 16, 187

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

Decision:

1. This is an appeal by the Appellant (‘ the Taxpayer’) against a salaries tax assessment for the year of assessment 1999/2000 raised on her. An objection by letters dated 1 July 2001 and 1 October 2001 against such assessment was lodged by her. By his letter dated 30 November 2001, the Respondent (‘ the Commissioner’) made a determination (‘ the Determination’) and rejected the Taxpayer’ s objection partially. The Taxpayer has brought this appeal against the Determination.

The facts

2. The Taxpayer is a teacher by profession. She is aged about 49 years. She is divorced and lives with her mother, aged about 74 years.

3. On 15 October 1994, the Taxpayer purchased a property known as Address A (‘ the Property’) for a consideration of \$2,920,000. She took the benefit of the home purchase loan scheme (‘ the Scheme’) operated by the Government. It involved her in getting an interest-free loan of \$300,000 from the Government and obtaining a loan of \$1,700,000 from Finance Company B secured by a mortgage on the Property. It is a condition of the Scheme that an applicant cannot make the purchase of property in the name of himself or herself. It must be co-owned between at least two members of the family. Hence, the purchase of the Property was made by the Taxpayer and her mother as joint tenants.

4. The Taxpayer is the sole bread-winner in the family and has been responsible for paying all the mortgage instalments.

5. By virtue of section 26B of the IRO, a person chargeable to salaries tax is allowed a deduction of certain items from his assessable income. One of such items is ‘ home loan interest’ .

6. Section 26E of the IRO provides as follows:

‘ 26E. Home loan interest

(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

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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*

(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 –*

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

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

7. It will be noted that Part IVA of the IRO which includes section 26E was enacted only in 1998, thus after the commencement of the Scheme.

8. The position of the Taxpayer is governed by section 26E(2)(c)(i) of the IRO. Since she is one of the two joint tenants, she is only entitled to claim deduction from her assessable income of home loan interest to the extent of half of \$100,000, that is, \$50,000.

9. Originally, the assessor had assessed the Taxpayer's income for the year of assessment 1999/2000 at \$464,340 with tax payable in the sum of \$50,077. As a result of the Taxpayer's objection, he revised the tax payable to be in the sum of \$36,477 after allowing a deduction for 'dependent parent allowance'. This was confirmed by the Determination.

The Taxpayer's case

10. The Taxpayer's case is that since she is the person who is responsible for making all the repayment of the mortgage loan, she should be allowed the full benefit of the deduction up to \$100,000, especially when the co-ownership of the Property with her mother is not of her own choice but as a result of a condition of the Scheme. She says that the law is unfair and that the Commissioner should have exercised his discretion in allowing her the deduction in full.

Conclusion

11. We have no doubt that the Taxpayer is in financial difficulty and that the Property is now a negative asset; we were informed by her at the hearing that it was worth about \$1,400,000 in the current market. We fully understand that she feels very much aggrieved and we have much sympathy for her. Nevertheless, we have to apply the law as it is enacted.

12. The effect of section 26E of the IRO is very clear. For someone in the position of the Taxpayer, she can only claim deduction to the extent of 50% because of the fact that there is another joint tenant. Neither the Commissioner nor ourselves has any discretion in allowing her any

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deduction to a larger extent. This point has been decided upon in another Board of Review case: D20/01, IRBRD, vol 16, 187.

13. In the circumstances, we have no alternative but to dismiss the appeal of the Taxpayer.

14. We should add that we are not sure of the rationale behind the enactment of section 26E of the IRO. We do, however, see the logic and justice in the Taxpayer's argument. It may be that section 26E was formulated in such a way as not to give the full benefit of deduction to someone in the position of the Taxpayer either as a result of oversight or for some other reasons. We do respectfully urge those in a position to do something to look into the matter and see whether any amendment of the law is necessary or justified.