

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D68/96

Profits tax – whether profit derived from sale of property assessable to profits tax.

Panel: Robert Wei Wen Nam QC (chairman), Ambrose Lau Hon Chuen and John Lee Luen Wai.

Dates of hearing: 9 May and 18 June 1996.

Date of decision: 22 November 1996.

The taxpayers, who were husband and wife, purchased a property while it was still under construction and sold it some nine months later at a profit. It was the taxpayers' case that they purchased the property as their residence and that they sold it because of bad fung shui and financial difficulty. For those reasons, they contended that the purchase and sale of the property did not amount to an adventure in the nature of trade and that the profit from the sale was not subject to profits tax. At the hearing, the first taxpayer the husband in effect abandoned the 'bad fung shui' as a reason for selling the property and alleged for the first time that the reason for selling the property was the 2nd taxpayer the wife's dissatisfaction with the transport arrangements. She was not called as a witness. The Board found no credible evidence of a cause of frustration which prevented the carrying out of an intention to use the property as a residence. The property was not used as a residence but was sold.

Held:

The taxpayers never had the intention to use the property as a residence. The acquisition and resale of the property constituted an adventure in the nature of trade. The profit on the resale is a trading profit and is subject to profits tax.

Appeal dismissed.

Cases referred to:

Simmons v CIR 53 TC 461
All Best Wishes Ltd v CIR 3 HKTC 750

Tsui Siu Fong for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

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1. This is an appeal by a husband (the 1st Taxpayer) and wife (the 2nd Taxpayer) against the profits tax assessment raised on them for the year of assessment 1991/92. They contend that the profit derived by them from the sale of a property (the Subject Property) is capital gain and should not be assessable to profits tax.

2. The relevant provisions of the Inland Revenue Ordinance (the IRO) are as follows:

2.1 *'14(1) Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part.'*

2.2 *'2(1) In this Ordinance, unless the context otherwise requires –*

...

'trade' includes every trade and manufacture, and every adventure and concern in the nature of trade;

...

2.3 *'68(4) The onus of proving that the assessment appealed is excessive or incorrect shall be on the appellant.'*

3. The relevant principles of law established by decided cases may be summarised as follows:

3.1 The taxability or otherwise of a profit derived by a person from the sale of an asset turns on his intention at the time of the acquisition. If the intention was to dispose of it at a profit, the asset was a trading asset, and the profit is a trading profit and is taxable. If the intention was to hold it as a long-term investment, the profit is a capital gain and is not taxable. At any given time, an asset is either a trading asset or a long-term investment; it cannot be both; it cannot be neither (see Simmons v CIR 53 TC 461 at 491-2).

3.2 Frustration of a plan for investment, which compels realisation, even if foreseen as a possibility, cannot give rise to an intention to trade (Ibid at 494).

3.3 On the question of intention, Mortimer J said in All Best Wishes Ltd v CIR 3 HKTC 750 at 771:

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'The intention of the taxpayer, at the time of acquisition, and at the time when he is holding the asset is undoubtedly of very great weight. And if the intention is on the evidence, genuinely held, realistic and realisable, and if all the circumstances show that at the time of the acquisition of the asset, the taxpayer was investing in it, then I agree. 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. Indeed, decisions upon a person's intention are commonplace in the law. It is probably the most litigated issue of all. It is trite to say that 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. Often it is rightly said that actions speak louder than words...'

4. It is the Taxpayers' case that they purchased the Subject Property as their residence and that they sold it because of bad fung shui and financial difficulty. For these reasons, they contend that the purchase and sale of the Subject Property did not amount to an adventure in the nature of trade and that the profit from the sale is not subject to profits tax. The onus is on the Taxpayers to prove their case.

5. At the hearing of this appeal, the Taxpayers appeared in person while the Commissioner was represented by Miss Tsui. The parties produced to the Board a statement of facts not in dispute. The 1st Taxpayer gave evidence for the Taxpayers. No other witness was called. Documentary evidence consisted of the Commissioner's determination dated 7 August 1995 together with appendices (which included the 1st Taxpayer's letters written to the Inland Revenue Department (the IRD) prior to and during the objection stage) and documents produced at the hearing. After the hearing was concluded on 18 June 1996, the Board, in the company of the parties, paid a visit to the Subject Property.

6. The following facts are not in dispute:

6.1 The 1st and 2nd Taxpayers are husband and wife. They married on 7 March 1981.

6.2 The Taxpayers have two daughters born on 24 March 1982 and 20 May 1987 respectively. The two daughters have been studying in a Kowloon school since September 1988 and September 1993 respectively.

6.3 The 1st Taxpayer has been employed by Company A since 3 September 1975. At all relevant times, he has been employed as an engineer.

6.4 Between 1 April 1988 and 20 March 1993, the Taxpayers resided at staff quarters provided to the 1st Taxpayer by Company A. The quarters provided were:

- (a) Flat B between 1 April 1988 and 31 August 1991; and

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(b) Flat C between 1 September 1991 and 20 March 1993.

6.5 Since 21 March 1993, the Taxpayers have been residing at Property D which they own.

6.6 The Taxpayers have the following property transactions:

Property	Date of purchase	Purchase price \$	Date of sale	Selling price \$
Property E	28-7-1983 [11-5-1985]	268,600	30-3-1988 [27-4-1988]	545,000
The Subject Property	24-7-1990	1,397,700	22-4-1991 [8-7-1991]	1,788,000
Property F	2-8-1991 [14-10-1991]	1,380,000	5-2-1994 [28-2-1994]	2,228,000
Property D	1-12-1992 [20-1-1993]	2,000,000	-	-

[Note: the dates in brackets are the dates of assignment.]

6.7 The Taxpayers obtained bank loans to finance the purchase of the properties mentioned in paragraph 6.6 above. Details of the mortgagees and periods of borrowing are as follows:

Property E	Company G (a credit limited)	28-7-1983 to 27-4-1988
The Subject Property	Company H (a credit limited)	24-7-1990 to 22-5-1991
Property F	Bank I	14-10-1991 to 28-2-1994
Property D	Bank J	20-1-1993 to present

6.8 **The Subject Property**

(i) By a sale and purchase agreement dated 24 July 1990, the Taxpayers purchased the property from the developer at a price of \$1,397,700. At the time of purchase, the property was still under construction and the scheduled date of completion of construction was 30 June 1991.

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- (ii) By a provisional agreement dated 22 April 1991, the Taxpayers sold the property at a price of \$1,788,000. The sale was completed on 8 July 1991 and the title to the property was assigned to the purchasers with the Taxpayers acting as confirmors.
- (iii) The Taxpayers derived a profit of \$215,793 from the sale of the property.

6.9 **Property F**

- (i) By a provisional agreement dated 2 August 1991, the Taxpayers purchased the property at a price of \$1,380,000.
- (ii) On 14 October 1991, the purchase was completed and the title to the property was assigned to the Taxpayers.
- (iii) By a tenancy agreement dated 9 September 1992, the Taxpayers let out the property for a term of two years commencing on 21 September 1992 at a monthly rent of \$7,500.
- (iv) The property was left vacant until 21 September 1992.
- (v) By a sale and purchase agreement dated 5 February 1994, the Taxpayers sold the property at a price of \$2,228,000. On 28 February 1994, the sale of the property was completed.

6.10 **Property D**

- (i) By a provisional agreement dated 1 February 1992, the Taxpayers purchased the property at a price of \$2,000,000.
- (ii) On 20 January 1993, the purchase of the property was completed.

7. Set out below are extracts from the 1st Taxpayer's correspondence with the IRD in connection with the Subject Property and matters related thereto.

7.1 On 7 May 1992, in a questionnaire completed by the 1st Taxpayer at the request of the IRD, the 1st Taxpayer filled in 'family use' in the 'usage' column and the following as reasons for selling the Subject Property:

- '(1) Bad fung shui.
- (2) Financial difficult.'

7.2 In his letter dated 13 March 1993, the 1st Taxpayer stated among other things the following:

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- (1) Where I am living belongs to my company.
- (2) I have to pay \$3,000 per month to rent the flat.
- (3) My family always wishes to own our own flat.
- (4) The reason we are living there is we wish our daughters can study in those schools at nearby.
- (5) I will move out after my eldest daughter confirmed with the primary school shortly.

[Note. At the hearing of this appeal, the 1st Taxpayer stated that by the underlined words he meant to say “after the primary school had confirmed the 2nd daughter’s admission”.]

As per your request, please note the following information.

- (1) After a visit with a “Fung Shui Expert” in [the Subject Property], his comment was that it’s not suitable for us and advise us not to move in. Then my wife refused to move in, even after a very lengthy discussion within the family. In result we decided to look for another flat.
- (2) Due to the sharp rise in property market we had no further money to purchase another flat unless we sold [the Subject Property] first.

...’

7.3 In his letter dated 20 January 1994, the 1st Taxpayer stated principally as follows:

- (1) Since early 1988, I was living in a quarter provided by my company but in return I had to waive my housing allowance (around \$8,000/month) and paid the company in additional. (\$2,000/month)

After one year, I felt that the total amount of the money I spent monthly could support the instalments if I own a flat. Therefore I decided to purchase a flat, finally I purchased the Subject Property in July 1990.

- (2) When the flat is nearly to be commissioned and before I have to pay a great sum of money for the handover. I had checked the fung shui of the flat. From the window of the living room of the flat I could see the edge of the flyover outside, cutting towards to the flat like a knife. Also there were four numbers of big fans on the roof floor of the nearby clinic close to the master room made me feel not comfortable. Therefore I decided to sell the flat within a very short duration. Finally it was sold in May 1991.

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- (3) Yes, after my disposal of the Subject Property, I continue to look for other flat for my family. At the same time the amount of my housing allowance and the additional rental of my quarter had been increased and close to \$12,000. In August 1991, I put all my money obtained from the above disposal to buy Property F. After the actual handover of the flat from the owner, the decoration work was finished in March 1992, and I was ready to move in.

[In another letter of his, that is, the one dated 18 January 1994, the 1st Taxpayer made statements which are identical with those in the letter dated 20 January 1994, except that the underlined words read as follows in the letter dated 18 January 1994:

“that already close to Lunar New Year. In February 1992 I started the decoration work for the flat and ready to move in.”]

- (4) Before my family was ready to move into Property F, I had visited my relative who is living in the Property D Estate, I like it was very quiet and the size of the flat is more suitable for me because area in Property F is 572 square feet but 665 square feet in Property D. Also at that time someone had expressed to me that he had interest to rent Property F in August 1992. So I deferred the move in and started to look for a flat in the Property D Estate.

Lastly in January 1993 I purchased the present flat [that is, Property D] and moved in subsequently.

[In his letter dated 18 January 1994, the underlined words read as follows:

So I decided not to move in and try to look for a flat in the Property D Estate. Lastly in January 1993 I purchased a flat and moved in subsequently.”]

7.4 His letter dated 20 April 1995 was a reply to the IRD’s letter dated 30 March 1995 and contained principally the following statements:

- (1) About the Subject Property
- (i) In answer to the question whether he has ever notified his employer about the purchase of the property and of his intention to surrender the quarters, the 1st Taxpayer stated:
- ‘Not required beforehand, until a month before I decided to leave the quarter after the flat was ready.’
- (ii) In answer to questions about the fung shui expert, the 1st Taxpayer stated:

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‘The Fung Shui Expert is my close friend, there had no money transaction and what comment he gave was agreed by me and was told in my previous letter (attached) dated 18 January 1994.’

(2) Property F

- (i) In answer to the question whether he has ever notified his employer about the purchase of the property and of his intention to surrender the quarters, the 1st Taxpayer stated:

‘Not required beforehand, until a month before I decided to leave the quarter when all outstanding decoration work was completed in Property F.’

(3) About Property D

The 1st Taxpayer supplied a copy of the provisional agreement for the purchase of the property signed by the Taxpayer on 1 December 1992. In answer to the question of when he notified his employer about the purchase of the property and of his intention to surrender the quarters, the 1st Taxpayer supplied a copy of his employer’s letter dated 3 December 1992 to Bank J which certified his employment with the company and continued as follows:

‘His present salary is \$33,980 per month and one month’s additional salary is payable to him as annual bonus.

He is currently residing in Company staff quarters at Flat C provided by Company A. He has informed Company A that he will soon move out from Company Staff quarters to his self-arranged accommodation. Upon moving out from the Company staff quarters, he will be entitled to a cash housing allowance of \$8,750 per month.’

- (4) The 1st Taxpayer gave particulars of his children.

8. The statement of grounds of appeal contain the following points which we consider relevant:

8.1 ‘Since I obtained my promotion from my employer, I was entitled either to obtain cash housing allowance which was equivalent to part of the market rental rate of my owned flat or to rent a flat from the market or moving into my company’s quarter. If I take the option to move into my company’s quarter, I could not obtain any cash allowance and had to pay some amount as the rental of the quarter. From that moment I wished to own a flat for my family and to make use of the amount of allowance which could support me to pay for the instalments. So that I started to look for a suitable flat after I moved into my company’s quarter as my first step.’

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8.2 'It is true that I was only required to notify my company one month in advance before I move out from the quarter. The reason why I asked my employer to prepare this letter [that is, the letter quoted in paragraph 7.4, sub-paragraph (3) above] was to give a proof to the bank that my total income will be the sum of my monthly salary and the entitled cash allowance if I moved out from the quarter. Not the amount as shown on the 'bank-book'. It served to prove my capability in repayment, so that the bank could offer me a better deal for the mortgage in purchasing the last flat which I am living NOW [that is, Property D]. It was not a letter to notify my employer that I was committed to move out from my quarter.'

8.3 'The bad "Fung Shui" was mainly due to the big exhaust fans on the roof floor of the nearby clinic, they produced not only the bad outlook from the window of the flat and also noisy.'

9. The 1st Taxpayer's evidence may be summarised as follows:

In chief

9.1 When the Subject Property was completed, his family was happy and they were ready to move in. They tried to raise about \$40,000 from his mother and mother-in-law to pay for the handover expenses, that is, the developer's additional charges which included fees for lawyers and management.

9.2 Since he had to pay such a large sum of money, he wanted to inspect the flat, to check before he made payment.

9.3 It was about a month before he sold the flat. He saw the fung shui when he went in. He went up there in a lift with his friend, the one he mentioned in his letter as the fung shui expert.

9.4 He and his friend went to see the flat. His wife did not go. After the inspection, he told her what he has seen. His wife was not happy about the transport arrangement for the property so she refused to move in. Initially he had insisted on moving in. He had faith in the developer. They had a very good reputation and the property should be managed well. There was a club and a swimming pool, so their daughters could learn to swim. Since they could not arrive at the same decision, he could only give up the flat.

9.5 The fung shui friend was his colleague in Company A, and would be willing to give evidence if the 1st Taxpayer asked him. But it would mean a lot of involvement. So he had to think about it.

In cross-examination

9.6 He was very keen on living in the Property D area so that his eldest daughter could get a place in a good school. By coincidence he got promoted, on 1 January 1988 he was promoted to first engineer and became entitled to housing benefit.

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9.7 Between 1983 and 1988, he was the owner of Property E which he used as his residence. Upon promotion he moved into staff quarters provided by his employer. He then sold Property E because he could not afford to pay rent for the staff quarters and also pay the instalments for Property E at the same time. He moved into staff quarters which was in the Property D district which had a very good school allocation network, so he could get a good school.

9.8 He went to check the Subject Property about a month before he was to take over the flat from the developer. He did receive a letter from the developer asking him to take the assignment but he did not have the letter with him.

9.9 At the adjourned hearing on 18 June 1996, the 1st Taxpayer stated that his friend was not coming to give evidence because he had to attend a MBA course in a university abroad.

9.10 Regarding 'a lengthy discussion within the family' (see paragraph 7.2 above), the discussion was spread over a number of days.

9.11 He visited the Subject Property not to identify the fung shui, but to identify possible defects. But during the visit his friend advised him about the effect of the flyover on the fung shui of the flat.

9.12 As for Property F, it was only in March 1992, after the decoration was completed, that he was ready to move in. His visit to his relative's flat in the Property D Estate (see paragraph 7.3(4) above) also took place in March 1992, but that was not the first visit. It was also in March 1992 that someone expressed an interest to rent Property F in August 1992. The letting commenced in September 1992.

9.13 The guy only showed an interest to rent Property F in August 1992. The phrase 'at that time' in his letter (see paragraph 7.3, sub-paragraph (4) above) referred to August 1992.

9.14 In March 1992, after his visit to his relative in the Property D Estate, he visited Property F and found that a noisy mahjong game was in progress somewhere in the building. So he changed his mind about Property F and tried to find a flat in the Property D Estate. He played mahjong too.

9.15 Towards the end of October 1991 he took possession of Property F. He agreed that there was some contradiction between that statement and the words 'after the actual handover of the flat from the owner ... that already close to Lunar New Year. In February 1992 I started the decoration work for the flat ...' (see paragraph 7.3, sub-paragraph (3) above).

9.16 It was put to him that the decorator's documents showed that the decoration work commenced on 10 November 1991 and was completed on 28 November 1991 and the

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flat was handed over to him on that day. His answer was that completion of decoration did not mean he could move in at once. The flat had to be fitted with some equipment. It took time to choose proper lighting. He would have had to put in lamps and air-conditioners and replace the wash basin which was an used one. Between November 1991 and March 1992 he could not find satisfactory equipment because he could not find a model he liked. He wanted something cheap, beautiful and practical.

9.17 He changed staff quarters from Flat B to Flat C on 1 September 1991. Flat C was larger and had a better view. It had one more bedroom, that is, three bedrooms altogether. He had applied for the change when he moved into Flat B. He was first notified on about 1 August 1991 that Flat C was available. On about 2 August 1991 he signed the provisional agreement for the purchase of Property F with 10 October 1991 being named the date of possession, and the assignment date was 14 October 1991. He agreed that at the time he signed the provisional agreement for the purchase of Property F, he had already planned to change his quarters to Flat C. He resided in staff quarters from 1988 until March 1993.

9.18 He obtained bank loans to finance the purchase of all the four properties, that is, Property E, the Subject Property, Property F and Property D. During the periods when he owned the Subject Property and Property F, he resided in staff quarters, so he did not have any cash housing allowance and had to pay the loan instalments out of his own pocket.

10. On the afternoon of 18 June 1996, the Board, in the company of the parties, paid a visit to the Subject Property and were allowed in by the occupants. Out of the living room window we could see, in the distance to our left, a flyover running more or less parallel to the direction the living room window was facing. It was not 'cutting towards to the flat like a knife' (see paragraph 7.3, sub-paragraph (2) above). Way below the Subject Property and to its left, some four exhaust fans were sitting on the roof top of a building. We did not hear any particular noise coming from the direction of the fans.

11. By the statement of grounds of appeal, the 1st Taxpayer declared that it was his wish to own a flat for his family and to use the cash housing allowance to pay the loan instalments and that he started to look for a suitable flat after he moved into staff quarters (see paragraph 8.1 above). He acquired the Subject Property. He claimed that his intention in so doing was to use it as his residence. But he never used it as his residence. Instead he sold it at a profit shortly after the completion of the construction of the Subject Property but before the completion of the Taxpayers' own purchase. In the questionnaire dated 22 April 1992 which he completed for the IRD (see paragraph 7.1 above), he stated two reasons for the sale: bad fung shui and financial difficulty. The latter reason was not pursued at the hearing, so the Taxpayers' case was simply that the carrying out of their long-term intention to use the Subject Property as a residence was frustrated by its bad fung shui.

12. The allegation is that the fung shui expert, after visiting the Subject Property together with the 1st Taxpayer, took the view that the flat was not suitable for the Taxpayers and advised them not to move in. The wife the 2nd Taxpayer refused to move in even after a lengthy discussion within the family. So they decided to look for another flat (see paragraph 7.2 above).

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13. Upon further enquiry by the IRD, the 1st Taxpayer gave more particulars of the bad fung shui in his letter dated 20 January 1994 (see paragraph 7.3, sub-paragraph (2) above). He complained about the flyover ‘cutting towards to the flat like a knife’ and the four big fans on the roof top of a nearby clinic making him uncomfortable and stated that ‘Therefore I decided to sell the flat within a very short duration’.

14. In the statement of grounds of appeal, the 1st Taxpayer played down the flyover element of the fung shui complaint by stating that the bad fung shui was mainly due to the big exhaust fans on the roof top of the nearby clinic which were unsightly and nosiy (see paragraph 8.3 above).

15. At the hearing, the 1st Taxpayer stated that initially he had insisted on moving into the Subject Property (that is, in spite of the bad fung shui) because he had faith in the developer. He believed the property would be managed well. Further, there was a clubhouse and a swimming pool. But his wife the 2nd Taxpayer refused to move in because she was not happy about the transport arrangements for the property. They could not reach agreement. So the 1st Taxpayer could only give up the flat (see paragraph 9.4 above).

16. By the statements mentioned in the preceding paragraph, the 1st Taxpayer in effect abandoned the ‘bad fung shui’ as a reason for selling the Subject Property, and alleged for the very first time that the reason for selling the Subject Property was the 2nd Taxpayer his wife’s dissatisfaction with the transport arrangements.

17. By shifting his ground in this fashion, the 1st Taxpayer destroyed his own credibility. There was no point in calling the fung shui expert, although his evidence would have been essential had it been necessary to establish the bad fung shui. As for the 2nd Taxpayer’s alleged dissatisfaction with the transport arrangements, the only evidence was a brief, vague statement by the 1st Taxpayer. The 2nd Taxpayer would have been a most material witness, but she was not called. Furthermore, there was no application to amend the statement of grounds of appeal by adding the transport arrangements complaint as a ground for selling the Subject Property. In our view, that complaint was an afterthought and should be given no weight.

18. We are unable to find any credible evidence of a cause of frustration which prevented the carrying out of an intention to use the Subject Property as a residence. The fact is that the Subject Property was not used as a residence but was sold. The compelling inference is that the Taxpayers never had any such intention, and so we find. We further find and conclude that the acquisition and resale of the Subject Property constituted an adventure in the nature of trade, and that the profit on the resale is a trading profit and is subject to profits tax.

19. That disposes of this appeal. However, we should mention that we agree with the submissions of Miss Tsui the Commissioner’s representative which showed that a finding of an adventure in the nature of trade is supported by or consistent with the surrounding circumstances. The principal submissions are summarised below.

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19.1 The Taxpayers decided to buy a residential apartment in the course of construction in a popular housing estate. Some nine months after the purchase and before the Subject Property was ready for assignment by the developer, they sold it at a good profit. This is a clear indication that the Taxpayers purchased the Subject Property for resale at a profit.

19.2 Property F was not a replacement of the Subject Property as the Taxpayers' residence because they did not intend to use Property F as a residence. The reasons are as follows:

- (a) The Taxpayers did not move in when Property F was ready for occupation, but continued to reside in staff quarters.
- (b) The Taxpayers left Property F vacant until September 1992, a total of 11 months since taking possession on 14 October 1991.
- (c) When Property F was first put to use on 21 September 1992, it was not used as the Taxpayers' residence but was let out. Up to its sale in February 1994, it had never been used as the Taxpayers' residence.
- (d) The Taxpayers could have made use of the cash housing allowance and rent saved (by surrendering the quarters) to finance Property F, but they chose to continue living in the quarters, leave Property F vacant and finance the loan repayments for Property F out of their own pocket.
- (e) The 1st Taxpayer asserts that Property F was handed over to the Taxpayers by the vendor when it was close to the Lunar New Year (4 February 1992), that the decoration work on Property F commenced in February 1992 and was completed in March 1992 (see paragraph 7.3, sub-paragraph (3) above). These assertions are incorrect. In fact, the decorator has confirmed that the decoration work commenced on 10 November 1991 and was completed on 28 November 1991 with the property handed over to the Taxpayers also on 28 November 1991. Without denying those facts, the 1st Taxpayer made a number of assertions to cover the gap between the end of November 1991 and March 1992 (see paragraph 9.16 above). But he was merely making up a story.
- (f) The Taxpayers moved from Flat B to Flat C of the staff quarters on 1 September 1991. The removal took place between the date of purchase (7 August 1991) and the date of possession (14 October 1991) of Property F. The change of quarters was upon the 1st Taxpayer's request and took place at the time they purchased Property F. It follows that when they purchased Property F, they would not have intended to use it as their residence.
- (g) Even if the realised profit on sale of the Subject Property was utilised in buying Property F, that is irrelevant to the question before the Board, this is, what was

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the Taxpayers' intention at the time of acquisition of the Subject Property. The nature of Property F is not an issue for the Board.

19.3 At all relevant times it was the Taxpayers' intention to reside in the Property D area, whereas neither the Subject Property nor Property F is situated in that area.

- (a) The 1st Taxpayer stated that 'The reason we are living there [that is, in the staff quarters] is we wish our daughters can study in those schools at nearby. (Property D area)' and that 'I will move out after the primary school had confirmed the 2nd daughter's admission' (see paragraph 7.2, sub-paragraph (5) above).
- (b) When the Taxpayers purchased the Subject Property, their first daughter had already been studying in the school for nearly two years, while their second daughter was then still too young to be admitted to the school. If, as they declared (see sub-paragraph (a) above), they chose to live in the Property D area so that their daughters could go to school in that area, then it would not have been their intention to move to the Subject Property which was ready for possession in mid-1991.
- (c) The facts are: the Taxpayers commenced to reside in staff quarters on 1 April 1988; they continued to reside in staff quarters until March 1993; finally in March 1993, they surrendered the quarters and moved to Property D which is in the area he liked.

20. It follows that this appeal is dismissed and that the profits tax assessment in question is hereby confirmed.