

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D84/99

Profits Tax – acquisition and sale of property – intention of purchaser at time of acquisition – burden of proof on taxpayer purchaser – whether tax chargeable on the profits of sale.

Panel: Ronny Wong Fook Hum SC (chairman), Dianthus Tong Lau Mui Sum and Daisy Tong Yeung Wai Lan.

Date of hearing: 28 September 1999.

Date of decision: 3 November 1999.

The taxpayer and Ms A are husband and wife. They have three grown children. On 31 August 1989, Ms A purchased Property 1 (with an area of 1,537 square feet) for \$2,430,000. The family lived there between 1989 and 1995. On 21 August 1991, the taxpayer purchased Property 2 (with an area of 937 square feet) for \$2,773,000. The occupation permit in respect of Property 2 was issued on 17 February 1992. By an assignment dated 22 June 1992, Property 2 assigned in favour of the taxpayer. On 25 June 1993, Property 2 was sold by the taxpayer for \$3,978,000.

On 20 January 1995, the taxpayer purchased Property 3 (with an area of 1,068 square feet) for \$5,500,000. Further, on 18 March 1995, Ms A sold Property 1 for \$8,838,000. The taxpayer moved into Property 3 with his family.

The taxpayer averred that Property 2 had been purchased for his own use as a future residence as he liked to change properties every few years. Accordingly he challenged the determination by the Commissioner that tax was chargeable on the profits of sale.

Held:

The onus of proof rested on the taxpayer. Evidence to support the taxpayer's position was required. The findings of the Board were as follows:

- (1) Property 2 was smaller than the others. It was not realistic that his entire family, plus his parents from Country F, could live there;
- (2) There were no steps taken to ascertain the area surrounding Property 2 nor to obtain *fung shui* advice in relation to Property 2 prior to purchase;

INLAND REVENUE BOARD OF REVIEW DECISIONS

- (3) There was no evidence to support the bare assertion that the taxpayer was inclined to move residence every few years.

Accordingly, the taxpayer had failed to discharge his burden.

Appeal dismissed.

Chiu Kwok Tsan for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. The Taxpayer and Ms A are husband and wife. They have 3 children born in 1971, 1973 and 1973.
2. By an agreement for sale and purchase dated 31 August 1989, Ms A purchased a unit at District B [' Property 1 '] for \$2,430,000. The purchase was supported by a loan of \$1,500,000 from Bank C repayable by monthly instalments of \$20,662.5 each. Property 1 is of an area of 1,537 square feet. The Taxpayer and his family resided in Property 1 between 1989 and 1995.
3. By an agreement dated 21 August 1991, the Taxpayer purchased a unit at District D [' Property 2 '] for \$2,773,000. Property 2 is of an area of 937 square feet.
4. On 29 August 1991, the Taxpayer borrowed \$1,200,000 from Bank C secured by a mortgage over Property 2. The loan was repayable by 144 monthly instalments of \$14,865.65 each.
5. The occupation permit in respect of Property 2 was issued on 17 February 1992. By an assignment dated 22 June 1992, Property 2 was assigned in favour of the Taxpayer.
6. On 25 June 1993 the Taxpayer sold Property 2 for \$3,978,000.
7. By letter dated 17 October 1994, the Taxpayer asserted that:
 - (a) Property 2 was purchased for his parents' use.
 - (b) his father passed away on 20 December 1991.

INLAND REVENUE BOARD OF REVIEW DECISIONS

- (c) he himself did not move into the flat as it was hot and noisy.
- (d) his mother inspected the flat in May 1993. She resisted any suggestion to move into the flat.
- (e) a soothsayer at his home village in China confirmed the unsuitability of the flat in the same month.

8. By an agreement for sale and purchase dated 20 January 1995, the Taxpayer purchased a unit at District E [' Property 3 '] for \$5,500,000. The purchase was also supported by a loan extended by Bank C. Property 3 is of an area of 1,068 square feet.

9. By an agreement for sale and purchase dated 18 March 1995, Ms A sold Property 1 for \$8,838,000. The Taxpayer moved into Property 3 with his family.

10. The principal income of the Taxpayer for the years of assessment 1988/89 to 1991/92 was as follows:

Year of assessment	Principal income (\$)
1988/89	322,800
1989/90	165,000
1991/92	130,000

11. The following deposit slips were placed before us:

Depositor	Bank	Amount (US\$)	From	To
The Taxpayer	Bank C	58,079.19	8-9-1989	10-10-1989
The Taxpayer' s brother		168,341.87	28-2-1991	28-5-1991
	Bank C	173,583.30	29-8-1991	

12. By letters dated 10 January 1981 and 22 December 1991, the Taxpayer' s father and brother confirmed that the Taxpayer was authorised to utilise deposits in their names with Bank C. The sum of US\$173,583.30 was deposited into a savings account of the Taxpayer on its maturity. \$1,295,700 was withdrawn from that account on 29 August 1991. The withdrawal was probably for payment of part of the purchase price of Property 2.

INLAND REVENUE BOARD OF REVIEW DECISIONS

13. The issue before us is whether the profit obtained by the Taxpayer from his dealings over Property 2 is chargeable to profits tax.

14. At the hearing before us, the Taxpayer elected to give an explanatory statement. He told us that Property 2 was purchased for his own use. He further pointed out that he would like to move his residence once every few years and the acquisition of Property 2 was with that purpose in mind.

15. We clearly explained to the Taxpayer that the onus of proof rests squarely on him. His brief explanatory statement left many questions unanswered:

- (a) Property 2 is smaller than Property 1 and Property 3. How did he expect to accommodate his grown up family and his two parents who previously resided in Country F?
- (b) How would he sustain the monthly instalment payments in respect of Property 2?
- (c) What steps did he take to ascertain the environment of Property 2 prior to its purchase?
- (d) What *fung shui* advice did he receive prior to its purchase?

There is also no evidence before us to support his bare assertion of inclination to move residence once every few years. We cannot place any reliance on this fresh revelation of the Taxpayer.

16. For these reasons, we are of the view that the Taxpayer failed to discharge the onus of proof. We confirm the assessment by the Revenue.