Case No. D27/04

Personal assessment – personal assessment on the total income of an individual – allowable deduction for interest payable on any money borrowed for the purpose of producing that part of the rental income – burden of proof on the appellant – sections 42(1) and 68(4) of the Inland Revenue Ordinance ('IRO'). [Decision in Chinese]

Panel: Anthony Ho Yiu Wah (chairman), Karl Kwok Chi Leung and Peter Sit Kien Ping.

Date of hearing: 19 March 2004.
Date of decision: 15 July 2004.

The appellant and his wife appealed against the determination of the Commissioner in respect of the personal assessment raised on them for the year of assessment 2001/02.

During the year of assessment 2001/02, the appellant and his wife jointly owned two properties: Property A and Property C; both of which were able to produce rental income. With respect to Property C, the total amount of interest payments on money borrowed for producing the rental income exceeds its net assessable value of that property.

The appellant contended that for the purpose of personal assessment, all the rental income derived from Property A and Property C should first be amalgamated before being deducted against the total interest payments for producing those rental incomes of Property A and Property C. On the other hand, the Commissioner contended that the amount of interest payable to be allowed as deduction is limited to the lesser value of the net assessable value of that property and the amount of the interest payable on any money borrowed for the purpose of producing that part of the income.

Hence, the issue before the Board was: If the appellant had borrowed money for producing rental income of one property, and the amount of interest payable on such loan exceeded the net assessable value of that property; can he set off those excessive interest payments against the whole or part of the net assessable value of another property?

Held:

1. It has been well-established in D86/99 that the proviso of section 42(1) of the IRO does not allow a global deduction for interest payable against total taxable property

income, even less does it allow a global deduction for interest payable against total taxable income. This interpretation as to the proviso of section 42(1) of the IRO has been adopted by the Board in two subsequent appeals decisions (D4/01 and D96/01); both of which also dealt with the issue of deduction for mortgage interest. It has been further stated in D4/01 that: the legislature, in enacting the proviso of section 42(1) of the IRO, intended that there should be some correlation between the interest claimed and the income relieved (D86/99, D4/01 and D96/01 followed).

2. The Board rejected the appellant's contention that his case was distinguishable from D86/99 and D4/01, on the ground that he was requesting to have the total interest payments in respect of his two properties to be deducted from the total property income derived from the letting of the two properties; whereas in D86/99 and D4/01, the taxpayers were asking for deductions for mortgage interest payments in respect of properties which were not producing any rental income at all. The Board came to a view that it does not matter whether part of the property income is nil or low (that is below the amount of interest payable on money borrowed for the purpose of producing that part of the total income). The crux of the matter was whether the proviso of section 42(1) allows a taxpayer who owns more than one property to carry out a global deduction for interest payable against his total property income.

3. The Board came to a view that in ascertaining the total income of an individual for the purpose of personal assessment, the proviso of section 42(1) of the IRO only allows deduction for interest payable on money borrowed for the purpose of producing the income of an individual property against the total property income of that individual property, and the ceiling for interest deduction is the lesser value of the net assessable value of the individual property and the amount of the interest payable on any money borrowed for the purpose of producing that part of the income.

Appeal dismissed.

Cases referred to:

D86/99, IRBRD, vol 14, 581
D4/01, IRBRD, vol 16, 126
D96/01, IRBRD, vol 16, 796

Fung Ka Leung for the Commissioner of Inland Revenue.
Taxpayer in person.

案件编号 D27/04

个人入息课税—个人入息课税的入息总额—可容许扣除为产生出租物业收入而支付的利息—举证责任在上诉人身上—《税务条例》第42(1)及68(4)条

委员会：何耀华（主席）、郭志梁及薛建平

聆讯日期：2004年3月19日
裁决日期：2004年7月15日

上诉人及其妻子反对税务局向他们在2001/02**课税年度所作出的个人入息课税评税。**

在2001/02**课税年度期间，上诉人及其妻子共同拥有两个出租物业：物业**A**及物业**C**。其中物业**C**借贷所支付的利息金额是超出该物业应评税净值的金额。**

上诉人认为在计算个人入息课税时，应在计算物业A**及物业**C**收入的总和后才扣除物业**A**及物业**C**利息支出的总和。但税务局的代表则认为有关的税例所容许从物业收入扣除的利息是限于该物业的应评税净值及为产生该笔收入而支付的利息中金额较少者。**

因此，委员会在这上诉中须裁决的问题是：在计算上诉人个人入息课税的入息总额时，假如上诉人为产生一个物业的租金收入而借贷，而就该借贷所支付的利息金额超出该物业应评税净值的金额时，他能否用超额的部份抵销另一个收租物业的应评税净值或其部份?

裁决：

1. **委员会在** D86/99 **已说明《税务条例》第** 42(1)**条的附带条款不容许利息支出整体性地从所有物业收入的总和扣除，更不容许利息支出整体性地从课税入息的总和扣除。其后两宗有关利息扣除的上诉个案(即** D4/01 **及** D96/01)**中，这样对第** 42(1)**条的附带条款的诠释亦受到在该两宗案件里**

的委员会支持。D4/01 个案中的委员会更进一步说明第 42(1)条的附带条款的立法意图为「申请扣除的利息应与所抵销的收入有若干关连」(采纳 D86/99、D4/01 及 D96/01)。

2. 委员会不同意上诉人提出区别本案与 D86/99 及 D4/01 的论点：本案中的上诉人只是要求将两个物业的利息支出的总和从两个物业的收入总和扣除；至于在 D86/99 及 D4/01 中的纳税人，则要求扣除没有产生租金收入的物业的借贷利息。委员会认为问题的关键不在乎是否有部份物业的收入是零收入或低收入（即低于利息支出）。关键是第 42(1)条的附带条款是否容许一位拥有多个物业的纳税人将其利息支出整体性地从所有物业收入的总和扣除。

3. 委员会认为在计算上诉人个人入息课税的入息时，《税务条例》第 42(1)条的附带条款所能容许扣除的利息是要以每一个物业独立计算，及限于物业的应评税净值及为产生该笔收入而支付的利息中金额较少者。

上诉驳回。

参考案例：

D86/99, IRBRD, vol 14, 581
D4/01, IRBRD, vol 16, 126
D96/01, IRBRD, vol 16, 796

冯加良代表税务局局长出席聆讯。
纳税人亲自出席聆讯。

裁 决 书：

背景

1. 在2001/02课税年度内，上诉人及其妻子在香港共同拥有物业A及物业C并将这两个物业作出租用途。该两个物业的应评税净值及为产生该入息而支付的利息如下：

	应评税净值	为产生该入息而支付的利息
物业A	$125,894	$24,841
物业C	$85,760	$216,501

合共	$211,654	$241,342

2. 上诉人和税务局局长对于案情事实并无争议。税务局的代表亦同意接受本宗上诉是上诉人及其妻子的共同上诉。本案的上诉书虽然是由上诉人单独签署，但上诉书的内容及所用的信纸明确显示这是一宗上诉人及其妻子的共同上诉。

3. 上诉人和税务局的代表又确认他们之间唯一的争议是：

> 上诉人认为在计算个人入息课税时，应在计算物业A及物业C收入的总和后才扣除物业A及物业C利息支出的总和，但税务局的代表则认为有关的税例所容许从物业收入扣除的利息是限于该物业的应评税净值及为产生该笔收入而支付的利息中金额较少者。

4. 因此在本案中，本委员会须考虑的问题是在计算上诉人的个人入息课税入息总额时，假如上诉人为产生一个物业的租金收入而借贷，而就该借贷所支付的利息金额超出该物业应评税净值的金额时，他能否用超额的部份抵销另一个收租物业的应评税净值或其部份？

《税务条例》的有关规定

5. 《税务条例》第42(1)条载明：

> 「为本部的施行，一名个人在任何课税年度的入息总额，除第*(8)*款另有规定外，须是以下款额的总和
>
> *(a)* *(i)* ...
>
> *(ii)* 就*1983*年*4*月*1*日或其后开始各课税年度而言，一笔相等于按照第*5(1A)*及*5B*条而确定的应评税净值的款额：
>
> *(b)* 该名个人在该课税年度的应评税入息实额；及
>
> *(c)* 除第*(1A)*款另有规定外，该名个人在该课税年度按照第*IV*部计算后所得的应评税利润的款额：
>
> *(d)* ...
>
> 但凡为产生*(a)*段所指的<u>该部分</u>入息总额而借入金钱，而须就其支付的利息并未根据第*IV*部获得免税及扣除，则该利息额须于*(a)*段所指的<u>该部分</u>入息总额中扣除。」(加入强调)

'*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 amount –*

(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) subject to subsection (1A), the assessable profits of the individual for that year of assessment computed in accordance with Part IV:

(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 Part IV.'* (emphasis added)

6. 《**税务条例**》**第**68(4)**条载明：**

「**证明上诉所针对的评税额过多或不正确的举证责任，须由上诉人承担。**」

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

有关案例

7. **委员会在**D86/99, IRBRD, vol 14, 581**说明《税务条例》第**42(1)**条的附带条款不容许从应课税物业入息总额中扣除所有物业合并计算的应付利息。委员会在判词中对《税务条例》第**42(1)**条的附带条款作出以下的解释：**

「**纳税人正确地提出在计算个人入息课税总额时应计算其入息总和。但这并不表示纳税人的利息支出总和可从其入息总和扣除。按照计算个人入息课税规定，利息只有在符合税务条例第***42(1)***或***42(2)***的附带条款的情形下才可以被扣除。**」

> 「〔第*42(1)*条的〕附带条款明确地只容许扣除因产生第*(a)*段所指的该部份入息而支付的借贷利息。该附带条款不容许利息支出整体性地从所有物业收入的总和扣除，更不容许利息支出整体性地从课税入息的总和扣除。」

以下是所节录的判词的英文原文：

> '*The Taxpayer argues, correctly, that an individual's total taxable income is aggregated for personal assessment purposes. But it does not follow that his total interest expenses should then be deducted against his total income. Rather, under personal assessment, to qualify for a deduction interest payable must satisfy the applicable statutory provisions, namely, either the proviso to section 42(1) or section 42(2).*
>
> *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 for interest payable against total taxable income.'*

8. 在其后两宗有关利息扣除的上诉个案[即D4/01, IRBRD, vol 16, 126及D96/01, IRBRD, vol 16, 796]中，由另一些委员所组成的委员会在决定如何诠释《税务条例》第42(1)条的附带条款时，都支持委员会在D86/99个案中对该附带条款的诠释。在D4/01个案中，委员会进一步说明第42(1)条的附带条款的立法意图为「申请扣除的利息应与所抵销的收入有若干关连」('the legislature intended that there should be some correlation between the interest claimed and the income received').

案情分析

9. 上诉人声称委员会判例D86/99及D4/01不适用于本案，因为在该两宗案件里，纳税人是要求扣除没有产生租金收入的物业的借贷利息。但在本案中，物业A及物业C都有租金收入，上诉人只是要求将两个物业的利息支出总和从两个物业的收入总和扣除。

10. 我们不同意上诉人上述的论点。问题的关键不在乎是否有部份物业的收入是零收入或低收入(即低于利息支出)。关键是第42(1)条的附带条款是否容许一位拥有多个物业的纳税人将其利息支出整体性地从所有物业收入的总和扣除。在D86/99及D4/01这两宗案件里，委员会对《税务条例》第42(1)条的附带条款进行了很慎重的诠释。我们认为委员会在该两宗案件的裁决原则适用于本案。

11. **我们认为在计算上诉人个人入息课税的入息时，《税务条例》第42(1)条的附带条款所能容许扣除的利息是要以每一个物业独立计算，及限于该物业的应评税净值及为产生该物业的收入而支付的利息中金额较少者。**

裁决

12. **我们因此驳回上诉，并维持原有的评税。**