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.

案件編號 D27/04

個人入息課稅 – 個人入息課稅的入息總額 – 可容許扣除為產生出租物業收入而支付的利息 – 舉證責任在上訴人身上 – 《稅務條例》第42(1)及68(4)條

委員會：何耀華（主席）、郭志樑及薛建平

聆訊日期：2004**年**3**月**19**日**
裁決日期：2004**年**7**月**15**日**

上訴人及其妻子反對稅務局向他們在2001/02**課稅年度所作出的個人入息課稅評稅。**

在2001/02**課稅年度期間，上訴人及其妻子共同擁有兩個出租物業：物業**A**及物業**C**。其中物業**C**借貸所支付的利息金額是超出該物業應評稅淨值的金額。**

上訴人認為在計算個人入息課稅時，應在計算物業A**及物業**C**收入的總和後才扣除物業**A**及物業**C**利息支出的總和。但稅務局的代表則認為有關的稅例所容許從物業收入扣除的利息是限於該物業的應評稅淨值及為產生該筆收入而支付的利息中金額較少者。**

因此，委員會在這上訴中須裁決的問題是：在計算上訴人個人入息課稅的入息總額時，假如上訴人為產生一個物業的租金收入而借貸，而就該借貸所支付的利息金額超出該物業應評稅淨值的金額時，他能否用超額的部份抵銷另一個收租物業的應評稅淨值或其部份?

裁決：

1. **委員會在** D86/99 **已說明《稅務條例》第** 42(1)**條的附帶條款不容許利息支出整體性地從所有物業收入的總和扣除，更不容許利息支出整體性地從課稅入息的總和扣除。其後兩宗有關利息扣除的上訴個案(即** D4/01 **及** D96/01)**中，這樣對第** 42(1)**條的附帶條款的詮釋亦受到在該兩宗案件裏**

的委員會支持。D4/01**個案中的委員會更進一步說明第** 42(1)**條的附帶條款的立法意圖為「申請扣除的利息應與所抵銷的收入有若干關連」(採納** D86/99**、**D4/01 **及** D96/01**)。**

2. **委員會不同意上訴人提出區別本案與** D86/99 **及** D4/01 **的論點：本案中的上訴人只是要求將兩個物業的利息支出的總和從兩個物業的收入總和扣除；至於在** D86/99 **及** D4/01 **中的納稅人，則要求扣除沒有產生租金收入的物業的借貸利息。委員會認為問題的關鍵不在乎是否有部份物業的收入是零收入或低收入（即低於利息支出）。關鍵是第** 42(1)**條的附帶條款是否容許一位擁有多個物業的納稅人將其利息支出整體性地從所有物業收入的總和扣除。**

3. **委員會認為在計算上訴人個人入息課稅的入息時，《稅務條例》第** 42(1) **條的附帶條款所能容許扣除的利息是要以每一個物業獨立計算，及限於物業的應評稅淨值及為產生該筆收入而支付的利息中金額較少者。**

上訴駁回。

參考案例：

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

馮加良代表稅務局局長出席聆訊。
納稅人親自出席聆訊。

裁 決 書：

背景

1. **在**2001/02**課稅年度內，上訴人及其妻子在香港共同擁有物業**A**及物業**C**並將這兩個物業作出租用途。該兩個物業的應評稅淨值及為產生該入息而支付的利息如下：

	應評稅淨值	**為產生該入息而支付的利息**
物業A	$125,894	$24,841
物業C	$85,760	$216,501

合共	$211,654	$241,342

2. **上訴人和稅務局局長對於案情事實並無爭議。稅務局的代表亦同意接受本宗上訴是上訴人及其妻子的共同上訴。本案的上訴書雖然是由上訴人單獨簽署，但上訴書的內容及所用的信紙明確顯示這是一宗上訴人及其妻子的共同上訴。**

3. **上訴人和稅務局的代表又確認他們之間唯一的爭議是：**

上訴人認為在計算個人入息課稅時, 應在計算物業A及物業C收入的總和後才扣除物業A及物業C利息支出的總和, 但稅務局的代表則認為有關的稅例所容許從物業收入扣除的利息是限於該物業的應評稅淨值及為產生該筆收入而支付的利息中金額較少者。

4. **因此在本案中，本委員會須考慮的問題是在計算上訴人的個人入息課稅入息總額時，假如上訴人為產生一個物業的租金收入而借貸，而就該借貸所支付的利息金額超出該物業應評稅淨值的金額時，他能否用超額的部份抵銷另一個收租物業的應評稅淨值或其部份？**

《稅務條例》的有關規定

5. **《稅務條例》第**42(1)**條載明：**

「為本部的施行，一名個人在任何課稅年度的入息總額，除第*(8)****款另有規定外，須是以下款額的總和***

(a) *(i)* ...

(ii) ***就****1983****年****4****月****1****日或其後開始各課稅年度而言，一筆相等於按照第****5(1A)****及****5B****條而確定的應評稅淨值的款額：***

(b) ***該名個人在該課稅年度的應評稅入息實額；及***

(c) ***除第****(1A)****款另有規定外，該名個人在該課稅年度按照第****IV****部計算後所得的應評稅利潤的款額：***

(d) ...

但凡為產生*(a)****段所指的該部分入息總額而借入金錢, 而須就其支付的利息並未根據第****IV****部獲得免稅及扣除, 則該利息額須於****(a)****段所指的該部分入息總額中扣除。」*** **(加入強調)**

'*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. **《稅務條例》第**68(4)**條載明：**

「證明上訴所針對的評稅額過多或不正確的舉證責任，須由上訴人承擔。」

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

有關案例

7. **委員會在**D86/99, IRBRD, vol 14, 581**說明《稅務條例》第**42(1)**條的附帶條款不容許從應課稅物業入息總額中扣除所有物業合併計算的應付利息。委員會在判詞中對《稅務條例》第**42(1)**條的附帶條款作出以下的解釋：**

「納稅人正確地提出在計算個人入息課稅總額時應計算其入息總和。但這並不表示納稅人的利息支出總和可從其入息總和扣除。按照計算個人入息課稅規定，利息只有在符合稅務條例第*42(1)****或****42(2)****的附帶條款的情形下才可以被扣除。」***

「〔第42(1)條的〕附帶條款明確地只容許扣除因產生第(a)段所指的該部份入息而支付的借貸利息。該附帶條款不容許利息支出整體性地從所有物業收入的總和扣除，更不容許利息支出整體性地從課稅入息的總和扣除。」

以下是所節錄的判詞的英文原文：

'*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. **在其後兩宗有關利息扣除的上訴個案**[**即**D4/01, IRBRD, vol 16, 126**及**D96/01, IRBRD, vol 16, 796]**中，由另一些委員所組成的委員會在決定如何詮釋《稅務條例》第**42(1)**條的附帶條款時，都支持委員會在**D86/99**個案中對該附帶條款的詮釋。在**D4/01**個案中，委員會進一步說明第**42(1)**條的附帶條款的立法意圖為「申請扣除的利息應與所抵銷的收入有若干關連」**('the legislature intended that there should be some correlation between the interest claimed and the income received').

案情分析

9. **上訴人聲稱委員會判例**D86/99**及**D4/01**不適用於本案，因為在該兩宗案件裏，納稅人是要求扣除沒有產生租金收入的物業的借貸利息。但在本案中，物業**A**及物業**C**都有租金收入，上訴人只是要求將兩個物業的利息支出總和從兩個物業的收入總和扣除。**

10. **我們不同意上訴人上述的論點。問題的關鍵不在乎是否有部份物業的收入是零收入或低收入(即低於利息支出)。關鍵是第**42(1)**條的附帶條款是否容許一位擁有多個物業的納稅人將其利息支出整體性地從所有物業收入的總和扣除。在**D86/99**及**D4/01**這兩宗案件裏，委員會對《稅務條例》第**42(1)**條的附帶條款進行了很慎重的詮釋。我們認為委員會在該兩宗案件的裁決原則適用於本案。**

11. **我們認為在計算上訴人個人入息課稅的入息時，《稅務條例》第**42(1)**條的附帶條款所能容許扣除的利息是要以每一個物業獨立計算，及限於該物業的應評稅淨值及為產生該物業的收入而支付的利息中金額較少者。**

裁決

12. **我們因此駁回上訴，並維持原有的評稅。**