

Company F -v- Comptroller of Taxes
Loan Interest and Historic Tax Assessment
June 2022

For the purpose of anonymisation, the true name of any individual or company mentioned below has been fictionalised.

OVERVIEW

Company F (the Company) owns a property used as a business and in 2013 transferred its trading activities to an associated company. The Company leased the property to that associated company and thus became liable to Jersey Income Tax under Schedule A. The Company's accounts show a number of loan structures for the purposes of funding the ongoing ownership of the property. The Company's agents submitted accounts and computations for all the required years from 2013 onwards. Revenue Jersey reviewed these in detail and raised a number of queries which were dealt with and agreed. Assessments were raised on the basis of the accounts and revised computations. Crucially these allowed interest on the loans as a deduction against rental income. At a later date Revenue Jersey revisited the assessments and concluded that the loan interest was not an allowable deduction and raise revised assessments where able to do so.

The Appeal raises the following issues for determination by the Commissioners: -

1. The intention under Article 90AB of the Income Tax (Jersey) Law 1961 (as in force during the relevant Years of Assessment) (the Law) to allow relief for loan interest expenses where there has been a change in use of the underlying property, and
2. The ability of Revenue Jersey to raise an amended assessment in respect of a Company's historic tax liability where no additional information or discovery has been made.

The Commissioners find in favour of the Respondent on both matters.

AGREED STATEMENT OF FACTS

Company F was registered in Jersey in September 1999 and has the company number of XXXXXXXX.

Company F is registered in St Helier, Jersey.

Company F is resident in the UK for tax purposes and has the Tax reference number of AA XXXX and the Tax Identification Number (TIN) of XXX-XXX-XXXX.

The Company is in receipt of Jersey source property rental income and is taxed at the rate of 20% on its adjusted profits under Part 8 of the Income Tax (Jersey) Law 1961.

The property is in Jersey.

Company F took an interest free loan, from a group company, to build a business and then to trade from those premises. (2007 for £4.8m)

In September 2013 trade was transferred out of the Company and the premises reclassified as investment property. (interest free loan approx. £5.7m)

Refinancing in 2014 and 2015 creates first interest bearing loan.

Revenue Jersey does not see that there is an interest deduction available under the Law. Revenue Jersey does not accept that any of the concessions published by the Comptroller are relevant.

Notices of assessment have been issued, and revised, as follows:

Year of assessment	Original assessment issued	Revised assessments issued
2016	February 2017	March 2018 and September 2021
2017	February 2018	September 2021
2018	February 2019	May 2021 and September 2021
2019	January 2021	September 2021

Tax calculation as per agent:

2016	Sch A rents	£288,720	@20%	£57,744.00
2017	Sch A rents	£337,343	@20%	£67,468.60
2018	Sch A rents	£365,115	@20%	£73,023.00
2019	Sch A rents	£409,922	@20%	£81,984.00

Tax calculated by Revenue Jersey

2016	Sch A rents	£605,829	@20%	£121,165.80
2017	Sch A rents	£637,278	@20%	£127,455.60
2018	Sch A rents	£661,287	@20%	£132,257.40
2019	Sch A rents	£671,033	@20%	£134,206.40

Tax in dispute is

2016	Sch A rents	£317,109	@20%	£63,421.80
2017	Sch A rents	£299,935	@20%	£59,987.00
2018	Sch A rents	£296,172	@20%	£59,234.40
2019	Sch A rents	£261,111	@20%	£52,222.20
Total				£234,865.40

CONCLUSIONS

- 1. The intention under Article 90AB of the Law (as in force during the relevant Years of Assessment) to allow relief for loan interest expenses where there has been a change in use of the underlying property**

Article 90AB states: -

- (1) This Article applies where a person pays yearly interest of money which he or she cannot deduct, in computing his or her income chargeable to tax, under any other provision of this Law.
- (2) Subject to Article 90AE, where the interest is payable on a loan incurred for the purpose of –
 - (a) acquiring land for the purpose of letting the whole or substantially the whole of it on open market terms (including terms as to rent) to a person** (other than the person by whom

the interest is payable or a person connected with him or her);

(b) extending a building acquired for the purpose described in sub-paragraph (a); or

(c) paying off another loan, interest on which would have been eligible for relief under this paragraph had the loan not been paid off,

the person by whom the interest is payable shall be entitled to relief of tax on the amount of the interest paid out of profits or gains of the letting of the land brought into charge to tax.

(3) Paragraph (2) shall not apply to a loan for the purpose described in sub-paragraph (a) or (b) of that paragraph unless the letting on open market terms commences within what is, in the circumstances, a reasonable time following the advance of the loan or the first instalment of it.

(4) Where –

(a) part of the land is occupied by the person by whom the interest is payable or a person connected with him or her; or

(b) the whole or substantially the whole of the land is let as described in paragraph (2) for only part of the year of assessment,

such part only of the interest shall be eligible for relief under the said paragraph (2) as is just and reasonable to attribute to the letting, having regard to all the relevant circumstances.

(5) In this Article “land” includes a building.

We find that the original loans were advanced for the purposes of carrying out a trade and that they are not a qualifying loan under the section 90AB of the Law.

In the submissions made to us we have considered firstly a concession issued by the Comptroller in relation to a domestic property which is subsequently let. We have also reviewed the “Hansard” report of the States sitting which discussed the introduction of this and other Articles.

The concession in relation to a main residence, covers the position of property which was owner occupied and is then let. Under the concession it is agreed that interest on the original loan is an allowable deduction, notwithstanding that it was not taken out with a view to the letting of the property. In our opinion, this is a very similar case, but not the same as the appeal before us.

In the transcript of the States sitting, it is evident that the Law was not meant to frustrate genuine commercial activities and it was anticipated that the Comptroller would give appropriate concessions as the Law matures and inconsistencies were found.

It seems inequitable to us that if another company bought the same property with the intention of letting it, and took a new commercial loan for that purpose, then the interest would be allowable.

We believe that the Comptroller should have considered giving a general concession in relation to this and similar cases, however the wording of this article is very precise and we do not consider that we have the power to create a concession even where it is appropriate.

2. The ability of Revenue Jersey to raise an amended assessment in respect of a Company's historic tax liability where no additional information or discovery has been made.

The case of Scorer v Olin Energy Systems Ltd has been referred to us. We are of the opinion that the differences in law and procedures between English and Jersey law are such that the powers applied by Jersey Revenue in this case are contained within Article 24 of the Law as follows: -

24 Additional assessments

(1) If the Comptroller discovers –

(a) that any properties or profits chargeable to tax have been omitted from the first assessments or have not been assessed;

(b) that a person chargeable has not delivered any return, or has not delivered a full and proper return, or has not been assessed to tax, or has been undercharged in the first assessments;

(c) that a person chargeable has been allowed, or has obtained from and in the first assessments, any deduction, or reduction of rate not authorized by this Law; or

(d) that by reason of the apportionment, under this Law, of an exemption threshold increase or any allowance, relief or deduction between a person and one or more others, an amount is recoverable from the person,

then and in every such case the Comptroller shall amend the assessment or make such additional assessment as will render the person liable to the full amount of tax with which he or she ought to be charged:

Provided that any such amended or additional assessment shall be subject to appeal and other proceedings as in the case of a first assessment.

(1A) A person chargeable who does not furnish any documents or information required, under Article 16(4A) or 16A, in support of a return shall be taken, for the purposes of paragraph (1)(b), to have failed to deliver a full and proper return.

(2) Subject to paragraph (3), an assessment may be amended or an additional assessment may be made at any time not later than 5 years after the end of the year of assessment in respect of which the return was made.

(3) Where any form of fraud or wilful default has been committed by or on behalf of the person chargeable to income tax for the year of assessment, amended assessments and additional assessments on that person for that year may be made at any time.

It is clear to us that under Article 24 (1) (c) the Comptroller has the power to raise an amended assessment notwithstanding that no new information has come to light. In our opinion discovery can occur, not just because of new evidence, but also because of a subsequent file review, quality control audit, or similar.

RECOMMENDATIONS

We would suggest the Comptroller gives consideration to a concession similar to that already in place where a main residence is subsequently rented out. The concession should cover other situations where the commercial purpose for which the property was originally purchased has changed.

We are of the opinion that when appropriate a concession should be captured in a future revision of the Law.